

# CITY OF PORTSMOUTH

## Zoning Board of Adjustment Application

For Appeals of Administrative Decision or Request for Equitable Waiver or City Council Decision

<i>Department Use Only</i>	Date _____	Decision _____
Assessor Plan # _____	Lot # _____	Fee _____
Zone _____	Lot area _____	By _____

Fill in below by printing in ink or typing / Complete all Blanks or indicate "N/A" if not applicable

Applicant Kenneth & Deborah Jennings Owner of Record Same

Applicant Street Address 63 Thaxter Road Owner Street Address Same

Applicant City / State / Zip Portsmouth NH 03801 Owner City / State / Zip \_\_\_\_\_

Applicant phone (603) 373-0061 Owner phone (\_\_\_\_) \_\_\_\_\_

Applicant e-mail 00mailx@gmail.com

Location (street address) of proposed work: 27 Thaxter Road

Existing use: Single Family Residence

Undersigned hereby requests:

Relevant Article and Section

Appeal from an Administrative Decision  
See Article 2, Section 10.234.30

Other (e.g. Equitable Waiver)

RSA 674:39-aa

For the following:

This is an appeal from the May 20, 2019 action of the City Council to restore what is claimed to be Lot 46 on "Plan of Westfield Park" also known as Tax Map 166 Lot 39 in accordance with the attached Appeal Statement.

The undersigned alleges that the required conditions exist for granting of this request according to the terms of the Zoning Ordinance as demonstrated in the attached submittals.

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application with original signatures, the application fee, and 12 packets of required plans and any supporting documents or photos. Incomplete applications will not be accepted. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Public Hearing for the above appeal.

Kenneth K. Jennings  
Signature of Owner

Deborah Jennings 6/14/2019  
Date

Please PRINT name here Kenneth Jennings

Deborah Jennings



## APPEAL STATEMENT

1. Chad Callihan, through counsel in a letter dated February 21, 2019, requested that the Portsmouth City Council restore two alleged involuntarily merged lots under the authority of RSA 674:39-aa.

2. Mr. Callihan states that the two lots which were involuntarily merged were

- “approximately 10,000 square feet” (Tax card for Map 52, Lots 44 and 45),
- “approximately 2,580 square feet” (Tax Map 52, Lot 46),

for a total of 12,580 sf for both Lots, with a total of 130 feet of frontage on Thaxter Road.

This total of 12,580 sf owned by Chad Callihan for both lots will sometimes be referred to as “All of 27 Thaxter Road.”

3. Mr. Callihan states that it is the

“former Lot 46, that the applicant seeks to restore.”

As we will see, it cannot be the original Lot 46 in its entirety that the applicant seeks to restore as Lot 46 is now in two separate ownerships.

4. Among the materials submitted are a typed, three page document entitled “Portsmouth Tax Cards” which show, in summary, early plans and deed information for each of Lots 44, 45, 46 , and 47.

### HISTORY OF WESTFIELD PARK-17, 27 AND 63 THAXTER ROAD

5. The property owned by Mr. Callihan (being a total of 12,580 sf with 130 feet of road frontage being All of 27 Thaxter Road), is shown as Lots 44, 45 and only a portion of 46 (with the portion owned by Mr. Callihan being 30 feet of frontage on Thaxter Road with all of Lot 46 being shown in its entirety) as shown on a “Plan of Westfield Park” (See Attachment #1),

filed as Plan No. 0233 in 1917 at the Rockingham Registry of Deeds – this is the area near Islington Street now known as Thaxter Road and Aldrich Road.

Once again Chad Callihan’s property (including Lots 44, 45 and the portion of Lot 46) is referred to as All of 27 Thaxter Road in this Appeal Statement.

A plan of Westfield Park Revised 1929 is then filed as Plan 0643 at the Rockingham Registry of Deeds (*See Attachment #2*).

6. The property owned by Kenneth and Deborah Jennings (known as 63 Thaxter Road) is shown as Lot 47 and a portion of Lot 46 as those lots are shown on the Westfield Park Plans.

7. Kenneth and Deborah Jennings are direct abutters to Mr. Callihan’s property at 27 Thaxter Road.

Kenneth and Deborah Jennings own a portion of Lot 46 with twenty (20) feet of frontage on Thaxter Road which is combined with Lot 47 to form 63 Thaxter Road with a total of 70 feet of frontage on Thaxter Road.

8. The property now known as 17 Thaxter Road (which also fronts on Islington Street) is shown as Lots 42 and 43 on the Westfield Park Plans, with 114 feet of frontage on Thaxter Road. These two (2) lots did not become a residential lot until after variances were granted to the then owner by the Board of Adjustment on May 25, 2004.

Prior to May 25, 2004 these Lots 42 and 43 (a) had their access/egress on Islington Street and (b) had what was commonly referred to in Town as the “false tooth” building (a commercial use) on them.

9. All of the properties known as 17 Thaxter Road, 27 Thaxter Road and 63 Thaxter Road are important in understanding what RSA 674:39-aa II(b) refers to as a “chain of title” and making an informed decision on Mr. Callihan’s “restoration” request.

10. Subsequent to the original two Westfield Park plans, an August 1933 “Plan of Westfield Park” showing Lots 38-46 was filed at the Registry of Deeds as Plan 0782 (*See* Attachment #3).

This plan is a good reference in that it more clearly shows all the lots at issue in this matter.

11. Based upon the foregoing and the deeds to Lots 42, 43, 44, 45, and a portion of 46 (all combined with a total of 244 feet of frontage on Thaxter Road and which we now know today as 17 Thaxter Road and All of 27 Thaxter Road), were all owned (together) by the Orville N. Guptill Revocable Trust as of April, 2004, i.e., contiguous lots in common ownership.

#### **2004 BOARD OF ADJUSTMENT VARIANCE**

12. There was no residence on the property known as 17 Thaxter Road as of April, 2004, as (a) the City had merged Lots 42 and 43 with Lots 44, 45 and a portion of 46 into one lot (with 244 feet of frontage on Thaxter Road) and (b) there was only the unused “false tooth” commercial building on Lots 42 and 43. With these lots merged into one, the City required the Orville N. Guptill Trust (the owner) to Petition the Board of Adjustment

“...to allow the separation of two lots in common ownership with Lot 52 having 10,475 sf and Lot 39 having 12,580 sf...”

Legal Notice of Board of Adjustment Meeting originally scheduled for May 18, 2004, but rescheduled to May 25, 2004 is Attachment #4.

It is important that this Lot 39 for tax assessment purposes with 12,580 sf and 130 feet of frontage on Thaxter Road is the exact same property which Chad Callihan owns today and is

known as All of 27 Thaxter Road (once again, Lots 44, 45 and a portion of Lot 46 on the Westfield Park Plans).

13. The 2004 Application to the Board of Adjustment by Guptill is attached as Attachment #5.

14. The Overview, believed to be prepared by the Planning Department Staff for this 2004 Application (*See Attachment #6*) states:

- “The Zoning Ordinance treats these two parcels [what we know today as 17 Thaxter and All of 27 Thaxter] as one parcel for zoning purposes because they are in common ownership and lack the minimum required lot area of 15,000 sf per lot.”
- “Lot 39 has a single family dwelling located on it” [this is exactly the property owned today by Mr. Callihan known as All of 27 Thaxter with a total of 12,580 sf and 130 feet of frontage on Thaxter Road].
- “Lot 52 is on the corner of Thaxter Road and Islington Street and has a small non-residential building. This non-residential building has been vacant for many years” [this is exactly the same property now known as 17 Thaxter with the residence which is there today not yet built as of April 1, 2004, on it].

15. By letter (*See Attachment #7*) dated May 27, 2004, the Board of Adjustment confirmed that variances were granted at its meeting on May 25, 2004 to allow the creation (at the request of the then owner)

”two lots in common ownership with Lot 52  
having 10,475 sf and Lot 39 having 12,580 sf...”

16. To be clear, the owner as of May, 2004, of the property known as All of 27 Thaxter Road (the exact same property Chad Callihan owns today) requested that these variances be granted in order that the following two lots could be created:

- Lot 52 on the City’s tax map = now known as 17 Thaxter Road = 10,475 sf = 114 feet of frontage on Thaxter = Lots 42 and 43 on the Westfield Park plans;

- Lot 39 on the City's tax maps = now known as 27 Thaxter Road = 130 feet of frontage on Thaxter = 12,580 sf = Lots 44, 45 and a portion of Lot 46 on the Westfield Park plans.

17. Although the Legal Notice for this May 25, 2004 ZBA meeting is on the Board of Adjustment's on-line archived records, the remainder of these records were not.

For reasons that are unknown, the facts stated in paragraphs 13, 14 and 15 regarding the Board of Adjustment records pertaining to the Application and the May 25, 2004, meeting were not available on-line.

#### **GUPTILL DEED= CHAIN OF TITLE**

18. Subsequent to the above 2004 action of the Board of Adjustment, what then became known as 17 Thaxter Road (Lots 42 and 43, the one 10,475 sf lot approved by the Board of Adjustment in 2004) was conveyed by deed dated July 9, 2004, to Angelique and Michael Murray at Rockingham County Registry of Deeds in Book 4329, Page 0573 (*See Attachment #8*).

19. Subsequent to the above 2004 action of the Board of Adjustment, the property known as All of 27 Thaxter (Lots 44, 45 and a part of 46 – the **ONE** 12,580 sf lot approved by the Board of Adjustment **AT THE REQUEST OF THE OWNER**) was transferred by the following attached deeds:

- a. by Guptill to William F. Burns by deed dated July 30, 2004 and recorded at Rockingham County Registry of Deeds in Book 4337, Page 2120;
- b. William F. Burns to Kieth Tong and Maureen Healy by deed dated May 16, 2008 and recorded at Rockingham County Registry of Deeds in Book 4918, Page 0090.
- c. Kieth Tong and Maureen Healy to Chad Callihan by deed dated June 29, 2018 and recorded at Rockingham County Registry of Deeds in Book 5926, Page 768.

All of these deeds in the paragraph are Attachment #9 for the Chad Callihan property known as All of 27 Thaxter Road.

20. Based on the foregoing it is clear that the Orville N. Guptill Revocable Trust owned both the property now known as 17 Thaxter Road and 27 Thaxter Road in 2004, then divided that property into two separate lots with the variance granted by the Board of Adjustment on May 25, 2004.

21. This Guptill Trust is an owner and is what RSA 674:39-aa II(b) refers to as in the “chain of title” for Chad Callihan, i.e., Guptill is a prior owner of Chad Callihan’s property.

#### **2011 BOARD OF ADJUSTEMENT VARIANCE**

22. Kieth Tong and Maureen Healy owned the property known as All of 27 Thaxter Road in 2011.

Not only were Mr. Tong and Ms. Healy in the “chain of title” they actually sold this property to Chad Callihan on June 29, 2018 (*See* Paragraph 19 (c) above).

The property at All of 27 Thaxter Road was configured in 2011 (12,580 sf, 130 feet of frontage on Thaxter Road, Lots 44, 45 and a portion of 46 on the Westfield Park plans) exactly the same as the property Chad Callihan owns today.

23. When the then owners of 27 Thaxter Road filed their requests with the City in 2011, they included an “Existing Site Plan” dated January 17, 2011, which represented the dimensions of All of 27 Thaxter Road and

- (a) showed the entirety of 27 Thaxter Road = 12,589 sf = 130 feet of frontage on Thaxter Road as a **SINGLE LOT**;
- (b) showed the entirety of All of 27 Thaxter Road as Tax Map 166 Lot 39 (including so-called Lot 46) as a **SINGLE LOT**;
- (c) showed a fence surrounding the entire perimeter of the single 12,589 sf lot.



This plan is stamped by the City as "Received Jan. 26 2011" and is attached here as Attachment #10.

24. The owners of All of 27 Thaxter Road filed a variance request, which was scheduled for a Board of Adjustment meeting on February 15, 2011 (*See Attachment #11*).

25. In the Staff Review of this application the coverage calculations are based on the entire lot (a single lot) of All of 27 Thaxter Road, including the alleged portion of Lot 46 which Chad Callihan now seeks to "restore" (*See Attachment #12*).

26. The Minutes of the February 11, 2011 Board of Adjustment hearing indicate that the requested variances were granted at that time, based on the representations by the then owners.

#### **JENNINGS PROPERTY**

27. Kenneth K. and Deborah Jennings acquired the property known as 63 Thaxter Road by deed of Robert E. Butler, et al. dated May 29, 2001, recorded at Rockingham County Registry of Deeds in Book 3591, Page 951.

28. The Jennings property at 63 Thaxter Road is directly adjacent to 27 Thaxter Road.

29. The Jennings own a portion of the original Lot 46 in the Westfield Park Plan (*See Jennings deed and 1933 Gove to Guptill deed as Attachment #13*), with Chad Callihan owning a separate portion of Lot 46.

Since the Jennings own a portion of Lot 46 (20 feet of frontage on Thaxter Road) and Chad Callihan owns a portion of Lot 46 (30 feet of frontage on Thaxter Road) it is not possible to "restore" Lot 46 to Mr. Callihan.

30. The Jennings have a common lot line with the 12,580 sf lot known as All of 27 Thaxter Road owned by Chad Callihan.

## **27 THAXTER ROAD FENCE**

31. Today Mr. Callihan's property at All of 27 Thaxter Road (which encompassed Lots 44, 45 and a portion of 46 as a single lot) has a contiguous white picket fence that currently runs along the side yards and the backyard.

The fence that continued along the front yard of the property (with a gate for the driveway) was constructed in 2004, was maintained by the owners prior to Chad Callihan for approximately 14 years, and was taken down approximately six (6) months ago. This is the same fence that is shown on the Existing Site Plan referred to in paragraph 23 above.

32. The existence of this fence around the entire perimeter of All of 27 Thaxter Road is significant to the issue of whether an owner in Chad Callihan's "chain of title" took action that indicated that the then owner "regarded said lots as merged." RSA 674:39-aa I(c).

### **PLANNING DEPARTMENT STAFF RECOMMENDATION**

33. Critical to the City's decision on Chad Callihan's request to restore lots to their "premerger status" under RSA 674:39-aa is that the law requires that

- "No owner in the chain of title voluntarily merged his or her lots."
- "If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration."
- Voluntary merger or merged includes "any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line."

34. Counsel for Chad Callihan says in his February 21, 2019 submission that

"The fact that the lots were conveyed to Mr. Callihan in a single deed is not legally sufficient to effect a voluntary merger of the lot."

35. The New Hampshire Supreme Court has said that the single deed

"does not, standing alone, support a voluntary merger."

Roberts v. Windham, 165 NH 186, at 192 (2013).

36. The Roberts case also explains that other factors must be considered in determining whether (in this situation) Chad Callihan or any “owner in the chain of title”

- took “overt action or conduct,”
- which “indicates an owner regarded said lots as merged...”

37. Based on what we now know the facts are:

- a. The actions in 2004 of a prior owner (Guptill) regarding a lot having the 100% exact dimensions of the entire property Chad Callihan owns known as All of 27 Thaxter Road (12,580 sf, 130 feet of frontage and Lots 44, 45 and a portion of 46) seems to be important to have in order to reach a decision about whether that prior owner “regarded said lots as merged.”

Guptill (in the “chain of title”) took action to create a single lot owned by Chad Callihan that is now known as All of 27 Thaxter Road which merged a portion of Lot 46 into All of 27 Thaxter Road.

- b. The actions of prior owners in the “chain of title” (Tong and Healy) in 2011 whereby they submit to the City an Existing Site Plan which shows, as a single lot, All of 27 Thaxter Road with the same dimensions stated in the prior paragraph seems to be important to have in order to make a decision about whether those prior owners “regarded said lots as merged.”

The representations of these prior owners were that Lot 46 had been merged into one single lot known as All of 27 Thaxter Road.

- c. The fact that the same Existing Conditions Plan shows a fence surrounding the entirety of All of 27 Thaxter Road (except for the driveway which had a gate) seems to be important in determining that the owner “regarded said lots as merged.”

People normally put a fence around a property when they consider it a single lot.

- d. The fact that today that same white picket fence goes around the perimeter on three sides - both side yards and the entirety of the rear lot line – seems to be pretty important in determining if the owner “regarded said lots as merged.”

38. In this matter, the Planning Department Staff provided recommendations dated April 12, 2019, to the Planning Board on the City Council's referral (*See Attachment #14*), with those recommendations considered by both the Planning Board and City Council when they made their decisions.

39. Although the Planning Department Staff recommendations correctly stated what RSA 674:39-aa says, **NONE** of the history and facts concerning the chain of title for the owners of All of 27 Thaxter Road, including the history of the ownership and the actions of those owners in 2004, when the owner requested that the single lot, including so-called Lot 46 be created, or in 2011 when the owner clearly regarded and represented to the City that All of 27 Thaxter Road was a single lot (which included Lot 46 as part of that single lot), or the fence surrounding the entirety of All of 27 Thaxter Road (including Lot 46) was ever mentioned.

40. The records of the 2004 Board of Adjustment action could not be located in the online archives, so it is possible that contributed to some confusion on the creation of All of 27 Thaxter Road as a single lot, at the request of the then owner, by the Board of Adjustment at its meeting of May 25, 2004.

#### **CITY COUNCIL ACTION**

41. The City Council considered Chad Callahan's request to restore the alleged Lot 46 at its May 20, 2019 meeting.

42. Although we do not have (at this time) minutes from this meeting, we do have the City Manager's Comments and Recommendation to the Council which is based (in part) on the Planning Department Staff recommendations.

43. There is no reference in the City Manager's comments on what we now know are the facts (*See Paragraph 37 and 39 above*).

44. Based on the facts that they knew at the time of their meeting and understanding of the law before it, the City Council voted 6-3 to “restore” Lot 46.

### APPEAL

45. It is clear that the recommendations of the Planning Department staff and the City Manager were based on incomplete information.

**NONE** of the pertinent history concerning All of 27 Thaxter Road was presented to the City Council and Planning Board in the Planning Department Staff Memo, including but not limited to:

- a. the fact that a prior owner in the chain of title requested and then took action in 2004 to create All of 27 Thaxter Road as a single lot (including Lot 46);
- b. the fact that the Board of Adjustment created All of 27 Thaxter Road as a single lot (at the request of the prior owner) by its action of May 25, 2004;
- c. the fact that a prior owner in the chain of title to Chad Callihan presented to the City an Exiting Site Plan dated January 17, 2011 which represented to the City that All of 27 Thaxter Road was a single lot (including Lot 46);
- d. the fact that a prior owner in the chain of title to Chad Callihan represented to the City in the January 25, 2011 Building Permit Application that All of 27 Thaxter Road had a lot area of 12,682 sf (which included Lot 46);
- e. the fact that the City Staff considered All of 27 Thaxter Road (including Lot 46) when it did its coverage calculations for the 2011 building permit;
- f. the fact that the prior owner in the chain of title to All of 27 Thaxter Road constructed a fence around the perimeter of All of 27 Thaxter Road (including Lot 46) showing it as a single lot.

46. This incomplete information could be based, at least in part, on what appears to be wrongly filed and therefore missing minutes of the May 25, 2004 meeting, decision and other documents in the Board of Adjustment’s on-line archives.

47. The incomplete information and the actual facts, however, are now before the Board of Adjustment in this Appeal.

48. Based on the now complete information as stated above, it is respectfully suggested that prior owners in the chain of title of the property known as All of 27 Thaxter Road (12,580 sf, 130 feet of frontage, including Lots 44, 45 and a portion of 46 just as deeded to Chad Callihan) have “voluntarily merged” the lots that form the entirety of this real estate as stated in RSA 674:39-aa I(c).

49. The Board of Adjustment now has the opportunity to correct the mistakes that have resulted from the incomplete information.

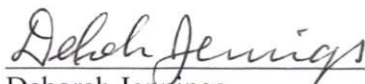
50. Given the foregoing RSA 674:39-aa II(b) requires that Chad Callihan should be “estopped from requesting restoration” by the Board of Adjustment on this appeal.

**RELIEF REQUESTED**

The Appellants (Kenneth and Deborah Jennings) request that the Board of Adjustment reverse the City Council’s action to “restore” Lot 46, find that the prior owners in Chad Callihan’s “chain of title” “voluntarily merged” [as defined in RSA 674:39-aa I(c)] All of 27 Thaxter Road by their conduct which resulted in the Board of Adjustment’s actions in 2004 and 2011, the January 2011 Existing Site Plan and the fence surrounding the one property which results in the current owner (Chad Callahan) being estopped from the requested restoration at this time.

Dated this 14<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Kenneth Jennings

  
\_\_\_\_\_  
Deborah Jennings

*Rh Woodman*

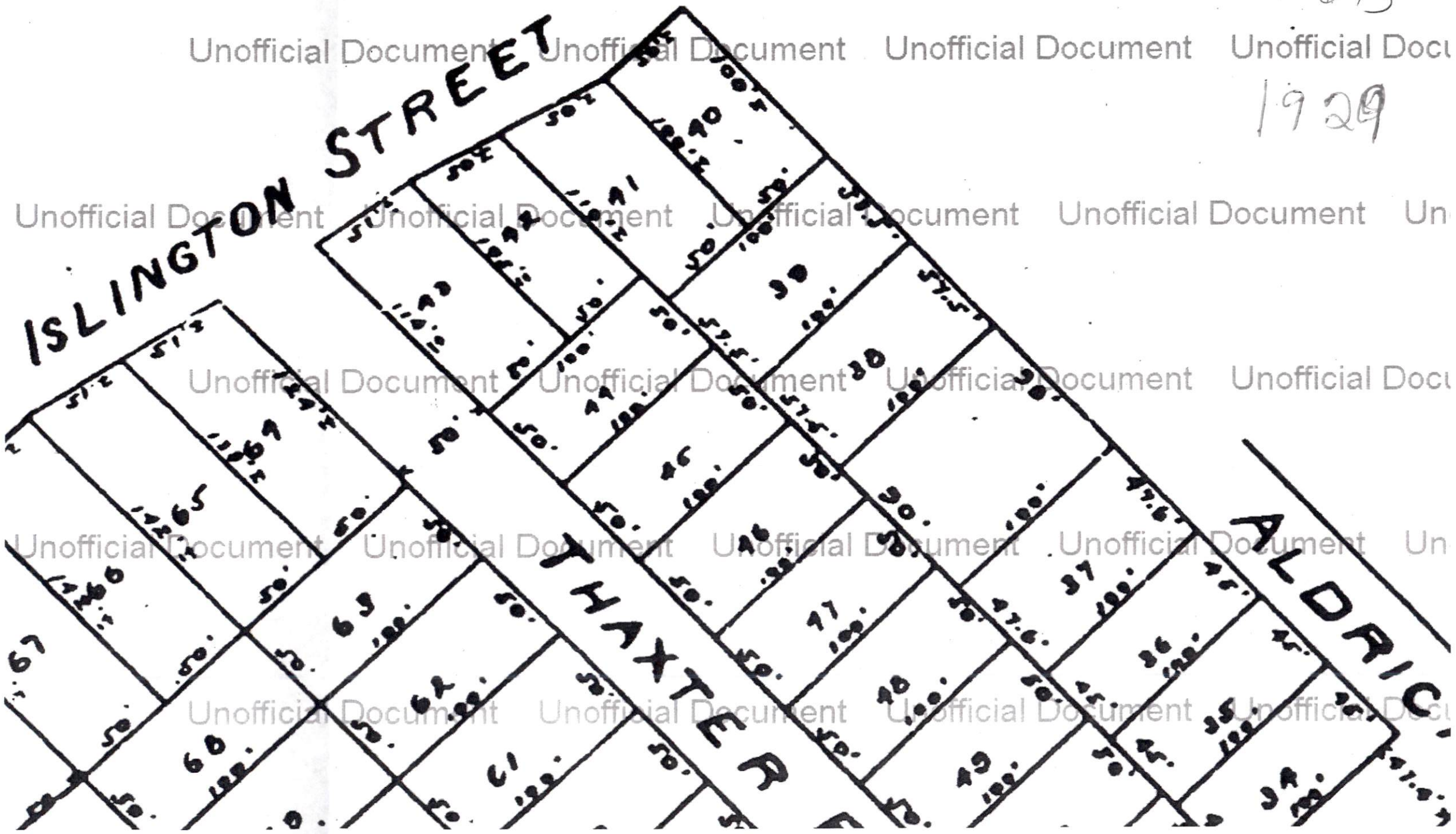
Ralph R. Woodman, Jr., Esquire  
BOYNTON WALDRON DOLEAC  
WOODMAN & SCOTT, PA  
82 Court Street  
Portsmouth, NH 03801  
603-436-4010  
rwoodman@nhlawfirm.com

**ATTACHMENT #1**



#643

1929



Unofficial Document Unofficial Document Unofficial Document Unofficial Document

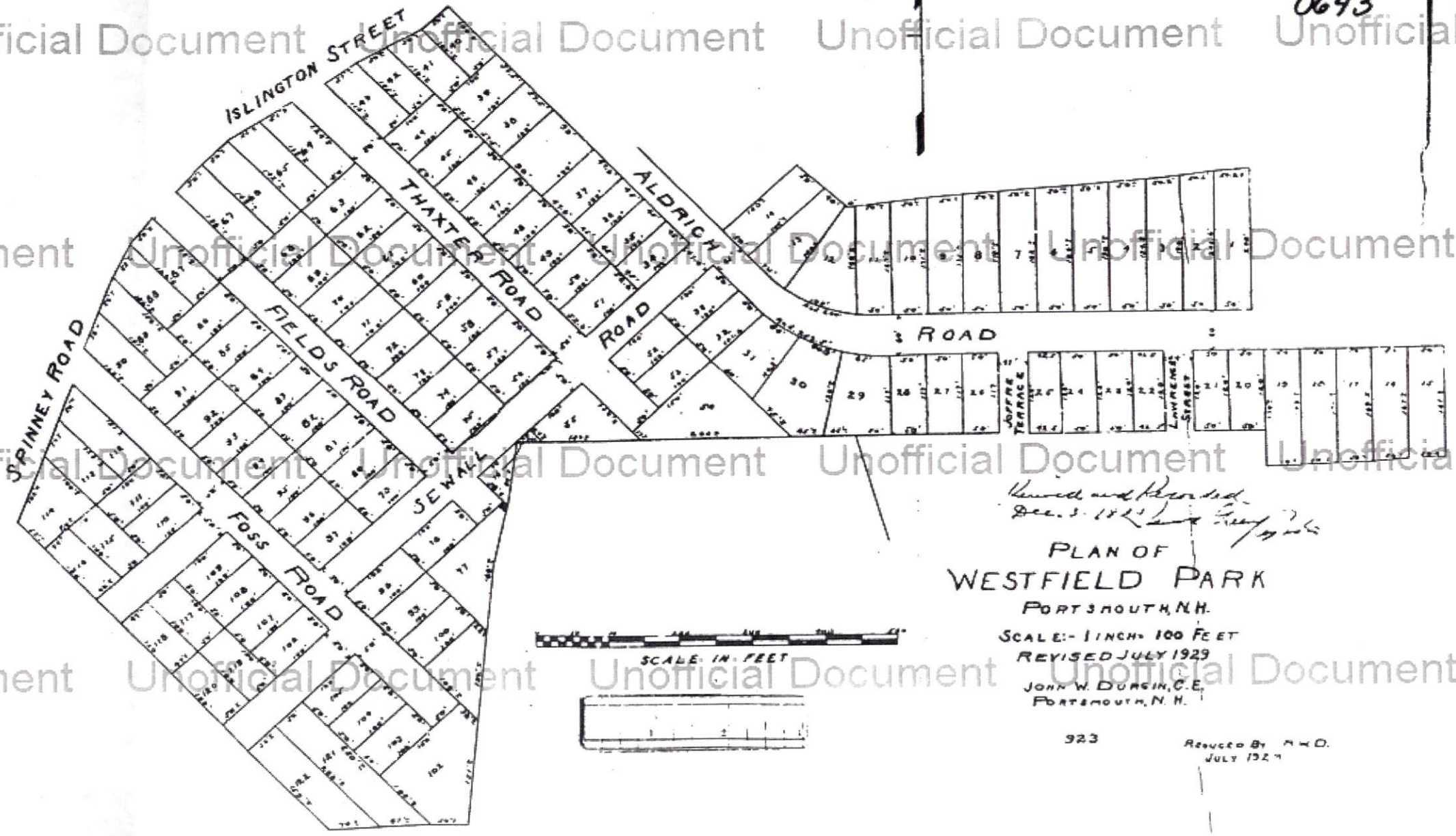
Unofficial Document Unofficial Document Unofficial Document Unofficial Document Un

Unofficial Document Unofficial Document Unofficial Document Unofficial Document

Unofficial Document Unofficial Document Unofficial Document Unofficial Document Un

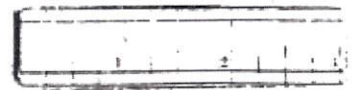
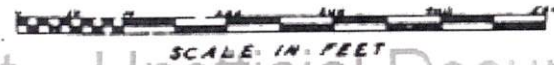
Unofficial Document Unofficial Document Unofficial Document Unofficial Document

0643



*Revised and Approved  
Dec. 3, 1921*

PLAN OF  
WESTFIELD PARK  
PORTSMOUTH, N.H.  
SCALE: 1 INCH = 100 FEET  
REVISED JULY 1929  
JOHN W. DUNNIN, C.E.  
PORTSMOUTH, N. H.



923

Revised By J.W.D.  
JULY 1929

See Book 80 PLAT 4

**ATTACHMENT #2**

# 233

Unofficial Document Unofficial Document Unofficial Document Unofficial

1917

ISLINGTON STREET

Unofficial Document Unofficial Document Unofficial Document Unofficial Document

Unofficial Document Unofficial Document Unofficial Document Unofficial

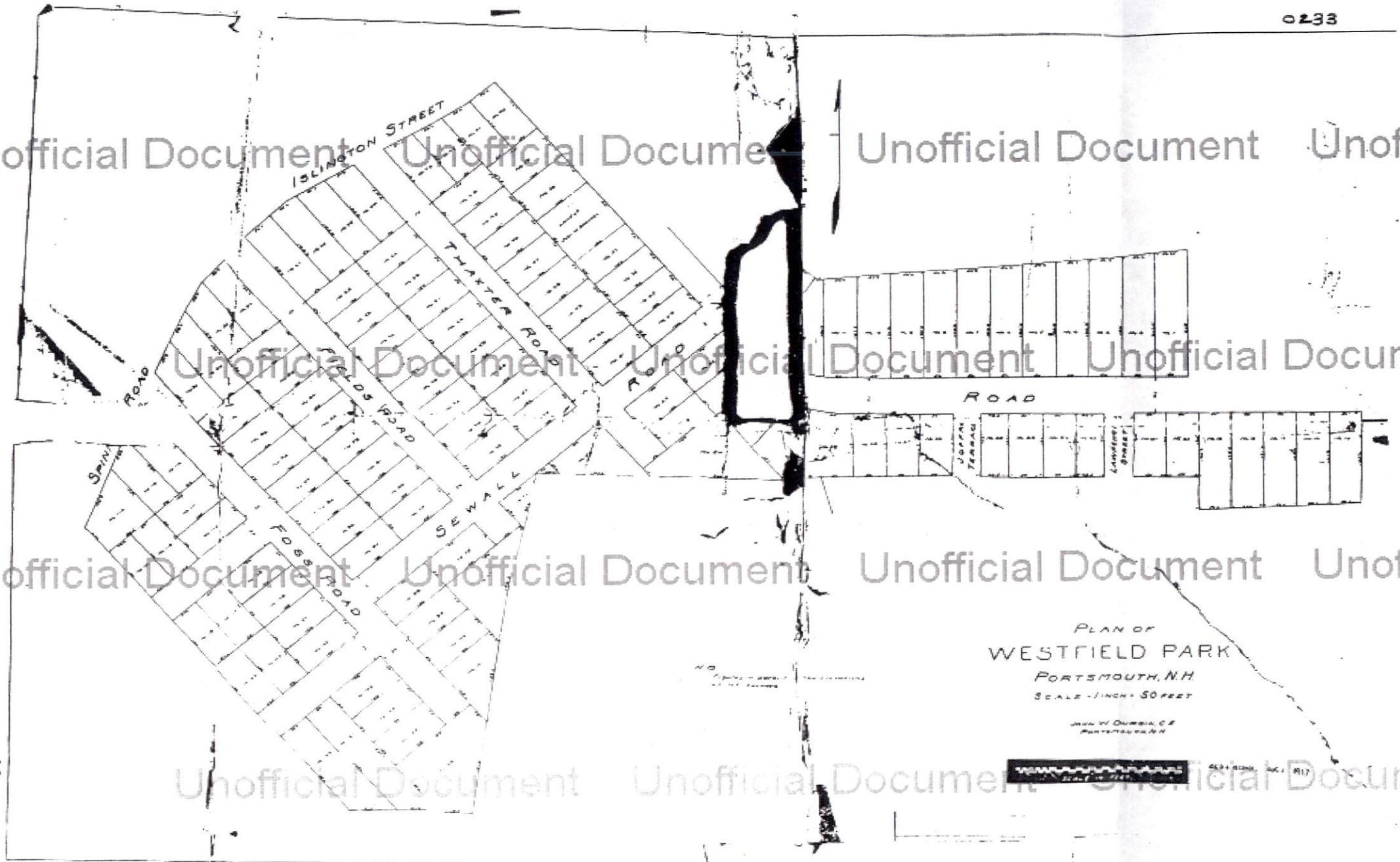
Unofficial Document Unofficial Document Unofficial Document Unofficial Document

THAT

Unofficial Document Unofficial Document Unofficial Document Unofficial



Unofficial Document Unofficial Document Unofficial Document Unofficial Document



Unofficial Document Unofficial Document Unofficial Document

Unofficial Document Unofficial Document Unofficial Document Unofficial Document

Unofficial Document Unofficial Document Unofficial Document

PLAN OF  
WESTFIELD PARK  
PORTSMOUTH, N.H.  
SCALE - 1 INCH = 50 FEET

JAMES W. DUMBLE, C.E.  
PORTSMOUTH, N.H.



**ATTACHMENT #3**

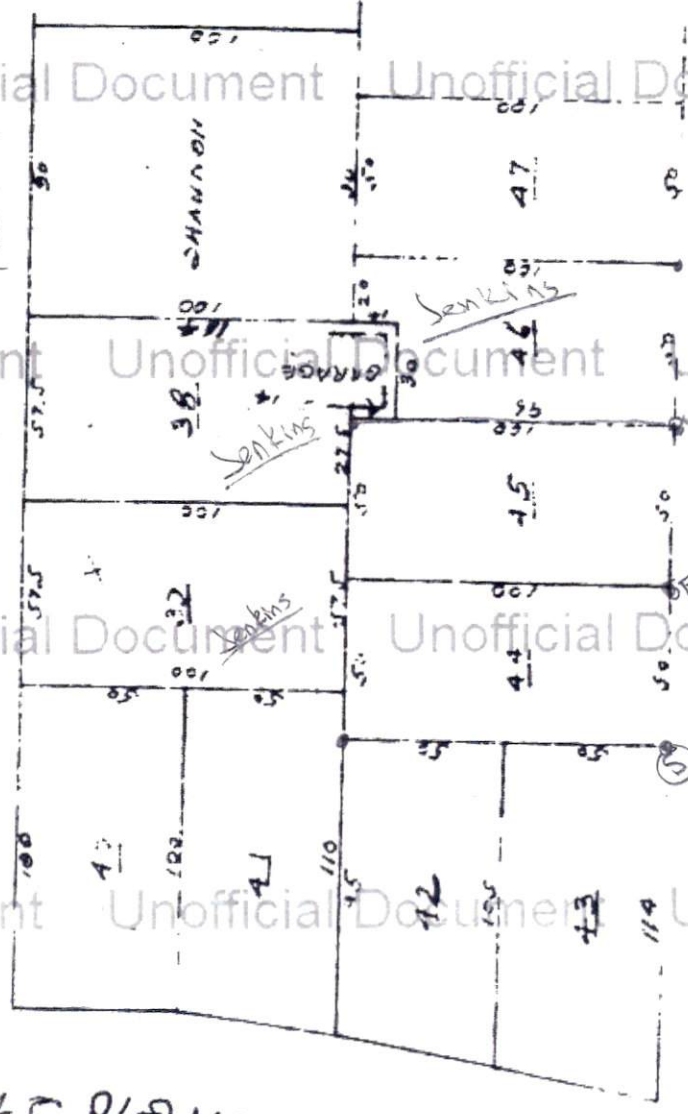
0782



ALDRICH ROAD

F/K/A

FREEMAN AVE



THAXTER ROAD

WICKINGHAM RECORDS

Received & Recorded 6/14 1936

PART OF WESTFIELD PARK

PORTSMOUTH, NH

SHOWING REVISIONS & CHANGES  
IN LOTS 3, 8, 11 & 16

RECORDED UNDER DEED AUG 1935

BY ENGINEER



FILE 1101590

F/K/A  
S. Priney's PD

1ST STREET

**ATTACHMENT #4**



9) Petition of **Stacey L. Bussing, owner, and Lee Gove, option holder**, for property located at **51 Morning Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow an irregular shaped 276 sf two story building after demolition of the existing 276 sf addition with 38.2% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 163 as Lot 16 and lies within the General Residence A district. Case # 5-8

**THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY,  
MAY 25, 2004**

**I. OLD BUSINESS**

A) Petition to **Public Service Company of New Hampshire, owner**, for property located at **400 Gosling Road** wherein the following are requested: 1) Variances from Article III, Section 10-305(B)(2) to allow a replacement boiler, air emission control device, conveyor and other appurtenances, (including coal crusher house, limestone silo, bed ash storage silo and wood ash silo) with heights between 85' and 125' but which will not exceed 125' where 45' is the maximum allowed height, 2) Variances from Article III, Section 10-305(B)(2) to allow a stack with heights between 250' and 275' but which will not exceed 275' where 45' is the maximum allowed height, 3) Variances from Article III, Section 10-305(A) to allow: a) wood storage building; b) process building; and c) conveyor on storage building extending from Lot 1 over the railroad parcel to Lot 2A, all of which have heights between 75' and 85' but which will not exceed 85' where 70' is the maximum allowed height, 4) Variances from Article III, Section 10-305(A) to allow a replacement boiler with auxiliary equipment, duct work, stack, conveyor fireside wash recycle basin, and other appurtenant structures located within 50' of the required side yard where 50' is the minimum required setback distance; and, 5) Variances from Article III, Section 10-305(A) to allow minor roof appurtenances on any of the following: the replacement boiler, air emission control device, conveyor, stack, wood storage building, process building, and other appurtenances (including coal crusher house, limestone silo, bed ash storage silo and wood ash silo) which will not exceed 25' where 10' is the maximum allowed height. All construction being in a district in which the height limitation is 45' for all portions of buildings within 200' of the high watermark along the shores of the Piscataqua River and where the height limitation is 70' for those portions of buildings beyond 200' of the high watermark and in which the minimum required side yards are 50'. Said property is shown on Assessor Plan 214 as Lots 1 and 2 and lies within the Waterfront Industrial District. Case # 12-4

**I. PUBLIC HEARINGS**

10) Petition of **Orville N. Guptill Revocable Trust, owners**, for property located at **27 Thaxter Road** wherein Variances from Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf. Said property is shown on Assessor Plan 166 as Lots 52 & 39 and lie within the Single Residence B district. Case # 5-8A

11) Petition of **Christopher Grant, owner**, for property located at **41 South Mill Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 5' x 11' deck with: a) a 15' rear yard where 25' is the minimum required, b) a

requested to allow a 16' x 21' one story addition with a 4' right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 162 as Lot 42 and lies within the General Residence A district. Case # 5-6

8) Petition of **Sharan R. Gross Revocable Trust, owner**, for property located at **201 Cate Street** wherein a Variance from Article IX, Section 10-908 is requested to allow a 40 sf attached sign for a hair salon in a district where commercial signs are not allowed. Said property is shown on Assessor Plan 163 as Lot 32 and lies within the General Residence A district. Case # 5-7

9) Petition of **Stacey L. Bussing, owner**, and **Lee Gove, option holder**, for property located at **51 Morning Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow an irregular shaped 276 sf two story building after demolition of the existing 276 sf addition with 38.2% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 163 as Lot 16 and lies within the General Residence A district. Case # 5-8

**THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, MAY 25, 2004**

✓ 10) Petition of **Orville N. Guptill Revocable Trust, owners**, for property located at **27 Thaxter Road** wherein Variances from Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf. Said property is shown on Assessor Plan 166 as Lots 52 & 39 and lie within the Single Residence B district. Case # 5-8A

11) Petition of **Christopher Grant, owner**, for property located at **41 South Mill Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 5' x 11' deck with: a) a 15' rear yard where 25' is the minimum required, b) a 5' left side yard where 10' is the minimum required; and, c) 49.1% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 18 and lies within the General Residence B and Historic A districts. Case # 5-9

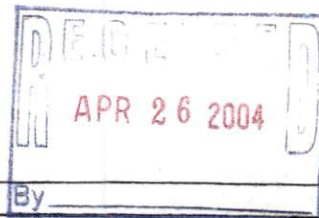
12) Petition of **Leslie Bouvier, owner, V. Stephen Piro, applicant**, for property located at **368 Greenside Avenue** wherein the following are requested: 1) a Special Exception as allowed in Article II, Section 10-206(12) to allow a Home Occupation II for a 256 sf psychotherapy office for the applicant, and 2) a Variance from Article XII, Section 10-1201(A)(2)&(3) to allow the required parking space to be provided in the existing driveway. Said property is shown on Assessor Plan 261 as Lot 4-1 and lies within the Single Residence B district. Case # 5-10

13) Petition of **Henry S. Dutkowski, owner**, for property located at **806 US Route One By-Pass** wherein a Variance from Article XII, Section 10-1204 Table 15 is requested to allow 37 parking spaces to be provided where 58 parking spaces are required. Said property is shown on Assessor Plan 161 as Lot 43 and lies within the Business district. Case # 5-11

14) Petition of **Smith, Smith & Ward LLC, owners**, for property located at **1338 Woodbury Avenue** wherein a Variance from Article IV, Section 10-401(A) is requested to allow a replacement of an unsafe trailer with a newer 8' x 35' trailer in an pre-existing non-conforming trailer park. Said property is shown on Assessor Plan 237 as Lot 70 and lies within the Mixed Residential Business district. Case # 5-12

**ATTACHMENT #5**

**CITY OF PORTSMOUTH**  
Board of Adjustment Application



Department Use Only	<u>166</u>	Lot # <u>52 E 39</u>	Date	By
Assessor Plan #		Lot area	Fee	
Zone			By	

Fill in below by printing in ink or typing / Complete all Blanks or indicate "N/A" if not applicable

Owner <u>Orville N. Guptill</u>	Applicant <u>Orville N. Guptill</u>
<u>Revocable Trust</u>	<u>Revocable Trust</u>
<u>27 Thaxter Rd</u>	<u>27 Thaxter Rd</u>
Owner address <u>Portsmouth, NH 03801</u>	Applicant address <u>Portsmouth, NH 03801</u>
<u>Robert Guptill &amp; Roy Guptill, Trustees</u>	<u>Robert Guptill &amp; Roy Guptill, Trustees</u>
Owner phone <u>(207) 439-6735 ext.</u>	Applicant phone <u>(207) 439-6735 ext.</u>
Owner Fax <u>603-433-1197</u>	Applicant Fax <u>603-433-1197</u>
Lessee _____	Lessee address _____
Lessee phone _____	Lessee Fax _____

Location address of work: 27 Thaxter Rd  
 Map 166 Lot 52 Former Office Building  
 Existing use: Map 166 Lot 39 Single Family Residence

Undersigned hereby requests:

	<u>Article</u>	<u>Section</u>
<input type="checkbox"/> Appeal from an Administrative Decision	_____	_____
<input type="checkbox"/> Special Exception	_____	_____
<input checked="" type="checkbox"/> Variance	<u>III</u>	<u>10-301-A4</u>
	<u>III</u>	<u>10-302-A</u>

To permit the following:

See Attached Sheet

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D):

See Attached Sheet

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application, the application fee and 12 packets each containing: site and building/floor plans (8 1/2" x 11")\* and any supporting data, letters or photos. Incomplete applications will not be accepted. The Board may allow evidence to be submitted at the time of the Public Hearing. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Public Hearing for the above appeal.

\*11" x 17" plans maybe used only if 8 1/2" x 11" plan would not be readable.

Signature of Owner Charles A. Griffin, Esquire Date April 26, 2004  
 Attorney

## Petitioner's Responsibilities

1. All applications for Variances and Special Exceptions must be submitted to the Code Official prior to the published deadline. Submissions which fail to meet this requirement shall not be considered until the next month's regular meeting. In the case of Appeals from an Administrative Decision, the appeal shall be filed no later than 30 days from the date of the action which is being appealed.
2. A petitioner shall be one of the following:
  - a) The owner of record to the property, or
  - b) The holder of a valid purchase and sales agreement for the purchase of the subject property, or
  - c) The holder of a valid option for the purchase of the subject property.
3. All applications shall be signed by the owner of record to the property.
4. It is the obligation of the Petitioner to submit adequate plans and exhibits in accordance with the terms of the Zoning Ordinance for all applications for Administrative Appeals, Variances and Special Exceptions.
5. Minimum requirements for adequate plans shall include the following:
  - Name of Owner(s)
  - Name of Petitioner(s)
  - Title of petition (i.e. Variance / Special Exception)
  - Abutting street(s)
  - Scale
  - Yard dimensions
  - Lot dimension
  - Dimensions of proposed and existing structures
  - Dimensions of parking spaces
6. The Code Official is authorized by the Board of Adjustment to refuse applications which do not meet these minimum requirements.
7. Public Hearings shall not be scheduled, advertised or held until such time as the "minimum requirements for adequate plans" have been submitted.
8. Any petitioner who submits plans or exhibits deemed inadequate or requiring more detailed information, may be tabled until such time as adequate plans or exhibits are received by the Board.
9. The Board may table any application requiring more information prior to any action being taken.
10. In the case of conversions or renovations to an existing structure, interior floor plans shall be furnished by the petitioner.

## Basic Fee Schedule

1. All appeals for a Variance or a Special Exception (no fee required for Administrative Appeals) shall be accompanied by a filing fee as follows:
  - a) Residential Applications (including Home Occupations)

1 - 2 units	\$ 60.00
3 - 4 units	\$110.00
5 - 10 units	\$160.00
11 - 30 units	\$260.00
30 plus units	\$310.00

plus \$35.00 for each additional unit
  - b) Non-Residential Applications  
\$160.00 base fee, plus an additional \$5.00 per \$1,000.00 of the cost of the new construction, up to \$500.00 for a total maximum of \$660.00.
  - c) Sign Applications - \$110.00
2. There is also a fee structure which covers all expenses incurred by the City in processing, reviewing and executing applications submitted to the Board of Adjustment for review. The fees imposed by the City in processing these applications will represent all time spent on a proposal during pre-application, application, and post-application stages.
  - a) The pre-application stage shall include but not be limited to all preliminary meetings and research relating to an application prior to formal submission to the Board of Adjustment.
  - b) The application stage shall include but not be limited to:
    - 1) planning staff review
    - 2) engineering review
    - 3) legal review (if required)
    - 4) special studies (if required)
    - 5) other related meetings, correspondence, etc.
  - c) The post-application stage shall include but not be limited to all City staff utilized with respect to the application after approval by the Board of Adjustment.
3. Each Petitioner will be entitled to a total of three (3) hours of principal (non-clerical) staff time as part of the basic application. Once the review process has utilized in excess of three hours of principal staff time, the applicant will be billed at a flat rate per hour or portion thereof based upon the salary and overhead cost of the staff person. The review staff consists of City Engineer, City Water Department, Code Official and other City officials as appropriate.
4. All postage costs for abutter notices and a proportionate share of the advertising of the legal notice shall be paid for by the Petitioner.

**Attachment to City of Portsmouth Board of Adjustment Application**

**Owner/Applicant: Orville N. Guptill Revocable Trust**

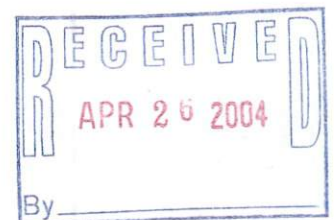
**Owner/Applicant Address: 27 Thaxter Rd Portsmouth, NH 03801**

"To permit the following":

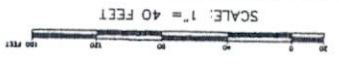
**Separation of contiguous lots in common ownership that do not meet the area requirements of the ordinance into two lots, one with an area of 10,475 square feet where 15,000 square feet is required and the second, with an area of 12,580 square feet where 15,000 square feet is required.**

"The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D)":

**Lots were created prior to adoption of zoning, were acquired by separate deeds and are separately assessed. Lots have been in contiguous ownership since 1943 and are both zoned SRB. One lot (Map 166, Lot 52) was used as a commercial office but that use has now lapsed. Applicant wishes to be able to sell this lot as a separate residential lot. Size and configuration of each lot, although larger than most in the neighborhood, is such that each cannot comply with the area requirements of the current ordinance.**



LEGEND  
ADJACENT SHEET NO. 207  
PARCEL NUMBER 23  
PARTIAL AREA  
SUBDIVISION NUMBER 5600 OR 2.3



# PORTSMOUTH

PROPERTY MAP  
NEW HAMPSHIRE

UPDATED TO APRIL 1, 2001

DRAWN BY: AERIAL SURVEY & PHOTO, INC.  
NORRIDGEWOOD, MAINE (1998)  
FROM PROPERTY MAPS PREPARED BY: JOHN E. DONNELL & ASSOC.  
AUBURN, MAINE (1979)



RECEIVED  
APR 9 A 2004

NT 1

20

166

167

170

170

171

167

153

172



DIGITALLY COMPILED BY: AERIAL SURVEY & PHOTO, INC.  
 NORRIDGEWOCK, MAINE (1998)  
 FROM PROPERTY MAPS PREPARED BY: JOHN E. O'DONNELL & ASSOC.  
 AUBURN, MAINE (1979)  
 UPDATED TO APRIL 1, 2001



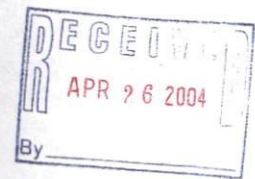
PROPERTY MAP  
**PORTSMOUTH**  
 NEW HAMPSHIRE

LEGEND

ADJACENT SHEET NO.	207
PARCEL NUMBER	23
PARCEL AREA	9600 SQ. FT.
SUBDIVISION NUMBER	2

166

*27 Thaxter Rd.*





**ATTACHMENT #6**

**Petition of Orville N. Guptill Revocable Trust, owners**

**Location:** 27 Thaxter Road  
**Zone:** Single Residence B  
**Lot area:** Lot 52 = 10,475 sf and Lot 39 = 12,580 sf  
**Map/Lot:** Map 166, Lots 52 & 39  
**Surrounding Properties:** Residential

**Variance:** Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf



**Overview**

The Zoning Ordinance treats these two parcels as one parcel for zoning purposes because they are in common ownership and lack the minimum required lot area of 15,000 sf per lot. Lot 39 has a single family dwelling located on it. Lot 52 is on the corner of Thaxter Road and Islington Street and has a small non-residential building. This non-residential building has been vacant for many years.

The owners are requesting relief in order to sell these parcels separately. Both parcels are in the Single Residence B zone. Since Lot 52 has been vacant for many years, it has no recognized pre-existing grandfathered use. However once it is separated, a single family dwelling could be constructed. The residential use would conform to the zoning district [the past uses were non-conforming].

The Department views this request as reasonable, as each lot has had separate uses over time and the proposed use would be conforming.

The Board needs to make their finding of fact and determine if all the criteria for granting a variance are found to be true.



**Findings of Fact**

- 1)
- 2)
- 3)
- 4)

  
**Analysis for Variances**

- |   | <u>True</u>              | <u>Not True</u>          |
|---|--------------------------|--------------------------|
| 1. The requested variance will not be contrary to the public interest.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Special conditions exist with respect to the property for which the variance is sought such that literal enforcement of the ordinance results in unnecessary hardship, meaning:                    |                          |                          |
| a) The zoning restriction as applied to the specific property interferes with the property owners reasonable use of that property, considering the unique setting of the property in its environment; | <input type="checkbox"/> | <input type="checkbox"/> |
| b) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property;   | <input type="checkbox"/> | <input type="checkbox"/> |
| c) The variance would not injure the public or private rights of others.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The requested variance is consistent with the spirit of the ordinance.   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Substantial justice is done by granting the variance.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Granting the variance will not diminish the value of surrounding properties.   | <input type="checkbox"/> | <input type="checkbox"/> |

**ATTACHMENT #7**



# CITY OF PORTSMOUTH

Community Development Department  
(603) 431-2006, ext. 232

Planning Department  
(603) 431-2006, ext.216

## PLANNING DEPARTMENT

May 27, 2004

Orville N. Guptill Revocable Trust  
27 Thaxter Road  
Portsmouth, NH 03801

Re: Property at **27 Thaxter Road**  
Assessor Plan 166 Lots 52 & 39

Dear Gentlemen:

The Board of Adjustment, at its meeting of May 25, 2004, and after due Public Hearing, completed its consideration of your application wherein the following was requested: Variances from Article III, Sections 10-301(A)(4) and 10-302(A) to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf.

As a result of this consideration, the Board voted to **grant** your request as advertised and presented with the following stipulations:

- That the curb cut be located on Thaxter Road.
- That there is no intent to stipulate how the house is oriented.

Stating that the requested Variance would not be contrary to the public interest, the Board spoke to the size of the lots, which would be close to the first and second largest lots on the block. They noted that this was the only vacant lot in an otherwise, fully developed neighborhood, and they saw no benefit to leaving it vacant. They felt it would also be in the public interest to demolish an unattractive commercial building on the edge of the lot.

The Board felt that special conditions exist in the fact that there is a vacant unusable building on the lot. The lot it is located in an area that is commercial in part, and abuts a residential area with small lots.

For this particular neighborhood, the Board felt that literal enforcement of the Ordinance would result in unnecessary hardship. They saw no advantage to retaining the lots as vacant and

unbuildable; and, stated that no one had spoken in terms of injury to either public or private rights.

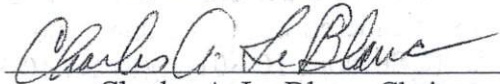
They stated that the requested Variance was consistent with the spirit of the Ordinance as it would provide housing in this residentially zoned area. They stated that substantial justice would be done, as there is a good use to which this property could be put. They felt there were no detrimental factors in making its use residential and that justice would be done to the owner in regards to the fact that the two lots have been taxed separately as buildable lots.

They felt that granting the Variance would not diminish the value of surrounding properties and noted a letter from a realtor to that effect.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-431-2006, ext. 243 between the hours of 8:30 – 10:00 a.m. Applicants should note that other approvals may also be required from other Committees and/or Boards prior to the issuance of a Building Permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,



---

Charles A. Le Blanc, Chairman  
Board of Adjustment

CAL/jac

cc: Richard A. Hopley, Building Inspector  
Charles A. Griffin, Esq.

**ATTACHMENT #8**



2004 JUL 15 PM 12:13

059392

### WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that we, **ROBERT F. GUPTILL**, of 3 Cherokee Lane, Nashua, New Hampshire, 03062, and **ROY N. GUPTILL**, of 4 Laurel Lane, Eliot, Maine, 03903, Successor Trustees of the **ORVILLE N. GUPTILL FAMILY TRUST** of 1987, u/d/t dated April 21, 1987, of 27 Thaxter Road, Portsmouth, New Hampshire, 03801

*For Consideration paid, grant to* **ANGELIQUE MURRAY and MICHAEL MURRAY**, husband and wife, of 411 Middle Street, Portsmouth, New Hampshire, 03801, as joint tenants with rights of survivorship,

With Warranty Covenants the following described premises situate in Portsmouth, Rockingham County, New Hampshire,

A certain lot or parcel of land with the buildings thereon, situate in Portsmouth in said county of Rockingham and State of New Hampshire, bounded and described as follows:

A certain lot or parcel of land, with the buildings thereon, situate in said Portsmouth and known as Lots Nos. 42 and 43 on a plan entitled "Plan of Westfield Park, Portsmouth, New Hampshire" and drawn by John W. Durgin, C.E. and recorded in Rockingham County Registry of Deeds as Plan #0782. Said parcel is bounded and described as follows:

Beginning at the Northwesterly corner of the land hereby conveyed at the intersection of the northeasterly sideline of Thaxter Road with the Southeasterly sideline of Islington Street thence running Northeasterly by said Islington Street One Hundred One (101) feet, more or less, to Lot No. 41 as shown on said plan; thence turning and running Southeasterly by said Lot No. 41 about Ninety (90) feet to Lot No. 44 as shown on said plan; thence turning and running Southwesterly by said Lot No. 44 One Hundred (100) feet to Thaxter Road; thence turning and running Northwesterly by said Thaxter Road One Hundred Fourteen (114) feet, more or less, to the point of beginning.

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS



Meaning and intending to convey Parcel 3 in Corrective Warranty Deed of ROBERT F. GUPTILL and ROY N. GUPTILL, Successor Trustees of the ORVILLE N. GUPTILL FAMILY TRUST of 1987, u/d/t dated April 21, 1987, to ROBERT F. GUPTILL and ROY N. GUPTILL, Successor Trustees of the ORVILLE N. GUPTILL FAMILY TRUST of 1987, which deed is dated May 9, 2003, and recorded in Rockingham County Registry of Deeds, Book 4027, Page 781. For further reference, see deed recorded in Rockingham County Registry of Deeds, Book 3877, Page 2074 and deed of Orville N. Guptill to Orville N. Guptill Trustee of the Trustee of the Orville N. Guptill Family Trust dated June 4, 1987 and recorded in the Rockingham County Registry of Deed in Book 2685 on Page 1110.

THIS IS NOT HOMESTEAD PROPERTY.

Signed 9 day of July, 2004.

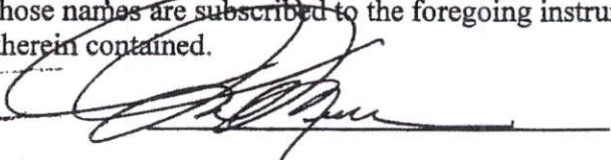
The Orville N. Guptill Family Trust of 1987

Robert F. Guptill - TTEE  
ROBERT F. GUPTILL, Successor Trustee

Roy N. Guptill - TTEE  
ROY N. GUPTILL, Successor Trustee

STATE OF NEW HAMPSHIRE  
ROCKINGHAM COUNTY

Personally appeared Robert F. Guptill and Roy N. Guptill, Successor Trustees of the Orville N. Guptill Family Trust of 1987 on this 9 day of July, 2004, known to me or satisfactorily proved to be the persons whose names are subscribed to the foregoing instrument and executed the same for the purposes therein contained.

  
\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires:

Michael J. Mulhern  
NOTARY PUBLIC  
New Hampshire  
My Commission Expires 08/13/08

**ATTACHMENT #9**

*Return to:*  
**Heritage Title Services, L.L.C.**  
402 The Hill, Deer Street  
Portsmouth, NH 03801  
603-431-8233  
603-431-8481 fax  
#15092

**STATE OF NEW HAMPSHIRE**

DEPARTMENT OF REVENUE ADMINISTRATION

REAL ESTATE TRANSFER TAX

4 THOUSAND 4 HUNDRED AND 93 DOLLARS

07 3004 679722 \$4493.00

VOID IF ALTERED

**WARRANTY DEED**

KNOW ALL PERSONS BY THESE PRESENTS that we, **ROBERT F. GUPTILL**, of 3 Cherokee Lane, Nashua, New Hampshire, 03062, and **ROY N. GUPTILL**, of 4 Laurel Lane, Eliot, Maine, 03903, Successor Trustees of the **ORVILLE N. GUPTILL FAMILY TRUST** of 1987, u/d/t dated April 21, 1987, of 27 Thaxter Road, Portsmouth, New Hampshire, 03801

For Consideration paid, grant to **WILLIAM F. BURNS**, a single person, of 1306 White Cedar Boulevard, Portsmouth, Rockingham County, New Hampshire, 03801

With Warranty Covenants the following described premises situate in Portsmouth, Rockingham County, New Hampshire,

A certain lot or parcel of land with the buildings thereon, situate in Portsmouth in said county of Rockingham and State of New Hampshire, bounded and described as follows:

A certain parcel of land together with the buildings thereon, situated on Thaxter Road in said Portsmouth and consisting of Lots Nos. 44, 45 and part of 46 as shown on the plan entitled "Plan of Part of Westfield Park, drawn by John W. Durgin, C.E. dated August 1933 and recorded in Rockingham County Registry of Deeds Plan # 0782 said lots being further bounded and described as follows:

A certain lot or parcel of land situated in said Portsmouth and known as Lot No. 44 bounded and described as follows:

Beginning at the southwesterly corner of said land on Thaxter Road at land of Portsmouth Building Association, known as lot No. 43 as shown on said plan, and running in a northeasterly direction one hundred (100) feet by said lot No. 43 and lot No. 42 as shown on said plan to lot No. 41 as shown on said plan; thence turning and running in a southeasterly direction by said lot No. 41 in part and in part by lot No. 39, the property of Herbert T. Jenkins, fifty feet to other land of said Jenkins, being Lot No. 45 as shown on said plan; thence turning and running in a southwesterly direction one hundred (100) feet by said Jenkins land to Thaxter Road; thence

064102

2004 JUL 30 PM 1:01

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

turning and running in a northwesterly direction by said Thaxter Road fifty-(50) feet to the point of beginning.

Also a certain tract of land situated on Thaxter Road, in said Portsmouth, bounded and described as follows, to wit:

Beginning on said road at the southeasterly corner of land of Walter A. Gove; thence running northeasterly 100 feet to land formerly of the estate of Herbert T. Jenkins; thence southeasterly along said Jenkins land 50 feet to a hub set in the ground; thence southwesterly along said Jenkins land 14 feet to a hub set in the ground; thence southeasterly along said Jenkins land 30 ft to a hub set in the ground; thence northeasterly along said Jenkins land 14 feet to hub set in the ground; thence southeasterly along land of one Shannon 20 feet to a hub set in the ground to land of Herbert S. Guptill; thence southwesterly along said Guptill land 100 feet to said Thaxter Road; thence northwesterly along said road 100 feet to the point of beginning.

Saving, exception and reserving, nevertheless, from the last above described parcel of land the premises conveyed by Walter A. Gove to Herbert S. Guptill by deed dated October 7, 1933, and recorded in said Records, Book 896, Page 3, said parcel being bounded and described as follows:

Beginning on Thaxter Road at the southwest corner of land of Herbert S. Guptill thence running Northeasterly along said Guptill land one hundred (100) feet to land of one Shannon; thence Northwesterly by said Shannon land twenty (20) feet to land of the Estate of Herbert T. Jenkins; thence Southwesterly along said Jenkins land and other land of said Gove one hundred (100) feet to Thaxter Road; thence Southeasterly by said Thaxter Road twenty (20) feet to the point of beginning. Being a part of Lot No. 46 as shown on said plan above described.

Meaning and intending to convey Parcels 1 and 2 in Corrective Warranty Deed of ROBERT F. GUPTILL and ROY N. GUPTILL, Successor Trustees of the ORVILLE N. GUPTILL FAMILY TRUST of 1987, u/d/t dated April 21, 1987, to ROBERT F. GUPTILL and ROY N. GUPTILL, Successor Trustees of the ORVILLE N. GUPTILL FAMILY TRUST of 1987, which deed is dated May 9, 2003, and recorded in Rockingham County Registry of Deeds, Book 4027, Page 781. For further reference, see deed recorded in Rockingham County Registry of Deeds, Book 3877, Page 2074 and deed of Orville N. Guptill to Orville N. Guptill Trustee of the Trustee of the Orville N. Guptill Family Trust dated June 4, 1987 and recorded in the Rockingham County Registry of Deed in Book 2685 on Page 1110.

THIS IS NOT HOMESTEAD PROPERTY.  
Signed 30<sup>th</sup> day of July, 2004.

The Orville N. Guptill Family Trust of 1987

Robert F. Guptill - TTEE  
ROBERT F. GUPTILL, Successor Trustee

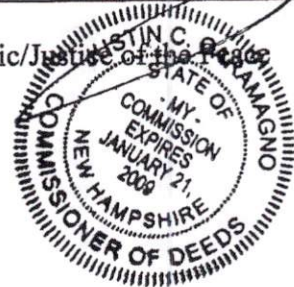
Roy N. Guptill - TTEE  
ROY N. GUPTILL, Successor Trustee

STATE OF NEW HAMPSHIRE  
ROCKINGHAM COUNTY

Personally appeared Robert F. Guptill and Roy N. Guptill, Successor Trustees of the Orville N. Guptill Family Trust of 1987 on this 30<sup>th</sup> day of July, 2004, known to me or satisfactorily proved to be the persons whose names are subscribed to the foregoing instrument and executed the same for the purposes therein contained.



Notary Public/Justice of the Peace

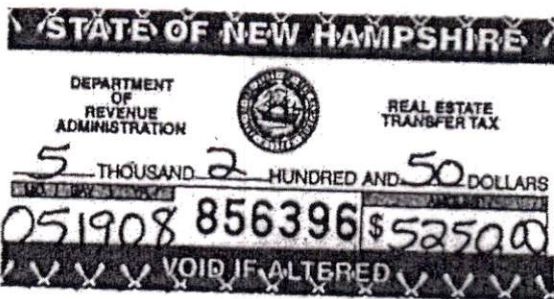


My commission expires:

Please Return To:

Kieth Tong, Maureen Healy  
27 Thaxter Rd  
Portsmouth, NH 03801

BK 4918 PG 0090



024379

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That William F. Burns, Single, of 27 Thaxter Road, Portsmouth NH 03801, for consideration paid grant(s) to Kieth L. Tong, Single, and Maureen Healy, Single, of 1275 Maplewood Avenue Unit #1, Portsmouth NH 03801, as joint tenants with rights of survivorship, with WARRANTY COVENANTS:

A certain lot or parcel of land with the building thereon, situated in Portsmouth in said County of Rockingham, and State of New Hampshire, bounded and described as follows:

A certain parcel of land together with the buildings thereon, situated on Thaxter Road in said Portsmouth and consisting of Lots Nos. 44, and 45 as shown on the plan entitled "Plan of Part of Westfield Park, drawn by John W. Durgin, C. E. dated August 1933 and recorded in Rockingham County Registry of Deeds as Plan # 0782 said lots being further bounded and described as follows:

Lot 44 beginning at the southwesterly corner of said land on Thaxter Road at land now or formerly of Portsmouth Building Association, known as Lot No. 43 as shown on said plan, and running in a northeasterly direction one hundred (100) feet by said Lot No. 43 and Lot No. 42 as shown on said plan to Lot No. 41 as shown on said plan; thence turning and running in a southeasterly direction by said Lot No. 41 in part and in part by Lot No. 39 the property now or formerly of Herbert T. Jenkins, fifty feet to other land of said Jenkins, being Lot No. 45 as shown on said plan; thence turning and running in a southwesterly direction one hundred (100) feet by said Jenkins land to Thaxter Road; thence turning and running in a northwesterly direction by said Thaxter Road fifty (50) feet to the point of beginning.

Also a certain tract of land situated on Thaxter Road, in said Portsmouth, bounded and described as follows, to wit:

Beginning on said road as the southeasterly corner of land of Walter a. Gove; thence running northeasterly 100 feet to land formerly of the estate of Herbert T. Jenkins; thence southeasterly along said said Jenkins land 50 feet to a hub set in the ground; thence southwesterly along said Jenkins land 14 feet to a hub set in the ground; thence southeasterly along said Jenkins land 30 ft to a hub set in the ground; thence northeasterly along said Jenkins land 14 feet to hub set in the ground; thence southeasterly along land of one Shannon 20 feet to a hub set in the ground to land

2008 MAY 19 AM 10:56

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

now or formerly of Herbert S. Guptill; thence southwesterly along said Guptill land 100 feet to said Thaxter Road; thence northwesterly along said road 100 feet to the point of beginning.

Excepting and reserving from the last above described parcel of land the premises conveyed by Walter A. Gove to Herbert A. Guptill by deed dated October 7, 1933, and recorded in said Records, Book 896, Page 3, said parcel being bounded and described as follows:

Beginning on Thaxter Road at the southwest corner of land of Herbert S. Guptill thence running Northeasterly along said Guptill land one hundred (100) feet to land of one Shannon; thence Northwesterly by said Shannon land twenty (20) feet to land of the Estate of Herbert T. Jenkins; thence Southwesterly along said Jenkins land and other land of said Gove one hundred (100) feet to Thaxter Road; thence Southeasterly by said Thaxter Road twenty (20) feet to the point of beginning. Being a part of Lot No. 46 as shown on said plan above described.

Meaning and intending to describe and convey the same premises conveyed to William F. Burns by virtue of a deed from Robert F. Guptill and Roy N. Guptill, Trustees of Orville N. Guptill, dated 07/30/2004 recorded in Book 4337, Page 2120, with the Rockingham County Registry of Deeds.

We, the grantors herein hereby release all rights of homestead in the above described premises.

Executed this 16th day of May, 2008.

William F. Burns  
William F. Burns

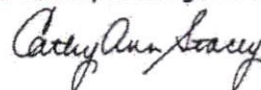
State of New Hampshire

Rockingham, ss.



On May 16, 2008, before me, the undersigned notary public, personally appeared the above-named William F. Burns and proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

[Signature]  
Notary Public:  
My Commission Expires:



LCHIP	ROA414450	25.00
TRANSFER TAX	RO080390	9,975.00
RECORDING		14.00
SURCHARGE		2.00

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS: That Kieth L. Tong and Maureen Healy a/k/a Maureen Tong, Husband and Wife, of 27 Thaxter Road, Portsmouth, NH 03801, for consideration paid grants to Chad Callihan, of 152 Dennett Street, Apt B, Portsmouth, NH 03801, with WARRANTY COVENANTS:

A certain lot or parcel of land with the building thereon, situated in Portsmouth in said County of Rockingham, and State of New Hampshire, bounded and described as follows:

A certain parcel of land together with the buildings thereon, situated on Thaxter Road in said Portsmouth and consisting of Lots Nos. 44, and 45 as shown on the plan entitled "Plan of Part of Westfield Park, drawn by John W. Durgin, C.E. dated August 1933 and recorded in Rockingham County Registry of Deeds as Plan #0782 said lots being further bounded and described as follows:

Lot 44 beginning at the southwesterly corner of said land on Thaxter Road at land now or formerly of Portsmouth Building Association, known as lot No. 43 as shown on said plan, and running in a northeasterly direction one hundred (100) feet by said Lot No. 43 and Lot No. 42 as shown on said Plan to Lot No. 41 as shown on said plan; thence turning and running in a southeasterly direction by said Lot No. 41 in part and in part by Lot No. 39 the property now or formerly of Herbert T. Jenkins, fifty feet to other land of said Jenkins, being Lot No. 45 as shown on said plan; thence turning and running in a southwesterly direction one hundred (100) feet by said Jenkins land to Thaxter Road; thence turning and running in a northwesterly direction by said Thaxter Road fifty (50) feet to the point of beginning.

Also a certain tract of land situated on Thaxter Road, in said Portsmouth, bounded and described as follows, to wit:

Beginning on said road as the southeasterly corner of land of Walter A. Gove; thence running northeasterly 100 feet to land formerly of the estate of Herbert T. Jenkins; thence southeasterly along said Jenkins land 50 feet to a hub set in the ground; thence southwesterly along said Jenkins land 14 feet to a hub set in the ground; thence southeasterly along said Jenkins land 30 ft to a hub set in the ground; thence northeasterly along said Jenkins land 14 feet to hub set in the ground; thence southeasterly along land of one Shannon 20 feet to a hub set in the ground to



land now or formerly of Herbert S. Guptill; thence southwesterly along said Guptill land 100 feet to said Thaxter Road; thence northwesterly along said road 100 feet to the point of beginning.

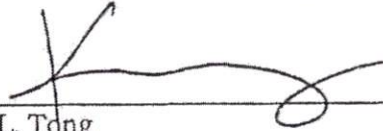
Excepting and reserving from the last above described parcel of land the premises conveyed by Walter A. Gove to Herbert A. Guptill by deed dated October 7, 1933, and recorded in said Records, Book 896, Page 3, said parcel being bounded and described as follows:

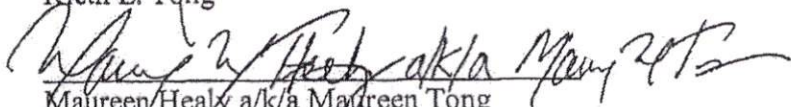
Beginning on Thaxter Road at the southwest corner of land of Herbert S. Guptill thence running Northeasterly along said Guptill land one hundred (100) feet to land of one Shannon; thence Northwesterly by said Shannon land twenty (20) feet to land of the Estate of Herbert T. Jenkins; thence Southwesterly along said Jenkins land and other land of said Gove one Hundred (100) feet to Thaxter Road; thence Southeasterly by said Thaxter Road twenty (20) feet to the point of beginning. Being a part of Lot No. 46 as shown on said plan above described.

Meaning and intending to describe and convey the same premises conveyed to Kieth L. Tong and Maureen Healy by virtue of a deed from William F. Burns dated 05/16/2008 recorded in Book 4918, Page 90, with the Rockingham County Registry of Deeds.

We, the grantors hereby release all rights of homestead in the above described premises.

Executed this 29 day of June, 2018.

  
\_\_\_\_\_  
Kieth L. Tong

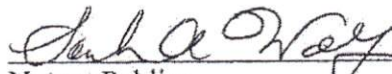
  
\_\_\_\_\_  
Maureen Healy a/k/a Maureen Tong

State of New Hampshire

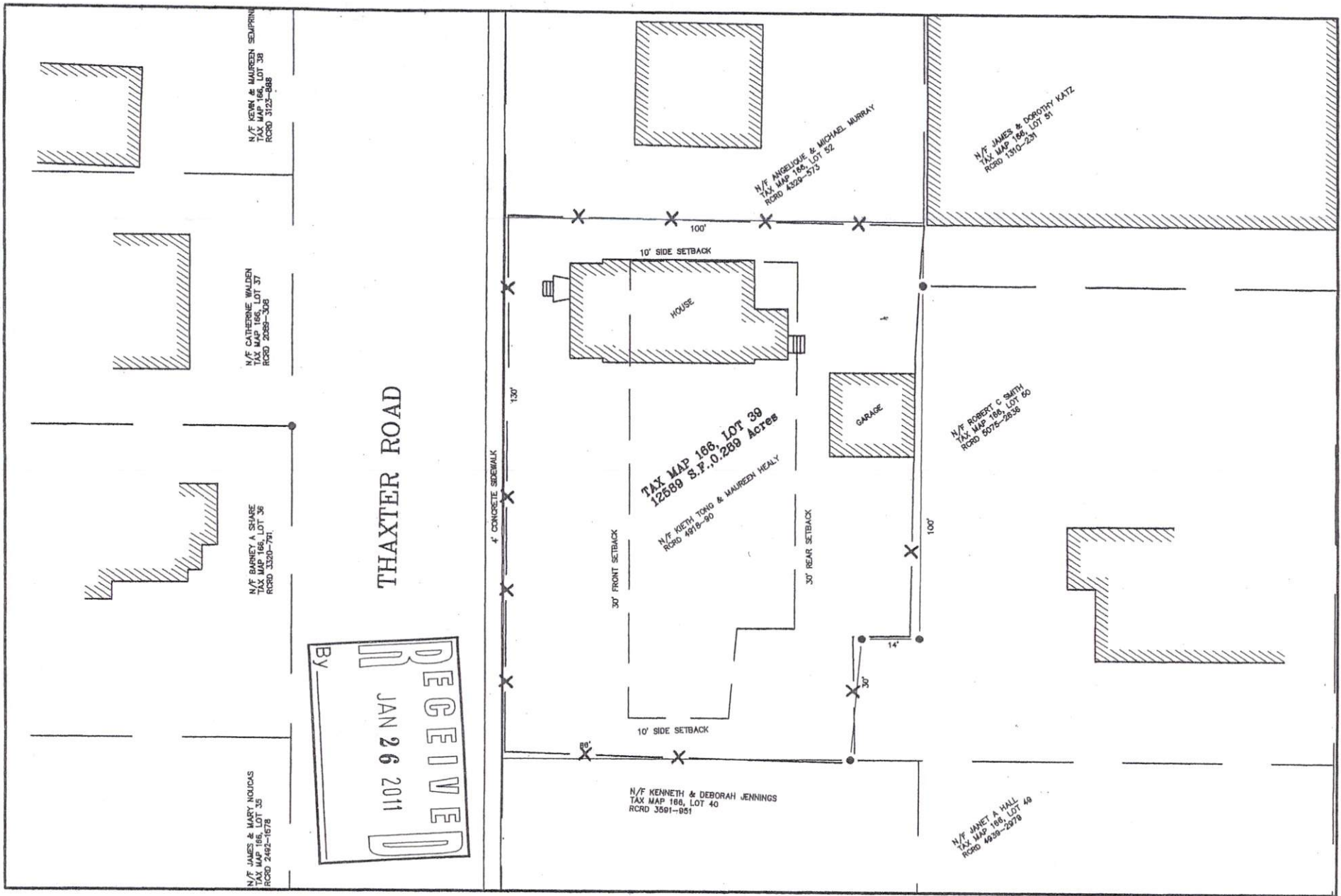
Rockingham, ss.

On June 29, 2018, before me, the undersigned notary public, personally appeared the above-named, Kieth L. Tong and Maureen Healy a/k/a Maureen Tong and proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.



  
\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ATTACHMENT #10**



TITLE: EXISTING SITE PLAN

SCALE: 1/32" = 1'-0"

DATE: 17 JAN 2011

## TONG RESIDENCE

27 Thaxter Road, Portsmouth, NH

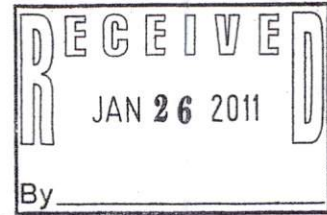
LITTLE GREEN HOMES, LLC

CHRIS REDMOND - Designer

23 Autumn Pond Park - Greenland, NH 03840  
603-319-8095 www.littlegreenhomes.com

**ATTACHMENT #11**

**CITY OF PORTSMOUTH**  
Board of Adjustment Application



Department Use Only		Date	1-27-11
Assessor Plan #	166	Fee	\$ 75.00 1826 = Sub to be used for
Zone	SRB	Lot #	39
		Lot area	
		By	FILE

Fill in below by printing in ink or typing / Complete all Blanks or indicate "N/A" if not applicable

Owner	<u>KIETH &amp; MAUREEN TONG</u>	Applicant	<u>SAME</u>
Owner address	<u>27 THAXTER RD.</u>	Applicant address	<u>SAME</u>
Owner phone	<u>(603) 501-9858</u> ext. _____	Applicant phone	<u>( ) SAME</u> ext. _____
Owner Fax	<u>N/A</u>	Applicant Fax	<u>N/A</u>
Lessee	<u>N/A</u>	Lessee address	<u>N/A</u>
Lessee phone	<u>N/A</u>	Lessee Fax	<u>N/A</u>
Location address of work:	<u>27 THAXTER RD.</u>		
Existing use:	<u>SINGLE FAMILY RESIDENTIAL</u>		

Undersigned hereby requests:

- |   | <u>Article</u> | <u>Section</u> |
|---|----------------|----------------|
| <input type="checkbox"/> Appeal from an Administrative Decision | _____          | _____          |
| <input type="checkbox"/> Special Exception                      | _____          | _____          |
| <input checked="" type="checkbox"/> Variance                    | _____          | _____          |

To permit the following:

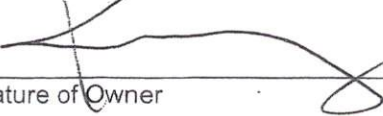
ALLOW FOR AN ADDITION TO BE BUILT 6" OVER THE SIDE SETBACK LINE AND AN ENTRY PORCH TO EXTEND 3'-6" OVER THE REAR SETBACK.

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D):

PLEASE SEE ATTACHED

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application, the application fee and 12 packets each containing: site and building/floor plans (8 1/2" x 11")\* and any supporting data, letters or photos. Incomplete applications will not be accepted. The Board may allow evidence to be submitted at the time of the Public Hearing. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Public Hearing for the above appeal.

\*11" x 17" plans maybe used only if 8 1/2" x 11" plan would not be readable.

Signature of Owner 

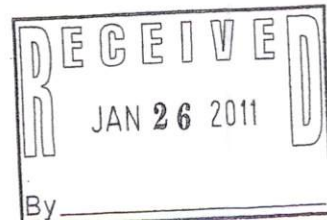
1/26/2011  
Date

CITY OF PORTSMOUTH  
Board of Adjustment Application  
ATTACHMENT

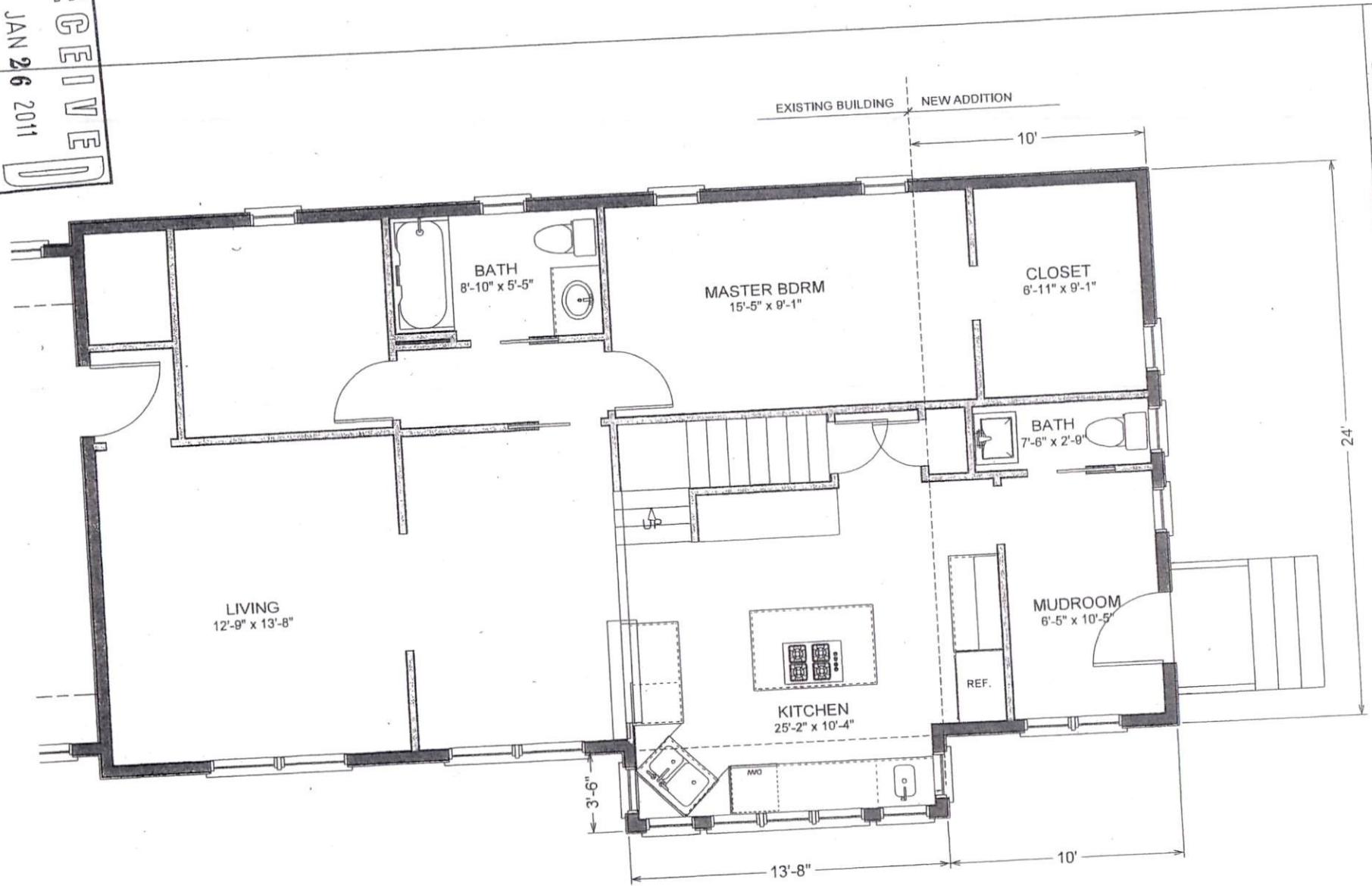
Owner: **Kieth & Maureen Tong**

Address: **27 Thaxter Road**

We believe that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship for the following reasons. Our home was built in the 1920's and is currently sitting 9'-6" off the side property line. We are currently faced, or blessed with a growing family and a small amount of suitable living space due to specific medical conditions limiting use of the second floor. Our goal is to remain in our house and neighborhood while maintaining a certain degree of comfort. By continuing the back walls of the house straight back we feel that we are keeping the existing architecture intact as much as possible with minimal impact on the neighbors (6" over side setback and 3-6"+/- over rear setback for stairs). The only suitable location for the rear entry is on the rear of the house due to the proximity of the garage and driveway.



RECEIVED  
 BY  
 JAN 26 2011



**FIRST FLOOR PLAN**  
 SCALE: N.T.S.

DRAWN BY: CMR DATE: 03/20/11 SCALE: PROJECT #: 1029
DESIGNER INFORMATION: Clark Builders Homes, LLC 10000 1st St. N. Omaha, NE 68140 402-333-4995
CLIENT INFORMATION: Keith & Maureen Tong 27 Thurston Road Portsmouth, NH 03801
SHEET TITLE: <b>FIRST FLOOR PLAN</b> PROJECT ADDRESS:
Keith & Maureen Tong Residence

**ATTACHMENT #12**



1700  
287 ft<sup>2</sup> J  
1767 ÷ 12,682 = 14%

-2580 ft<sup>2</sup> lot 46  
10102 ft<sup>2</sup>

= 17.5%

### Staff Review

Application requires approvals in the following areas:

Category	Article/Section	Category	Article/Section
Use of Property	_____	Parking	_____
Use of Building	_____	Loading	_____
# Dwelling Units	_____	Historic District	_____
Yards	_____	Wetlands Buffer	_____
Coverage	_____	Wetlands District	_____
Open Space	_____		_____
Lot Area	_____		_____

Existing Coverage: 11.6%      New Coverage: 14%      Max. Allowed Coverage: 20%  
 Existing Open Space: \_\_\_\_\_      New Open Space: \_\_\_\_\_      Min. Open Space Required: \_\_\_\_\_  
 Existing Parking: \_\_\_\_\_      New Parking: \_\_\_\_\_      Required Parking: \_\_\_\_\_

Board of Adjustment: Yes  No \_\_\_\_\_ Date Approved \_\_\_\_\_ Stipulations: \_\_\_\_\_

Historic District Commission: Yes \_\_\_\_\_ No  Date Approved \_\_\_\_\_ Stipulations: \_\_\_\_\_

Conditional Use Permit: Yes \_\_\_\_\_ No  Date Approved \_\_\_\_\_ Stipulations: \_\_\_\_\_

Site Review: Yes \_\_\_\_\_ No  Date Approved \_\_\_\_\_ Stipulations: \_\_\_\_\_  
 \_\_\_\_\_ Site Review Agreement and Bond \_\_\_\_\_

Building Code Board of Appeals Yes \_\_\_\_\_ Date Approved \_\_\_\_\_ Stipulations: \_\_\_\_\_

Building Area Calcs.	Basement: _____ + Attic: _____ + Garage: _____	@ _____ = \$ _____
For Permit Fee:	1 <sup>st</sup> Flr: _____ + 2 <sup>nd</sup> Flr: _____ + 3 <sup>rd</sup> Flr: _____	@ _____ = \$ _____
	Porch 1: _____ + Porch 2: _____ + Deck 1 _____ + Deck 2 _____	@ _____ = \$ _____
	Other Areas: _____ + _____ + _____ + _____	@ _____ = \$ _____
	TOTAL PERMIT FEE = \$ _____	

Planning Department \_\_\_\_\_ LJF Initials \_\_\_\_\_ Date Denied 1/27/2011 Date Approved \_\_\_\_\_  
 Comments \_\_\_\_\_

Building Inspector Comments: \_\_\_\_\_  
 \_\_\_\_\_

All conditions and requirements having been met, and there being no known outstanding violations to local codes or ordinances, I hereby approve the issuance of this Building Permit.

\_\_\_\_\_  
Building Inspector

\_\_\_\_\_  
Date Approved for Permit

**ATTACHMENT #13**

FIDUCIARY DEED

KNOW ALL BY THESE PRESENTS, that ROBERT E. BUTLER, of 11101 Maricopa Lane, Dewey, Arizona 86327, Executor under the will of MYRTLE H. BUTLER, and with the Assents of ROBERT E. BUTLER, GERALDINE BROWNING, and DIANA SHORE, for Two Hundred Forty Thousand and no/100 (\$240,000.00) dollars paid, grants to KENNETH K. JENNINGS and DEBORAH A. JENNINGS, both of 555 Sagamore Avenue, Portsmouth, New Hampshire 03801, as joint tenants with rights of survivorship, the following described premises:

A certain parcel of land, with the buildings thereon, situate in the easterly side of Thaxter Road in the City of Portsmouth, County of Rockingham, State of New Hampshire, bounded and described as follows:

Beginning in said Road at the northwesterly corner of Lot #48 on the Plan hereinafter referred to; thence running northerly by said Road seventy (70) feet to land now or formerly of Walter A. Gove; thence turning and running easterly in part by said last named land and in part by land formerly of the estate of Herbert T. Jenkins, one hundred (100) feet to land now or formerly of the heirs of John W. Shannon; thence turning and running southerly by said last named land, seventy (70) feet to said Lot #48; thence turning and running westerly by said Lot #48 one hundred (100) feet to said Thaxter Road to the point of beginning.

Being all of Lot #47 and part of Lot #46 as shown on a "Plan of Westfield Park" drawn by John W. Durgin, C.E., and recorded in the Rockingham County Registry of Deeds at Plan number 0643. Reference being also made to a plan of "Part of Westfield Park, Portsmouth, N.H." dated August 1933, drawn by the said John W. Durgin and recorded in said Registry of Deeds.

Subject to the restrictions and reservations set forth in the deed of R. Clyde Margeson et als, Trustee, dated October 7, 1927 and recorded in said Registry of Deeds at book 835, Page 272, as same may still apply.

Being the same premises conveyed by deed of Herbert S. Guptill to Everett A. Butler and Myrtle H. Butler as joint tenants with rights of survivorship, dated October 7, 1944 and recorded at said Registry of Deeds at Book 1030, Page 312. For further reference see Estate of Myrtle H. Butler (Docket #2000-1389).

Dated: May 29, 2001

Estate of Myrtle H. Butler

By: Robert E. Butler  
Robert E. Butler, Executor

STATE OF NEW HAMPSHIRE		
DEPARTMENT OF REVENUE ADMINISTRATION		REAL ESTATE TRANSFER TAX
3 THOUSAND	6 HUNDRED AND	XX DOLLARS
NO.   DAY   YR	AMOUNT	
060401	486977	\$3600.00
VOID IF ALTERED		

038166

2001 JUN -4 AM 9:30

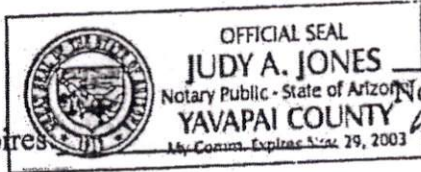
ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

STATE OF ARIZONA  
COUNTY OF Yavapai, SS

May 29, 2001

Personally appeared Robert E. Butler, the Executor of the Estate of Myrtle H. Butler, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Before me,



*Judy A. Jones*

My Commission expires

\$.50  
Rev

# Know all Men by these Presents,

THAT I, Walter A. Gove of Portsmouth in the County of Rockingham and State of New Hampshire

in consideration of one dollar and other valuable considerations to me paid by Herbert S. Guptill, of said Portsmouth,

Gove  
to  
Guptill

the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold, and conveyed and do for my self and my heirs, by these presents, give, grant, bargain, sell, and convey unto the said Herbert S. Guptill, his heirs and assigns, forever,

Del. to  
grantee

A certain tract of land situated on Thaxter Road in said Portsmouth bounded and described as follows, to wit: beginning on said Thaxter Road at the south-westerly corner of land of Herbert S. Guptill; thence northeasterly along said Guptill land 100 feet to land of one Shannon; thence northwesterly along said Shannon land 20 feet to land formerly of the estate of Herbert T. Jenkins; thence southwesterly along said Jenkins land and other land of said grantor 100 feet to said Thaxter Road; thence southeasterly along said Thaxter Road 20 feet to the point of beginning.

Being a portion of Lot No. 46 as shown on a plan of "Part of Westfield Park, Portsmouth, N.H." drawn by John W. Durgin, C.E., August, 1933, which plan is recorded in the Rockingham County Registry of Deeds.

Meaning and intending to convey a portion of the premises deeded to me by Alice Mabel Cooper et als on October 7, 1933, which deed is to be recorded herewith.

To have and to hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging to the said grantee his heirs and assigns, to his use and behoof forever. And I do covenant with the said grantee his heirs and assigns; that I am lawfully seized in fee of the afore-described premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said grantee in manner aforesaid; and that I and my heirs will warrant and defend the same premises to the said grantee his heirs, and assigns, forever, against the lawful claims and demands of all persons.

And I Frances M. Gove, wife of the said Walter A. Gove in consideration aforesaid, do hereby relinquish my right of dower in the before mentioned premises. And we, and each of us, hereby release our several rights of Homestead in said premises, under and by virtue of any law of this State.

In Witness whereof we have hereunto set our hands and seal this 7th day of October in the year of our Lord one thousand nine hundred and thirty-three.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF US:

F. Clyde Keefe

Walter A. Gove (L.S.)

Frances M. Gove (L.S.)

STATE OF NEW HAMPSHIRE, Strafford ss. October 7 1933  
Then the above named Walter A. Gove and Frances M. Gove

personally appearing,  
acknowledged the above instrument to be their free act and deed.

Before me,

F. Clyde Keefe

Justice of the Peace.

Received and recorded Nov. 4, 8:35 A.M. 1933

John W. A. Green Register.

**ATTACHMENT #14**



CITY OF PORTSMOUTH  
PLANNING DEPARTMENT

---

**MEMORANDUM**

---

**To:** Planning Board  
**From:** Juliet T.H. Walker, Planning Director *JTW*  
Jillian Harris, Planner 1  
**Subject:** Staff Recommendations for the April 18 and April 25, 2019 Planning Board Meetings  
**Date:** 04/12/19

---

**II. DETERMINATIONS OF COMPLETENESS**

**A. SUBDIVISION REVIEW**

1. The application of **Wayne & Kristin Ricciardi Barrow, Owners** and **James Verra, Applicant**, for property located at **55 Lafayette Road**, requesting Subdivision approval.

Planning Department Recommendation

*Vote to determine that the application is complete according to the Subdivision Rules and Regulations contingent on the granting of any required waivers under Section IV of the agenda and to accept the application for consideration.*

**B. SITE PLAN REVIEW**

1. The application of **Islamic Society of the Seacoast Area, Owner**, for property located at **686 Maplewood Avenue**, requesting Site Plan approval.

Planning Department Recommendation

*Vote to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration.*

**VI. CITY COUNCIL REFERRAL – PUBLIC HEARING**

- A. Request for restoration of involuntarily merged lots at **27 Thaxter Road**, Assessor Map 166, Lot 39.



Description

The parcel at 27 Thaxter Rd (Assessor Map 166, Lot 39) appears to have been created from 3 previous existing lots, which the owner's representative indicates were described in the City's tax records dating back to 1951. The owner is requesting that the lots be restored to their premerger status, former Lot 46 measuring 2,580 sq.ft. and former lots 44 and 45 measuring 5,000 sq.ft. severally. The 2,580 sq.ft. parcel (Lot 46 on the tax cards provided) fronts on Thaxter Rd and does not include any buildings, former lot 44 fronts on Thaxter Rd and includes the existing single family home and part of the detached garage. Former lot 45 includes part of the detached garage. This request is being made pursuant to RSA 674:39-aa, Restoration of Involuntarily Merged Lots.

Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore "to their premerger status" any lots or parcels that were "involuntarily merged" by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process, but the City Council is referring such requests to the Board for its review and report back.



The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

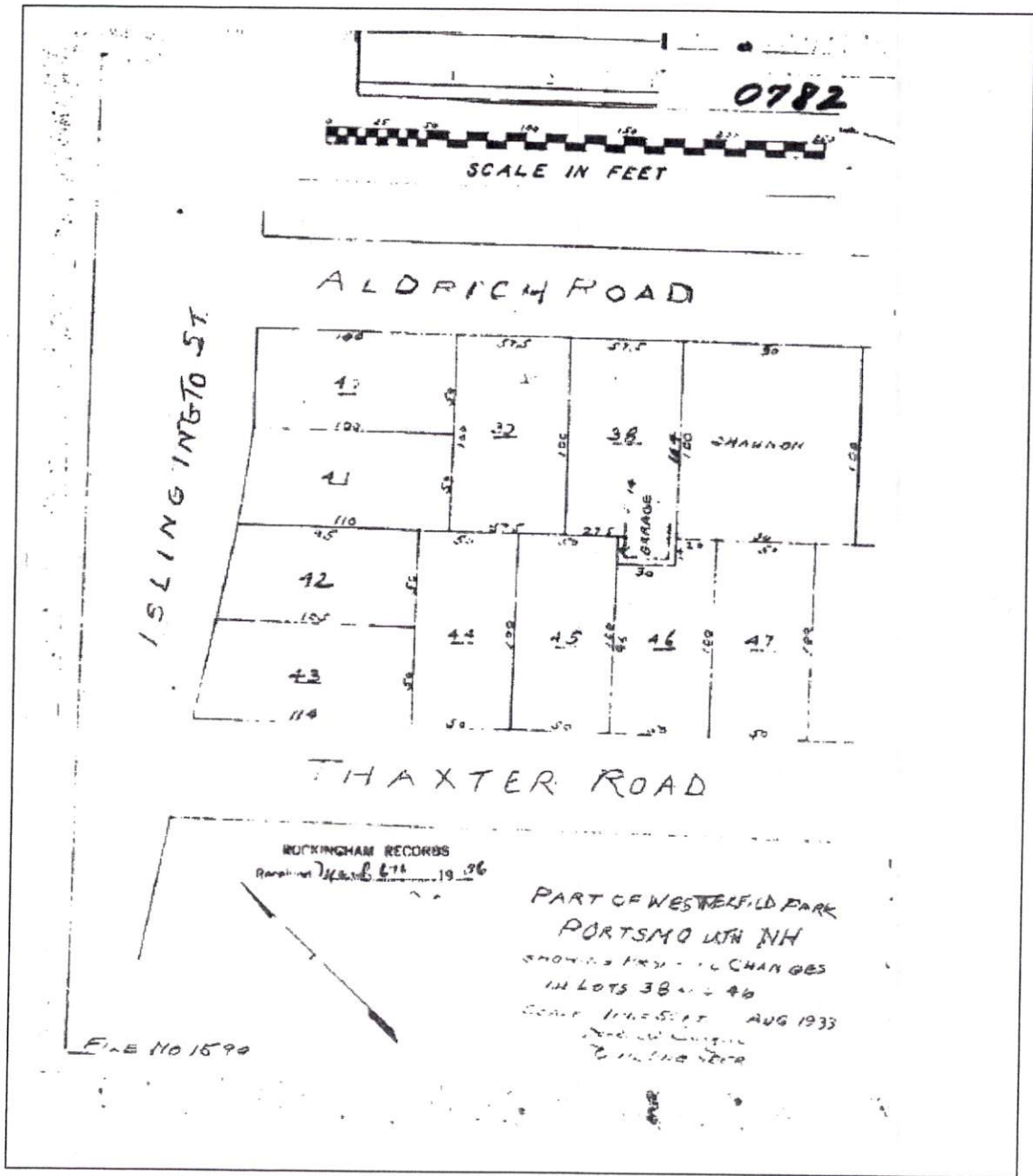
It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “*The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances*” (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two premerger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

#### Analysis

While no original subdivision plan has been provided by the owner, a cursory review of the Rockingham County Registry of Deeds records by the Planning Department found a recorded deed (Book 0943, Page 0498) dated August 10, 1938 that described these lots as lots 44, 45 and a part of 46 as shown on a plan entitled “Plan of part of Westfield Park, drawn by John W. Durgin, C.E., dated August 1933 and recorded in Rockingham Records, Plat 25, Page 2”. Further search of the County Records located the plan (#0782) dated August, 1933 which appear to show the lots referenced in the deed (See below). The lots described on these two documents from the Registry are also consistent with the dimensions provided in the tax cards provided by the owner in his request to restore the lots to their premerger status.

#### Planning Department Recommendation

*Vote to recommend to the City Council to restore the three involuntarily merged lots at 27 Thaxter St to their premerger status.*



MEETING TO BE RECONVENED ON APRIL 25, 2019