

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date: **Thursday, July 20, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF JUNE 15, 2017

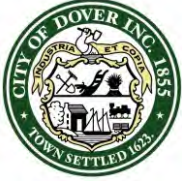
3. HEARINGS

- A. Z17-13 Applicant/Owner Diane Bragdon, 20 Atlantic Avenue (Tax Map 25, Lot 10), located in the Medium Density Residential (R-12) Zoning District, requests a variance from **Section 170-12.B** of the Zoning Ordinance to permit a front setback of approximately one foot where a minimum of five feet is required.
- B. Z17-14 Applicant/Owner Gordon Clark, c/o GC/AAA Fence, 304 Durham Road (Tax Map I, Lot 123), located in the Hotel/Retail (B-4) Zoning District, requests a variance from **Section 170-12.B** of the Zoning Ordinance to permit a reduced parking area setback where a minimum of 25 feet is required. The proposed paved parking area's distance from front and side property lines ranges from 2.3 feet to 18.3 feet.
- C. Z17-15 Applicant/Owner D.R. Lemieux Builders, Inc., 53 Spur Road (Tax Map L, Lot 14-N), located in the Low Density Residential (R-20) Zoning District, requests a variance from **Section 170-12.B** of the Zoning Ordinance to permit a side setback of 11 feet where a minimum of 20 feet is required.
- D. Z17-16 Applicant/Owners Hadley and Shane Moores, 33 Littleworth Road (Tax Map G, Lot 6-D), located in the Assembly and Office (I-4) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit reduced setbacks where 75 feet is required from all property lines. The proposed buildings' distance from side property lines ranges from 17 feet to 42 feet.
- E. Z17-17 Applicant/Owner Cornelis J. Lotter, 21 Fairway Drive (Tax Map N, Lot 14-K), located in the Rural Residential (R-40) Zoning District, requests a variance from **Section 170-12.A** of the Zoning Ordinance to permit the keeping of "farm animals," specifically a rooster, on a 93,200-square-foot lot, where the keeping of a rooster is permitted only on a lot of at least 100,000 square feet with the animal's shelter located a minimum of 100 feet from any property line.

4. OTHER BUSINESS

5. ADJOURN

Persons with questions or interested in reviewing the meeting materials are invited to visit the Planning Department located in City Hall, open Monday-Thursday from 8:30 am to 5:30 pm and Friday from 8:30 am to 4:00 pm. The meeting materials are also available online at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>.



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1. ATTENDANCE

Members Present: Chris Prior (Chair), Bob Hall (Vice Chair), Otis Perry, Frank Landford, Sam Reid, George Reagan (Alternate), Nicholas Couturier (Alternate)

Members Not Present:

Staff Present: Elena Piekut (Assistant City Planner), Tracy Smith (Recording Secretary)

The Chair called the meeting to order at 7:00 p.m. He opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF MAY 18, 2017

Motion: O.Perry made a motion to approve the May 18, 2017 Regular Meeting Minutes as submitted. Seconded by F.Landford. B.Hall and N.Couturier abstained as they were not present at that meeting. Vote: U/A

3. HEARINGS

- A. Z17-05 Applicant/Owner Edward B. & Martha E. Heaphy Revocable Living Trust, 5 & 7 Heaphy Lane, (Tax Map 8, Lot 21-B), located in the Low Density Residential (R-20) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit a rear setback of 15 feet where 30 feet is required.

Paul Connolly, Civilworks, Inc., represented the applicant, displayed a plan for viewing which showed the lots owned by the applicant, and presented the proposed plan. Martha Heaphy was also present.

Discussion ensued regarding clarification that the application pertains to only Lot 21B as recommended by the Planning Staff, which homes on the lots are used by family and those that are currently used as rental properties, and that the removal of three structures in order to place one structure will reduce the existing non-conformity of Lot 21B.

Public Hearing Opened. Nobody Spoke.

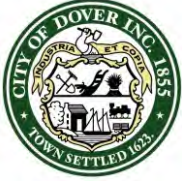
E.Piekut stated that Staff supports the variance, and explained that the removal of the structures would make the property more conforming.

Discussion ensued regarding consideration of previous rear setbacks at 15 ft., and clarification of the condition of approval would amend the application and plan.

STAFF RECOMMENDATION:

Staff recommends the Board determine whether each of the five criteria are met, and if all five criteria are met, approve the request. If the Board decides to approve the request, staff suggests the following condition of approval:

1. The Applicant shall revise the plan to reflect the amended application and single variance request.



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Public Hearing Closed.

Motion: O.Perry made a motion to grant the variance as the applicant has met the requirements for granting the variance with the condition to revise the plan to make it accurately reflect the variance requested. Seconded by S.Reid. C.Prior confirmed for B.Hall the condition would revise the plan. Vote: U/A

- B. Z17-11 Applicant Salty Sea, LLC and Owner Thomas J. Cauley, Sr., 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Thoroughfare Business (B-3) Zoning District, request a variance from **Section 170-12.A** of the Zoning Ordinance to permit a Multi-Family Dwelling (15 units) where Multi-Family Dwelling is a Use Permitted by Special Exception and the Applicant's proposal does not meet one of the two special exception criteria, which requires that dwelling units are located only on the second story or higher of a newly constructed structure.

Attorney Jim Schulte of Bruton & Berube, PLLC, represented the applicant, displayed a plan for viewing which showed the lots, and presented the proposed plan. He reviewed the five criteria pertaining to the application. Jim Wolcott of Salty Sea, LLC, Bob Stowell of Tritech Engineering Corporation, and Thomas J. Cauley, Sr. were also present.

Discussion ensued regarding clarification of the application as it relates to the special exception criteria, the purpose and requirements of the special exception in the B-3 District, the reason for consistency as it pertains to the percentage of commercial use available, the safety of traffic flow, clarification of commercial and residential parking locations on the plan, the hardship regarding difficulty to rent the spaces, particularly the back units and the traffic flow, and comparison of the proposed plan to other projects that have commercial rentals.

Public Hearing Opened.

Mark Moclock, 54 Old Rochester Road, stated his concern regarding the proximity of the project to his home and the need for a sound barrier. He requested the tree line and shrubs be kept for a sound barrier. C.Prior stated the application process and Planning Board purview if the variance application were granted.

J.Schulte addressed the change of use and how the variance would enhance health and safety of the neighborhood.

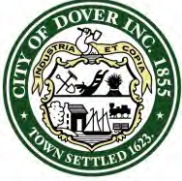
E.Piekut stated that Staff does not oppose the variance and stated the proposed condition of approval.

STAFF RECOMMENDATION:

Staff recommends the Board make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are met, the Board should approve the request and staff suggests the following condition of approval:

1. The Applicant shall convert the existing mixed-use building to commercial only and obtain a Certificate of Occupancy for the converted space prior to obtaining a building permit for the proposed residential-only structure.

J.Schulte confirmed for C.Prior that the variance application was for 7 units (building C) and the special exception application referred to the other units.



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O.Perry asked whether the applicant considered creating a subdivision instead. E.Piekut stated it had not been discussed.

Public hearing closed.

Discussion ensued regarding Board deliberation and voting options with consideration to the Zoning regulations with the applicant submitting both the special exception and a variance, the hardship criteria, the health and safety perspective regarding the traffic flow and proximity to other residential zones, and the commercial rental hardship.

Motion: S.Reid made a motion to grant the variance for building C as shown on the plan for 7 units as recommended by the City. Seconded by B.Hall. Vote: 4/1 O.Perry opposed

- C. Z17-10 Applicant Salty Sea, LLC and Owner Thomas J. Cauley, Sr., 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Thoroughfare Business (B-3) Zoning District, request a special exception per **Section 170-12.A** of the Zoning Ordinance to permit Multi-Family Dwellings.

Attorney Jim Schulte, Bruton & Berube PLLC, represented the applicant, displayed a plan for viewing and presented the proposed plan. He addressed the five criteria pertaining to the application. Jim Wolcott of Salty Sea, LLC, Bob Stowell of Tritech Engineering Corporation, and Thomas J. Cauley, Sr. were also present.

J.Schulte confirmed for O.Perry that the existing building would be commercial and is confirmed as a condition in the variance.

Public Hearing Opened. Nobody Spoke.

E.Piekut stated the Staff recommendation.

STAFF RECOMMENDATION:

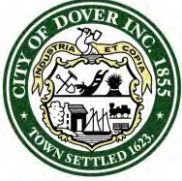
Staff recommends the Board make findings as to whether each of the three general special exception criteria (170-52.C(3)) and two additional criteria specific to the B-3 are met. If the Board finds that all five conditions are satisfied, the Board should approve the request.

Public Hearing Closed.

C.Prior addressed the concern that the existing building would be converted to commercial and stated it could be listed as a condition of approval. J.Schulte proposed the Board use the same condition listed for the variance.

Motion: O.Perry made a motion to grant the special exception per the same condition as the variance as recommended by the Planning Staff. Seconded by S.Reid. Vote: U/A

- D. Z17-12 Applicant Quantum Real Estate Group, LLC and Owner George F. Mitropoulos Revocable Living Trust, Littleworth Road (Tax Map H, Lot 29-A), located in the Low Density Residential (R-20) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit a minimum front setback of 35 feet where a build-to line of 20 feet minimum, 35 feet maximum is required. The request applies to all six lots to be subdivided from Lot 29-A.



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S.Reid recused himself from hearing the case. The Chair recognized G.Reagan to hear the case.

Attorney Jim Schulte of Bruton & Berube, PLLC, represented the applicant, displayed a plan for viewing, and presented the proposed plan. He reviewed the five criteria pertaining to the application. Bob Stowell, Trittech Engineering Corporation, was also present.

Discussion ensued regarding the substantial justice criteria and the proposal approved by the Planning Board depicting home locations consistent with the criteria except lot 29A, house location further from the road due to wetlands, and consideration of burden due to house location, and confirmation that shared driveways would still serve the structures.

Public Hearing Opened.

Michael Garofano, 258 Dover Point Road, spoke against the variance and stated his concern regarding appropriate abutter notification. He recommended tabling the item for further abutter notification.

E.Piekut confirmed the abutter notifications were sent for both the Planning Board and Zoning Board of Adjustment meetings. She stated the Staff recommendation and noted the previous effort to rezone area to non-residential which had been approved by the Planning Board and overturned by the City Council. She stated the conditions of approval and the procedure that after the subdivision plan amendment sheet is recorded it is no longer subject to the build to line.

E.Piekut clarified for G.Reagan the right of way and the build to line distance.

STAFF RECOMMENDATION:

Staff recommends the Board make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff recommends the following conditions:

1. Subdivision plan P17-34 shall be approved by the Planning Board, signed, and recorded at the Strafford County Registry of Deeds.
2. An amendment sheet to subdivision plan P17-34, including a note regarding the granting of this variance (file #Z17-12) to permit a front setback of 35 feet as opposed to the build-to line, shall be provided and recorded with the approved plan.

Public Hearing Closed.

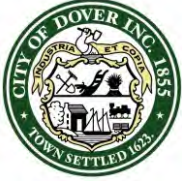
B.Hall requested clarification to the recommendation of the setback and build to line.

Public Hearing Reopened.

E.Piekut clarified the recommendation.

J.Schulte clarified the build to line conversion to a 35 ft. setback for B.Hall.

Public Hearing Closed.



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Motion: B.Hall made a motion to grant the variance with the two conditions as recommended by the Planning Staff to permit a 35 ft. minimum front setback for condition #2. Seconded by F.Landford. Discussion ensued regarding clarification of the conditions. Vote: U/A

S.Reid returned to his seat.

O.Perry recused himself from hearing the case, and left the meeting at 8:18 pm.

4. CONSIDERATION OF REHEARING REQUEST

Z17-07R, a Motion for Rehearing of Z17-07 by DR Lemieux Builders, Inc., where Z17-07 was a request by Owner DR Lemieux Builders, Inc., 53 Spur Road (Tax Map L, Lot 14-N), for an equitable waiver of dimensional requirements from **Section 170-12.B** of the Zoning Ordinance to permit a side setback of 11 feet where 20 feet is required, and where the request was denied on April 20, 2017.

The Chair recognized N.Couturier to hear the case.

C.Prior explained the process for the re-hearing request and requested Board feedback. The Board evaluated the information regarding the motion provided, especially the definition of a structure, and determined there was no new evidence provided.

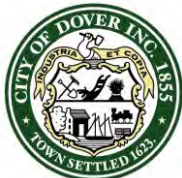
Motion: S.Reid made a motion to deny the re-hearing. Seconded by B.Hall. Vote 4/1

5. OTHER BUSINESS

There was no other business.

6. ADJOURN

Motion: S.Reid made a motion to adjourn at 8:26 p.m. Seconded by B.Hall. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, July 20, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit a front setback of one foot where five feet is required.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: Medium Density Residential (R-12)

FILE: Z17-13

APPLICANT/OWNER: Diane Bragdon

LOCATION: 20 Atlantic Avenue (Tax Map 25, Lot 10)

ACREAGE: 0.105 (4,574 sq. ft.)

EXISTING LAND USE: Single-family dwelling

PROPOSED LAND USE: Single-family dwelling

SURROUNDING LAND USE: Single-family dwellings

PREVIOUS ZBA ACTION: Z98-8 variances granted to subdivide two lots containing four houses into four lots nonconforming in area and frontage, and permit creation of nonconformities for existing structures.

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports the variance.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the corner of Atlantic Avenue and Cross Street. This corner previously consisted of two lots containing four homes, and in 1998 several variances were granted to permit a subdivision for each house to be on its own lot, with varying setback, lot size, and frontage nonconformities. The Applicant has removed a dilapidated porch from the 1918 structure and wishes to reconstruct it in the same location.

In the R-12 Zoning District, expansions to or renovations of existing structures require a minimum front setback of five feet. According to the 1998 subdivision plan, the porch was located one foot from the front property line (Atlantic Avenue) and two or three feet from the secondary, or “abut-a-street” property line (Cross Street).

REASON FOR STAFF RECOMMENDATION

The lot in question is very small (less than 5,000 square feet) as well as being subject to a 20-foot-wide access easement. The only area where a new porch could be constructed without requiring a variance is on the west side of the house. However, a porch has existed on the front of the house for many years (as many as 99 years) without any effect on neighboring properties. The small size of the lot and existing structure present a hardship, property values and the public interest are unlikely to be affected, substantial justice is done, and the request is consistent with the spirit of the ordinance, which recognizes that existing (older) structures in the R-12 zoning district require relief from the 15 to 25-foot build-to line required for new structures.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff supports the request.

**Property Information**

Property ID 25010-000000
Location 20 ATLANTIC AV
Owner BRAGDON DIANE M



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

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

Parcels updated 03/20/2017
Properties updated 07/11/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]
RECEIVED
Planning Office

Office Use Only Case #:

217-13

Date Received: **JUN 14 2017**

Amount Paid: \$ _____

Time Received: **Dover, New Hampshire**

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Diane Bragdon

Phone #603-205-2720

Address of Applicant: 9 Reyners Brook, Dover, NH 03820

E-Mail Address: watercolorsbydiane@hotmail.com

PROPERTY OWNER (if different from applicant): _____

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 20 Atlantic Ave, Dover, NH 03820

Brief Directions: Off Portland Ave in Dover, NH

Zoning District: R-12

Assessor's Map #25

Lot(s) #10

TYPE OF APPEAL: (Please check one)

☒ Variance

from Section _____ of the Zoning Ordinance

☐ Physical Disability Variance (RSA 674:33-V)

from Section _____ of the Zoning Ordinance

☐ Special Exception

per Section _____ of the Zoning Ordinance

☐ Appeal of Administrative Decision

regarding Section _____ of the Zoning Ordinance

☐ Equitable Waiver

per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

Rebuild the front porch using the same footprint as the original.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12.B of the Zoning Ordinance to permit:

A variance from section 170-12B of the zoning ordinance to permit a front setback of less than the 5' requirement.

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

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

The Residence has been in this location for 99 years.

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

The rebuilding of the porch does not violate the spirit of the Ordinance because the location and footprint is not changing, and the new porch will maintain the essential character of the neighborhood.

3. Granting the variance would do substantial justice because:

The original porch was a safety concern with holes in the floor and roof, rotten support columns that were unattached to the roof, leaning support posts on cinder blocks under the porch – the porch needs to be replaced. (See photos)

The variance will allow the structure to maintain its appeal and character, while providing a safe entrance to the home.

4. The value of surrounding property will not be diminished because:

The existing residence is in very poor condition. The rebuilt porch will be built with quality materials, which will improve the appearance of the property without changing the footprint. This will have a positive effect on surrounding property values.

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

As the frontage is narrower than some of the other lots in the neighborhood, it would be a hardship for this property to have a front setback of 5', which would not allow for a safe entrance/exit to the home.

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

The current residence exists with less than the 5' minimum required by the ordinance. The old porch is a safety concern for residents, visitors, and neighbors.

and

(iii) The proposed use is a reasonable one because:

The residence at 20 Atlantic Ave with a front porch, has been in existing use since 1918. It allows a front entry to the house while maintaining its historical character and appeal.

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, 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:

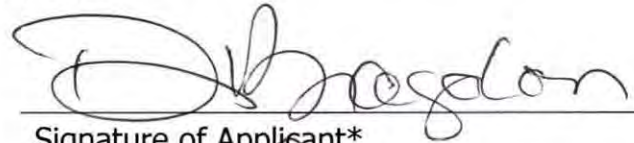
SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

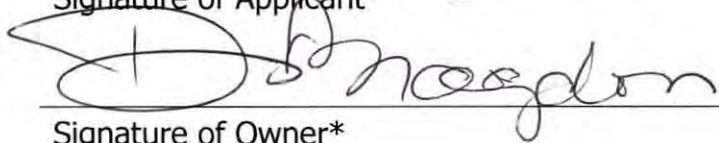
I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.



Signature of Applicant*



Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:



Date:

6/14/17



Holes in floor of porch



Leaning support posts on top of concrete blocks

Broken, rusty support post



**Property Information**

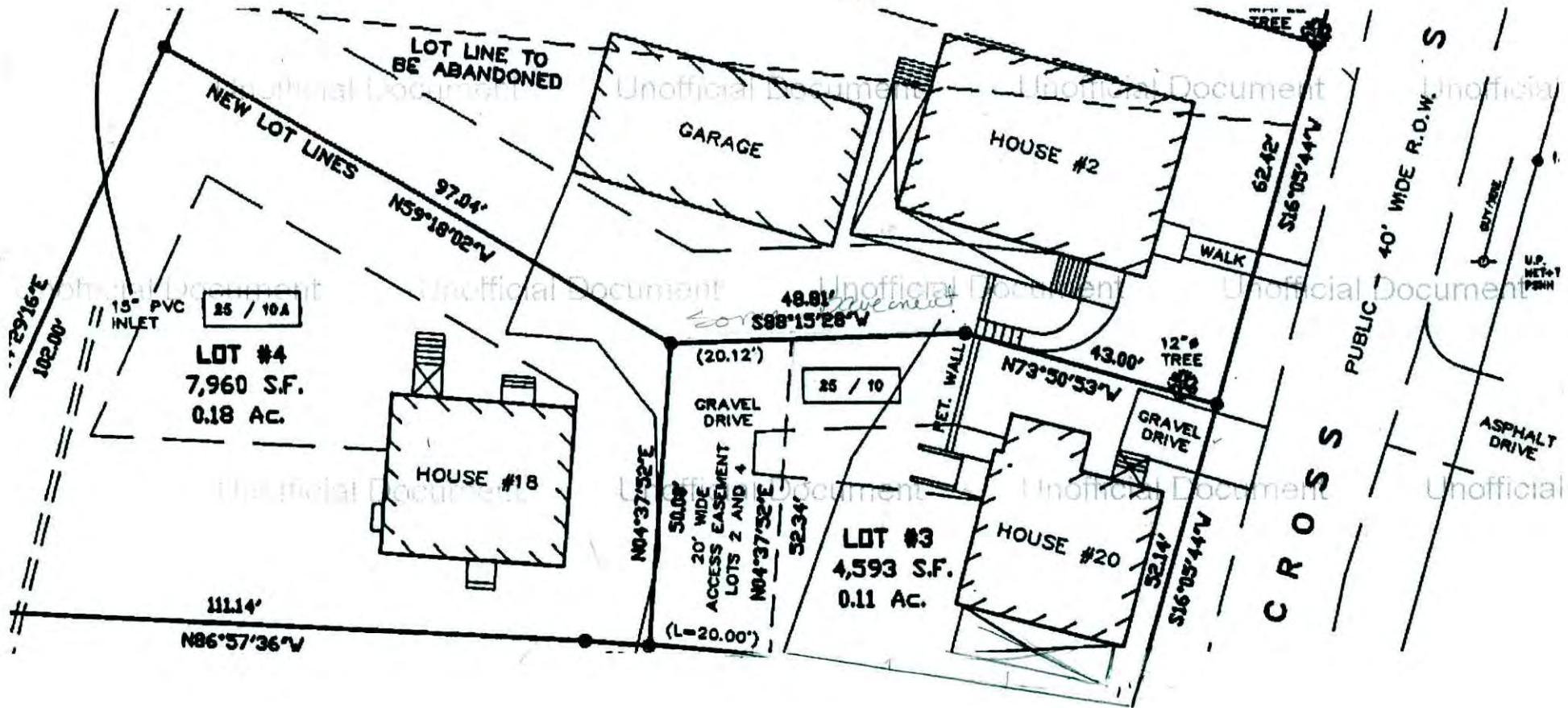
Property ID 25010-000000
Location 20 ATLANTIC AV
Owner BRAGDON DIANE M



**MAP FOR REFERENCE ONLY
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Parcels updated 03/20/2017
Properties updated 06/13/2017



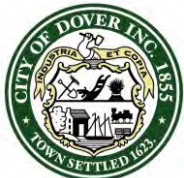
Atlantic Avenue

ABUTTER LIS1 Z17-13

DIANE BRAGDON

20 ATLANTIC AVENUE

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
25008-000000	1 CROSS ST	FITZPATRICK KEVIN W &	FITZPATRICK JUDITH M	1 CROSS ST	DOVER	NH	03820
25011-000000	5 CROSS ST	RIDOLFI KERRY ANNE		10 ROSS RD	DURHAM	NH	03824-4219
25074-000000	1 DANBURY LN	SOUCY DAVID R &	SOUCY SANDI K	186 COTTON HILL ROAD	LACONIA	NH	03246
25009-A00000	4 CROSS ST	GAGNE NORMAN TRUSTEE	GAGNE FAMILY REVOCABLE TRUST	2 CROSS ST	DOVER	NH	03820
25010-A00000	18 ATLANTIC AV	SEARLES PAULA S	SEARLES HARLAN H III	2 CROSS STREET	DOVER	NH	03820
25009-000000	2 CROSS ST	GAGNE NORMAN TRUSTEE	GAGNE FAMILY REVOCABLE TRUST	2 CROSS STREET	DOVER	NH	03820
25079-000000	2 DANBURY LN	CAHILL DANIEL R		2 DANBURY LN	DOVER	NH	03820-3510
25035-000000	2 ELMWOOD AV	MESERVE ROBERT H	MESERVE PIPER A	2 ELMWOOD AV	DOVER	NH	03820
25064-000000	21 ATLANTIC AV	SAVAGE JOHN & CECILE TRUSTEES	SAVAGE FAMILY REVOCABLE TRUST	21 ATLANTIC AVE	DOVER	NH	03820
25007-000000	24 ATLANTIC AV	SHAW SUSANNA &	DIETRICH JORDAN	24 ATLANTIC AV	DOVER	NH	03820
25006-000000	26 ATLANTIC AV	MADORE CAITLEN L &	MADORE JAMES	26 ATLANTIC AVE	DOVER	NH	03820
25013-000000	3 FAIRVIEW AV	BORDEN RYAN M &	BORDEN LINDY E	3 FAIRVIEW AVE	DOVER	NH	03820
25066-F00000	25 ATLANTIC AV	SYCAMORE PAUL &	SYCAMORE MARY GAIL	40 MEADOW LANE	ELIOT	ME	03903
25066-E00000	23 ATLANTIC AV	DUREAU MICHAEL		6 BERNIER STREET	SOMERS	NH	03878
25036-000000	6 ELMWOOD AV	ADAMS GLENN L TRUSTEE	ADAMS LAURA L IRREVOCABLE TRUST	6 ELMWOOD AVE	DOVER	NH	03820
24132-000000	COCHeco ST	PUBLIC SERV CO OF N H		PO BOX 330	MANCHESTER	NH	03105-0330



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, July 20, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance from the 25-foot setback required for parking areas in the B-4.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-B

ZONING DISTRICT: Hotel/Retail (B-4)

FILE: Z17-14

APPLICANT/OWNER: Gordon Clark
c/o GC/AAA Fence

LOCATION: 304 Durham Road (Tax Map I, Lot 123)

ACREAGE: 0.23 acre, approx. 10,000 square feet

EXISTING LAND USE: 26' x 36' warehouse structure and gravel parking area

PROPOSED LAND USE: Retail office in existing structure; gravel and paved parking areas

SURROUNDING LAND USE: Commercial, light manufacturing, assembly hall, assisted living facility

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No; Technical Review Committee approval required

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports the variance.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the east side of Durham Road, near the Madbury town line. The Applicant also owns 294 Durham Road and operates his fencing business in that location (a narrow strip of land owned by the Order of Elks divides 294 and 304). The Applicant's intent is to create a retail office at 304 Durham Road in a small, existing warehouse structure. The B-4 Zoning District requires a 25-foot setback for parking areas, and the Applicant requests a variance to permit parking area located within 2.3 feet of a side property line, 18.3 feet of another side line, and 10 feet of the front property line.

The intent is to provide four paved parking spaces and room for maneuvering on the 9,976-square-foot lot. Gravel storage area exists behind the building within 25 feet of the lot lines.

REASON FOR STAFF RECOMMENDATION

This lot is less than 5% of the minimum lot size in the B-4 Zoning District, and the 25-foot parking area setback is unique to the B-4. The lot is 100 feet wide and 100 feet deep, yielding only 2,500 square feet that could meet the parking area setback. Most of the 940-square-foot existing structure is within that 2,500-square-foot area. The B-4 setbacks for a principal building would render this lot unbuildable without relief.

The nearest structure is a light manufacturing business at 308 Durham Road with a substantial parking area approximately 25 feet from the common lot line. The driveway to the Elks Lodge is between 304 Durham and 294 Durham, where GC/AAA Fence is currently located. Relief from the parking area setback is unlikely to impact property values, will not create an injustice, is not contrary to the public interest, and is consistent with the spirit of the ordinance, which in this case is to provide significant setbacks on large commercial lots. The lot in question is very small and relief from the ordinance is required to allow minimal parking and enable reasonable use of this commercial property.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff supports the request.

**Property Information**

Property ID I0123-000000
Location 304 DURHAM RD
Owner CLARK GORDON D



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

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

Parcels updated 03/20/2017
Properties updated 07/11/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

Office Use Only	Case #:	<u>217-14</u>	Date Received:	<u>RECEIVED</u> <u>Planning Office</u> <u>JUN 29 2017</u>
	Amount Paid:	<u>\$ 180.00</u> <u>ck # 4123</u>	Time Received:	<u>Dover, New Hampshire</u>

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Gordon Clark Phone # 603-234-7746

Address of Applicant: c/o GC/AAA Fence, 294 Durham Road, Dover, NH 03820

E-Mail Address: gordon@vinylfencesinc.com

PROPERTY OWNER (if different from applicant): same

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 304 Durham Road, Dover

Brief Directions: Heading south on Durham Road, the property is on the left (east)
approximately 1/4 mile from the Mast Road intersection.

Zoning District: B-4 Assessor's Map # I Lot(s) # 123

TYPE OF APPEAL: (Please check one)

☒ Variance	from Section <u>170-12</u> of the Zoning Ordinance
☐ Physical Disability Variance (RSA 674:33-V)	from Section _____ of the Zoning Ordinance
☐ Special Exception	per Section _____ of the Zoning Ordinance
☐ Appeal of Administrative Decision	regarding Section _____ of the Zoning Ordinance
☐ Equitable Waiver	per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

To relocate Granite State Gate Systems, LLC's offices presently housed at
294 Durham Road to this location. This retail office will be used in essentially
the same manner.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12 of the Zoning Ordinance to permit:

A variance is requested to allow the improvement of the site and use as
a retail sales office for a fence/gate company.

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

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

The subject property is a longstanding, pre-existing and non-conforming building and
lot in the B-4 District. The B-4 District requires a minimum 5 acre lot and the lot
in this case is significantly smaller measuring 100' square. The dimensional setbacks
in the B-4 District require a rear setback of 75', front setback of 50' and side
setbacks of 75'. Based on these principal building setbacks, the long existing building
on this site would not be able to stand at all and in fact, no building would be
permissible on this site. The 25' minimum parking setbacks are also a physical (over)

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

The spirit of the guidelines in this zone are to encourage larger development. Per
170-16, the purpose of the district is to create an environment that encourages
efficient and attractive commercial development on a large scale along major
highways outside of the downtown area of Dover. The minimum lot size of 5 acres
encourages larger commercial development including retail which is what this lot is
proposed for. The lot however is significantly less than the size required in this
zone and thus the applicant is attempting to use the zone for the purposes set forth
in the zoning ordinance but may not because of the size of the pre-existing lot and
building.

3. Granting the variance would do substantial justice because:

The lot simply does not conform within the zone and has not for a period of approx-
imately 30 years when the district was enacted and likely the building was not
compliant even before then. The applicant owns the adjacent property in sub-
stantially the same business and seeks to improve the property and make it more
attractive and useful.

4. The value of surrounding property will not be diminished because:

The surrounding property values will not be diminished as the property was previously used for commercial purposes in exactly the same configuration as exists today.

The building, the parking and the setbacks have all been in their current condition and not compliant with Zone B-4 regulations since the enactment of the Zone in October 1988. The surrounding uses are commercial in nature including an engine shop, an assisted living facility, a fence company, and a daycare center. If anything, the property will be improved both in appearance and function and would stand likely to increase the surrounding property values.

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

The other properties in the area are larger properties and many comply with the B-4 District requirement of 5 acres. This property is distinguished from the others as it is an extremely small property with no setbacks which can be compliant with the now existing zoning ordinance. The property also pre-dates the promulgation of the B-4 District restrictions.

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

The general purposes of the ordinance provision are to create larger retail areas on the outskirts of the City of Dover. There is no fair and substantial relationship between those general purposes and the specific provision of this property as this property is significantly smaller than is necessary to comply with those specific zoning restrictions, specifically setbacks.

and

(iii) The proposed use is a reasonable one because:

The proposed use is reasonable because the proposed use is substantially identical to the adjacent use of GC/AAA Fence and Granite State Gate Systems. It is a retail use within a zone permitted for retail and the retail use will not create a high traffic or any other traffic concern.

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, 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:

SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.

Gordon Clark

Signature of Applicant*

Gordon Clark

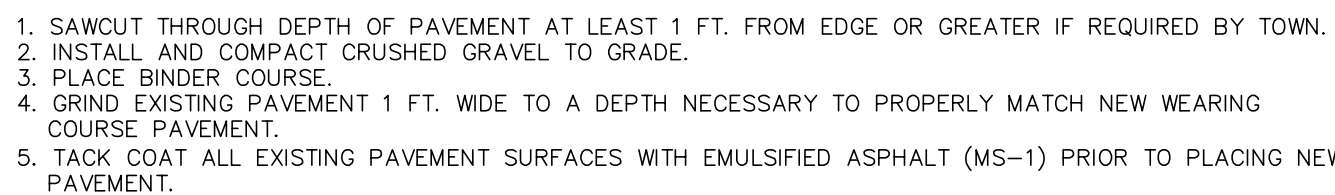
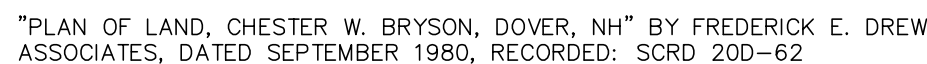
Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner: Gordon Clark Date: _____

C1

ABUTTER LIST Z17-14**GORDON CLARK****304 DURHAM ROAD****CERTIFIED MAILINGS:**

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
I0022-D00000	294 DURHAM RD	CLARK GORDON D		294 DURHAM RD	DOVER	NH	03820
I0132-000000	DURHAM RD	COLDSTREAM PROPERTIES LLC		314 RT 108 (DURHAM RD)	MADBURY	NH	03823
I0129-000000	308 DURHAM RD	CROISETIERE LEO		308 DURHAM RD	DOVER	NH	03820
I0122-000000	282 DURHAM RD	ELKS ORDER OF		282 DURHAM RD	DOVER	NH	03820
H0001-000000	301 DURHAM RD	REAL MCKOY PROPERTIES LLC		PO BOX 1727	DOVER	NH	03821
I0131-000000	DURHAM RD	VATISTAS NICOLLETTA TRUSTEE NIKKI TRUST		320 ROUTE 108	MADBURY	NH	03823

ENGINEER

MJS ENGINEERING, PC

PO BOX 359

NEWMARKET NH

03857

LAND SURVEYOR

NORWAY PLAINS ASSOCIATES, INC

PO BOX 249

ROCHESTER NH

03867



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, July 20, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit an 11-foot side setback where 20 feet is required.

UNITS PROPOSED: One

AGENDA ITEM #: 3-C

ZONING DISTRICT: Low Density Residential (R-20)

FILE: Z17-15

APPLICANT/OWNER: DR Lemieux Builders, Inc.

LOCATION: 53 Spur Road (Tax Map L, Lot 14-N)

ACREAGE: 1.35 acre (58,806 sq. ft.)

EXISTING LAND USE: Vacant

PROPOSED LAND USE: Single-family dwelling

SURROUNDING LAND USE: Single-family dwellings

PREVIOUS ZBA ACTION: Z17-07, denial of equitable waiver of side setback requirement

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff does not oppose the variance.

SUMMARY OF APPEAL AND BACKGROUND

The property is a vacant 1.35-acre lot located toward the north end of Spur Road. It has a small amount of frontage on the Bellamy River but is mostly blocked from the river by another lot which does not have street frontage. This lot (55 Spur Road) is also owned by the Applicant.

The Applicant indicates he believed the structure would be 22 feet from the side property line at its nearest point, where a 20-foot minimum setback is required. Upon the completion of a foundation certification survey, the Applicant discovered that the front corner of the foundation is 11 feet from the side property line rather than the minimum of 20. The building permit for 53 Spur Road, as well as the building permit for 55 Spur Road (issued by the previous Building Official in 2014), both indicate that “footing location must be certified prior to further construction” and that an inspection is required upon completion of footings.

REASON FOR STAFF RECOMMENDATION

The physical hardships presented by this lot include protected shoreland (see plan) and a driveway right-of-way to 55 Spur Road. Both yield a small area to build without requiring NH DES permitting. Each of the neighboring homes is more than 100 feet from the existing foundation and is unlikely to be affected by a variance from the side setback requirement.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff does not oppose the variance.

**Property Information**

Property ID L0014-N00000
Location 53 SPUR RD
Owner D R LEMIEUX BUILDERS INC



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

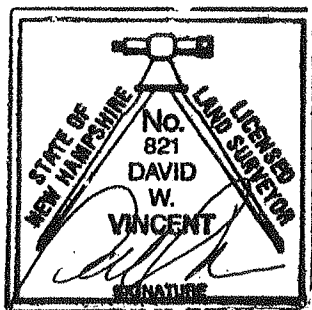
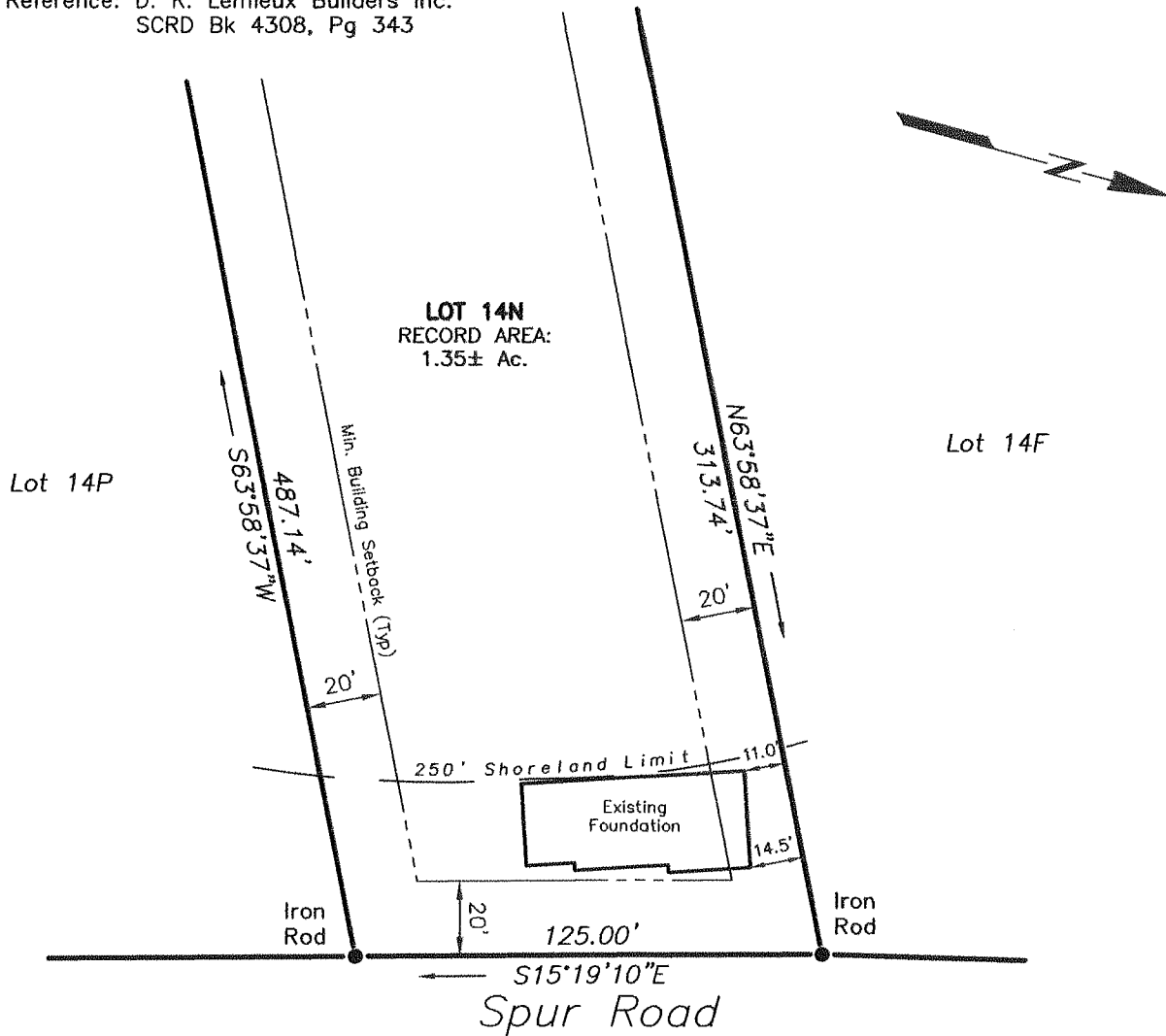
City of Dover, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 6/13/2017
Properties updated 07/13/2017

B15-133

Notes:

1. This plan does not represent a confirmation of boundary lines nor a determination of title but is solely intended to depict the location of the existing structure to the boundaries depicted on the plan reference in note 2.
2. The boundary lines depicted are based upon "Subdivision of Land for Harold & Hazel Cate, Dover, NH," dated Oct. 18, 1988, prepared by Bruce L. Pohopek, Land Surveyor, SCR D Plan No. 35-36.
3. Deed Reference: D. R. Lemieux Builders Inc.
SCR D Bk 4308, Pg 343



David W. Vincent, LLS No. 821

24 Mar. 2017

Date

PLOT PLAN

D. R. Lemieux Builders Inc.
Tax Map L / Lot 14N
53 Spur Road
Dover, NH

David W. Vincent

Land Surveying Services
PO Box 1622
Dover, NH 03821-1622
Ph: 603-664-5786
www.landsurveyingservices.net

Scale: 1"=50'	Date: 03/24/17	ML_L14N
Dwg: 001cpp	Checked: dwv	Job: 17_001



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

<i>Office Use Only</i>	Case #: _____	Date Received: _____
	Amount Paid: \$ _____	Time Received: _____

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: D R Lemieux Builders, Inc. Phone # (603) 235-4370

Address of Applicant: PO Box 1163, Rochester, NH 03866

E-Mail Address: David Lemieux / lemieux.inc@comcast.net

PROPERTY OWNER (if different from applicant): Same

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 54 Spur Road, Dover, NH 03820

Brief Directions: _____

Zoning District: R-20 Assessor's Map # L Lot(s) # 14-N

TYPE OF APPEAL: (Please check one)

☒ Variance	from Section <u>170-12.A + B</u> of the Zoning Ordinance
☐ Physical Disability Variance (RSA 674:33-V)	from Section _____ of the Zoning Ordinance
☐ Special Exception	per Section _____ of the Zoning Ordinance
☐ Appeal of Administrative Decision	regarding Section _____ of the Zoning Ordinance
☐ Equitable Waiver	per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

To construct a single family residence

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12.A + B of the Zoning Ordinance to permit:

See attached

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

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

See attached

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

See attached

3. Granting the variance would do substantial justice because:

See attached

4. The value of surrounding property will not be diminished because:

See attached

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

See attached

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

See attached

and

(iii) The proposed use is a reasonable one because:

See attached

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, 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:

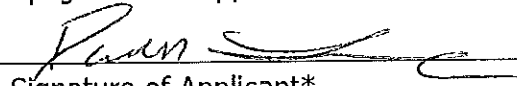
SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.


Signature of Applicant*


Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:  Date: 6/28/17

ABUTTER LIST
FOR
D R LEMIEUX BUILDERS INC.
Map L, Lot 14-N
53 Spur Road, Dover, NH
March 30, 2017

MAP/LOT

OWNER/APPLICANT:

MAP L/LOT 14-N	D R LEMIEUX BUILDERS INC. PO BOX 1163 ROCHESTER, NH 03866
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ABUTTERS:

MAP J/LOT 8-A	STATE OF NEW HAMPSHIRE C/O NH FISH AND GAME 11 HAZEN DR CONCORD, NH 03301
MAP L/LOT 12	RUSSEL E. CHARLESTON STEPHANIE LEFLEM 23 NUTE RD DOVER, NH 03820
MAP L/LOT 13	ADAM R. FOGG PATRICIA NAGLE 149 MILL RD DURHAM, NH 03824
MAP L/LOT 14-L	ANDREW KOELLMER NATALIE HOGINSKI 59 SPUR RD DOVER, NH 03820
MAP L/LOT 14-A	DAVID LEMIEUX PO BOX 1163 ROCHESTER, NH
MAP L/LOT 14-F	DALE S. ROEMER, TRUSTEE DALE S. ROEMER REV. TRUST 51 SPUR RD DOVER, NH 03820
MAP L/LOT 14-M	CAROLYN A. LAVOIE PIERRE C. LAVOIE 175 DOVER POINT ROAD A DOVER, NH 03820
MAP L/LOT 14-P	NATALIE KOELLMER 59 SPUR RD DOVER, NH 03820

ABUTTER LIST
FOR
D R LEMIEUX BUILDERS INC.
Map L, Lot 14-N
53 Spur Road, Dover, NH
March 30, 2017

PROFESSIONALS:
ATTORNEY

FRANCIS X. BRUTON, III, ESQUIRE
BRUTON & BERUBE, PLLC
798 CENTRAL AVENUE
DOVER, NH 03820

A. Variance Requested

A variance is requested from Section(s) 170-12. A + B of the Zoning Ordinance to permit:

Allowing a foundation and single family residence to be built with a side yard setback of eleven (11) feet where a setback of twenty (20) feet is required.

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

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

The public interest is affected if the proposed variance would constitute a fundamental change in the neighborhood or if there would be a substantial impact on health or safety. Residential use is a permitted use in this zone. The applicant discovered that the foundation had mistakenly been constructed approximately nine (9) feet into the side yard setback and voluntarily disclosed that to City officials. Other residences in this neighborhood are constructed closer than twenty (20) feet to the side property lines of those lots. Allowing this foundation to be used in its present location and allowing a home to be built on the foundation will not change the fundamental character of this neighborhood and would not have a substantial impact on health or safety.

The residence on the lot located to the north of this lot is located approximately 150 feet from the applicant's lot while the residence on the lot located to the south of this lot is located about 50 feet from the applicant's lot. There is an existing driveway which extends across the applicant's lot from Spur Road down to a waterfront residence. If the foundation and home on the applicant's lot had to be moved south by nine (9) feet, it would be moved to within 8 to 10 feet of that existing driveway and would be moved closer to the southerly neighbor and would thereby reduce the setback from that residence which is already closer than the northerly neighbor's house.

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

The spirit of the ordinance is to allow for adequate spacing between structures on adjacent parcels of land. Since the home on the northerly abutting lot is located approximately 150 feet away from the applicant's northerly property line, there will be more than adequate spacing from that residence and the two residences will be screened by existing trees and other vegetation. Denying the variance would require that the applicant's residence be moved closer to the southerly abutter, and the existing between those two dwellings is already less than the distance between the applicant's house and the southerly neighbor. Keeping the applicant's house in its present location will also keep it further away from the existing driveway to the waterfront neighbor's house.

3. Granting the variance would do substantial justice because:

The New Hampshire Supreme Court has held that an injustice occurs when the injury to the applicant resulting from denying the variance would be greater than any benefit that would accrue to the public if the variance is denied. In this case, similar uses already exist nearby. Denying the variance will not confer a benefit on the general public since adequate spacing will exist between the applicant's house and both the northerly and southerly abutters. Denying the variance would be a detriment to the applicant because that denial would prevent the applicant from the reasonable use of its property.

4. The value of surrounding property will not be diminished because:

The value of adjacent properties will not be affected because the residential use is a permitted use and the new home to be constructed on this foundation will be a significant distance from adjacent dwellings and will be screened by existing vegetation.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

The applicant's lot is long and narrow and is burdened by an existing driveway which extends from Spur Road to an adjacent waterfront home. The applicant reported the error in locating the foundation as soon as that error was discovered. This is the first time that this applicant has encountered this problem of placing a foundation within the setback. As presently located, the foundation is about 160 feet away from the home on the northerly abutting lot, and it is located further away from the southerly neighbor and from the existing driveway than would be the case if the foundation was located 20 feet from the northerly property line.

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

The general purposes of the ordinance provision are to ensure adequate spacing between adjacent structures. In this case, granting the variance will allow the applicant's house to be located further away from its closest neighbor (on the south) and will still be 160 feet away from the northerly neighbor. Granting the variance will also allow the applicant's house to be located further away from the neighbor's driveway which extends across the applicant's land and which will facilitate maintenance of that driveway, including snow removal.

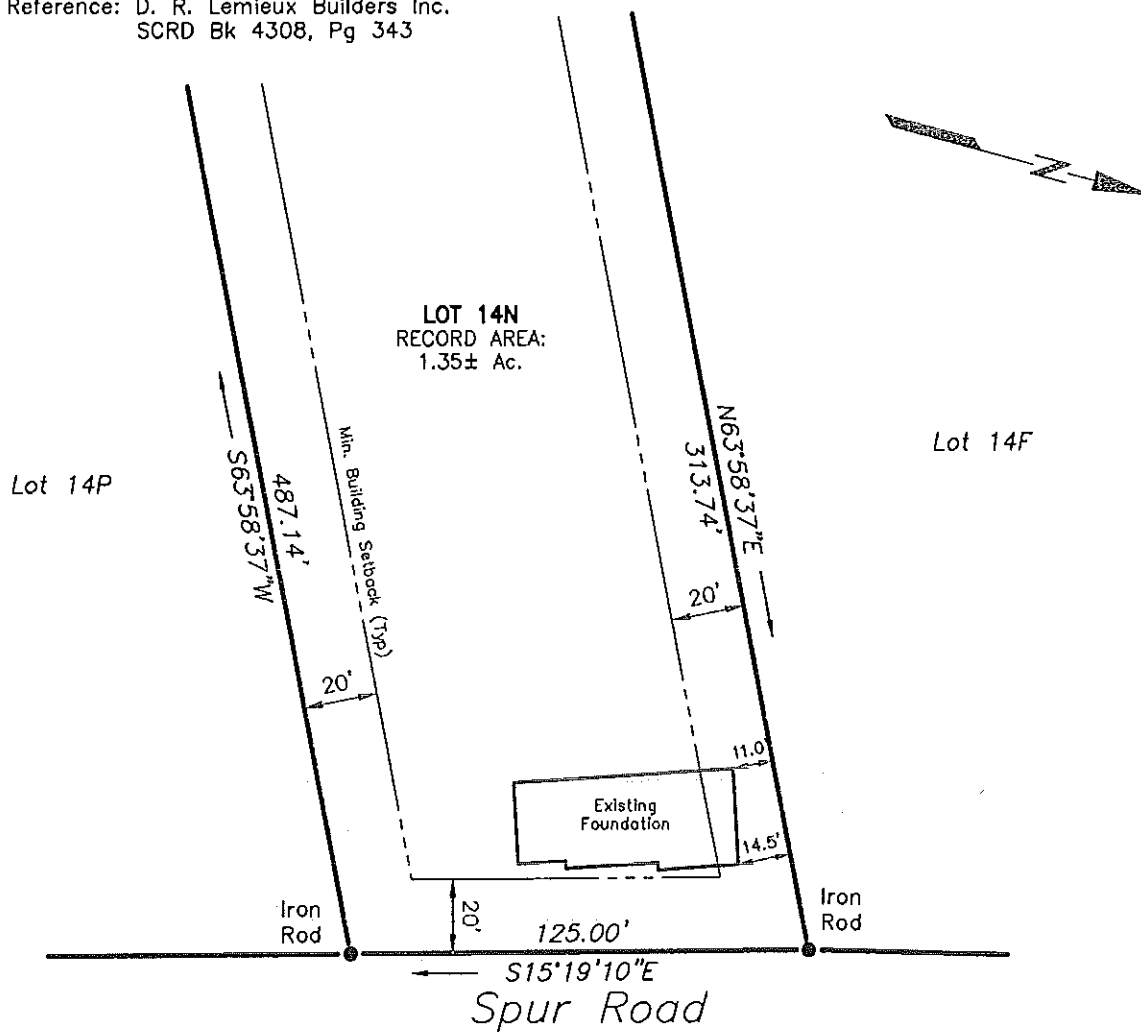
(iii) The proposed use is a reasonable one because:

The construction of the foundation in its present location was done by error and not in a deliberate attempt to circumvent the zoning requirements. The error was reported as soon as it was discovered. Maintaining the present location will result in better overall spacing among the

three abutting residences and will facilitate the use, maintenance and snow removal from the neighbor's driveway which extends across the applicant's land.

Notes:

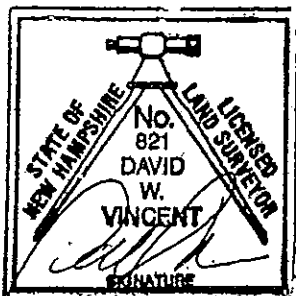
1. This plan does not represent a confirmation of boundary lines nor a determination of title but is solely intended to depict the location of the existing structure to the boundaries depicted on the plan reference in note 2.
2. The boundary lines depicted are based upon "Subdivision of Land for Harold & Hazel Cote, Dover, NH," dated Oct. 18, 1988, prepared by Bruce L. Pohopek, Land Surveyor, SCRD Plan No. 35-36.
3. Deed Reference: D. R. Lemieux Builders Inc.
SCRD Bk 4308, Pg 343



PLOT PLAN

D. R. Lemieux Builders Inc.
Tax Map L / Lot 14N
53 Spur Road
Dover, NH

David W. Vincent
Land Surveying Services
PO Box 1622
Dover, NH 03821-1622
Ph: 603-664-5786
www.landsurveyingservices.net



24 Mar. 2017

Date

David W. Vincent, LLS No. 821

Scale: 1"=50'	Date: 03/24/17	ML_L14N
Dwg: 001cpp	Checked: dwv	Job: 17_001



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type: Regular Meeting
Meeting Location: McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date: Thursday, July 20, 2017
Meeting Time: 7:00 pm

INTENT: The Applicant requests a variance to permit side setbacks ranging from 17 to 42 feet, where 75 feet is required.

UNITS PROPOSED: None

AGENDA ITEM #: 3-D

ZONING DISTRICT: Assembly and Office (I-4)

FILE: Z17-16

APPLICANT/OWNER: Hadley & Shane Moores

LOCATION: 33 Littleworth Road (Tax Map G, Lot 6-D)

ACREAGE: 2.36 acres (102,800 square feet)

EXISTING LAND USE:
Warehouse/Office

PROPOSED LAND USE: Same

SURROUNDING LAND USE:
Warehouse, office, manufacturing, single-family dwellings

PREVIOUS ZBA ACTION:
None

PLANNING BOARD APPROVAL REQUIRED: Technical Review Committee approval required at minimum. Site plan approval likely required, dependent on final building and parking plans.

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION:
Staff does not oppose the variance.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the north side of Littleworth Road and is home to Moores Crane Rental. The existing, 2,880-square-foot metal structure was built in 1970. The property was rezoned from Rural Restricted Industrial (I-2) to a less intensive industrial zone, Assembly and Office (I-4), in 2003. I-4 requires a larger minimum lot size and greater setbacks from property lines. The Applicant seeks a variance from side setback requirements to construct an addition of approximately 8,640 square feet (in order to garage cranes) and a freestanding, 1,680-square-foot office building. The majority of the property is cleared, with vehicles parked on a gravel/dirt surface.

The property is on the edge of the I-4 Zoning District, with single-family dwellings in the Low Density Residential (R-20) to the west and industrial uses in the I-2 across Littleworth Road to the south. A large manufacturing facility is located behind Moores Crane, and nonconforming single-family dwellings, also in the I-4, are located directly south and southeast of the property (35 Littleworth and 29 Littleworth).

REASON FOR STAFF RECOMMENDATION

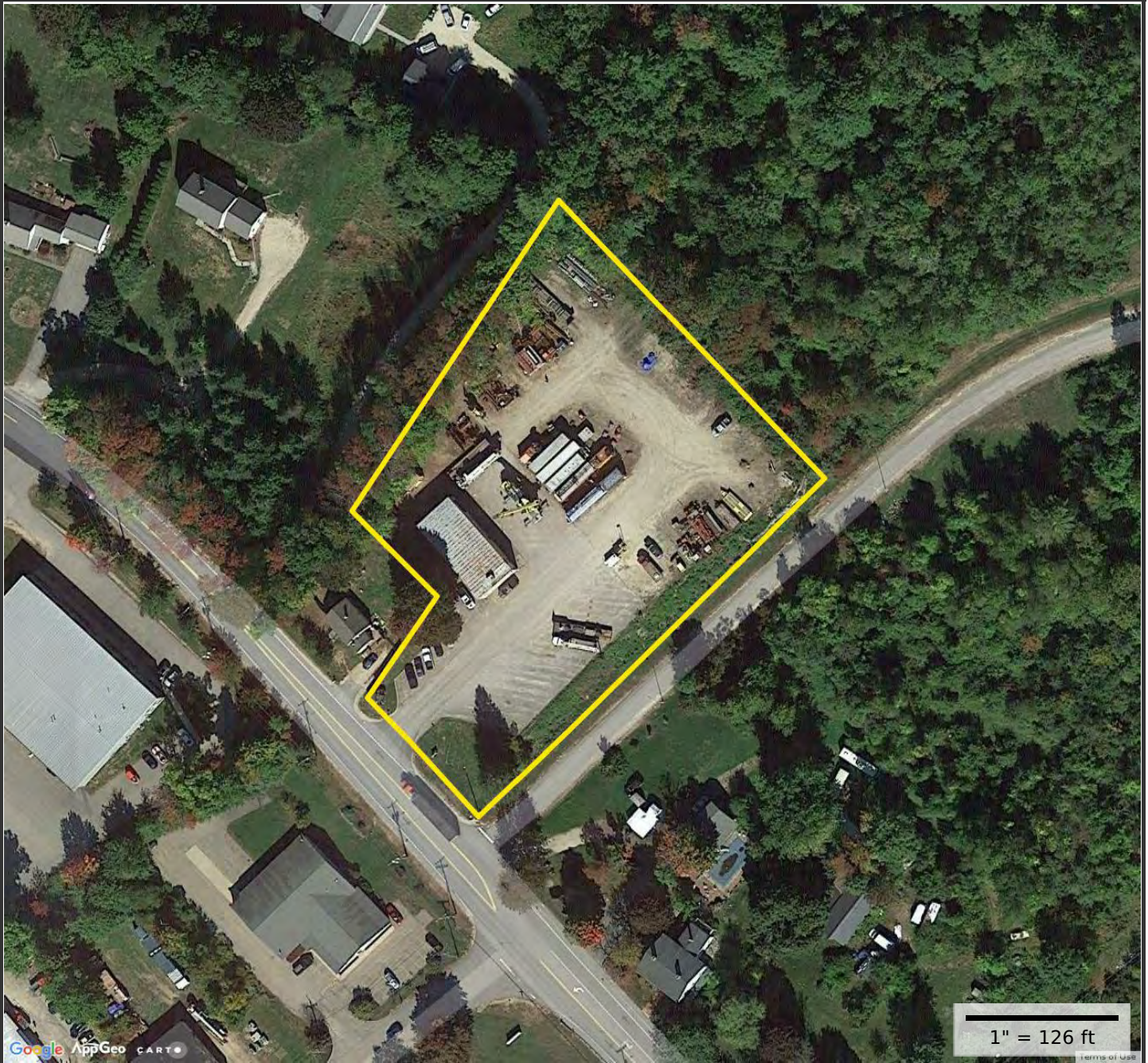
This lot is less than half of the five-acre minimum lot size in the I-4. The existing structure is nonconforming to the 75-foot setback from its lot lines shared with 35 and 39 Littleworth Road. The use is reasonable and the size and shape of the lot, as well as the placement of the existing building upon it, present a hardship. The Board should accept testimony and make a finding as to whether the variance(s) diminish the value of surrounding properties. The previous zoning (I-2), allows 10-foot side setbacks and the Applicant has amended his request to allow a blanket variance permitting the I-2 setbacks to be applied to the entire lot. A proposed condition of approval is included below.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff does not oppose the request and suggests the following conditions:

- 1) The current Rural Restricted Industrial (I-2) Zoning District setbacks, as follows, shall apply to all future development on Tax Map G, Lot 6-D:

Principal Building:	Outbuilding/Accessory Use:
Front: 35 feet	Front: 35 feet
Abut a Street: 35 feet	Abut a Street: 35 feet
Side: 10 feet	Side: 10 feet
Rear: 10 feet	Rear: 10 feet
- 2) The plan shall be revised with a reference to this decision and a note and depiction of the setback requirements described in condition 1.

**Property Information**

Property ID G0006-D00000
Location 33 LITTLEWORTH RD
Owner MOORES HADLEY S &



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

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

Parcels updated 6/13/2017
Properties updated 07/13/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

Office Use Only	Case #:	<u>217-16</u>	Date Received:	RECEIVED Planning Office <u>JUN 29 2017</u>
	Amount Paid:	\$ <u>28800 CF 2645</u>	Time Received:	Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Hadley and Shane Moores Phone # (603) 534-3001

Address of Applicant: 4 Cottage Lane, Rollinsford, NH

E-Mail Address: Shane@moorescranerental.com

PROPERTY OWNER (if different from applicant): _____

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 33 Littleworth Road

Brief Directions: On Route 9 - 2,933' West of the intersection of Route 9 and Route 155

Zoning District: I-4 Assessor's Map # G Lot(s) # 6D

TYPE OF APPEAL: (Please check one)

☒ Variance	from Section <u>170-12.B</u> <u>170-41.A</u> of the Zoning Ordinance
☐ Physical Disability Variance (RSA 674:33-V)	from Section _____ of the Zoning Ordinance
☐ Special Exception	per Section _____ of the Zoning Ordinance
☐ Appeal of Administrative Decision	regarding Section _____ of the Zoning Ordinance
☐ Equitable Waiver	per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

Please see attached

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12.B 170-41.A of the Zoning Ordinance to permit:

Please see attached

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

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

Please see attached

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

Please see attached

3. Granting the variance would do substantial justice because:

Please see attached

4. The value of surrounding property will not be diminished because:

Please see attached

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

Please see attached

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

Please see attached

and

(iii) The proposed use is a reasonable one because:

Please see attached

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, 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:

SIGNATURE PAGE

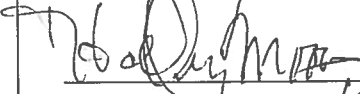
THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.


Signature of Applicant *Shane Moore*


Signature of Owner *Shane Moore*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:  Date: 06-29-17

AUTHORIZATION

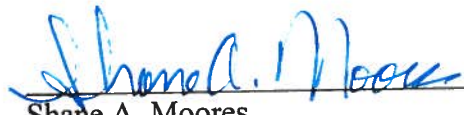
The undersigned,

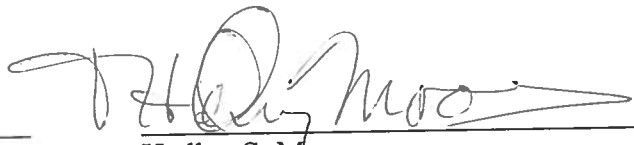
Shane A. Moores and Hadley S. Moores, Owners/Applicants, with respect to property located at

33 Littleworth Road, Dover, New Hampshire (Tax Map ID G0006-D00000), by virtue of the deed from Shane A. Moores and Joyce M. Moores as Trustees of the Land & Sea Trust, dated December 31, 1996, recorded at Strafford County Registry of Deeds Book 1911, Page 378,

hereby authorize Wyskiel, Boc, Tillinghast & Bolduc, P. A., specifically including, but not limited to, Attorneys Abigail Sykas Karoutas and Christopher A. Wyskiel, to represent the undersigned before the Zoning Board of the City of Dover with respect to the undersigneds' Application for Variances regarding the above referenced property.

Dated this 29th day of June, 2017.


Shane A. Moores
Owner/Applicant


Hadley S. Moores
Owner/Applicant

ABUTTER LIST Z17-16

HADLEY & SHANE MOORES

33 LITTLEWORTH ROAD

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
G0006-C00000	29 1/2 LITTLEWORTH RD	STOREMASTERS FUNDING III LLC	C/O PACE INDUSTRIES LLC	67 FAULKNER ST	NORTH BIMA	01862	
G0006-B00000	35 LITTLEWORTH RD	HUTCHINGS WILLIS E		184 W HIGH ST	SOMERSV NH	03878	
G0004-G01001	38 B LITTLEWORTH RD	38 LITTLEWORTH ROAD LLC		PO BOX 2232	DOVER NH	03821	
G0006-000000	29 LITTLEWORTH RD	ROGERS DOUGLAS S		24 RED FOX LN	BARRING NH	03825-3551	
G0028-001D00	37 LITTLEWORTH RD	DUNPHY MICHAEL B &		37 LITTLEWORTH RD	DOVER NH	03820	
G0004-A00001	1 INDUSTRIAL PARK RD	BEARINGS INC	DUNPHY JOY C	PO BOX 3075	MCKINNE TX	75070	
G0028-001C00	39 LITTLEWORTH RD	KRUSPKI DAVID J &	C/O PT COUNSELORS	39 LITTLEWORTH RD	DOVER NH	03820-4314	
G0004-000000	14 16 INDUSTRIAL PARK RD	FISH LIPS HOLDING CO LLC	KRUSPKI APRIL M	273 CORPORATE DR STE 150	PORTSMC NH	03801	
G0004-G01002	38 A LITTLEWORTH RD	LITTLEWORTH/INDUSTRIAL PARK PROPERTIES L		140 SILVER ST	DOVER NH	03820	
G0004-G00002	36 LITTLEWORTH RD			165 INDUSTRIAL PARK DRIVE	DOVER NH	03820	
		HADLEY & SHANE MOORES		4 COTTAGE LANE	ROLLINSF NH	03869	
		WYSKIEL, BOC, TILLINGHAST & BOLDUC, P.A.		561 CENTRAL AVENUE	DOVER MH	03820	



**Wyskiel,
Boc,
Tillinghast
& Bolduc, P.A.**
Attorneys at Law

*Christopher A. Wyskiel
William E. Boc
**D. Lance Tillinghast
*Michael J. Bolduc
Thomas G. Ferrini
*William R. Phipps
*Laurie Smith Young
Abigail Sykas Karoutas

* also admitted in Maine
**also admitted in MA, ME & VT

June 29, 2017

Chris Prior, Chairman
Zoning Board of Adjustment
City of Dover
288 Central Avenue
Dover, NH 03820

RECEIVED
Planning Office
JUN 29 2017
Dover, New Hampshire

RE: Variance Application of 33 Littleworth Road/Tax Map G/6D

Dear Chairman Prior & Board Members:

This firm represents Hadley and Shane Moores with regard to their application for 2 variances, the first with regard to Section 170-12.B of the Zoning Ordinance as to the applicability of the setbacks in the I-4 Zone with regard to the planned construction and as to any future construction on the subject lot, and a second variance from Section 170-41.A of the Zoning Ordinance, to permit the expansion of an existing non-conforming structure that will increase the structure's non-conformity.

Please allow this letter to serve as an explanation of how this application meets the elements necessary to be granted the requested variances.

Background

Hadley and Shane Moores (the "Moores") have owned the lot at 33 Littleworth Road since early 1997. The lot was originally used as the site for a construction company, but has been used for a crane rental business, Moores Crane Rental Corp., for the majority of the time since they acquired it.

Moores Crane Rental Corp. parks/stores 5-6 large cranes on the lot when they are not on job sites. In addition, they park/store approximately one-half dozen trailers and a few tractors on the lot when they are not on job sites. The company employs 9 full-time employees and several part-time employees, all of whom bring their personal vehicles to the site each work day. There is currently one building on the lot, a 36' wide x 80' long pre-engineered metal two (2) story structure which is used as office space and shop space to support the ongoing business.

At the time of its acquisition in 1997, the property was zoned I-2 ("Rural Restricted Industrial District"). The lot is 2.3 acres and has just over 129 feet of frontage on Littleworth Road. These dimensions conform to the size and frontage requirements of the I-2 zone, which require a minimum size of 20,000 square feet and 100 feet of frontage.

However, in 2003, the zoning of this lot and others in the area was changed to I-4 ("Assembly and Office District"). This was done, in large part, to attract specific users to the area which need the space afforded by the larger lots required in the I-4 zone. This change rendered the subject lot non-conforming as to its area and frontage. The I-4 zone requires a minimum lot size of 5 acres and at least 400 feet of frontage.

The Moores are proposing two additions to the existing building as well as the construction of another structure on the lot (See Exhibit A, Plan of Proposed Construction). Had the Moores' property not been rezoned to I-4 along with the others in this area that were rezoned, no relief would be needed to permit the proposed construction.

Initially, the Moores plan to add a 36' wide x 40' long pre-engineered metal addition to the north of the existing building (shown in orange on Exhibit A). The Moores also plan to add a 120' long x 60' wide pre-engineered metal addition to the back of the existing structure (shown in pink on Exhibit A). When complete, the complete building would be expanded into a 96' wide x 120' long pre-engineered metal structure (See Exhibit A). This building would be used for shop space for crane repair and associated functions and for storage, including to park the cranes and other equipment under cover and in an enclosed space while they are not on a job site (the "Additions"). Parking the cranes and other equipment inside is much better for the equipment than having it exposed to the elements, particularly in the winter. If not stored under cover, snow and ice build-up on the equipment which is difficult to remove and cold temperatures make it hard to start the engines, requiring longer idling time.

The Moores also propose to add a 30'W x 56' L single story structure with a basement to be used as office space (shown in yellow on Exhibit A), moving the office functions in the existing building into the new proposed office building ("Office Building").

With regard to the current proposal, there is no concern about the front or rear setback distances with the proposed Additions or the Office Building, as they comply with the requirements of the I-4 (and I-2) zone. However, the Additions and Office Building are generally within the required 75-foot side setback of the I-4 zone, so a variance from this requirement is needed. While the part of the existing building on the portion of the lot with frontage on Littleworth Road is conforming to the required front setback as (it is approximately 127 feet from Littleworth Road), the remaining side yard of the existing building on that side of the existing structure (roughly parallel to Littleworth Road) only ranges from approximately 30-33 feet from the boundary with the abutting property, which is within the required 75 foot side

setback in the I-2 zone (See Exhibit C, Plan Excerpt with hand drawn distance markers showing approximate distances of existing structure from lot boundaries¹).

Zoning Ordinance Criteria

The requests for both variances are simultaneously addressed.

The first variance sought is from Section 170-12.B (excerpted below in relevant part):

Applicability of Tables of Use and Dimensional Regulations by District. [Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]†††

B. The minimum regulations for LOT size, LOT FRONTAGE, BUILDING SETBACK standards for front, side and REAR YARDS, BUILDING HEIGHTs, and LOT COVERAGE shall be as specified in the Tables of Use and Dimensional Regulations by District.

The second variance is sought from Section 170-41.A (excerpted below in relevant part):

Nonconforming STRUCTUREs. [Amended on 08-01-90 by Ord. No. 8-90; Amended on 02-17-99 by Ord. No. 25-98.] Where a lawful STRUCTURE exists at the effective date of adoption or amendment of this Chapter that could not be built under the terms of this Chapter by reason of restrictions on area, LOT COVERAGE, HEIGHT or yards, its location on the LOT or other requirements concerning the STRUCTURE may be continued so long as it remains otherwise lawful, subject to the following:

A. Except as provided for in 170-40.A and 170-41.D, no such nonconforming STRUCTURE may be enlarged or ALTERed in a way which increases its nonconformity, but any STRUCTURE or portion thereof may be ALTERed to decrease its nonconformity.

Variance Criteria

To be eligible for a variance, the proposed use must meet all five of the conditions in RSA 674:33:

- (1) The variance will not be contrary to the public interest;

¹ These dimensions were measured with a scale, and are approximate only, as the distances were not surveyed.

- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, 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.

1) The variances will not be contrary to the public interest:

When considering the first two criteria of the variance standard, the courts have suggested that the criteria are interdependent and should be construed together. See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 580 (2005). Guided by the New Hampshire Supreme Court’s decision in Chester, the Board should consider whether the requested variance would “unduly and to a marked degree” conflict with the basic premises of the zoning ordinance, or alter the essential character of the locality, or threaten the public health, safety, or welfare. Id. at 581. The plans proposed by the application do not conflict with the basic premises of the zoning ordinance, alter the essential character of the locality or threaten the public health, safety or welfare.

The subject lot has a long history of being zoned as part of the I-2 district, and many parcels near to or abutting it are still in the I-2 zone. It was within the I-2 district until about 2003, when the area was rezoned to I-4 because many of the lots in the area are large enough to easily fit within the requirements of the I-4 zone and the City wanted to encourage I-4 permissible uses on those larger lots. The area across Littleworth Road from the subject property is still within the I-2 Zone to this day. On March 8, 2017, Dover’s City Council re-zoned over 106 acres of land just further west along Littleworth Road (Tax Map G, Lots 19-B, 29, 29-A, 29-B, 29-C and 30B) from R-20 and I-4 to the I-2 Zone (See Exhibit B). However, the subject lot is caught within a little cluster of smaller non-conforming lots which remain within the I-4 district.

While the construction of the Additions and Office Building on the subject lot as proposed would require building within the setbacks of the I-4 zoned property, the proposed construction would comply with the requirements of the I-2 zone. The I-4 zone requires that the setbacks on all sides of the buildings on the lot be 75 feet, unless the building is an accessory building, and then the setbacks permitted are 10 feet on the side and rear of the building. However, in the I-2 zone, the setbacks for both primary structures and accessory structures are 35 feet on the front and abutting a street, but only 10 feet on the side and rear.

Because, the proposed construction of the Additions and the Office Building are within the required 75 foot side setbacks of the I-4 district, a variance is needed to permit this encroachment into the setbacks. Importantly, however, the buildings are all outside of the 10 foot side setbacks that would be required in the I-2 zone, or for an accessory structure within the I-4 zone. Moreover, although the southeastern side of the proposed Office Building would be only just over 21 feet from the side of the subject lot, the abutting lot (29 ½ Littleworth Road (Tax Map G/6-C)) is shaped in such a way that a private drive (marked on Exhibit A as to L&P Aluminum Holdings, LLC) of just over 58 feet in width abuts the subject parcel, which would ensure that the side of the Office Building would be at least 79 feet from the boundary of the next abutting parcel with a structure on it, and 118 feet and 167 feet from two of the principal buildings on that lot (29 Littleworth Road (Tax Map G/6) (See Exhibit A and Exhibit D (Tax Map excerpt showing approximate distance measurements)). This placement of the Office Building allows for plenty of space between buildings, and while not in strict conformity with the zoning ordinance, honors the basic premises of the zoning ordinance, does not alter the essential character of the locality or threaten the public health, safety or welfare.

Similarly, although the northern side of the proposed Additions would range from just over 17 feet from the lot line to over 42 feet from the lot line, which is within the 75 foot I-4 setback, the shape of the next abutting lot at 37 Littleworth Road (Tax Map G/28-1-D) ensures that there is a strip of land with no structures on it between the subject lot and the next abutting parcel with a structure on it. Also, there would be approximately 79 feet from the Additions to the edge of the building located at 35 Littleworth Road, and the next closest buildings to the north (at 39 and 37 Littleworth Road (Tax Map G/28-1C and G/28-1D respectively), are approximately 191 feet and 124 feet from the boundary line of the subject parcel. Therefore, the proposed Additions' encroachment into the setback, while not in strict conformity with the zoning ordinance, honors the basic premises of the zoning ordinance, does not alter the essential character of the locality or threaten the public health, safety or welfare.

Along these lines, and while it might be difficult to say which of these buildings would be an "accessory" to the other, the I-4 district contemplates the existence of structures only 10 feet from the side and rear property lines, in that the Table of Uses authorizes accessory structures within 10 feet of the side and rear property lines within this zone. Therefore, construction of these structures at least 10 feet (or more) from the side property boundaries does not conflict with the basic premises of the zoning ordinance or alter the essential character of the locality.

With regard to the variance that is needed for the Additions' expansion of the existing nonconforming structure, although the Additions do render the existing structure less conforming than previously, as explained above, the proposed construction does not conflict with the basic premises of the zoning ordinance, does not alter the essential character of the locality or threaten the public health, safety or welfare.

2. The spirit of the ordinance is observed:

Along the lines of the first criteria, the second criteria asks the Board to determine whether the requested variance complies with the spirit of the ordinance. In addition to the reasons above, the Zoning Ordinance was "designed to promote the health, safety, and the general welfare of Dover's residents...to encourage the maintenance of Dover's economic and aesthetic quality of life; and to encourage the most appropriate use of land throughout the City of Dover." (See Zoning Ordinance at 170-3).

Both the request for the variance from the setback requirements and the request for the variance to permit the expansion of an existing non-conforming structure which increases its non-conformity meet this criteria. Dover's economy is enhanced by allowing businesses within its borders to succeed. The Applicant's proposal for construction on this lot would facilitate the success of Moores Crane Rental Corp., a Dover business of long standing, by providing it a way to shelter its valuable equipment from the elements, prolonging its useful life. Current outside storage of cranes and trucks is particularly problematic in the winter when snow and ice need to be removed and longer engine warm-up time is needed for these vehicles parked outside. Having the office use separate from the garage use is reasonable given the larger space and heating/cooling needs of crane storage and repair versus office use. Also, by having the cranes under cover, the attractiveness of the lot is increased, as the equipment would not be visible to passersby, and there is significantly less risk that the equipment might constitute an inducement to children or young adults to play on the cranes and equipment, risking injury. Finally, the proposed pre-engineered metal structures, and the use of the lot as the site of a crane rental company, fit in with the aesthetic qualities of that area of Littleworth Road and are an appropriate use of land in the City of Dover.

3. Substantial justice is done:

This criteria requires the Board to consider the facts of each case before it to determine whether justice would be served by granting the variance. One way to consider whether "justice" would be done is to determine whether there is any gain to the public that is greater than the loss suffered by the individual if the variance is not granted. See Farrar v. City of Keene, 158 N.H. 684, 692 (2009). If the Board imagined a scale, it could weigh the loss suffered by the Moores, if they could not build the proposed Additions and Office Building, against the public benefit gained by enforcing the ordinance expressly as written.

Even considering the encroachment into the setbacks as described above, and the increase in non-conformity of the existing structure as encroaching further into the side setbacks than it does at present, it is difficult to think of any loss suffered by the public by permitting the proposed construction. Had the pre-existing I-2 zoning not been changed in 2003 (to attract targeted development on existing larger parcels to the rear of the Moores' lot) the construction proposed here would have occurred as a matter of right. The encroachment into the setbacks is in conformity with the setbacks permitted in the I-2 zone across the street from the subject property and in the nearby newly re-zoned I-2 properties.

In fact, the public would gain by permitting the proposed construction, as the equipment currently stored outside on the site would be under cover, rather than in the open and visible to all who pass by, which is less in line with the spirit of the ordinance than having it outside. Finally, even the I-4 zoning contemplates the possibility of structures closer to the side boundary lines of the property, as it permits construction of accessory structures up to 10 feet away from the side setbacks. For all these reasons, there is no loss to the public by permitting the proposed construction.

Conversely, if the Moores were not permitted to construct the Office Building and Additions as proposed, they would be prevented from using their property in a reasonable manner that would be permitted and fully compliant if the property had not been re-zoned I-4. These factors all weigh more in favor a greater loss to the Moores if they are not permitted to construct the Addition and Office Building as proposed, rather than a finding of any loss to the public if the ordinance was not strictly enforced in these circumstances.

4. The values of surrounding properties are not diminished:

There is no diminution in value to the surrounding properties if the construction as proposed is allowed within the side setbacks and to further expand the non-conformity of a non-conforming structure. As noted previously, when completed, the proposed buildings will be appropriately distant from any other buildings in the vicinity due to the shape and layout of surrounding lots. In addition, arguably the value of surrounding lots could be increased if the equipment and other storage was within structures and hidden from view, rather than visible to passersby.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Special conditions of the property that distinguish it from other properties in the area:

As noted above, the lot was previously zoned I-2 before being re-zoned I-4, although the area across the street was left I-2 and nearby parcels were recently re-zoned back to I-2. This lot is a relatively small one, and the 75 foot setbacks required on all sides of a structure in the I-4 zone create a very small buildable envelope on the property, which ranges in width from just over 129 feet to just over 319 feet. Although the property is 400 feet from Littleworth Road to

the rear lot line, when combined with the relatively narrow property dimensions, its "L" shape, and the required 75 foot setbacks, it is hard to site any building on the property in compliance with the setbacks. The other properties in the area are either larger or have a more regular shape which makes these setbacks more reasonable. Therefore, this lot is unique when taking its size, shape and the requirements of the zone into consideration.

No fair and substantial relationship exists between the general public purposes of the requirement for a 75 foot setback from the side setbacks, or prohibiting the expansion of an existing non-conforming structure that would increase its non-conformity, and the specific application of those provisions to the property:

Setbacks are generally required in order to allow for space around buildings and to prevent buildings from being too close to the road or other buildings, all of which overall tend to lessen the density of structures in an area, allow for site lines at the street, and similar outcomes. Rules which prevent expansion of a non-conforming structure which increase its non-conformity serve two purposes. One is to work toward overall conformity with existing zoning rules. The other (in terms of setbacks) is to prevent expansion of a structure in such a way that the desired outcomes of having setbacks are not thwarted. In this case, both the original structure to which the Additions will be added and the Office Building are at least 75 feet from the street, complying with the street setback rules. In addition, as explained above, given the layout of this lot and the abutting lots, as a practical matter, there is sufficient space between the existing buildings and proposed construction so as to achieve the goals of the setbacks although the Additions and Office Building would encroach into the actual setbacks required in the zone. The Additions' increased encroachment of the existing non-conforming structure into side setback near 37 Littleworth Road is toward an area which does not contain a building, and the construction of the Additions would not decrease the distance in the side setback between the Additions and the buildings on 35 Littleworth Road, where there is less space between the structures.

Because the proposed construction encroachments into the setback area do not defeat the purposes of the setback requirements or the reasons to forbid expansion of an existing non-conforming structure which increases its non-conformity, there is no fair and substantial relationship between the general public purposes of these provisions of the Zoning Ordinance and the specific application of those provisions to the property.

The proposed use is a reasonable one:

This lot was rezoned into the I-4 zone in 2003 along with a number of other lots in the area, although the area across the street was left as I-2 and other areas near this lot have recently been re-zoned back to I-2. The proposed construction of the Additions and the Office Building would comply with all setback and other requirements if the lot had remained in the I-2 zone, as the side setback requirements in that zone are only 10 feet, rather than the 75 feet required in the I-4 district. Therefore, the proposed use of the property is a reasonable one.

Chris Prior, Chairman
Zoning Board of Adjustment
June 29, 2017
Page 9

Moreover, the zoning of the I-4 district contemplates construction up to 10 feet from the side and rear setbacks, as accessory structures in that district are permitted to have side and rear setbacks of 10 feet, rather than the 75 feet otherwise required. Therefore, the proposed construction and use of the property is reasonable, given the proximity of this lot to other lots actually zoned I-2 and the features of this lot.

For all these reasons, the Moores respectfully request that the Board grant the requested variances, first from the setbacks to permit the current proposal as it encroaches into the setbacks and to permit any future construction to be in compliance with the setbacks applicable to the I-2 district, and second, to allow expansion of an existing non-conforming structure in a way that increases its non-conformance. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abigail Sykas Karoutas', with a long horizontal flourish extending to the right.

Abigail Sykas Karoutas

cc: Hadley and Shane Moores

H:\RE & BUS\Moores Crane Rental Corp\Real Estate\Letter to accompany ZBA Application (final).docx

REFERENCE

- 1.) PLAN OF LAND, DOVER, N.H., GENERAL ELECTRIC COMPANY TO CRT
PRESENT; SCALE: 1" = 100'; DATED: JUNE 1983; BY: NORWAY
PLANS ASSOCIATES, INC.; RECORDED S.C.R.D. PLAN 42-34.
- 2.) BOUNDARY PLAN, DOUGLAS S. & TERRY A. ROGERS, LITTLEWORTH
ROAD, DOVER, NEW HAMPSHIRE. SCALE: 1" = 30'; DATED: AUGUST 3,
1983; BY: TRITECH ENGINEERING CORPORATION; NOT RECORDED.
- 3.) SUBDIVISION PLAN, LONHEART INVESTMENT PROPERTY, LLC,
LITTLEWORTH ROAD, DOVER, NEW HAMPSHIRE. SCALE: 1" = 60';
DATED: OCTOBER 31, 2003; RECORDED S.C.R.D. PLAN 74-86.
- 4.) PROPOSED SUBDIVISION, LAND OF PENELOPE GROSSMAN FOR JAMES
K. HORNE, LITTLEWORTH ROAD, DOVER, N.H.; SCALE: 1" = 100';
DATED: OCTOBER 3, 1988; BY: BERRY SURVEYING & ENGINEERING;
RECORDED S.C.R.D. PLAN 35-16.
- 5.) NEW HAMPSHIRE HIGHWAY DEPARTMENT, PLAN OF DOVER,
BRF - A-222(001), 13042.

50 / 2

NUM HOLDINGS, LLC
D. Box 309
VILLE, AR 72702
331 / 839

NOTES:

- 1.) OWNERS OF RECORD: HADLEY S. MOORES
SHANE A. MOORES
4 COTTAGE LANE
ROLLINSFORD, NEW HAMPSHIRE 03849
S.C.R.D. VOLUME 1911, PAGE 378
- 2.) [5 / 8 D] - DENOTES TAX MAP AND PARCEL NUMBER.
- 3.) ZONING DISTRICT: ASSEMBLY & OFFICE (A-4)
MINIMUM LOT SIZE = 5 AC.
MINIMUM FRONTAGE = 400 FEET
BUILDING SETBACK REQUIREMENTS:
FRONT AND SIDE = 75 FEET
BACK AND SIDE (R.O.W.) = 75 FEET
PARKING = 25 FEET
MAX. BLDG. HEIGHT = 40 FEET
- 4.) THE SUBJECT PARCEL IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330145; PANEL 131C; SUFFIX D; MAP NUMBER 330170300, EFFECTIVE DATE MAY 17, 2005.
- 5.) BASIS OF BEARINGS IS CITY OF DOVER GRID SYSTEM. VERTICAL DATUM IS NAD 1929. CONTOUR INTERVAL IS 1 FOOT.
- 6.) NO WETLAND DELINEATION HAS BEEN PERFORMED FOR THE SUBJECT PARCEL.
- 7.) THE PARCEL IS SUBJECT TO A DRAINAGE EASEMENT GRANTED TO THE STATE OF NEW HAMPSHIRE AS DESCRIBED IN S.C.R.D. VOLUME 3302, PAGE 146.
- 8.) CITY OF DOVER TAX PARCELS G/6A & G/6D WERE MERGED INTO ONE PARCEL, G/6D. SEE NOTICE OF LOT MERGERS RECORDED S.C.R.D. VOLUME 3286, PAGE 164, DATED OCTOBER 25, 2005.

EXISTING CONDITIONS PLAN

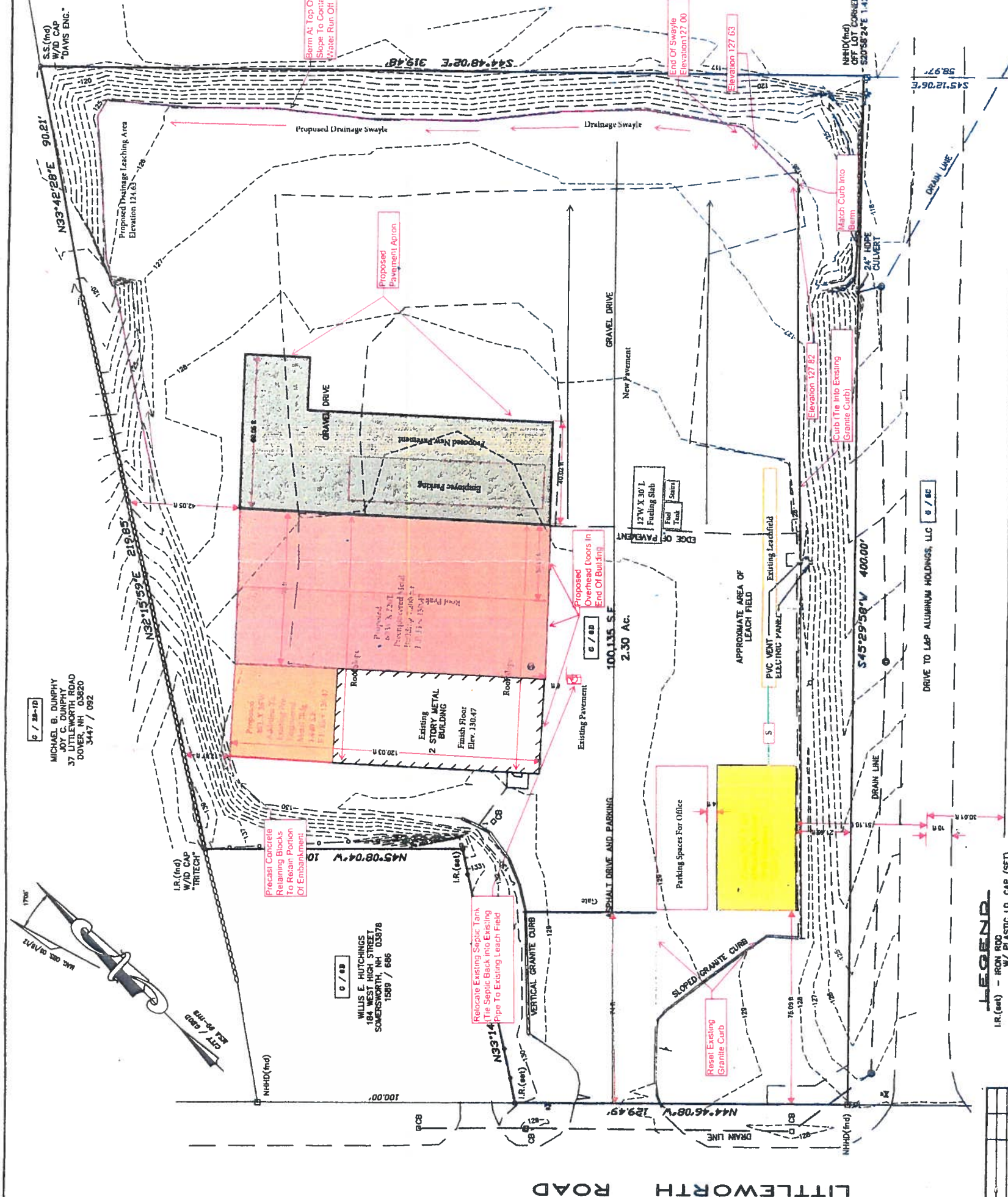
PREPARED FOR
HADLEY S. & SHANE A. MOORES
TAX MAP G, LOT No. 6D
33 LITTLEWORTH ROAD
CITY OF DOVER
COUNTY OF STRAFFORD
STATE OF NEW HAMPSHIRE

DRAWN BY:	KJF	FILE: VR CP\1988\12-1985V10.DWG
SCALE:	1" = 20'	DATE: AUGUST 2012

McNeaney
Survey
Associate

P.O. Box 681 - 24 CHESTNUT STREET
DOVER, NH 03820 (603) 742-0811

SURVEYING	PLANNING	CONSULTING
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2.00	2.00	2.00
3.00	3.00	3.00
4.00	4.00	4.00
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97.00	97.00	97.00
98.00	98.00	98.00
99.00	99.00	99.00
100.00	100.00	100.00



"I CERTIFY THAT THIS SURVEY PLAY IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN." (REA 876:18)

"I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL GROUND SURVEY PERFORMED WITH A TOTAL STATION, BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SURVEY MEETS OR EXCEEDS THE MINIMUM PRECISION REQUIREMENTS FOR SURVEY CLASSIFICATION "1" AS SET FORTH IN TABLE 500.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSES FOR LAND SURVEYORS."

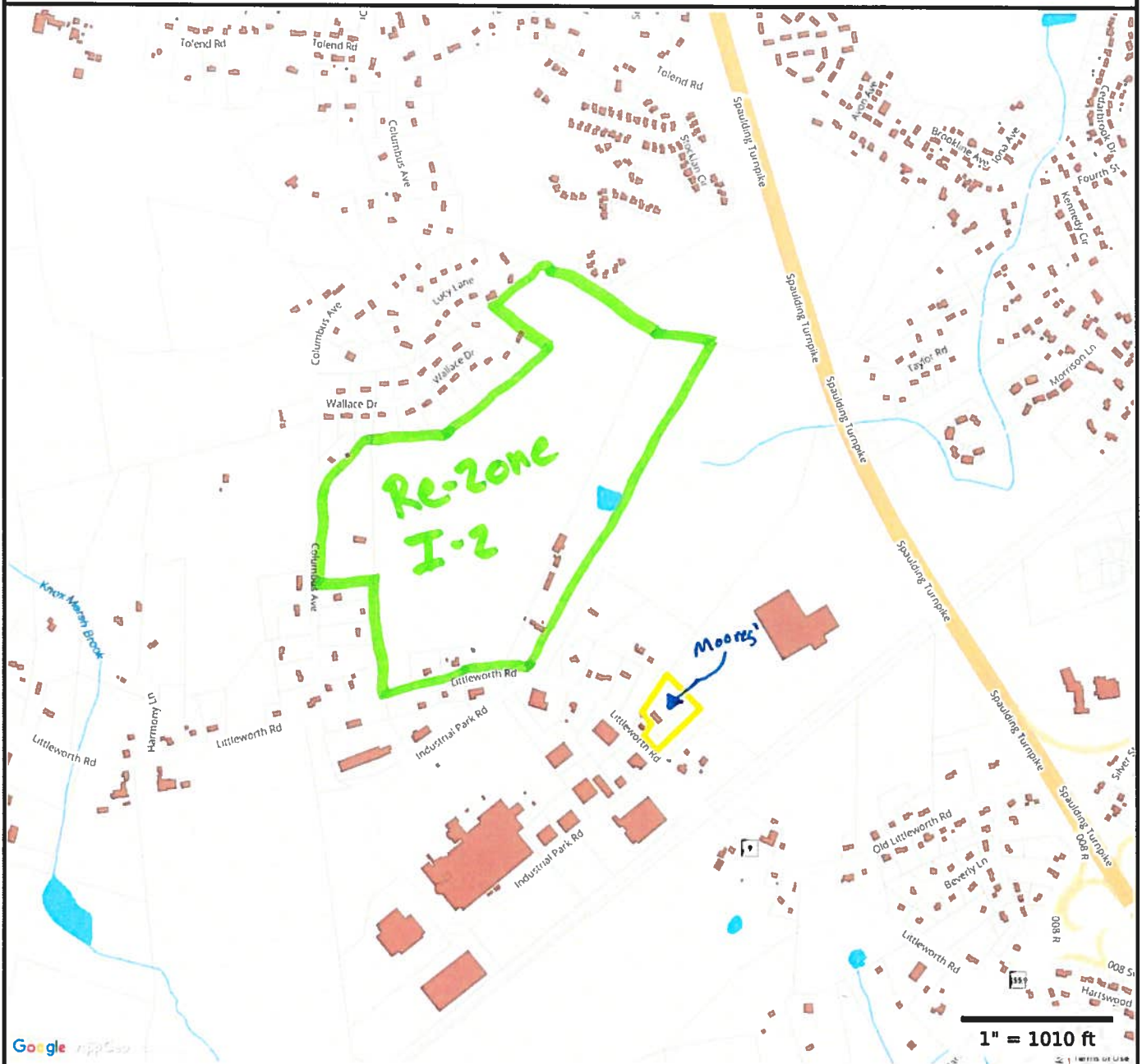
DATE: / KEVIN M. MCENEANEY 119 # 661

अनुसूची

- IRON ROD
— W/ PLASTIC I.D. CAP (SET)
— IRON ROD FOUND
— GRANITE BOUND FOUND
— UTILITY DEPT. CONCRETE BOUND
— UTILITY DEPT.
— OVERHEAD UTILITIES
— CORRUGATED METAL PIPE
— SIGN POST
— STONEWALL
— SQUARE FEET
— MORE OR LESS
— TYPICAL
— STRAFFORD COUNTY
— REGISTRY OF DEEDS

NO.	DATE	DESCRIPTION	BY	CHK
12-1986		EXIST. COND.	12-02	56-99
PROJECT NO		TYPE	FIELDBOOK & PAGES	

For Registry of Deeds Use

**Property Information**

Property ID G0006-D00000
Location 33 LITTLEWORTH RD
Owner MOORES HADLEY S &



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

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

Parcels updated 03/20/2017
 Properties updated 06/28/2017

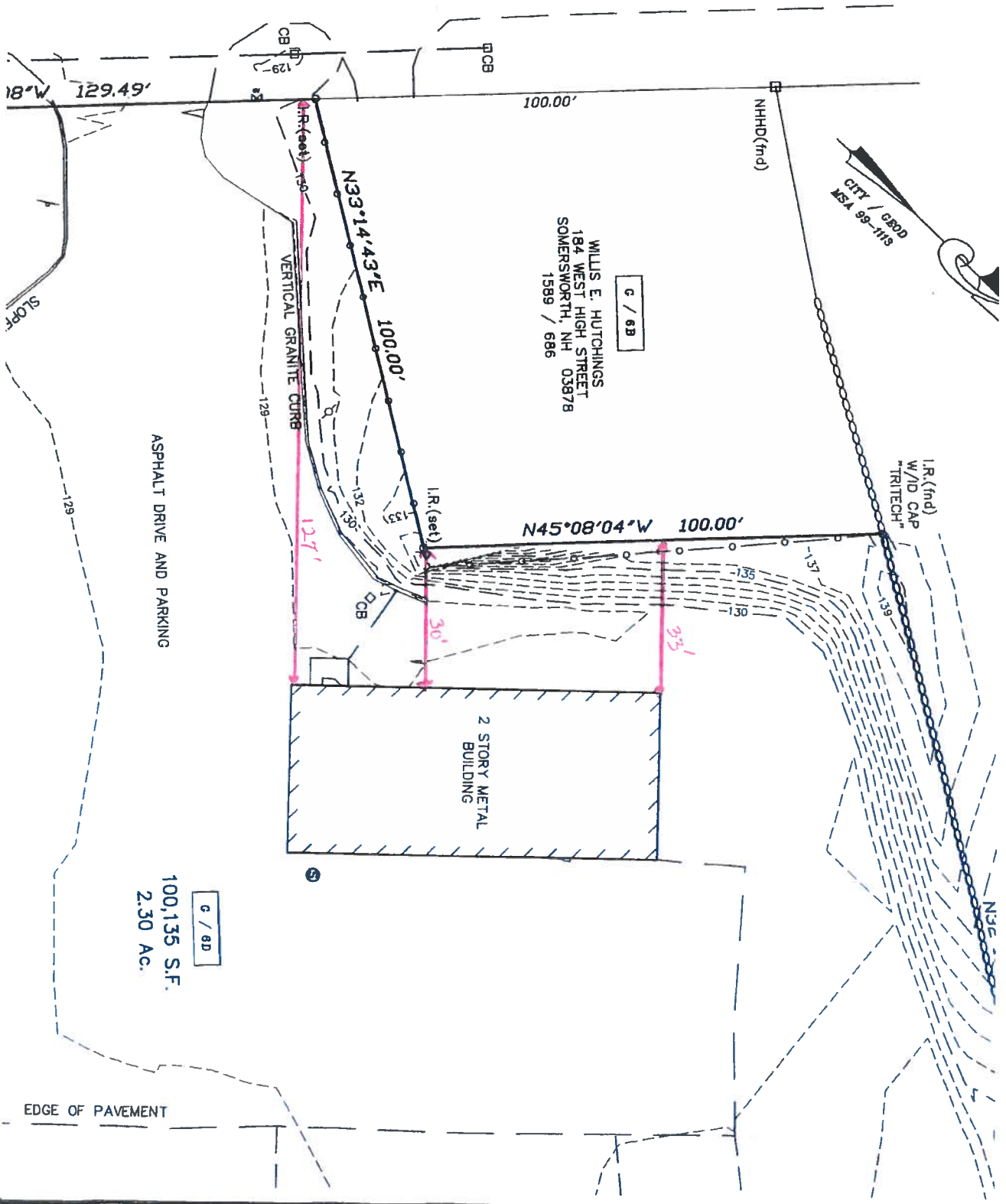
EXHIBIT C

LOCATION PLAN
(NO SCALE)

LEWORTH / INDUSTRIAL
PARK PROPERTIES
65 IND. PARK DRIVE
DOVER, NH 03820
3561 / 972

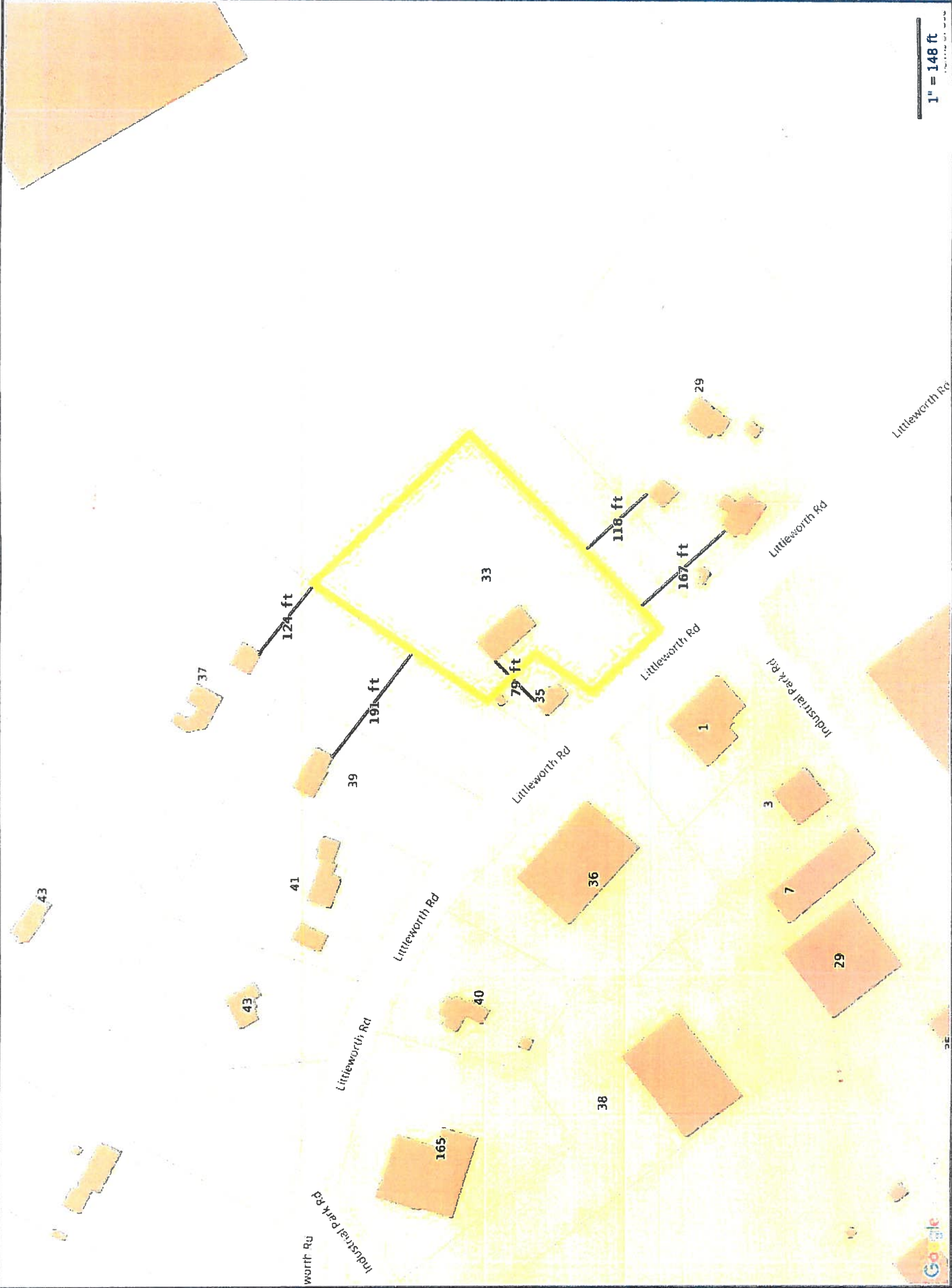
C / 40-2

ROAD



100,135 S.F.
2.30 Ac.

EDGE OF PAVEMENT



Property Information
Property ID G0006-D00000
Location 33 LITTLEWORTH RD
Owner MOORES HADLEY S &



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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Parcels updated 03/20/2017
Properties updated 06/25/2017



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, July 20, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit the keeping of a rooster (a farm animal) on 93,200 sq. ft. where a 100,000 sq. ft. lot is required for the keeping of farm animals.

UNITS PROPOSED: None

AGENDA ITEM #: 3-E

ZONING DISTRICT: Rural Residential (R-40)

FILE: Z17-17

APPLICANT/OWNER: Cornelis J. Lotter

LOCATION: 21 Fairway Drive (Tax Map N, Lot 14-K)

ACREAGE: 2.14 acres (93,200 square feet)

EXISTING LAND USE: Single-family dwelling

PROPOSED LAND USE: Single-family dwelling and “farm” with “farm animals” as defined by Chapter 170 Zoning Ordinance

SURROUNDING LAND USE: Single family dwellings, golf course

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports granting the variance.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the east side of Fairway Drive, a small subdivision between Gulf Road and the Cochecho River. The property abuts the Cochecho Country Club to the east. The Applicant’s lot is among the largest on Fairway Drive at 2.14 acres, or approximately 93,200 square feet.

The Applicant has converted a golf cart garage at the rear of his home (facing the golf course) into a coop for his bantam chickens, including a rooster. In response to a complaint, he was notified that the rooster is not permitted (nor are more than six hens) and must be removed from the property. The Applicant chose to seek a variance to permit the rooster.

The Zoning Ordinance defines “farm,” “farm animals,” and “farm animals for family use.” “Farm animals for family use” includes up to six hens, goats, or sheep and is generally permitted in residential districts, provided that the shelters meet setbacks and dimensional requirements per animal. “Farm animals” includes just about any other livestock and is permitted where a “farm” is permitted, provided that the lot is at least 100,000 square feet in area and farm animal shelters are located at least 100 feet from any property line. Our definition of “farm” refers to state statutes regarding agriculture. The R-40 is Dover’s most rural zoning district and permits a “farm,” and thus “farm animals,” including roosters provided the lot and shelters meet dimensional requirements.

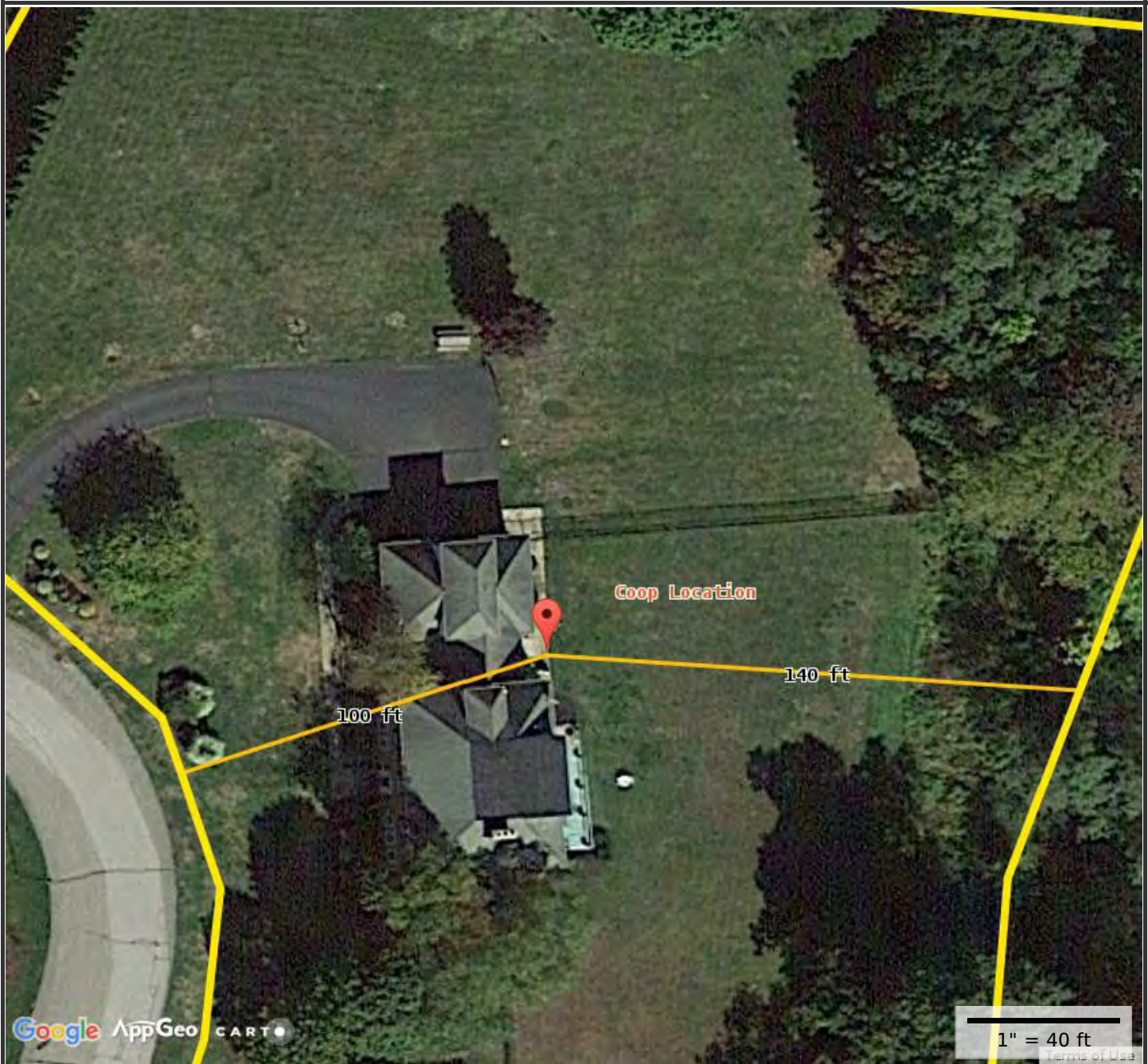
REASON FOR STAFF RECOMMENDATION

“Farm animals” of any kind would be permitted at 21 Fairway Drive if the lot were 6,800 square feet larger, provided their shelters were located at least 100 feet from any lot line. The Applicant’s chicken coop appears to be located at least 100 feet from any lot line. The use is a reasonable one, unlikely to affect property values, and the minor lack of sufficient lot size to meet the condition for keeping a farm animal may be considered a hardship.

RECOMMENDATION

Staff recommends the Board clarify the extent of the Applicant’s plan to keep “farm animals” as defined, which may include more than six hens, more than one rooster, or other animals, and consider imposing additional conditions. The Board should hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff supports the request and suggests the following conditions:

- 1) The Applicant shall provide at least three square feet of chicken coop and 20 square feet of fenced enclosure per chicken.

**Property Information**

Property ID N0014-K00000
Location 21 FAIRWAY DR
Owner LOTTER CORNELIS JACOBUS &



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

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

Parcels updated 03/20/2017
Properties updated 07/05/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

Office Use Only	Case #:	<u>217-17</u>	Date Received:	RECEIVED Planning Office JUL - 5 2017
	Amount Paid:	\$ <u>180.00</u> CF*2281	Time Received:	Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: CORNELIS J. LOTTER (CJ) Phone # (603) 969-5032
Address of Applicant: 21 FAIRWAY DRIVE DOVER NH 03820 (LOT 14-K)
E-Mail Address: cjlotter@comcast.net
PROPERTY OWNER (if different from applicant): SAME AS ABOVE
Address: / Phone # /
E-Mail Address: /

PROPERTY/PARCEL INFORMATION

Address: 21 FAIRWAY DRIVE DOVER NH 03820
Brief Directions: HEAD SOUTH ON CENTRAL AVE TOWARD CHESNUT ST.
TURN LEFT ONTO CHAPEL ST. CONTINUE ONTO PORTLAND AVE, TURN
RIGHT ONTO ATLANTIC AVE CONTINUE ONTO GOLF RD TURN RIGHT
ONTO FAIRWAY DRIVE TURN LEFT TO STAY ON FAIRWAY DRIVE
Zoning District: R-40 Assessor's Map # N-14-K-D Lot(s) # N 0014-K 00000

TYPE OF APPEAL: (Please check one)

☒ Variance	from Section <u>170-12A</u> of the Zoning Ordinance
☐ Physical Disability Variance (RSA 674:33-V)	from Section _____ of the Zoning Ordinance
☐ Special Exception	per Section _____ of the Zoning Ordinance
☐ Appeal of Administrative Decision	regarding Section _____ of the Zoning Ordinance
☐ Equitable Waiver	per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

THE PROPERTY IS APPROXIMATELY 93,200 SF. in area. ASKING A
VARIANCE FROM THE 100,000 SF (APPROXIMATELY 6,800 SF SHORT) TO
QUALIFY AS RURAL RESIDENTIAL (R-40) IN ORDER TO ALLOW FARM
ANIMALS (SECTION 170-12-A) TO KEEP MY BANTAM ROOSTER (ABOUT
1/3 THE SIZE OF A STANDARD CHICKEN). I AM A BANTAM BREEDER OF
RARE CHICKEN SPECIES NAMED BANTAM WHANDOTTES BLUE LACED RED.
I BREED USING KNOWLEDGE OF GENETICS. I AM A MEMBER OF THE
AMERICAN BANTAM ASSOC. Page 2 of 9 A PROFESSIONAL INSTITUTION,

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170.12A of the Zoning Ordinance to permit:

THE KEEPING OF "FARM ANIMALS" INSTEAD OF FARM ANIMALS FOR FAMILY USE IN ORDER TO KEEP MY BANTAM ROOSTER THAT I KEEP FOR BREEDING PURPOSES IN ORDER TO BREED SHOW QUALITY BANTAMS. PLEASE SEE LETTER FROM ELENA PIEKUT DATED JUNE 20, 2017 GIVING NOTICE OF THE FACT THAT I NEED TO REMOVE MY ROOSTER WITHIN 10 DAYS SINCE THE PROPERTY FALL SHORT BY APPROXIMATELY 6,800 SF TO LEGALLY OWN A

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

ROOSTER

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

WAIVING THE TERMS OF THE ORDINANCE WILL ALLOW ME TO KEEP MY ROOSTER AND CONTINUE MY BREEDING PROGRAM. IT WILL ALSO ALLOW ME TO KEEP THE ROOSTER ON THE PROPERTY TO GROOM WITH THE HENS FOR SHOW. THE PUBLIC WILL NOT BE NEGATIVELY AFFECTED IN ANYWAY THE PROPERTY WILL NOT LOSE ITS PURPOSE AND APPEARANCE AS A HIGH END DWELLING IN AN UPGRADE NEIGHBORHOOD. THE NOISE OF THE ROOSTER IS CONTAINED IN THAT IT STAYS INDOORS IN A HIGH END COOP MOST

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

THE ORDINANCE IS INTENDED TO ALLOW FARM ANIMALS SINCE THE SPACE IS AT LEAST 100,000 SF IN AREA. MY PROPERTY IS FALLING SHORT BY A MERE 6,800 SF. MY APPEAL IS NOT TO CONVERT THE PROPERTY INTO A FARM BUT MERELY ASK PERMISSION TO KEEP MY BANTAM ROOSTER ABOUT 1/3 THE SIZE OF A REGULAR CHICKEN. THE FACT THAT 6 HENS ARE ALLOWED SET THE STAGE TO WAIVE THE ORDINANCE TO ALLOW THE ROOSTER SO THAT THE BREEDING PROGRAM CAN CONTINUE. OFFSPRING ARE KEPT WITH A FRIEND.

3. Granting the variance would do substantial justice because:

IT WILL ALLOW ME TO CONTINUE MY BREEDING PROGRAM AND CRITICAL GENETIC DEVELOPMENT OF THIS RARE BREED WITH NO IMPACT TO THE GENERAL PUBLIC. IF THE VARIANCE IS NOT GRANTED I WILL HAVE TO ABANDON MY BREEDING PROGRAM. I AM ONE OF A FEW BREEDERS IN THE COUNTRY WITH THIS BLOODLINE AND I HAVE MADE GREAT PROGRESS IN IMPROVING THE QUALITY OF THIS BREED.

4. The value of surrounding property will not be diminished because:

GRANTING THE KEEPING OF THE ROOSTER IS NO DIFFERENT THAN KEEPING THE SIX HENS. ANY NOISE THE ROOSTER PRODUCES IS CONTAINED BY THE FACT THAT IT STAYS INDOORS MOST OF THE TIME IN A COOP/SHED CONVERTED FROM A GOLF CART GARAGE. THE UPSCALE COOP HAS AN AUTOMATIC DOOR THAT OPENS APPROXIMATELY AT 8AM IN THE MORNING TO PREVENT NOISE. THE PROPERTY WILL CONTINUE TO BE UTILIZED AS A HIGH END RESIDENCE IN AN UPSCALE NEIGHBORHOOD. PLEASE SEE PHOTOS

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you ATTACH complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

① THE SIZE OF THE PROPERTY IS APPROXIMATELY 93,200 SF AND CONSIST OF A DOUBLE LOT. MOST IF NOT ALL THE PROPERTIES IN THE AREA IS CONSIDERABLY SMALLER AND CONSISTS OF ONE LOT. ② THE PROPERTY ABUTTS AN APPROXIMATE 200 ACRE GOLF COURSE. THE COOP/SHED FACES THE GOLF COURSE. NO ABUTTERS CAN SEE THE COOP/SHED. THE BANTAMS ARE ALSO KEPT OUT OF THE FRONT YARD. ③ THE RESIDENCE IS BUILT WITH BRICK TO KEEP NOISE LEVELS and DOWN.

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

THE PURPOSE OF THE ORDINANCE IN GENERAL IS TO ALLOW GENERAL FARMING ACTIVITIES. THAT IS NOT THE CASE HERE. ALL I AM ASKING FOR IS TO ALLOW ME TO KEEP MY ROOSTER WITH THE ALLOWABLE AMOUNT OF HENS TO CONTINUE MY BREEDING PROGRAM. IT HAS NO NEGATIVE IMPACT ON THE COMMUNITY. CONTRARY TO WHAT GENERAL FARMING MAY CAUSE

and

(iii) The proposed use is a reasonable one because:

IT ALLOWS ME TO CONTINUE MY BREEDING PROGRAM OF RARE BANTAMS WITH NO OR LIMITED IMPACT ON THE COMMUNITY. THE USE IS NO DIFFERENT FROM WHAT IS LEGAL NOW EXCEPT FOR THE LEGAL POSSESSION OF A ROOSTER. THE ONLY POSSIBLE NEGATIVE IMPACT IS NOISE WHICH IS CURTAILED IN THAT THE SHED DOOR MOST OF THE TIME DOES NOT OPEN BEFORE 8AM AND ARE CLOSED AT NIGHT. THE ROOSTER STAYS INDOORS MOST OF THE TIME *

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, 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.

* TO LIMIT CROWING NOISE. THE SHED IS IN THE BACKYARD FACING THE GOLF COURSE AWAY FROM ANY ABUTTERS. THE CHARACTER OF THE PROPERTY WILL CONTINUE TO BE THAT OF A HIGH VALUE ESTATE AND NOT OF A FARM. THE BREEDING OF THESE BANTAMS IS A HOBBY WITH NO COMMERCIAL SCOPE.

SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.


Signature of Applicant*

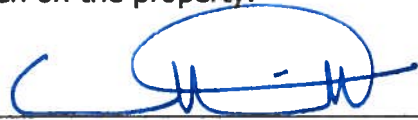

Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:



Date: 7/4/17

ABUTTER LIST Z17-17

CORNELIS J. LOTTER

Property ID	Location	Owner 1	Owner 2
N0015-000000	145 GULF RD	COCHeco COUNTRY CLUB	
N0014-Q00000	2 FAIRWAY DR	LANE EDWARD J &	LANE MICHELLE T
N0014-P00000	10 FAIRWAY DR	CHILD TYLER &	CHILD ASHLEY
N0014-B00000	111 GULF RD	ROYER THOMAS C &	ROYER DONNA H
N0014-T00000	19 FAIRWAY DR	MILLER ELIZABETH C &	DAVIS THOMAS M
N0014-C00000	105 GULF RD	BOACKLE HAICKEL PAUL TRUSTEE	BOACKLE HAICKEL PAUL REVOCABLE TRUST
N0014-A00001	1 FAIRWAY DR	WONG JOHN	WONG CHYONG
N0014-I00000	12 FAIRWAY DR	WILSON BRETT D &	WILSON NICOLE B
N0014-V00000	25 FAIRWAY DR	PELLETIER R & HOPPE K REV LIV TRUST	PELLETIER RICHARD AND HOPPE KRISTA TRUST
N0014-A00000	117 GULF RD	TOWNSEND EDWARD M &	TOWNSEND SARAH L

CORNELIS J. LOTTER

21 FAIRWAY DRIVE

Owner Address 1	City	State	Zip
145 GULF RD	DOVER	NH	03820
2 FAIRWAY DR	DOVER	NH	03820
10 FAIRWAY DR	DOVER	NH	03820
111 GULF RD	DOVER	NH	03820
19 FAIRWAY DR	DOVER	NH	03820
105 GULF RD	DOVER	NH	03820
1 FAIRWAY DRIVE	DOVER	NH	03820
12 FAIRWAY DR	DOVER	NH	03820
25 FAIRWAY DR	DOVER	NH	03820
117 GULF ROAD	DOVER	NH	03820
21 FAIRWAY DRIV	DOVER	NH	03820

CHRISTOPHER G. PARKER, AICP
Assistant City Manager
Planning & Strategic Initiatives
c.parker@dover.nh.gov



288 Central Avenue
Dover, New Hampshire 03820-4169
(603) 516-6008
Fax: (603) 516-6049
www.dover.nh.gov

City of Dover, New Hampshire

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

NOTICE OF VIOLATION

June 20, 2017

Cornelius Jacobus & Debrah Lotter
21 Fairway Drive
Dover, NH 03820

VIA CERTIFIED MAIL – RETURN RECEIPT & FIRST CLASS

RE: Roosters Prohibited – 21 Fairway Drive (Tax Map N, Lot 14-K)

Dear Mr. & Mrs. Lotter:

It has been brought to my attention by Health Inspector Jaimie Donovan, who performed a drive-by inspection on June 15, 2017, that you keep a rooster at the above-referenced property. Per the City of Dover Code, Chapter 170 Zoning Ordinance, **Section 170-12.A, "FARM ANIMALS"** are permitted in the Rural Residential (R-40) Zoning District only upon a lot with a minimum of 100,000 square feet of area and where the animals' shelters are no closer than 100 feet from any property boundary. According to Tax Assessment records, the above referenced property is approximately 93,200 square feet in area.

"FARM ANIMALS FOR FAMILY USE," defined as follows, are permitted with shelter and yards meeting the minimum dimensions and setbacks described in footnote 10 of the R-40 Table of Uses and Dimensional Regulations (enclosed):

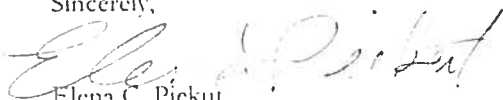
"FARM ANIMALS FOR FAMILY USE means animals commonly raised or kept by a family for non-commercial purposes on a LOT containing a one or two family dwelling. Includes chickens, sheep, or goats totaling six (6) or fewer, but does not include roosters."

Please remove the rooster from the property within ten (10) days of receipt of this letter.

Failure to comply with this Notice of Violation may result in fines and penalties in accordance with and pursuant to NH RSA 676:17 and/or the filing of an enforcement action in Strafford County Superior Court.

Thank you for your attention to this matter. If you have any questions, I can be reached by email at c.pickut@dover.nh.gov, or by phone at (603) 516-6008.

Sincerely,


Elena C. Pickut
Assistant City Planner, Zoning Administrator

Enclosure

CC: Christopher G. Parker, Assistant City Manager (via email)
James H. Maxfield, Building Official (via email)
Jaimie Donovan, Health Inspector (via email)

Residential Property Record Card - Dover, New Hampshire

Property Location:

21 Fairway Dr

Parcel ID: N0014-K00000

Map Block No. N-14-K-0

Class: R

Use: 101

Card 1 of 1

Current Owner Lotter Cornelis Jacobus & Lotter Debrah 21 Fairway Dr Dover Nh 03820		Previous Owner History <table border="1"> <thead> <tr> <th>Name</th> <th>Deed</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>21 Fairway Dr Lic</td> <td>3765/465</td> <td>08/06/2009</td> </tr> <tr> <td>20-22-26 Moulton Street Realty T</td> <td>2468/72</td> <td>02/28/2002</td> </tr> <tr> <td>Spinelli Patricia Ann Trustee</td> <td>2265/249</td> <td>01/12/2001</td> </tr> </tbody> </table>		Name	Deed	Date	21 Fairway Dr Lic	3765/465	08/06/2009	20-22-26 Moulton Street Realty T	2468/72	02/28/2002	Spinelli Patricia Ann Trustee	2265/249	01/12/2001	Miscellaneous Deed Info: 4038/721-07/27/2012 Zoning: R-40 Neighborhood: 158 Living Units: 1		Assessment Information Assessed Value: * Prior Land: 132,100 126,600 Building: 580,400 567,800 Total: 712,500 694,400 Assessed Information: Value: 712,500 Effective DOV: 4/1/2016 Value Flag: COST VALUE												
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Sales History				
Book/Page	Date	Price	Type	Validity
4038/721	07/26/2012	550,000	2	09
3765/465	07/30/2009	675,000	2	08

Permit Information			
Date	Permit #	Price	% Comp.
06/24/2014	FLAG		0
02/11/2014	14-19	10,000	0
		Ck Uc	
		Finish Basemt	

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	1 0	0	120,000
Residual	A	1.14 0	0	12,090
Water Access	L	1x1 0	0	
Total Acres for this Parcel			2.14	Total Land Value
				132,100

Out Building Information					
Type	Qty	Year	Size1	Size2	Grade Cond %Good Value
	0	0	0	0	0% 0
	0	0	0	0	0% 0
	0	0	0	0	0% 0
	0	0	0	0	0% 0
	0	0	0	0	0% 0
	0	0	0	0	0% 0
	0	0	0	0	0% 0
	0	0	0	0	0% 0
Total OBV for this card					0



Inspection witness by:

Property Location:
21 Fairway Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: N0014-K00000

Map Block No. N-14-K-0

Class: R

Use:

Card 1 of 1

Dwelling Information

Style: Colonial
Condo Style:
Exterior Walls: Brick
Story Height: 2.0
Attic: Full Finish
Interior/Exterior: Same
Basement: Full
Bsmt Garage: 0
Rec Room size: 0 0
FBLA size: 0 0
Unfinished Area: 0
WB Fireplace: Stacks 1 Openings 2
MTL Fireplace: Stacks 0 Openings 0
Heating Type: Basic
Fuel: Oil
Heating System: Steam/Hot Wa
Year Built: 1991
Eff. Yr Built: 0
Ground Fir Area: 1833
Tot Living Area: 5300
Basement Area: 2307
Grade: A-
Condition: Good
CDU: GD

Building Notes:

Rooms:	0	0	0	0	12
Bedrooms:	0	0	0	0	4
Full Baths:	0	0	0	0	3
Half Baths:	0	0	0	0	1
Add'l Fixtures:	0	0	0	0	3

Replacement Costs

Base Price:	289,460
Additions:	98,200
Unfinished Area:	0
Basement:	0
Attic:	32,350
Plumbing:	14,650
Heating A/C Adj.:	0
FBLA:	0
Rec Room:	0
Fire Place:	9,660
Basement Garage:	0
Exterior Trim:	0
Subtotal:	444,320
Grade Factor:	1.45
C & D Factor:	0.00
Total RCN:	644,260
Percent Good:	0.91
Eco Depr:	0
Func Depr:	0
Under Constn %:	99
Market Adj.:	0.00
Total RCNLD:	580,400

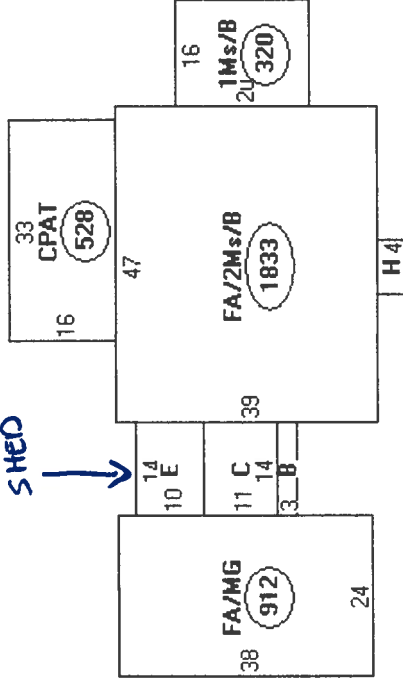
Addition Information

Low	1st	2nd	3rd	Area	Points
32	42				700
50	20	19		154	16300
23	19			912	44600
24				140	3300
33				528	2700
50	20			320	29600
35				32	1000

GOLF COURSE

BACK

SHED

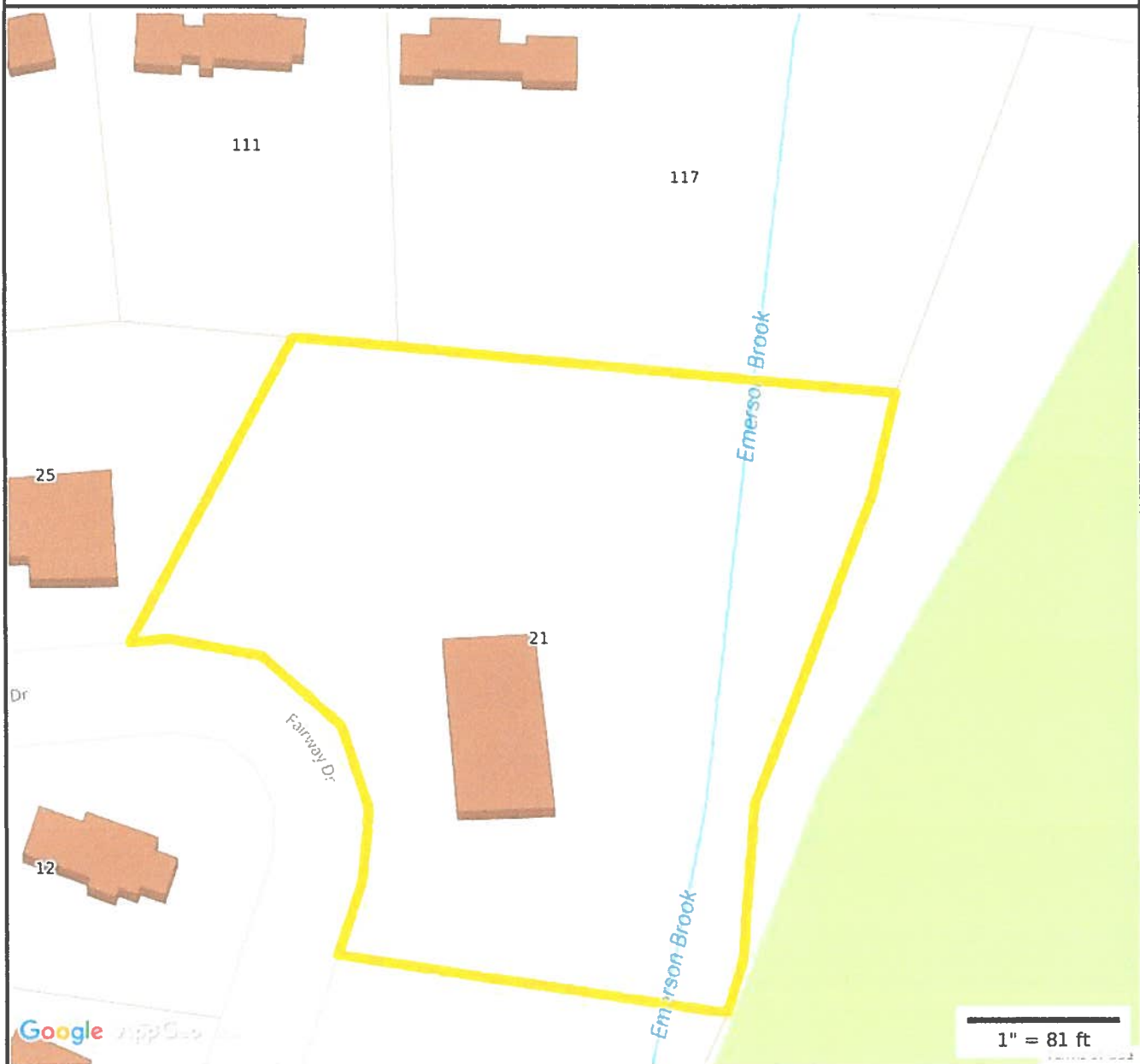


FRONT

Descriptor/Area

A: FA/2Ms/B 1833 sqft
B: CNPY 42 sqft
C: FA/1Ms/B 154 sqft
D: FA/MG 912 sqft
E: MSP 140 sqft
F: CPAT 528 sqft
G: 1Ms/B 320 sqft
H: MT 32 sqft

21 Fairway Drive Dover NH

**Property Information**

Property ID N0014-K00000
Location 21 FAIRWAY DR
Owner LOTTER CORNEUS JACOBUS &



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

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

Parcels updated 03/20/2017
Properties updated 07/03/2017

ME WINNING FIRST
PRIZE WITH
ROOSTER AND
HEN

2017 NEW
ENGLAND
POULTRY
SHOW IN MA

FIRST PRIZE
ROOSTER

FIRST PRIZE
HEN





FIRST PRIZE
BANTAM WYANDOTTE
BLUE LACED RED
ROOSTER -
MY PRIMARY BREED
AND ROOSTER IN
QUESTION

A photograph of two chickens in wire cages at what appears to be a fair or exhibition. In the foreground, a Black Langshank hen with a red face and wavy black and white feathers is shown in profile. Behind it, in a separate cage, is a large white chicken with a red comb. The background shows other cages and people, though they are out of focus. The floor is covered with yellow straw bedding.

FIRST PRIZE BANTAM WHANOTTE
BLUE LACED RED HEN

FIRST PRIZE
BANTAM WYANDOTTE
BLUE LACED RED HEN

RED
FEATHER
BLUE
LACING

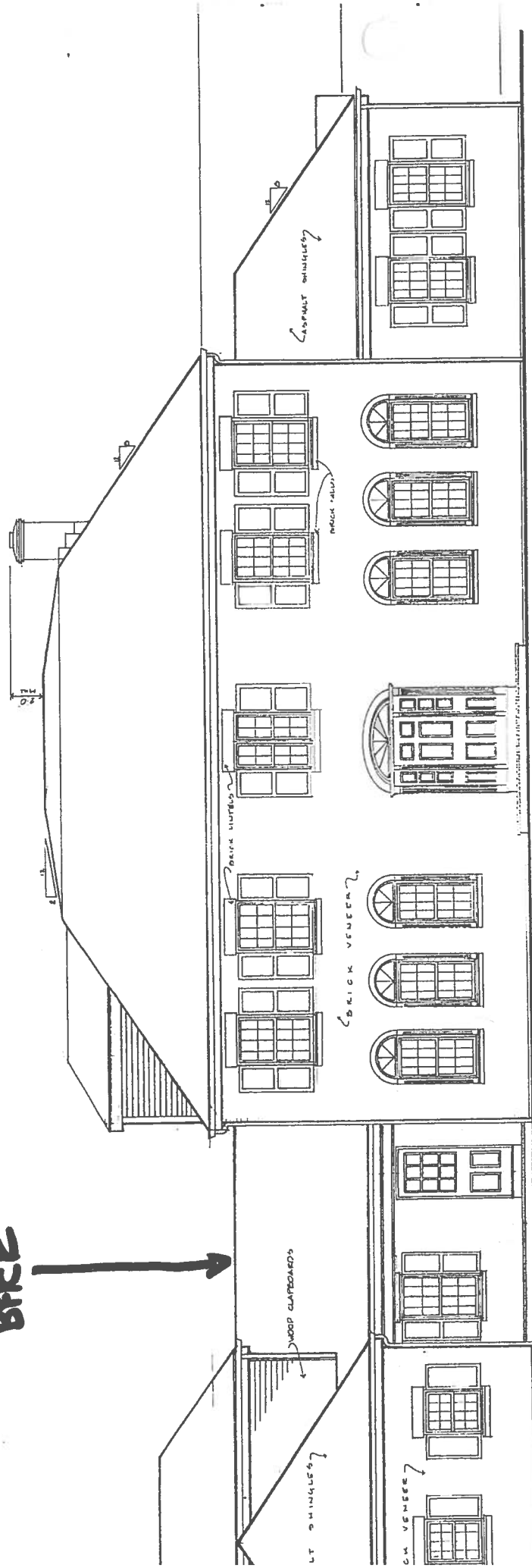


BREEDING PEN ROOSTER AND 2 HENS



FRONT OF HOUSE

SHED LOCATED IN
BACK



* MINIMIZE ROOSTER

NOISE

* BRICK CONSTRUCTION



SPECIALTY CAGES
FOR HENS
ROOSTER
AND 2 HENS

SHED DOOR OPEN



VACUUM
USED TO CLEAN
AREA

SHED DOOR CLOSED TO
PREVENT NOISE

**GOLF CART / SHED /
COOP DOOR CLOSED**





**VIEW ONTO GOLF COURSE
FROM SHED**