

BY: VIEWPOINT & HAND DELIVERY

September 23, 2026

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Cain Investments, LLC
0 Woodworth Ave, Tax Map 232, Lot 73**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application for the property at 0 Woodworth Avenue, Tax Map 232, Lot 73.

- 1) Landowner Letter of Authorization
- 2) Narrative to Variance Application
- 3) Site Plan
- 4) Architectural Plans
- 5) Photographs of Property

A copy of the above application materials is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

David L Schofield and Nancy E Kanner, Trustees of the Schofield-Kanner Revocable Trust of 2025, record owners of property located off of **Woodworth Avenue, Portsmouth, NH**, identified on **Tax Map 232, Lot 73** (the “Property”), hereby authorizes **Durbin Law Offices PLLC and Cain Investments, LLC**, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth relative to the Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

<i>David Schofield</i>	dotloop verified 09/16/26 6:23 PM EEST XDPM-T186-C8J6-ZDSQ
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David L. Schofield, Trustee

<i>Nancy Kanner</i>	dotloop verified 09/16/26 6:26 PM EEST D01H-1GY6-X0BG-NRQN
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Nancy E. Kanner, Trustee

**CITY OF PORTSMOUTH
VARIANCE APPLICATION NARRATIVE**

**0 Woodworth Avenue
Tax Map 232, Lot 73**

**Cain Investments, LLC
(Applicant)**

**David L Schofield and Nancy E Kanner,
Trustees of the Schofield-Kanner Revocable Trust of 2025
(Owners)**

INTRODUCTION

History

The property at 0 Woodworth Avenue, identified on Tax Map 232 as Lot 73 is a 3440 square feet corner lot located in the Single Residence B (“SRB”) Zoning District (the “Property”). It is a vacant lot of record shown as Lot 73 on a 1902 subdivision plan for “Prospect Park”. **Exhibit A.** Prospect Park is otherwise known as one of Portsmouth’s “trolley stop” subdivisions that was created during the advancement of motorized transportation that allowed homes to be developed farther from the town center.

Most of the lots were 40’ x 80’ or 40’ x 86’, sized to accommodate standardized homes; homes that could be purchased from the Sears and Roebuck catalogues (i.e. “Craftsman Homes”). The classic grid layout provided homebuyers with their “little slice of heaven”. By 1903, the lots in Prospect Park were selling like “hot cakes” as evidenced by the Portsmouth Herald. **Exhibit B.** However, as the nation prepared for and entered war, the economy declined and many of the Prospect Park lots were acquired by the City through tax collector deed. **Exhibit C.** Many lots were subsequently combined or partially merged with other lots to accommodate larger yards and homes, as the desires of homeowners evolved. Prospect Park was developed over a long period of time, and its complexion and character have changed significantly over the past century plus. There are still several *developed* lots in the immediate vicinity of the Property that remain in their original dimensions and are of similar size, including but not limited to: TM 232-59, 232-70, 232-74 and 243-41. **Exhibit D.**

Current Plans

The Applicant, Cain Investments, LLC, would like to construct a single-family home on the Property using a floor plan specifically designed to accommodate a smaller, narrower lot, while providing modern amenities and features that most homeowners demand in today's market. The lot itself is non-conforming with respect to area, frontage, and depth. Because the lot is so small and narrow in width (40'), it has a small building envelope (520 sf.). In addition, it has only 22.9% of the area required for a conforming lot (15,000 sf.) in the SRB Zoning District. Because the Property is significantly undersized and non-conforming in multiple respects, it cannot be reasonably developed without several variances from Section 10.521 of the Portsmouth Zoning Ordinance (the "Ordinance"). The Applicant has made a conscious effort to put forward a plan for the Property that is the most unobtrusive to abutting properties.

Prior Zoning Application (2009)

A variance application was previously filed in 2009 by a different Applicant involving the subject Property and an adjacent lot that were under common ownership. The Applicant sought to merge the two properties and re-subdivide them into two new lots of different configurations. One of the proposed lots needed a variance for lot area while the other required variances for lot area, depth and frontage. The Board voted to deny the variances on the basis that the "public interest" and "unnecessary hardship" criteria had not been met because the subdivision proposal would result in two non-conforming lots.

If any question arises as to whether the Board may consider the current application based on the precedence set forth by *Fisher v. City of Dover* (120 N.H. 187, 1980), the answer is "yes". To satisfy the test set forth by the Court in *Fisher v. City of Dover*, any new application must *differ materially in nature and degree* from the prior application or there must be a *material change of circumstances* for the Board to consider the new application.

With the current application, the Board is only being asked to consider the variances necessary to construct a single-family home on a lawfully existing non-conforming lot of record. The Applicant is not seeking to merge or subdivide property or otherwise create new non-conforming lots that do not already exist. The building coverage and setback variances applied for are the only variances being sought that do not related to existing "grandfathered" non-conformities of the Property. The test set forth by *Fisher v. City of Dover* is clearly satisfied with the current application. Therefore, it is proper for the Board to address the merits of the application.

ZONING RELIEF SUMMARY

The Applicant seeks the following variances from Section 10.521 of the Portsmouth Zoning Ordinance (the “Ordinance”):

- (a) To allow a lot area of 3,440 square feet where 15,000 square is required.*
- (b) To allow a lot area per dwelling unit of 3,440 square feet where 15,000 square feet is required.
- (c) To allow 40’ of continuous street frontage where 100’ is required.*
- (d) To allow a lot depth of 86’ where 100’ is required.*
- (e) To allow a 17’ (+/-) front yard setback where 30’ is required.
- (f) To allow an 8’ (+/-) rear yard setback where 30’ is required.**
- (g) To allow 34.6% (+/-) building coverage where 20% is allowed.***

VARIANCE CRITERIA

Granting the variances will not be contrary to the spirit and intent of the Ordinance or the public interest.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" *Id.* "Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011). "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." *Id.*

The area formerly known as “Prospect Park” predominantly consists of single-family home lots that do not meet the 15,000 square foot requirement. Many, if not all the lots in the immediate surrounding area that are of similar or equal size to the Property and are not encumbered by wetlands, including TM 232-59, 232-70, 232-74 and 243-41, all exceed the 20% building coverage requirement applicable to the SRB Zoning District. These lots also appear to have structures that encroach into one or more of the building setbacks.

* The Property is a non-conforming lot of record, so the existing conditions of the property (i.e. lot area, frontage and depth) should not required variance relief, but the Applicant has applied for the relief out of an abundance of caution given the Planning Department’s past history of requiring this relief for similarly situated lots.

** The rear yard setback is measured to the portion of the proposed bulkhead exceeding 18” above grade. The house is setback an additional 2’ from the rear property boundary (10’).

***Building coverage counts the proposed bulkhead, which adds an additional 0.3% to total coverage. Otherwise, coverage is 34.3%.

The primary purposes behind the Ordinance provisions, when viewed together, are to ensure that adequate light, air and space exist between buildings on abutting properties and to protect against the overcrowding or “over-densification” of land. In the present case, the proposed single-family home would have a considerable setback to the nearest structures on the abutting properties. The nearest abutting home to the left, right or rear of the Property, which is not even on an abutting property (TM 232-74), would be at least 60-70’ away at its closest distance. The other homes would be even further away. The home will primarily be surrounded by open space. Approving the variances being requested will not alter the essential character of the neighborhood, which consists of varying sized lots with single-family homes of different designs and sizes, nor will it threaten public health, safety and welfare. The addition of a single-family residence to the neighborhood will have no negative impact on traffic or municipal services, which are the most relevant considerations in this context.

Substantial Justice will be done by granting the variances.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007). The Property is a lot of record that was created in 1902 for the express purpose of having a single-family home built upon it. The adoption of zoning in Portsmouth, specifically current SRB zoning standards, has rendered the Property non-conforming and constrained it in such a way that it is not practical or economically feasible to construct a marketable single-family home on it without the variances that are being sought by the Applicant. Denial of the variances would likely foreclose on the possibility of a single-family home ever being constructed on the Property, which would represent a significant loss to the landowner. This loss outweighs any perceived gain to the public by denying the variances.

Surrounding property values will not be diminished by granting the variances.

The Board may rely upon its own knowledge and expertise in Portsmouth real estate to conclude that granting the variances necessary to allow the construction of a new tastefully designed single family home on the Property will not have a negative impact upon surrounding property values. In fact, it is more likely to increase the values of surrounding properties rather than detract from them. As noted above, the proposed home will be setback a considerable distance from the homes on surrounding properties.

Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship.

RSA 674:33, I(b)(1) Unnecessary Hardship Test (Special Conditions / Fair and Substantial Relationship)

The Property has special conditions which distinguish it from surrounding properties. When Prospect Park was established in 1902, it was primarily comprised of smaller 3,200 – 3,440 square foot lots. Modern zoning standards did not exist. The adoption of current SRB Zoning rendered the vast majority of lots within Prospect Park non-conforming, even those that had been merged post-1902. Notwithstanding, these lots were always intended to have single-family home constructed on them and were created for that express purpose. Only a handful of lots have remained in their original configuration from 1902, including the subject Property, but several of these lots cannot be developed because they are encumbered by wetlands. The Property remains one of the smallest, narrowest, unencumbered, undeveloped lots in this area of Portsmouth. As noted above, it has only 22.9% of the area required for a conforming lot in the SRB Zoning District and is only 40' wide and 86' deep. The lot itself cannot be developed without allowing variances for lot area, frontage and depth. In addition, it has an extremely limited building envelope (520 sf.) once the SRB setback standards are applied to it. The Property cannot accommodate a reasonably sized single-family home (500-700 sf. per person) with modern amenities and features without requiring building coverage and setback relief. Thus, owing to these special conditions of the Property, there is no fair and substantial relationship between the general purpose of the ordinance provisions and their specific application to the Property.

Finally, the proposed use is reasonable. The Property will be used for single-family residential purposes, a use which is permitted by right and encouraged by SRB zoning.

RSA 674:33, I(b)(2) Unnecessary Hardship Test (Strict Conformance)

In the event that the Board finds that hardship criteria above has not been established, RSA 674:33, I(b)(2) provides that “an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.” The Applicant incorporates its statements and arguments above and avers that the Property cannot be used in strict conformance with the Ordinance and the variances that have been sought are necessary to make reasonable use of it.

CONCLUSION

In conclusion, the Applicant has demonstrated that its application meets the five (5) criteria for granting the variances requested and respectfully requests the Board's approval.

Respectfully Submitted,

Dated: September 23, 2026



Derek R. Durbin, Esq.
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Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

EXHIBIT A

Prospect Park Plan of 4/17/1902 – Plan #00113 (RCRD)

EXHIBIT B

Portsmouth Herald Article of June 10, 1903

EXHIBIT C

Portsmouth Herald Article of May 9, 1918

EXHIBIT D

GIS/Tax Map Sheet

The Plains

School House

to Exeter

to Portsmouth

Electric Railroad

House

No.

No.

Prospect Park

PORTSMOUTH N H

owned by

LEAVITT, WOODWORTH & SWEATT

30 COURT ST

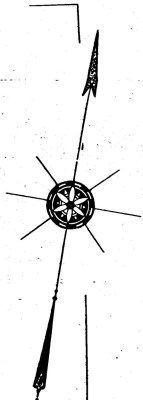


BOSTON MASS

Surveyed April 17 1902

by John N. McClintock A M C E

Road



House

60

Peverly Hill Road

Avenue Leavitt

Avenue Woodward

Avenue Sweatt

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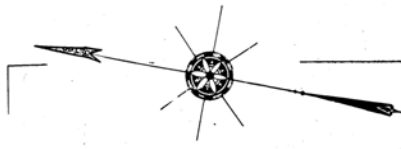
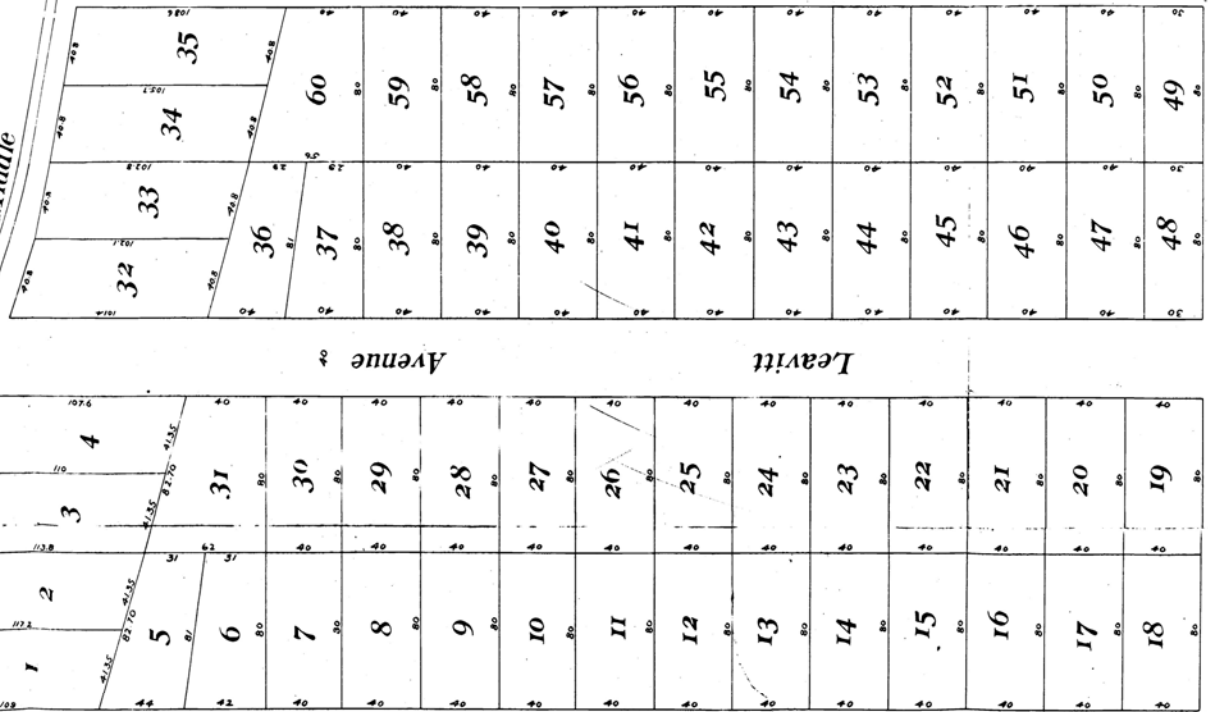
owned by

LEAVITT, WOODWORTH & SWEATT
30 COURT ST BOSTON MASS

Surveyed April 17 1902
by John N. McClintock A M C E

Road

Middle



House

Road

Hill

Peverly

Avenue

McClintock

Sheet 2 of 2
00113

Drawn by John N. McClintock Architect, Boston Mass.

Scale, 30ft. to an inch.

EXHIBIT

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The new law also provides for a regular inspection of the cows and the premises and a test of the milk at Concord.

SOLD THEM ALL.

House Lots At Prospect Park Annex Go Like Hot Cakes.

All of the house lots at Prospect Park annex, on Middel Road, have been sold. In all, one hundred and eight lots were disposed of, averaging in price from twenty-five dollars to two hundred each. Manager Cloran, who had charge of the sales, had ten assistants. They have been in this city for two weeks.

The lots are quite near the city and many of the purchasers will begin to erect homes at once.

Others, who bought lots more for speculation than anything else, will wait a while.

FOUR MORE LICENSES.

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AUCTION OF Real Estate

(Taken for Taxes)

Wednesday, May 15, 1918

At 11 O'Clock A. M.

**13 LOTS OF LAND IN
PROSPECT PARK**

Single lots, double lots and one block
of five lots.

The property will be sold to the
highest bidder absolutely without re-
serve. Good opportunity to own your
own land and plant a war garden.

By Order of City of Portsmouth.

**BUTLER & MARSHALL
AUCTIONEERS.**

EXHIBIT D**Property Information**

Property ID 0232-0073-0000
Location WOODWORTH AVE
Owner SCHOFIELD KANNER REV TRUST

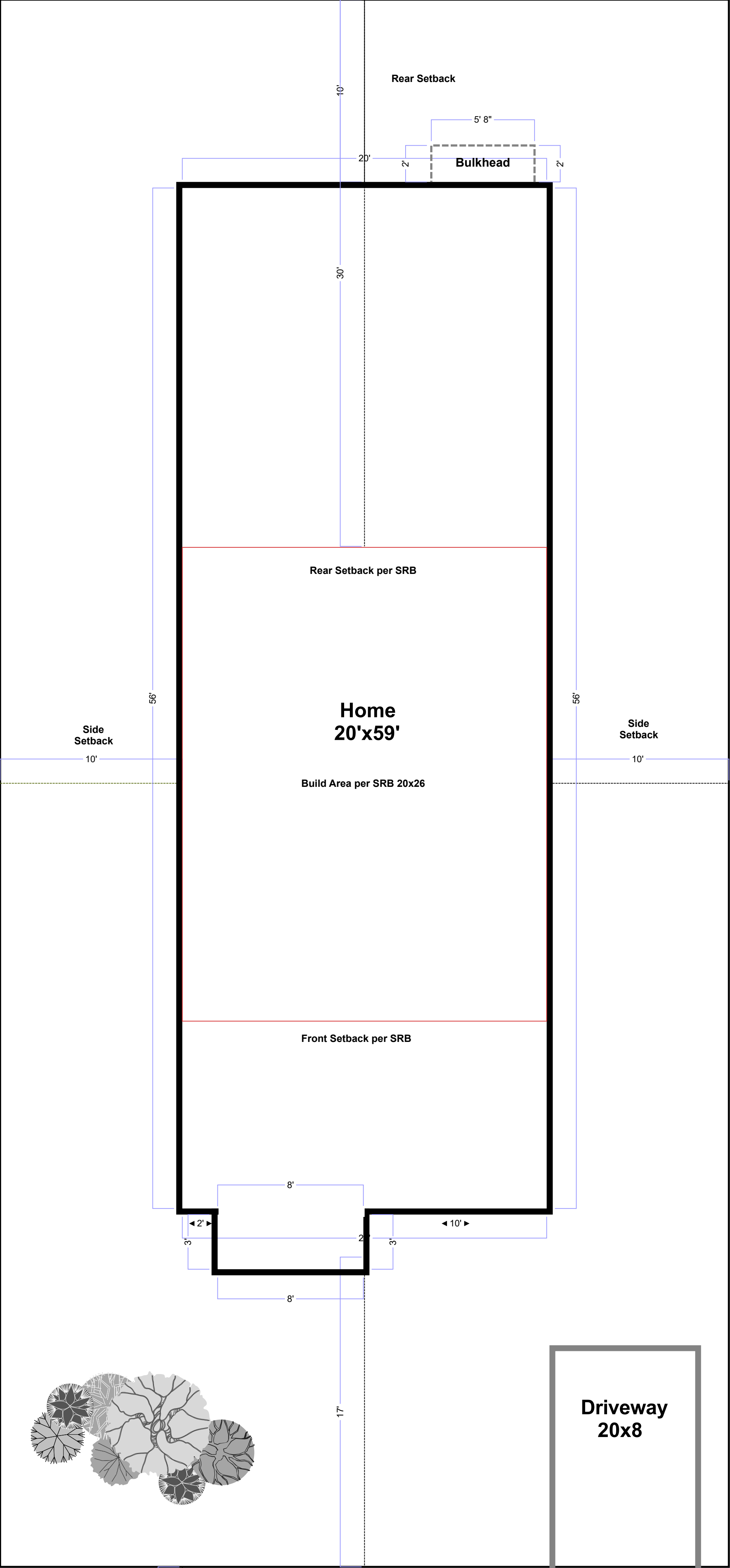
**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 03/06/2026

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Lot Plan
Woodworth Ave
Tax Map 232 Lot 73



Lot Data	
Lot Size	40x86
Lot Area	3,440 SQ FT
Home Size	20x59
Home Area	1,191 SQ FT
Coverage	34.6%

SRB Setbacks	
Front	30 FEET
Rear	30 FEET
Side	10 FEET
Height	35 FEET

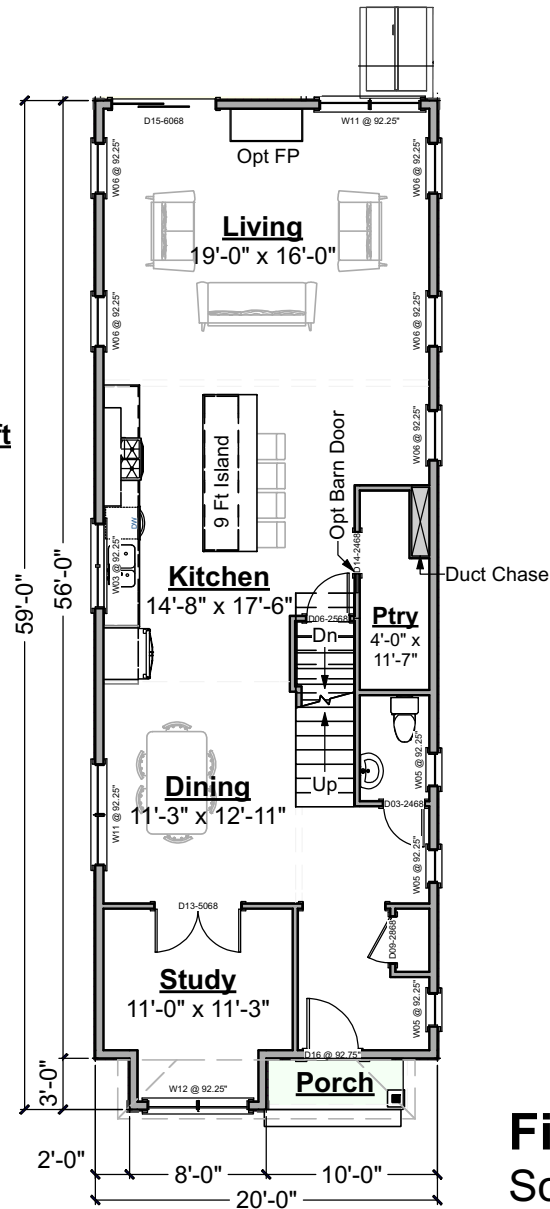
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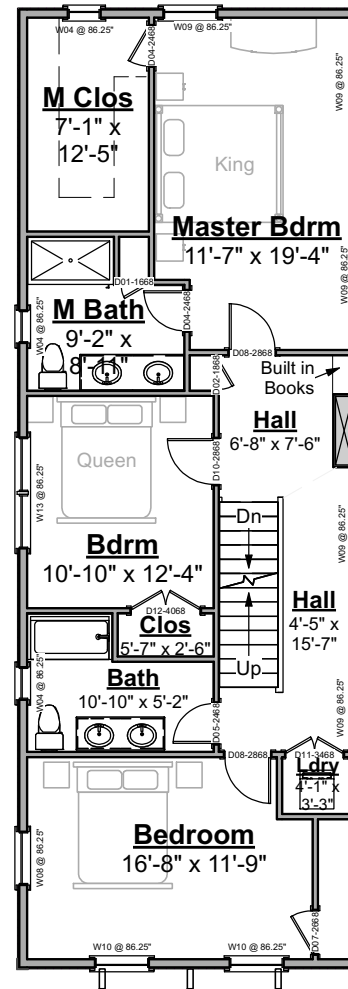
Living Area this Floor: 1144 sq ft
9'-0" Ceiling Heights



First Floor Plan
Scale: 3/32" = 1'-0"

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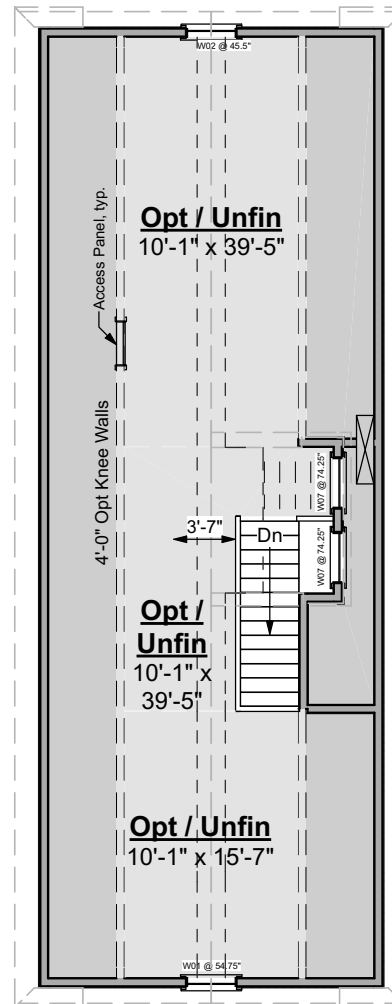
Living Area this Floor: 1120 sq ft
8'-0" Ceiling Heights



Second Floor Plan
Scale: 3/32" = 1'-0"

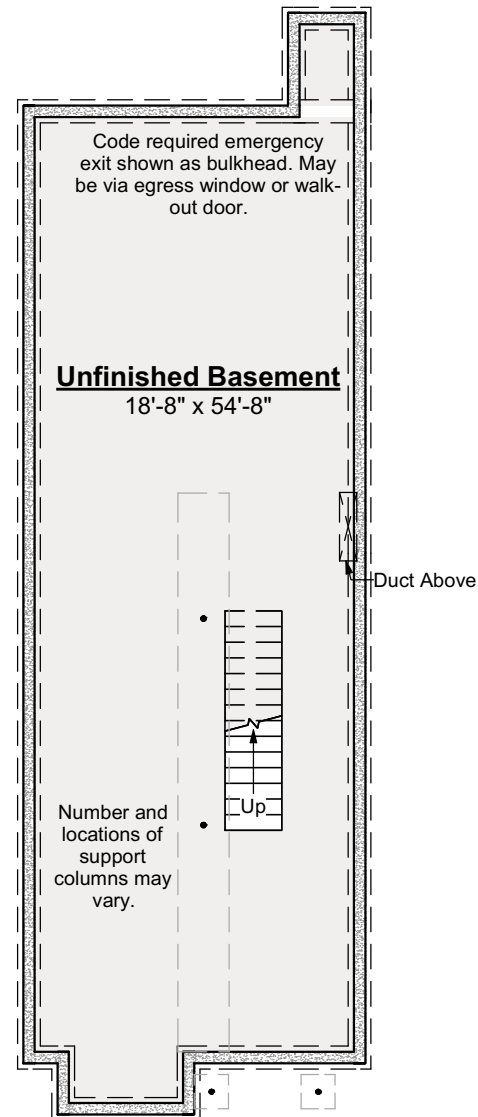
Heidi
911.500 KL

Opt Living Area this Floor: 589 sq ft
8'-0" Ceiling Heights



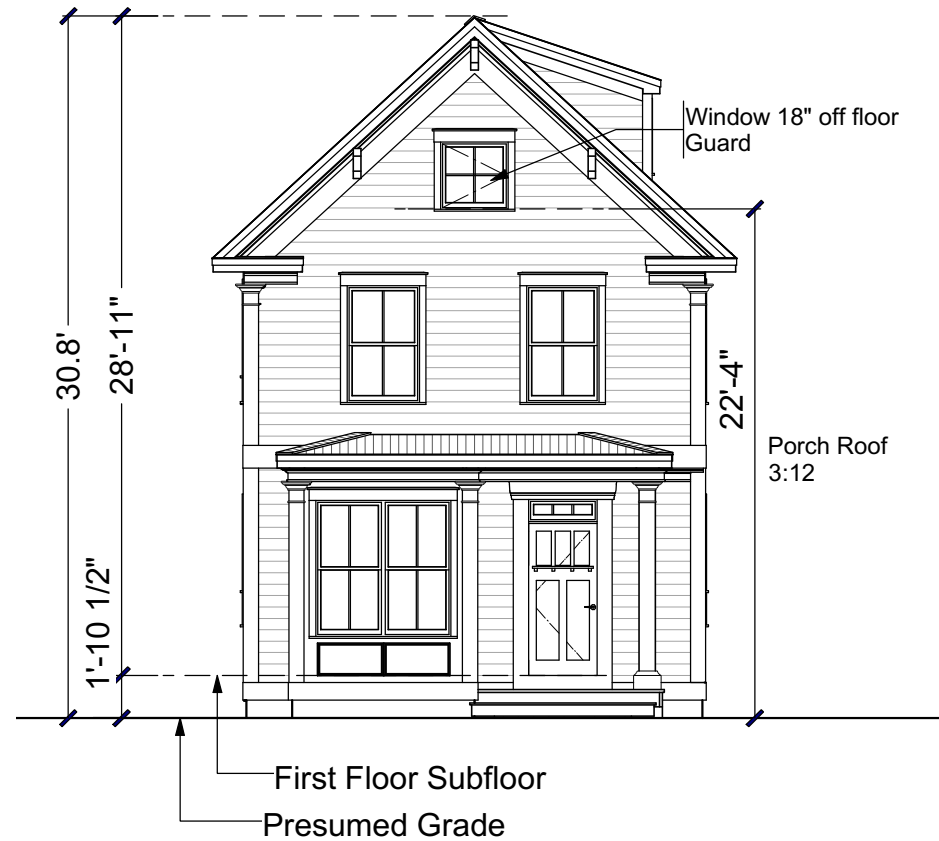
Third Floor Plan
Scale: 3/32" = 1'-0"

Heidi
911.500 KL



Foundation Plan
Scale: 3/32" = 1'-0"

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911.500 KL



Front Elevation
Scale: 1/8" = 1'-0"

Heidi

911.500 KL



Right Elevation

Scale: 1/8" = 1'-0"

Heidi
911.500 KL



Rear Elevation
Scale: 1/8" = 1'-0"

Heidi

911.500 KL





Front Elevation Right



Front Elevation Left



Rear Elevation (from Swett Ave)