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April 28, 2020

Tom House, Chair
Stratham Planning Board
10 Bunker Hill Avenue
Stratham, NH 03885

Re: Group 1/BMW Site Plan
Request for Finding of Substantial Compliance

Dear Chair House and Board Members:

This firm represents Group 1 Realty, Inc., ("Group 1") with regard to the property located at 71 Portsmouth Avenue, further identified as Tax Map 13, Lot 1 (the "Property"), which Property was the subject of a Conditional Use Permit and conditional Site Plan Review approval in October, 2016. We write to request that the Planning Board review the as-built conditions of the Property as depicted in the plans enclosed herewith and as discussed below, against the approved site plan in this case, and make a finding of substantial compliance. We also request to be placed on the agenda for either the 6 May or 20 May Planning Board meetings to discuss this matter and answer any questions the Planning Board may have.

Executive Summary

There are 12 discreet discrepancies between the Approved Plan and the As-Built Plan, which discrepancies have no discernible impact on the functionality and safety of the site and no impact on abutting property. The site remains in compliance with the Town's land use regulations. Under the circumstances, Group 1 respectfully submits that a finding of substantial compliance is reasonable.

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16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
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83 Clinton Street, Concord, NH 03301

Analysis

1) Context

In October of 2016, Group 1 obtained Conditional Use and Site Review approval to slightly modify the physical condition of the Property to enhance the BMW operation thereat and meet manufacturer requirements for vehicle inventory. The Notice of Approval is enclosed herewith as **Enclosure (1)**. The site changes which were the subject of Group 1's application contemplated, among other things, alterations to the onsite lighting, the addition of inventory parking, new landscaping, and the widening of the site access drive and onsite traffic pattern to facilitate better truck access to the Property. The approved site plan, revision 5 of the plan, was recorded as Plan #D-40275 at the Rockingham County Registry of Deeds, and is enclosed herewith as **Enclosure (2)** (the "Approved Plan").

The as-built condition of the Property, depicted in **Enclosure (3)**, which depicts revision 7 to the plan (the "As-Built Plan"), differs in 12 discreet ways from the Approved Plan. The discrepancies between the Approved Plan and the As-Built Plan are depicted on the plan enclosed herewith as **Enclosure (4)** (the "Discrepancy Plan"), as described in greater detail below.

Pursuant to Section 6.2 of the Site Plan Review Regulations, the Planning Board decides whether the differences in as-built plans are sufficiently material as to require a resubmission of portions or all of the project plans to the Planning Board.

2) Request

Group 1 requests a determination by the Planning Board that the As-Built Plan and existing conditions substantially comply with the Approved Plan and the discrepancies are not sufficiently material as to require resubmission, such that the As-Built Plan may be recorded, and the local entitlement process finalized.

3) Discrepancies

The 12 discrepancies between the Approved Plan and the As-Built Plan are identified below with corresponding descriptions regarding the basis for the same. Each such discrepancy is depicted in the Discrepancy Plan.

- **Light Poles:** Seven (7) light poles located along the perimeter of the parking area were slightly relocated, in most cases less than 2 ft. The slight adjustments to the location of the light poles was inadvertent. None of the light poles were relocated to be closer to the Property lines than the approved locations of the light poles, and the revised locations have no discernable impact on the operation or functionality of the site, or on abutting properties. As such, Group 1 requests a finding that the location of these seven (7) light fixtures substantially complies with the Approved Plan and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Additional Light Pole:** A single light pole, consistent with those described above, was added to the southern side of the access driveway from Portsmouth Avenue, where no light pole was depicted on the Approved Plan. The light pole is sited in a configuration that is identical to approved lighting fixtures. This additional light pole was added to illuminate the five (5) parking stalls in the southeast portion of the Property for safety. The light pole also provides additional illumination to the driveway entrance. As the additional light pole causes no discernable impact to the safety or functionality of the site, has no impact on abutters, and, if anything, makes the site safer, Group 1 requests a finding from the Planning board that this additional light fixture substantially complies with the Approved Plan and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Rotated Lighting Fixture:** The head on one of the lighting fixtures in the northeast portion of the parking area on the Property was rotated 90 degrees to allow for a more distributed lighting pattern along the north driveway of the building. As this minor modification has no discernible impact on the safety or functionality of the site, has no impact on abutters, and, if anything, makes the site safer, Group 1 requests a finding from the Planning Board that the slight rotation of the underlying light fixture substantially complies with the Approved Plan and the underlying discrepancy is not sufficiently material

as to require resubmission of the plan to the Planning Board.

- **Removal of Lighting Fixture:** One of the three heads of the lighting fixture at the driveway to the main entrance was removed because this head was not needed to provide adequate lighting in that area. As this minor modification has no discernible impact on the safety or functionality of the site, and has no impact on abutters, Group 1 requests a finding from the Planning Board that the removal of this lighting head substantially complies with the Approved Plan and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Rear Drive Aisle:** The Approved Plan depicts a drive isle at the rear (western) side of the building on the site with parking located to the west of said drive aisle. When construction commenced on the project, several underground tanks, valves and pipes were identified directly adjacent to the rear of the existing building, in the location of the approved drive aisle. Several of these valves and ports required bollards for protection, depicted on the As-Built Plan and the Discrepancy Plan, which precluded the area from being used as a drive aisle. To compensate for these unanticipated circumstances, and to comply with the Approved Plan to the greatest extent possible, the parking was flipped from the west side of the aisle to the east side of the same, adjacent to the building. To summarize, the rear drive aisle is sited where the rear parking was depicted, and the rear parking is sited along the building, where the rear drive aisle was depicted on the Approved Plan. This modification, however, does not impact the functionality or safety of the site, and it has no impact on the abutters. As such, Group 1 requests a finding from the Planning Board that the relocation of the rear drive aisle substantially complies with the Approved Plan and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Southwest Island:** The Approved Plan depicts an installed island at the southwest corner of the parking field. Due to the tight turning radius necessary to access the parking spots to the west of this island on the Approved Plan,

Group 1 paved and striped the same instead. Were the island to have been installed, it would have represented a liability to the vehicles and would have likely incurred consistent damage. This modification, does not impact the functionality or safety of the site, and in fact, makes the same easier to navigate and promotes the preservation of Group 1's vehicle inventory. Moreover, this modification does not have any impact on abutting property. As such, Group 1 requests a finding from the Planning Board that the paving and striping of this island substantially complies with the Approved Plan and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.

- **Impervious Surface:** The various minor island and drive aisle modifications depicted in the Discrepancy Plan result in a net decrease in impervious coverage on the site of 100 sf. These slight modifications do not impact the functionality or safety of the site, nor the site's storm water drainage design, and, if anything, makes the Property more environmentally friendly. Moreover, these modifications do not impact abutters. As such, Group 1 requests a finding from the Planning Board that the minor modifications to the islands and drive aisles substantially comply with the Approved Plan.
- **Inventory Parking:** The Approved Plan contemplated 164 inventory stalls and 152 were constructed, which figure remains compliant with the Site Plan Review Regulations' off-street parking requirements. The reduction in the amount of constructed inventory stalls is primarily the result of the relocation of the rear drive aisle, as described in subparagraph (5) above. The slight reduction in the amount of inventory parking stalls does not compromise the functionality or safety of the site, and does not affect abutting property. As such, Group 1 requests a finding from the Planning Board that the As-Built Plan is substantially compliant with the Approved Plan in this regard and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Service Drive Entrance:** The service drive entrance on the southeast corner of the building has been slightly

relocated to prevent cars that customers drop off for service early in the morning from blocking the route around the building. This slight modification to the Approved Plan also ensures sufficient emergency vehicle access to the Property at all times. The relocation of the service drive does not compromise the functionality or safety of the site, and does not affect abutting property. As such, Group 1 requests a finding from the Planning Board that the As-Built Plan is substantially compliant with the Approved Plan in this regard and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.

- **Customer / Employee Parking:** The Approved Plan contemplated 62 customer / employee parking stalls, and 64 were constructed, which figure remains compliant with the Site Plan Review Regulations' off-street parking requirements. The increase in the amount of constructed customer / employee parking stalls is the result of the minor island and drive aisle modifications addressed above. This increase does not compromise the functionality or safety of the site, and does not affect abutting property. As such, Group 1 requests a finding from the Planning Board that the As-Built Plan is substantially compliant with Approved Plan in this regard and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Gazebo:** The gazebo depicted on the Approved Plan was not sited at the Property, as there are sufficient interior facilities provided for employees and customers. The site's continued functionality and safety is not compromised without the gazebo as depicted on the Approved Plan and there is no impact on abutting property. As such, Group 1 requests a finding from the Planning Board that the As-Built Plan substantially complies with the Approved Plan in this regard and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.
- **Picnic Table:** The picnic table depicted on the Approved Plan was not sited at the Property as there are sufficient interior facilities provided for employees and customers. The site's continued functionality and safety is not

Tom House, Chair
Stratham Planning Board
April 28, 2020
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compromised without the picnic table as depicted on the Approved Plan and there is no impact on abutting property. As such, Group 1 requests a finding from the Planning Board that the As-Built Plan substantially complies with the Approved Plan in this regard and the underlying discrepancy is not sufficiently material as to require resubmission of the plan to the Planning Board.

Conclusion

The slight modifications and changes discussed herein promote a more efficient use and operation of the Property while not undermining the central tenets and core considerations of the site review approval process from 2016. Moreover, these discrepancies are not sufficiently material as to require resubmission of the plan to the Planning Board, as the operation, functionality, safety and abutter impact of the site are not implicated by same. Under the circumstances, Group 1 respectfully submits that a finding by the Planning Board of substantial compliance with the Approved Plan is reasonable. Finally, Group 1 appreciates the Planning Board and Planning Staff's time and attention with regard to this project and looks forward to finalizing the local entitlement process. We welcome any thoughts or questions and hope to be placed on the agenda for the 6 May or 20 May meeting, if at all possible. Thank you.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC



Justin L. Pasay
JLP/sac

Enclosures (4)
cc: Mark Tobia
Steven Cattani PE, CFM, CME



TOWN OF STRATHAM

Incorporated 1716

10 Bunker Hill Avenue · Stratham, NH 03885

Town Clerk/Tax Collector 603-772-4741

Selectmen's Office/Administration/Assessing 603-772-7391

Code Enforcement/Building Inspections/Planning 603-772-7391

Fax (All Offices) 603-775-0517

Planning Board **NOTICE OF DECISION**

Petition of: Group 1 Realty, Inc, 800 Gessner Road, Suite 500, Houston TX 77024

Project Name: Site Plan Review and Conditional Use Permit applications for the redesign and updating of site details for the BMW Dealership

Premises Affected: 71 Portsmouth Avenue, Stratham, Tax Map 13 Lot 1

So as to: the redesign and updating of site details for the BMW Dealership.

The Stratham Planning Board, at its meeting of October 19, 2016 and after a public hearing, completed its consideration of the application for the Site Plan Review Amendment application for the property located at 71 Portsmouth Avenue.

The Board based its decision on plans, supporting oral and written information, and records provided by the Applicant, professional staff, consultants for both the Applicant and the Board, and abutters, as reflected in the minutes on file at the Stratham Town Hall. This information shall be incorporated into the decision by reference.

As a result of such consideration, at its meeting of October 19, 2016, the Planning Board found that the application for amendment was complete and in **Substantial Compliance** with the Stratham Zoning Ordinance and Site Plan Review Regulations. The Planning Board voted unanimously in favor to **Grant** the Conditional Use Permit and Conditionally Approve the **Site Plan Review** based on the information and stated conditions attached and incorporated hereto.

On October 19, 2016, upon a motion made by Michael Houghton and seconded by David Canada, the Planning Board herein APPROVED the Conditional Use Permit for the requested project. Additionally, on October 19, 2016, upon a motion made by Michael Houghton and seconded by Nancy Ober, the Planning Board herein CONDITIONALLY APPROVED the Site Plan Review Permit for the requested project. The final vote for each motion was unanimous. The project lies in the Gateway Commercial Business District Outer Zone and is located on real property shown on the Stratham Assessors Tax Map 13 Lot 1 consisting of approximately 4.97 acres with frontage on Portsmouth Avenue.

The Site Plan and Conditional Use Permit Applications were requested by Group 1 Realty, Inc., 800 Gessner Road, Suite 500, Houston TX 77024 for the property at 71 Portsmouth Ave. Stratham, NH, Tax Map 13 Lot 1. This application was filed with the Planning Board on September 01, 2016. The Applicant submitted a complete application which was noticed and reviewed in accordance with RSAs 676:4 & 675:7. The Applicant has filed with the Planning Board the minimum plans and information required under the Stratham Site Plan Review Regulations.

During the review process, the Applicant and its professional consultants submitted various revisions to the plans along with various supplemental memoranda and correspondence in response to requests by the Planning Board and the Planning Department that reviewed the project. All of these plans, reports and correspondence, and meeting minutes are contained in the Planning Department's files and are hereby incorporated by reference into the public record for this public hearing.

CONDITIONS PRECEDENT:

1. All final revisions to the approved plans and/or related documents required by the Town Departments and Town Consultants or comments/recommendations/requirements to be addressed by the Applicant.
2. The Applicant shall submit any/all revised plans, reports and associated information to the Planning Department for review and approval by the Town and its agents. Applicant shall be required to modify the final plans to address and incorporate the following site design elements and information identified by the Planning Board at its meeting on October 19, 2016:
 - a. Address all comments of Civilworks in its memorandum of 10/19/2016;
 - b. Applicant shall provide a revised '*Stormwater Management, and Groundwater Recharge and Water Quality Analysis*' to the approval and satisfaction of the Town Engineer;
 - c. All stormwater retention/detention basins along the south property line of the project parcel shall be lined if located within 75' well radii;
 - d. Final site plan shall include a note specifying that all parking on site shall be within designated (striped) parking spaces in accordance with approved plan;
 - e. Final site plan shall denote location of fire lane signage;
 - f. Final site plan shall correlate with final landscape plan.

3. Applicant shall provide a mylar and 6 copies of the approved plan for signature by the Planning Board. All mylars must be pre-approved by the Rockingham County Registry of Deeds. Prior to the Board Chairman signing the approval on a mylar, the Applicant, or its representative, must provide the date that the Registry reviewed and approved the mylar as adequate for recording.
4. Payment of any and all outstanding fees which may be owed to the Town of Stratham and/or its agents in association with review and approval of the Plan and associated elements need to be paid prior to signing of the plan.
5. Recording fees will need to be paid prior to recordation.
6. The Applicant shall post a performance guarantee based on its landscape architect's construction estimate in an amount and under conditions satisfactory to the Planning Board after review by the Town's Planning Department.
7. The Applicant shall execute a written Site Plan Performance Agreement with the Town stating the nature and conditions of the landscaping installation surety.
8. The Applicant shall meet with abutters to revise and bring closure to concerns relevant to landscaping plans and include Town staff in those discussions.
9. Receipt of all state and federal permits including:
 - a. NH DES Alteration of Terrain;
 - b. NH DOT Driveway Permit.

Conditions Subsequent:

1. Payment of any and all outstanding fees which may be owed to the Town of Stratham and/or its agents in association with review and inspection of the construction associated elements are to be paid in full prior to start of construction.
2. The Applicant shall comply with all Site Plan Review Regulations and Zoning Ordinance regulations in effect as of the filing of the Application.
3. Prior to the start of construction:
 - a. A construction schedule shall be submitted to the Planning Staff;
 - b. A pre-construction meeting must be held with the developer, their construction employees, the Stratham Planning Department and Building Department to discuss scheduling of inspections and the construction schedule.
 - c. All applicable erosion control measures must be in place and reviewed and approved by the Planning Department and any applicable federal Construction Notice of Intent shall have been complied with.
4. During construction:
 - a. Best Engineering and Management practices shall be utilized/implemented during the construction.
 - b. During construction, the site and impacted public ways must be kept clean and swept regularly throughout the consecution process.
 - c. It shall be the responsibility of the Applicant to ensure that no erosion on the site shall occur which will cause the deposit of soil or sediment upon adjacent properties, public ways or designated wetland areas.
 - d. It shall be the responsibility of the Applicant to ensure that all stormwater and drainage utilities and infrastructure function are maintained properly.

5. As built site plans for the development shall be submitted to the Town within 60 days after substantial completion of the project has occurred. As built plans that differ from the approved plans shall be reviewed by the Planning Department to determine if an amended site plan hearing shall be required.

General Conditions:

1. Unless otherwise stated, all previous approvals and plans associated with this property and project area shall remain in full force. Further, the provisions of this conditional Site Plan Review approval shall apply to and be binding upon the Applicant and all successors and assigns in interest or control.
2. On September 21, 2016, the Planning Board, pursuant to Section 8.1 of the Site Plan Review Regulations, granted the following waivers to the Site Plan Regulations:
 - a. Section 4.3.1 showing all existing features within the immediate proximity of the site, other than the structures across public ways.
 - b. Section 5.7 allowing the average setback of pavement along Portsmouth Avenue to be twenty (20) feet in the Gateway (outer zone) in accordance with Section 3.8.8, Table 5 of the Zoning Ordinance.
 - c. Checklist item F allowing 22" x 36" plan size provided that all plan sheets that shall be recorded at the Registry of Deeds shall be 22" x 34".
3. On October 19, 2016 the Planning Board also approved a conditional use permit for the project as proposed in the Gateway zone pursuant to Section 3.8.6 of the Zoning Ordinance.
4. This Site Plan Review and associated Conditional Use Permit approval is based upon the following information which is incorporated into this decision by reference:

Plan Title: "Group 1 Automotive, Inc., Proposed Parking Improvements, Tax Map 13, Lot 1, 71 Portsmouth Avenue, town of Stratham, Rockingham County, NH"

Prepared for: Group 1 Realty, Inc.

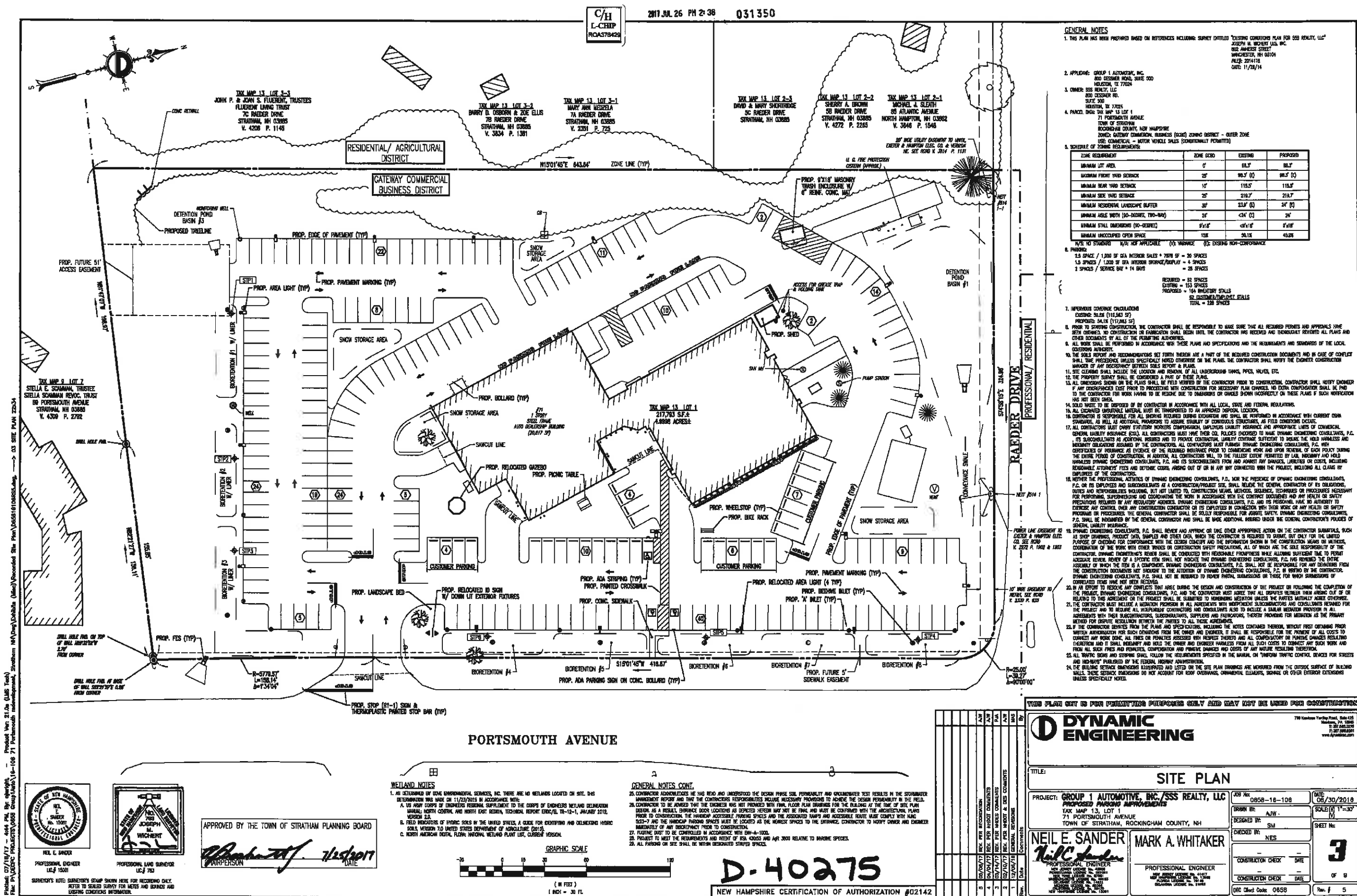
Prepared by: Dynamic Engineering, 790 Newtown Road, Suite 425, Newtown, PA 18940

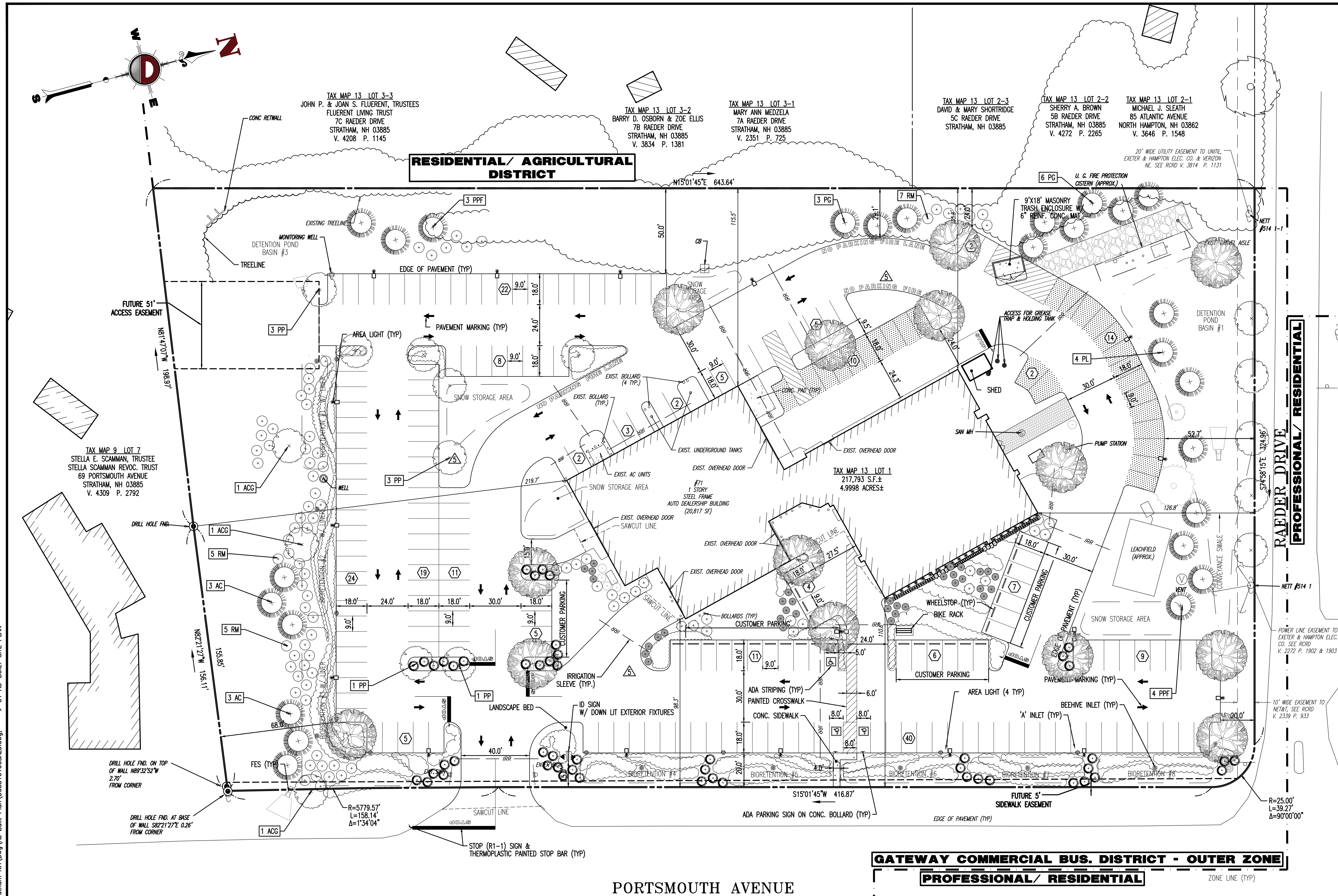
Date: 8/30/2106; Revised 10/19/2016 per Conditions

Sheets: 8 total sheets
5. Should any disagreement arise or clarification be needed in the enforcement and/or implementation of any of these conditions, the Planning Board shall be sole and final interpreter of the intent, performance and outcomes of these conditions subject only to the statutory right to judicial review of any Planning Board decision.
6. In accordance with NH RSA 676:4 I(i), the listed conditions are considered administrative in nature and therefore do not require an additional compliance hearing. Upon determination by Planning Board staff that these conditions have been met the decision will be considered final.

Planning Board

Date





LANDSCAPE SCHEDULE				
KEY	QTY	BOTANICAL NAME	COMMON NAME	REMARKS
DECIDUOUS TREES(S)				
ACG	3	AMELANCHIER CANADENSIS 'GLENFORM'	RAINBOW PILLAR SERVICEBERRY	12' B&B, MULTI-STEMMED
PP	8	PARROTTIA PERSICA	PERSIAN PARROTTIA	3' C. B&B
EVERGREEN TREES(S)				
AC	6	ABIES CONCOLOR	WHITE FIR	9' HT B&B
PG	9	PICEA GLAUCA	WHITE SPRUCE	8' HT B&B
PPF	7	PICEA PUNGENS 'FAT ALBERT'	FAT ALBERT SPRUCE	6' HT B&B
PL	4	PINUS LEUCODERMIS	BOSMAN PINE	7' HG B&B
SHRUB(S)				
RM	17	RHOODODENDRON MAXIMUM	ROSEBAY RHOODODENDRON	4' HT B&B

NOTE:
1. THIS PLAN SUBJECT TO FINAL CONFIRMATION OF ESTABLISHMENT OF PLANTED LANDSCAPING ONCE ALL VEGETATION HAS REACHED FULL SPRING 2020 FOLIAGE.

ISSUED FOR CONSTRUCTION			
DYNAMIC ENGINEERING LAND DEVELOPMENT CONSULTING • PERMITTING • GEOTECHNICAL • ENVIRONMENTAL • SURVEY • PLANNING & ZONING		826 Newtown Yardley Road, Suite 201 Newtown, PA 18840 T: 267.885.0276 F: 267.885.0261 www.dynamiceng.com	
TITLE: AS-BUILT SITE PLAN			
PROJECT: GROUP 1 AUTOMOTIVE, INC PROPOSED PARKING IMPROVEMENTS		JOB No: 0658-16-106	DATE: 04/14/2020
TAX MAP 15, LOT 1 71 PORTSMOUTH AVENUE TOWN OF STRATHAM, ROCKINGHAM COUNTY, NH		DRAWN BY: LZ	SCALE: (H) 1"=30' (V)
DESIGNED BY: SM		CHECKED BY: NES	SHEET No:
CHECKED BY: -		OF 2	
STEVEN R. CATTANI PROFESSIONAL ENGINEER NEW HAMPSHIRE LICENSE No. 16341		MARK A. WHITAKER PROFESSIONAL ENGINEER NEW HAMPSHIRE LICENSE No. 13928	
FOR STATE OFFICIAL DIRECT PHONE NUMBERS VISIT: WWW.CALL811.COM		PROTECT YOURSELF ALL STATES REQUIRE NOTIFICATION OF CONCRETE, REBAR, OR ANY OTHER PREPARED TO EXPOSE THE STATE'S SERVICE PROVIDERS. IN NH 305	

