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**NEW  
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200**

April 1, 2025

Portsmouth Zoning Board of Adjustment  
Planning and Sustainability Department  
1 Junkins Ave, 3<sup>rd</sup> Floor  
Portsmouth, NH 03801

via ViewPoint Cloud

**RE: Zoning Board of Adjustment Submittal  
1980 Woodbury Avenue – Colbea Enterprises, LLC – Tax Map 239 Lot 11  
TFM Project #46077.16**

Dear Board Members,

On behalf of our client, Colbea Enterprises, LLC, please find a Variance Application submission relative to the above-referenced project. The following materials are included in this submission:

- **Check for Board of Adjustment Non-Residential Application and Signs made out to “City of Portsmouth” (\$4,300);**
- **Special Exception Written Statement (1 copy);**
- **Variance Request Written Statements (1 copy of each);**
- **Letter of Authorization (1 copy);**
- **Site Photos (1 copy);**
- **Floor Plan, Elevations, and Photos from other Seasons Corner Market New Hampshire Locations (1 copy at 11”x17”);**
- **Sign Plan (1 copy at 11”x17”);**
- **Existing Conditions Plan (1 copy at 11”x17”); and**
- **Variance Plans titled “Proposed Gas Station and Convenience Store, 1980 Woodbury Avenue, Portsmouth New Hampshire, dated March 19, 2025” (1 copy at 11”x17”).**

#### Project Description

The project proposes the redevelopment of a gas station and convenience store located at 1980 Woodbury Avenue. The existing Tax Map 239 Lot 11 is approximately 0.8815 acres and is located within the Gateway Corridor Mixed Residential District (G1). The site is located at the intersection of Woodbury Avenue and Gosling Road at the Portsmouth-Newington town line.

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**Zoning Board of Adjustment Submittal**  
**1980 Woodbury Avenue – Colbea Enterprises, LLC – Tax Map 239 Lot 11**  
**TFM Project #46077.16**

**March 18, 2025**

The existing site contains a 1,787 s.f. convenience store, centered between eight fueling islands (16 total fueling stations) with a canopy above both the convenience store and fueling islands. The canopy is 18.4' tall and set back 10.4' from the front property line along Woodbury Avenue.

The proposed project is to construct a single story, 4,580 s.f. convenience store with drive-thru and four fueling islands (eight total fueling stations). The four fueling islands will be located underneath a canopy located 27.4' from the front property line along Woodbury Avenue. The canopy and convenience store will both have a height of less than 40'. A total of 19 parking spaces are proposed, 11 of which, including two accessible spaces, are located along the front of the convenience store and the remaining 8 spaces at the fueling stations. Associated improvements include but are not limited to access, grading, utilities, stormwater management system, lighting, and landscaping.

Included in the submittal package are floor plans and elevations for the most recently constructed Seasons Corner Market in Tilton, NH and site photos from the Nashua, NH location.

The applicant requests a Special Exception for the proposed use, Convenience Store 2, within the Gateway Corridor Mixed Residential District. Based on our review of the City of Portsmouth's Zoning Ordinance, the applicant is also requesting a variance from the following sections. Included in the submittal items are written statements explaining how the requests comply with the requirements of the Zoning Ordinance.

Variance Request #1

Requirement: 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.

Variance Request #2

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.5B34.60, to allow for a Front Setback from the lot line of 27.4 feet where a maximum of 20 feet is required.

Variance Request #3

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.5B83.10, to allow for parking spaces to be located between the principal building and the street.

Variance Request #4

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 35 feet ± from the applicable lot lines.

Variance Request #5

Requirement: 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.

Variance Request #6

Requirement: 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.

**Zoning Board of Adjustment Submittal**  
**1980 Woodbury Avenue – Colbea Enterprises, LLC – Tax Map 239 Lot 11**  
**TFM Project #46077.16**

**March 18, 2025**

Variance Request #7

Requirement: Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.10, to allow for a greater aggregate sign area (of 453.26 square feet) than the maximum area of 1.5’ per linear foot (which is 223.50 square feet) of the building frontage per establishment.

Variance Request #8

Requirement: 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.

Variance Request #9

Requirement: 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. Additionally, the Applicant requests a sign setback of 3.4 feet from the travel way where the PZO requires a setback of at least 10 feet.

We appreciate your consideration of these matters and look forward to presenting this project to you in the near future.

We respectfully request that we be placed on the upcoming agenda for the Zoning Board of Adjustment meeting on April 15, 2025.

If you have any questions or concerns, please do not hesitate to contact us.

Respectfully,  
**TFMoran, Inc.**



**Jason Cook**  
*Civil Project Engineer*

JKC/crr

### **Relief Requested**

The Applicant requests a Special Exception as per the Portsmouth Zoning Ordinance (the “PZO”) **Section 10.230, *et seq.***, to allow for Convenience Goods Store (C-2) use in the G1 Zone.

### **Background and 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 RI, 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.

As it is intended that the Store will involve the preparation of food for off-site consumption the Applicant seeks a Special Exception for a Convenience Goods 2 Store as per the PZO.

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.

### **Special Exception Criteria**

10.232.20 Special exceptions shall meet all of the following standards:

10.232.21: Standards as provided by this Ordinance for the particular **use** permitted by special exception;

*The proposed use requiring a Special Exception is a convenience store (C-Store) that would be collectively part of a fueling station. C-Stores are quite commonly attached to fueling stations. The fueling station aspect of the proposed use is an otherwise allowed use by right. Across Gosling Road there is a Cumberland Farms in Newington that has a fueling station and C-Store so what is being proposed is consistent with the surrounding area.*

*Finally, the existing business at the Property is a fueling station with a C-Store so what is being proposed is consistent with the ongoing activity to the Property.*

10.232.22: No hazard to the public or **adjacent** property on account of potential fire, explosion or release of toxic materials;

*The C-Store does not pose any immediate threat of fire, explosives, or toxins. Nor is the proposed C-Store a threat to the public or the adjacent properties.*

*Again, the adjacent properties are all commercial, some are fueling stations with C-Stores, others also have a drive through components (Dunkin) the same as the proposed project.*

*To the extent that the fueling station's gasoline may have the potential of fire, explosions, or toxins, the Applicant will use state-of-the-art protective measures to ensure public safety. That said, a Special Exception is not needed to allow for the fueling stations. Nonetheless, the aforesaid safety measures will aid to ensure the C-Store and, the public that frequents the C-Store, will be protected from any of the aforesaid threats.*

10.232.23: No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of **buildings** and other **structures**, parking areas, **accessways**, odor, smoke, gas, dust, or other pollutant, noise, **glare**, heat, vibration, or unsightly **outdoor storage** of equipment, vehicles or other materials;

*The proposed use is a commercial use that is permitted in the zone. There is already a fueling station with a C-Store on site.*

*Additionally, there is the aforesaid Cumberland Farms across Gosling Road that is a similar commercial business.*

*Thus, the essential characteristics of the area remain unchanged.*

*As such, the proposed use is consistent with the surrounding area. Furthermore, what is being proposed will be an improvement to what is currently on site as the existing fueling station is working with outdated equipment.*

*Consequently, the proposal will aid in property values and will not be detrimental to the same.*

*There will be no outdoor storage of any equipment or vehicles. Nor will there be any odor, smoke, gas, dust, or other pollutants. The noise level will be no different from what is already in place.*

10.232.24: No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

*What is being proposed is replacing one fueling station with a C-Store with another fueling station with a C-Store. The proposed project will also be reducing the number of fuel pumps on site from eight stations to four stations.*

*As such, the proposal may result in reducing the amount of traffic but it will certainly not add more traffic than what is already existing today. Additionally, The Applicant has retained traffic engineers for many projects throughout New England, all whom classify vehicle trips to our facilities as pass by trips, not destination trips, hence the level trip generation on the surrounding streets. Curb cuts are being modified to help vehicle ingress and egress, and the site has been designed to optimize safety, especially under the gas canopy, with only drive in (not stacked) fueling positions.*

10.232.25: No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and

*Similar response as above.*

*What is being proposed is replacing one fueling station with a C-Store with another fueling station with a C-Store. The proposed project will also be reducing the number of fuel pumps on site from eight stations to four stations.*

*As such, the proposal may result in reducing such demands but it will certainly not add further strain on the above referenced services in comparison to what is already existing today.*

10.232.26: No significant increase of stormwater runoff onto adjacent property or streets.

*The project is well designed and the Applicant has engaged one of the most reputable engineering firms in the state to ensure that the Applicant's project's design will effectively handle all matters relative to stormwater runoff.*

## **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 is 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 35 feet +/- 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 10.835.31***

#### **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 35 feet +/- of the Property 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 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 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.

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 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 #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 (*of 453.26 square feet*) than the maximum area of 1.5’ per linear foot (*which is 223.50 square feet*) of the building frontage per establishment.

### **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 is 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 453.26 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 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. 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. Additionally, the Applicant requests a sign setback of 3.4 feet from the travel way where the PZO requires a setback of at least 10 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 is 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, as well as a sign setback of 3.4 feet where the PZO requires a minimum of 10 feet from the travel way.

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.

With respect to the sign's setback, the Property is unable to conform to the PZO's requirement of 10 feet. Indeed, the signage that is currently in place for Mobil is within the sign setback. Were the signage to be placed back 10 feet the signs would be awkwardly towards the middle of lot thereby further restricting the buildable area of the Property. Again, the lot is small. Furthermore, it would appear that there are many commercial businesses in the surrounding area that have signs within this setback requirement.

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 that sits within the 10-foot setback.

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 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.

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.

Finally, the sign will need to be within the 10-foot setback due to the small size of the corner lot. Again, the current signs for Mobil, as well as many other commercial signs in the neighborhood, are already within said setback.

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.

Given the dimensional constraints of the small lot the setback relief would be needed no matter what sign was being proposed.

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.

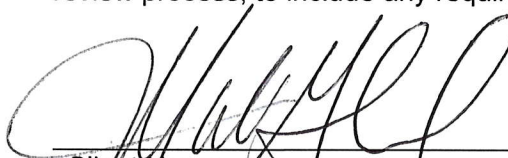


Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

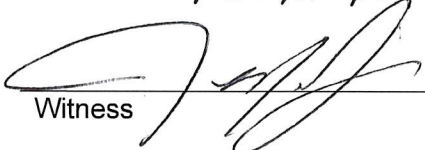
**NEW  
HAMPSHIRE  
200**

## Letter of Authorization

I, Michael Gazdacko, of Colbea Enterprises, LLC, 695 George Washington Highway, Lincoln, RI, hereby authorize TFMoran, Inc., 170 Commerce Way, Suite 102, Portsmouth, NH, to act on my behalf concerning property owned by Colbea Enterprises, LLC, 1980 Woodbury Avenue, Portsmouth, NH, known as Tax Map 239, Lot 11. I hereby appoint TFMoran, Inc. as my agent to act on my behalf in the review process, to include any required signatures.

  
\_\_\_\_\_  
Client Name *Michael Gazdacko, Colbea Enterprises LLC*

*November 5, 2024*  
\_\_\_\_\_  
Date

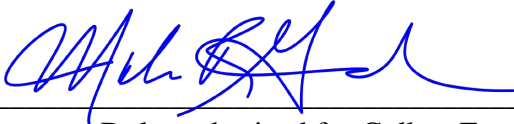
  
\_\_\_\_\_  
Witness

*11/5/24*  
\_\_\_\_\_  
Date



**LETTER OF AUTHORITY/PERMISSION**

The undersigned, being the owner of the property known as 1980 Woodbury Avenue, Map 239, Lot 11, hereby grants authority and consent to attorneys at Cronin, Bisson & Zalinsky, P.C. to sign and file ZBA and Planning Board applications and any related materials on my behalf and deliver the same to the City of Portsmouth, represent me at any hearing(s) concerning these applications, and perform all other necessary actions in connection with such applications.



Signature \_\_\_\_\_  
Duly authorized for Colbea Enterprises, LLC

3/18/2025

\_\_\_\_\_  
Date

Michael Gazdacko, Director of Construction & Maintenance

Print name





Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

## **Site Photos**

**Proposed Gas Station and Convenience Store**

**1980 Woodbury Avenue  
Portsmouth, New Hampshire 03801**

**Taken on  
February 12, 2021**

Photo #1:



View of Gas Station and Convenience Store from Gosling Road

Photo #2:



View of Gas Station and Convenience Store from intersection of  
Gosling Road and Woodbury Avenue

Photo #3:



View of parking lot at rear of Convenience Store

Photo #4:



View of dumpster enclosure and storage building



Photo #5:



View of pylon sign along Woodbury Avenue

Photo #6:



View of pylon sign along Gosling Road

Photo #7:



Photo #8:



View of fence and arborvitae between convenience store and adjacent residential use

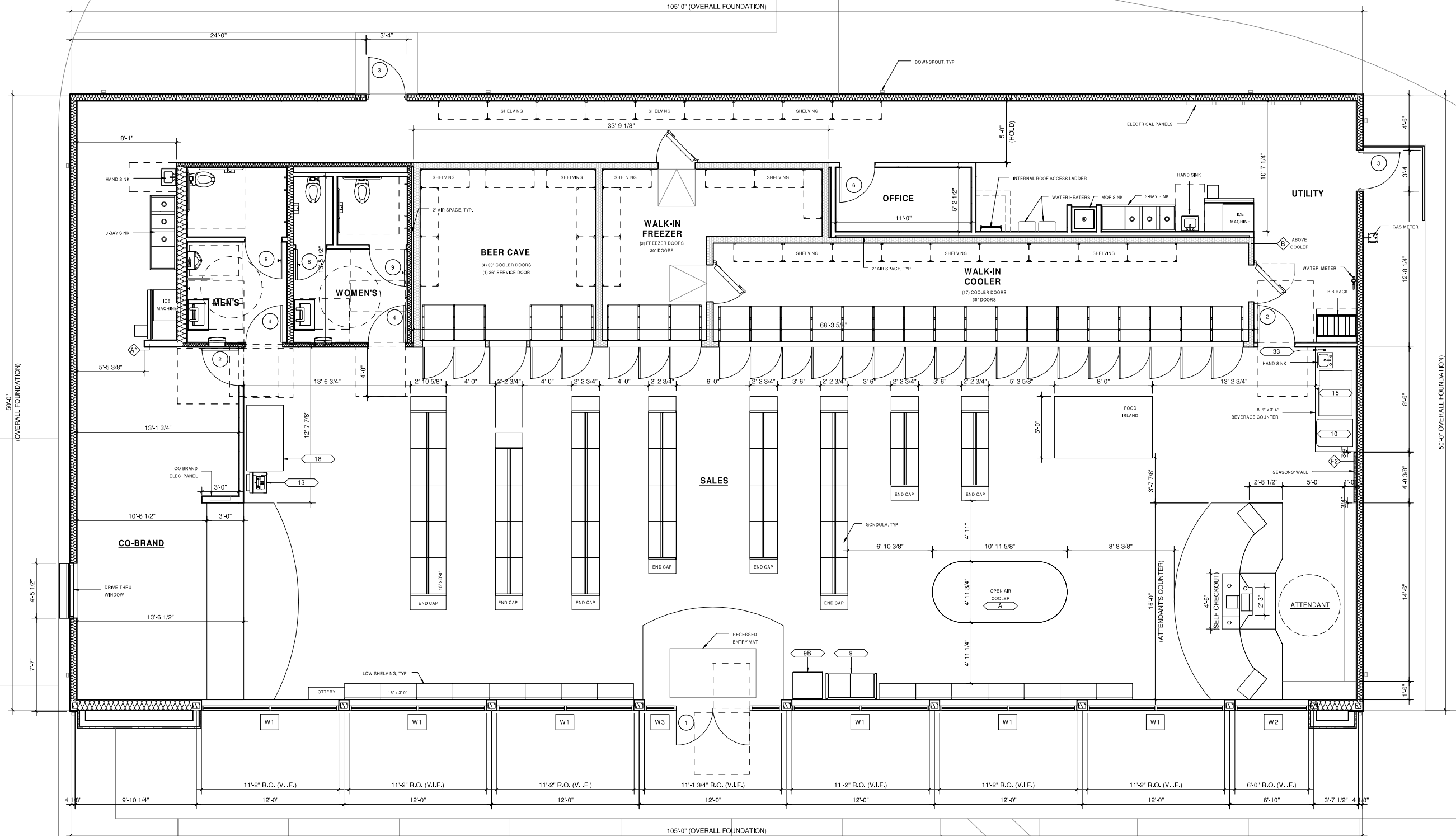


8/16/2025 5:13:58 PM  
C:\Users\cmccord\OneDrive\Documents\2025 Revit Projects\62-1-00019 Colbea - Tilton, NH\A100\_L1\FHA\_Rooms\_Tenets.rvt  
A100 MAIN LEVEL FLOOR PLAN (SECTION 2)

1  
A100

MAIN LEVEL FLOOR PLAN

1/4" = 1'-0"



HFA

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COLBEA ENTERPRISES,  
LLC

63 LACONIA ROAD  
TILTON, NH 03276

JOB NUMBER: 62-21-20019

ISSUE BLOCK		
1	REVISION 1	07/24/23
2	REVISION 2	08/16/23

CHECKED BY:	HAL
DRAWN BY:	RTM
DOCUMENT DATE:	05/15/23

MAIN LEVEL  
FLOOR PLAN

SHEET:  
A100

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TILTON, New Hampshire  
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63 LACONIA ROAD  
TILTON, NH 03276

JOB NUMBER: 42-21-20019

[illegible]

CHECKED BY:	HAL
DRAWN BY:	RTM
DOCUMENT DATE:	05/15/23

EXTERIOR  
ELEVATIONS  
FRONT

HEET:  
A200



- NOTES:

1. REFER TO A601 F OR MATERIAL CALL OUT SPECIFICATION.
2. G.C. IS TO PROVIDE POWER & INSTALL OWNER UED LED ROPE LIGHT (LIGHT WRAPS 4 SIDES OF BUILDING). REFER TO REFLECTED CEILING PLAN FOR ADDITIONAL INFORMATION.
3. ALUMINUM STOREFRONT SYSTEM IS TO BE TEMPERED AS REQUIRED BY CODE. REFER TO "STOREFRONT MATERIAL SPECIFICATIONS" ON SHEET A601 F FOR ADDITIONAL INFORMATION.
4. PROVIDE AND INSTALL (2) 8" x 16" SCREENED ALUMINUM VENTS ON BACK SIDE OF SEASONS' ARCH LOCATED AS HIGH AS POSSIBLE.
5. THE GUARDRAIL SYSTEM, COLUMNS, STL PLATES, STL SADDLES, FASCIA BOARDS AND WOOD BEAM AT THE EXTERNAL BASEMENT ACCESS STAIRS SHALL BE PAINTED BLACK

T/ CUPOLA  
36'-8"

T/ RIDGE  
28'-8"

T/ SEASONS ARCH  
20'-0"

T/ DOUBLE PLATE  
14'-5"

T/ STONE CAP  
11'-4"

3 1/2" HARDIE CORNER TRIM,  
COLOR TO MATCH SIDING, TYP.

T/ MAIN SLAB  
0"

OWNER SUPPLIED  
PREFABRICATED CUPOLA,  
G.C. TO INSTALL

ARCHITECTURAL SHINGLES  
SEE ROOF PLAN, TYP.

EQUIPMENT SCREEN  
BEYOND

LED ROPE LIGHT INSTALLED  
UNDER SOFFIT ON ALL  
ELEVATIONS, REFER TO A132

G

B

L

FULLY ADHERED  
EPDM MEMBRANE

MF

M2

MT

TR

S1

5-1/2" HARDIE TRIM, COLOR  
TO MATCH SIDING, TYP.

M1

DS

DS

HARDIEPLANK CEDARMILL LAP SIDING  
(COLOR: NAVAJO BEIGE) WITH 5" EXPOSURE

CONCRETE WALK, REFER  
TO CIVIL DRAWINGS, TYP.

3 1/2" HARDIE TRIM, COLOR  
TO MATCH SIDING, TYP.

GRADE, SEE CIVIL  
DRAWINGS, TYP.

HIDDEN LINE INDICATES FOUNDATION  
WALL & FOOTING, TYP.

1  
A201

RIGHT ELEVATION

1/4" = 1'-0"

T/ CUPOLA  
36'-8"

T/ RIDGE  
28'-8"

T/ SEASONS ARCH  
20'-0"

T/ DOUBLE PLATE  
14'-5"

T/ STONE CAP  
11'-4"

B/ AWNING  
SYSTEM  
9'-2"

T/ WINDOW SILL  
3'-0"

T/ MAIN SLAB  
0"

OWNER SUPPLIED  
PREFABRICATED CUPOLA,  
G.C. TO INSTALL

ARCHITECTURAL SHINGLES  
SEE ROOF PLAN, TYP.

EQUIPMENT SCREEN  
BEYOND

LED ROPE LIGHT INSTALLED  
UNDER SOFFIT ON ALL  
ELEVATIONS, REFER TO A132

G

B

BLACK

L

3 1/2" HARDIE TRIM, COLOR  
TO MATCH SIDING, TYP.

5-1/2" HARDIE TRIM, COLOR  
TO MATCH SIDING, TYP.

AWNING SYSTEM, BY OTHERS

HARDIEPLANK CEDARMILL LAP SIDING  
(COLOR: NAVAJO BEIGE) WITH 5" EXPOSURE

DRIVE-THRU WINDOW (READY ACCESS MODEL BO-10  
MANUAL) WITH 3-1/2" HARDIE CORNER TRIM  
SURROUND, COLOR TO MATCH SIDING, TYP.

CONCRETE WALK, REFER  
TO CIVIL DRAWINGS, TYP.

HIDDEN LINE INDICATES FOUNDATION  
WALL & FOOTING, TYP.

2  
A201

LEFT ELEVATION

1/4" = 1'-0"

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63 LACONIA ROAD  
TILTON, NH 03276

JOB NUMBER: 42-21-20019

ISSUE BLOCK

1	REVISION 1	07/24/23
2	REVISION 2	08/16/23

CHECKED BY: HAL

DRAWN BY: RTM

DOCUMENT DATE: 05/15/23

EXTERIOR  
ELEVATIONS  
LEFT & RIGHT

SHEET:

A201









ner · market

Clearance 14' 6"

Shell



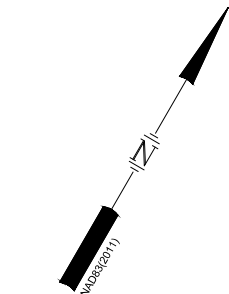
Seasons

293

299

OPENING SOON





LEGEND:	
MAP 137 LOT 11	ASSESSORS MAP AND LOT NUMBER
BH	BUILDING HEIGHT
BK. PG.	BOOK / PAGE
CB	CATCH BASIN
DMH	DRAIN MANHOLE
EL	ELEVATION
EM	ELECTRIC METER
EP	EDGE OF PAVEMENT
FF	FINISHED FLOOR
GREG	GAS REGULATOR
INV.	INVERT
LPG	LIQUEFIED PETROLEUM GAS
N/F	NOW OR FORMERLY
PSNH	PUBLIC SERVICE OF NEW HAMPSHIRE
PVC	POLYVINYL CHLORIDE
RCP	REINFORCED CONCRETE PIPE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
SGC	SLOPED GRANITE CURB
SMH	SEWER MANHOLE
SWL	SINGLE WHITE LINE
TBM	TEMPORARY BENCHMARK
UG	UNDERGROUND
UGU	UNDERGROUND UTILITIES
UP	UTILITY POLE
VGC	VERTICAL GRANITE CURB
VERIZON	VERIZON
IRON PIPE/ROD FOUND	IRON PIPE/ROD FOUND
BOUND FOUND	BOUND FOUND
GUY POLE	GUY POLE
GUY WIRE	GUY WIRE
LIGHT POLE	LIGHT POLE
UTILITY POLE	UTILITY POLE
ELECTRIC BOX	ELECTRIC BOX
CATCH BASIN	CATCH BASIN
MAILBOX	MAILBOX
HAND HOLD	HAND HOLD
DECIDUOUS TREE	DECIDUOUS TREE
SEWER MANHOLE	SEWER MANHOLE
DRAIN MANHOLE	DRAIN MANHOLE
MANHOLE	MANHOLE
MONITORING WELL	MONITORING WELL
VENT PIPE	VENT PIPE
HYDRANT	HYDRANT
WATER GATE VALVE	WATER GATE VALVE
SIGN	SIGN
CHAINLINK FENCE	CHAINLINK FENCE
STOCKADE FENCE	STOCKADE FENCE
BOUNDARY LINE	BOUNDARY LINE
APPROXIMATE ABUTTER LINE	APPROXIMATE ABUTTER LINE
APPROXIMATE TOWN LINE	APPROXIMATE TOWN LINE
DRAIN LINE	DRAIN LINE
W	WATER LINE
S	SEWER LINE
G	GAS LINE
OHW	OVERHEAD WIRE
UGE	UNDERGROUND ELECTRIC
UGC	UNDERGROUND COMMUNICATION
UGU	UNDERGROUND UTILITIES
SHRUB LINE	SHRUB LINE
CONCRETE	CONCRETE
PAVEMENT	PAVEMENT
SLOPE EASEMENT	SLOPE EASEMENT



CONTACT DIG SAFE 72 BUSINESS HOURS PRIOR TO CONSTRUCTION

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

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

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

MAP 239 LOT 11  
±38,399 S.F.  
(±0.8815 AC.)

MAP 215 LOT 5  
N/F  
STATE OF NEW HAMPSHIRE  
STATE HOUSE  
CONCORD, NH 03301

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

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

#### BUILDING COVERAGE CALCULATION:

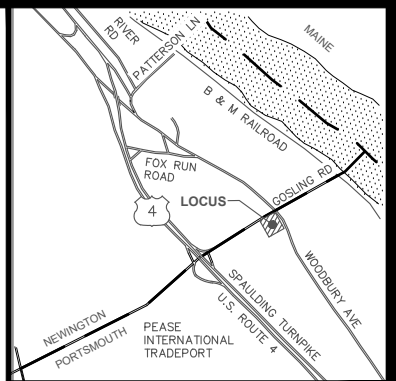
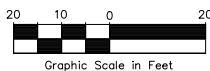
BUILDINGS: 7,402 SF  
TOTAL LOT AREA: 38,399 SF

7,402 SF / 38,399 SF = 0.193 X 100 = **19.3%**  
(BUILDINGS / TOTAL LOT AREA = BUILDING COVERAGE)

#### OPEN SPACE CALCULATION:

OPEN SPACE: 7,284 SF  
TOTAL LOT AREA: 38,399 SF

7,284 SF / 38,399 SF = 0.19 X 100 = **19.0%**  
(OPEN SPACE SF / TOTAL LOT AREA = OPEN SPACE %)



### LOCATION PLAN

#### NOTES:

- THE PARCEL IS LOCATED IN THE GATEWAY NEIGHBORHOOD MIXED USE CORRIDOR (G1) ZONING DISTRICT.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 239 AS LOT 11.
- THE PARCEL IS LOCATED IN ZONE X, "AREA OF MINIMAL FLOOD HAZARD", AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAP (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 260 OF 681, MAP NUMBER 33015C0260F, WITH A MAP REVISED DATE OF JANUARY 29, 2021.
- |                                  |             |          |
|----------------------------------|-------------|----------|
| <b>DIMENSIONAL REQUIREMENTS:</b> |             |          |
| LOT STANDARDS:                   |             |          |
| MIN. DEVELOPMENT SITE AREA:      | 10,000SF*** | 38,399SF |
| MIN. LOT DEPTH:                  | NR          | ±200FT   |
| MIN. STREET FRONTAGE:            | 100FT**     | 375.22FT |
| MIN. OPEN SPACE:                 | 10%         | 19.0%    |
| MINIMUM YARD DIMENSIONS:         |             |          |
| FRONT (MIN./MAX.):               | 0FT/20FT    | 10.4FT   |
| SIDE:                            | 10FT        | 7.0FT    |
| REAR:                            | 15FT        | >15FT    |
| DESIGN STANDARDS:                |             |          |
| MAX. BUILDING HEIGHT:            | 40FT        | 18.4FT   |
| MAX. BUILDING COVERAGE:          | 70%         | 19.3%    |
| MAX. BUILDING FOOTPRINT:         | 10,000SF    | 7,402SF  |

SEE THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE 5B FOR REGULATIONS/DEVELOPMENT STANDARDS  
\*\*PER PORTSMOUTH ZONING ORDINANCE SECTION 10.5B34.60 SMALL COMMERCIAL BUILDING  
\*\*\*PER 10.5B32.30 SPECIAL FRONTAGE REQUIREMENT. FRONTAGE ON WOODBURY AVENUE.  
\*\*\*PER 10.5B42.40 GENERAL COMMERCIAL DEVELOPMENT
- OWNER OF RECORD:  
MAP 239 LOT 11:  
COLBEA ENTERPRISES, LLC  
695 GEORGE WASHINGTON HIGHWAY  
LINCOLN, RI 02865  
RCRD BK.#6281 PG.#2912
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE. THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES, TOPOGRAPHY AND CURRENT SITE CONDITIONS OF MAP 239 LOT 11.
- FIELD SURVEY COMPLETED BY TCE IN JANUARY 2021 AND ON DECEMBER 12, 2024 USING A LEICA TS-16 TOTAL STATION, GS-18 & GS-16 GPS RECEIVERS AND CARLSON DATA COLLECTION SOFTWARE.
- HORIZONTAL DATUM IS NAD83 (2011) PER REDUNDANT NETWORK RTK GPS OBSERVATIONS. THE VERTICAL DATUM IS NAVD88 PER REDUNDANT NETWORK RTK GPS OBSERVATIONS. THE CONTOUR INTERVAL IS 1 FOOT.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
- THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TFMORAN, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.

#### PLAN REFERENCES:

- "STATE OF NEW HAMPSHIRE STATE HIGHWAY DEPARTMENT PLAN AND PROFILE OF PROPOSED FEDERAL AID PROJECT NO. SN-FAP 129 (2) WHITE MOUNTAIN HIGHWAY CITY OF PORTSMOUTH COUNTY OF ROCKINGHAM LAYOUT AS-BUILT PLANS" DATED 4-28-40.
- "STATE OF NEW HAMPSHIRE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS PLANS OF PROPOSED FEDERAL AID PRIMARY PROJECT FG-F-027-1922) N.H. PROJECT NO. C-3275 CONTRACT I MARKET STREET EXTENSION LAYOUT AS BUILT PLANS CITY OF PORTSMOUTH - TOWN OF NEWINGTON COUNTY OF ROCKINGHAM" DATED 8-18-83.
- "ALTA/ACSM LAND TITLE SURVEY TOSCO MARKETING COMPANY 97 GOSLING ROAD NEWINGTON, NEW HAMPSHIRE" BY MCNEANEY SURVEY ASSOCIATES, DATED FEB. 10, 2000 WITH REVISION 1 DATED 3/29/00. RCRD PLAN #0-28044.
- "BOUNDARY & TOPOGRAPHIC PLAN ASSESSORS MAP R-39 - LOT 11 WOODBURY AVE. & GOSLING ROAD PORTSMOUTH, NEW HAMPSHIRE PREPARED FOR MOBIL OIL CORPORATION" BY STORCH ASSOCIATES, DATED 12/6/91. RCRD PLAN #0-21731.
- "TRAFFIC SIGNAL PLAN DOVER ROAD - GOSLING ROAD FOX RUN MALL NEWINGTON, NEW HAMPSHIRE" BY ANDERSON-NICHOLS ENGINEERS, ENVIRONMENTAL CONSULTANTS ARCHITECTS, DATED FEB. 1, 1982, WITH LAST REVISION 4-23-82.
- "EASEMENT PLAN OVER LAND OF PORTSMOUTH HOUSING AUTHORITY ASSESSOR'S PARCEL 239-12 GOSLING ROAD, PORTSMOUTH, N.H. IN FAVOR OF THE CITY OF PORTSMOUTH FOR CMA ENGINEERS, INC." BY JAMES VERRA AND ASSOCIATES, INC., DATED 7/27/2016, WITH REVISION 1 DATED 8/8/2016. RCRD PLAN #0-39722.
- "LOT LINE ELIMINATION PLAN FOR D'ANGELO, INC. WOODBURY AVENUE COUNTY OF ROCKINGHAM PORTSMOUTH, NH" BY RICHARD P. MILLETTE AND ASSOCIATES, DATED DEC. 1982. RCRD PLAN #0-11318.
- "EXISTING CONDITIONS PLAN GOSLING ROAD & WOODBURY AVENUE PORTSMOUTH & NEWINGTON, N.H. FOR CMA ENGINEERS, INC." BY JAMES VERRA AND ASSOCIATES, INC., DATED 4/14/2016, WITH REVISION 2 7/27/2016. PLAN IS NOT RECORDED.
- "PROPERTY ACQUIRED BY STATE OF NEW HAMPSHIRE FROM DUNCAN CONSTRUCTION COMPANY, INC. IN PORTSMOUTH, N.H. ROCKINGHAM COUNTY PROJECT: PORTSMOUTH-NEWINGTON, C-3275" DATED AUGUST 15, 1983. RCRD PLAN C-11802.

TAX MAP 239 LOT 11  
**EXISTING CONDITIONS PLAN**  
**MOBIL STATION**  
**1980 WOODBURY AVENUE**  
**PORTSMOUTH, NEW HAMPSHIRE**  
**COUNTY OF ROCKINGHAM**  
OWNED BY  
**COLBEA ENTERPRISES, LLC**

SCALE: 1" = 20' (22x34)  
1" = 40' (11x17)

JANUARY 14, 2025

Seacoast Division



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 PJT FB 612  
CK BMK CADFILE SEE MARGIN

S-1

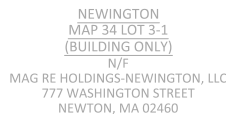
PURSUANT TO NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES LAN 503.09(24):  
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN JANUARY 2021 & ON DECEMBER 12, 2024. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. THIS SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.



LICENSED LAND SURVEYOR

2025-01-14  
DATE

REV.	DATE	DESCRIPTION	DR	CK



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

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%	18.6±%	
MIN. OPEN SPACE:	10%	15.6±%	
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'.

NUMBER (SEE ABOVE)	REQUIRED	EXISTING	PROPOSED
1	127.5' MIN	0'	0'
2	20' MAX	10.4	27.4'
3	NO PARKING	YES	YES
4	50' MIN	N/A	34.8' & 38.7'
5	30' MIN	N/A	11.2'
6	40' MIN	23.1'	34.7'
7	223.50 S.F. (149 x1.5')	-	392.11 S.F.
8	100 S.F. MAX	-	134 S.F.
9	20' MAX HEIGHT	-	26.25'
	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY

## 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')**



Civil Engineers  
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46077.16	DR	JKC	FB	-	C-01
	CK	CRR	CADFILE	46077-16 VARIANCE PLAN	

EASEMENTS & RESTRICTIONS:

COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 20CLTO055-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 DEPENDED 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.

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 CORPORATION AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2936, 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 1323 AND VOLUME 3688, PAGE 1465. 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

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

PROPOSED CONCRETE  
PAD (TYP.)

PROPOSED MENU  
BOARD

FOUND, CRIMPED  
(HELD FOR LINE)

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

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.

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HORIZONTAL SCALE 1"=20'

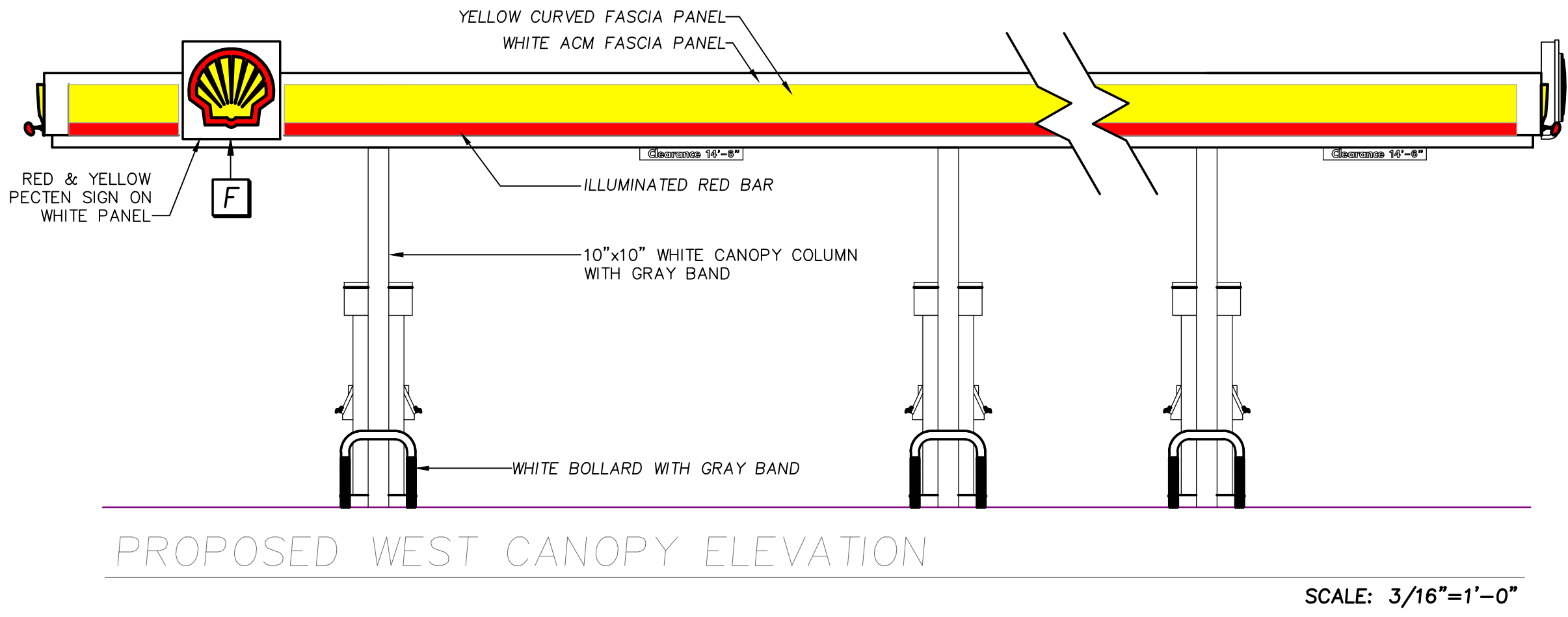
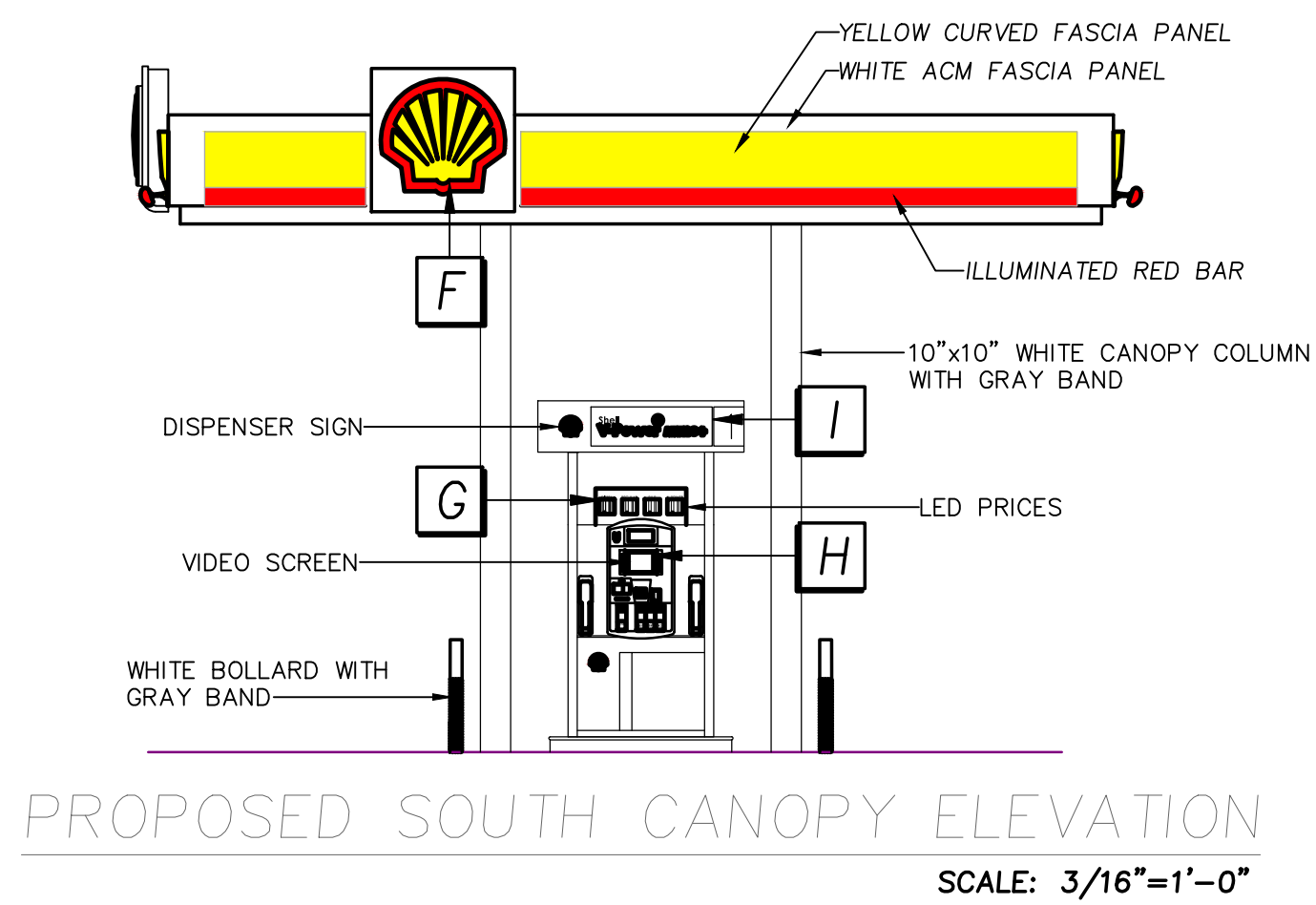
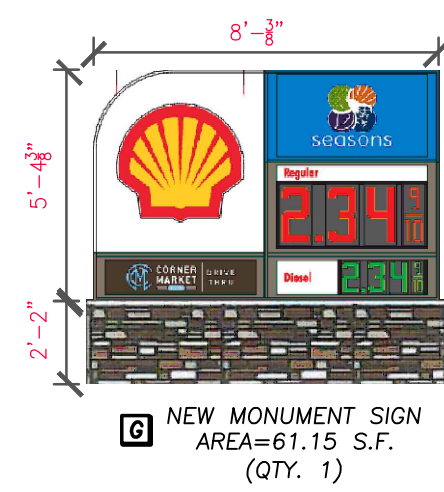
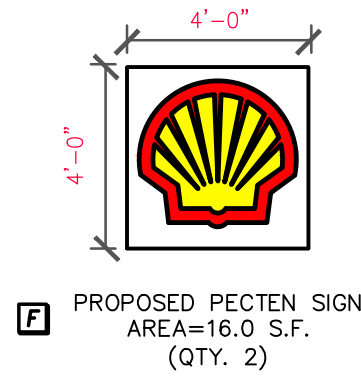
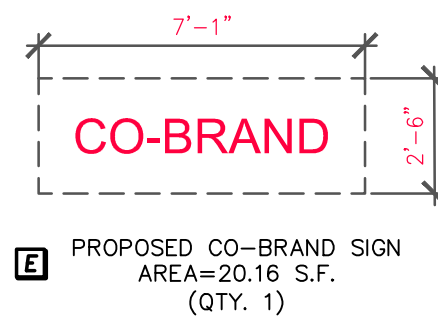
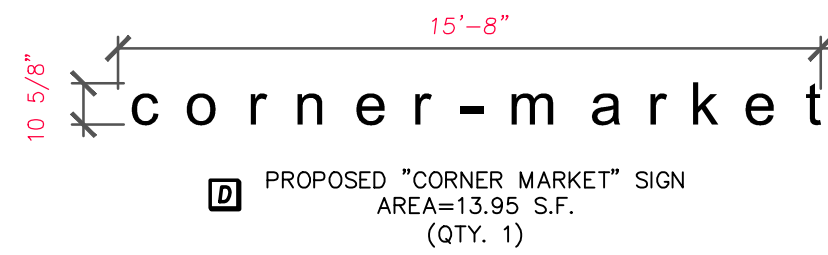
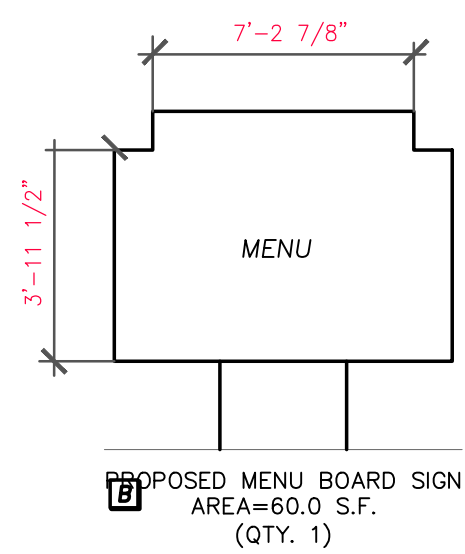
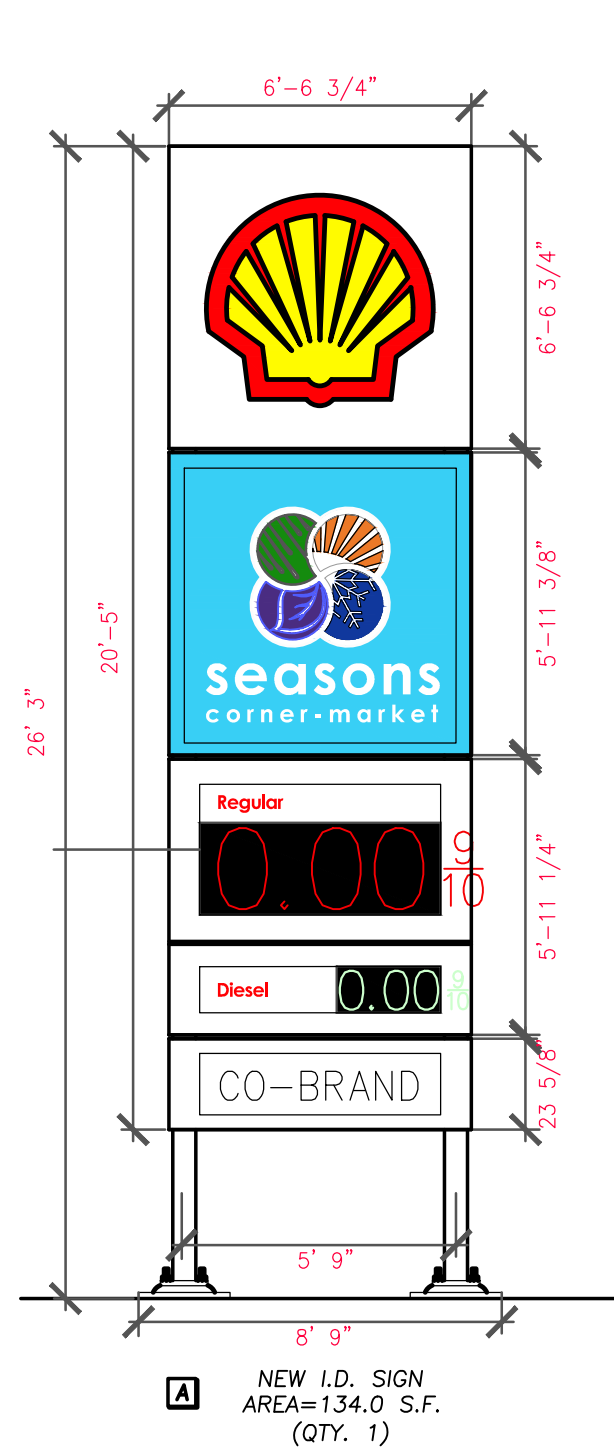
A horizontal scale bar with a black background and white markings. The markings are labeled 20, 10, 0, and 20 from left to right. The bar is divided into segments by white lines.

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Apr 01, 2025 - 2:12pm  
\\TFM-BEDFORD\Projects\Civil-Survey\MSC Projects\46077 - Woodbury Ave - Portsmouth\46077-16 Colbea Ent LLC - 1980 Woodbury Ave, Portsmouth, NH\Design\PRODUCTION DRAWINGS\46077-16\_Sign.dwg



PROPOSED SIGN SCHEDULE							
MARK	DESCRIPTION	SIZE	AREA (SF)	QUAN.	SIZE (SF)	ILLUMINATION	REMARKS
FREESTANDING SIGNS							
A	I.D. SIGN	6'-6 3/4" X 20'-5"	134.0	1	134.0	INT	NEW
TOTAL FREESTANDING SIGNAGE: 134 S.F., 26' 3" TALL (TOTAL PERMITTED - 100 S.F., MAX OF 20' TALL)							
C	NEW MONUMENT SIGN	7'-2 7/8" X 8'-3"	61.15	1	61.15	INT	NEW
B	MENU BOARD SIGN	3'-11 1/2" X 7'-2 7/8"	60.0	1	60.0	INT	NEW
TOTAL MONUMENT & MENU BOARD SIGNAGE: 121.15 S.F.							
WALL SIGNS							
C	"SEASONS" SIGN	24' X 3'-6"	84	1	84	INT	NEW
D	"CORNER MARKET" SIGN	15'-8" X 0'-10 5/8"	13.95	1	13.95	NON	NEW
E	CO-BRAND SIGN	7'-1" X 2'-6"	20.16	1	20.16	INT	NEW
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	5	80.0	INT	NEW

TOTAL DIRECTIONAL AND MISCELLANEOUS SIGNAGE: 80 S.F.

TOTAL SIGNAGE: 453.26 S.F.

## 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

Seacoast Division



Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
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REV	DATE	DESCRIPTION	DR	CK
46077.16	DR	JKC	FB	-
CK	CRR	CADFILE	46077-16_SIGN	C-11

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CONTACT DIE SAFE 72 BUSINESS HOURS PRIOR TO CONSTRUCTION