



Christopher B. Drescher
Admitted in NH

May 21, 2025

City of Portsmouth
Board of Adjustment
1 Junkins Ave.
3rd Floor
Portsmouth, NH 03801

RE: Colbea Enterprises LLC: property located at 1980 Woodbury Ave. (LU-25-39)

Update ZBA on amendments to Site Plan

Dear Honorable Zoning Board of Adjustment (“ZBA”),

I write to you on behalf of our client, Colbea Enterprises, LLC, to provide some background as to the changes that we implemented to the proposed project in light of suggestions and concerns raised by the ZBA back on April 22, 2025, at our first meeting.

First, we address the concerns raised relative to the Drive-Thru by bringing the speaker box closer to building thereby increasing the distance between proposed speaker and abutting residences (*originally 38.7' from the lot line to 41.0' from the lot line*). Additionally, an eight (8) foot stockade fence, as well as plantings are being proposed to run along the westerly side of the Property to add additional buffering and screening in the interests of mitigating the noise for the abutters to the west

Second, we address issues raised with respect to the signage. Under the revised Plan, we are removing the monument sign along Gosling Road. We are reducing the overall signage on-site from 453.25 sf to 308.11 sf. The proposed pylon sign is relocated to match the existing pylon location and, in doing so, we no longer need a variance for 10-foot sign setback as the new location will be 11.2 feet from the lot line. We are also offering to include a “Welcome to Portsmouth” sign to be placed at the intersection. This would be within the right-of-way and Colbea would coordinate with the City to establish design.

Third, in order to demonstrate compliance with the Gateway District’s mission statement, we are proposing an outdoor dining area next to the convenience store and another one along Gosling Road. The addition of sidewalks throughout the site to provide interconnectivity and

allow pedestrians to navigate between Gosling and Woodbury without going to the main intersection. We are Proposing stamped concrete sidewalks at pedestrian crossings to raise awareness for drivers. Finally, we are adding a bike rack on-site.

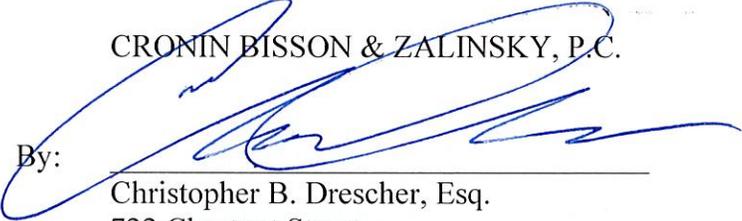
Fourth, we are providing a Landscape Plan in an effort to demonstrate how we will turn the site from primarily pavement with minimal landscaping to that of a greener site with many plantings.

Fifth, and final, we have conducted a Sound Study to demonstrate that the noise level of the proposed project will not only comply with the Portsmouth Zoning Ordinance but also demonstrate that the noise level from the Drive-Thru will not have a negative impact to the abutting property.

Should you need us to provide anything else please do not hesitate to ask.

Very Truly Yours,

CRONIN BISSON & ZALINSKY, P.C.

By: 

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VARIANCE #1 from PZO 10.5B33.20

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B33.20*, to allow for a Front Lot Line build out of 0 feet where a minimum of 127.5 feet would be the required 75% build out as required by the PZO for commercial and mixed-use buildings. However, the proposed project is outside the required 20-foot setback for this provision of the PZO to apply.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the "Store") will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a 'drive-through' lane, which will be relative to 'co-brand' business (*i.e., Heavenly Donuts, Mary Lou's Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today's standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.5B33.20

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for Front Lot Line Build Out of 0 feet where the PZO would otherwise require 127.5 feet.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a Front Lot Line Build Out of 0 feet because the Store is setback beyond the required 20 feet from the Front Line of the Property.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a

much needed ‘face-lift’ and overall modernization of all of the convenience store and fueling components, bringing the fueling systems up to date with state of the art technology that is much safer to use and operate than the current system that is likely 25+ years old.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store on site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to avoid overcrowding, and life and safety. More specifically, the City of Portsmouth desires to control the size of buildings along the Front Lot Line as it is preferred under the PZO to have buildings flush against the Front Lot Line for aesthetics.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #2 from PZO 10.5B34.60

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B34.60*, to allow for a Front Setback from the lot line of 0 feet where a maximum of 20 feet is required.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.5B34.60

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for Front Building Setback of 0 feet where the PZO would otherwise require a maximum of 20 feet.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a Front Building Setback of 0 feet because the Store is setback well beyond the required maximum of 20 feet from the Front Lot Line of the Property.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the

property,' which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance; and,

c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it unreasonably frustrate the purpose of the PZO.

The purpose and goals of the applicable ordinance is to avoid overcrowding, and life and safety. More specifically, the City of Portsmouth desires to control the location of commercial buildings to be close to the Front Lot Line and likely encourage parking behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #3 from PZO 10.5B83.10

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B83.10*, to allow for parking spaces to be located between the Principal building and the street.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.5B83.10

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for off street parking to be present between the principal Building (aka the Store) and the front Property line.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for off street parking to occur between the front Property line and the Store. Generally, any fueling station is setup so people pull into the site and park in front of the convenience store to enter – not park around back only to walk around front.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the

property,' which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance; and,

c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it unreasonably frustrate the purpose of the PZO.

The purpose and goals of the applicable ordinance is to avoid motor vehicles parking in front of buildings in a neighborhood where the Zoning is tailored to keep buildings close to the Front Lot line likely for aesthetics. More specifically, the City of Portsmouth desires to control the location of commercial buildings to be close to the Front Lot Line and likely encourage parking

behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

As such, it is far more logical to allow the parking to take place between the Store and the Front Lot line.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #4 from PZO 10.835.31

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.835.31*, to allow for outdoor service facilities (transaction windows, menu boards, speakers, *etc.*) to be within the required setback of 50 feet – approximately 34.8 feet and 40.8 feet from the applicable lot lines.

The variance is needed for two locations that are both marked on the “variance plan” by a “4” – one is located by the proposed menu board along the westerly side of the main building (40.8’/41.0’) and the other is located along the southerly side at the drive through window (34.8’).

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the "Store") will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a 'drive-through' lane, which will be relative to 'co-brand' business (*i.e., Heavenly Donuts, Mary Lou's Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the

same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today's standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance ("PZO") Section 10.835.31

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for outdoor service facilities (transaction windows, menu boards, speakers, etc.) to encroach into the required 50-foot setback and come within 34.8 feet and 40.8 feet at two locations from the applicable lot lines.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. Indeed, the dimensional

constraints are such that this section of the PZO would be difficult, if not impossible, to comply with.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

The outdoor service facilities are common for any drive-through and there are other drive-throughs in the vicinity of the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a minor encroachment into a setback for the standard outdoor service facilities that are inherit with fueling stations and similarly situated businesses.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is quite literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Finally, the main building has been moved slightly more away from the lot to the west. Additionally, a tall stockade fence (8' tall), as well as some additional plantings have been added to further screen the abutting lots.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity of a drive-through and, in this case, its outdoor services facilities. This is done for both aesthetics and life and safety.

Here, there is already some buffering between the proposed drive-through lanes and the abutting western property line. Furthermore, the corner of the Property where this activity will be located is the furthest point from any other activity taking place on site. The Applicant has also enhanced the lot line with tall fence and some plantings to further screen the westerly neighbors.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #5 from PZO 10.835.32

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.85.32*, to allow for drive-through lanes, bypass lanes and stacking lanes (*collectively the “drive-through lanes”*) to come within 13 feet of the required 30-foot setback from the applicable lot lines.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the "Store") will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a 'drive-through' lane, which will be relative to 'co-brand' business (*i.e., Heavenly Donuts, Mary Lou's Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today's standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.835.32

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for drive-through lanes, bypass lanes, and stacking lanes to encroach into the required 30-foot setback up to 13 feet along the westerly side of the Property.

The Lot is small and given those constraints the Store will have to be placed in the middle of the Lot. Approximately 30 feet from the westerly side of the Property is where the edge of the logical location for the Store.

Despite this ask, there is buffering between the Property and the abutting property to the west. Traffic will enter from either entrance and circle around behind the Store at the most remote part of the Property from the intersections of Gosling Road and Woodbury Avenue. In

doing so, the ‘action’ from the drive-through will be as pushed as far back as possible in light of the dimensional constraints of the Property.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is a drive-through on the abutting property to the south (*Dunkin*) that, presumably, also does not comply with the applicable section of the PZO. Therefore, a drive-through – even one encroaching into the applicable setback – is consistent with the neighborhood.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for an encroachment into a setback to accommodate a common and typical drive-through component to a fueling station.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity of a drive-through. This is done for both aesthetics and life and safety.

Here, there is already sufficient buffering between the proposed drive-through lanes and the abutting western property line. Furthermore, the corner of the Property where this activity will be located is the furthest point from any other activity taking place on site.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #6 from PZO 10.843.33

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.843.33*, to allow for fuel pumps to come within 28 feet of the required 40-foot setback from the applicable lot lines.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.843.33

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for fuel pumps to encroach into the required 40-foot setback within 28 feet along the easterly side of the Property. Otherwise, all other sides of the Property comply with this section of the PZO.

The Lot is small and given those constraints the Store will have to be placed in the middle of the Lot and the fuel pumps will logically go in front of the Store. Notably, there will be fewer pumps than are currently on site today and, moreover, one can see on the current conditions plan that the configuration of the fuel pumps does not presently conform to this section of the PZO. Despite the aforesaid non-conformity, the current encroachment has not, to the best of our knowledge, ever caused any problems.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at

the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is another fueling station across Gosling Road in the abutting Town.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for the fuel pumps to encroach into a setback that would result in the Property being more conforming. Currently, Mobil has more fuel pumps than what the Applicant is proposing and, furthermore, does not conform to this section of PZO on multiple sides of the Property whereas, here, the ask is only relative to the front Property line.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity at the fuel pumps. This is done for both aesthetics and life and safety.

Here, what is being proposed is more conforming than what is on site today. Fuel pumps are clearly a normal aspect of any fueling station and the relief sought is minor distance from Woodbury Avenue. Otherwise, no relief is needed from any other setback relative to the fuel pumps.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #7 from PZO 10.1251.10

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1251.10*, to allow for a greater aggregate sign area than the maximum area of 1.5’ per linear foot of the building frontage per establishment. Under the PZO, 223.50 square feet is allowed and the Applicant requests relief to allow for an aggregate sign area of 308.11 square feet. This request is down from an ask of 453.26 square feet that was previously requested in order to address some of the Honorable Board’s comments.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the

site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e.*, *Heavenly Donuts*, *Mary Lou’s Coffee*, *Honeydew Coffee*, *etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming

at one time, the lot is not conforming under today's standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance ("PZO") Section PZO 10.1251.10

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum aggregate sign area of 308.11 square feet where 223.50 square feet is allowed.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant's standard sign. Although 'standard' what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as

there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is another fueling station across Gosling Road in the abutting Town.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and

reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger aggregate sign area.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components,

bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is quite literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.

As stated above, the Applicant has reduced this request from 453.26 square feet to 308.11 square feet to minimize this request.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra square footage the sign will not be abnormally large in comparison to many signs in the area. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra square footage is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #8 from PZO 10.1251.20

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1251.20*, to allow for a larger sign area of 135 square feet where the PZO allows for a maximum sign area of 100 square feet.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.20

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum sign area of 135 square feet where 100 square feet is allowed.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a slightly larger sign conveying multiple businesses, as well as an array of information. Notably, there is another fueling station across Gosling Road in Newington that has signs much larger and taller than what is currently on the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger sign area.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties. Moreover, it would be consistent with the neighborhood when considering the size of the Cumberland Farms signs across Gosling Road.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra square footage the sign will not be abnormally large in comparison to many signs in the area. Indeed, as stated above the Cumberland Farm signs across the street are

significantly larger than signs at the Property now. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra square footage is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #9 from PZO 10.1253.10

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1253.10*, to allow for a sign height of 26.25 feet where the PZO allows for a maximum sign height of 20 feet.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1253.10

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum sign height 26.25 feet where the PZO allows for 20 feet.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a slightly larger sign conveying multiple businesses, as well as an array of information. Notably, there is another fueling station across Gosling Road in the abutting Town that has signs much larger and taller than what is currently on the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger taller sign than is allowed by the PZO.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

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As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components,

bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

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5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is quite literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra height and square footage is needed to convey all the businesses and amenities.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

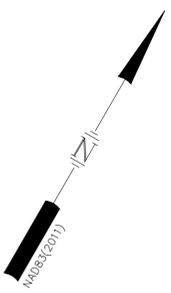
The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra height the sign will not be abnormally large in comparison to many signs in the area. Indeed, as stated above, the Cumberland Farm signs across the street are significantly larger than signs at the Property now. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra height is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.



NEWINGTON
MAP 34 LOT 3-1
(BUILDING ONLY)
N/F
MAG RE HOLDINGS-NEWINGTON, LLC
777 WASHINGTON STREET
NEWTON, MA 02460

NEWINGTON
MAP 34 LOT 2
N/F
CFI PROPCO, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01851
RCRD BK.#6110 PG.#2160

NEWINGTON
MAP 34 LOT 1
N/F
NEWINGTON CROSSING, LLC
291 CARL BROGG HIGHWAY
LEBANON, NH 04027
RCRD BK.#6578 PG.#43

NOTES

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT. REQUIRED PROPOSED

USE: SMALL COMMERCIAL BUILDING	1.1 AC.	0.88 AC.
MIN. LOT SIZE:	50'	>100'
MIN. LOT FRONTAGE:		
MIN. BUILDING SETBACKS:		
FRONT	0' MIN/20' MAX.'	27.4±'
SIDE	10'	34.8±'
REAR	15'	40.7'
MAX. BUILDING HEIGHT:	40'	<40'
MAX. BUILDING COVERAGE:	70%	18.8±%
MIN. OPEN SPACE:	10%	19.6±%

PARKING CALCULATIONS: (8.5'X19'X24')

REQUIRED:
MOTOR VEHICLE SERVICE STATION:
2 SP.+ 1/400 SF GFA (4,580 SF) = 12 SPACES

PROPOSED: 19 SPACES & 9 STACKING

SPECIAL EXCEPTION

THE CONVENIENCE GOODS USE WILL REQUIRE A SPECIAL EXCEPTION WHICH IS VOTED ON BY THE ZONING BOARD OF ADJUSTMENT.

VARIANCES REQUIRED

- PZO 10.5B33.20 - ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
- PZO 10.5B34.60 - FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
- PZO 10.5B83.10 - REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
- PZO 10.835.31 - ALL OUTDOOR SERVICE FACILITIES (INCLUDING TRANSACTION WINDOWS, MENU BOARDS, SPEAKERS, ETC.) SHALL BE LOCATED A MINIMUM OF 50 FEET FROM ANY LOT LINE.
- PZO 10.835.32 - ALL DRIVE-THROUGH LANES, BYPASS LANES, AND STACKING LANES SHALL BE LOCATED A MINIMUM OF 30 FEET FROM ANY LOT LINE.
- PZO 10.843.33 - ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
- PZO 10.1251.10 - THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
- PZO 10.1251.20 - THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
- PZO 10.1253.10 - THE MAXIMUM AND MINIMUM HEIGHTS AND MINIMUM SETBACKS FOR SIGNS IN EACH SIGN DISTRICT SHALL BE AS SET FORTH IN THE FOLLOWING TABLE, EXCEPT AS OTHERWISE PROVIDED HEREIN: MAXIMUM HEIGHT = 20', MINIMUM SETBACK FROM LOT LINE = 10'.

VARIANCE TABLE				
NUMBER (SEE ABOVE)	REQUIRED	EXISTING	REQUESTED AT APRIL MEETING	CURRENTLY REQUESTED
1	127.5' MIN	0'	0'	0'
2	20' MAX	10.4	27.4'	27.4
3	NO PARKING	YES	YES	YES
4	50' MIN	N/A	34.8' & 38.7'	34.8' & 40.8'
5	30' MIN	N/A	13.0'	13.0'
6	40' MIN	23.1'	34.7'	34.7'
7	223.50 S.F. (149'x1.5')	-	453.26 S.F.	308.11 S.F.
8	100 S.F. MAX	-	134 S.F.	134 S.F.
9	20' MAX HEIGHT	-	26.25'	26.25'
	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY	11.2' (VARIANCE NO LONGER REQD.)

EASEMENTS & RESTRICTIONS:

COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 20CLT0055-NH, DATED DECEMBER 16, 2020 WAS EXAMINED AS PART OF THIS SURVEY. SURVEY EXCEPTIONS CONTAINED IN SCHEDULE B PART II OF THAT COMMITMENT WHICH THE SUBJECT PROPERTY IS SUBJECT TO AND/OR HAS THE BENEFIT OF ARE AS FOLLOWS:

- ITEM 11 - NOTICE OF CONDEMNATION, EASEMENT RIGHTS, AND LIMITATION ON ACCESS AS DESCRIBED IN THE AMENDED NOTICE OF CONDEMNATION DATED 9/14/83 AND RECORDED IN VOLUME 2461, PAGE 163. (SEE PLAN REFERENCE 9)
- ITEM 12 - THE FOLLOWING MATTERS DEPICTED ON BOUNDARY AND TOPOGRAPHIC PLAN, ASSESSORS MAP R-39-LOT11, WOODBURY AVE. & GOSLING ROAD, PORTSMOUTH, NEW HAMPSHIRE, PREPARED FOR MOBIL OIL CORPORATION DATED 12/6/1991 AND RECORDED AS PLAN D21731.
 - A - MOBIL SIGN TRAVERSING THE NORTHERLY BOUNDARY. (SIGN SINCE HAS BEEN RELOCATED AND RESIDES ON THE PROPERTY, SHOWN HEREON)
 - B - CATCH BASIN AND PIPES TRAVERSING THE NORTHERLY BOUNDARY. (AS SHOWN ON THE PLAN)
 - C - CURBING AND CONCRETE WALKWAY, TRAVERSING THE NORTHERLY, EASTERLY AND SOUTHERLY BOUNDARIES.
 - D - OBSERVATION WELL LOCATED WITHIN THE PROPERTY.
 - E - ELECTRIC POLE SUPPORT POLE TRAVERSING THE EASTERLY BOUNDARY.
- ITEM 13 - NOTICE OF RESTRICTIONS, INCLUDING RESTRICTIONS ON THE USE OF GROUNDWATER, AS RECORDED IN VOLUME 4011, PAGE 1268. (RESTRICTION NOT PLACEABLE AND THEREFORE NOT PLOTTED).
- ITEM 14 - TERMS AND PROVISIONS OF LEASE BY AND BETWEEN DUNCAN CONSTRUCTION COMPANY, INC. AND MOBIL OIL CORPORATIONS AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2836, PAGE 1157, AS AFFECTED BY SUPPLEMENTAL NOTICE OF LEASE RECORDED IN VOLUME 3113, PAGE 1212. ASSIGNMENTS OF THE LEASE ARE RECORDED IN VOLUME 3046, PAGE 2323 AND VOLUME 3688, PAGE 1466. ALLIANCE ENERGY CORP. CONVERTED TO ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4929, PAGE 2060. (NOT PLOTTABLE)

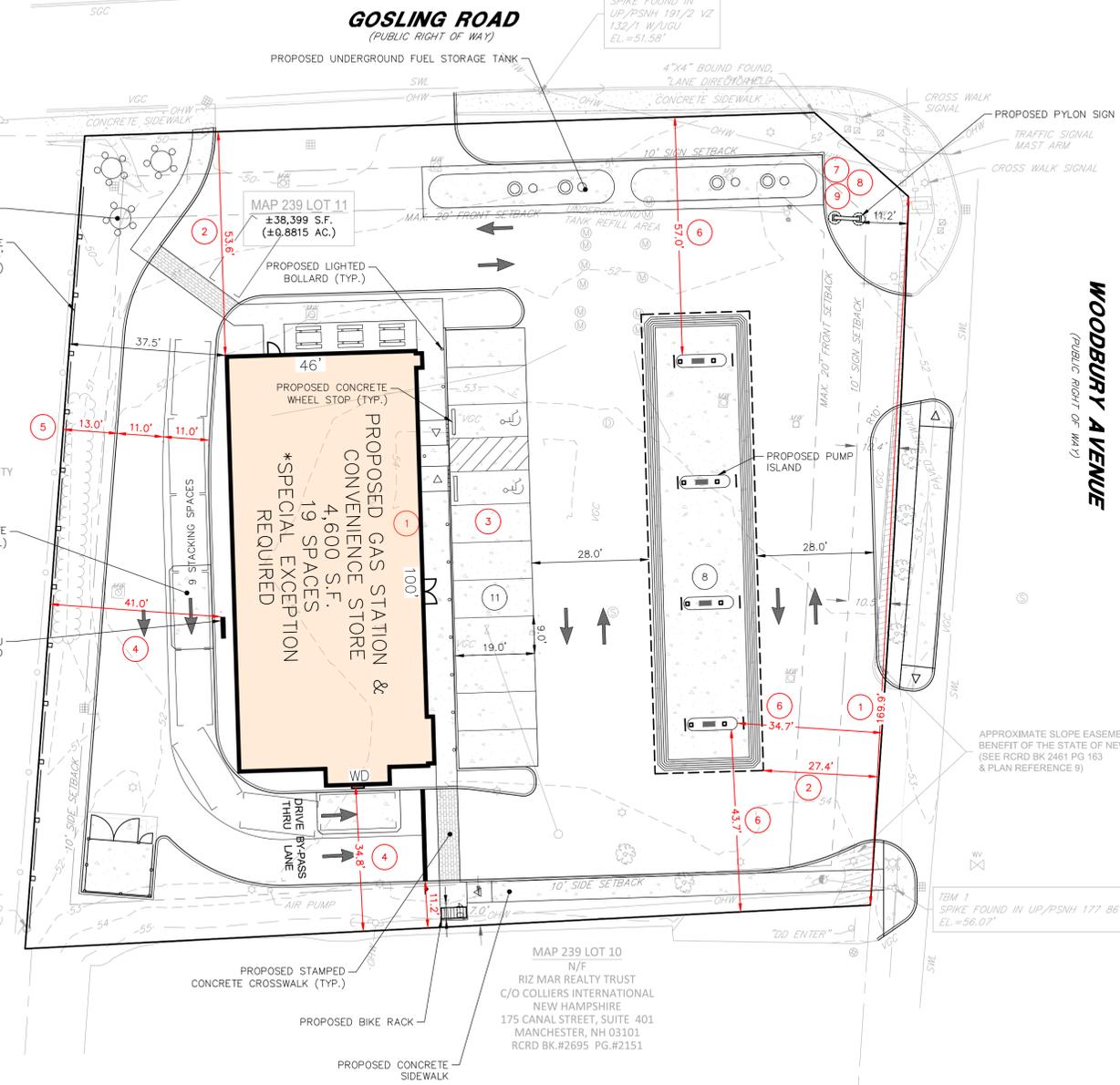
ENCROACHMENTS:

- ON THE SOUTH, WALKWAY EVIDENCE OF PASSAGE BETWEEN SUBJECT PARCEL AND TAX MAP 239 LOT 10;
- ON THE WEST, STOCKADE FENCE OVER RECORD LINE;
- ON THE NORTH, OVERHEARD UTILITY WIRE OVER RECORD LINE;
- ON THE NORTH, UTILITY POLE SUPPORT WIRE OVER RECORD LINE;
- ON THE NORTH, LANE DIRECTORY SIGN OVER RECORD LINE;

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REV	DATE	DESCRIPTION	JKC	CRR
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11
VARIANCE PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
OWNED BY
COLBEA ENTERPRISES, LLC

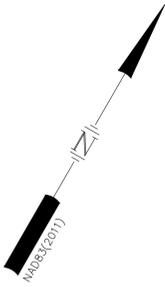
1"=40' (11"X17')
SCALE: 1"=20' (22"X34') **MARCH 19, 2025**

Seacoast Division
TFM
Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.tfmoran.com

46077.16
C-01

May 30, 2025 - 11:50am F:\MISC Projects\46077-16 Woodbury Ave - Portsmouth\46077-16 Variance Plan.dwg

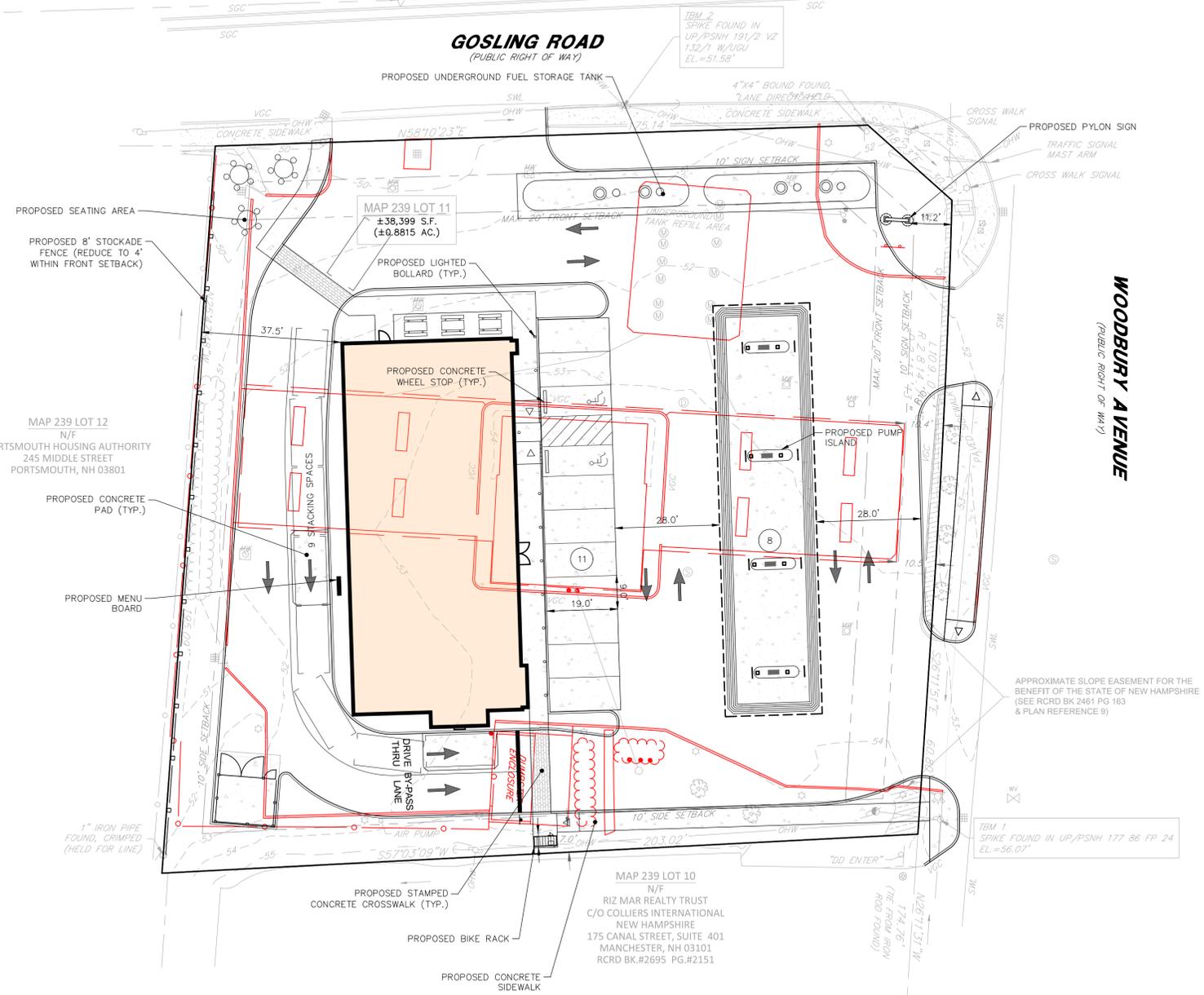


NEWINGTON
MAP 34 LOT 3-1
(BUILDING ONLY)
N/F
MAG RE HOLDINGS-NEWINGTON, LLC
777 WASHINGTON STREET
NEWTON, MA 02460

NEWINGTON
MAP 34 LOT 2
N/F
CFI PROPCO, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01851
RCRD BK.#6110 PG.#2160

NEWINGTON
MAP 34 LOT 1
N/F
NEWINGTON CROSSING, LLC
291 CARL BROGG HIGHWAY
LEBANON, NH 04027
RCRD BK.#6578 PG.#43

LEGEND:
EXISTING FEATURE TO BE DEMOLISHED



MAP 239 LOT 12
N/F
PORTSMOUTH HOUSING AUTHORITY
245 MIDDLE STREET
PORTSMOUTH, NH 03801

MAP 239 LOT 10
N/F
RIZ MAR REALTY TRUST
C/O COLLIER'S INTERNATIONAL
NEW HAMPSHIRE
175 CANAL STREET, SUITE 401
MANCHESTER, NH 03101
RCRD BK.#2695 PG.#2151

MAP 215 LOT 7
N/F
DANGELO, INC.
ATTN: A/P
PO BOX 519
W. BRIDGEWATER, MA 02379
RCRD BK.#2415 PG.#0785

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11
OVERLAY PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
OWNED BY
COLBEA ENTERPRISES, LLC

1"=40' (11'x17')
SCALE: 1"=20' (22'x34') **MARCH 19, 2025**

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DR JKC FB
CK CRR CADFILE 46077-16 VARIANCE PLAN

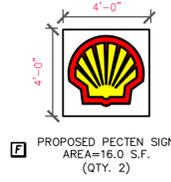
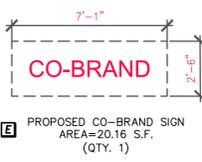
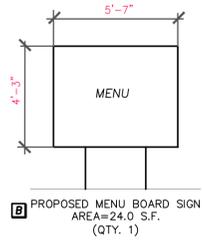
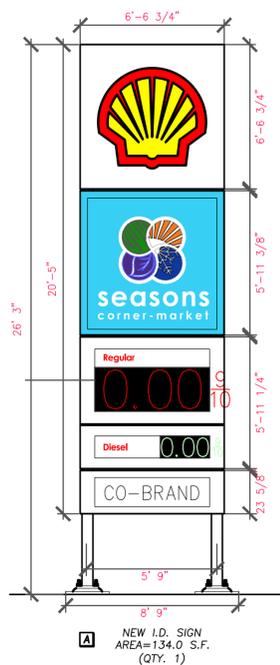
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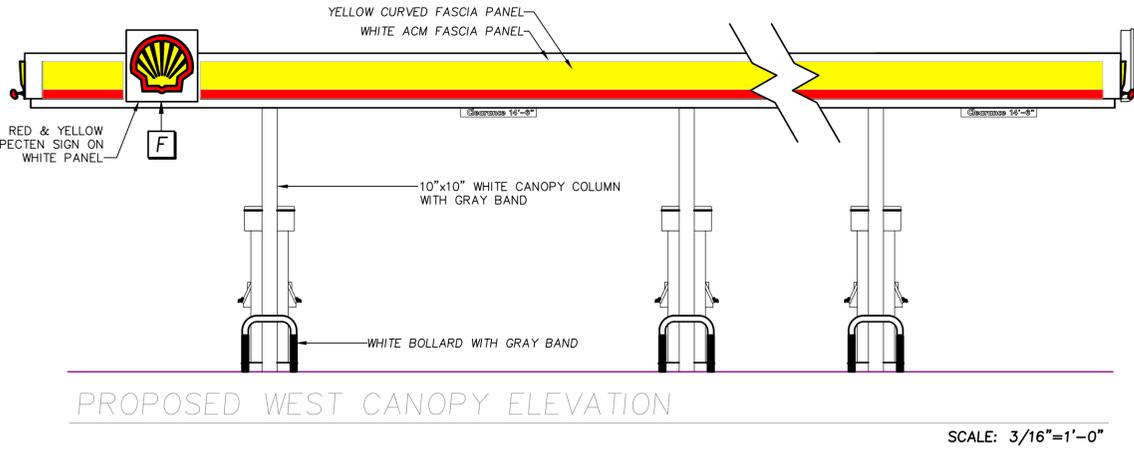
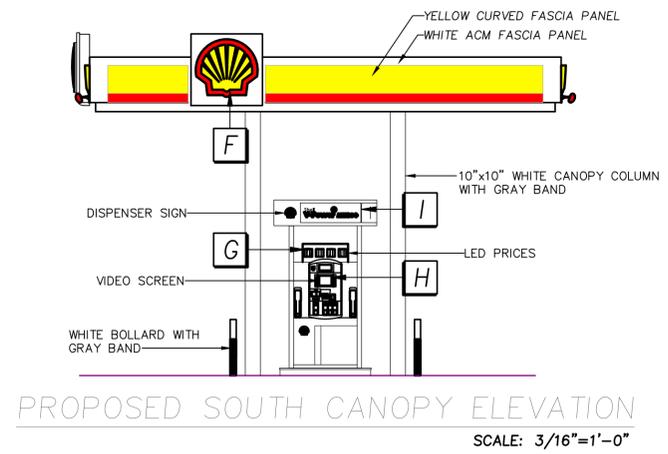
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PROPOSED SIGN SCHEDULE									
MARK	DESCRIPTION	SIZE	AREA (SF)	QUAN.	SIZE (SF)	ILLUMINATION	REMARKS	TYPE	
FREESTANDING SIGNS									
A	I.D. SIGN	6'-6 3/4" X 20'-5"	134.0	1	134.0	INT	NEW	GROUND	
TOTAL FREESTANDING SIGNAGE: 134 S.F., 26' 3" TALL (TOTAL PERMITTED - 100 S.F., MAX OF 20' TALL)									
B	MENU BOARD SIGN	3'-1 1/2" X 7'-2 3/8"	24.0	1	24.0	INT	NEW	GROUND	
TOTAL MENU BOARD SIGNAGE: 24.0 S.F.									
WALL SIGNS									
C	"SEASONS" SIGN	24' X 3'-6"	84	1	84	INT	NEW	WALL	
D	"CORNER MARKET" SIGN	15'-8" X 0'-10 3/8"	13.95	1	13.95	NON	NEW	WALL	
E	CO-BRAND SIGN	7'-1" X 2'-6"	20.16	1	20.16	INT	NEW	WALL	
TOTAL WALL SIGNAGE: 118.11 S.F. (TOTAL PERMITTED - 200 S.F.)									
DIRECTIONAL AND MISCELLANEOUS SIGNS									
F	CANOPY SIGN	4'-0" X 4'-0"	16.0	2	32.0	INT	NEW	WALL	
TOTAL DIRECTIONAL AND MISCELLANEOUS SIGNAGE: 32.0 S.F.									
TOTAL SIGNAGE: 308.11 S.F. (453.26 S.F. ON PREVIOUS PLAN)									



SITE DEVELOPMENT PLANS
TAX MAP 239 LOT 11
SIGN PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
OWNED BY
COLBEA ENTERPRISES, LLC

SCALE: NTS MARCH 19, 2025

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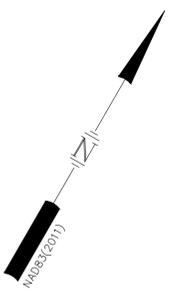
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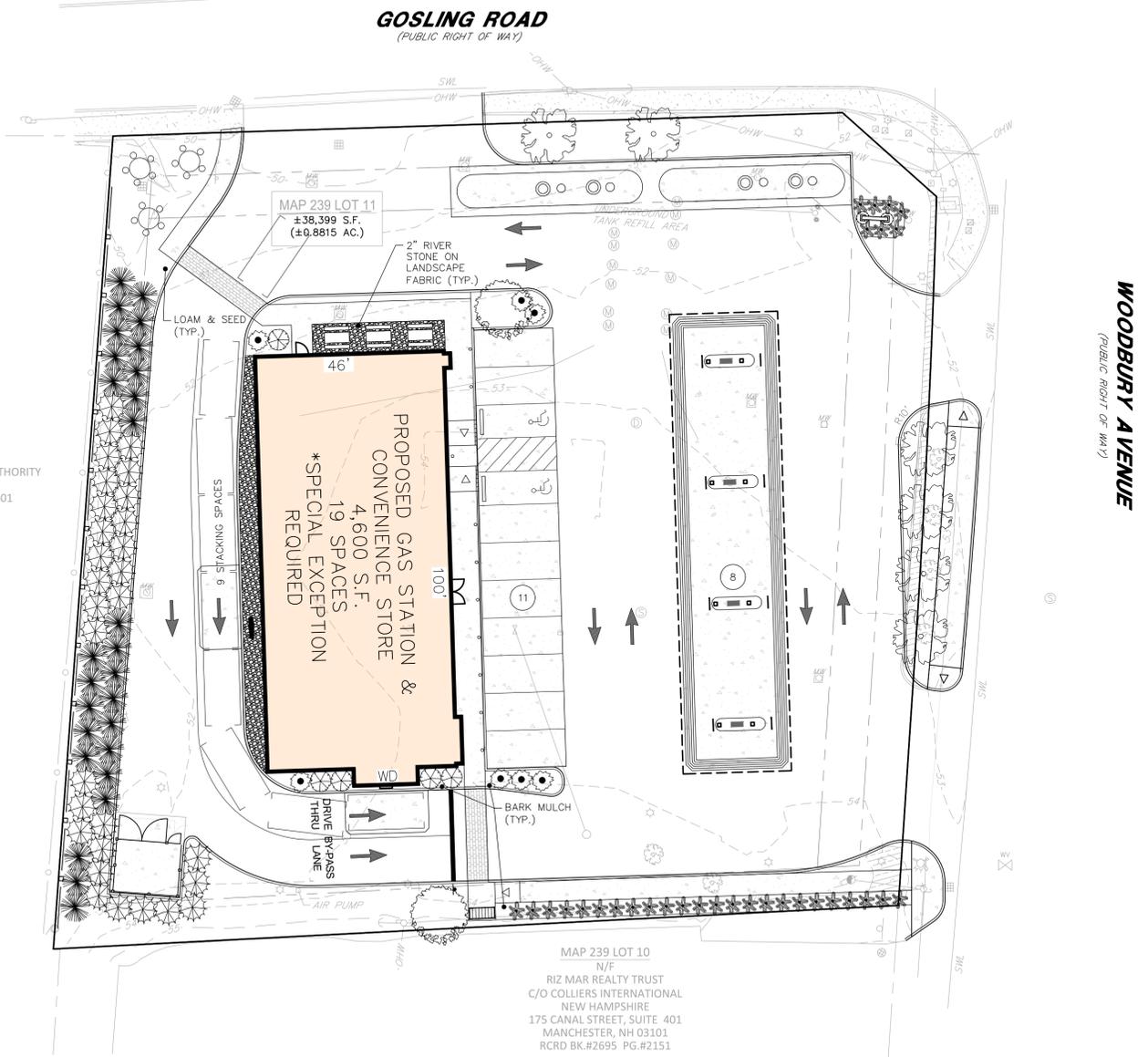


NEWINGTON
 MAP 34 LOT 3-1
 (BUILDING ONLY)
 N/F
 MAG RE HOLDINGS-NEWINGTON, LLC
 777 WASHINGTON STREET
 NEWTON, MA 02460

NEWINGTON
 MAP 34 LOT 2
 N/F
 CFI PROPCO, LLC
 165 FLANDERS ROAD
 WESTBOROUGH, MA 01851
 RCRD BK.#6110 PG.#2160

MAP 239 LOT 12
 N/F
 PORTSMOUTH HOUSING AUTHORITY
 245 MIDDLE STREET
 PORTSMOUTH, NH 03801

MAP 239 LOT 10
 N/F
 RIZ MAR REALTY TRUST
 C/O COLLIERS INTERNATIONAL
 NEW HAMPSHIRE
 175 CANAL STREET, SUITE 401
 MANCHESTER, NH 03101
 RCRD BK.#2695 PG.#2151



LANDSCAPE LEGEND

SYMBOL	QTY	BOTANICAL NAME COMMON NAME	SIZE	REMARKS	MATURE HEIGHT/ SPREAD	GROWTH HABIT
	6	ACER RUBRUM 'BOWHALL' BOWHALL RED MAPLE	2" TO 2 1/2" CAL.	B&B	40' TO 60' 10' TO 15'	UPRIGHT
	2	AMELANCHIER X GRANDIFLORA 'ROBIN HILL' ROBIN HILL SERVICEBERRY	2" TO 2 1/2" CAL.	B&B	15' TO 20' 10' TO 15'	UPRIGHT
	7	JUNIPERUS HORIZONTALIS 'BAR HARBOR' BAR HARBOR JUNIPER	1 GAL.	CONT.	6" TO 12" 6' TO 8'	GROUNDCOVER
	27	JUNIPERUS VIRGINIANA 'MANHATTAN BLUE' MANHATTAN BLUE EASTERN RED CEDAR	5" TO 6"	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL
	31	PANICUM VIRGATUM 'SHENANDOAH' SHENANDOAH SWITCH GRASS	1 GAL.	CONT.	3' TO 4' 3' TO 4'	CLUMPING
	5	PHYSOCARPUS O. 'TINY WINE GOLD' TINY WINE GOLD NINEBARK	3 GAL.	CONT.	4' TO 5' 4' TO 5'	MOUNDED
	30	THUJA OCCIDENTALIS 'TECHNY' MISSION ARBORVITAE	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL

LANDSCAPE NOTES

(SEE DETAILS FOR ADDITIONAL NOTES)

GENERAL

- THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE RULES, REGULATIONS, LAWS, AND ORDINANCES HAVING JURISDICTION OVER THIS PROJECT SITE.
- PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES AND NOTIFY OWNER'S REPRESENTATIVE OF CONFLICTS.
- THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON PLANS BEFORE PRICING THE WORK. ANY DIFFERENCE IN QUANTITIES SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT FOR CLARIFICATION. LANDSCAPE QUANTITIES SHOWN ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN LANDSCAPE LEGEND.
- THE CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT PRIOR TO STARTING WORK AND VERIFY THAT THE PLANS IN THE CONTRACTOR'S POSSESSION ARE THE MOST CURRENT PLANS AVAILABLE AND ARE THE APPROVED PLAN SET FOR USE IN CONSTRUCTION.
- ALL PLANT MATERIALS INSTALLED SHALL MEET OR EXCEED THE SPECIFICATIONS OF THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION (ANLA) [FORMERLY THE AMERICAN ASSOCIATION OF NURSERYMEN] IN THE AMERICAN STANDARD FOR NURSERY STOCK (AS AMENDED) [ANSI Z60.1-1996].
- ALL PLANTS SHALL BE FIRST CLASS AND SHALL BE REPRESENTATIVE OF THEIR NORMAL SPECIES AND/OR VARIETIES. ALL PLANTS MUST HAVE GOOD, HEALTHY, WELL-FORMED UPPER GROWTH AND A LARGE, FIBEROUS, COMPACT ROOT SYSTEM.
- ALL PLANTS SHALL BE FREE FROM DISEASE AND INSECT PESTS AND SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING TO PLANT DISEASES AND INFESTATIONS.
- ALL TREES SHALL BE BALLED AND BURLAPPED (B & B) UNLESS OTHERWISE NOTED OR APPROVED BY LANDSCAPE ARCHITECT.
- ALL LANDSCAPED AREAS INCLUDING LAWNS SHALL BE PROVIDED WITH UNDERGROUND IRRIGATION. SEE IRRIGATION NOTES.
- IF APPLICABLE, THE CONTRACTOR SHALL HAVE ALL FALL TRANSPLANTING HAZARD PLANTS DUG IN THE SPRING AND STORED FOR FALL PLANTING.
- ALL INVASIVE PLANT SPECIES FROM THE "NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST", TO BE REMOVED SHALL BE DONE SO IN ACCORDANCE WITH THE "INVASIVE SPECIES ACT, HB 1258-FN."

GUARANTEE

- THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE WORK FOR A PERIOD OF ONE YEAR, BEGINNING AT THE START OF THE MAINTENANCE PERIOD.

IRRIGATION NOTES

- THE IRRIGATION SYSTEM SHALL BE DESIGNED BY AN APPROVED IRRIGATION DESIGN/BUILD CONTRACTOR ACCEPTABLE TO THE OWNERS REPRESENTATIVE.
- THE CONTRACTOR IS RESPONSIBLE FOR SUBMITTING THE IRRIGATION SYSTEM DESIGN AND SHOP DRAWINGS TO THE OWNER 30 DAYS PRIOR TO THE START OF CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EXISTING AND PROPOSED UTILITIES AND NOTIFY THE OWNER'S REPRESENTATIVE OF CONFLICTS.
- THE IRRIGATION CONTRACTOR IS RESPONSIBLE FOR A COMPLETE AND OPERABLE IRRIGATION SYSTEM AND SHALL FOLLOW ALL APPLICABLE CODES.
- REFER TO ARCHITECTURAL PLANS FOR LOCATION OF THE IRRIGATION SYSTEM'S BUILDING CONNECTION AND CONTROLS.
- FOLLOW ALL MANUFACTURER'S INSTRUCTIONS AND PRODUCT SPECIFICATIONS FOR INSTALLATION.

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11
LANDSCAPE PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
190 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
 OWNED BY
COLBEA ENTERPRISES, LLC

1"=40' (11"x17')
SCALE: 1"=20' (22"x34') **MARCH 19, 2025**



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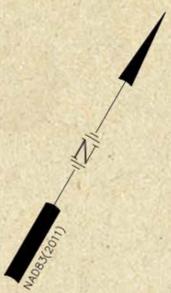
REV	DATE	DESCRIPTION	DR	CK

FILE	46077.16	DR	JKC	FB	46077-16 LANDSCAPE PLAN	C-04
CK	CRR	CADFILE				

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CONTACT US AT 9:00 AM - 5:00 PM, MONDAY THROUGH FRIDAY
 CONTACT US AT 9:00 AM - 12:00 PM, SATURDAY
 CONTACT US AT 9:00 AM - 12:00 PM, SUNDAY

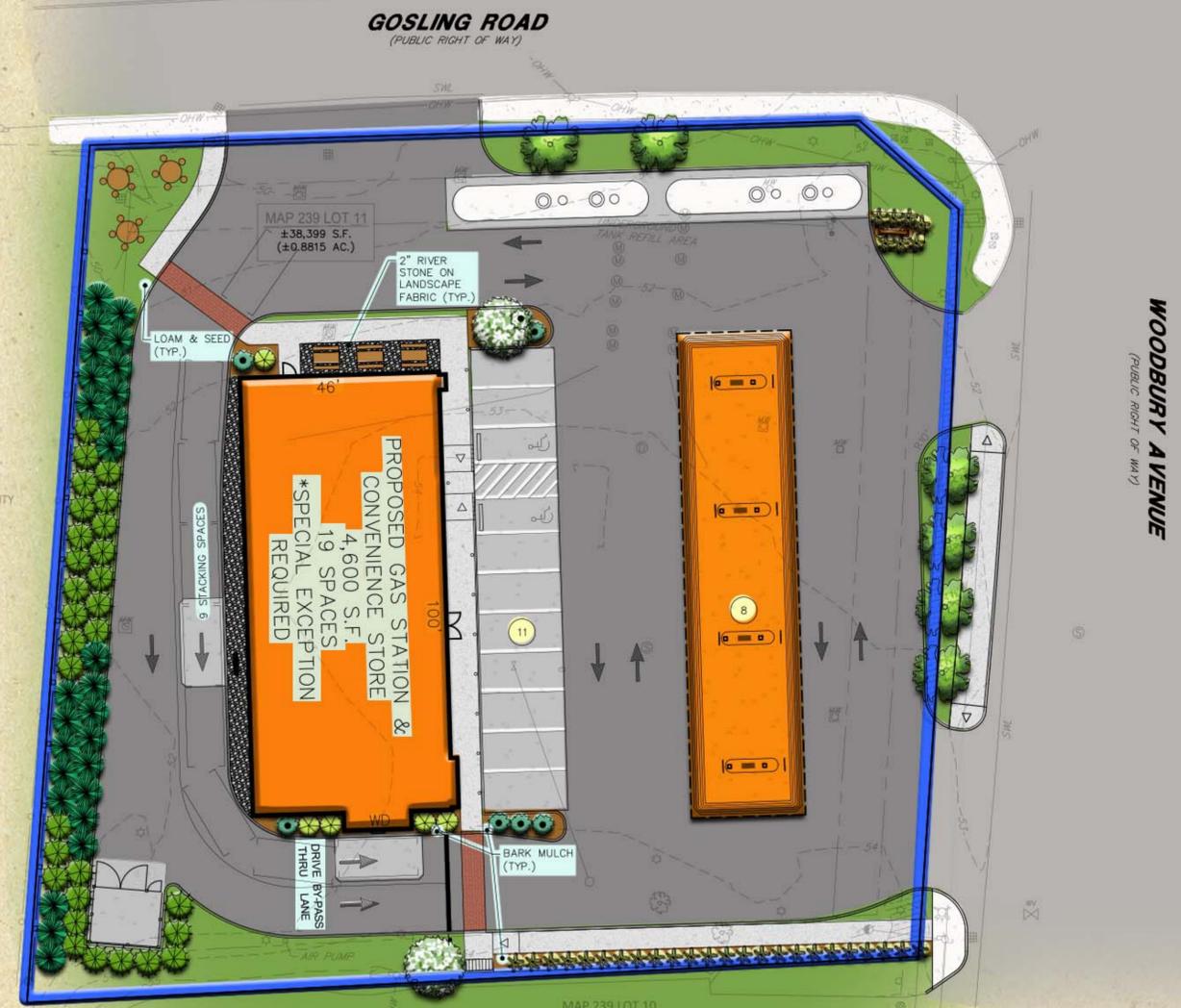


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MAP 34 LOT 3-1
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NEWTON, MA 02460

NEWINGTON
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N/F
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165 FLANDERS ROAD
WESTBOROUGH, MA 01851
RCRD BK.#6110 PG.#2160

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PORTSMOUTH HOUSING AUTHORITY
245 MIDDLE STREET
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C/O COLLIERS INTERNATIONAL
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(SEE DETAILS FOR ADDITIONAL NOTES)

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 - PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES AND NOTIFY OWNER'S REPRESENTATIVE OF CONFLICTS.
 - THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON PLANS BEFORE PRICING THE WORK. ANY DIFFERENCE IN QUANTITIES SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT FOR CLARIFICATION. LANDSCAPE QUANTITIES SHOWN ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN LANDSCAPE LEGEND.
 - THE CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT PRIOR TO STARTING WORK AND VERIFY THAT THE PLANS IN THE CONTRACTOR'S POSSESSION ARE THE MOST CURRENT PLANS AVAILABLE AND ARE THE APPROVED PLAN SET FOR USE IN CONSTRUCTION.
 - ALL PLANT MATERIALS INSTALLED SHALL MEET OR EXCEED THE SPECIFICATIONS OF THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION (ANLA) [FORMERLY THE AMERICAN ASSOCIATION OF NURSERYMEN] IN THE AMERICAN STANDARD FOR NURSERY STOCK (AS AMENDED) [ANSI 260.1-1996].
 - ALL PLANTS SHALL BE FIRST CLASS AND SHALL BE REPRESENTATIVE OF THEIR NORMAL SPECIES AND/OR VARIETIES. ALL PLANTS MUST HAVE GOOD, HEALTHY, WELL-FORMED UPPER GROWTH AND A LARGE, FIBROUS, COMPACT ROOT SYSTEM.
 - ALL PLANTS SHALL BE FREE FROM DISEASE AND INSECT PESTS AND SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING TO PLANT DISEASES AND INFESTATIONS.
 - ALL TREES SHALL BE BALLED AND BURLAPPED (B & B) UNLESS OTHERWISE NOTED OR APPROVED BY LANDSCAPE ARCHITECT.
 - ALL LANDSCAPED AREAS INCLUDING LAWNS SHALL BE PROVIDED WITH UNDERGROUND IRRIGATION. SEE IRRIGATION NOTES.
 - IF APPLICABLE, THE CONTRACTOR SHALL HAVE ALL FALL TRANSPLANTING HAZARD PLANTS DUG IN THE SPRING AND STORED FOR FALL PLANTING.
 - ALL INVASIVE PLANT SPECIES FROM THE "NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST", TO BE REMOVED SHALL BE DONE SO IN ACCORDANCE WITH THE "INVASIVE SPECIES ACT, HB 1258-FN."

- GUARANTEE**
- THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE WORK FOR A PERIOD OF ONE YEAR, BEGINNING AT THE START OF THE MAINTENANCE PERIOD.

IRRIGATION NOTES

- THE IRRIGATION SYSTEM SHALL BE DESIGNED BY AN APPROVED IRRIGATION DESIGN/BUILD CONTRACTOR ACCEPTABLE TO THE OWNERS REPRESENTATIVE.
- THE CONTRACTOR IS RESPONSIBLE FOR SUBMITTING THE IRRIGATION SYSTEM DESIGN AND SHOP DRAWINGS TO THE OWNER 30 DAYS PRIOR TO THE START OF CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EXISTING AND PROPOSED UTILITIES AND NOTIFY THE OWNER'S REPRESENTATIVE OF CONFLICTS.
- THE IRRIGATION CONTRACTOR IS RESPONSIBLE FOR A COMPLETE AND OPERABLE IRRIGATION SYSTEM AND SHALL FOLLOW ALL APPLICABLE CODES.
- REFER TO ARCHITECTURAL PLANS FOR LOCATION OF THE IRRIGATION SYSTEM'S BUILDING CONNECTION AND CONTROLS.
- FOLLOW ALL MANUFACTURER'S INSTRUCTIONS AND PRODUCT SPECIFICATIONS FOR INSTALLATION.

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11
LANDSCAPE PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
OWNED BY
COLBEA ENTERPRISES, LLC

1"=40' (11"x17')
SCALE: 1"=20' (22"x34') **MARCH 19, 2025**

Seacoast Division

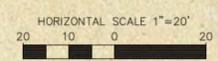
TFM

Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.tfmoran.com

FILE	46077.16	DR	JKC	FB	46077-16, LANDSCAPE PLAN	C-04
		CK	CRR	CADFILE		

REV	DATE	DESCRIPTION	DR	CK



May 20, 2025 - 3:38pm
\\TFM-BE\BDFORDA\Projects\Civil-Survey\Projects\46077-16 Colbea Ent.LLC - 1980 Woodbury Ave. - Portsmouth, NH\Design\PRODUCTION DRAWINGS\46077-16 Landscape Plan.dwg

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This plan is not effective unless signed by a duly authorized officer of TFMoran, Inc.



CONTACT US 9 AM - 5 PM BUSINESS HOURS PRIOR TO CONSTRUCTION



CORNER MARKET CAFÉ

WARM ME UP: SANDWICHES

- BLT
- BLT with Bacon
- BLT with Avocado
- BLT with Cheddar
- BLT with Swiss
- BLT with Prosciutto
- BLT with Ham
- BLT with Turkey
- BLT with Chicken
- BLT with Beef
- BLT with Pork
- BLT with Lamb
- BLT with Veal
- BLT with Pork Chops
- BLT with Chicken Thighs
- BLT with Beef Tenderloin
- BLT with Pork Tenderloin
- BLT with Lamb Tenderloin
- BLT with Veal Tenderloin

COOL ME DOWN: SMOOTHIES & BREAD

- Apple Cider Vinegar
- Apple Cider Vinegar with Honey
- Apple Cider Vinegar with Lemon
- Apple Cider Vinegar with Lime
- Apple Cider Vinegar with Orange
- Apple Cider Vinegar with Grapefruit
- Apple Cider Vinegar with Pomegranate
- Apple Cider Vinegar with Blueberry
- Apple Cider Vinegar with Raspberry
- Apple Cider Vinegar with Strawberry
- Apple Cider Vinegar with Peach
- Apple Cider Vinegar with Mango
- Apple Cider Vinegar with Pineapple
- Apple Cider Vinegar with Kiwi
- Apple Cider Vinegar with Papaya
- Apple Cider Vinegar with Watermelon
- Apple Cider Vinegar with Cantaloupe
- Apple Cider Vinegar with Honeydew
- Apple Cider Vinegar with Muskmelon
- Apple Cider Vinegar with Pumpkin
- Apple Cider Vinegar with Butternut
- Apple Cider Vinegar with Acorn
- Apple Cider Vinegar with Spaghetti
- Apple Cider Vinegar with Zucchini
- Apple Cider Vinegar with Eggplant
- Apple Cider Vinegar with Cauliflower
- Apple Cider Vinegar with Broccoli
- Apple Cider Vinegar with Asparagus
- Apple Cider Vinegar with Green Beans
- Apple Cider Vinegar with Snap Peas
- Apple Cider Vinegar with Sugar Snap Peas
- Apple Cider Vinegar with Snow Peas
- Apple Cider Vinegar with Carrots
- Apple Cider Vinegar with Parsnips
- Apple Cider Vinegar with Turnips
- Apple Cider Vinegar with Rutabagas
- Apple Cider Vinegar with Beets
- Apple Cider Vinegar with Chard
- Apple Cider Vinegar with Kale
- Apple Cider Vinegar with Collard Greens
- Apple Cider Vinegar with Swiss Chard
- Apple Cider Vinegar with Bok Choy
- Apple Cider Vinegar with Napa Cabbage
- Apple Cider Vinegar with Savoy Cabbage
- Apple Cider Vinegar with Red Cabbage
- Apple Cider Vinegar with Green Cabbage
- Apple Cider Vinegar with Purple Cabbage
- Apple Cider Vinegar with White Cabbage
- Apple Cider Vinegar with Braising Cabbage
- Apple Cider Vinegar with Butterhead Cabbage
- Apple Cider Vinegar with Flathead Cabbage
- Apple Cider Vinegar with Savoy Cabbage
- Apple Cider Vinegar with Napa Cabbage
- Apple Cider Vinegar with Red Cabbage
- Apple Cider Vinegar with Green Cabbage
- Apple Cider Vinegar with Purple Cabbage
- Apple Cider Vinegar with White Cabbage

SMOOTHIES & PROTEIN DRINKS

- Apple Cider Vinegar
- Apple Cider Vinegar with Honey
- Apple Cider Vinegar with Lemon
- Apple Cider Vinegar with Lime
- Apple Cider Vinegar with Orange
- Apple Cider Vinegar with Grapefruit
- Apple Cider Vinegar with Pomegranate
- Apple Cider Vinegar with Blueberry
- Apple Cider Vinegar with Raspberry
- Apple Cider Vinegar with Strawberry
- Apple Cider Vinegar with Peach
- Apple Cider Vinegar with Mango
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- Apple Cider Vinegar with Green Cabbage
- Apple Cider Vinegar with Purple Cabbage
- Apple Cider Vinegar with White Cabbage

QUALITY COFFEE & SMOOTHIES
FRESHLY MADE EGG

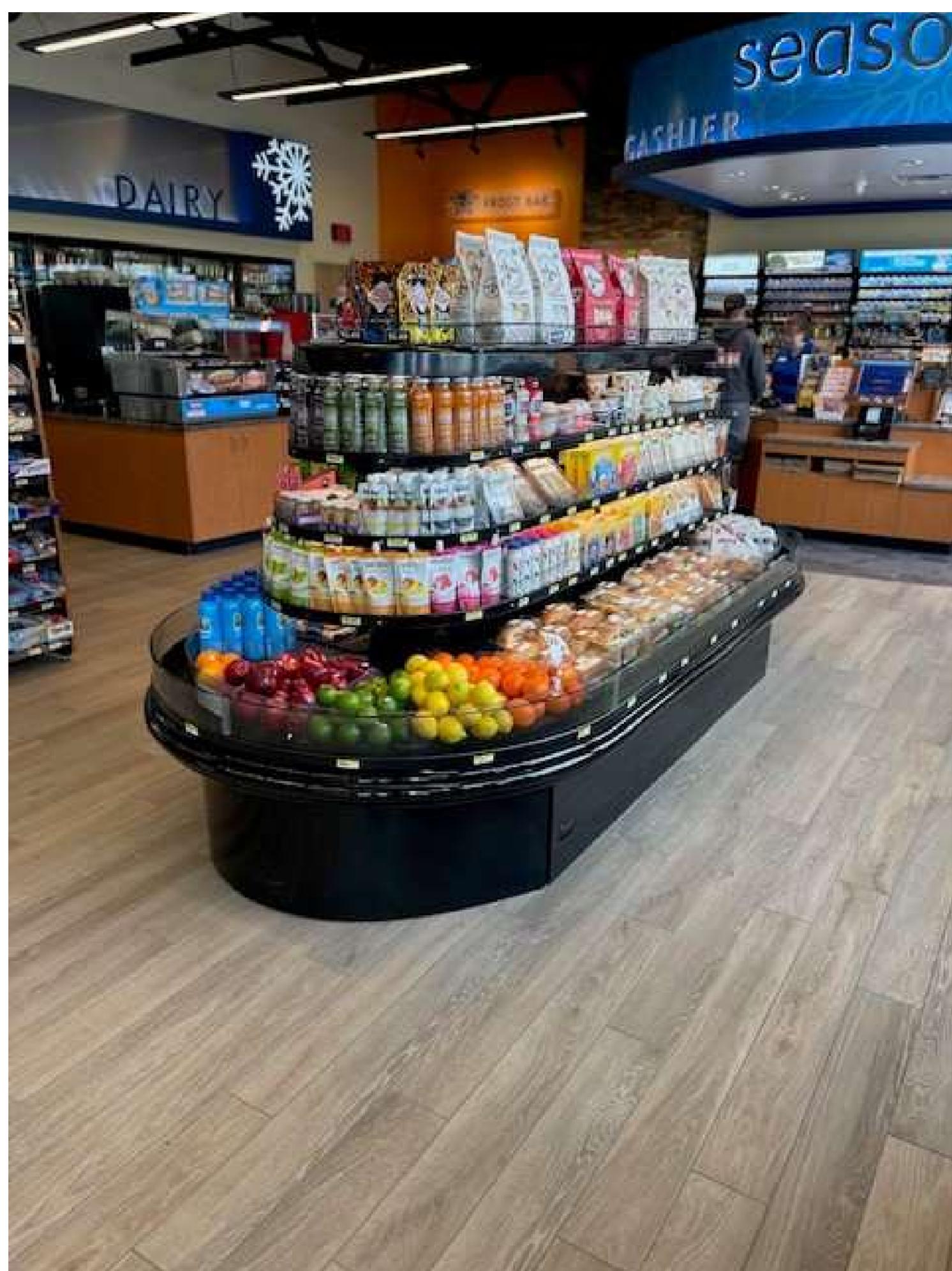
FRESH COFFEE,
GREAT FOOD,
CLOSE TO HOME.

CORNER MARKET
QUALITY COFFEE
FRESHLY MADE SANDWICHES
JUICE & SMOOTHIES

BAGGED ICE









seasons
corner-market

Regular

2.93⁹/₁₀

Diesel

2.99⁸/₁₀

CORNER MARKET DRIVE THRU







© 2025 Cumberland Farms

Cumberland
Farms
282¢
272¢
All other brands

TEXT
CUMBERS
TO:
342424

May 16, 2025

Mr. Michael Gazdacko
Director of Construction
Colbea Enterprises, LLC
695 George Washington Highway
Lincoln, Rhode Island 02865

RE: Sound Study - Environmental Review Letter
Proposed Seasons Corner Market
1980 Woodbury Avenue, Portsmouth, NH

Dear Mr. Gazdacko:

Tg2 Solutions Inc. was retained by Colbea Enterprises, L.L.C./Seasons Corner Market ("Colbea/Seasons") to provide a review of sound related to the proposed development of a Seasons Corner Market facility at the above-referenced property. The scope of the sound review was twofold:

- Establish data related to the existing sound levels at the current facility (a Mobil-branded gasoline station/kiosk store) during the day and evening; and,
- Compare the existing sound levels at the current facility to those of a recently constructed Seasons Corner Market with a drive through coffee/window in the rear of the property.

The goal of the study is to compare the sound levels of an operating Seasons Corner Market with a drive through window and provide an estimation of the effect of a similar development in Portsmouth with respect to the baseline current sound levels.

This letter report provides a summary of the data collected from both locations and compares that data to the sound study data for proposed development in Portsmouth to evaluate the potential impact of sound along the property boundaries. Since approximately 2021, Tg2 has been retained by Colbea/Seasons to complete various sound surveys of existing and/or recently constructed facilities. These data have been presented to various local agencies as part of development permitting and/or post-construction occupancy permitting. The data collected in Scituate, RI is part of a previous study from 2021, whereas the data collected in Portsmouth, NH was collected on Monday May 12, 2025.

Sound Study - 34 Hartford Avenue, Scituate, RI

Tg2 performed a sound study in March 2021 at a Colbea facility with a drive-through located at 34 Hartford Avenue, Scituate, Rhode Island. The facility is located along US Route 6 and the building layout is a similar to the proposed layout for the property at 1980 Woodbury Avenue. A photograph of the property in Scituate is displayed in the photo below.



The sound study in Scituate was designed to document the following:

- General background sound conditions at study locations, primarily related to traffic-related sound and background sound levels; and,
- Sound carry distance from drive through window coffee shop ordering/pickup speaker systems.

For the sound study, the means and procedures of the data collection included positioning a calibrated tripod-mounted sound meter at the front (along Route 6) and rear (behind the station building near the drive-through), documenting sound readings over a set period of time.

Table 1 - Front/Rear Ambient Sound Readings - Scituate, RI

Location	Time	Average Sound Reading (dB)	Maximum Sound Reading (dB)
Front (North)	Mid-Day	76.2	81.5
Front (North)	Evening	52.1	58.1
Rear (South)	Mid-Day	49.9	52.8
Rear (South)	Evening	47.5	51.0

The difference between the average reading from the front of the property off the road and the average reading from the rear of the property is 26.3 dB for the mid-day reading, which is a 34% reduction in of sound from the front to the rear. The difference for the front and rear of the

property for the evening reading is 4.6 dB, which is a 9% reduction in of sound from the front to the rear. Separately, Tg2 collected sound readings during drive through operations measuring the sound carry (detectable above 1 decibel - dB) from the drive through window speaker system and associated automobile idling at the drive through. Results of the sound carry measurement documented detectable sound (1 decibel above background) during drive through operations extending to a distance of 52 feet from the drive through lane/ordering window.

Table 2 - Detectable Sound Carry - Scituate, RI (>1dB)

Location	Drive Through Speaker (Max Distance, ft)
34 Hartford Ave, Scituate, RI	52'

Ft - Distance in feet

Sound Study - 1980 Woodbury Avenue, Portsmouth, NH

On May 12, 2025, a sound study was completed at 1980 Woodbury Avenue, Portsmouth, NH at approximately 3:30 PM and 9:00 PM. The location at 1980 Woodbury Avenue is an active Mobil branded gasoline station with a kiosk store situated in the middle of the canopy and four double sided dispensers on both sides of the convenience store building.

The sound study was completed by Mr. Daniel Belair, a Project Scientist for Tg2. The study was completed using a Svantek Class 1 Sound Level Meter SV 917A. Prior to the study, the sound meter was calibrated with a 120 decibel (dB) calibration sound generator. The study was designed to measure the following at the following locations.

- Ambient sound levels over an hour at approximately mid-day and evening by the front and rear of the property; and,
- Maximum sound levels at the same time frame.

The study was completed by mounting the decibel meter on a tripod at an approximate height of four feet above grade and recording sound readings during that time period. Weather at the time of the study was clear skies with no precipitation and light wind. The study was designed to determine the degree of ambient sound at each location. Specifically, the study was designed to determine the approximate impact of sound to nearby residential receptors. The nearest receptor to the property is the Portsmouth Housing Authority (PHA) located adjacent to the property at 245 Middle Street. The PHA home is situated 37 feet from the property boundary with the Mobil station, approximately 65 feet from the proposed drive through lane, and approximately 75 feet from the speaker/menu board of the proposed drive through. See the attached **Figure 1** for the proposed facility layout. Sound readings are provided in **Table 3**, below.

Table 3 - Front/Rear Ambient Sound Readings - Portsmouth, NH

Location	Time	Average Sound Reading (dB)	Maximum Sound Reading (dB)
Front off Woodbury Ave	Mid-Day	72.9	74.9
Front off Woodbury Ave	Evening	65.4	67.8
Rear	Mid-Day	58.7	59.6
Rear	Evening	56.4	57.1

The difference between the average reading from the front of the property off of Woodbury Avenue and the average reading from the rear of the property is 14.2 dB for the mid-day reading, which is a 19% reduction in of sound from the front to the rear. The difference for the front and rear of the property for the evening reading is 4.6 dB, which is a 13% reduction in of sound from the front to the rear.

Conclusions and Discussion

This sound study was completed in order to document ambient sound levels at the property, to provide an evaluation of sound emanating from the proposed drive-through window at 1980 Woodbury Avenue and evaluate those as they relate to the proximity to nearby residential receptors. The following offers findings from this study:

- The primary source of sound at the Portsmouth location, like most gasoline station facilities, is related to traffic noise from the street. The sound fades with distance from the main street. Tg2 has found in completing studies at many facilities in RI, MA and NH, traffic count and traffic speed combined are the main drivers of sound at gasoline convenience store facilities, with higher speeds on the main road directly resulting in higher sound levels.
- Operational noise at gasoline convenience stores is typically minor and includes vehicles, customers, and speaker systems for drive through windows.
- The placement of a building and size/shape of a building have a pronounced effect on the mitigation of roadway sound extending from the primary street. Larger buildings with pitched roofs provide higher sound attenuation from the front to the rear of the facility than smaller, flat roofed buildings.
- The detectable sound carry from the proposed drive through speaker system in Portsmouth has a maximum expected carry distance of 52' as documented by the readings completed in Scituate, RI. The proposed drive through is approximately 65' from the nearest residential receptor home (the PHA house). Based on these data, the sound generated from the drive through speaker system is unlikely to be detectable at the nearest residence under normal atmospheric conditions similar to those during the two studies (clear skies, light wind, moderate humidity).

- Tg2 has noted that the size and shape of buildings between the main sound source (the road) and receptors behind proposed gasoline stations/convenience stores is the size and shape of the building. The existing facility in Portsmouth is a flat-roofed kiosk store located central to the property under the canopy measuring 1,800 square feet. The proposed building for the Seasons Corner Market is a 4,600 square foot building with a pitched, shingled roof. Presently, the sound reduction from the front of the property to the rear is approximately 16% based on distance and sound blocking from the existing structures. The analogous property in Scituate, RI shows a more than doubling of sound attenuation from the front to the rear of 34%. It can be expected that the construction of the proposed Seasons Corner Market will have the effect of significantly reducing the sound levels at the PHA housing compared to the existing store as it represents a larger and more effective sound barrier to roadway noise than the existing structure.

Furthering sound reduction can be achievable with the installation of fencing and plantings between the proposed facility and the PHA housing. While Tg2 does not presently have data sets that provide a quantitative reduction in sound with the placement of fencing/plantings at analogous gasoline station/convenience stores, published data document that fencing typically reduces sound levels by 6-10 dB. Published data from additional scientific studies notes that planting of broadleaf trees or evergreen shrubs can reduce sound by an additional 5dB.

In summary, it is Tg2's opinion that the proposed development with a larger store and pitched roof will have the effect of reducing sound levels from Woodbury Ave to the PHA housing in the rear. The proposed drive through window/speaker/vehicle operations are not expected to be detected at a distance beyond 52 feet based on analogous site data. As the PHA housing is located 65 feet from the proposed drive through, it is Tg2's opinion that sound from the drive through operation will not affect the residents at the PHA housing behind the proposed development. Finally, the applicant's proposal for fencing and plantings is expected to further reduce sounds to the PHA housing. It is therefore Tg2's opinion that this proposed development will in fact have a net reduction in sound affecting the PHA housing than the current existing site conditions.

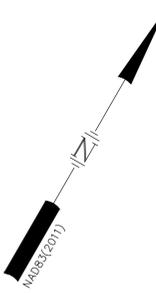
Sincerely,



Eric D. Simpson, P.G., LSP
Owner

Attachments:
Figure 1
Field Notes - May 12, 2025 Sound Study - Portsmouth, NH

May 15, 2025 - 1:42pm W:\FM-BED\FOR\DA\Projects\Civil-Survey\MSC Projects\46077 - Woodbury Ave - Portsmouth\46077-16 Colbea Ent LLC - 1980 Woodbury Ave. Portsmouth, NH\Design\Exhibits\46077-16 Variance Plan.dwg



NEWINGTON MAP 34 LOT 3-1 (BUILDING ONLY) N/F MAG RE HOLDINGS-NEWINGTON, LLC 777 WASHINGTON STREET NEWTON, MA 02460

NEWINGTON MAP 34 LOT 2 N/F CFI PROPCO, LLC 165 FLANDERS ROAD WESTBOROUGH, MA 01851 RCRD BK.#6110 PG.#2160

NEWINGTON MAP 34 LOT 1 N/F NEWINGTON CROSSING, LLC 291 CARL BROGG HIGHWAY LEBANON, NH 04027 RCRD BK.#6578 PG.#43

NOTES

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT. REQUIRED PROPOSED
USE: SMALL COMMERCIAL BUILDING
MIN. LOT SIZE: 1.1 AC. 0.88 AC.
MIN. LOT FRONTAGE: 50' >100'
MIN. BUILDING SETBACKS:
FRONT 0' MIN/20' MAX.' 27.4±'
SIDE 10' 34.8±'
REAR 15' 40.7'
MAX. BUILDING HEIGHT: 40' <40'
MAX. BUILDING COVERAGE: 70% 18.8±%
MIN. OPEN SPACE: 10% 19.6±%
PARKING CALCULATIONS: (8.5'X19'X24')
REQUIRED:
MOTOR VEHICLE SERVICE STATION:
2 SP.+ 1/400 SF GFA (4,580 SF) = 12 SPACES
PROPOSED: 19 SPACES & 9 STACKING

SPECIAL EXCEPTION

THE CONVENIENCE GOODS USE WILL REQUIRE A SPECIAL EXCEPTION WHICH IS VOTED ON BY THE ZONING BOARD OF ADJUSTMENT.

VARIANCES REQUIRED

- 1 PZO 10.5B33.20 - ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
- 2 PZO 10.5B34.60 - FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
- 3 PZO 10.5B83.10 - REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
- 4 PZO 10.835.31 - ALL OUTDOOR SERVICE FACILITIES (INCLUDING TRANSACTION WINDOWS, MENU BOARDS, SPEAKERS, ETC.) SHALL BE LOCATED A MINIMUM OF 50 FEET FROM ANY LOT LINE.
- 5 PZO 10.835.32 - ALL DRIVE-THROUGH LANES, BYPASS LANES, AND STACKING LANES SHALL BE LOCATED A MINIMUM OF 30 FEET FROM ANY LOT LINE.
- 6 PZO 10.843.33 - ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
- 7 PZO 10.1251.10 - THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
- 8 PZO 10.1251.20 - THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
- 9 PZO 10.1253.10 - THE MAXIMUM AND MINIMUM HEIGHTS AND MINIMUM SETBACKS FOR SIGNS IN EACH SIGN DISTRICT SHALL BE AS SET FORTH IN THE FOLLOWING TABLE, EXCEPT AS OTHERWISE PROVIDED HEREIN: MAXIMUM HEIGHT = 20', MINIMUM SETBACK FROM LOT LINE = 10'.

VARIANCE TABLE				
NUMBER (SEE ABOVE)	REQUIRED	EXISTING	ORIGINALLY PROPOSED	CURRENTLY PROPOSED
1	127.5' MIN	0'	0'	0'
2	20' MAX	10.4	27.4'	27.4
3	NO PARKING	YES	YES	YES
4	50' MIN	N/A	34.8' & 38.7'	34.8' & 40.8'
5	30' MIN	N/A	11.2'	11.2'
6	40' MIN	23.1'	34.7'	34.7'
7	223.50 S.F. (149'x1.5')	-	453.26 S.F.	308.11 S.F.
8	100 S.F. MAX	-	134 S.F.	134 S.F.
9	20' MAX HEIGHT	-	26.25'	26.25'
	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY	11.2' (VARIANCE NO LONGER REQ'D.)

EASEMENTS & RESTRICTIONS:

COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 20CLT0055-NH, DATED DECEMBER 16, 2020 WAS EXAMINED AS PART OF THIS SURVEY. SURVEY EXCEPTIONS CONTAINED IN SCHEDULE B PART II OF THAT COMMITMENT WHICH THE SUBJECT PROPERTY IS SUBJECT TO AND/OR HAS THE BENEFIT OF ARE AS FOLLOWS:

- ITEM 11 - NOTICE OF CONDEMNATION, EASEMENT RIGHTS, AND LIMITATION ON ACCESS AS DESCRIBED IN THE AMENDED NOTICE OF CONDEMNATION DATED 9/14/83 AND RECORDED IN VOLUME 2461, PAGE 163. (SEE PLAN REFERENCE 9)
- ITEM 12 - THE FOLLOWING MATTERS DEPICTED ON BOUNDARY AND TOPOGRAPHIC PLAN, ASSESSORS MAP R-39-LOT11, WOODBURY AVE. & GOSLING ROAD, PORTSMOUTH, NEW HAMPSHIRE, PREPARED FOR MOBIL OIL CORPORATION DATED 12/6/1991 AND RECORDED AS PLAN D21731:
 - A - MOBIL SIGN TRAVERSING THE NORTHERLY BOUNDARY. (SIGN SINCE HAS BEEN RELOCATED AND RESIDES ON THE PROPERTY, SHOWN HEREON)
 - B - CATCH BASIN AND PIPES TRAVERSING THE NORTHERLY BOUNDARY. (AS SHOWN ON THE PLAN)
 - C - CURBING AND CONCRETE WALKWAY, TRAVERSING THE NORTHERLY, EASTERLY AND SOUTHERLY BOUNDARIES.
 - D - OBSERVATION WELL LOCATED WITHIN THE PROPERTY.
 - E - ELECTRIC POLE SUPPORT POLE TRAVERSING THE EASTERLY BOUNDARY.
- ITEM 13 - NOTICE OF RESTRICTIONS, INCLUDING RESTRICTIONS ON THE USE OF GROUNDWATER, AS RECORDED IN VOLUME 4011, PAGE 1268. (RESTRICTION NOT PLACEABLE AND THEREFORE NOT PLOTTED).
- ITEM 14 - TERMS AND PROVISIONS OF LEASE BY AND BETWEEN DUNCAN CONSTRUCTION COMPANY, INC. AND MOBIL OIL CORPORATIONS AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2836, PAGE 1157, AS AFFECTED BY SUPPLEMENTAL NOTICE OF LEASE RECORDED IN VOLUME 3113, PAGE 1212. ASSIGNMENTS OF THE LEASE ARE RECORDED IN VOLUME 3046, PAGE 2323 AND VOLUME 3688, PAGE 1466. ALLIANCE ENERGY CORP. CONVERTED TO ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4929, PAGE 2060. (NOT PLOTTABLE)

ENCROACHMENTS:

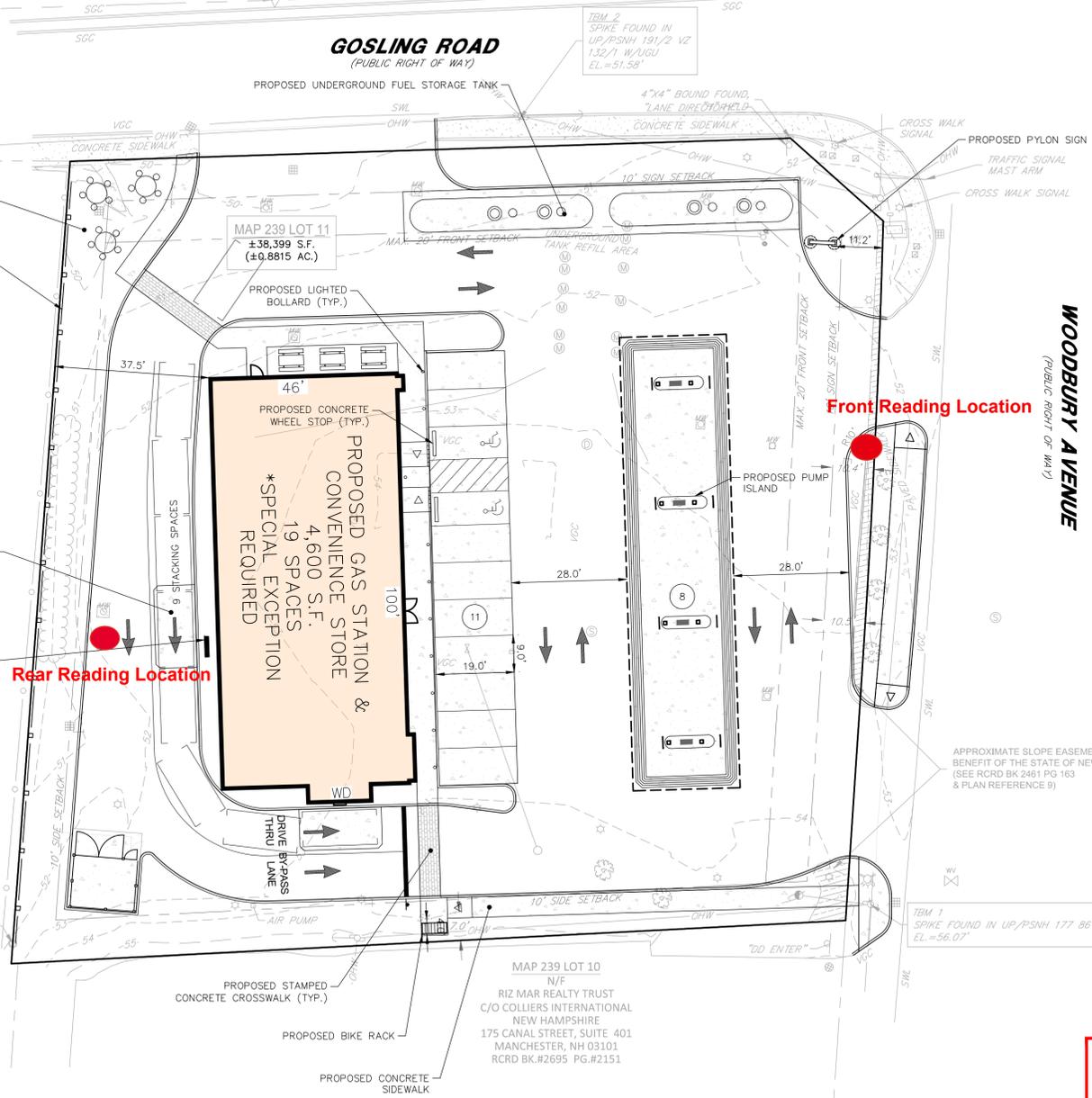
- ON THE SOUTH, WALKWAY EVIDENCE OF PASSAGE BETWEEN SUBJECT PARCEL AND TAX MAP 239 LOT 10;
- ON THE WEST, STOCKADE FENCE OVER RECORD LINE;
- ON THE NORTH, OVERHEARD UTILITY WIRE OVER RECORD LINE;
- ON THE NORTH, UTILITY POLE SUPPORT WIRE OVER RECORD LINE;
- ON THE NORTH, LANE DIRECTORY SIGN OVER RECORD LINE;

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Rear Reading Location

Front Reading Location



PROGRESS PRINT
date: 5.15.2025



THIS PLAN IS A PRELIMINARY CONCEPTUAL DESIGN FOR SITE LOCATION FEASIBILITY AND DISCUSSION PURPOSES ONLY. ADDITIONAL PERMITS, WAIVERS, AND VARIANCE MAY BE REQUIRED UPON FURTHER DESIGN, REVIEW, AND COORDINATION WITH THE CITY.

SITE DEVELOPMENT PLANS
TAX MAP 239 LOT 11
VARIANCE PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
OWNED BY
COLBEA ENTERPRISES, LLC
1"=40' (11"x17')
SCALE: 1"=20' (22"x34') **MARCH 19, 2025**

Seacoast Division
TFM
Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists
170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
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www.tfmoran.com

FILE	46077.16	DR	JKC	FB	-	C-01
REV	DATE	DESCRIPTION	JKC	DR	CRR	CK
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	DR	CRR	CK



Field Notes

Date: 5/12/2025
Project #: _____ Project Manager: _____
Weather: Sunny/ 70 Degrees F Signature: *[Handwritten Signature]*

Facility

1980 Woodbury Avenue Portsmouth NH

Position	Employee	Start Time	End Time	Total Hours
Project Scientist	Dan Belair	12:00 PM	12:00 AM	12

Comments

-- No notes found --

VEHICLES/MACHINES/EQUIPMENT

	QTY	Comments
Field Vehicle	1	2023 Toyota Tacoma
Svantek 971	2	

SUPPLIES/MATERIALS

	QTY	Comments
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Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Sample Location	Time	Decibels	Svantek ID
Rear(DT)	3:30	57.1	Day_DT
	3:40	59.6	
	3:50	58.8	
	4:00	58.7	
	4:10	58.9	
	4:20	59.0	
	4:30	59.0	
Front/Street	3:50	72.3	Day_ST
	4:00	70.3	
	4:10	74.9	
	4:20	73.9	
	4:30	73.1	
	4:40	73.1	
	4:50	72.6	

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Field Notes

04:36 PM - Svantek ID for data extraction: Day_DT refers to daytime sound level readings recorded at the proposed drive thru location in the rear of proposed building. Recording equipment faces Woodbury Ave. Day_ST refers to daytime sound level readings recorded at the "Street" location facing Woodbury Avenue. To conduct study, two sound level meters (Svantek 971) were tripod mounted approximately 4 FT above finished grade, facing Woodbury Avenue. Decibel readings (dB) were recorded every 10 minutes.

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Rear (Drive Through)



1980 Woodbury Avenue Portsmouth NH-Rear (Drive Through)



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Front/ Street



1980 Woodbury Avenue Portsmouth NH-Front/Street



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Sample Location	Time	Decibels	Svantek ID
Rear (DT)	9:00 PM	55.3	NI_DT
	9:10 PM	56.5	
	9:20 PM	57.1	
	9:30 PM	56.5	
	9:40 PM	56.6	
	9:50 PM	56.4	
	10:00 PM	56.3	
Front/Street	9:00 PM	67.8	NI_ST
	9:10 PM	65.8	
	9:20 PM	65.7	
	9:30 PM	65.2	
	9:40 PM	65.0	
	9:50 PM	64.7	
	10:00 PM	65.3	

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Field Notes

09:34 PM - Svantek ID for data extraction: NI_DT refers to nighttime drive thru sound level readings recorded at the proposed drive thru location in the rear of the proposed building location. Recording equipment faces Woodbury Avenue. NI_ST refers to nighttime sound level readings recorded at the "street location" facing Woodbury Avenue. To conduct sound level study (nighttime) two sound level meters (Svantek 971) were tripod mounted approximately 4FT above finished grade facing Woodbury Avenue. Decibel readings (dB) were recorded every 10 minutes.

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Front/Street(Nighttime)



1980 Woodbury Avenue Portsmouth NH-Front/Street (Nighttime)



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Rear (Drive thru night)



1980 Woodbury Avenue Portsmouth NH-Rear (Drive thru night)

