

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: MAY 9, 2017
TO: JOHN P. BOHENKO, CITY MANAGER
FROM: SUZANNE WOODLAND, DEPUTY CITY ATTORNEY
RE: AGENDA ITEM
REFERRAL TO PLANNING BOARD

S & G Realty owns property located on Chevrolet Avenue and seeks to construct a three unit residential structure. S & G Realty has already received necessary variances from the Zoning Board of Adjustment, and the project is presently in the site review process.

S & G Realty has proposed resolving a discrepancy in the boundary line between S & G Realty's property and property owned by the City, property which constitutes a portion of Chevrolet Avenue. Two surveys have been done in the area with differing results. Representatives of the Public Works Department and the Legal Department have met with counsel for S & G Realty, Attorney Bernard Pelech, to discuss a Boundary Line Agreement and Easement to resolve the title discrepancies. The proposed Boundary Line Agreement and Easement would benefit the City by allowing the City to gain additional rights by both fee and easement to better maintain the City's sewer and drain infrastructure in Chevrolet Avenue which runs along the edge of S & G Realty's boundary.

Attached is the correspondence from Attorney Pelech along with two boundary exhibits, one showing existing conditions, and the other showing the proposed site layout. The proposed new boundary and easement area are noted in green. The Planning Board will be reviewing the site plan at its upcoming May meeting, and it would be appropriate at that time for the Planning Board to recommend, or not, this proposed Boundary Line Agreement and Easement.

PROPOSED MOTION

MOVE to refer the request of S & G realty for Boundary Line Agreement and Easement to the Planning Board for its recommendation.

Law Offices of
WHOLEY & PELECH
55 CONGRESS STREET, SUITE B
P.O. BOX 395
PORTSMOUTH, NEW HAMPSHIRE 03802-0395

Tel. 603-436-6121
Fax 603-433-7491

bernie@wholey-pelech.com

BERNARD W. PELECH*

JOHN J. WHOLEY
(1922-2001)

ADMITTED NH & ME BARS

April 26, 2017

Mayor Jack Blalock
Mayor's Office
1 Junkins Avenue
Portsmouth, NH 03801

Re: S&G Realty - Chevrolet Avenue

Dear Mayor Blalock and Members of the City Council:


I represent S&G Realty, owners of certain property located on Chevrolet Avenue, Tax Map 147, Lot 30. There has been for many years a discrepancy and question as to the location of the common boundary line between the S&G lot and the city owned adjacent lot.

After many meetings with the Legal Department, Public Works Department and the Planning Department, a tentative, agreed upon boundary line, subject to Council approval, has been established.

The agreed upon boundary line is shown on the attached drawing.

On behalf of my clients, it is requested that the City Council refer this matter to the Planning Board for a report and recommendation, and thereafter vote to authorize the City Manager to execute the Boundary Line Agreement for recording in the Registry of Deeds.

Sincerely,



Bernard W. Pelech

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April 26, 2017

Suzanne Woodland, Assistant City Attorney
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Re: S&G Realty - Chevrolet Avenue

Dear Suzanne:

As you know, this office represents Scott Brown and Gail Huff of S&G Realty, with regard to their proposed 3-unit residential structures on Chevrolet Avenue.

We have received all necessary variances from the ZBA for the project and we are presently in the site review process, having appeared before TAC.

Confirming our several meetings with the legal department and the planning department, it has been well documented for over 15 years that there are conflicting surveys of the boundary line between the S&G Realty property and property of the city, namely Chevrolet Avenue.

The legal department files on this discrepancy date back to 1991. In 1995, Easterly Survey performed a standard boundary survey for the S&G Realty lot, which survey showed the lot line to be at an angle to and some distance from Chevrolet Avenue.

In 1998, the city engaged the services of James Verra and Associates to survey the public works facility and Chevrolet Avenue. This survey showed the S&G Realty property line extending into the paved area of Chevrolet Avenue.

As we have discussed in our meetings, it is in the best interest of both S&G Realty and the city to enter into a Boundary Line Agreement as provided for in RSA 472:1-4.

As discussed and tentatively agreed, subject to City Council approval, the agreed upon boundary would be established at the edge of pavement on the southerly side of Chevrolet Avenue. S&G Realty would also grant to the city a 10-foot wide utility easement southerly of the agreed upon common boundary.

Page Two
Suzanne Woodland, Assistant City Attorney
April 26, 2017

Ambit Engineering would prepare the plan depicting the agreed upon boundary which would then be recorded along with the written agreement in the Registry of Deeds.

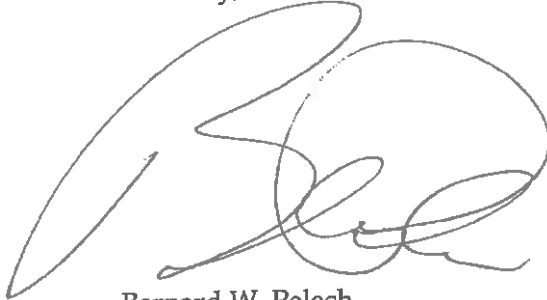
Ambit Engineering is in the process of incorporating this proposed boundary line into the pending site plan application plan set.

I have attached hereto a draft request addressed to the Mayor and Council asking for approval of the Boundary Line Agreement, after referral to and report back from the Planning Board. I would hope this could be acted upon by the Council at their May 15th meeting, and by the Planning Board at their May 18th meeting.

I plan to attend both meetings in order to answer any questions which may arise. I understand that you will be submitting a memo to the Council prior to the May 15th meeting, addressing the request.

Thank you for your cooperation in this matter and hopefully the longstanding discrepancy can be resolved.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard W. Pelech". The signature is fluid and cursive, with a large initial "B" and "W".

Bernard W. Pelech

PLANTING NOTES

- 1) ALL PLANT MATERIALS SHALL BE FIRST QUALITY NURSERY GROWN STOCK. ALL EVERGREEN TREES AND SHRUBS SHALL BE "HEAVY".
- 2) ALL PLANTS SHALL BE PLANTED IN ACCORDANCE WITH NEW HAMPSHIRE LANDSCAPE ASSOCIATION STANDARDS AND GUARANTEED FOR TWO YEARS BY THE LANDSCAPE CONTRACTOR.
- 3) ALL TREES AND SHRUBS SHALL BE MULCHED WITH 4" OF AGED BARK MULCH.
- 4) ALL LAWN AREAS SHALL BE LOAMED WITH 4" OF CLEAN LOAM, FREE OF ROCKS, ROOTS AND TRASH. TURF GRASS SHALL BE ESTABLISHED BY HYDROSEEDING A MIX OF MULCH, SEED AND FERTILIZER.
- 5) ALL DISTURBED AREAS NOT DESIGNATED FOR GRAVEL, ASPHALT, CONCRETE OR PLANTINGS SHALL BE SEEDED.
- 6) REFER TO VEGETATIVE PRACTICE NOTES ON SHEET D1 FOR SEEDING INFORMATION AND SEED MIXTURE.

TOPSOILING

- TOPSOIL QUALITY**
- 1) TOPSOIL MAY BE OF THE FOLLOWING TEXTURES: SANDY LOAM, LOAM, OR SILT LOAM.
 - 2) THE MATERIAL SHALL BE FRIABLE AND FREE OF TREE ROOTS, WEEDS, STONES MORE THAN 1.5 INCHES IN DIAMETER OR LENGTH, AND OF OTHER DEBRIS.
 - 3) SOIL TREATED WITH AN HERBICIDE WILL NOT BE USED FOR TOPSOILING IF IT IS DETERMINED THAT THE HERBICIDE WILL BE DAMAGING TO DESIRABLE VEGETATION.
- SOURCES OF TOPSOIL**
- 1) MATERIAL FOR TOPSOILING SHALL BE TAKEN FROM THE NATURAL SURFACE LAYERS (A HORIZON) OF SOILS KNOWN TO BE CAPABLE OF PRODUCING GOOD YIELDS OF CULTIVATED CROPS OR HAY.
 - 2) SOIL THAT HAS BEEN TREATED WITH AN HERBICIDE SHOULD NOT BE USED FOR TOPSOILING IF IT IS DETERMINED THAT THE RESIDUAL EFFECTS OF THE HERBICIDE WILL BE DAMAGING TO THE NEW SEEDING.
 - 3) TOPSOIL MAY BE STRIPPED FROM AND STOCKPILED AT A SITE FOR LATER REPLACEMENT. STOCKPILED TOPSOIL WILL NOT BE COMPACTED AND SHALL BE PROTECTED AGAINST EROSION.
 - 4) AREAS FROM WHICH TOPSOIL HAS BEEN REMOVED SHALL BE PROTECTED AGAINST EROSION.
- APPLYING TOPSOIL**
- 1) TOPSOIL SHOULD NOT BE COLLECTED OR SPREAD WHILE IT IS WET.
 - 2) SUBSURFACES WILL BE SCARIFIED OR OTHERWISE TILLED TO FACILITATE BONDING PRIOR TO SPREADING TOPSOIL.
 - 3) TOPSOIL WILL BE UNIFORMLY SPREAD TO A MINIMUM DEPTH OF 5 INCHES (THIS WILL PROVIDE 4 INCHES OF SETTLED TOPSOIL DEPTH).

LANDSCAPE SCHEDULE

I.D. No.	ITEM	SIZE	QTY
1	THUJA OCCIDENTALIS 'NIGRA'	6'-8'	3
	DARK AMERICAN ARBORVITAE		
2	ACER TRUNCATUM x PLATANOIDES	2" CALIPER	3
	CRIMSON SUNSET MAPLE		

LEDGEND:

- JVA BOUNDARY
- PROPOSED BOUNDARY AND EASEMENT
- EASTERLY BOUNDARY

Received at Meeting

MAY - 2 2017

From J. Chagnon



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 5
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 430-2315

NOTES:

- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
- 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION." (NHDES DECEMBER 2008).
- 4) ACCUMULATED SNOW THAT EXCEEDS THE AVAILABLE SNOW STORAGE AREAS SHALL BE REMOVED FROM THE SITE AS NECESSARY.

PARKING ANALYSIS:

MULTIFAMILY RESIDENTIAL: 4 SPACES + 1.5 SPACES PER DWELLING UNIT OVER 2 UNITS
 PROPOSED PARKING REQUIREMENTS
 EXISTING BUILDING (0 DWELLING UNITS) = 0
 PROPOSED BUILDING: 3 DWELLING UNITS = 4 + (1) x 1.5 = 6 SPACES
 MINIMUM SPACES REQUIRED: 6 SPACES
 SPACES PROVIDED BY LAYOUT: 6 SPACES (GARAGE AND ONE OUTSIDE)

ZONING CALCULATIONS:

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	3,500 SF	10,071 SF	10,071 SF
MIN. LOT AREA/DWELLING:	3,500 SF	N/A	3,357 SF
FRONTAGE:	70 FEET	94.6 FEET	94.6 FEET
DEPTH:	50 FEET	105.86 FEET	105.86 FEET
FRONT SETBACK:	5 FEET	<5 FEET	6.09 FEET
SIDE SETBACK:	10 FEET	<10 FEET	14.88 FEET
REAR SETBACK:	20 FEET	22 FEET	20.12 FEET
MAX. STRUCTURE HEIGHT:	35 FEET	N/A	<35 FEET
MAX. BUILDING COVERAGE:	35%	10.3%	24.1%
MIN. OPEN SPACE COVERAGE:	20%	82.3%	66.1%

VARIANCES GRANTED:

- 1) *A VARIANCE WAS GRANTED ON 2/16/16 FROM SECTION 10.521 TO ALLOW 3,357 SF OF LOT AREA PER DWELLING UNIT WHERE 3,500 SF PER DWELLING UNIT IS REQUIRED.

BOUNDARY EXHIBIT

S&G REALTY
CHEVROLET AVENUE
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	5/1/17
REVISIONS		

SCALE: 1" = 10' MARCH 2017

SITE LAYOUT & LANDSCAPE PLAN

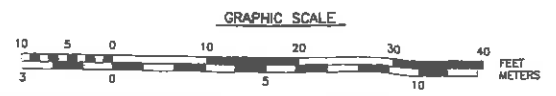
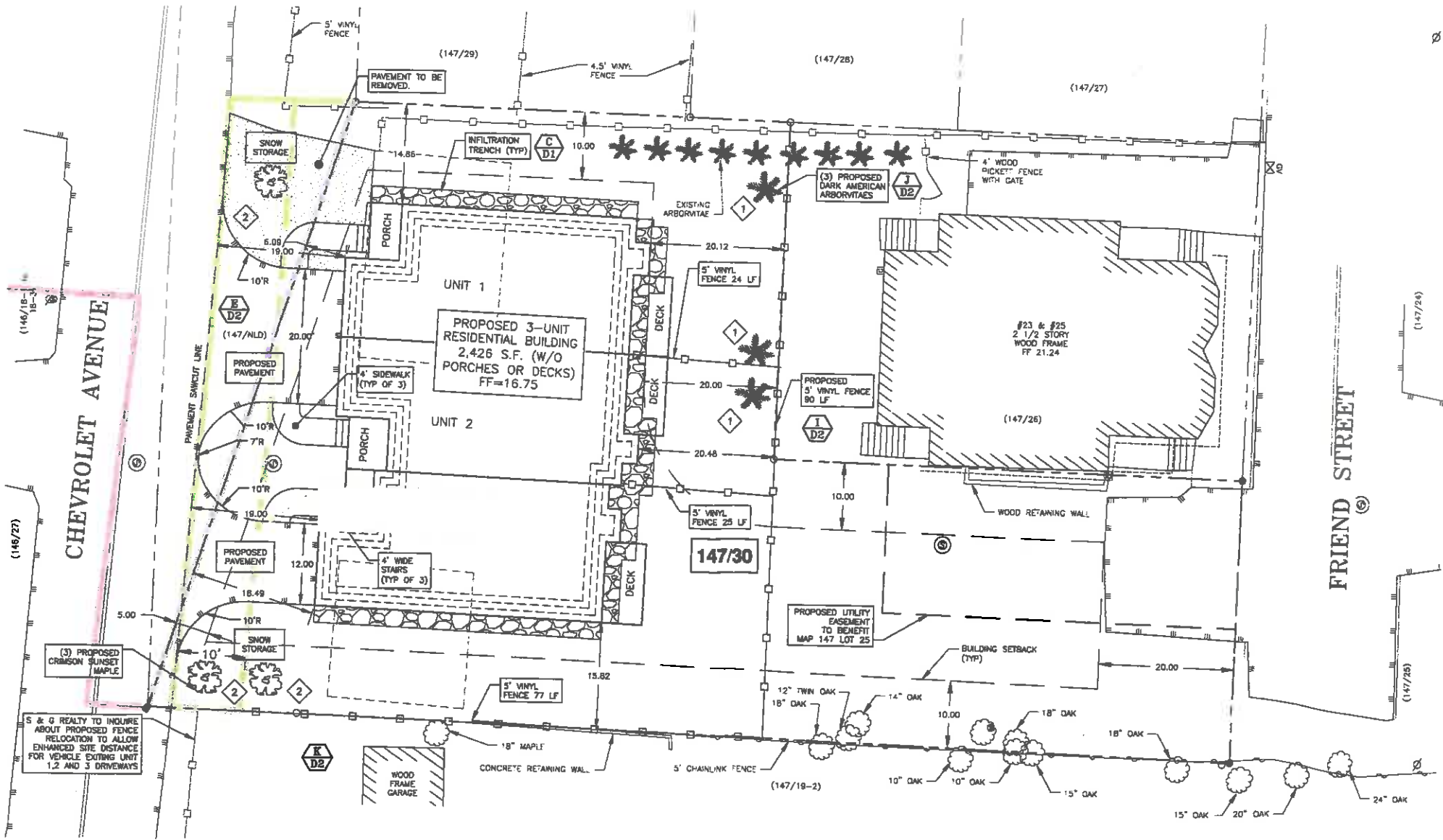
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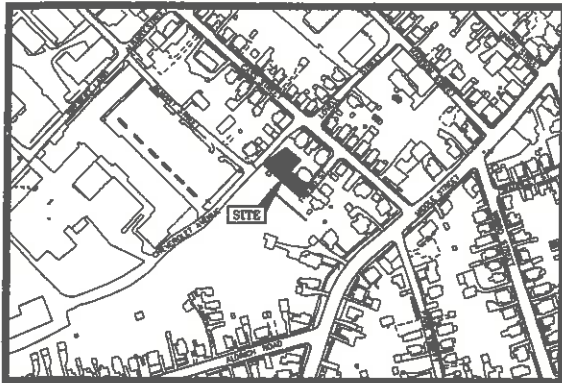
APPROVAL NOTES:

- 1) THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
- 2) ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THIS SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DIRECTOR.
- 3) THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS SHALL BE RESPONSIBLE FOR THE MAINTENANCE, REPAIR AND REPLACEMENT OF ALL REQUIRED SCREENING AND LANDSCAPE MATERIALS.
- 4) ALL REQUIRED PLANT MATERIALS SHALL BE TENDED AND MAINTAINED IN A HEALTHY GROWING CONDITION, REPLACED WHEN NECESSARY, AND KEPT FREE OF REFUSE AND DEBRIS. ALL REQUIRED FENCES AND WALLS SHALL BE MAINTAINED IN GOOD REPAIR.
- 5) THE PROPERTY OWNER SHALL BE RESPONSIBLE TO REMOVE AND REPLACE DEAD OR DISEASED PLANT MATERIALS IMMEDIATELY WITH THE SAME TYPE, SIZE AND QUANTITY OF PLANT MATERIALS AS ORIGINALLY INSTALLED, UNLESS ALTERNATIVE PLANTINGS ARE REQUESTED, JUSTIFIED AND APPROVED BY THE PLANNING BOARD OR PLANNING DIRECTOR.

APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN _____ DATE _____



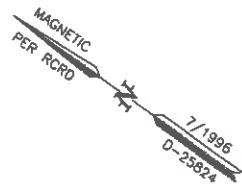


LOCATION MAP SCALE: 1" = 300'

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY
- RR SPK RAILROAD SPIKE
- MAP 11/LOT 21
- IR FND IRON ROD FOUND
- IP FND IRON PIPE FOUND
- IR SET IRON ROD SET
- ⊙ DH FND DRILL HOLE FOUND
- ⊙ DH SET DRILL HOLE SET

- JVA BOUNDARY
- PROPOSED BOUNDARY AND EASEMENT
- EASTERLY BOUNDARY



PLAN REFERENCES:

- 1) STANDARD BOUNDARY SURVEY AT CASS STREET & FRIEND STREET FOR JUDY BROWN 699 MIDDLE STREET PORTSMOUTH, NH 03801. PREPARED BY EASTERLY SURVEYING DATED SEPTEMBER 12, 1995. FINAL REVISION DATE SEPTEMBER 10, 1997. R.C.R.D. PLAN D-25824.
- 2) SUBDIVISION PLAN 660 MIDDLE STREET PORTSMOUTH, NEW HAMPSHIRE ASSESSORS PARCEL: 0147-0019 OWNER: CATHERINE R. WHELAN. PREPARED BY JAMES VERRA AND ASSOCIATES, INC. DATED MAY 28, 2010. FINAL REVISION DATE OCTOBER 25, 2010. R.C.R.D. PLAN D-36752.



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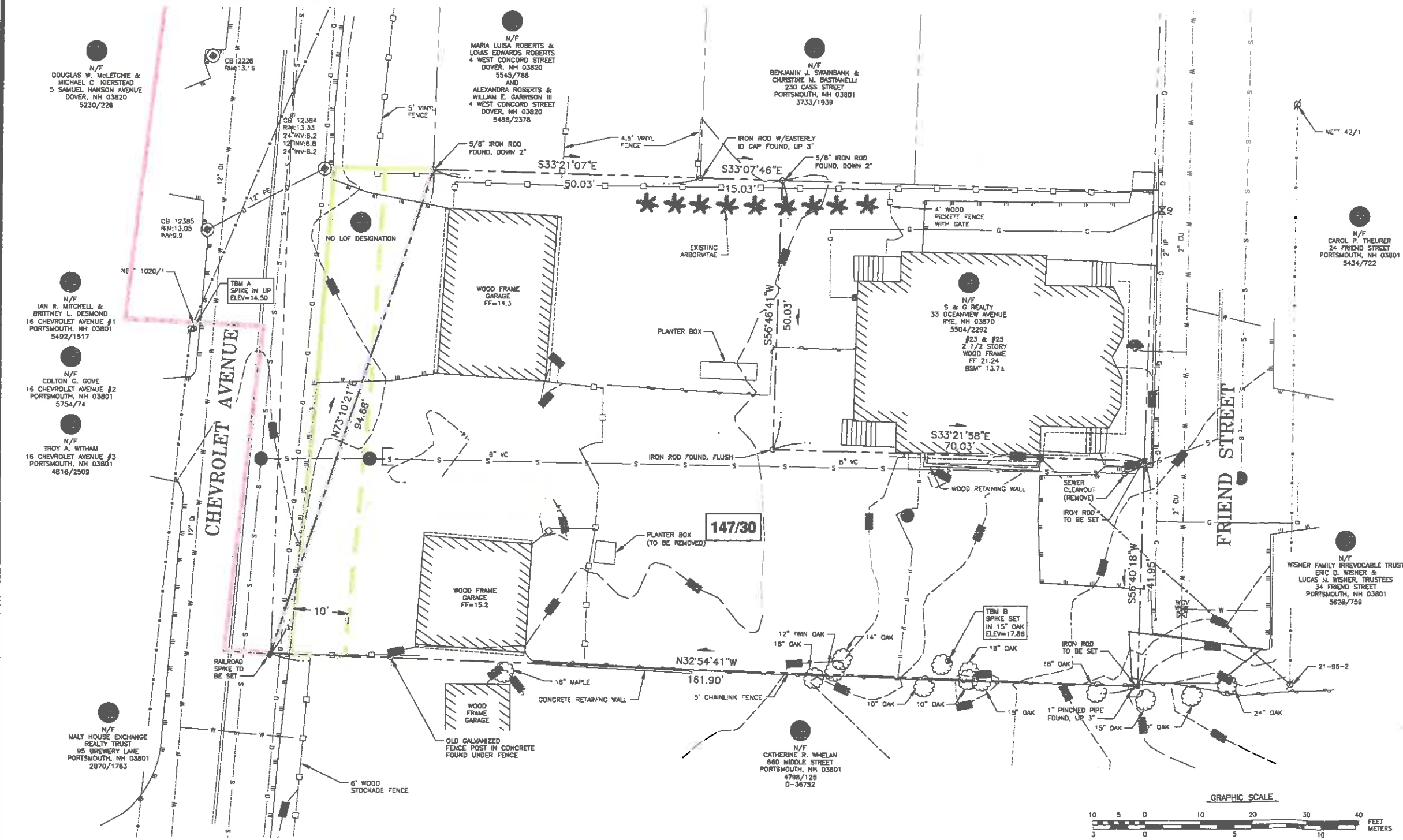
NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 147 AS LOT 30.
- 2) OWNERS OF RECORD:
S & G REALTY
33 OCEAN VIEW AVENUE
RYE, NEW HAMPSHIRE 03870
5504/2292 (TRACT II)
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
- 4) EXISTING LOT AREA:
10,071 S.F.
0.2312 ACRES
- 5) PARCEL IS LOCATED IN GENERAL RESIDENCE C (GRC) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 3,500 S.F.
FRONTAGE: 70 FEET
SETBACKS: FRONT 5 FEET
SIDE 10 FEET
REAR 20 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM STRUCTURE COVERAGE: 35%
MINIMUM OPEN SPACE: 20%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON THE SUBJECT PARCEL BOUNDARY FROM PLAN REFERENCE 1: D-25824 DATED 9/12/95.
- 8) VERTICAL DATUM IS MEAN SEA LEVEL NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS (±0.3').
- 9) THE CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT GRANTED THE FOLLOWING VARIANCES FOR THE SUBJECT PARCEL ON OCTOBER 18, 2016:

ARTICLE 10: SECTION 10.521 FOR CONSTRUCTION OF A THREE UNIT TOWNHOUSE WITH A LOT AREA PER DWELLING UNIT OF 3,357 S.F.

BOUNDARY EXHIBIT

**S&G REALTY
CHEVROLET AVENUE
PORTSMOUTH, N.H.**



NO.	DESCRIPTION	DATE
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SCALE 1"=10' MARCH 2017

EXISTING CONDITIONS AND DEMOLITION PLAN **C1**