

Planning Department
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

To: Portsmouth Zoning Board of Adjustment (“ZBA”)

From: Martin Ryan

Date: June 05, 2026

Re: Ryan Trust
221 Woodbury Ave, Tax map 175-10
General Residence A Zoning

Dear Chair & Zoning Board Members:

In support of the request for zoning relief, we respectfully submit this updated memorandum and the accompanying exhibits for the Zoning Board of Adjustment's (ZBA) consideration at its meeting on June 16, 2026. Note, this updated memorandum addresses the Board's consideration of whether or not it is appropriate to evoke Fisher v. Dover before this application is heard in Section 6 below.

1. Attachments

- A. City Tax Map
- B. Drawing Set
 - T1- Title Sheet
 - C1- Historic Map & Figure Ground
 - C2- Existing Site Plan
 - C3- Proposed Site Plan
 - C4- Site Diagram
 - A1- Site Elevation
 - A2- Site Elevations
 - P1- Context Photographs
 - P2- Context Photographs
- C. Previous Application- 2009
- D. 2009 Meeting Minutes
- E. Abutter Letters

2. Property:

Located at 221 Woodbury Avenue, the subject property is a 17,351-square-foot corner parcel with approximately 135 feet of Woodbury Avenue frontage and approximately 145 feet of Thornton Street frontage (see C2 Existing site Plan). Existing structures include a well-maintained two-family residence constructed circa 1900 and a detached garage.

Originally, the property consisted of two (2) long and narrow rectangular lot, much like the surrounding lots, but the lots were situated on Thornton Street, rather than Woodbury Avenue. These original features can be seen on the pertinent section of the plan prepared by A.C. Hoyt in June 1890, recorded in the Rockingham County Registry of Deeds as #00150. (Re org exhibit list if you want to include this paragraph). Why Mr. Hoyt chose to layout these two (2) lots in this fashion is unknown and otherwise inconsistent with planning practices today; similarly, why the original builder or owner of the house chose to orient the house on Woodbury Avenue is also unknown. Regardless of these unknown factors, the original intent was for this property to be two (2) lots and not one (1) lot.



Figure #1- 1890 Hoyt Plan, Rockingham County Registry of Deeds

The applicants, who have resided at and maintained the property for 30 years, seeks a subdivision due to health-related challenges that make the current dwelling unfeasible.

The objective and goal of this proposal and application is to subdivide the large parcel to create a new, adjacent lot, with the original house remaining on its own lot; both of which having frontage on, and cited to, Woodbury Avenue, and which would be more consistent with what we today would have deemed as better planning practices.

This will facilitate the construction of a more suitable residence, enabling the applicants to age in place within their established community.

While the proposed subdivision creates two appropriately sized lots that is consistent with the essential character of the neighborhood, as well as the neighborhood's layout and development over the years, the project requires the approval of specific zoning variances.

3. Zoning Compliance :

Except for lot depth and frontage, the proposed subdivision would be in accordance with all of the dimensional standards, (See Table 10.521) as follows:

Lot Area: the existing lot is 17,351 SF. With the proposed subdivision, a new lot at 9,538 sf. would be created for the development of a single-family dwelling. The existing dwelling, which is a two-family home, will downgrade to a single-family dwelling on the remaining lot which would be 7,979 sf. Both lots would be conforming as the required lot sizes are a min. of 7,500 sf.

Front Setback: The existing two-family house has an existing, non-conforming front setback of 13'-2" where 15'-0" is required.

The proposed development of the newly formed lot would adhere to the setback requirements based upon section 10.516.10 "Front Yard Exception of Existing Alignments". The existing setback of 251 Woodbury Avenue and the existing structure of 221 Woodbury Avenue, the proposed house would be at 8'-0", an average of the sets of the two existing structures.

Rear setbacks: The existing 2 family house rear setback of 20'-0" is conforming.

The proposed development of the newly formed lot would adhere to the rear setback requirements.

Lot Coverage: With the proposed subdivision, the newly created lot #1, containing the existing house and garage, would have a lot coverage of 21%

where 25% is the maximum allowed. The lot coverage of the proposed new lot #2, will adhere to the lot coverage requirements

Open Space: With the proposed subdivision, Lot #1, containing the existing house and garage, would be at 21% where 25% is the maximum allowed.

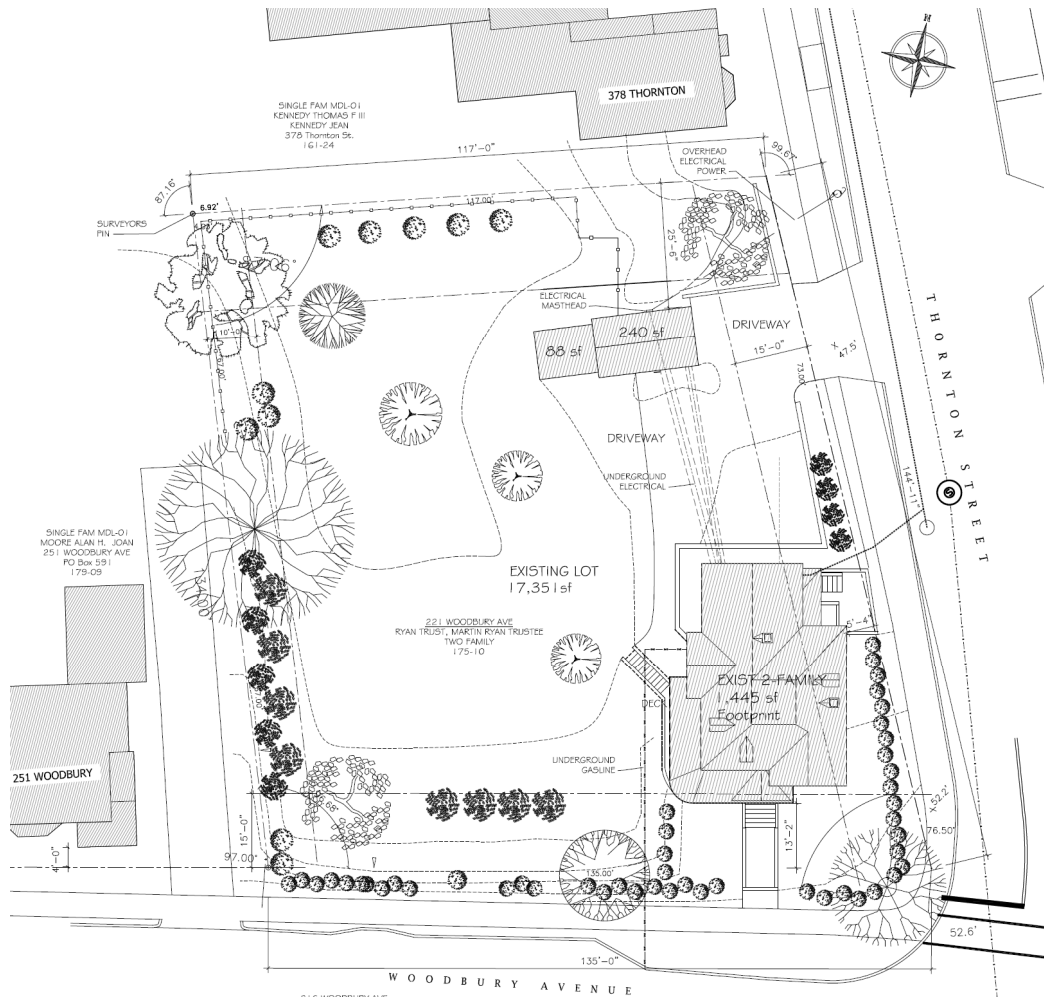


Figure #2 Existing Site Plan

4. Zoning Relief Required:

Lot Frontage: where 100 LF is required in Zone GRA, 63'-0" would be the proposed frontage on Woodbury Avenue for the newly created Lot 2. As shown on

the Figure #2 drawing, the proposed and remaining lot frontage is typical for lot frontage and average for the pattern and character of the neighborhood.

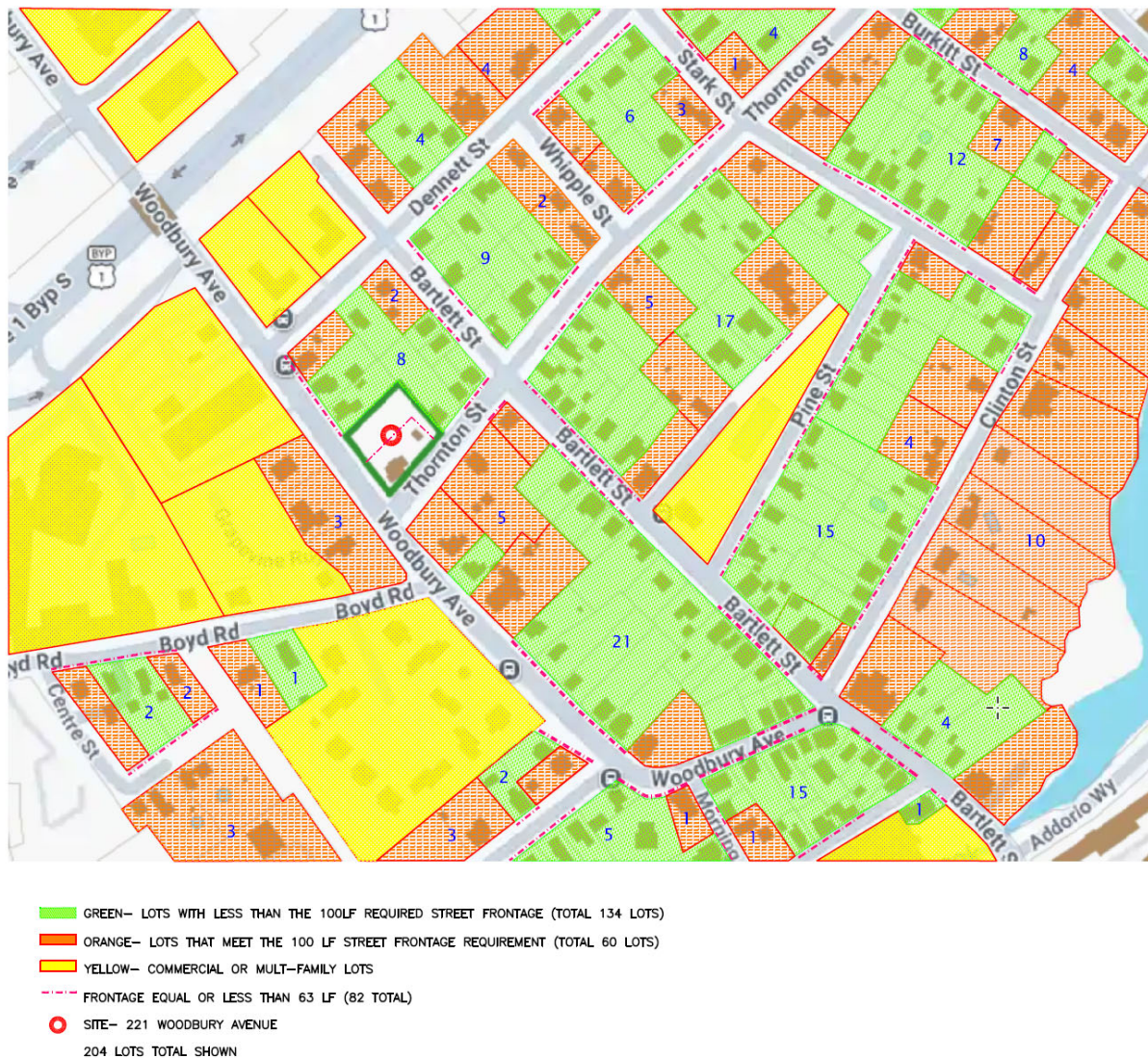


Figure #3. Neighborhood Context & Analysis Map

5. Site Layout:

The proposed subdivision is deliberately designed to maintain the neighborhood's character by preventing driveways and garages from dominating the property's architectural façade and by reducing the traffic and safety factors by not proposing a curb cut on Woodbury Avenue.

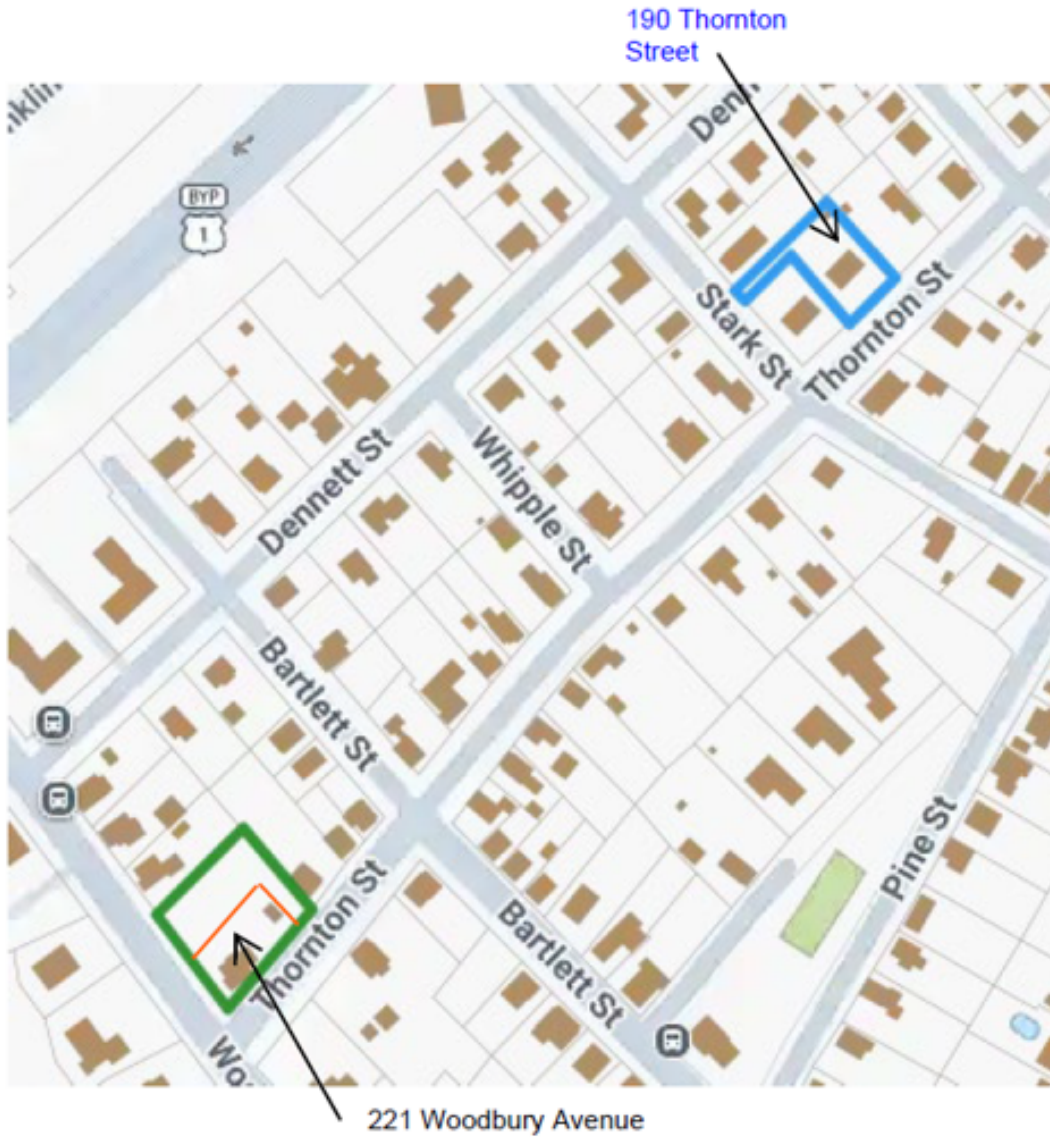


Figure #4- Precedent for Site Layout.

By relocating these visual elements to the interior of the lot, the proposed lot configuration successfully preserves the existing streetscape and the historic charm of the area. This approach would maintain the historic language of the “urban street wall”. Additionally, this driveway configuration eliminates the danger of backing into street traffic. A comparable precedent for this L-shaped lot and driveway configuration can be found at 190 Thornton Street.

6. Fisher V. Dover:

As noted in the historical record, the Applicant previously filed a request for a subdivision on this parcel, which was reviewed at a meeting on August 18, 2009, (see Figure #5). Under New Hampshire law, consideration of subsequent petitions by a zoning board is limited to those which present a material change in circumstances affecting the application, propose a use materially different in nature or degree, or upon a finding of a material change of circumstances (Fisher v. Dover, 121 N.H. 187 (1980)).

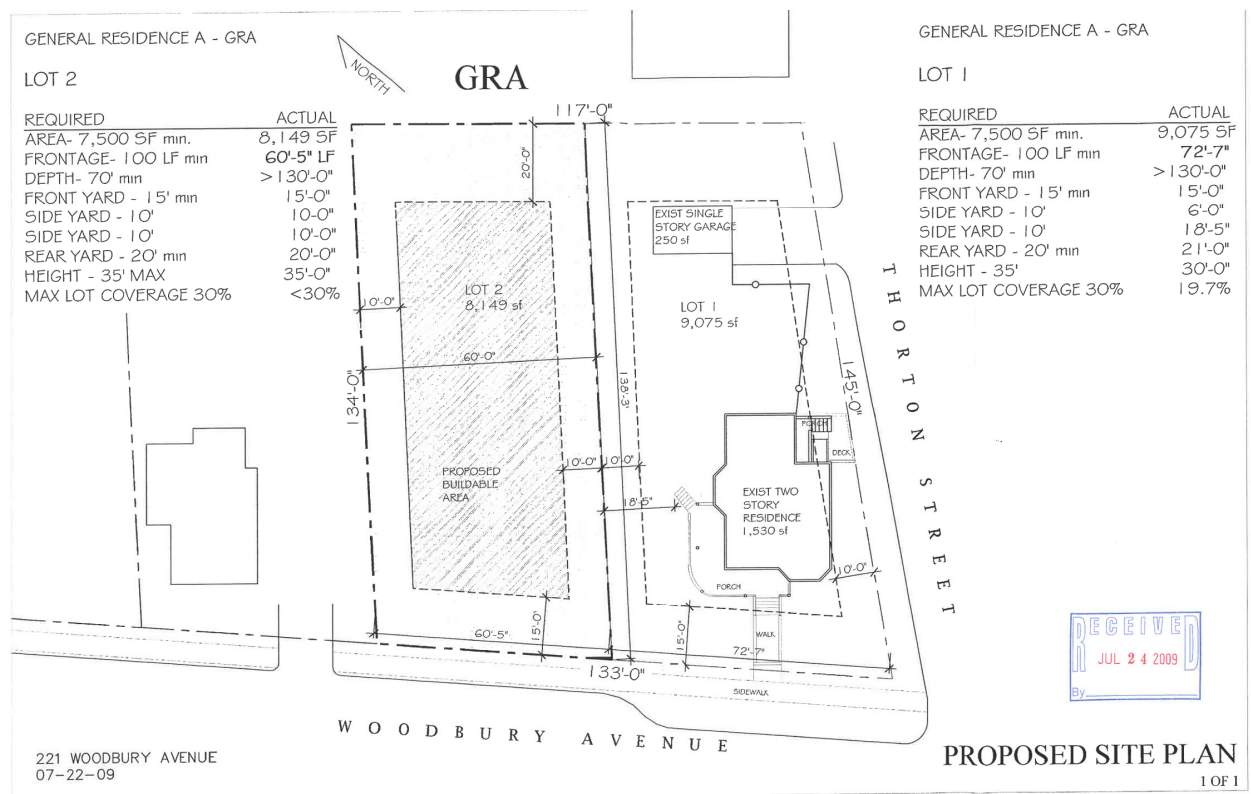


Figure #5: 2009 Request for Lot Subdivision.

The New Hampshire Supreme Court has emphasized that this limitation is not to be technically and narrowly imposed. The intent of the doctrine is to resolve finality and prevent abusive, repetitive applications, not to freeze a parcel of land in perpetuity based on a decades-old denial.

The current 2026 application successfully clears the Fisher hurdle by presenting a radically modified proposal, demonstrating substantial changes in the surrounding environment over the intervening 17 years, and because of changes in the legal standards for zoning boards.

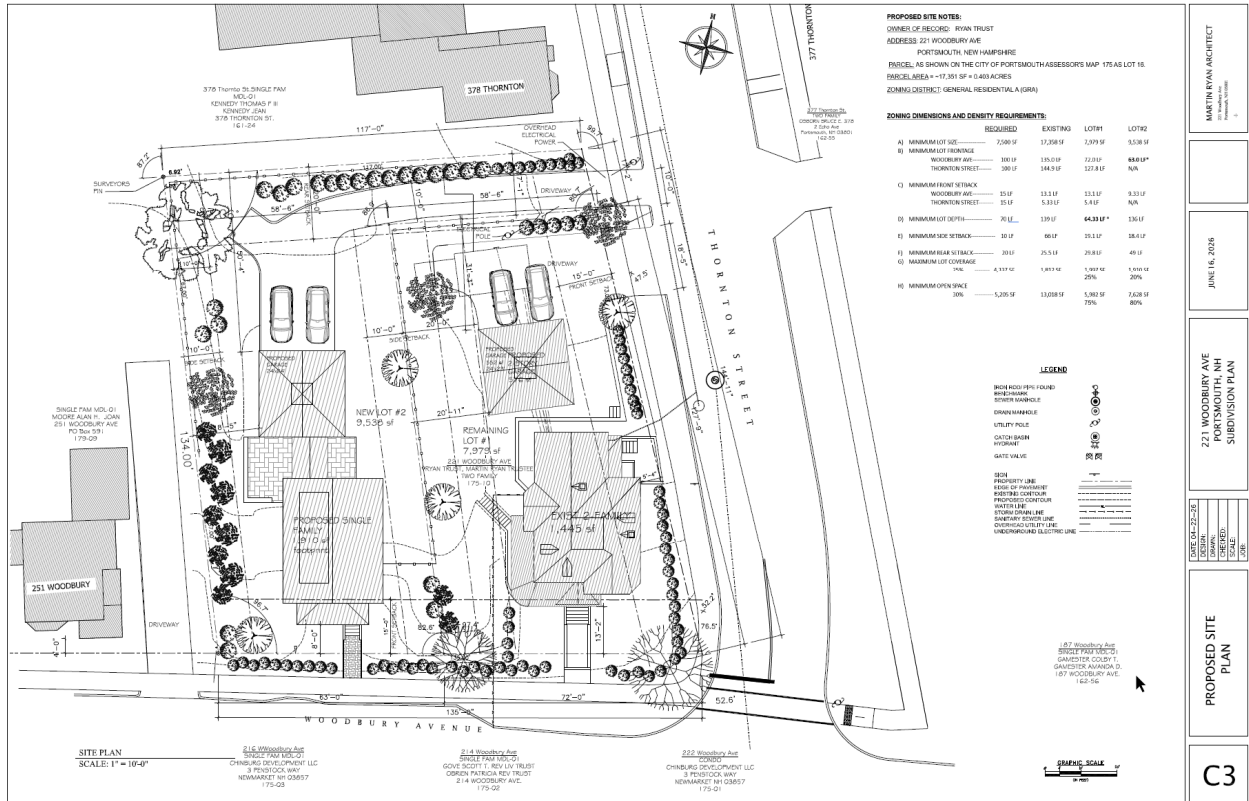


Figure #6: 2026 Request for Lot Subdivision

Materially Different Proposal (Changes in Nature and Degree): The 2026 application is fundamentally different in scope, detail, intensity, access, and design from the 2009 generic subdivision request.

- Detailed, Engineered Site Plan vs. Speculative Request:** The 2009 application provided no specific architectural elevations, driveway locations, landscaping, or building footprint for the new lot, making impact assessment difficult. The 2026 application is comprehensive: precise site plans (C3 Proposed Site Plan, C4 Site Diagram), architectural elevations (A1–A2), context photographs, and a landscaping plan that relocates driveways and garages to the interior of an L-shaped lot. This transforms the request from an abstract subdivision into a concrete, thoroughly engineered proposal the Board can fully evaluate.

- **Reduced Density and Intensity:** The 2009 proposal contemplated maintaining the existing house as a two-family dwelling while adding a new single-family dwelling, potentially resulting in three total dwelling units. The 2026 application reduces this to two total units (downgrading the existing two-family to single-family on Lot 1 and constructing one new single-family on Lot 2)—a 33% reduction in density. This directly reduces traffic, noise, and utility burden compared to the prior proposal.
- **Safer, Reconfigured Site Access:** The 2009 plan proposed a new curb cut directly onto Woodbury Avenue (a high-traffic arterial), raising legitimate concerns about traffic flow, sightlines, and public safety. The 2026 plan abandons any new Woodbury curb cut. Both lots are accessed via Thornton Street (a secondary, lower-volume street), with driveways and garages located internally. This eliminates backing into street traffic and better preserves the historic “urban street wall” character of the neighborhood. A comparable L-shaped configuration with internal access exists at 190 Thornton Street.
- **Lot Shape, Size, and Spatial Relationship:** The 2026 geometry incorporates specific design factors—adjusted setbacks under §10.516.10 (Front Yard Exception of Existing Alignments), optimized building envelopes, and internal circulation—that were absent in 2009. These directly address potential abutter concerns regarding privacy, light, and air.
- **Material Change in Circumstances (17 Years of Evolution):** Beyond applicant-driven changes, the physical, infrastructural, and regulatory environment has evolved materially.
 - Municipal water, sewer, and stormwater networks and standards have advanced significantly. Modern stormwater management (bio-retention, permeable surfaces, etc.) allows far superior mitigation of environmental impacts than was feasible in 2009.
 - The surrounding neighborhood has changed with new development, higher-density housing, and commercial properties nearby. The baseline for assessing neighborhood character, property values, and impacts is no longer the 2009 snapshot.
 - The 2009 denial occurred under an ambiguous, high-intensity proposal. The 2026 application cures those defects with a lower-impact, fully realized design.

Material Change in Applicable Law: The legal framework governing the ZBA's review has changed. In 2009, area variances were evaluated under the two-part judicial test articulated in *Boccia v. City of Portsmouth*, 151 N.H. 85 (2004). Effective January 1, 2010, the Legislature enacted 2009 N.H. Laws ch. 307 (SB 147), which repealed and reenacted RSA 674:33, I(b) specifically "to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia*." All variances are now reviewed under unified statutory five criteria, with unnecessary hardship determined under the *Simplex* standards for both use and area variances. ZBAs have recognized statutory changes between applications as a material change of circumstances for *Fisher* purposes. The Board is therefore reviewing this application under an entirely different legal standard than in 2009.

Materially Different Proposal (Changes in Nature and Degree): The applicants have substantially modified their proposal, intent, and overall site design to directly mitigate potential impacts and improve harmony with the neighborhood.

Proposed Lot Development & Design Clarity: The 2009 application was essentially a generic subdivision request that did not suggest a specific intended use or structural footprint for the new lot, making it difficult for the Board to accurately assess its impact. By contrast, the 2026 application is comprehensive. It provides detailed architectural elevations, precise driveway locations, and a comprehensive landscaping plan. This transitions the request from a speculative subdivision to a concrete, thoroughly engineered site plan.

Reduced Density and Intensity of Use: A critical material change is the substantial reduction in proposed density. The 2009 proposal intended to maintain the existing house as a two-family dwelling while adding a new single-family dwelling on the proposed lot, resulting in three (3) total dwelling units across the two parcels. The 2026 application drastically reduces this intensity by proposing only two (2) total units—one single-family dwelling per lot. This 33% reduction in density directly translates to reduced traffic, lower noise profiles, and a lesser burden on municipal utilities, representing a use materially different in degree.

Lot Shape, Size, and Spatial Relationship: The 2026 application proposes a fundamentally different lot configuration than the 2009 plan. This new geometry incorporates specific design factors—such as adjusted setbacks and optimized building envelopes—that were completely absent in the 2009 submission. These spatial adjustments directly address potential abutter concerns regarding privacy, light, and air that may have existed previously.

Safer, Reconfigured Site Access: Perhaps the most significant material change to the site's functionality is the vehicular access plan. The 2009 application proposed a new curb cut directly onto Woodbury Avenue, a high-traffic arterial road, raising valid concerns regarding traffic flow, sightlines, and public safety. The 2026 application abandons this approach entirely, instead proposing two curb cuts on Thornton Street. This routes traffic onto a secondary, less busy street, significantly improving safety and reducing friction on the main thoroughfare.

Material Change in Circumstances (17 Years of Evolution) Beyond the changes made by the applicant, the physical and regulatory environment surrounding the property has evolved considerably since August 2009.

Upgraded Infrastructure and Environmental Standards: The availability, capacity, and standards of municipal utilities have not remained static. Over the last 17 years, municipal water and sewer networks have been expanded or upgraded. Furthermore, modern stormwater management regulations and technologies (such as bio-retention and permeable surfaces) have advanced significantly since 2009. The technical feasibility of developing this lot, and the ability to mitigate environmental impacts, are vastly superior today than they were 17 years ago.

Evolution of Surrounding Development: The character of the surrounding neighborhood has inevitably changed since the initial denial. The introduction of new commercial properties, higher-density housing, or infrastructural expansions in the immediate vicinity alters the baseline of the neighborhood. Because the surrounding landscape has evolved, the impact of the requested variance on surrounding property values and neighborhood character is a brand-new factual question that cannot be answered using 2009 data.

Context of the 2009 Meeting: In the 2009 application, the intended use and specific impacts were left ambiguous, leading to board hesitation and an inability to properly weigh the benefits against the detriments. The 2026 application cures these defects entirely by presenting a fully realized, lower-impact design.

Conclusion:

The fundamental purpose of Fisher v. Dover is to prevent an applicant from treating the ZBA like a revolving door, submitting identical applications month after month in hopes of a different outcome. It was never intended to chain a piece of property to a single, localized snapshot in time from 17 years ago.

The combination of a materially different, lower-density, safer, and more precisely engineered proposal, 17 years of neighborhood and infrastructural evolution, and

a change in the statutory criteria the Board must apply creates a clear basis for the Board to consider this application on its merits under today's standards and realities.

CRITERIA

The Five Variance Criteria (as set forth in NH RSA 674:33, I(b))

A. Public Interest:

Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to *Malachy Glen Associates v. Chichester*, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. A second dwelling lot is entirely appropriate and consistent with the existing subdivision in which this property sits. It does not increase the amount of residential density beyond what is permitted by right. Thus, the fundamental residential character of the neighborhood will not be altered and the health, safety and welfare of the public will not be threatened.

B. Spirit of the Ordinance:

"The spirit of the Ordinance will be observed".

The neighborhood is diverse with older traditional homes sited on longer, rectangular lots, as well as more contemporary homes where driveways and garages are present. The lot is also adjacent to a newly developed residential block and existing commercial buildings. The intent of Section 10.1113.20 is presumably to create and preserve a consistent aesthetic where buildings are visible from the street and separated from the street by landscaping or other similarly landscaping, fencing and garden features. The location of automobiles and driveways and garage doors are minimized. Much of the area between the buildings and the street will remain grassed and landscaped, thus preserving that aesthetic of the neighborhood. This proposed lot and home not only meets the spirit of the ordinance, it furthers it.

C. Substantial Justice:

“Substantial justice will be done” If this variance is granted, the applicants will be allowed to continue to reside in the community. If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011). That is, “any loss to the owner that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen*, supra at 109. The owners are constitutionally entitled to the use of the lot as it sees fit; including redevelopment for a permitted single-family home with an incorporated garage, fully zoning compliant except for frontage, which is being sought. “The right to use and enjoy one’s property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; *Town of Chesterfield v. Brooks*, 126 N.H. 64 (1985) at 68.

Approval of the frontage variance, supports a development that adheres to the character of the neighborhood and all substantive zoning criteria. As the variance entails no detriment to adjacent properties, there is no public interest served by its denial. In contrast, the applicants would not only be barred from creating an otherwise incredibly reasonable lot based on the surrounding neighborhood, but would also lose out on their ability to construct a home that would allow and enable them to age in place and in a neighborhood of which is part of their identity, and vice versa..

D. Property Values:

“The values of the surrounding properties will not be diminished”. “The Project, as designed and presented in this application, will result in no diminution of value to surrounding properties. The traditional style, single family structure is consistent with the neighborhood land use pattern and quality and character of the existing structures in the neighborhood. The request is limited to lot frontage variance necessitated by a site constraint that cannot be remedied. Moreover, even though the applicants are seeking relief to construct a new residence, they are at the same time reducing the number of dwelling units in the existing structure, thereby creating result of no net change in dwelling units yielding from the property. As the development enhances the property without impacting adjacent owners, it successfully fulfills the fourth prong of the variance requirements.

E. Unnecessary Hardship:

“Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship”. Allowing this proposed use is fair and reasonable.

The occupants of the property have resided at and maintained 221 Woodbury Avenue for over 30 years. Health-related challenges now make the current two-family dwelling unfeasible for aging in place within their established community. This can be accomplished by allowing the construction of a new, more suitable single-family residence on the newly created adjacent lot, with both lots being appropriately sized and consistent with the neighborhood’s land use patterns.

The property presents special conditions that distinguish it from other properties in the GRA district and that necessitates the requested variance: it is a large (17,351 sf) corner parcel developed circa 1900 with an existing two-family structure positioned with a non-conforming front setback on Woodbury Avenue. This pre-zoning development pattern, combined with the corner location, creates practical difficulties in configuring two standard rectangular lots meeting all dimensional requirements without variance relief. The lot’s size nevertheless allows logical subdivision into two lots each exceeding the minimum 7,500 sf area requirement. In addition, there are currently no curb cuts on the property on and for Woodbury, which drives the development proposal to maintain a status quo situation on Woodbury and forces the applicant to create a better result of utilizing Thornton Street for all ingress and egress of each lot.

There is no fair and substantial relationship between the general public purposes of the frontage (and, under the proposed configuration, depth) requirements and the specific application of those provisions to this property. Those purposes include preventing overcrowding, ensuring adequate street access and light/air, maintaining appropriate residential densities, and preserving neighborhood character. Here:

- Both resulting lots exceed the minimum lot area; Lot 1 coverage and open space remain conforming (21% where 25% max / 30% min).
- Access is reconfigured to Thornton Street (a secondary street), eliminating any new curb cut on high-traffic Woodbury Avenue and improving safety.
- Driveways and garages are located internally via an L-shaped configuration that preserves the historic “urban street wall” streetscape and matches an existing condition located nearby at 190 Thornton Street.
- Overall residential density/intensity is reduced compared to the 2009 proposal (two total units vs. potential three) and is fully consistent with the permitted use and existing varied lot frontages in the West End neighborhood (as shown on

Figure #3, where numerous lots have frontage below 100 lf, particularly on side streets or in the historic pattern).

- The development enhances the property without diminishing surrounding values or threatening public health, safety, or welfare.

The proposed use, a single-family dwelling on each lot, is a reasonable use. Single-family residential use is permitted by right in the GRA district and is identical in character to the existing and abutting properties. The variances are narrowly tailored to site constraints that cannot be remedied while still achieving a permitted, lower-impact outcome that allows the owners to remain in the community they have called home for three decades.

Granting the variance is essential for the owners to make reasonable use of their property and remain in the community.

Thank you for your fair consideration on this matter.

Respectfully Submitted,

Martin Ryan

II. PUBLIC HEARINGS

- 1) Case # 8-1
Petitioners: Martin L. Ryan
Property: 221 Woodbury Ave. Assessor Plan 175, Lot 10
Zoning district: General Residence A
Request: Variance from Article III Section 10-302(A) to allow for a new lot with 60.45'±
of frontage where 100' is required

SPEAKING IN FAVOR OF THE PETITION

Mr. Martin Ryan stated that he had owned the property since 1996 and his intention was to subdivide it. His request was for relief from the 100' of frontage to 60.45'. Addressing the criteria, he stated that this was an irregularly shaped corner lot and the existing structure made it difficult to subdivide. He had done a survey of the surrounding lots and only 25% met the frontage requirement. He stated that the size and scale of the lot would meet the spirit of the ordinance, with proper setbacks and buffering. It would be designed to fit the residential nature of the rest of the community. In the justice consideration, not allowing the variance would lend itself to an expansion of the current structure which would be more intrusive than what he was proposing. A variance would allow them to increase the value of the property while producing another buildable lot.

Mr. Grasso asked Mr. Feldman for clarification of the reference in the departmental memorandum to the new lot having an address of Thornton Street. Mr. Feldman stated that what they would see if they looked at the plan was that the applicant was proposing to create two

undersized lots. Because the address for the main lot from which the parcel would be cut was a Woodbury Avenue address, not Thornton Street, they needed to look at the frontage on Woodbury Avenue, rather than Thornton as the width of the lot. Even if they were going to look at Thornton Street as the width of the lot for the frontage, the depth of the lot still wouldn't meet the requirements. Mr. Grasso agreed but stated it would be less impact. His follow-up question was, if this were met favorably by the Board, would the two addresses be Woodbury Avenue. Mr. Feldman stated that they would.

Mr. Parrott referred to Mr. Ryan's memo to the Board under "Conditions," where he had said that if the parcel were vacant, it would be possible to configure the proposed lot lines in a manner that would not require a variance. As he looked at the plot plan provided, Mr. Parrott saw 133' on Woodbury Avenue and 145' on Thornton Street and he was trying to figure out how either of these could end up with 200'. Mr. Ryan stated it would be achievable if Thornton Street were considered as frontage and with the creation of a division that was irregular in shape that could have angles back from the corner back toward the opposite deep corner of the lot. Mr. Parrott asked if he meant an L-shaped lot and Mr. Ryan replied it could be an L or triangular. Mr. Parrott asked him if he were aware of a general requirement in the city zoning ordinance which said that lots generally should be of a rectangular nature, his point being that the applicant might not be able to take an essentially rectangular lot and reconfigure it in some odd way.

Ms. Rousseau stated that Mr. Ryan had mentioned the benefit to the city re. tax revenue and asked if he intended to put a three bedroom house on there. Mr. Ryan stated his intention was to build a single family residence. He hadn't explored all possibilities. Ms. Rousseau stated that would bring in about \$10,000 in tax revenue and it cost \$10,000 per child in the school system. With more than one child, the city was in a deficit position, which she felt would not be in the public interest.

Mr. Ryan stated that he would just like to add that he had read the comments from the planning department and if it were an issue of whether or not he had requested the proper variances, depth versus frontage, he would like to go after a continuance and adjust the request. Chairman LeBlanc stated that it was too late as they had already opened consideration.

Mr. Witham directed a question to Mr. Feldman. The way he was reading it, if the applicant used the address of Woodbury Avenue, he needed 100' of frontage and, if he used Thornton Street, he needed 70'. Mr. Feldman stated, "no." He still needed 100' of frontage but he needed 70' of depth because it was a corner lot and he didn't have that either. Mr. Feldman concurred when Mr. Witham asked if, then, 70' x 100' was the minimum lot size.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition as presented and advertised, which was seconded for discussion by Mr. Grasso.

Mr. Witham stated that he was usually hesitant to approve a subdivision which brought one lot into nonconformity. One of the key considerations was a change in the essential character of the neighborhood. When you look at the site map of the neighborhood, what the applicant was proposing conformed to 75% of the lots in the area so that the essential character of the area would not be changed. Mr. Witham stated that each lot met the lot size requirement and there was room to build. He could understand hesitance in putting another lot into nonconformance but the structure on the one lot now was nonconforming.

Mr. Witham stated that granting the variance would not be against the public interest. They were not creating substandard lots. The properties would be larger than required for lot size but did not have the street frontage. He didn't feel the information about the cost to maintain one student could be used as an argument in determining the public interest. The special conditions would be the corner lot and the shape which made it difficult to divide and meet the requirements. He felt there was no public benefit to having one oddly shaped lot as opposed to two standard lots with two houses. He stated that the spirit of the ordinance would be served by allowing a reasonable use of this lot and creating another housing unit which would be of such a size as to be affordable. He reiterated that the essential character of the neighborhood would remain unchanged. Justice would be served by allowing the owner to create another lot in keeping with the area and the value of surrounding properties would not be diminished. There was plenty of space between the proposed properties and the homes to the sides.

Mr. Grasso stated that he was on the fence. Mr. Witham made a strong argument and he was going to go with his motion to grant the petition. Given the current zoning the house that would go in the buildable section of the new lot would not be overbearing for the neighborhood.

Mr. Parrott stated that if they approved the request, there would not be just one nonconforming lot but two and a 60' wide lot line was very short. Absent some extraordinary circumstance or hardship presented by the land, there was no strong reason for the subdivision except that the owner wanted to do so. The fact that there were plenty of others in the neighborhood was not a good reason to make two new nonconforming lots.

Mr. Witham stated that he didn't feel he was making a motion to create two nonconforming lots. The lot was already nonconforming considering the location of the structure. It would be conforming with regard to size and it was noted that he could make two conforming lots by having an odd shape but again that flew against the recommendation to which Mr. Parrott referred about having the regularly shaped rectangular lots. To have the applicant go do it without a variance seemed to require going through a lot of hassle to make this odd shaped lot work and he questioned whether it was in the public interest to do so. He also noted that, while 60' was narrow, it was the average for 75% of the homes in that area.

Ms. Eaton stated that the application could not meet all the criteria, especially the special conditions for the lot.

The motion to grant the petition failed to pass by a vote of 3 to 4, with Ms. Eaton, Ms. Rousseau and Messrs. Durbin and Parrott voting against the motion.



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7232

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

August 21, 2009

Martin L. Ryan
221 Woodbury Avenue
Portsmouth, NH 03801

Re: Property at 221 Woodbury Avenue
Assessor Plan 175, Lot 10
Zoning district: General Residence A

Dear Applicant:

The Board of Adjustment at its regular meeting on August 18, 2009 completed its consideration of your application described as follows:

Request: Variance from Article III Section 10-302(A) to allow for a new lot with 60.45'± of frontage where 100' is required

After consideration, a motion to grant the petition failed to pass and the request was denied. In conformance with RSA 677:2, you have thirty days from the date of decision to file a request for rehearing with the Board of Adjustment.

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

Very truly yours,

Charles A. LeBlanc, Chairman
Board of Adjustment

mek

c: Richard A. Hopley, Building Inspector
Roseann Maurice-Lentz, City Assessor

Case # 8-1

Petitioners: Martin Ryan

Property: 221 Woodbury Ave. Assessor Map 175, Lot 10

Zoning district: General Residence A

Request: Variance from Article III Section 10-302(A) to allow for a new lot with 60.45'± of frontage where 100' is required



Previous Board of Adjustment actions

None.



Overview

The applicant is seeking relief from to allow the division of the lot into two lots, both lots having less than the required street frontage of 100'.

This request is being reviewed as a Boccia analysis

All of the submission requirements have been met by the applicant

The property is located at 221 Woodbury Avenue which is on the corner of Woodbury Avenue and Thornton Street as shown on the attached plans. In creating the second lot which would have a nonconforming frontage the remainder of the lot from which the new lot is being created would now have nonconforming frontage on Woodbury Avenue. If the frontage were to be changed to Thornton Street than the depth of the remaining land would now be nonconforming. The applicant should really be asking for frontage or depth relief for the parcel remaining on the corner of Woodbury Avenue and Thornton Street after the lot split occurs.

Depth of Lot - The average horizontal distance between the front lot line and the rear lot line as measured along both side property lines.

The average depth of the lot utilizing Thornton street as the frontage is 64'± where 70' is required. The address for the home is Woodbury Avenue which suggests that the frontage for the lot is Woodbury Avenue. Since this is the case once the lot split occurs both parcels would have less than the required 100' of frontage.

The creation of an undersized lot(s) would be in opposition to the current zoning policy and could be considered to be contrary to the spirit of the ordinance by allowing non-conformity to take place, could be considered a diminution of surrounding property values by allowing the further erosion of lot size requirements where only 25% of the lots meet the zoning standards,

and may hurt the benefit to the public interest by allowing the construction of an additional unit to be built on an undersized lot where one did not exist previously.

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**Findings of Fact**

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

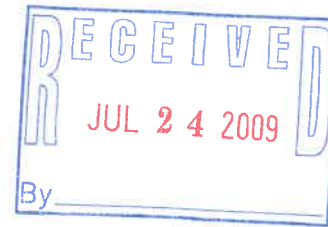
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Analysis for Variances

	<u>True</u>	<u>Not True</u>
I. The variance will not be contrary to the public interest.	<input type="checkbox"/>	<input type="checkbox"/>
II. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.		
B. Applicant seeking area variance – Boccia analysis		
i. An area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property.	<input type="checkbox"/>	<input type="checkbox"/>
ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.	<input type="checkbox"/>	<input type="checkbox"/>
III. The variance is consistent with the spirit of the ordinance.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Substantial justice is done.	<input type="checkbox"/>	<input type="checkbox"/>
V. The value of surrounding properties will not be diminished.	<input type="checkbox"/>	<input type="checkbox"/>

Martin Ryan
221 Woodbury Avenue
Portsmouth, NH 03801

July 22, 2009



City of Portsmouth, Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

Re: Zoning Board of Adjustments Relief Request
221 Woodbury Avenue
Lot 10
Tax Map 175
General Residence A

Dear Members of the Board;

I am seeking a variance relief of the 100-linear feet of required frontage for the purpose of subdivision of the current 17,224 sf. lot from a single lot into 2 dwelling lots of 9,075 sf and 8,149 sf. (See attached Proposed Site plan).

The proposed two lot subdivision meets all of the criteria of the Zoning Regulations under Section 10-302 (A) with the exception of the frontage requirement. Lot 1, which contains the existing dwelling and garage, will meet of the Zoning Requirements for a new residential lot. Lot 2, which vacant, will meet of the criteria as well with the exception of the frontage requirement.

I am proposing and requesting that Lot 2 have 60-feet of frontage where 100-feet is required.

5 Conditions

The denial of the variance will result in unnecessary hardship

If the parcel were vacant, it would be possible to configure the proposed lot lines in a manner that would not require a variance. The house was constructed in 1900, which is prior to the Zoning Ordinance. The lot was developed in a manner that is conducive to subdividing and creating a similar sized and shaped lot as the abutting parcels.

No diminution in value of surrounding property values

The majority of abutting parcels are smaller and have similar lot frontage as the proposed lot. Of the approximately 388 lots in this particular zoning district only 91 meet the required 100 linear feet of frontage. That's approximately 25% of the lots meeting the requirement.

Contrary of the spirit of the ordinance

The proposed lots will be developed in a reasonable manner. Each lot will have adequate buffering from abutting properties and room for adequate yards and treatment of stormwater, parking, etc.

Benefits to the public Interest

The granting of the variance will allow the development of additional housing in an area with a housing shortage. Improvements to the property would translate into increased tax revenue for the City of Portsmouth.

Substantial justice

Granting the variance will not be injurious to the abutters, it will do substantial justice in the fact that the remaining open portions of the property can be developed. Its fair to believe that w/o the variance, that the existing house could be expanded to an unwieldy size and occupy as much space as 2 house lots.

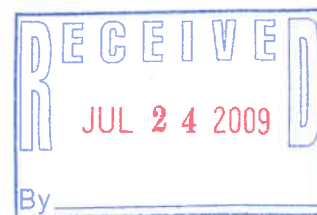
In summary, granting of a variance would not be contrary to the public interest or injurious to public rights of others. This proposal does not conflict with the ordinance or violate the zoning requirements in any way. The creation of these lots would be harmonious with the immediate neighborhood and even more in keeping with the lots sizes that are indigenous to the City of Portsmouth.

Please call me at (603) 436-5767 if you have any questions or require additional information regarding this matter. I look forward to presenting this issue to the board.

Sincerely,



Martin L. Ryan



GENERAL RESIDENCE A - GRA

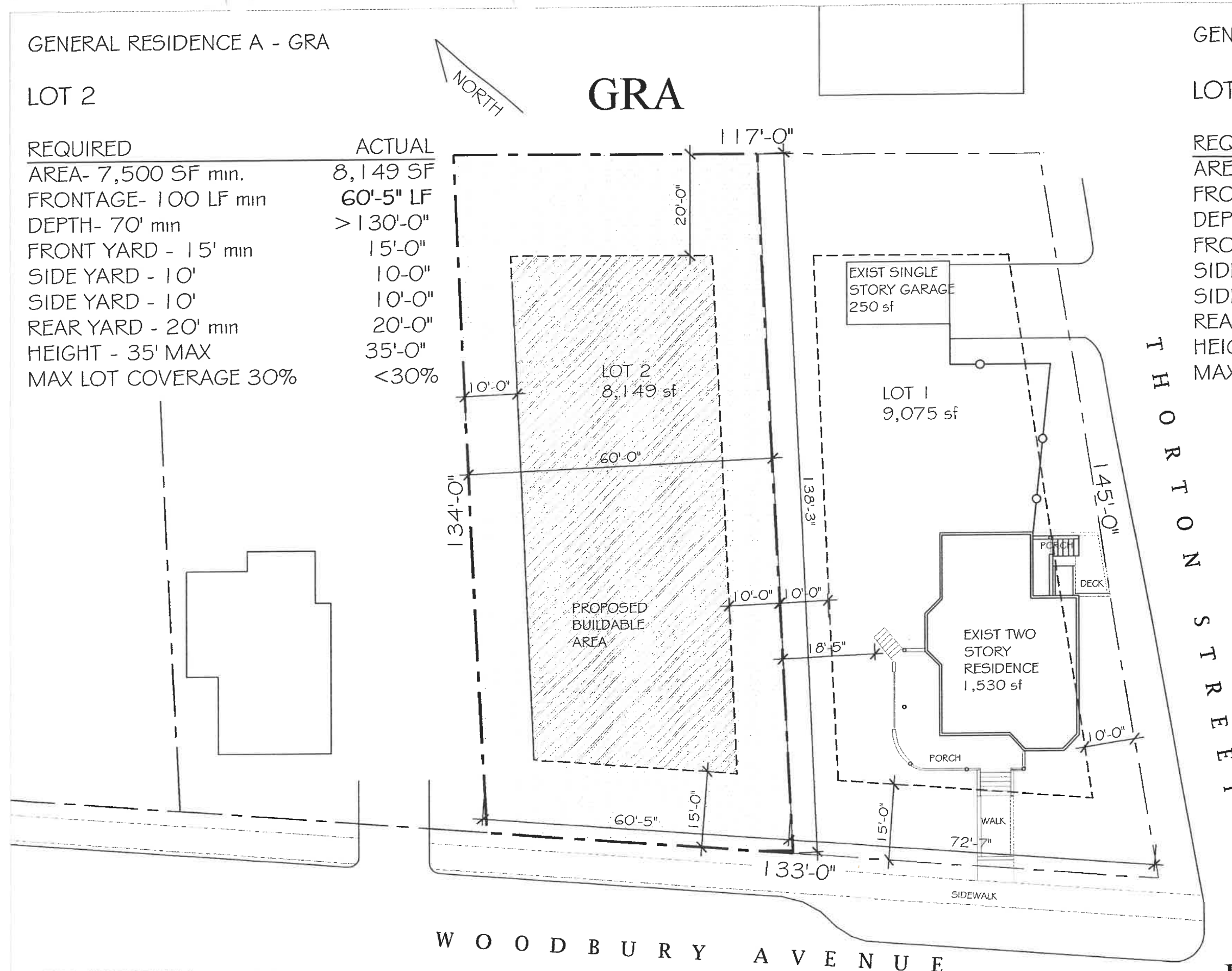
LOT 2

REQUIRED	ACTUAL
AREA- 7,500 SF min.	8,149 SF
FRONTAGE- 100 LF min	60'-5" LF
DEPTH- 70' min	> 130'-0"
FRONT YARD - 15' min	15'-0"
SIDE YARD - 10'	10'-0"
SIDE YARD - 10'	10'-0"
REAR YARD - 20' min	20'-0"
HEIGHT - 35' MAX	35'-0"
MAX LOT COVERAGE 30%	<30%

GENERAL RESIDENCE A - GRA

LOT 1

REQUIRED	ACTUAL
AREA- 7,500 SF min.	9,075 SF
FRONTAGE- 100 LF min	72'-7"
DEPTH- 70' min	> 130'-0"
FRONT YARD - 15' min	15'-0"
SIDE YARD - 10'	6'-0"
SIDE YARD - 10'	18'-5"
REAR YARD - 20' min	21'-0"
HEIGHT - 35'	30'-0"
MAX LOT COVERAGE 30%	19.7%



221 WOODBURY AVENUE
07-22-09

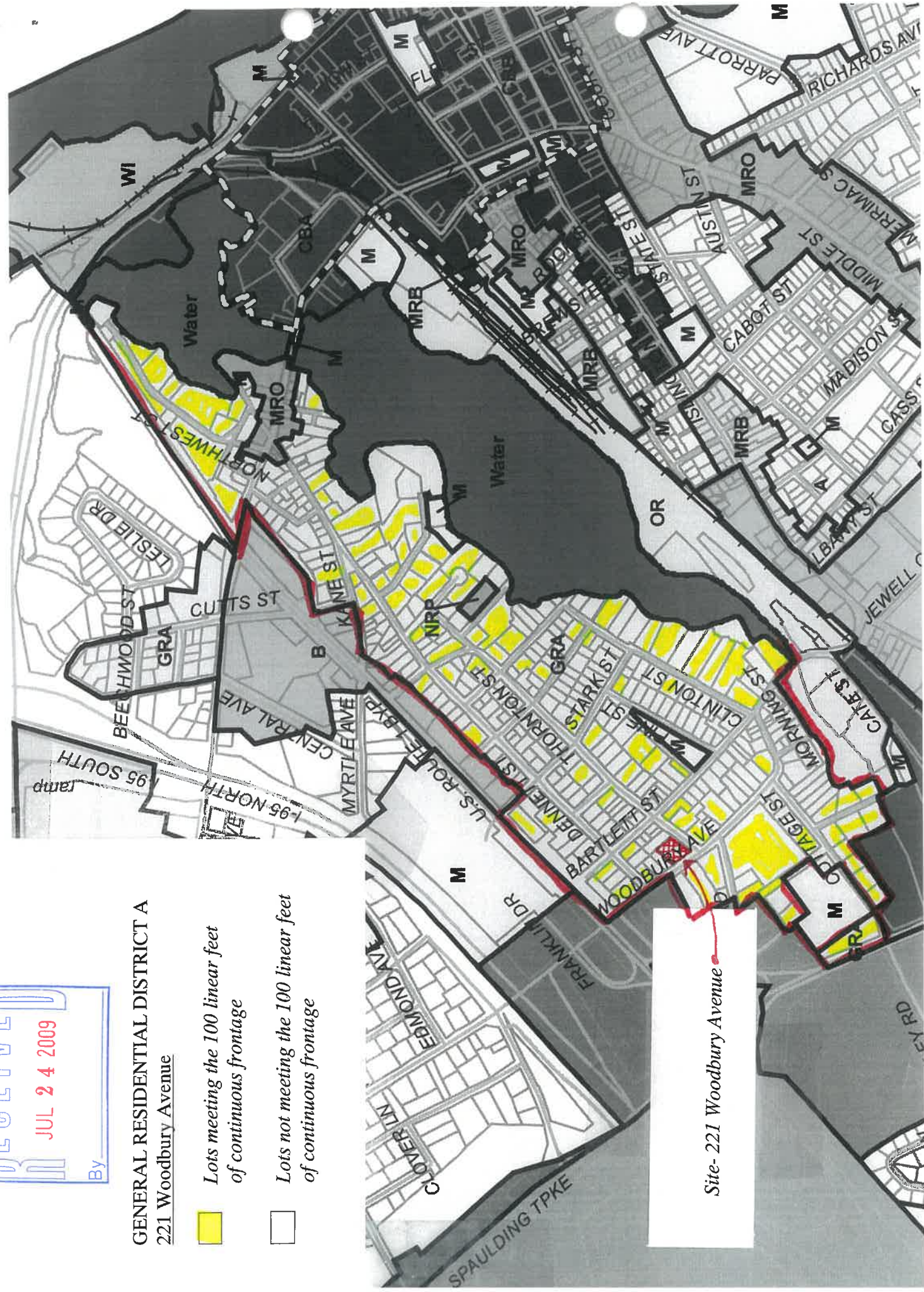
PROPOSED SITE PLAN

RECEIVED
JUL 24 2009
By

GENERAL RESIDENTIAL DISTRICT A
221 Woodbury Avenue

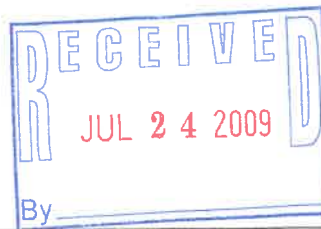
■ Lots meeting the 100 linear feet
of continuous frontage

□ Lots not meeting the 100 linear feet
of continuous frontage



Site- 221 Woodbury Avenue

CITY OF PORTSMOUTH
Board of Adjustment Application



Department Use Only	Date	7-24-09
Assessor Plan # <u>175</u>	Fee	875.00
Zone <u>GRA</u>	Lot # <u>10</u>	Lot area _____
	By	<u>ML</u>

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

Owner Martin L. Ryan Applicant Martin L. Ryan

Owner address 221 Woodbury Avenue Applicant address 221 Woodbury Avenue

Owner phone (603-436-5767) ext. _____ Applicant phone (603) 502-8635 ext. _____

Owner Fax 603-457-0268 Applicant Fax 603-457-0268

Lessee _____ Lessee address _____

Lessee phone _____ Lessee Fax _____

Location address of work: 16 Market Square, Suite 2, Portsmouth, NH 03801

Existing use: residence

Undersigned hereby requests:

	<u>Article</u>	<u>Section</u>
<input type="checkbox"/> Appeal from an Administrative Decision	_____	_____
<input type="checkbox"/> Special Exception	_____	_____
<input checked="" type="checkbox"/> Variance	Dimension Table 810-302A	_____

To permit the following:
The variance requested is to relieve the dimensional requirements of one lot from 100' lf of frontage to 60.45' of street frontage in an effort to take a single 17,224 sf. lot and subdivide the lot into 2 separate lots of 9,075 sf. and 8,150 sf. each.

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D):
Location of the existing structure makes it impossible to configure the proposed lot lines in a manner that would not require a variance. The house was constructed in 1900, which is prior to the Zoning Ordinance. The lot was developed in a manner that is condusive to subdividing and creating a similar sized and shaped lot as the abutting parcels. (see narrative).

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

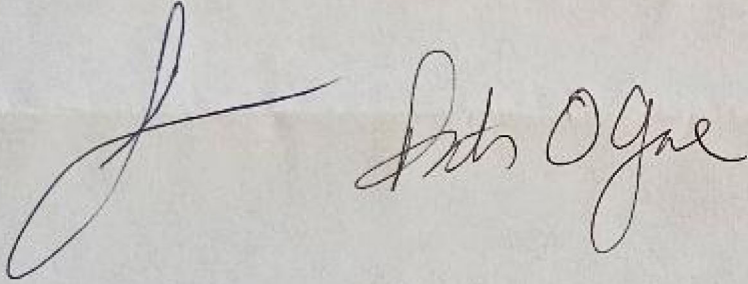
*11" x 17" plans maybe used only if 8 1/2" x 11" plan would not be readable.

Signature of Owner Date 7/22/09

To whom it may concern:

My wife and I live at 214 Woodbury Ave, directly across the street from 221. We fully support the request for the variance requested by Martin and Lisa to allow reduced frontage and create a new buildable lot. The new lot in question has sufficient area for a home to be built and would be in keeping with character of the neighborhood. In addition, housing is badly needed in the city, and this would be one more small step in alleviating that issue.

Scott and Patty Gove

A handwritten signature in cursive script, appearing to read "Scott and Patty Gove". The signature is written in dark ink on a light-colored, slightly textured paper. The first part of the signature is a large, stylized initial, followed by the names "Scott and Patty Gove" written in a fluid, connected cursive style.

From Moore-251

From: Joan Moore (jmo1251@hotmail.com)

To: mlr10000@yahoo.com

Date: Tuesday, May 12, 2026 at 11:59 AM EDT

Hi Martin & Lisa,

Thanks for the letter and house plans. We hope that everything goes well with the city and you can start your new home soon!

Best wishes, Alan & Joan

221 WOODBURY AVENUE PORTSMOUTH, NH 03801 SUBDIVISION PROPOSAL PLAN

DRAWING LIST

NO	TITLE
T1	TITLE SHEET
C1	HISTORIC MAP & FIGURE GROUND
C2	EXISTING SITE PLAN
C3	PROPOSED SITE PLAN
C4	SITE DIAGRAMS
A1	SITE ELEVATIONS
A2	SITE ELEVATIONS
P1	CONTEXT PHOTOGRAPHS
P2	CONTEXT PHOTOGRAPHS

OWNER- RYAN TRUST
JUNE 16, 2026



AERIAL VIEW
SCALE: NTS

MARTIN RYAN ARCHITECT
221 Woodbury Ave
Portsmouth, NH 03801

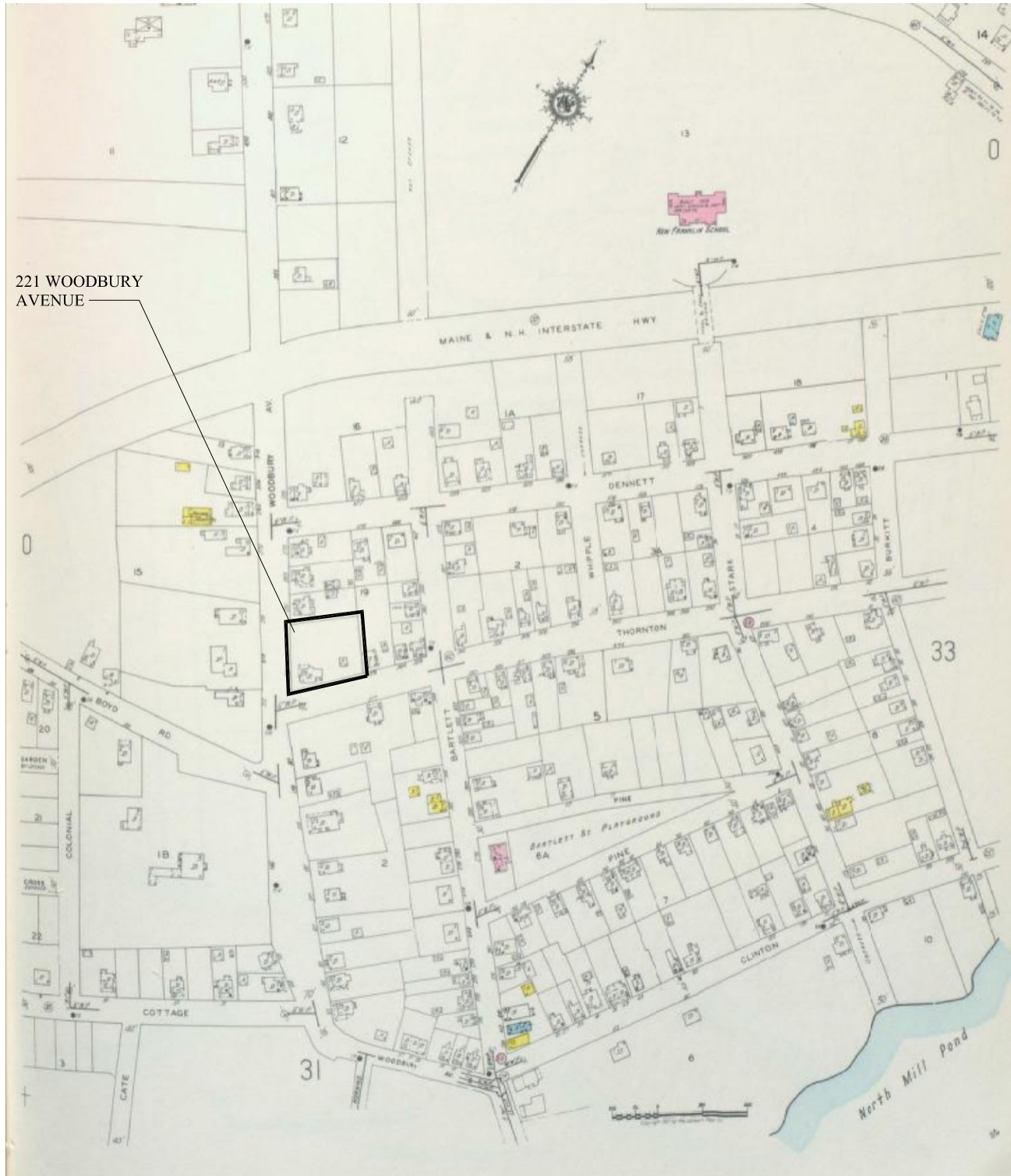
JUNE 16, 2026

221 WOODBURY AVE
PORTSMOUTH, NH
SUBDIVISION PLAN

DATE: 04-22-26
DESIGN:
DRAWN:
CHECKED:
SCALE:
JOB:

TITLE
SHEET

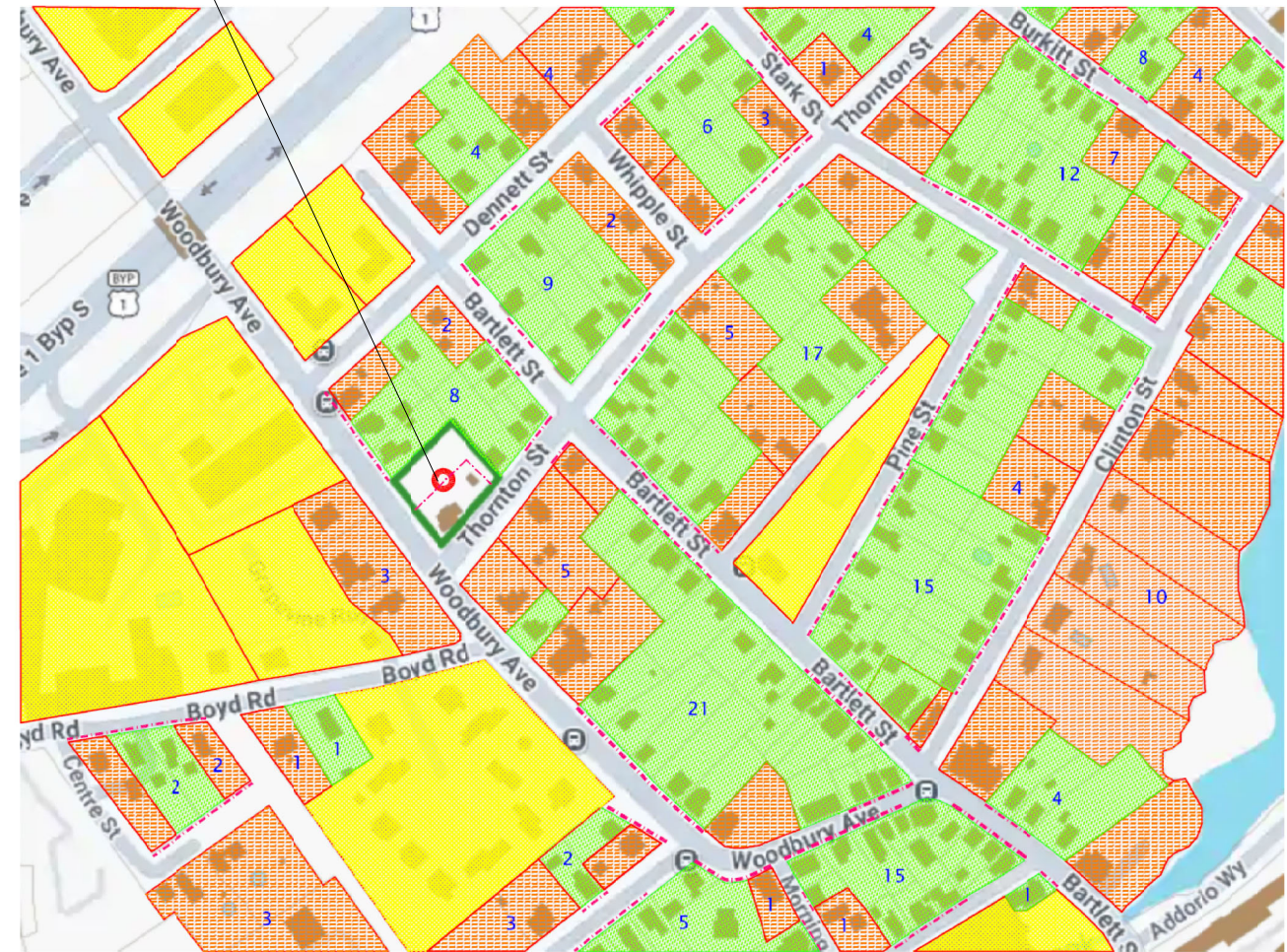
T1



221 WOODBURY AVENUE

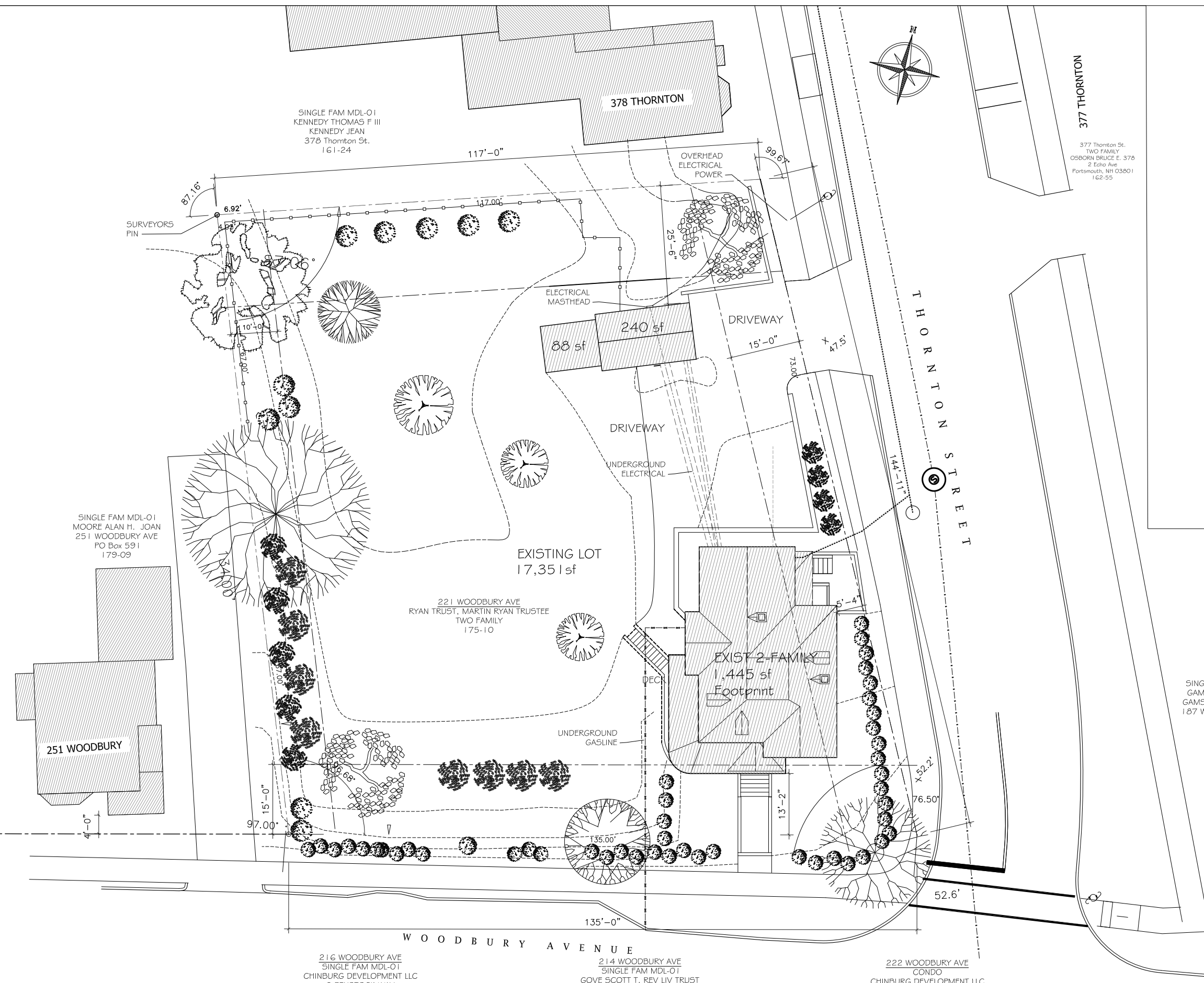
SANBORNE MAP 1920
SCALE: NTS

221 WOODBURY AVENUE



- GREEN— LOTS WITH LESS THAN THE 100LF REQUIRED STREET FRONTAGE (TOTAL 134 LOTS)
- ORANGE— LOTS THAT MEET THE 100 LF STREET FRONTAGE REQUIREMENT (TOTAL 60 LOTS)
- YELLOW— COMMERCIAL OR MULTI-FAMILY LOTS
- FRONTAGE EQUAL OR LESS THAN 63 LF (82 TOTAL)
- SITE— 221 WOODBURY AVENUE
- 204 LOTS TOTAL SHOWN

FIGURE GROUND
SCALE: NTS



SITE NOTES:
OWNER OF RECORD: RYAN TRUST
ADDRESS: 221 WOODBURY AVE
 PORTSMOUTH, NEW HAMPSHIRE
PARCEL: AS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S
 MAP 175 AS LOT 16.
PARCEL AREA = ~17,351 SF = 0.403 ACRES
ZONING DISTRICT: GENERAL RESIDENTIAL A (GRA)

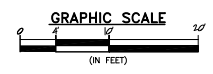
ZONING DIMENSIONS AND DENSITY REQUIREMENTS:

	REQUIRED	EXISTING
A) MINIMUM LOT SIZE	7,500 SF	17,58 SF
B) MINIMUM LOT FRONTAGE		
WOODBURY AVE	100 LF	135.0 LF
THORNTON STREET	100 LF	144.9 LF
C) MINIMUM FRONT SETBACK		
WOODBURY AVE	15 LF	13.1 LF
THORNTON STREET	15 LF	5.33 LF
D) MINIMUM LOT DEPTH	70 LF	135 LF
E) MINIMUM SIDE SETBACK	10 LF	66 LF
F) MINIMUM REAR SETBACK	20 LF	25.5 LF
G) MAXIMUM LOT COVERAGE		
25%	4,337 SF	1,767 SF
30%	5,205 SF	13,018 SF
H) MINIMUM OPEN SPACE		
30%	5,205 SF	13,018 SF
35%		89.82%

LEGEND

- IRON ROD/PIPE FOUND
- BENCHMARK
- SEWER MANHOLE
- DRAIN MANHOLE
- UTILITY POLE
- CATCH BASIN
- HYDRANT
- GATE VALVE
- SIGN
- PROPERTY LINE
- EDGE OF PAVEMENT
- EXISTING CONTOUR
- PROPOSED CONTOUR
- WATER LINE
- STORM DRAIN LINE
- SANITARY SEWER LINE
- OVERHEAD UTILITY LINE
- UNDERGROUND ELECTRIC LINE

SINGLE FAM MDL-01
 GAMSTER COLBY T.
 GAMSTER AMANDA D.
 187 WOODBURY AVE.
 162-56



EXISTING SITE PLAN
 SCALE: 1" = 10'-0"

216 WOODBURY AVE
 SINGLE FAM MDL-01
 CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY
 NEWMARKET NH 03857
 175-03

214 WOODBURY AVE
 SINGLE FAM MDL-01
 GOVE SCOTT T. REV LIV TRUST
 OBRIEN PATRICIA REV TRUST
 214 WOODBURY AVE.
 175-02

222 WOODBURY AVE
 CONDO
 CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY
 NEWMARKET NH 03857
 175-01

MARTIN RYAN ARCHITECT
 221 Woodbury Ave
 Portsmouth, NH 03801

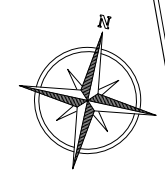
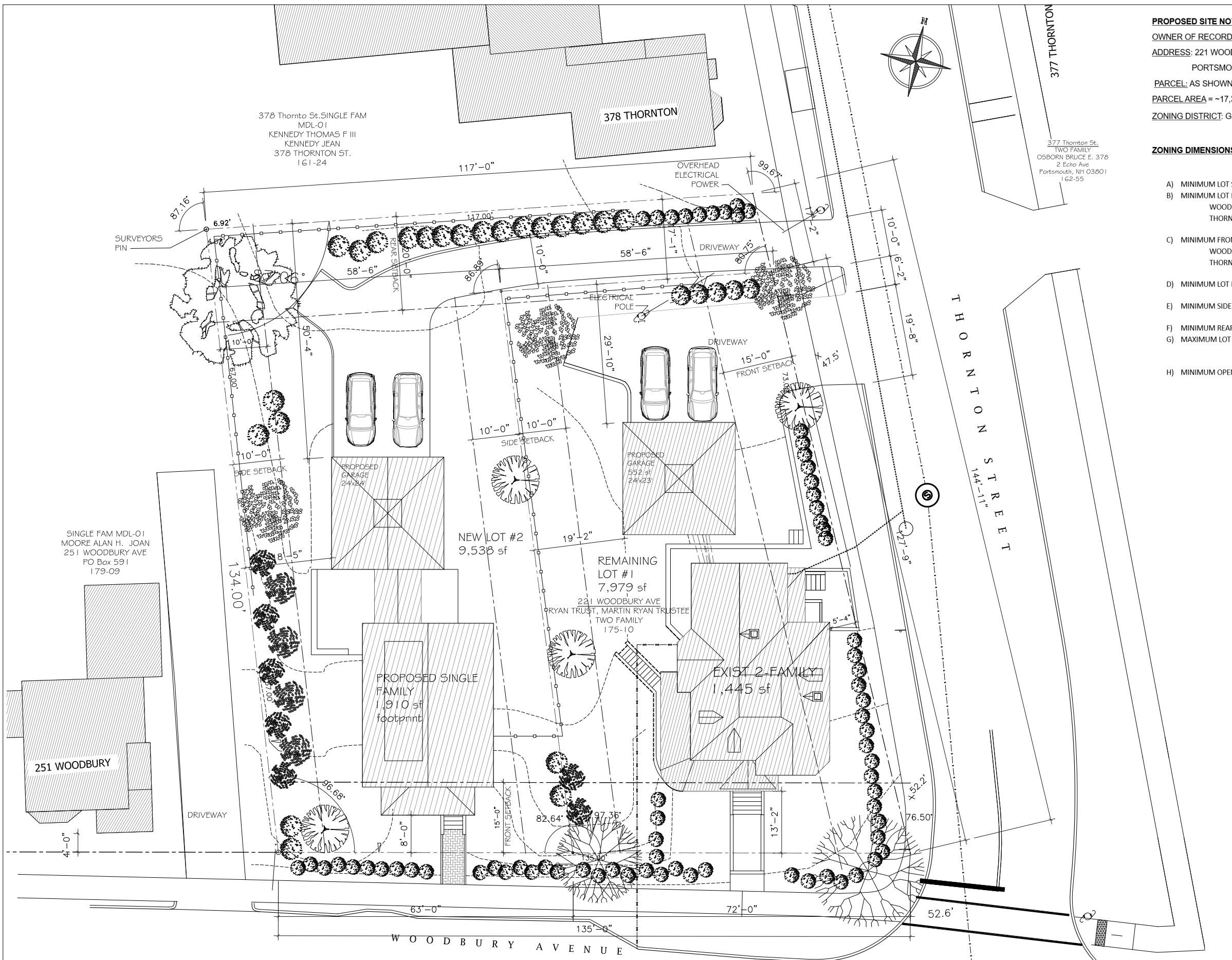
JUNE 16, 2026

221 WOODBURY AVE
 PORTSMOUTH, NH
 SUBDIVISION PLAN

DATE: 04-22-26
 DESIGN:
 DRAWN:
 CHECKED:
 SCALE:
 JOB:

EXISTING SITE
 PLAN

C2



PROPOSED SITE NOTES:
OWNER OF RECORD: RYAN TRUST
ADDRESS: 221 WOODBURY AVE
 PORTSMOUTH, NEW HAMPSHIRE
PARCEL: AS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 175 AS LOT 16.
PARCEL AREA = ~17,351 SF = 0.403 ACRES
ZONING DISTRICT: GENERAL RESIDENTIAL A (GRA)

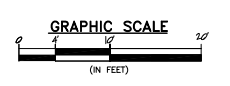
ZONING DIMENSIONS AND DENSITY REQUIREMENTS:

	REQUIRED	EXISTING	LOT#1	LOT#2
A) MINIMUM LOT SIZE	7,500 SF	17,358 SF	7,979 SF	9,538 SF
B) MINIMUM LOT FRONTAGE				
WOODBURY AVE	100 LF	135.0 LF	72.0 LF	63.0 LF*
THORNTON STREET	100 LF	144.9 LF	127.8 LF	N/A
C) MINIMUM FRONT SETBACK				
WOODBURY AVE	15 LF	13.1 LF	13.1 LF	9.33 LF
THORNTON STREET	15 LF	5.33 LF	5.4 LF	N/A
D) MINIMUM LOT DEPTH	70 LF	139 LF	64.33 LF*	136 LF
E) MINIMUM SIDE SETBACK	10 LF	66 LF	19.1 LF	18.4 LF
F) MINIMUM REAR SETBACK	20 LF	25.5 LF	29.8 LF	49 LF
G) MAXIMUM LOT COVERAGE				
25%	4,337 SF	1,812 SF	1,997 SF	1,910 SF
30%	5,205 SF	13,018 SF	5,982 SF	7,628 SF
H) MINIMUM OPEN SPACE				
25%			25%	20%
30%			75%	80%

LEGEND

IRON ROD/ PIPE FOUND	
BENCHMARK	
SEWER MANHOLE	
DRAIN MANHOLE	
UTILITY POLE	
CATCH BASIN	
HYDRANT	
GATE VALVE	
SIGN	
PROPERTY LINE	
EDGE OF PAVEMENT	
EXISTING CONTOUR	
PROPOSED CONTOUR	
WATER LINE	
STORM DRAIN LINE	
SANITARY SEWER LINE	
OVERHEAD UTILITY LINE	
UNDERGROUND ELECTRIC LINE	

187 Woodbury Ave
 SINGLE FAM MDL-01
 GAMSTER COLBY T.
 GAMSTER AMANDA D.
 187 WOODBURY AVE.
 162-56



SITE PLAN
SCALE: 1" = 10'-0"

216 Woodbury Ave
 SINGLE FAM MDL-01
 CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY
 NEWMARKET NH 03857
 175-03

214 Woodbury Ave
 SINGLE FAM MDL-01
 GOVE SCOTT T. REV LIV TRUST
 O'BRIEN PATRICIA REV TRUST
 214 WOODBURY AVE.
 175-02

222 Woodbury Ave
 CONDO
 CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY
 NEWMARKET NH 03857
 175-01

MARTIN RYAN ARCHITECT
 221 Woodbury Ave
 Portsmouth, NH 03801

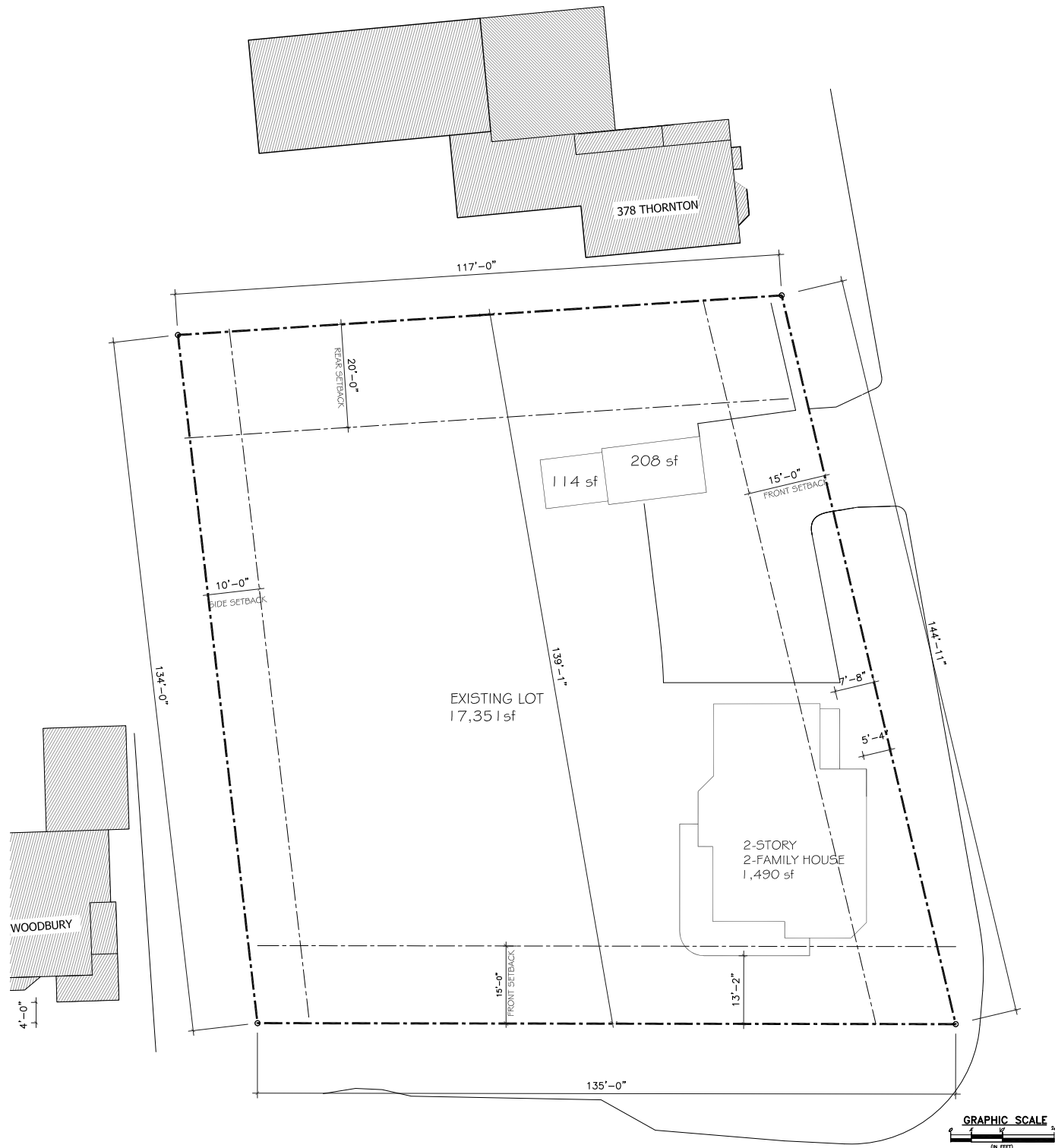
June 16, 2026
 City of Portsmouth, NH
 BOA Hearing

221 WOODBURY AVE
 PORTSMOUTH, NH
 SUBDIVISION PLAN

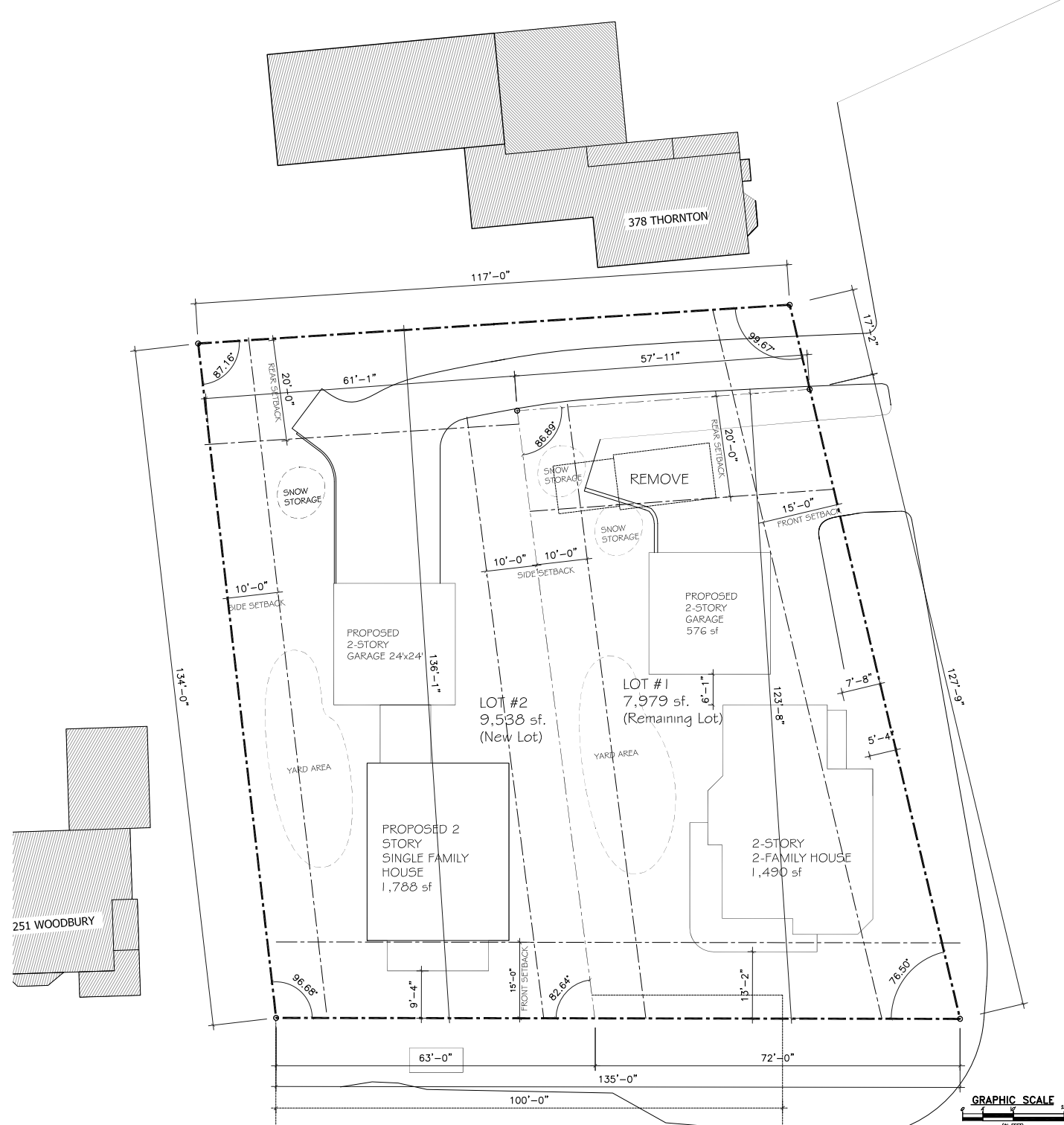
DATE: 04-22-26
 DESIGN:
 DRAWN:
 CHECKED:
 SCALE:
 JOB:

PROPOSED SITE
 PLAN

C3

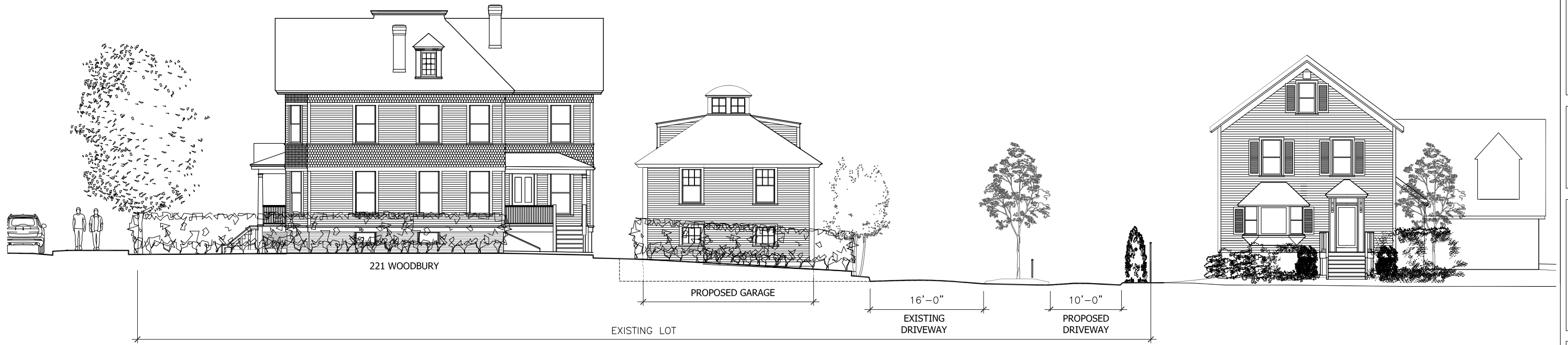


EXISTING SITE DIAGRAM
SCALE: NTS

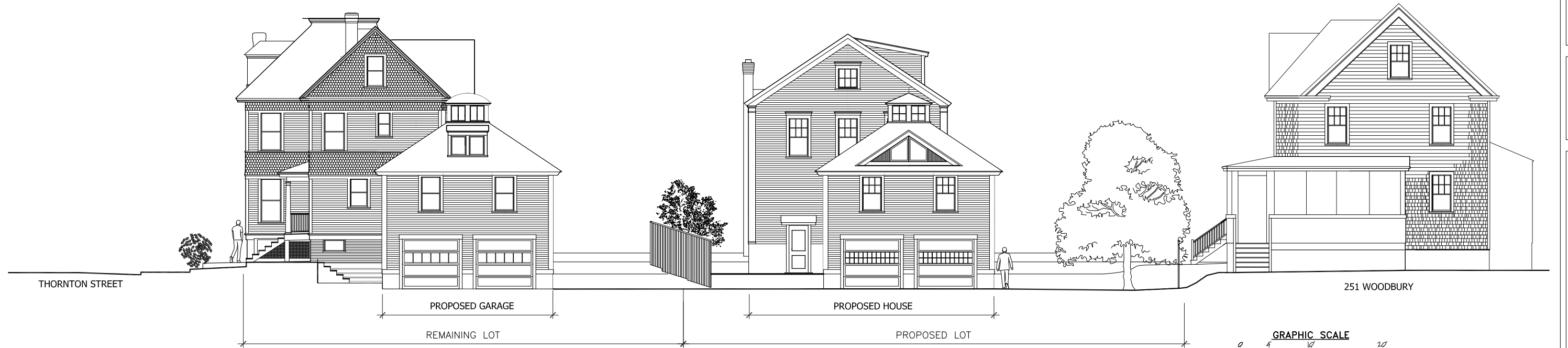


PROPOSED SITE DIAGRAM
SCALE: NTS

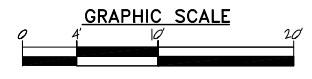
DATE: 04-22-26
DESIGN:
DRAWN:
CHECKED:
SCALE:
JOB:



3 THORNTON STREET ELEVATION



4 NORTH ELEVATION



MARTIN RYAN ARCHITECT
221 Woodbury Ave
Portsmouth, NH 03801

JUNE 16, 2026

221 WOODBURY AVE
PORTSMOUTH, NH
SUBDIVISION PLAN

DATE: 04-22-26
DESIGN:
DRAWN:
CHECKED:
SCALE:
JOB:

SITE
ELEVATIONS

A2



PHOTOGRAPH #1



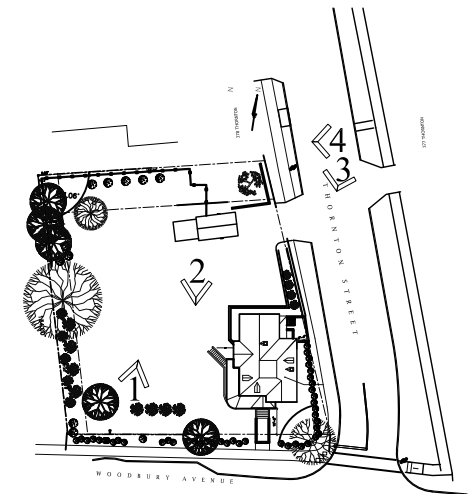
PHOTOGRAPH #2



PHOTOGRAPH #3



PHOTOGRAPH #4



SITE KEY PLAN
SCALE: NTS



PHOTOGRAPH #5



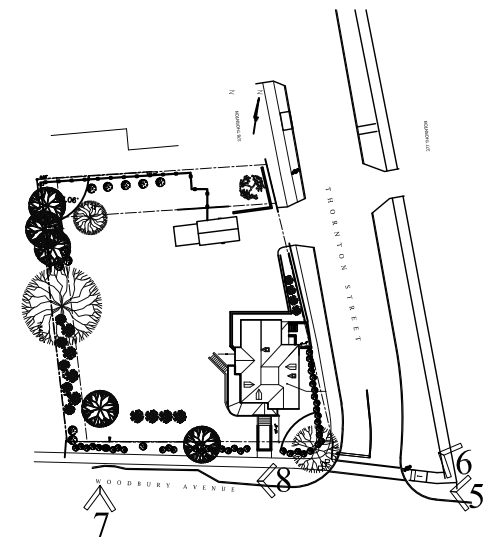
PHOTOGRAPH #6



PHOTOGRAPH #7



PHOTOGRAPH #8



SITE KEY PLAN
SCALE: NTS

MARTIN RYAN ARCHITECT
221 Woodbury Ave
Portsmouth, NH 03851

31 MARCH 2026

221 WOODBURY AVE
PORTSMOUTH, NH
PROPOSAL

DATE: 08-01-21
DESIGN:
DRAWN:
CHECKED:
SCALE:
JOB:

CONTEXT
PHOTOGRAPHS

P2