



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

REVISED

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820
Meeting Date: Thursday, February 21, 2019
Meeting Time: 7:00 pm

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF DECEMBER 20, 2018 AND JANUARY 17, 2019

3. HEARINGS

- A. Z19-01 Applicant Thomas A. Toye IV and Owner Michelle Hunt, 10 Durham Road (Tax Map I, Lot 7), located in the Low Density Residential (R-20) Zoning District, request a variance from **Section 170-12.A** of the Zoning Ordinance to permit an office use, where offices are not permitted in the R-20 Zoning District.
- B. Z19-02 Applicant Thomas A. Toye IV and Owner Michelle Hunt, 10 Durham Road (Tax Map I, Lot 7), located in the Low Density Residential (R-20) Zoning District, request a variance from **Section 170-32.A** of the Zoning Ordinance to permit two signs, each not to exceed 16 square feet, where only one 16-square-foot sign is permitted in the R-20 Zoning District.
- C. Z19-03 Applicant White Birch Armory and Owner Dover Business & Industrial Development Authority, Quality Way (Tax Map D, Lot 11-7), located in the Assembly & Office (I-4) Zoning District, request a variance from **Section 170-12.A** to permit a commercial recreation use (indoor shooting range), where commercial recreation is not a permitted use in the I-4 Zoning District.

4. OLD BUSINESS

- A. Z18-20R, a Motion for Rehearing of Z18-20 by Coldstream Properties, LLC/Little Tree Education, LLC, where Z18-20 was a variance request by Applicant/Owner Real McKoy Properties, LLC, 301 Durham Road (Tax Map H, Lot 1), located in the Hotel/Retail (B-4) Zoning District, to permit an assisted living facility, where assisted living facilities are not permitted in the B-4 Zoning District. The request was granted by the Board, with conditions, on January 17, 2019.

5. OTHER BUSINESS

6. 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>.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

REVISED

Meeting Type: Regular Meeting
Meeting Location: **Council Chambers, City Hall** - 288 Central Ave., Dover, NH 03820
Meeting Date: **Thursday, December 20, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Bob Hall (Vice Chair), Otis Perry, Frank Landford, Rich Onufry (Alternate), Nick Couturier (Alternate)

Members Absent: George Reagan, Anthony Sillitta (Alternate)

Staff Present: Elena Piekut (Assistant City Planner, Zoning Administrator)

The Chair called the meeting to order at 7:02 p.m. He introduced the Board and staff present to the audience and explained the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF DECEMBER 6, 2018

Motion: Otis Perry moved to approve the meeting minutes of December 6, 2018 as presented. Frank Landford seconded. Vote: U/A

3. HEARINGS

- A. Z18-19 Applicant/Owner Todd LaFond, 4 Crestview Drive (Tax Map D, Lot 22-2), 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 side setback of 10 feet for an attached garage, where a minimum of 15 feet is required.

Todd LaFond explained he is proposing to build an attached 28'x28' garage. The current garage under the house is only 7' tall and not sufficient for a larger vehicle. The location will prevent removing a retaining wall and landscaping. All of his neighbors are supportive of the proposal. Chair Chris Prior clarified that the neighbor has a garage on the abutting side.

Public hearing opened. No one spoke.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated the Planning Department doesn't have any objection to granting the variance. There is a stipulation in the ordinance allowing non-conforming lots with a specified width reduced setbacks. This lot is just barely conforming. If it were a little smaller, it could have 10-foot setbacks. Also, if the garage was to be detached, 10-foot setbacks would be allowed.

Public hearing closed.

Chair Chris Prior stated Nick Couturier will be the alternate to vote in this case.

Motion: Bob Hall moved to approve the variance as requested. Frank Landford seconded. Vote: U/A

- B. Z18-20 Applicant/Owner Real McKoy Properties, LLC, 301 Durham Road (Tax Map H, Lot 1), located in the Hotel/Retail (B-4) Zoning District, requests a variance from Section 170-12.A of the Zoning Ordinance to permit an assisted living facility, where assisted living facilities are not permitted in the B-4 Zoning District.

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Attorney FX Bruton of Bruton and Berube presented the case. He said this zoning board granted this variance in June of 2018. The case is back before them because there was an error in notifying the abutters in Madbury. He gave the property location and history. In 2013 an elderly assisted care facility with 12 beds was approved. They are now looking to have an assisted living facility which will still have 12 rooms, but 24 residents. No changes are proposed to the structure that was approved in 2013. The only exterior change is 11 additional parking spaces in the back.

Otis Perry asked for clarification that the State licensing agency has reviewed the proposal. Attorney Bruton said they had.

Chair Chris Prior stated Rich Onufry will be the alternate to vote in this case.

FX Bruton reviewed the five criteria. He said the use would be consistent with similar uses permitted in the zone and nearby overlay district where there is a similar existing facility. He discussed the small nonconforming lot size and shape. He believes there will be no burden to the public and noted that the site has already received approval from the Dover Planning Board and Madbury Planning Board. He stated there will be no increase in traffic. He noted that permitted uses could be more impactful but also would not fit well on the lot. He stated there will be no diminution in value of surrounding properties as the structure already exists and will not change.

Chair Chris Prior addressed concerns from a Freshet Road, Madbury abutter's email that was sent to the board.

Steve Haight, Civilworks NE, addressed questions from the board members. He said the closest public water is at the intersection of Mast Road. He said the traffic is unlikely to increase for a memory care facility. He clarified for Rich Onufry how the building will retain a residential appearance.

Public hearing opened.

Sarah Greenshields, 13 South Watson Lane/314 Rt. 108 in Madbury, owner of Little Tree Education, stated her facility hosts 75 children a day plus teachers. She is concerned about their water supply being contaminated by medical drugs and cleaning solutions from the commercial leach field.

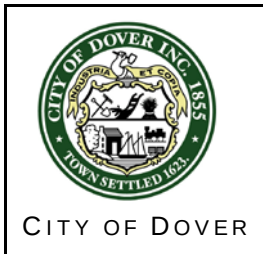
Danna Truslow, hydrogeologist, 454 Court St., Portsmouth, reviewed water quality impacts and requested the facility hook up to City sewer. She provided a report to the Board. Otis Perry asked for clarification about the private well and Chris Prior asked for clarification about sewage disposal. Discussion ensued regarding the availability of public or private sewer.

David Greenshields, 13 South Watson/ 314 Rt 108 Madbury explained where their sewer line connects. Steve Haight further addressed the septic design and regulations regarding wells.

Attorney Denis Robinson, Pierce Atwood, Portsmouth described three reasons this application doesn't meet the criteria for variance:

1. It's not consistent with adjacent uses
2. The property doesn't have distinguishing elements—the property is large enough to support an allowed use
3. It's not consistent with the spirit and intent of the ordinance. He provided material from the Zoning Ordinance showing that where permitted, an assisted living facility must be connected to public sewer. He provided a document to the Board.

FX Bruton addressed the residential and commercial uses in the area and addressed the nature of the assisted living facility use. Steve Haight said that it would take half a mile to get to the public sewer.



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Patte Dell Isola, co-applicant, owns the land where the proposed leach field will go. She explained they've worked with all the necessary state regulatory organizations for approvals. They are back before the board due to an administrative error regarding the public notice. The applicant has attended multiple Madbury and Dover board meetings over the past year to fulfill all requirements. Rich Onufry asked what was concluded about connecting to public sewer. Patte Dell Isola said they met with The Elks about connecting to their private main and that there may be a public main extended to the area in the future. She said it was a better choice for them to use a leach field and be on the same side of the road as a potential new sewer line, and that the cost of either option was about the same. Bob Hall asked about the design of the septic system and Steve Haight said the design is currently pending approval from the DES.

Attorney Robinson addressed the distinction between elderly assisted care and assisted living.

Sarah Greenshields clarified that The Elks Lodge has both a septic system and a private sewer. She addressed the order in which applications have been reviewed by the City and State.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated the Planning Department has been neutral on this variance. It is not an incompatible use with the other uses in that zone. This application has gone through site plan approval and staff review. The Planning Board added a condition of approval for a drug use and disposal plan. Staff recommended they hook up to public sewer, but it could not be required.

Elena Piekut also confirmed for Otis Perry that the reason the case is before the board tonight is due to an administrative error in noticing the case to the abutters. The variance was granted by this board in June of this year, though the additional leach field in Madbury was not a definite part of that plan.

Otis Perry asked whether Sarah Greenshields also addressed her concerns to the Planning Board. Denis Robinson said Madbury was not receptive and that Danna Truslow made a presentation to the Dover Planning Board.

Otis Perry asked what conversations occurred with the City regarding extending public sewer. Steve Haight said it was discussed at Technical Review and the City wasn't prepared to do that, and that it would involve working in the State right-of-way.

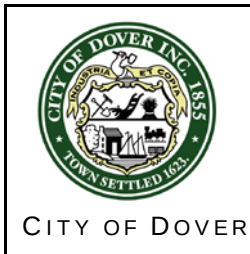
Bob Hall asked whether the concern was about the new leach field or the existing leach field. Denis Robinson said the concern is the new leach field and its proximity.

FX Bruton added that the DES has not objected to the current plan and Steve Haight explained how the system works.

Public hearing closed.

Motion: Otis Perry moved to refer the variance to the January meeting so Community Services can review the expert witness concerns. Frank Landford seconded. Vote: U/A

- C. Z18-21 Applicant/Owner Sarah McClellan, 410 Middle Road (Tax Map M, Lot 60), located in the Rural Residential (R-40) Zoning District, requests a variance from Section 170-18.H of the Zoning Ordinance to permit a popcorn popping home occupation, where uses such as "restaurants, caterers or bakeries...and others of a similar nature" are not considered customary home occupations.



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Sarah McClellan, owner and operator, requested a variance for a home occupation to pop popcorn. The product will be taken off-site to sell. There will be no changes to the structure and no additional traffic to the site.

Chair Chris Prior reviewed the criteria list with the applicant then stated Nick Couturier will be the alternate to vote in this case.

Public hearing opened. No one spoke.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated the Planning Department supports the granting of the variance. It is in favor of home businesses. The only reason for the variance is because the business is in the food industry.

Public hearing closed.

Motion: Frank Landford moved to approve the variance as requested. Otis Perry seconded. Vote: U/A

A five minute recess was taken. When the meeting commenced, Chair Chris Prior and Alternate Nick Couturier were no longer seated with the board members. Chair Chris Prior stated he would recuse himself.

- D. Z18-22 Applicant Industrial Tower and Wireless, LLC and Owners Peter and Susan Rousseau, 200 Henry Law Avenue (Tax Map K, Lot 1), located in the Rural Residential (R-40) Zoning District, request a variance from Section 170-22.C(1) of the Zoning Ordinance to permit the construction of a new, 180-foot tall telecommunications tower on the above referenced property, where the construction of new telecommunications towers is only permitted on 15 parcels specified by the Zoning Ordinance.

Bob Hall, Vice Chair requested the applicant grant a 90-day extension to the clock so that proceedings may continue. He also stated there is a quorum of the board tonight, though not a full board. He asked if the applicant wished to proceed.

Attorney Steve Grill represented the applicant and said he will take the request for extension under consideration, but not decide tonight. He confirmed the applicant will proceed with the hearing tonight.

Attorney Grill stated the purpose of the rehearing is to give the applicant an opportunity to present information that led to errors in the decision--not to start the case over again from square one. He requested the entire record from case Z18-07 be incorporated into case Z18-22 as well as the testimony taken in the four hearings held.

Bob Hall stated an additional reason for a rehearing is to present new evidence.

Motion: Otis Perry moved to accept the entire previous record into this case record. Frank Landford seconded. Vote U/A

Attorney Grill stated there are two main issues: whether there is a significant gap in coverage and whether feasible alternative locations were sought.

Attorney Grill stated that:

1. IDK confirmed there is a gap--there is an area in Dover where there is an "in-building" gap. The roads in the gap are significant roads. It's in a residential and business area where 1600 people live, which is 5% of Dover's population.



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2. They looked at the 15 allowed sites and they were not feasible from a technical aspect--they wouldn't cover the gap. They checked if there were existing tall structures in the gap they could use. The silo is too low. 101 Back Rd was discussed but negotiations broke down regarding that lot.
3. He thinks a new tower at 101 Back Road would require a variance and wetlands would be impacted.
4. Nothing that it was reported Mr. Binnie said contradicts what Industrial Tower said. Mr. Binnie has never gotten in touch to continue negotiation. T-Mobile wouldn't share their business judgments with a Zoning Board. The Board shouldn't second-guess T-Mobile's decision.
5. He thinks the Board should have suggested other lots and they weren't given the opportunity to analyze other locations.
6. There were four large lots to the north owned by the State and subject to conservation easements. They also slope down to the river. A tower would not be allowed on conservation land.
7. A 180-foot tower at 101 Back Road would not have provided coverage as well as 200 Henry Law Avenue because it is lower.

Attorney Grill stated that 200 Henry Law is unique because:

1. There is a power line easement
2. Proximity to 101 Back Rd
3. Size of the parcel
4. Location and elevation

Attorney Grill said lots along McKone Lane are all small and some of them are subject to conservation easements. Locations further out or located downtown are too low in elevation, outside the search ring, close to existing facilities and were not feasible, but they weren't asked to look at those. He said it's not unusual for the Board or abutters to suggest alternative locations but not a single lot was brought to their attention except 101 Back Road. They assumed everyone thought there were no feasible alternatives. Any location would still be objected to by neighbors.

Attorney Grill said the applicant has agreed to a condition of approval for a 160ft tall tower rather than 180ft. He corrected that there are more locations from which the tower could be seen than the five he said there were. He thinks a reduction in height would result in less visibility to some. He said it will not be visible from many locations in town and there are other towers that are visible from downtown.

Attorney Grill said that Ryan Monte de Ramos, Gerry Squires, Kevin Fadden, and Kevin Delaney were available to answer questions.

Rich Onufry asked if Attorney Grill sees a difference in the visual impact of a tower to an area zoned for that type of development compared to areas that are not. Attorney Grill said his remarks were specific to this area and that they had a limited area to work with and anywhere in that area would be objectionable. He said abutters would still get notice of the Planning Board process for a tower in a permitted location. He said generally speaking, people don't want to see towers.

Otis Perry asked for details about the investigation made into alternative sites and why they were turned down. He asked about the process the company uses and whether there are notes or discussions on each property. Attorney Grill said it varies from case to case and that they discussed the process at the first hearing. T-Mobile identifies the need to close the gap, then issue a "search ring," or an area that they determine would be suitable for a new facility. That is issued to companies like Industrial Tower and Wireless, and they go out and look for sites. Existing structures are easiest. He said typically they look at the tax map for large lots in the search ring and talk to the owners. He said in this case tax records



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referred to conservation easements and they didn't approach those property owners. Small lots under about three acres that couldn't accommodate a fall zone were also eliminated. Otis Perry clarified that he wants to know if there are written criteria and a record of which lots were looked at, which were rejected, and why. Attorney Grill explained that his motion for rehearing include information on lots that were considered but that the information came from a discussion, not a written record. He said he doesn't think the process is that formal and that the search ring establishes the criteria. Otis Perry asked if the company continues to evaluate more sites once they have an agreement with a property owner. Attorney Grill said it depends but where the identified sites were so ideal they probably did not continue looking. Otis Perry noted that the Applicant has said that they believe a tower at 101 Back Road would require a variance, but 200 Henry Law Avenue also requires a variance. Attorney Grill explained that he brought that up because staff said 101 Back Road did not need a variance and he found that outrageous and decide to prejudice the case against the Applicant. He said 101 Back Road would also require wetland permitting. He said every site has good and bad, but it's better if you can use a site that already has tall structures. Discussion ensued over what was written in the staff memo.

Bob Hall asked about 105 Middle Road. Attorney Grill said it was lower in elevation. He thinks a tower at that location will be over 200 feet. Bob Hall noted the overall height would not exceed that of a tower at a higher elevation at 200 Henry Law Avenue. Attorney Grill said the ordinance allows a waiver for a height over 180 feet but a site where a 180 foot tower will work is preferable. He said they try to keep all facilities under 200 feet so that they don't need a light. Bob Hall said he doesn't think it's up to the Board to tell the Applicant where to look, and his impression is they haven't looked at other lots.

Attorney Grill said it is very unusual that Dover only allows towers on specific lots, so those are what they considered as alternatives but none were feasible. He said they may have looked at more if that wasn't the case. He said the proposed lot is the most in character for a tower and is the best site. He said he felt like they were presented with a moving target. He said other than 101 Back Road there were no other sensible or feasible alternatives.

Bob Hall asked about 1600 people living in the area that would be served by a tower, and how many live in the gap. Ryan Monte de Ramos said he maps census data along with the coverage area. He discussed how coverage improves for the area and those already covered by existing sites by adding a new site. He said he could identify the number of people in the gap, but that is not what they usually do. Bob Hall reiterated that the issue is the need in the gap but he doesn't understand how many people are actually without sufficient coverage.

Bob Hall said he is bothered that all discussion about 101 Back Road has all been verbal and there has been no documentation of anything and he doesn't know what to believe. Attorney Grill described their testimony as an "offer of proof" and that Chris Parker's notes on a conversation with Bill Binnie are objectionable as being testimony taken outside a hearing. He described the effect of different techniques of asking questions. Bob Hall reiterated his desire for written communications. Attorney Grill repeated that T-Mobile does not want to share its negotiations and pointed out that there are consistencies between both parties' statements and there is no question that eight months of negotiation were not fruitful. He said further negotiations may have worked, but they did not.

Rich Onufry said that 101 Back Road was a viable location, and agreed with Bob Hall that he doesn't understand why things didn't work out. He asked the Applicant if they started with that location and then began looking for other sites. Attorney Grill explained that Mr. Squires had pursued the property over a couple years. Industrial Tower was also looking for something in the search ring and began negotiations with the Rousseaus. He believes that began before negotiations with 101 Back Road ended. Rich Onufry asked whether the onus is on Bill Binnie to contact the Applicant to resume negotiations. Attorney Grill said it was odd that he said he didn't know why negotiations stopped and didn't try to find

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out. He said maybe Mr. Binnie was not serious and said he made many changes to the deal. The Applicant made a business decision not to continue negotiations after eight months.

Public hearing opened.

Peter Rousseau, 200 Henry Law Avenue stated the tower is going up whether people like it or not. He needs to do it to pay the taxes and run the farm.

Tom Hackett, 43 Samuel Hanson Avenue has an issue with the gap and the fact that no residents have supported this tower due to lack of coverage while there were customers who said they had services. He noted that building materials impact in-building coverage and questioned what adequate coverage is. He asked whether the applicant considered adding height to the tower at 292 Middle Rd. He requested the ZBA deny this application.

Bob Hall invited Attorney Grill to comment and he said that in-building coverage is a given today and that the peer reviewer said that the signal level threshold used in the analysis was typical for the region. Ryan Monte de Ramos addressed T-Mobile's existing facilities and their upgrade to smart antennas which have less loss, and some sites have fiber. He discussed how terrain affects coverage even with increased heights.

Norm Fracassa, 1 Penny Lane said the gap area includes 1600 people total in that area and they are not all T-Mobile customers. It's more likely less than 280 people are affected based on the company's market share. It is not the abutter's burden to help the applicant find locations. There are other places in Dover that need coverage but they are focused on this area, and even with the proposed tower they will not achieve "seamless coverage."

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated she had no comments and deferred to the recommendations of special counsel due to the complexity of the case and the laws involved.

Public hearing closed.

Motion: Otis Perry moved to deny the application for a tower based on the written statements from the original hearing and the fact that testimony tonight did not add or refute any previous statements. Frank Landford seconded and said there was no new information presented tonight.

Rich Onufry added that there is too much speculation, and he is not convinced that feasible alternatives were pursued. Bob Hall agreed with Otis Perry and stated nothing was presented to change his mind from the previous hearing and previous decision.

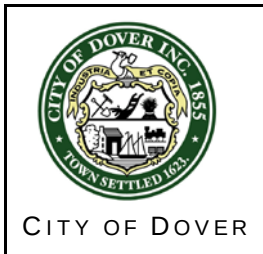
Vote: U/A

4. OTHER BUSINESS

Elena Piekut (Assistant City Planner, Zoning Administrator) reiterated the Land Use board meet and greet will be Tuesday January 8th. Also, goal setting with the Planning Board occurs in January regarding amendments to the Zoning Ordinance so if any ZBA members have issues they need to bring them forward.

5. ADJOURN

Motion: Otis Perry moved to adjourn. Rich Onufry seconded. Vote: U/A. Adjourned: 10:18p.m.



ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
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Meeting Date: Thursday, January 17, 2019
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior, Bob Hall (Vice Chair), Frank Landford, Otis Perry, Nick Couturier (Alternate), Rich Onufry (Alternate), Anthony Sillitta (Alternate)

Members Absent: George Reagan

Staff Present: Elena Piekut (Assistant City Planner, Zoning Administrator)

The Chair called the meeting to order at 7:00 p.m. He stated that Rich Onufry will serve as a voting member on the old business item.

2. ELECTION OF OFFICERS

Motion: Otis Perry moved to hold the election of officers after other business. Anthony Sillitta seconded. **Vote:** U/A

3. APPROVAL OF MEETING MINUTES OF DECEMBER 20, 2018 AND JANUARY 8, 2019

Chair Chris Prior explained that a revised version of the minutes was provided at the start of the meeting.

Motion: Otis Perry moved to refer a decision on the December 20, 2018 meeting minutes to the February meeting. Bob Hall seconded. **Vote:** U/A

Motion: Frank Landford moved to approve the minutes of the January 8, 2019 meeting as written. Otis Perry seconded. **Vote:** U/A

4. OLD BUSINESS

- A. Z18-20 Applicant/Owner Real McKoy Properties, LLC, 301 Durham Road (Tax Map H, Lot 1), located in the Hotel/Retail (B-4) Zoning District, requests a variance from Section 170-12.A of the Zoning Ordinance to permit an assisted living facility, where assisted living facilities are not permitted in the B-4 Zoning District.

Motion: Otis Perry moved to remove the item from the table. Bob Hall seconded. **Vote:** U/A

Chair Chris Prior asked alternate Rich Onufry to vote on the case as he had attended the previous hearing. He explained that the item had been tabled in order to obtain comments from Community Services staff on concerns raised at the public hearing regarding the effect of a septic system on an abutting well. He paraphrased the memo provided by City Engineer Dave White, explaining that Mr. White had reviewed the materials submitted to the Zoning Board as well as during his Planning Board review, and that the proposal meets the City Code and that he defers to the state's Subsurface Systems Bureau for review of compliance with their technical requirements.

Motion: Otis Perry moved that in light of the testimony and memo provided, that the variance be granted. Bob Hall seconded. Rich Onufry asked about the status of the septic system and well permits with the state. Assistant City Planner Elena Piekut said her understanding is that both are pending approval. Chris Prior read the conditions of approval proposed by staff:



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1. NH Subsurface Systems Bureau and Town of Madbury approve the septic system, with permit number added to the plan.
2. Prior to issuance of a Certificate of Occupancy, the City has been provided proof that the NH Drinking Water Bureau approves of the well.

Otis Perry amended his motion to include the conditions. Frank Landford seconded and Bob Hall assented to the amendment. **Vote:** U/A

5. HEARINGS

None.

6. OTHER BUSINESS

Chair Chris Prior began a discussion about improving detail included in meeting minutes and asked Assistant City Planner Elena Piekut to convey that message to the contracted minute taker. Otis Perry commented on the importance of minutes as an official record, and said they should be complete enough for a reader to understand what happened. He said he was concerned that the most recent meeting minutes would not meet the rules for public access to meeting records. Bob Hall agreed, noting that discussion on key points needs to be captured. Rich Onufry pointed out that there were some mentions of questions and answers but no information on what they were. Chris Prior said he saw the findings of fact issued after the meeting are also important in completing the record.

The group discussed offering applicants the option of providing a digital presentation.

7. ELECTION OF OFFICERS

Otis Perry nominated Chris Prior as Chair and Bob Hall as Vice Chair. Members voted by secret ballot and the slate was elected unanimously.

8. ADJOURN

Motion: Otis Perry moved to adjourn at 7:20 pm. Anthony Sillitta seconded. **Vote:** U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, February 21, 2019
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit the property to be used as an office.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: Low Density Residential (R-20)

FILE: Z19-01

APPLICANT/OWNER: Thomas A. Toye IV/Michelle Hunt

LOCATION: 10 Durham Road (Tax Map I, Lot 7)

ACREAGE: 0.95 acre (41,382 sq. ft.)

EXISTING LAND USE: Single-family dwelling

PROPOSED LAND USE: Office

SURROUNDING LAND USE: Single-family dwelling, multi-family dwellings, offices, convenience store, vacant lot

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Technical Review Committee approval required

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports granting the variance request.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

The property subject to this variance request is located on the south side of Durham Road, on the corner of Back River Road. The approximately one-acre lot is currently home to a large single-family dwelling c. 1890.

The Applicant requests a variance to convert the dwelling to office use. At this time the occupant would be his company, Arthur Thomas Properties, a real estate and property management office.

REASON FOR STAFF RECOMMENDATION

This property is located at the edge of the R-20 Zoning District, where several districts converge. Across Back River Road is the Gateway Business (B-5) Zoning District and the Medium Density Residential (R-12) Zoning District. The lot behind this house (to the south) is partially in the Suburban Density Residential (RM-SU) Zoning District. All three abutting districts permit denser and/or more commercial development than the R-20.

The property's current owners had previously contacted the Planning Department about their fencing options, as they found the busy nature of the intersection led to pedestrians cutting across their property and cars using their circular drive. The busy corner of Durham Road and Back River Road is no longer conducive to a single-family dwelling, representing a hardship unique to this property. Further, over the years staff and the Planning Board have considered rezoning this area for more commercial uses.

A customary home occupation such as a small real estate office would be permitted if the property owner were to occupy the building as a dwelling as well. It is common for larger old homes in and near the downtown area to be converted to office space, and as such the use is a reasonable one.

The Applicant intends to add an appropriate number of additional parking spaces, which will require review by the Technical Review Committee to consider any needs for additional stormwater treatment, lighting, landscaping, etc.

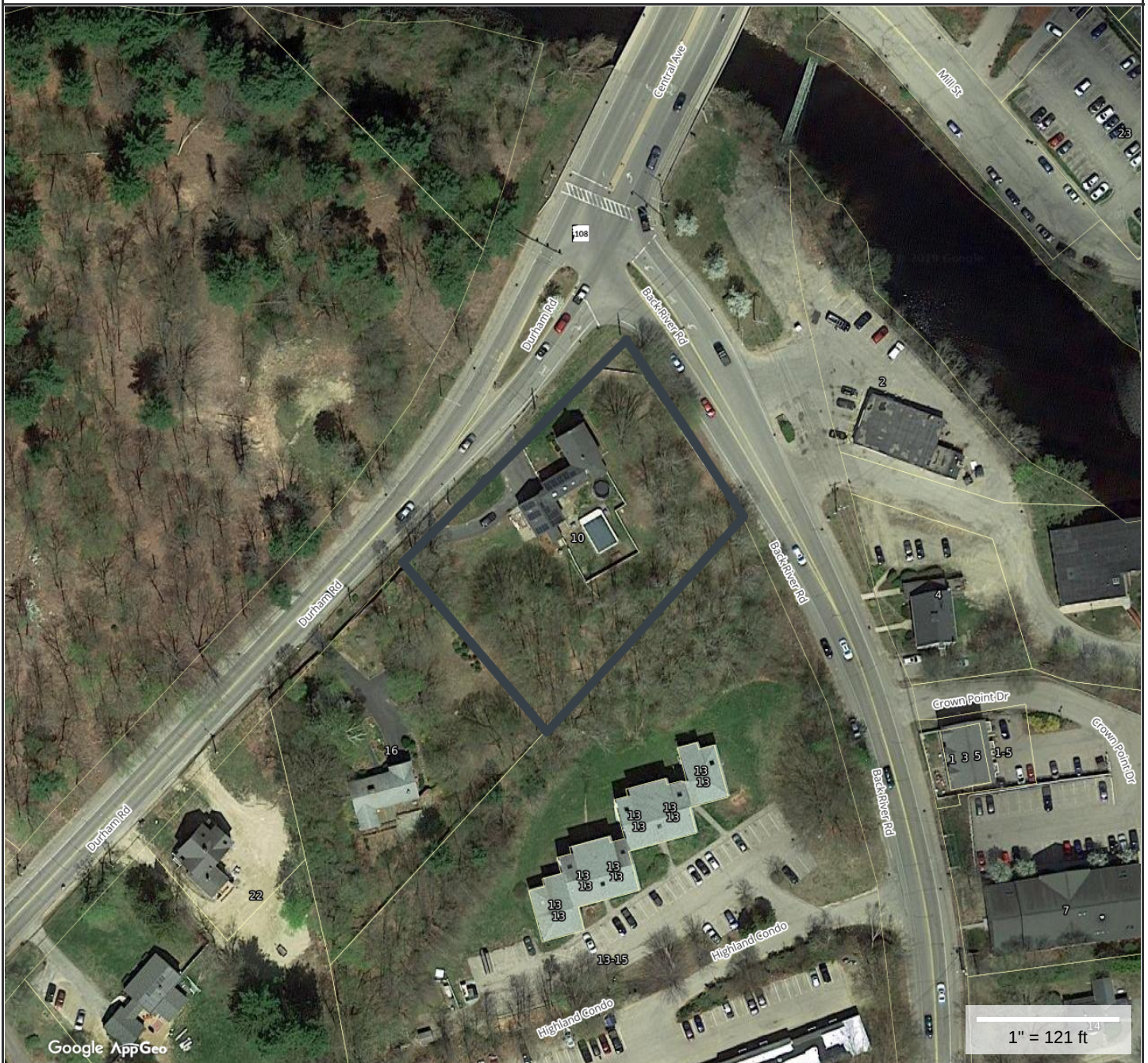
The proposal is unlikely to adversely affect property values. Only one other single-family dwelling abuts the property. The overall appearance of the property would remain a large Colonial home.

STAFF RECOMMENDATION

Staff recommends the Board hold a public hearing, make findings on the five variance criteria, and grant the variance request with the following condition:

- The Applicant shall obtain Technical Review Committee approval for additional parking spaces and complete all site improvements prior to occupancy as an office.

10 Durham Road

**Property Information**

Property ID I0007-000000
Location 10 DURHAM RD
Owner HUNT TIMOTHY H &
Land Use 101

**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.

Geometry updated 11/16/2018
Data updated 11/18/2018



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

RECEIVED
Planning Office

Office Use Only Case #:

Z19-01

Date Received:

JAN 30 2019

Amount Paid: \$ _____

Time Received:

Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: THOMAS A. TOYE IV Phone # 603.781.8600

Address of Applicant: 278 WASHINGTON ST., DOVER NH 03820

E-Mail Address: Tom@ARTHURTHOMASPROPERTIES.COM

PROPERTY OWNER (if different from applicant): MICHELLE HUNT

Address: 10 DURHAM RD, DOVER NH Phone # 207.233.0231

E-Mail Address: MYRVIKM@YAHOO.COM

PROPERTY/PARCEL INFORMATION

Address: 10 DURHAM RD. DOVER NH

Brief Directions: FROM DOWNTOWN DOVER NH, FOLLOW NH RT.

108 SOUTH, PAST EXIT 7 TO SPAULDING TRKE., PROPERTY ON
CORNER OF BACK RIVER ROAD.

Zoning District: R-20 Assessor's Map # I Lot(s) # 7

TYPE OF APPEAL: (Please check one)

- | | |
|--|---|
| ☒ Variance | from Section <u>12A:33D</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:

ADAPTIVE RE-USE OF AN 1890 SINGLE FAMILY RESIDENCE AS
AN OFFICE USE WITH BUSINESS SIGNAGE.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 12A¹ 32D 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:

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

THIS SECTION TO BE COMPLETED BY EQUITABLE WAIVER APPLICANTS ONLY

An Equitable Waiver of Dimensional Requirements is requested from Article _____ Section _____ of the Zoning ordinance to permit _____

1. Does the request involve a dimension requirement, not a use restriction? yes no

2. a) Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the city **OR** b) explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser **AND** how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.

4. Explain how the cost of correction far outweighs any public benefit to be gained.

NOTE: The Board must find in the affirmative on all four questions or the request must be denied

APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION TO BE COMPLETED BY APPLICANTS APPEALING AN ADMINISTRATIVE DECISION ONLY

Explain why you feel that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.

Lined area for writing the appeal explanation.



288 Central Avenue
Dover, New Hampshire 03820-4169
Tel: (603) 516-6008
Fax: (603) 516-6049

Zoning Board of Adjustment City of Dover, New Hampshire

HOURS: Monday through Thursday 8:30 AM - 5:30 PM & Friday 8:30 AM to 4:00 PM

INSTRUCTIONS TO APPLICANTS APPEALING TO THE DOVER ZONING BOARD OF ADJUSTMENT

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

Dear Applicant:

This will serve to briefly inform you as to what you must do to bring a petition before the Dover Zoning Board of Adjustment (ZBA). Please refer to the NH Statutes on Land Use and Regulation and the Dover Zoning Ordinance for more specific information. You must complete the application(s) applicable to you. There are four (4) purposes to petition the ZBA; they are:

1. Variances - where special conditions exist in the property warranting the use of that property in a manner which literally or technically is in violation of the ordinance. Variances can be sought to dimensional or use requirements.

There is a special type of variance allowed for persons having a recognized physical disability, which may be granted for as long as the particular person has a need to use the premises (see RSA 674:33-V). Any medical information submitted to substantiate a disability will remain confidential.

2. Special Exceptions - where the ordinance specifically permits a particular use provided the applicant can prove that whatever conditions attached to such use by the ordinance have or will be complied with.
3. Appeal from Administrative Decisions - where the applicant feels that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.
4. Equitable Waiver of Dimensional Requirements - where a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA:674:16.

The ZBA cannot and will not grant the relief sought unless the applicant proves the elements of his or her case. For example, variances may not be granted solely because the applicant is suffering from financial hardships or other personal hardships or whimsically would like to put his or her property to a non-conforming use.

YOU, THE APPLICANT, ARE RESPONSIBLE FOR PRESENTING SUFFICIENT INFORMATION TO SUPPORT AND PROVE YOUR CASE. WHEN FILLING OUT THE APPLICATION, PLEASE PRINT OR TYPE.

Familiarity with the particular provision of the Zoning Ordinance that affects your property is important, and any specific questions you may have relative to your particular case can be answered either by obtaining a copy of the Zoning Ordinance at the City Clerk's Office, or by inquiring at the Planning Office, Municipal Building, 288 Central Avenue, Dover, NH 03820. The Zoning Ordinance can also be viewed on the City web-site at www.dover.nh.gov.

You may represent yourself or authorize, in writing, someone else to represent you. Deliver or mail ten (10) copies of the completed application, with applicable attachments to the Planning Department at least twenty-one (21) days prior to the ZBA meeting date. The ZBA meets on the third Thursday of the month.

The attached application form must be properly completed. An application fee is charged to cover the cost of preparing and mailing the legally required certified letters to the abutters and to place a legal notice in the newspaper. We will notify you of the cost once your application has been submitted.

The ZBA will hold a public hearing on your application at its regularly scheduled monthly meeting. Public notice of the hearing will be posted at the City Clerk's office and the Planning Department office and printed in the newspaper. Certified letters will be mailed to you and to all abutters at least five days before the date of the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state the reasons why the appeal should or should not be granted. Please be advised that a decision may not be made the same night of the hearing. You will be sent a notice of the decision.

Variance Requirements

A. Variance Requested

A variance is requested from **Chapter 170, Sections 12A** of the City of Dover New Hampshire Zoning Ordinance to permit the use of an existing single-family residence to be used for “office” use as defined by the Zoning Ordinance.

B. The five variance criteria (as set fourth in NH RSA 674:33, I (b))

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

The subject property is located on the corner of a signaled intersection which serves as a gateway to the City from points south from Durham, Newmarket, and Exeter along NH Rt 108; and Portsmouth via Back River road and Rt. 4. The subject property is the beginning of the R-20 Zone for this neighborhood and is flanked by commercial uses of varying intensities including: a 7-11 Convenience Store, newly developed Portsmouth Region Hospital, Sullivan Tire, Roland’s sub shop and Sawyer Mill apartments, among others.

Use of the property under the “Office” designation is a relatively low intensity commercial use, with all primary activities taking place indoors and during business hours. The signaled street corner is a busy artery for the City and as such the coming and going of customers and employees and the transient parking of such will be consistent with the character of the neighborhood.

Finally, the low intensity office use, will serve as transition between the residential abutters to the South and East, and the active commercial/retail uses to the North.

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 promote the health, safety and welfare of the community as a whole through regulation of private property uses. The R-20 zoning ordinance is the City’s low-density residential district which is plentiful throughout the city and by definition is near major roadways. In many instances the zoning boundaries are understandably drawn at major road way intersections which is the case for the subject property. The result of strict interpretation of the ordinance in this case would largely limit the use of a property with road frontage totaling +/- 420’ along a major signaled intersection, with less than 35’ front yard setback to residential use.

3) Granting the variance would do substantial justice because:

The subject property has limited appeal to the marketplace as a single-family home. The lot is oversized for the R-20 zone, yet it is not conducive to a subdivision, nor is the yard desirable or

usable for typical single-family activities as it slopes towards the heavily trafficked roadways on two sides and lacks privacy on three of four sides. Granting the variance will provide a disposition plan for the home owner to sell their property, while providing an opportunity for adaptive reuse of one of the city's historic structures.

4) The value of the surrounding properties will not be diminished because:

The adaptive reuse of this historic structure in an economically viable capacity will ensure that the property is well maintained indefinitely. A Use variance for Office use within the remaining confines of the Zoning and code related Ordinances, which otherwise regulate occupancy loading, parking, etc. is compatible with the low-density residential zone, as traditional office uses are indoors, and traditional office hours are opposite those of prime residential use times.

5) (A) 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 subject property is prominently located on the corner of NH Rt 108 (Durham Road) and Back River Road. The intersection of these two main roads is signaled and has multiple lanes from all directions. According to the NH Department of Transportation's Bureau of Traffic the North and South Bound traffic count in 2013 was 15000 cars per day. -See Reference Item A.
- According to the enclosed property survey completed in 2005, the subject lot has 41,483 square feet of land with +/- 420' lineal feet of total road frontage which meet the Table of Dimensional Standards for two conforming lots within the R-20 Zone. -See Reference Item B
- The subject property has a circular driveway.
- The road frontage along both Durham Rd. and Back River Rd. have island/medians with "adopt-a-spot" landscaping signage.
- Directly across the street from the Front door to the property is a 7-11 Convenience Store.

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

- The specified purpose of the R-20 zoning district per the ordinance is:
 - a) "to provide for traditional single-family NEIGHBORHOODS on LOT's not less than twenty thousand (20,000) square feet.
 - a') The best description for the subject lot is a busy downtown street corner and does not, in the applicant's opinion, fit the description of a single-family neighborhood.

b) Non-residential uses that are compatible with single family homes are permitted, including churches, elementary schools, high schools, and CHILD CARE FACILITIES.

b') The subject property was built circa 1890 within the 35' front yard setback required by the current ordinance. The current owner has resided at the property for the past 3 years and has had to place barricades in the circular driveway prominently labeled "No Turning" -AND- the home is surrounded by fencing on all sides, including a double fence in the back yard- presumably an attempt to make the yard suitable for single family activities, away from the busy intersection and commercial uses across the street.

c) OFFICE use is permitted within the R-20 zone, but only if it is operated as a customary home occupation.

c') The subject property is best suited for office use and is not appealing to the marketplace as a single-family residence for all of the reasons listed previously.

iii) The Proposed use Is a reasonable one because:

- Office uses are predominately interior to the property and will not interfere with the peaceful enjoyment of the multi-family residential condominium residents on the rear (East) side of the property, or the single- family residence on the south side of the property.
- The proposed use will promote adaptive reuse of the existing, historical, building, which is situated less than the currently required 35' setback from the roadway.
- From the North side of the property multiple, commercial uses are not only seen, but can be heard (ie. Sullivan Tire)
- While the South side does not directly abut commercial uses, the neighborhood is home to the following uses, which are all compatible with the proposed Office use and currently pre-exist with the few remaining single-family residences:
 - Dover Middle and High School's
 - Dover Veterinary Hospital
 - Garrison City Early Childhood Center
 - The Garrison Condo Complex among other large multi-residential complexes

Variance Requirements

A. Variance Requested

A variance is requested from **Chapter 170, Sections 32A** of the City of Dover New Hampshire Zoning Ordinance to permit two (2) business signs, each not to exceed sixteen (16) square feet, where only one (sign) is otherwise permitted.

B. The five variance criteria (as set fourth in NH RSA 674:33, I (b))

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

The subject property is located on the corner of a signaled intersection which serves as a gateway to the City from points south from Durham, Newmarket, and Exeter along NH Rt 108; and Portsmouth via Back River road and Rt. 4. The subject property is the beginning of the R-20 Zone for this neighborhood and is flanked by commercial uses of varying intensities including: a 7-11 Convenience Store, newly developed Portsmouth Region Hospital, Sullivan Tire, Roland's sub shop and Sawyer Mill apartments, among others.

The signaled street corner is a busy artery for the City and signage is typical of the character of the existing neighborhood.

The ordinance provides for one (1) sign to be erected onsite within the R-20 zoning district for legally permitted uses. Given that the site contains +/-420' of total road frontage on two major city roadways, a second sign will not be disproportionate with the surroundings and will otherwise meet the requirements of the ordinance for installation and illumination.

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

The R-20 zoning ordinance is the City's low-density residential district which is plentiful throughout the city and, by definition, is near major roadways. The intersection of Back River Road NH Route 108 defines the intersection of the City's B-5 (Highway Business District) with the R-12 and R-20 (Low and Medium density) residential districts. The zoning boundaries are understandably drawn at major road way intersections and the spirit of the ordinance is to prevent signage from becoming a nuisance within residential neighborhoods. The result of strict interpretation of the ordinance in this case would limit signage at the property to one sign only. With road frontage of +/- 168' at the intersection of Back River Road and +/-252' of frontage on Durham Road, two (2) signs will be proportionate and consistent with the character of the neighborhood.

3) Granting the variance would do substantial justice because:

The neighborhood for the subject property is best classified as a busy city street corner and is not consistent with that of a low-density residential neighborhood. Because of this the subject property has limited appeal to the marketplace as a residential home. Granting the variance will provide a disposition plan for the home owner to sell their property, while providing an opportunity for adaptive re-use of one of the city's historic structures in an economically viable way.

4) The value of the surrounding properties will not be diminished because:

The adaptive reuse of this historic structure in an economically viable capacity will ensure that the property is well maintained indefinitely.

The ordinance does provide for one (1) sign to be erected onsite within the R-20 zoning district for legally permitted uses. Given that the site contains +/-420' of total road frontage on two major city roadways, a second sign will not be disproportionate with the surroundings and will otherwise meet the requirements of the ordinance for installation and illumination.

5) (A) 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 subject property is prominently located on the corner of NH Rt 108 (Durham Road) and Back River Road. The intersection of these two main roads is signaled and has multiple lanes from all directions. According to the NH Department of Transportation's Bureau of Traffic the North and South Bound traffic count in 2013 was 15000 cars per day. -See Reference Item A.
- According to the enclosed property survey completed in 2005, the subject lot has 41,483 square feet of land with +/- 420' lineal feet of total road frontage which meet the Table of Dimensional Standards for two conforming lots within the R-20 Zone. -See Reference Item B
- The subject property has a circular driveway.
- The road frontage along both Durham Rd. and Back River Rd. have island/medians with "adopt-a-spot" landscaping signage.
- Directly across the street from the Front door to the property is a 7-11 Convenience Store.

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

- The purpose of the sign ordinance is to limit the size, type, quantity, illumination and installation of signs within residential districts. The subject property is situated at the intersection of two major, arterial, signaled roadways for the City of Dover. These roadways provide access to the City from commuters, customers and visitors from the neighboring

City of Portsmouth, and the Towns of Durham, Newmarket and Exeter as well as transient access to these neighboring communities by residents of the City of Dover. The character of this heavily trafficked neighborhood consists of mixed uses which are commonly associated with transitional neighborhoods.

iii) The Proposed use Is a reasonable one because:

- The ordinance does provide for one (1) sign to be erected onsite within the R-20 zoning district for legally permitted uses. Given that the site contains +/-420' of total road frontage on two major city roadways, a second sign will not inconsistent with the neighborhood and will otherwise meet the requirements of the ordinance for installation and illumination.
- While the South side does not directly abut commercial uses, the neighborhood is home to multiple uses all of which have prominent signage:
 - Dover Middle and High School's
 - Dover Veterinary Hospital
 - Garrison City Early Childhood Center
 - The Garrison Condo Complex among other large multi-residential complexes

REF: ITEM A

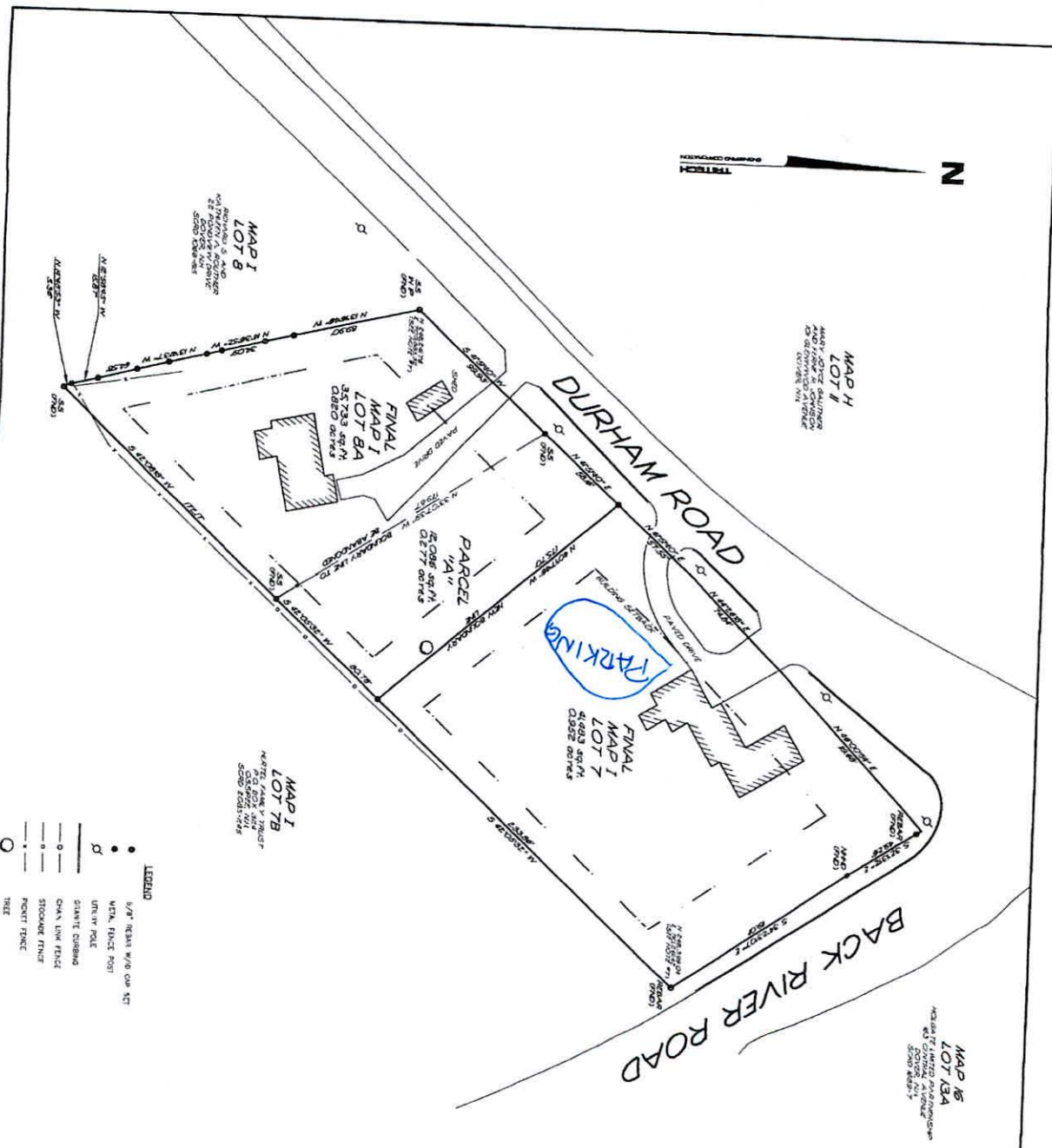
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC

Bureau of Planning, Traffic Section, Traffic Reports

18-Feb-16

STAT.	TYPE	LOCATION	FC	2008	2009	2010	2011	2012	2013	2014	2015
Town: DOVER											
125065	82	FOURTH ST OVER COCHECO RIVER (EB-WB) (81125140-81125141)	19	*	*	*	*	4400	*	*	2500
125066	82	NH 9/NH 108 (CENTRAL AVE) SB AT COCHECO RIVER BRIDGE	16	12000	*	*	12000	*	*	10000	*
125067	82	NH 9/NH 108 (WASHINGTON ST) EB AT COCHECO RIVER BRIDGE	16	14000	*	*	13000	*	*	11000	*
125068	82	WASHINGTON ST EAST OF HIGHLAND ST (EB- WB) (81125134-81125135)	17	*	*	6000	*	*	5600	*	*
125069	82	SIXTH ST WEST OF GLENWOOD AVE	17	*	*	8400	*	*	8500	*	*
125070	82	TOLEND RD BY SPAULDING TPK BRIDGE	17	*	*	3800	*	*	3700	*	*
125071	62	SPAULDING TPK/NH 16 BETWEEN EXITS 8-9 (SB-NB) (61125071-61125072)	12	*	*	43300	*	*	43500	*	*
125075	82	BELLAMY RD BY BELLAMY RIVER BRIDGE	16	*	*	4600	*	*	5000	*	*
→ 125077	82	NH 108 (DURHAM RD) NORTH OF BACK RIVER RD (SB-NB) (81125202-81125203)	16	*	*	18000	*	*	15000	*	*
125078	82	OAK ST EAST OF CENTRAL AVE	16	*	*	8200	*	*	8000	*	*
125079	82	DOVER POINT RD SOUTH OF HOMESTEAD LANE	16	12000	*	*	13000	*	*	11000	*
125083	82	LONG HILL RD WEST OF OLD ROCHESTER RD (EB-WB) (81125144-81125145)	19	1400	*	*	1800	*	*	1900	*
125084	82	SIXTH ST WEST OF CHESTNUT ST	17	*	*	7100	*	*	6700	*	*
125085	82	TOLEND RD WEST OF WASHINGTON ST	17	5000	*	*	2800	*	*	5600	*
125086	82	NH 9 (LITTLEWORTH RD) WEST OF B&M RR BRIDGE	16	10000	*	*	8000	*	*	*	9300
125087	82	NH 155 (KNOX MARSH RD) SOUTH OF NH 9	16	14000	*	*	13000	*	*	15000	*

REF: ITEM 1B



- LEGEND**
- 1/4" REBAR W/8 GUN SET
 - WELDED FENCE POST
 - UTILITY POLE
 - STAKE CHAIN
 - CHAIN LINK FENCE
 - STOCKADE FENCE
 - POCKET FENCE
 - TREE



NOTES

1. INTENT TO ADJUST THE BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
2. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
3. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
4. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
5. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
6. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
7. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
8. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
9. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
10. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.

Robert A. Naumann
Robert A. Naumann
Robert A. Naumann

APPROVED
 07/11/16
 07/11/16
 07/11/16

1. INTENT TO ADJUST THE BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
 2. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
 3. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
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 8. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
 9. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.
 10. CORRECTION OF BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 13A.

SHEET NO. S-1	BOUNDARY LINE ADJUSTMENT PLAN ROBERT & SALLY NAUMANN AND JOHN & LESLIE DONAIS DURHAM ROAD & BACK RIVER ROAD DOVER, NEW HAMPSHIRE AUGUST 8, 2006 SCALE: 1" = 30'		TRITECH ENGINEERING CORPORATION 700 CENTRAL AVENUE DOVER, NEW HAMPSHIRE 03801 TELEPHONE 603 742 8707 FAX 603 742 0800
			REVISIONS DATE: DESCRIPTION: 8/14/06 REVISED FOR CONDUITS OF METEOROL

020881 2006 SEP - 8 AM 9:47

Z19-01 & Z19-02 10 Durham Road

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
16013-000000	1 MILL ST	SAWYER'S MILL ASSOCIATES INC		1 MILL STREET	DOVER	NH	03820
16013-A00000	2 BACK RIVER RD	HOLGATE LIMITED PARTNERSHIP		130 CENTRAL AVE	DOVER	NH	03820
16014-000000	4 6 BACK RIVER RD	HOLGATE LIMITED PARTNERSHIP		130 CENTRAL AVE	DOVER	NH	03820
16015-001000	7 CROWN POINT DR	DRJ CROWN POINT APARTMENTS LLC		242 CENTRAL AVE	DOVER	NH	03820
H0011-000000	DURHAM RD	7 WEST LLC	C/O SUMMIT LAND DEVELOPMENT LLC	340 CENTRAL AVE STE 202	DOVER	NH	03820
H0011-A00000	DURHAM RD	CITY OF DOVER		288 CENTRAL AVENUE	DOVER	NH	03820
I0007-B00000	13 15 BACK RIVER RD	DOVER HIGHLAND CONDOMINIUM	HEADS UP REAL ESTATE GROUP LLC	3510 LAFAYETTE RD STE 4	PORTSMOUTH	NH	03801
I0007-B00101	13 101 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00102	13 102 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00103	13 103 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00104	13 104 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00105	13 105 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE STE 1	PORTSMOUTH	NH	03801
I0007-B00106	13 106 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00107	13 107 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00108	13 108 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00109	13 109 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00110	13 110 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00111	13 111 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00112	13 112 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00113	13 113 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00114	13 114 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00115	13 115 BACK RIVER RD	HEADS UP REAL ESTATE GROUP LLC		290 HERITAGE AVE	PORTSMOUTH	NH	03801-5680
I0007-B00116	13 116 BACK RIVER RD	DEMPSEY SEAN		2 ALEX CT	SOMERSWORTH	NH	03878-1237
I0008-000000	22 DURHAM RD	SMITH ROBERT H III &	SMITH BRIDGET F	10 PONDVIEW DR	DOVER	NH	03820
I0008-A00000	16 DURHAM RD	DONAI JOHN &	DONAI LESLIE	16 DURHAM RD	DOVER	NH	03820-4382
		THOMAS A TOYE IV		278 WASHINGTON STREET	DOVER	NH	03820
		MICHELLE HUNT		10 DURHAM ROAD	DOVER	NH	03820



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, February 21, 2019
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit two freestanding signs, each of no more than 16 square feet.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-B

ZONING DISTRICT: Low Density Residential (R-20)

FILE: Z19-02

APPLICANT/OWNER: Thomas A. Toye IV/Michelle Hunt

LOCATION: 10 Durham Road (Tax Map I, Lot 7)

ACREAGE: 0.95 acre (41,382 sq. ft.)

EXISTING LAND USE: Single-family dwelling

PROPOSED LAND USE: Office

SURROUNDING LAND USE: Single-family dwelling, multi-family dwellings, offices, convenience store, vacant lot

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports granting the variance request.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

The property subject to this variance request is located on the south side of Durham Road, on the corner of Back River Road. The approximately one-acre lot is currently home to a large single-family dwelling c. 1890.

The Applicant requests a variance to permit an additional sign. In the R-20 Zoning District, one sign of up to 16 square feet is permitted. The only allowed sign types are freestanding and projecting signs—a wall sign is not permitted. The Applicant requests an additional sign of up to 16 square feet.

REASON FOR STAFF RECOMMENDATION

This property is located at the edge of the R-20 Zoning District, where several districts converge. Across Back River Road is the Gateway Business (B-5) Zoning District and the Medium Density Residential (R-12) Zoning District. The lot behind this house (to the south) is partially in the Suburban Density Residential (RM-SU) Zoning District. All three abutting districts permit denser and/or more commercial development than the R-20. While the other residential districts have the exact same restrictions on signage, the B-5 district permits much greater square footage (based on the size of the building) and allows up to three signs.

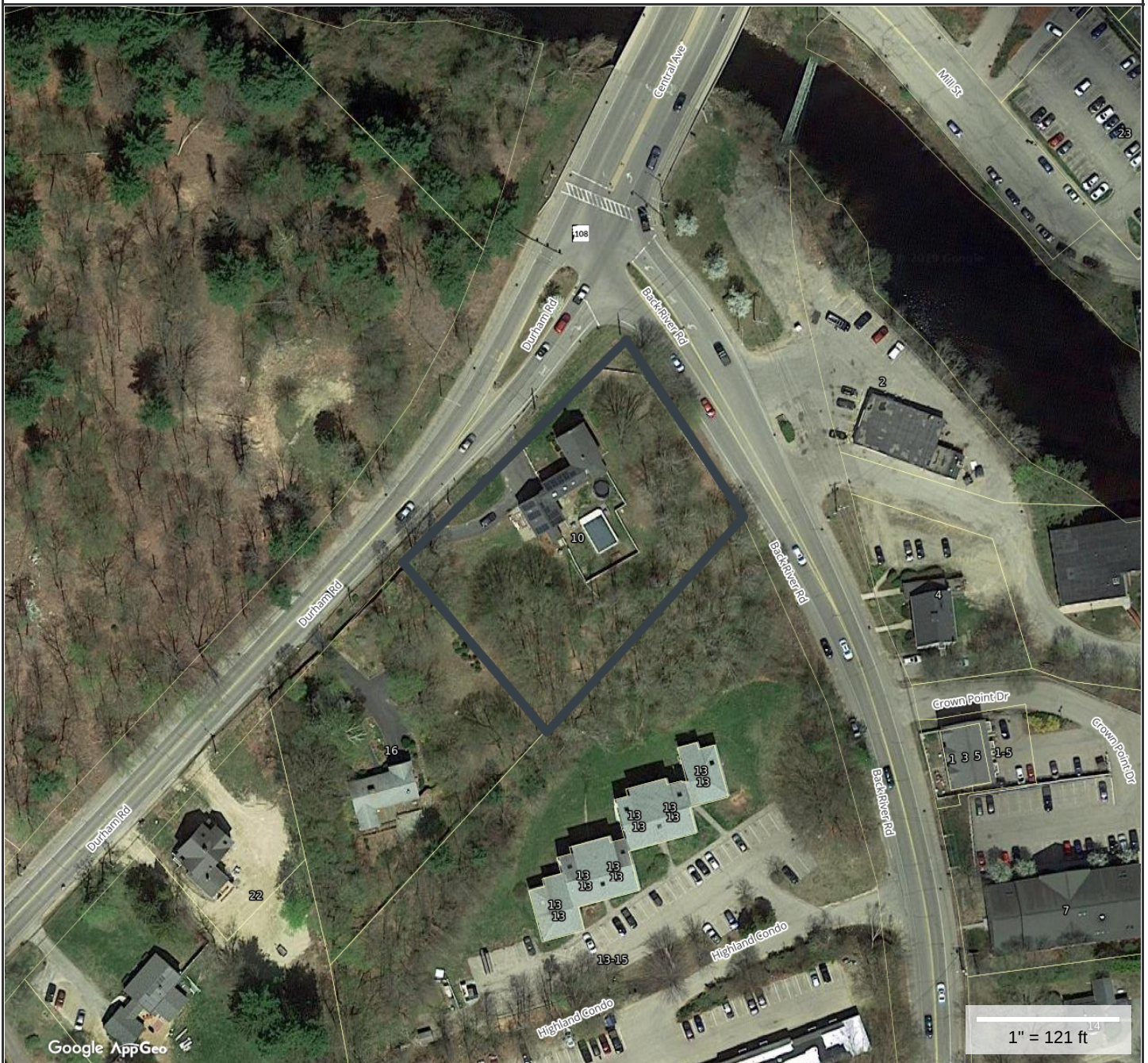
In nonresidential districts, the Zoning Ordinance permits an additional sign for corner lots with frontage on two streets. Where this property has frontage on two streets, if a variance is granted to permit an office use it is reasonable to allow additional signage, as is afforded to 7-Eleven across the street. All other requirements of the ordinance regarding safe sight distance and lighting would still apply to both signs.

STAFF RECOMMENDATION

Staff recommends the Board hold a public hearing, make findings on the five variance criteria, and grant the variance request with the following condition:

- If the use of the property reverts to a single-family dwelling, the additional sign shall be considered obsolete and must be removed in accordance with Section 170-32.M of the Zoning Ordinance.

10 Durham Road

**Property Information**

Property ID I0007-000000
Location 10 DURHAM RD
Owner HUNT TIMOTHY H &
Land Use 101

**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.

Geometry updated 11/16/2018
Data updated 11/18/2018



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

RECEIVED
Planning Office

Office Use Only

Case #:

219-02

Date Received:

JAN 30 2019

Amount Paid: \$

Time Received:

Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: THOMAS A. TOYE IV Phone # 603.781.8600

Address of Applicant: 278 WASHINGTON ST., DOVER NH 03820

E-Mail Address: TOM @ ARTHUR THOMAS PROPERTIES.COM

PROPERTY OWNER (if different from applicant): MICHELLE HUNT

Address: 10 DURHAM RD, DOVER NH Phone # 207.233.0231

E-Mail Address: MYRVIKM @ YAHOO.COM

PROPERTY/PARCEL INFORMATION

Address: 10 DURHAM RD. DOVER NH

Brief Directions: FROM DOWNTOWN DOVER NH, FOLLOW NH RT.

108 SOUTH, PAST EXIT 7 TO SPAULDING TPK., PROPERTY ON
CORNER OF BACK RIVER ROAD.

Zoning District: R-20 Assessor's Map # I Lot(s) # 7

TYPE OF APPEAL: (Please check one)

- | | |
|--|---|
| ☒ Variance | from Section <u>12A.32D</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:

ADAPTIVE RE-USE OF AN 1890 SINGLE FAMILY RESIDENCE AS
AN OFFICE USE WITH BUSINESS SIGNAGE.

Variance Requirements

A. Variance Requested

A variance is requested from **Chapter 170, Sections 32A** of the City of Dover New Hampshire Zoning Ordinance to permit two (2) business signs, each not to exceed sixteen (16) square feet, where only one (sign) is otherwise permitted.

B. The five variance criteria (as set fourth in NH RSA 674:33, I (b))

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

The subject property is located on the corner of a signaled intersection which serves as a gateway to the City from points south from Durham, Newmarket, and Exeter along NH Rt 108; and Portsmouth via Back River road and Rt. 4. The subject property is the beginning of the R-20 Zone for this neighborhood and is flanked by commercial uses of varying intensities including: a 7-11 Convenience Store, newly developed Portsmouth Region Hospital, Sullivan Tire, Roland's sub shop and Sawyer Mill apartments, among others.

The signaled street corner is a busy artery for the City and signage is typical of the character of the existing neighborhood.

The ordinance provides for one (1) sign to be erected onsite within the R-20 zoning district for legally permitted uses. Given that the site contains +/-420' of total road frontage on two major city roadways, a second sign will not be disproportionate with the surroundings and will otherwise meet the requirements of the ordinance for installation and illumination.

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

The R-20 zoning ordinance is the City's low-density residential district which is plentiful throughout the city and, by definition, is near major roadways. The intersection of Back River Road NH Route 108 defines the intersection of the City's B-5 (Highway Business District) with the R-12 and R-20 (Low and Medium density) residential districts. The zoning boundaries are understandably drawn at major road way intersections and the spirit of the ordinance is to prevent signage from becoming a nuisance within residential neighborhoods. The result of strict interpretation of the ordinance in this case would limit signage at the property to one sign only. With road frontage of +/- 168' at the intersection of Back River Road and +/-252' of frontage on Durham Road, two (2) signs will be proportionate and consistent with the character of the neighborhood.

3) Granting the variance would do substantial justice because:

The neighborhood for the subject property is best classified as a busy city street corner and is not consistent with that of a low-density residential neighborhood. Because of this the subject property has limited appeal to the marketplace as a residential home. Granting the variance will provide a disposition plan for the home owner to sell their property, while providing an opportunity for adaptive re-use of one of the city's historic structures in an economically viable way.

4) The value of the surrounding properties will not be diminished because:

The adaptive reuse of this historic structure in an economically viable capacity will ensure that the property is well maintained indefinitely.

The ordinance does provide for one (1) sign to be erected onsite within the R-20 zoning district for legally permitted uses. Given that the site contains +/-420' of total road frontage on two major city roadways, a second sign will not be disproportionate with the surroundings and will otherwise meet the requirements of the ordinance for installation and illumination.

5) (A) 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 subject property is prominently located on the corner of NH Rt 108 (Durham Road) and Back River Road. The intersection of these two main roads is signaled and has multiple lanes from all directions. According to the NH Department of Transportation's Bureau of Traffic the North and South Bound traffic count in 2013 was 15000 cars per day. -See Reference Item A.
- According to the enclosed property survey completed in 2005, the subject lot has 41,483 square feet of land with +/- 420' lineal feet of total road frontage which meet the Table of Dimensional Standards for two conforming lots within the R-20 Zone. -See Reference Item B
- The subject property has a circular driveway.
- The road frontage along both Durham Rd. and Back River Rd. have island/medians with "adopt-a-spot" landscaping signage.
- Directly across the street from the Front door to the property is a 7-11 Convenience Store.

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

- The purpose of the sign ordinance is to limit the size, type, quantity, illumination and installation of signs within residential districts. The subject property is situated at the intersection of two major, arterial, signaled roadways for the City of Dover. These roadways provide access to the City from commuters, customers and visitors from the neighboring

City of Portsmouth, and the Towns of Durham, Newmarket and Exeter as well as transient access to these neighboring communities by residents of the City of Dover. The character of this heavily trafficked neighborhood consists of mixed uses which are commonly associated with transitional neighborhoods.

iii) The Proposed use Is a reasonable one because:

- The ordinance does provide for one (1) sign to be erected onsite within the R-20 zoning district for legally permitted uses. Given that the site contains +/-420' of total road frontage on two major city roadways, a second sign will not inconsistent with the neighborhood and will otherwise meet the requirements of the ordinance for installation and illumination.
- While the South side does not directly abut commercial uses, the neighborhood is home to multiple uses all of which have prominent signage:
 - Dover Middle and High School's
 - Dover Veterinary Hospital
 - Garrison City Early Childhood Center
 - The Garrison Condo Complex among other large multi-residential complexes

REF: ITEM A

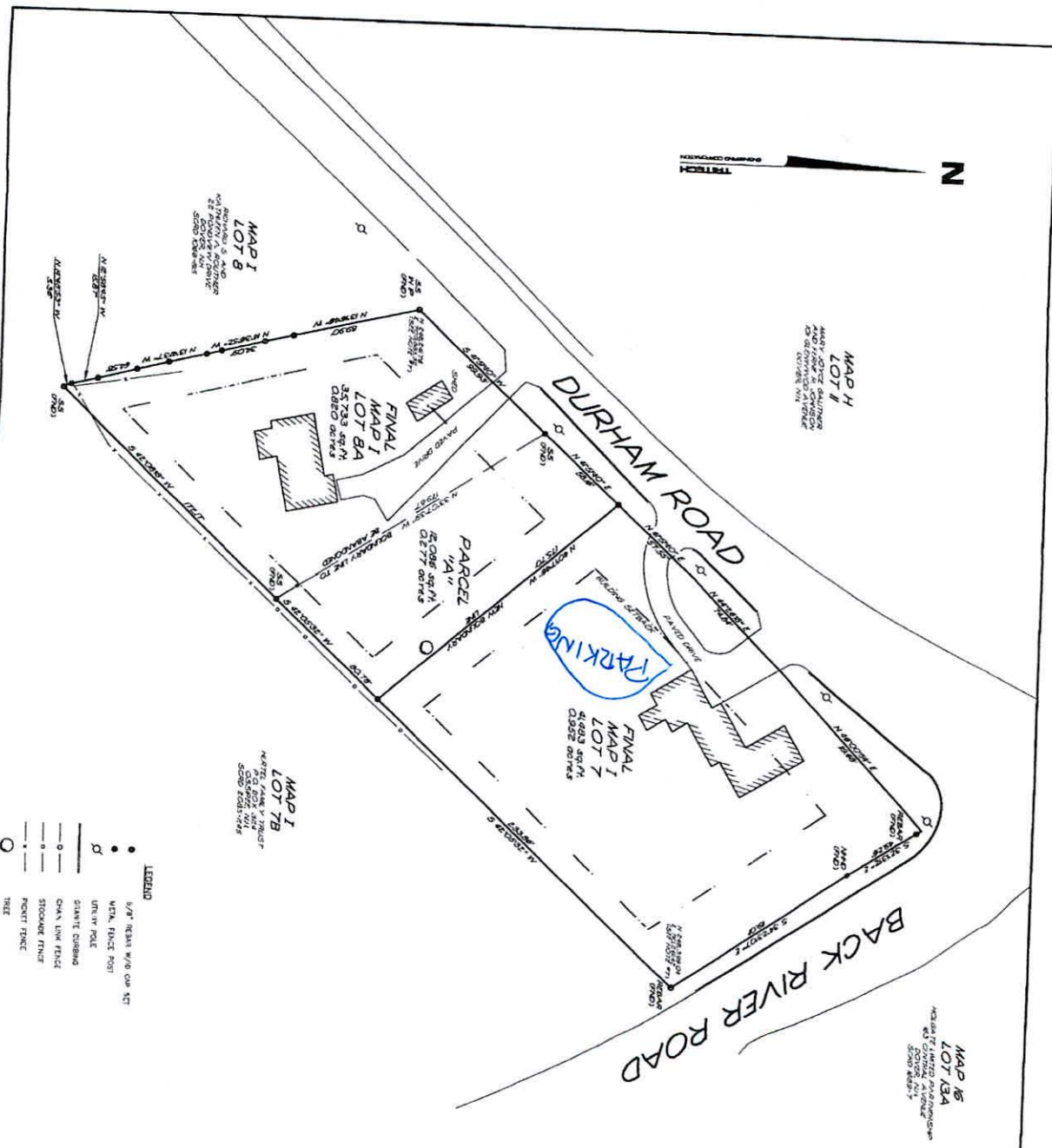
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC

Bureau of Planning, Traffic Section, Traffic Reports

18-Feb-16

STAT.	TYPE	LOCATION	FC	2008	2009	2010	2011	2012	2013	2014	2015
Town: DOVER											
125065	82	FOURTH ST OVER COCHECO RIVER (EB-WB) (81125140-81125141)	19	*	*	*	*	4400	*	*	2500
125066	82	NH 9/NH 108 (CENTRAL AVE) SB AT COCHECO RIVER BRIDGE	16	12000	*	*	12000	*	*	10000	*
125067	82	NH 9/NH 108 (WASHINGTON ST) EB AT COCHECO RIVER BRIDGE	16	14000	*	*	13000	*	*	11000	*
125068	82	WASHINGTON ST EAST OF HIGHLAND ST (EB- WB) (81125134-81125135)	17	*	*	6000	*	*	5600	*	*
125069	82	SIXTH ST WEST OF GLENWOOD AVE	17	*	*	8400	*	*	8500	*	*
125070	82	TOLEND RD BY SPAULDING TPK BRIDGE	17	*	*	3800	*	*	3700	*	*
125071	62	SPAULDING TPK/NH 16 BETWEEN EXITS 8-9 (SB-NB) (61125071-61125072)	12	*	*	43300	*	*	43500	*	*
125075	82	BELLAMY RD BY BELLAMY RIVER BRIDGE	16	*	*	4600	*	*	5000	*	*
→ 125077	82	NH 108 (DURHAM RD) NORTH OF BACK RIVER RD (SB-NB) (81125202-81125203)	16	*	*	18000	*	*	15000	*	*
125078	82	OAK ST EAST OF CENTRAL AVE	16	*	*	8200	*	*	8000	*	*
125079	82	DOVER POINT RD SOUTH OF HOMESTEAD LANE	16	12000	*	*	13000	*	*	11000	*
125083	82	LONG HILL RD WEST OF OLD ROCHESTER RD (EB-WB) (81125144-81125145)	19	1400	*	*	1800	*	*	1900	*
125084	82	SIXTH ST WEST OF CHESTNUT ST	17	*	*	7100	*	*	6700	*	*
125085	82	TOLEND RD WEST OF WASHINGTON ST	17	5000	*	*	2800	*	*	5600	*
125086	82	NH 9 (LITTLEWORTH RD) WEST OF B&M RR BRIDGE	16	10000	*	*	8000	*	*	*	9300
125087	82	NH 155 (KNOX MARSH RD) SOUTH OF NH 9	16	14000	*	*	13000	*	*	15000	*

REF: ITEM 1B



- LEGEND**
- 1/4" REBAR W/8 GUN SET
 - WELDED FENCE POST
 - UTILITY POLE
 - SLANT CURBING
 - CHAIN LINK FENCE
 - STOCKADE FENCE
 - POCKET FENCE
 - TREE



NOTES

1. INTENT TO ADJUST THE BOUNDARY LINE BETWEEN MAP I LOT 7 & MAP I LOT 8.
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APPROVED

[Signature]

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SHEET NO. S-1	BOUNDARY LINE ADJUSTMENT PLAN ROBERT & SALLY NAUMANN AND JOHN & LESLIE DONAIS DURHAM ROAD & BACK RIVER ROAD DOVER, NEW HAMPSHIRE AUGUST 8, 2006 SCALE: 1"=30'		TRITECH ENGINEERING CORPORATION 700 CENTRAL AVENUE DOVER, NEW HAMPSHIRE 03801 TELEPHONE 603 742 8707 FAX 603 742 0800
			REVISIONS DATE: 8/24/06 DESCRIPTION: REVISED FOR CONDUITS OF METEOROL



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date: Thursday, February 21, 2019
Meeting Time: 7:00 pm

INTENT: The Applicant requests a variance to permit a commercial recreation use (indoor shooting range).

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-C

ZONING DISTRICT: Assembly & Office (I-4)

FILE: Z19-03

APPLICANT/OWNER: White Birch Armory/Dover Business & Industrial Development Authority

LOCATION: Quality Way (Tax Map D, Lot 11-7)

ACREAGE: 3.49 ac (152,024 sq. ft.)

EXISTING LAND USE: Vacant

PROPOSED LAND USE: Commercial recreation, warehouse, office, and retail

SURROUNDING LAND USE: Vacant/conserved land, warehouse/manufacturing/office, single-family dwellings

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application, plans, renderings

STAFF RECOMMENDATION: Staff supports granting the variance request.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

The property subject to this variance request is a 3.49-acre vacant lot at the end of Quality Way in Enterprise Park, one of the City's three industrial parks. As such, the design of the park's development is partially overseen by the Dover Business and Industrial Development Authority (DBIDA) in accordance with the park's protective covenants.

The Applicant seeks a variance to permit commercial recreation (as defined in **Section 170-6** of the Zoning Ordinance), specifically an indoor shooting range and training facility as a complementary use to the distribution and sales of ammunition, firearms, and related products. Commercial recreation is not permitted in the I-4 district.

The Applicant has prepared a conceptual layout of the general size and orientation for the new building and parking on the lot. The Applicant has also provided conceptual renderings and floor plans. If the variance is granted, a full site plan review will be completed by the Planning Board along with DBIDA review.

REASON FOR STAFF RECOMMENDATION

Commercial recreation is permitted in the Thoroughfare Business (B-3), Hotel/Retail (B-4), Gateway Business (B-5), Rural Restricted Industrial (I-2), and Little Bay Waterfront (LBW) Zoning Districts. All but the I-2 district are vehicle- and pedestrian-oriented commercial or mixed-use areas with high visibility to passersby in terms of their relationship to main thoroughfares and Spaulding Turnpike exits, their dimensional regulations, and the provisions they make for signage.

The one area of the City zoned I-2 has similar, smaller lot size and setback minimums to allow for denser development. It accommodates the community's most industrial uses adjacent to the railroad tracks and among wetlands that have been impacted for decades, as commercial and industrial development in the I-2 primarily occurred in the 1950s, '60s, '70s, and '80s. Many parcels have frontage on Routes 155 and 9.

The Assembly & Office (I-4) Zoning District, on the other hand, has a five-acre lot size minimum, a low limit on lot coverage, and 75-foot minimum setbacks in order provide for larger, more spread out manufacturing facilities. (Due to a transfer of development rights when Enterprise Park was created, setbacks can be reduced to 25 feet in this park.) However, Dover's zoning requires any new non-residential structure to be 150' from an abutting residential structure within a residential zone. Enterprise Park in particular, where this variance is sought, was developed primarily in the 1990s and early 2000s, and designed to both protect wetland areas and provide a destination park where lighter/more high-tech manufacturing, laboratories, warehousing and wholesaling, offices, and other commercial uses are permitted by right.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, February 21, 2019
Meeting Time:	7:00 pm

The Applicant's business comprises warehousing/wholesaling and office uses combined with an indoor shooting range, indoor training, and retail sales of firearms, ammunition, and related accessories. Warehousing, wholesaling, and office uses are permitted by right and retail sales would be considered an accessory use. A variance is required to permit the shooting range, which falls under the "commercial recreation" use category. While most types of "commercial recreation" rely on visibility and proximity to other commercial uses, the recreational component of the Applicant's proposed business is a destination sought out by customers throughout a large region. These customers are also likely to desire more privacy than those of other types of recreation. As such the location on a dead-end street that can accommodate little further development is suitable to the use. The property is also unique in that it is large enough to permit an approximately 15,000-square-foot building and associated parking while allowing significant buffers from the nearest residential dwellings – which are 300' away. There are few available properties in the zoning districts where commercial recreation is permitted that would allow a facility of this size, and in many cases it would be more visible to the general public and in closer proximity to more residential dwellings and customers of other busy commercial uses.

STAFF RECOMMENDATION

Staff recommends the Board hold a public hearing, make findings on the five variance criteria, and grant the variance request with the following condition:

- As represented by this application, the granting of a variance for commercial recreation shall apply only to an indoor shooting range use and associated indoor training.

Quality Way

**Property Information**

Property ID D0011-007000
Location QUALITY WY
Owner DOVER BUSINESS & IND DEV AUTHORITY
Land Use 903

**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.

Geometry updated 11/16/2018
Data updated 11/18/2018



288 Central Avenue
Dover, New Hampshire 03820-4169
Tel: (603) 516-6008
Fax: (603) 516-6049

RECEIVED
Planning Office

FEB 08 2019

Zoning Board of Adjustment City of Dover, New Hampshire

Dover, New Hampshire

HOURS: Monday through Thursday 8:30 AM - 5:30 PM & Friday 8:30 AM to 4:00 PM

INSTRUCTIONS TO APPLICANTS APPEALING TO THE DOVER ZONING BOARD OF ADJUSTMENT

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

Dear Applicant:

This will serve to briefly inform you as to what you must do to bring a petition before the Dover Zoning Board of Adjustment (ZBA). Please refer to the NH Statutes on Land Use and Regulation and the Dover Zoning Ordinance for more specific information. You must complete the application(s) applicable to you. There are four (4) purposes to petition the ZBA; they are:

1. Variances - where special conditions exist in the property warranting the use of that property in a manner which literally or technically is in violation of the ordinance. Variances can be sought to dimensional or use requirements.

There is a special type of variance allowed for persons having a recognized physical disability, which may be granted for as long as the particular person has a need to use the premises (see RSA 674:33-V). Any medical information submitted to substantiate a disability will remain confidential.

2. Special Exceptions - where the ordinance specifically permits a particular use provided the applicant can prove that whatever conditions attached to such use by the ordinance have or will be complied with.
3. Appeal from Administrative Decisions - where the applicant feels that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.
4. Equitable Waiver of Dimensional Requirements - where a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA:674:16.

The ZBA cannot and will not grant the relief sought unless the applicant proves the elements of his or her case. For example, variances may not be granted solely because the applicant is suffering from financial hardships or other personal hardships or whimsically would like to put his or her property to a non-conforming use.

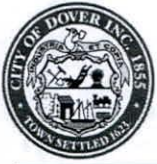
YOU, THE APPLICANT, ARE RESPONSIBLE FOR PRESENTING SUFFICIENT INFORMATION TO SUPPORT AND PROVE YOUR CASE. WHEN FILLING OUT THE APPLICATION, PLEASE PRINT OR TYPE.

Familiarity with the particular provision of the Zoning Ordinance that affects your property is important, and any specific questions you may have relative to your particular case can be answered either by obtaining a copy of the Zoning Ordinance at the City Clerk's Office, or by inquiring at the Planning Office, Municipal Building, 288 Central Avenue, Dover, NH 03820. The Zoning Ordinance can also be viewed on the City web-site at www.dover.nh.gov.

You may represent yourself or authorize, in writing, someone else to represent you. Deliver or mail ten (10) copies of the completed application, with applicable attachments to the Planning Department at least twenty-one (21) days prior to the ZBA meeting date. The ZBA meets on the third Thursday of the month.

The attached application form must be properly completed. An application fee is charged to cover the cost of preparing and mailing the legally required certified letters to the abutters and to place a legal notice in the newspaper. We will notify you of the cost once your application has been submitted.

The ZBA will hold a public hearing on your application at its regularly scheduled monthly meeting. Public notice of the hearing will be posted at the City Clerk's office and the Planning Department office and printed in the newspaper. Certified letters will be mailed to you and to all abutters at least five days before the date of the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state the reasons why the appeal should or should not be granted. Please be advised that a decision may not be made the same night of the hearing. You will be sent a notice of the decision.



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

Office Use Only	Case #:	<u>219-03</u>	Date Received:	<u>RECEIVED Planning Office FEB 08 2019 Dover, New Hampshire</u>
	Amount Paid:	\$ _____	Time Received:	

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: White Birch Armory (c/o Sean Manning) Phone # (603) 330-0146

Address of Applicant: 9 Great Falls Ave Suite 2 Rochester, NH 03867

E-Mail Address: sean@wbarmory.com

PROPERTY OWNER (if different from applicant): Dover Business & Industrial Development Authority

Address: 288 Central Avenue Dover, NH 03820 Phone # (603) 516-6000

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: TBD

Brief Directions: Enterprise Park, end of Quality Way, lot on the left at cul-de-sac.

Zoning District: I-4 Assessor's Map # D Lot(s) # 11-7

TYPE OF APPEAL: (Please check one)

☐ Variance	from Section <u>170-12.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:

The applicant intends to build an indoor shooting range with gun shop in Enterprise Park.

APPLICATION CHECKLIST (Please check off)

- A. **Application signed** by Applicant and Property Owner (if different from Applicant) X
Note: In order for the application to be accepted by Planning Department staff and placed on the ZBA agenda YOU MUST COMPLETE (1) ALL SECTIONS ON PAGE 1 as well as (2) ALL QUESTIONS FOR THE SPECIFIC APPEAL YOU ARE SEEKING.
- B. **10 Copies of Completed Zoning Board of Adjustment Application** X
Note: Only include those pages of the application that are relevant to your request. Please do not include the abutters list with the 10 copies (include only as part of original signed application (Part A above)).
- C. **10 copies of a plot plan** drawn in accordance with a boundary line to scale not less than 1" = 40'. They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks. X
- D. Submit at least one (1) copy of the plot plan at a size of **8 1/2 x 11** (this is in addition to the 10 copies required in 'C' above). X
- E. **10 copies of photos** (suggested but optional) and any **other materials** applicant would like to submit in support of the application. X
- F. **Abutter Notification/Mailing Labels** - this office will create and print the abutter list and provide labels in triplicate for each abutter. The applicant/owner will need to provide to this office the engineer, architect, land surveyor or soil scientist whose professional seal appears on the plan with names and addresses for notices. You will be notified with the amount due, once this has been completed.
1. Applicant & Owner, engineer, architect, land surveyor or soil scientist
 Certified letters fee # 2 of x \$8.00 =
 2. Certified letters fee: # of abutters 6 X \$8.00 = \$ 64.00
 3. First Class Mail fee (for individual owner of units within a condominium or other collective form of ownership): # of abutters _____ X \$1.00 = \$ _____
 4. Creating/Printing Abutter Labels in triplicate per sheet 1 x \$10.00 = \$ 10.00
- G. **TOTAL FEE** paid by cash or check made payable to "City of Dover"
1. Application fee of:

\$100.00 VARIANCE (per Section requested)	\$ 100.00
\$100.00 SPECIAL EXCEPTION	\$ _____
\$100.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ _____
\$100.00 EQUITABLE WAIVER	\$ _____
 2. Foster's newspaper public notice \$ 80.00
- TOTAL FEE** \$ 254.00

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

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

an indoor shooting range with gun shop.

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:

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

THIS SECTION TO BE COMPLETED BY EQUITABLE WAIVER APPLICANTS ONLY

An Equitable Waiver of Dimensional Requirements is requested from Article _____ Section _____ of the Zoning ordinance to permit _____

1. Does the request involve a dimension requirement, not a use restriction? yes no

2. a) Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the city **OR** b) explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser **AND** how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.

4. Explain how the cost of correction far outweighs any public benefit to be gained.

NOTE: The Board must find in the affirmative on all four questions or the request must be denied

APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION TO BE COMPLETED BY APPLICANTS APPEALING AN ADMINISTRATIVE DECISION ONLY

Explain why you feel that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

SPECIAL EXCEPTION REQUIREMENTS

THIS SECTION TO BE COMPLETED BY SPECIAL EXCEPTION APPLICANTS ONLY

A. General Special Exception Requirements (as set forth in §170-52.C.3 of the Zoning Ordinance)

1. Explain how the requested use would be essential or desirable to the public convenience or welfare.

2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.

3. Describe how the requested use would not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.

B. Specific Special Exception Requirements (as may be set forth in the applicable Table of Use)

Explain how the proposal meets the specific special exception requirements as may be set forth in the Table of Use for the zoning district in which the subject property is located:

A. _____

B. _____

C. _____

D. _____

E. _____

F. _____

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: _____

White Birch Armory
9 Great Falls Ave Suite 2
Rochester, NH 03867

INTRODUCTION

The property subject to the request for variance is located at the end of Quality Way in Enterprise Park. The proposed structure would have an estimated area of 15,000 square feet and of rectangular shape.

Our company, White Birch Armory currently located in Rochester, is a certified Service Disabled Veteran Owned Small Business that provides various firearms industry products and services. We have a very diversified business model with many sales channels to include; federal government contracting, wholesale distribution, retail gun shop, e-commerce sales, export, and test & evaluation consulting.

Over the past four years, we've grown every sales channel we pursued; with minimal financial support. Late last year, we switched to a new bank that understands our potential and provided us with over sixteen times the working capital of our previous bank. Now that we can hire a large team of talented individuals that are dedicated to each aspect of our business, we're poised for profound growth.

We believe that Dover, specifically Enterprise Park, is the ideal home for our new facility. Not only will we reside in a great community, with room to grow, we intend on building a state-of-the-art indoor range and gun shop that's open to the public; the only one of its kind on the seacoast.

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

Individuals that utilize firearms for professional or recreational use follow the universal firearms safety rules. This requires constant awareness of the condition and orientation of their firearm as well as their surroundings. Industrial zones are generally higher risk areas due to large trucks maneuvering in and out of loading docks, forklift traffic, dangerous machinery, increased noise levels, etc. which makes them unsuitable for most forms of commercial recreation. These locations are not only suitable for indoor ranges and their patrons, they are the ideal locations.

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

The stated purpose of the I-4 zone is to "provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, laboratory, testing facility, WAREHOUSING, WHOLESALING, PUBLISHING and shipping activities that expand the economic base of the city and provide employment opportunities." The Applicant's business performs similar packaging, distribution, warehousing, wholesaling, and shipping activities as the surrounding businesses. It is likely that these operations will become the primary source of revenue with increasing law enforcement, federal government, and international contracts. The proposed indoor range and gun shop use is complimentary to these operations and would provide many employment opportunities.

3. Granting the variance would do substantial justice because:

The granting of the variance would result in substantial justice as it would allow the Applicant's business to be utilized in Enterprise Park's industrial zone, which would be consistent with the zoning of other similar businesses located in New Hampshire. The nearest indoor ranges that are open to the public are at least a one-hour drive away. Most residents are not willing to travel this far and resort to shooting their firearms in their backyards or at nearby gravel pits; with or without authorization. This poses potential risk to the shooters, surrounding residents, environment, and unacceptable noise levels causing unrest over

long distances. By granting the variance, residents of Dover and surrounding cities will have access to a facility that provides emphasis on safe firearms handling and usage. Further, many law enforcement agencies from surrounding cities do not have range facilities of their own and must commute to the Police Academy range in Concord. The construction of an indoor range in Enterprise Park could provide a more convenient option for officer training.

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

The surrounding properties located in Enterprise Park are a mix of industrial and commercial uses. The Applicant's business performs similar operations as stated above. The additional indoor range and gun shop use would not impede surrounding businesses, little to no audible noise will be emitted due to ample sound dampening materials, and the building will conform to the high standards of Enterprise Park's building covenants. The restaurants, retail stores, and other surrounding businesses will benefit greatly from the large number of customers that the Applicant's state-of-the-art facility will draw from surrounding cities and neighboring states.

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:

Indoor ranges are considered Commercial Recreation which is not a permitted use in the I-4 zone. The substantial space required to build an indoor range would be exponentially more expensive in the commercial zones that permit the use. By requiring the Applicant's business to be located in commercial zones, which are intended for maximum public exposure, they would likely receive backlash due to the nature of the business and industry. Additionally, the Applicant's customers deserve their privacy and Second Amendments rights to be respected by permitting a facility in a location that is "out of sight, out of mind" from the general public.

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:

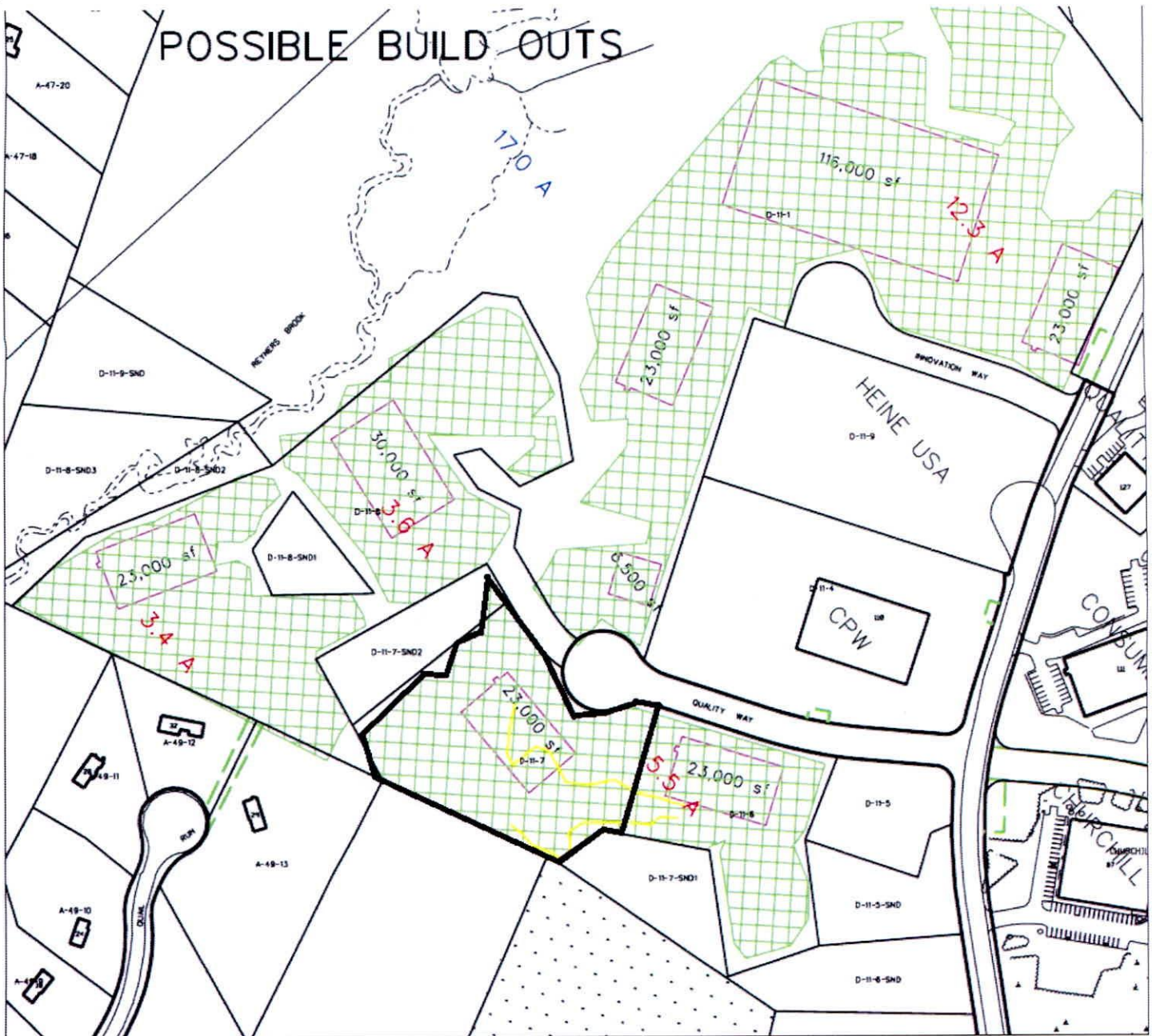
There are many brick and mortar gun shops scattered throughout the state which benefit from prime road-side locations in commercial zones, so the passerby stops in to check out their inventory. Indoor ranges are extremely scarce, especially those open to the public, and are constantly sought after. Our modern range will feature the latest electronic target retrievers with controls in each stall, target cameras to easily identify shot impacts, projected target systems that provide image, video, and interactive games; making our facility a true destination. We expect steady visits from enthusiasts residing in Boston who can reach us after a short train ride. The privacy and professional appearance of Enterprise Park is perfect for everyone's new home range.

and

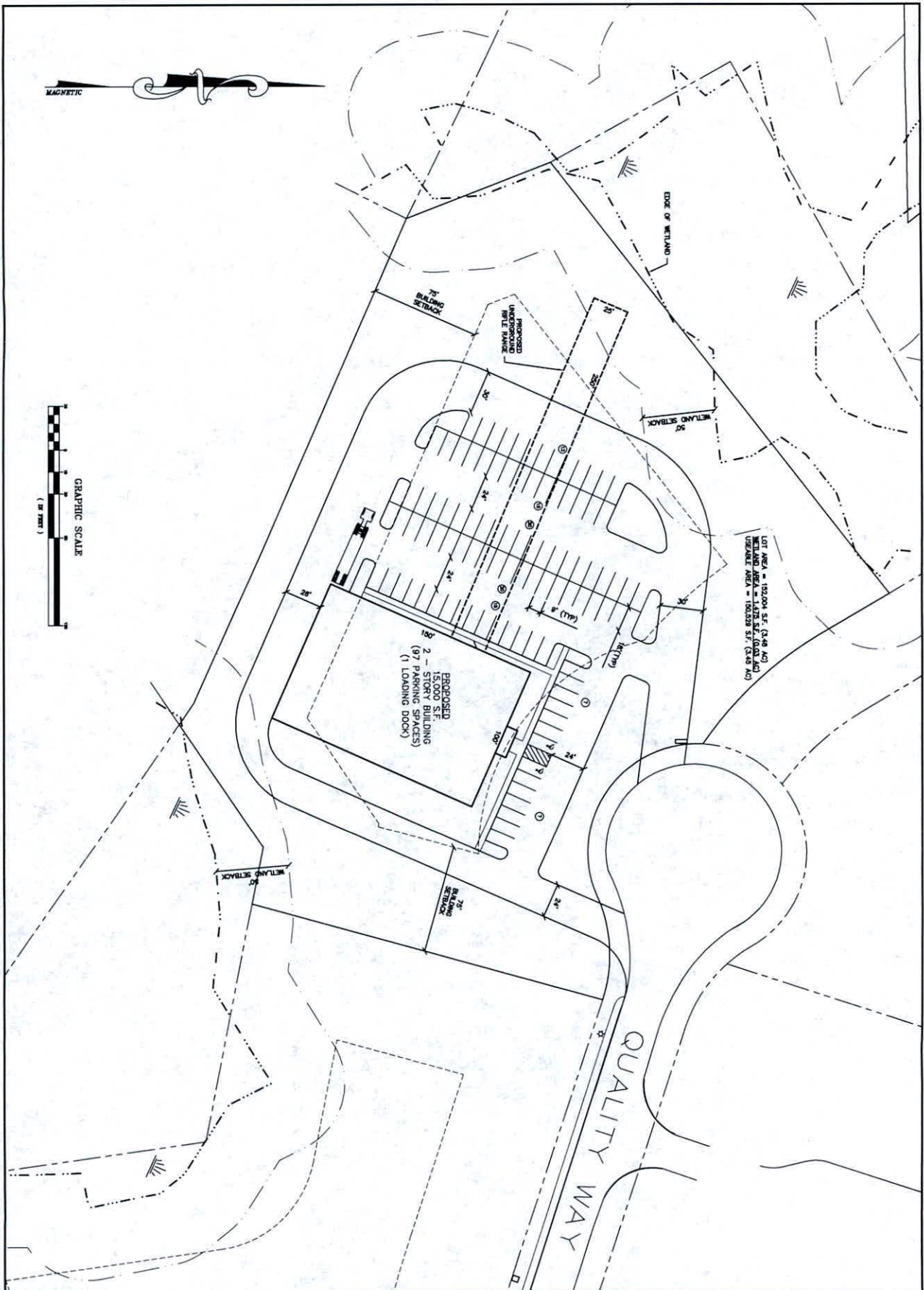
(iii) The proposed use is a reasonable one because:

An indoor range and gun shop are a reasonable use for all the numerous reasons outlined above. The facility complements and supports adjacent and surrounding businesses. Granting the variance will result in an aesthetically pleasing structure and facility for locals/tourists to safely train and enjoy a new form of recreation.

POSSIBLE BUILD OUTS



basemap.dgn 12/11/2007 11:17:40 AM CONCEPT ONLY. MEASUREMENTS ARE APPROXIMATE. SCALE: 1" = 300'



X-X

**WHITE BIRCH ARMORY
9 GREAT FALLS AVE.
SUITE 2
ROCHESTER, NH**

DATE: XXX
SCALE: XX
DRAWN BY: XX
DESIGN BY: XX
APPROVED BY:XX
PROJECT NO: 18003
FILE: concept-001

CIVILWORKS NEW ENGLAND
CIVIL ENGINEERING
181 Watson Road, P.O. Box 1156
Dover, New Hampshire 03820
(603) 749-0443

Michael Cuomo, Soil Scientist
6 York Pond Road, York, Maine 03909
207 363 4532
mcuomosoil@gmail.com

Steve Haight, P.E.
Civilworks of New England
P.O. Box 1166
Dover, NH 03820

7 February 2019

Dear Mr. Haight;

This letter is in reference to the vacant property located on the south side of Quality Way in Dover, NH. On 6 February 2019 I conducted a preliminary wetland investigation of this property.

Attached is a base plan with topography and a wetland boundary by others. I made a visual inspection of the property when there was snow and ice on the ground. I made no soil observations. I found the wetlands on the plan represent the wetlands boundary fairly well. As noted on the attached sketch, the wetlands may be more extensive than shown on the work by others in the east of the area of investigation.

The results of this investigation are preliminary. I recommend you have the wetland boundary flagged when there is no snow on the ground.

Please call if you have questions regarding this work.

Sincerely,

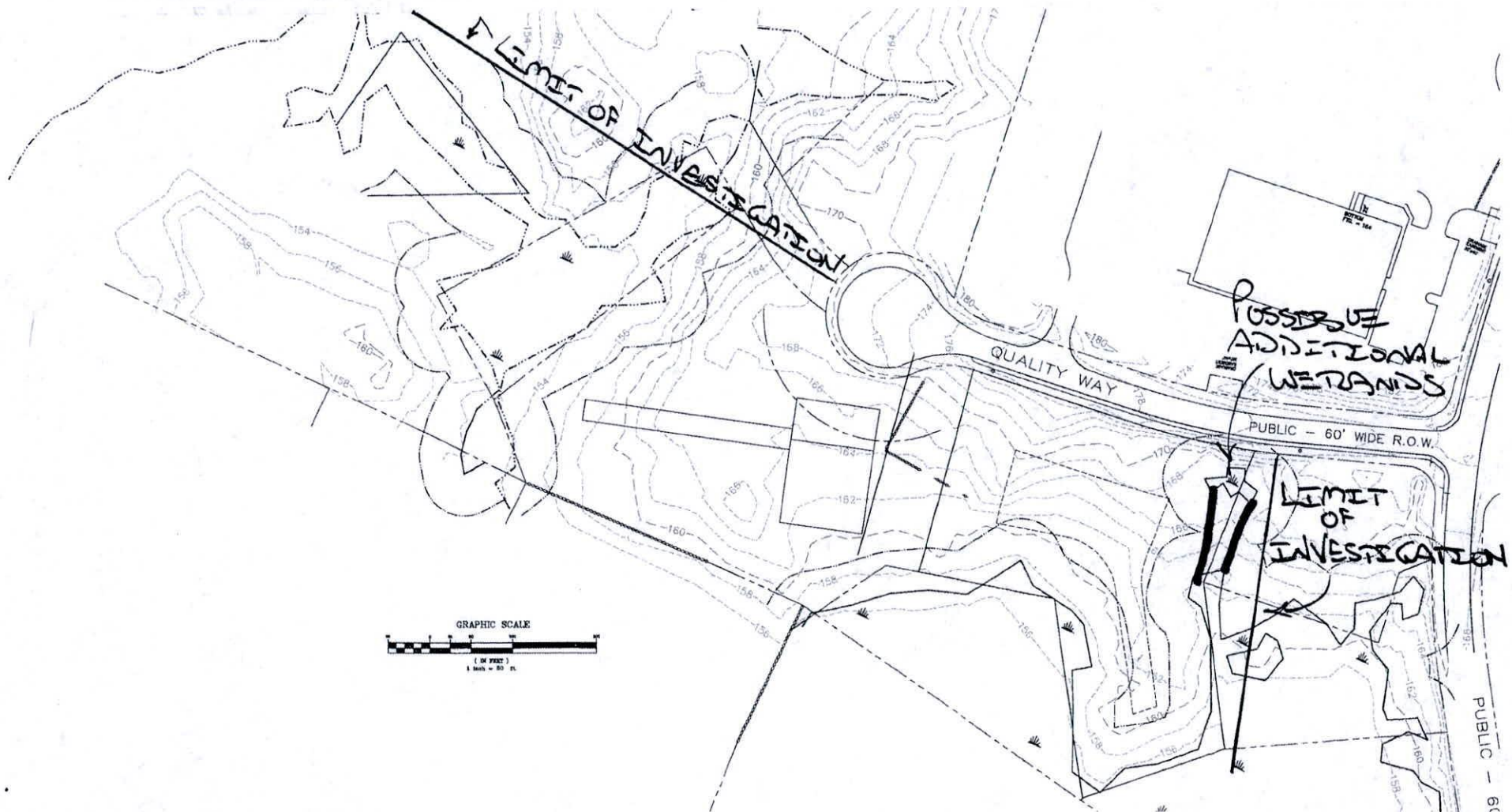


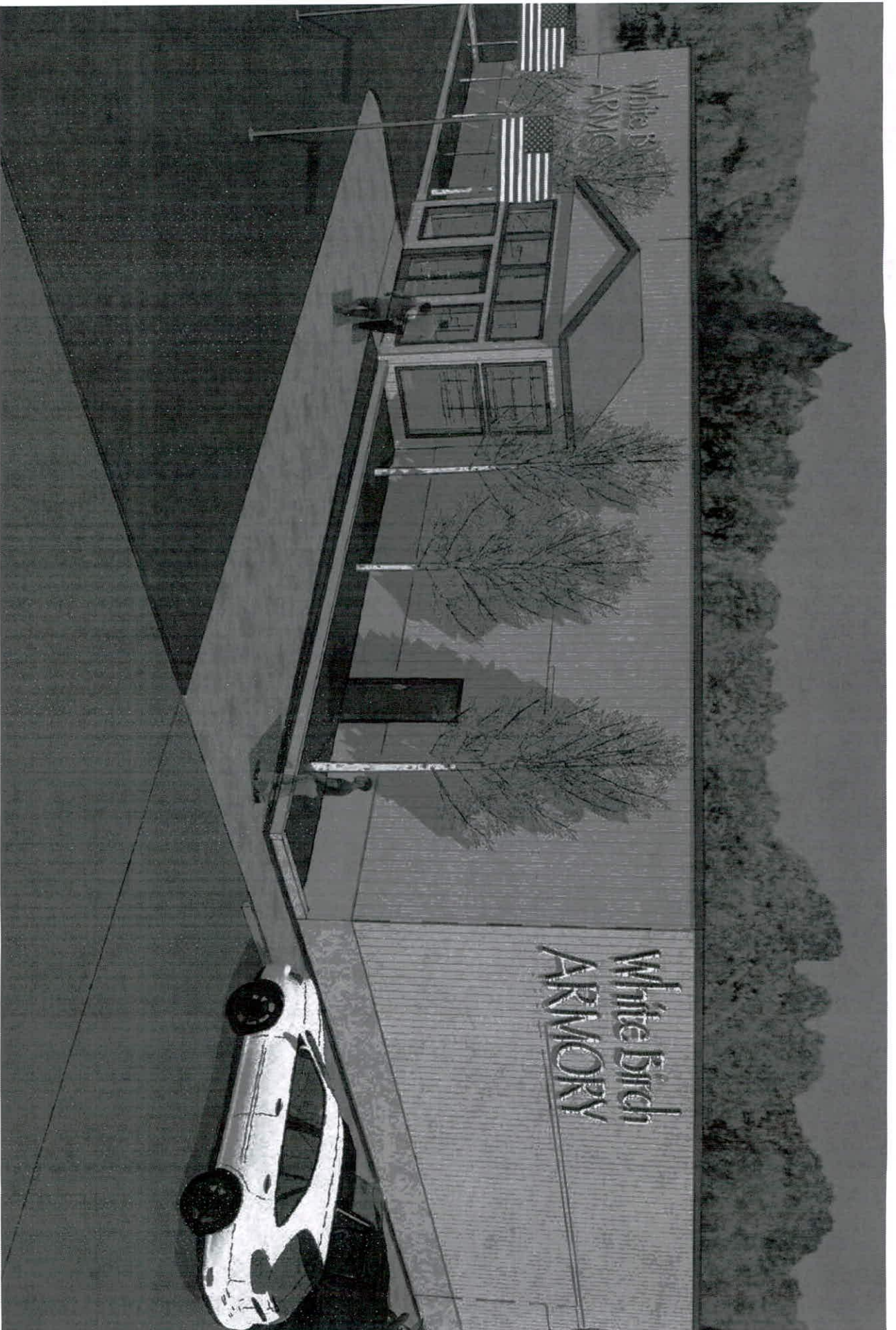
Michael Cuomo
NH Wetland Scientist #004
NH Soil Scientist #006



Michael Cuomo, Soil Scientist
6 York Pond Road, York, Maine 03909
207 363 4532
mcuomosoil@gmail.com

Preliminary Wetland Investigation
Quality Way, Dover, NH



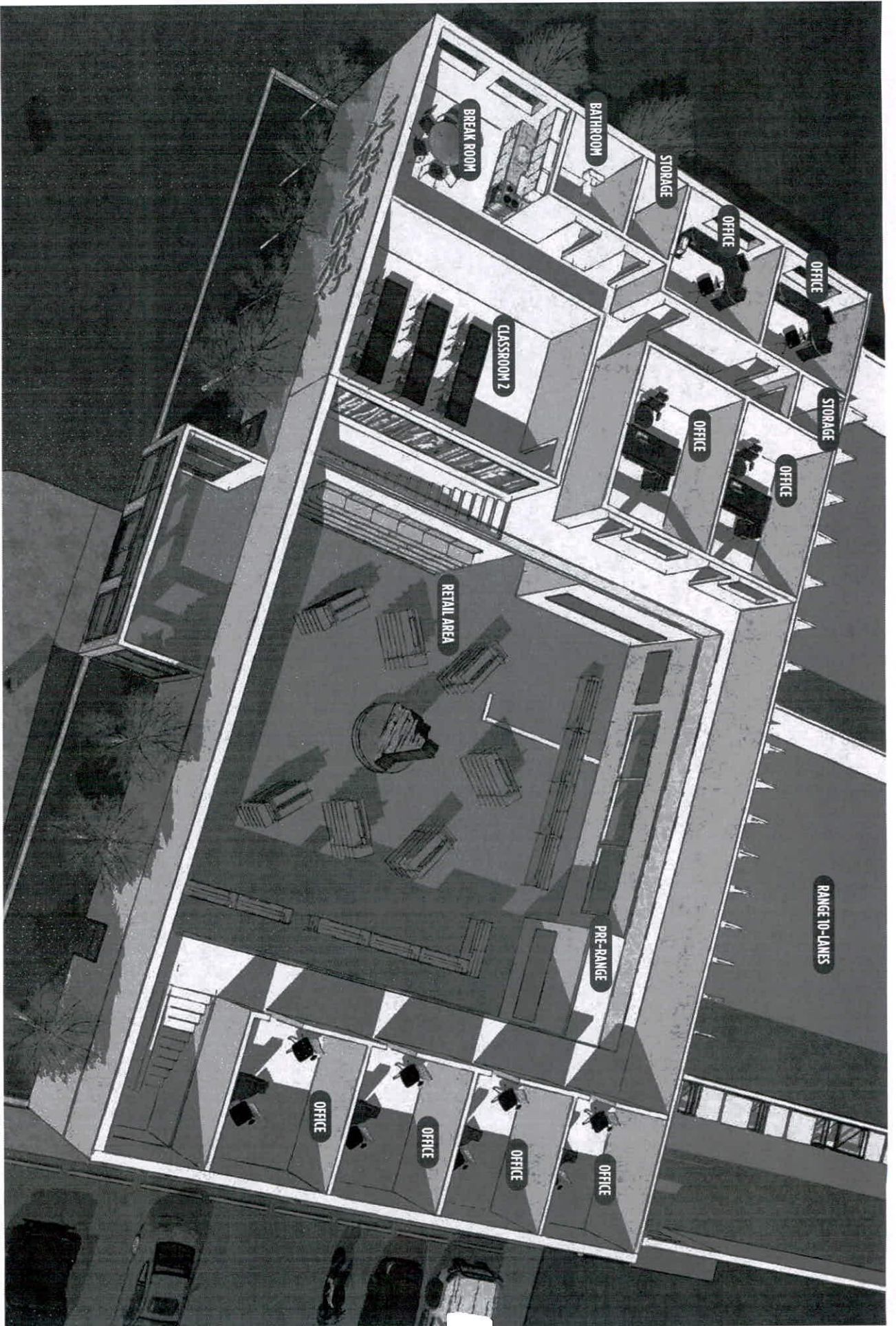


CONCEPT PLAN
INDOOR SHOOTING RANGE
AND RETAIL STORE
CURRENT SKETCH AS OF 2/4/19



White Birch
ARMORY

CONCEPT PLAN
INDOOR SHOOTING RANGE
AND RETAIL STORE
CURRENT SKETCH AS OF 2/4/19

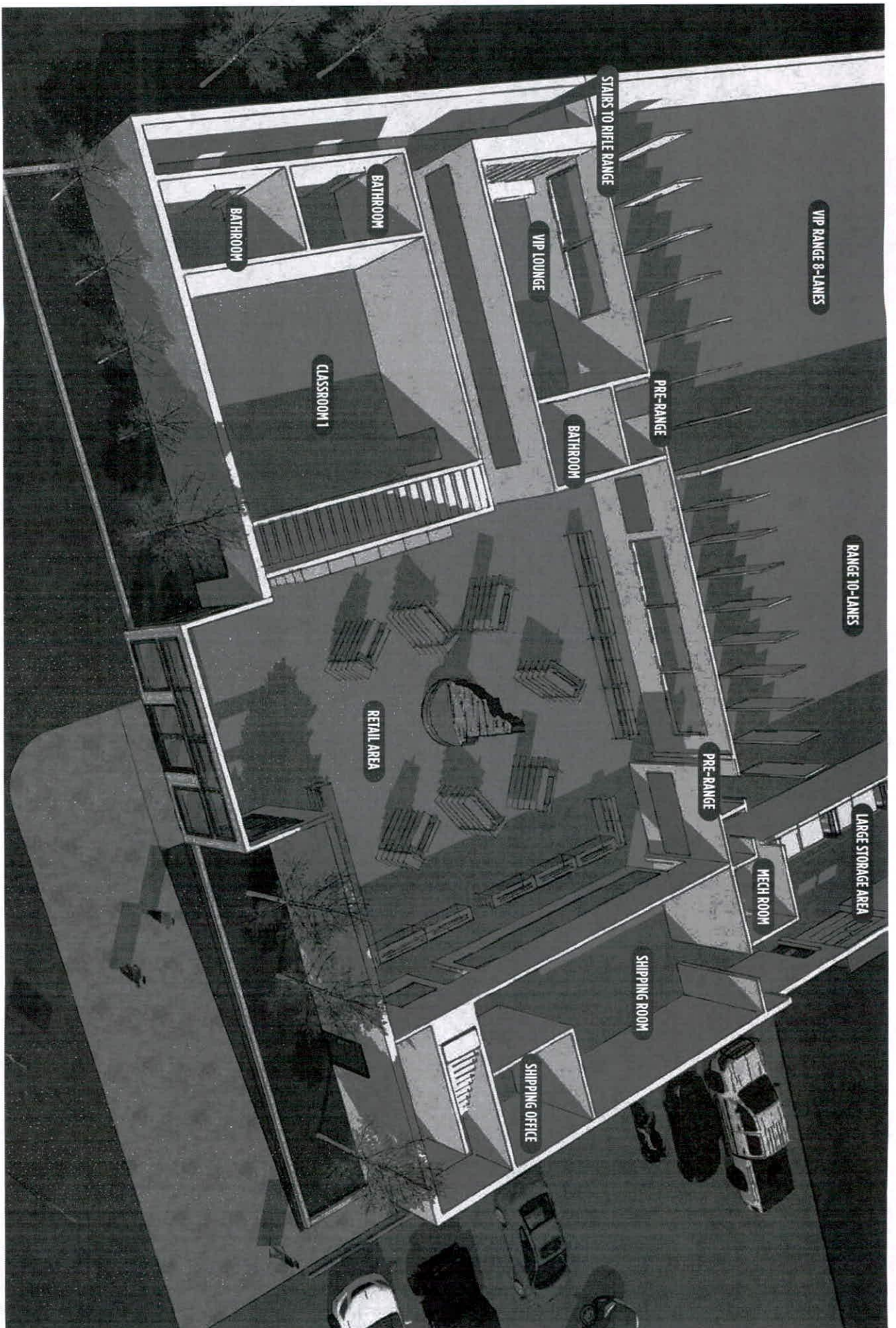




White Birch
ARMORY

CONCEPT PLAN
INDOOR SHOOTING RANGE
AND RETAIL STORE

CURRENT SKETCH AS OF 2/4/19



Z19-03

Quality Way

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
A0049-012000	32 QUAIL DR	KLINE CHRISTOPHER WAYNE &	KLINE RACHEL DEANN	32 QUAIL DR	DOVER	NH	03820-5916
A0049-013000	29 QUAIL DR	PORTER DOUGLAS W &	PORTER YUKARI	29 QUAIL DRIVE	DOVER	NH	03820
D0011-001000	VENTURE DR	DOVER BUSINESS & IND DEV AUTHORITY		288 CENTRAL AVE	DOVER	NH	03820
D0011-004000	110 VENTURE DR	QUALITY WAY LLC		1 QUALITY WAY ENTERPRISE PARK	DOVER	NH	03820
D0011-006000	QUALITY WY	DOVER BUSINESS & IND DEV AUTHORITY F/K/A DOVER IND DEV AUTHORITY		288 CENTRAL AV	DOVER	NH	03820
D0011-007SN1	QUALITY WY	DOVER BUSINESS & IND DEV AUTHORITY F/K/A DOVER IND DEV AUTHORITY		288 CENTRAL AV	DOVER	NH	03820
D0011-007SN2	QUALITY WY	DOVER BUSINESS & IND DEV AUTHORITY F/K/A DOVER IND DEV AUTHORITY		288 CENTRAL AV	DOVER	NH	03820
D0011-008000	QUALITY WY	DOVER BUSINESS & IND DEV AUTHORITY F/K/A DOVER IND DEV AUTHORITY		288 CENTRAL AV	DOVER	NH	03820
D0011-008SN1	QUALITY WY	DOVER BUSINESS & IND DEV AUTHORITY F/K/A DOVER IND DEV AUTHORITY		288 CENTRAL AV	DOVER	NH	03820
D0012-000000	447 SIXTH ST	TSB PROPERTIES LLC		385 SIXTH ST	DOVER	NH	03820
D0013-003000	27 PRODUCTION DR	JMW PRODUCTION LLC	C/O MFB HOLDINGS INC	27 PRODUCTION DR	DOVER	NH	03820
		WHITE BIRCH ARMORY	C/O SEAN MANNING	9 GREAT FALLS , SUITE 2	ROCHESTER	NH	03867
		CIVILWORKS NEW ENGLAND	STEVE HAIGHT	181 WATSON ROAD	DOVER	NH	03820



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, February 21, 2019
Meeting Time:	7:00 pm

INTENT: Little Tree Education Center/Coldstream Properties, LLC has filed a motion for rehearing of Z18-20, in which the Board granted a variance to permit an assisted living facility where the use is not permitted in the B-4 Zoning District.

AGENDA ITEM #: 4-A

FILE: Z18-20R

PETITIONER: Coldstream Properties, LLC/Little Tree Education, LLC

APPLICANT/OWNERS: Real McKoy Properties, LLC

LOCATION: 301 Durham Road (Tax Map H, Lot 1)

ATTACHMENTS: Motion for rehearing

STAFF RECOMMENDATION: See staff recommendation

Summary of Request and Background

The Board granted a request for a variance to permit an assisted living facility where the use is not permitted in the B-4 Zoning District. The Board voted 5-0 to grant the variance on January 17, 2019 with the following conditions:

1. NH Subsurface Systems Bureau and Town of Madbury approve the septic system, with permit number added to the plan.
2. Prior to issuance of a Certificate of Occupancy, the City has been provided proof that the NH Drinking Water Bureau approves of the well.

A motion for rehearing of this case was filed with the Planning Department on February 15, 2019, and is therefore timely.

Process for a Rehearing

The Board should review each point in the submitted motion and determine if a rehearing is warranted based on the criteria set forth in RSA 677. The Board's consideration of the motion for rehearing occurs at a public meeting, but it is not a public hearing, and it is recommended that no testimony be taken at this time. The decision to either grant or deny this request is based on the submitted motion alone.

The reasons for granting a rehearing should be compelling ones; the Board should not reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created. The Board can also hold a rehearing as an opportunity to complete its records and make clear the reasons for its initial decision.

The Board shall either grant or deny a rehearing within 30 days of receiving the request.

Recommendation

Please review NH RSA 677 and guidance in *The Board of Adjustment in New Hampshire: A Handbook for Local Officials*.

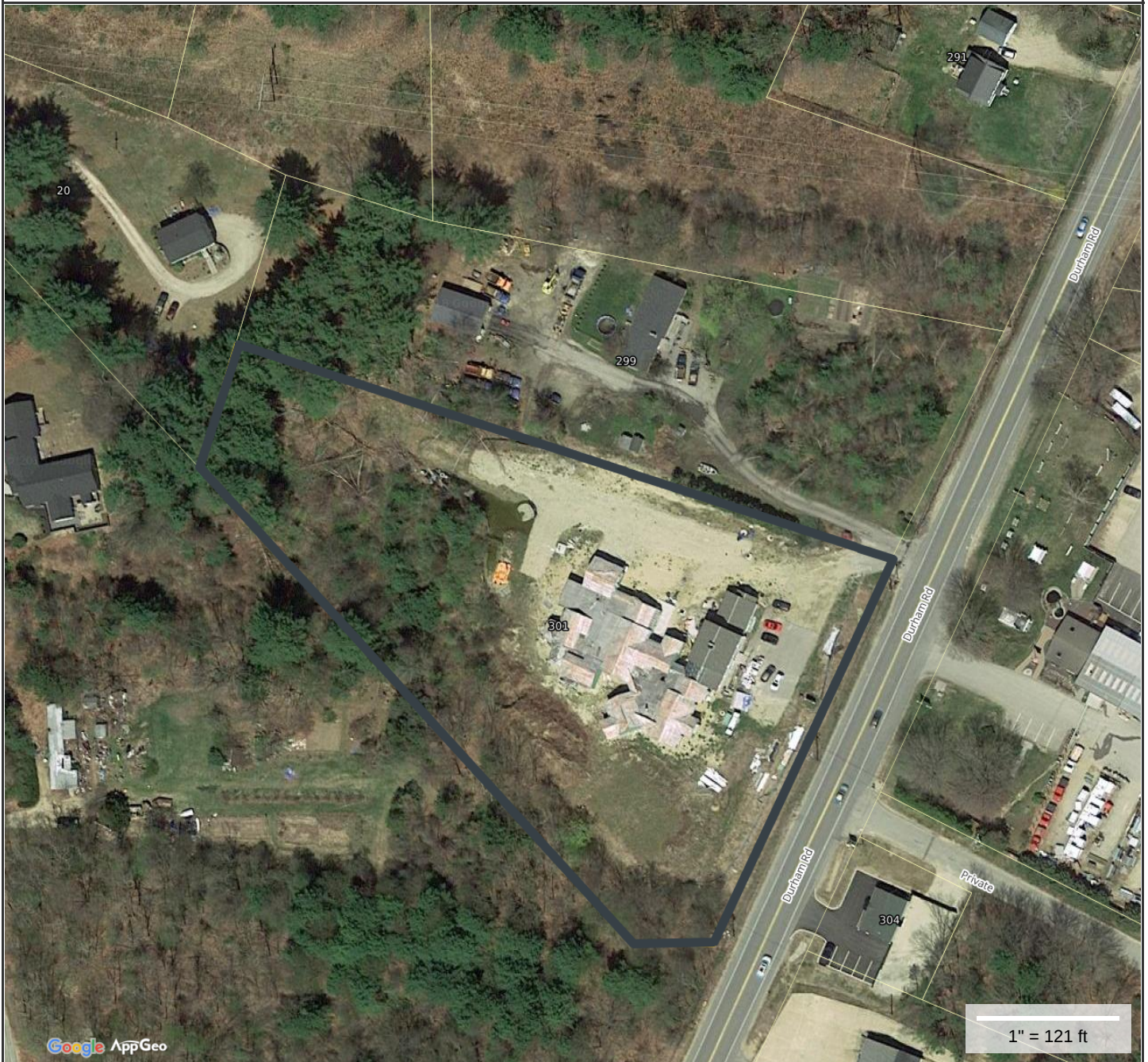
(<https://www.nh.gov/osi/planning/resources/zoning-board-handbook.htm>)

Following a discussion on the motion for rehearing, if the Board finds that one of the following criteria is met, it should grant the motion for rehearing:

- There is new, relevant evidence that was previously unavailable;
- There are relevant legal issues that were not considered at the original hearing; or
- The Board feels it may have made a prejudicial technical or legal error in its original decision.

If the Board finds that none of the above criteria are met, it should deny the motion for rehearing.

301 Durham Road

**Property Information**

Property ID H0001-000000
Location 301 DURHAM RD
Owner REAL MCKOY PROPERTIES LLC

**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.

Geometry updated 11/16/2018
Data updated 11/18/2018

DENIS O. ROBINSON

Pease International Tradeport
One New Hampshire Avenue, #350
Portsmouth, NH 03801

P 603.373.2003
F 603.433.6372
drobinson@pierceatwood.com
pierceatwood.com

Admitted in: NH

By Courier

February 15, 2019

Elena Piekut, Assistant City Planner
Zoning Board of Adjustment
City of Dover
288 Central Avenue
Dover, NH 03820

Re: Coldstream Properties, LLC

Dear Elena:

Enclosed please find an original and ten (10) copies of a Request for Findings and Motion for Rehearing regarding the above matter.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



Denis O. Robinson

DOR/kmd
Enclosures

STATE OF NEW HAMPSHIRE

STRAFFORD, SS

**CITY OF DOVER
ZONING BOARD OF ADJUSTMENT**

Coldstream Properties, LLC
Application for Variance
Property: 301 Durham Road (Tax Map H, Lot 1)
Applicant: Aramis Black/Real McKoy Properties, LLC; Cocheco Village, Inc.

**REQUEST FOR FINDINGS AND
MOTION FOR REHEARING**

Coldstream Properties, LLC and Little Tree Education, LLC (collectively, the “Abutters”), hereby request findings and move the Zoning Board of Adjustment (the “ZBA”) pursuant to RSA 677:2 for a rehearing of the ZBA’s grant of a variance to Aramis Black/Real McKoy Properties, LLC; Cocheco Village, Inc. (collectively, the “Applicant”) for a variance from Section 170-12.A of the Dover Zoning Ordinance (“Ordinance”) to permit an Assisted Living Facility in the Hotel/Retail Zoning District where Assisted Living Facilities are not permitted. In accordance with RSA 677:2, the Abutters have set forth in this Motion for Rehearing good reason to grant the same, and further state that the January 17, 2019 decision of the ZBA to grant the variance was unlawful or unreasonable for the reasons set forth below.

I. THE ZBA ERRED IN FINDING THAT ANY OF THE CONDITIONS OF GRANTING A VARIANCE EXIST, FOR THE REASONS SET FORTH IN THE ABUTTERS’ OBJECTION TO VARIANCE SUBMITTED TO THE ZBA ON AND DATED DECEMBER 20, 2018, A COPY OF WHICH IS ATTACHED HERTO AS EXHIBIT “A” AND INCORPORATED HEREIN BY REFERENCE.

The Abutters offer the following in this Part I to supplement Part B of their Objection to Variance, which noted that a grant of the variance is contrary to the spirit and intent of the ordinance because Assisted Living Facilities are not permitted *anywhere* within the City of Dover without being connected to public sewer. On December 31, 2019, and following submission of the Abutters’ Objection to Variance and the public hearing on December 20, 2019,

counsel to the Abutters received a recorded voice mail message from City Planner, Chris Parker, stating the following:

Hey, Denis. Chris Parker, City of Dover. Wanted to follow up, I watched the video from the last Zoning Board meeting here in Dover, and you made mention that the zoning doesn't allow assisted living facilities with on [sic] septic systems throughout the City, and while that's true in a lot of ways, it is allowed in the residential commercial mixed use overlay district which is adjacent to this property where the Hannafords and the residential behind the Hannafords is just up the road on Durham Road, you could have a septic on an assisted living facility there. So just assuming that that's part of your material should you go to court, should the process be approved and your applicant or your client wish to appeal, just wanted to make sure you're clear on that so you had proper understanding. If you look in the zoning and look for the residential commercial mixed use overlay district, you'll know about it there.

According to Chris Parker, the area in town where assisted living facilities on private sewer is the Residential-Commercial Mixed Use (RCM) Overlay. The existence of an overlay district does not change the fact that connection to public sewer is required for Assisted Living Facilities in all of the underlying zoning districts where Assisted Living Facilities are permitted by right or by special exception. Overlay districts do not override the requirements of underlying districts. Ordinance, Section 170-7, B(4) states as follows:

(4) OVERRIDING DISTRICTS

The purpose of the overriding districts is to provide an additional layer of land use regulation or protection is certain sensitive areas of the city. The requirements of these overlay districts are in addition to the underlying zoning districts. Most of the districts are intended to protect environmentally sensitive areas. For specific purpose statements review the text of each overriding district.

Furthermore, the RCM Overlay does not mention or specifically permit "Assisted Living Facilities", but does allow "ADULT DAY CARE", "NURSING HOMES", "CONGREGATE CARE FACILITIES" and "other uses compatible with housing for older persons." Ordinance, Section 170-28.2(D)(1)(c)(ix), (x), (xi) and (xii). This is in contrast to each underlying Dover

zoning district that specifically permits Assisted Living Facilities and requires a connection to public sewer. If the RCM Overlay “permits” Assisted Living Facilities at all, it does so under the general category of “other uses compatible with housing for older persons”, and not by specific mention of “Assisted Living Facilities.”

In summary, the existence of an overlay district that does not specifically mention “ASSISTED LIVING FACILITIES” or any requirement to connect to public sewer does not override the express spirit and intent of the Ordinance to require public sewer in connection with this use, where *every* underlying zoning district which permits “ASSISTED LIVING FACILITIES” as a matter of right or by special exception *requires* connection to public sewer. Moreover, the RCM Overlay applies solely to parcels of fifty (50) or more acres – which may very well allow for an on-site septic that would have less impact on neighboring properties and water supplies than what is being proposed here.

II. IT WAS ERROR FOR THE ZBA TO FIND THE UNNECESSARY HARDSHIP AND SUBSTANTIAL JUSTICE REQUIRED TO GRANT A VARIANCE WITHOUT THE REQUIRED CONNECTION TO PUBLIC SEWER WHERE CITY STAFF AND A LICENSED HYDROLOGIST RECOMMENDED CONNECTION TO PUBLIC SEWER, AND THE APPLICANT ADMITTED THAT THE COSTS TO CONNECT TO PUBLIC SEWER AND THE PROPOSED LEACH FIELD WERE THE SAME.

The testimony of the Applicant at the December 20, 2018 public hearing included statements that the costs to connect to public sewer and the proposed private leach field were the same, and that it was simply “a better choice for them to use a leach field and be on the same side of the road as a potential new sewer line.” If there is an equivalent option available which would permit compliance with the Ordinance’s requirement for Assisted Living Facilities to be connected to public sewer, the Applicant cannot establish that reasonable use of its property would be prevented by strict conformance with the Ordinance’s requirement that Applicant connect to public sewer. As a result, Applicant cannot satisfy the unnecessary hardship required to justify the variance.

Moreover, there is no loss to the Applicant in connecting to the public sewer, notwithstanding the gain to the public of a safer alternative that is supported by City staff and a licensed hydrologist. Substantial justice is therefore not done by granting the variance.

III. SINCE THE APPLICANT'S PROPOSED WATER SUPPLY QUALIFIES AS A "COMMUNITY WATER SYSTEM", THE APPLICANT'S PROJECT CANNOT BE CONSTRUCTED AS PROPOSED AND THE APPLICANT MUST RETURN AND SEEK A VARIANCE FOR A MODIFIED AND MATERIALLY DIFFERENT PROJECT.

The Applicant's proposal includes a 24 bed facility as well as two residential apartments intended to house resident staff. The on-site well proposed by the Applicant therefore qualifies as a "community water system," since that term is defined as "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." RSA 485:1-a, I. The Abutters have verbally confirmed with the New Hampshire Department of Environmental Services ("NH DES") that the Applicant's well as submitted to NH DES would constitute a "community water system."

As a small "community water system", the Applicant is required to comply with the NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES PART Env-Dw 405 DESIGN STANDARDS FOR COMMUNITY WATER SYSTEMS. *See* Env-Dw 406.02(a). These rules require a sanitary protective radius of at least 75 feet, depending on an assigned permitted production volume. *See* Env-Dw 405.14. The area within the sanitary protective radius must be "be maintained in a natural state at all times except as necessary for: (1) limited land clearing and terrain alteration required for well access and construction of a pump house or other structure(s) related to the well or water system; and (2) activities necessary for the use and maintenance of the production wells that do not pose a contamination risk to groundwater." Env-Dw 405.14(b); Env-Dw 302.10(d). In addition, "no underground utilities shall be installed in the sanitary protective area except for drinking water supply and electrical or communications conduits." Env-Dw 302.10(f). The Applicant's project does not show a natural vegetative state within even the minimum 75 foot radius, let alone the 125 foot radius shown on the Applicant's plan¹. *See* Exhibit "B" attached hereto and incorporated herein by reference.

The Applicant cannot simply change the proposed project to obtain the required State approvals, but must instead return to the ZBA, and possibly the Planning Board, with any project modifications that are required to obtain the required well and septic approvals. This is especially

¹ The 125 foot radius shown is consistent with the Applicant's estimate of 3,600 gallons per day of water use. *See* Env-Dw 405.14(d); Table 405-2.

true where the variance was granted subject to the condition that the Applicant obtain these approvals and was based upon the project as presented.

IV. THE REFUSAL OF CITY STAFF TO CONSIDER SUPPLEMENTAL EXPERT MATERIALS FROM ABUTTERS' LICENSED HYDROLOGIST WAS CONTRARY TO THE RULES OF THE ZBA AND AMOUNTED TO A DENIAL OF DUE PROCESS.

The public hearing was closed at the initial hearing before the ZBA on December 20, 2018, and the variance request continued to permit City staff to review the report prepared by the Abutter's expert, licensed hydrologist Danna B. Truslow, CG, PG of Truslow Resource Consulting LLC. A copy of Ms. Truslow's report is attached hereto as Exhibit "C" and is incorporated herein by reference. Following the close of the public hearing, Ms. Truslow and a principal of the Abutters, Sarah Greenshields, attempted to reach out to City staff to assist with staff review of Ms. Truslow's report, and provide additional information that would permit City staff to do so. A copy of the supplemental report prepared by Ms. Truslow is attached hereto as Exhibit "D" and is incorporated herein by reference. The Abutters were informed that the City staff would not meet with or consider any further submittals, citing a restriction in the Dover Zoning Board of Adjustment Rules of Procedure ("ZBA Rules"). *See* Exhibit "E" attached hereto and incorporated herein by reference, which contains a copy of email between counsel to the Abutters and Assistant City Planner, Elena Piekut, together with a copy of the ZBA Rules. First, the ZBA Rules do not prevent communications with City staff but can only be interpreted to mean to comments made to the ZBA. There is no reason that City staff and interested parties should be prohibited from communicating about a review by City staff of a submittal. Even if the ZBA Rules do prevent such communication, the result is a denial of Abutters' due process rights. Unlike the Applicant, the Abutters have not had months to discuss the project with City staff. Refusal to permit the Abutters to participate further in the process deprived City staff from fully understanding Abutters' concerns and resulted in a denial of due process protections afforded the Abutters by the United States and New Hampshire Constitutions.

V. THE ZBA'S FAILURE TO MAKE SPECIFIC FACTUAL FINDINGS WAS UNREASONABLE AND LEAVES THE ABUTTERS UNABLE TO UNDERSTAND THE BASIS FOR THE ZBA DECISION.

The minutes from the January 17, 2019 ZBA meeting are devoid of any specific findings of fact which support the decision of the ZBA to grant the Applicant's variance. As a result, the Abutters are left without a clear understanding of the specific basis for the grant of the variance. Moreover, the Abutters are left in a position of being unable to determine which findings of fact to challenge in order to challenge the grant of the variance. Leaving abutters, including the Abutters, in such a predicament is unfair and unreasonable and the ZBA should grant a rehearing to clarify and support its decision to grant the variance.

THE ABUTTERS RESERVE THE RIGHT TO SUPPLEMENT THIS MOTION FOR REHEARING IN ACCORDANCE WITH RSA 677:2 AND RSA 676:3, II, AS APPLICABLE.

WHEREFORE the Abutters respectfully request that the ZBA:

- A. Order rehearing of this matter; and
- B. Deny the application for Variance.

Respectfully submitted,

COLDSTREAM PROPERTIES, LLC, and
LITTLE TREE EDUCATION, LLC

By their attorneys,

Pierce Atwood LLP

Date: February 15, 2019

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Town of Dover
Zoning Board of Adjustment

December 20, 2018

Application of Aramis Black/Real McKoy Properties, LLC; Cocheco Village, Inc.

Objection to Variance to Permit Assisted Living Facility in Hotel/Retail Zoning District

I. Background

On May 31, 2018, Aramis Black/Real McKoy Properties, LLC (“Applicant”) filed an application for a variance from Section 170-12.A of the Dover Zoning Ordinance (“Ordinance”) to permit an Assisted Living Facility in the Hotel/Retail Zoning District (“Hotel/Retail District”) where Assisted Living Facilities are not permitted. The Applicant received prior approval for a 12-bed elderly assisted care facility in 2015. The Assisted Living Facility would double the number of beds to 24 and the Applicant proposes to site a leach field on adjacent property pursuant to an easement to be obtained from that property owner (the “Leach Field”).

Little Tree Education Center operates a preschool for children ages 6 weeks to 12 years on property owned by an affiliate, Coldstream Properties, LLC, and located at 314 Route 108 in Madbury, New Hampshire (the “Preschool”), with an average daily enrollment of 75 children per day. The drinking water for the Preschool is provided from an on-site public water supply well that supplies water from underground bedrock (the “Public Well”). The Leach Field proposed by the Applicant is to abut a “Primary Wellhead Protection Area” prescribed by the Town of Madbury’s zoning ordinance, the purpose of which is to protect the Public Well as a critical water resource and within which leach fields are not permitted.¹ A septic system is also included in a list of “potential contamination sources” under the New Hampshire Groundwater Protection Act, RSA Chapter 485-C:7, II, (h). The primary impetus for this objection is to protect the

¹ See excerpt from Madbury Zoning Ordinance, attached hereto as Exhibit A.

Preschool children (as well as neighboring property owners) from thousands of gallons of daily sewer discharge (including prescription medication, personal care products, and cleaning products) from the elderly residents at Applicant's property to a Leach Field location that, according to a licensed hydrologist and geologist, is up-gradient to the Public Well and carries risk of contaminating the Public Well.

II. Variance/Standard of Review

Under New Hampshire law (RSA 674:33), the burden is on the Applicant when seeking a variance to demonstrate that:

- A. Granting the variance will not be contrary to the public interest;
- B. Granting the variance observes the spirit of the Ordinance;
- C. Granting the variance results in substantial justice being done;
- D. Granting the variance will not diminish the value of surrounding properties; and
- E. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship to the Applicant.

It is well established under New Hampshire law that each and every one of the five conditions for the granting of a variance must be met. If any one of the five conditions is not met, the request for a variance must be denied. 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.08. Here the Applicant cannot sustain this burden on any of the five variance requirements.

A. The variance is contrary to the public interest since the expanded residential use, as proposed by the Applicant, conflicts with basic zoning objectives of the ordinance, alters the essential character of the locality, and threatens the public health, safety and welfare of preschool children as well as the residents of the proposed Assisted Living Facility.

A variance request will be contrary to the public interest if it conflicts unduly and to a marked degree with the basic zoning objectives of the zoning ordinance. Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005); and Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). In making such a determination, the ZBA should examine whether the variance would (a) alter the essential character of the locality or (b) threaten public health, safety or welfare. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011); *see also*, Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-106 (2007); and Naser d/b/a Ren Realty v. Town of Deering Zoning Board of Adjustment, 157 N.H. 322 (2008).

Granting the variance would unduly and in a marked degree conflict with the basic zoning objectives of the ordinance. A basic purpose and function of zoning is to divide a municipality into residential, commercial, and industrial districts (or zones), that are for the most part separate from one another, with the uses of properties within each district being reasonably uniform.² Any use of property not permitted within a zoning district conflicts with this basic zoning principle in a marked degree, and the ZBA needs to consider whether permitting such a use would either alter the essential character of the locality, or threaten the public health, safety

² See RSA 674:20 ("In order to accomplish any or all of the purposes of a zoning ordinance enumerated under RSA 674:17, the local legislative body may divide the municipality into districts of a number, shape and area as may be deemed best suited to carry out the purposes of RSA 674:17... All regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.")

of welfare. In this case, permitting a residential use in a zone whose purpose is to “provide an environment that encourages efficient and attractive commercial development on a larger scale along major highways outside of the downtown”³ would, in fact, both alter the essential character of the locality and threaten the public health, safety and welfare.

The essential character of the locality in which the Applicant’s property sits is commercial. Adjacent properties include the Dover Elks Lodge (Map I, Lot 122) a large fence company, GC/AAA Fence (Map I, Lot 22-D), an auto mechanic shop mixed with residential use Carrier Auto Repair (Madbury), the Preschool (Madbury), a floral shop, In Bloom and an engine rebuilding machine shop, R & L Engines, Inc., mixed with a single family home (Map I, Lot 129), and a paving business, Tri-State Seal Coating and Paving (Tax Map H, Lot 1-B). Granting the variance will alter the essential *commercial* character of the locality by allowing a predominantly *residential* elderly housing facility.

Granting the variance is also contrary to the public interest as use of the Applicant’s property as an Assisted Living Facility will threaten the health, safety and welfare of the Preschool’s children and the residents of the proposed Assisted Living Facility in particular, and the public generally. The Applicant proposes to operate a licensed Assisted Living Facility which caters to patients suffering from Alzheimer’s and other forms of dementia, and similar cognitive challenges. The Hotel/Retail District is intended to provide economic development opportunities for a mix of land uses, including retail sales, personal services, restaurants, hotels, offices, banks, and theaters. Each of these uses contemplates high volumes of people and associated traffic within the Hotel/Retail District, in contrast to the districts where Assisted Living Facilities are permitted under the Ordinance (Rural Residential R-40, Low Density Residential R-20, Urban Density Multi Residential R-MU, Office O, and Hospital H). This type

³ Dover Zoning Ordinance, Section 170-7(B)(2)(c).

of retail traffic, and the traffic contemplated by the abutting commercial uses, is simply incompatible with providing safe housing to cognitively impaired elders, and presents risks of injury to travelers and the elderly residents.

More specifically and perhaps more importantly, the use presents a threat to the health, safety and welfare of the children who attend the Preschool. Danna Truslow of Truslow Resource Consulting, LLC, a New Hampshire licensed geologist and hydrologist, analyzed impacts the Leach Field could have on the water quality of surrounding properties, including the Public Well. According to Ms. Truslow: (i) the septic discharge from the proposed Assisted Living Facility into the Leach Field will include chemicals included in prescription medication, personal care products and cleaning products; and (ii) the expected level of the use of these chemicals in an assisted living facility may impact down gradient water supplies, including the Public Well. Ms. Truslow concludes that there are valid concerns about water quality impacts to the Public Well, "especially since there are babies and young children that may be more sensitive to these chemicals during development." Accordingly, granting the variance is contrary to the public's interest in assuring that preschool children have access to clean and safe water while at the Preschool.

B. Granting the variance would violate the spirit and intent of the Ordinance in that the Ordinance does not allow Assisted Living Facilities to operate in Dover without being connected to public sewer.

In addition to being inconsistent with the general purposes of the Ordinance, as discussed in Section (A) above, the proposed project violates the spirit and intent of the Ordinance in that all of the zoning districts that permit Assisted Living Facilities *require a connection to public sewer.*

The only zoning district which permits Assisted Living Facilities as a matter of right is the Hospital District. Footnote 3 of the Zoning Tables applicable to that district specifically provides that an Assisted Living Facility “shall be serviced by municipal sewer.”

- [3] An ASSISTED LIVING FACILITY or CONTINUING CARE COMMUNITY FACILITY shall be serviced by municipal sewer, have a density of one unit requirement per 2,000 square feet of lot area. Parking lots and service areas are screened from abutting residential uses, and the facility shall obtain a license from the State of New Hampshire.

There is a similar requirement in the Zoning Tables applicable to each of the zoning districts which permit Assisted Living Facilities by special exception – Office, Rural Residential R-40, Low Density Residential R-20, Urban Density Multi Residential R-MU, as follows:

Special Exception Criteria

ASSISTED LIVING FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 sf of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

Copies of the applicable Zoning Tables are attached hereto as Exhibit B for ease of reference. The clear and established intent of the ordinance is that Assisted Living Facilities be connected to public sewer. This is likely due to concerns over effluent discharge from a quasi-medical facility noted by Ms. Truslow and discussed in Section (A) above – namely pharmaceuticals and other medical waste flowing into the ground and presenting potential for groundwater contamination. Accordingly, allowing effluent discharge from an Assisted Living Facility to be serviced by a leach field is contrary to the spirit and intent of the Ordinance, and the variance should be denied.

C. Substantial justice is not done by granting the variance because the gain to the general public in protecting a public water supply outweighs the Applicant's request for an unpermitted use in the Hotel/Retail District.

The New Hampshire Supreme Court has stated that “perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Associates v. Town of Chichester, 155 N.H. 102 (2007). However, a board of adjustment “cannot alleviate an injustice by granting an illegal variance.” Loughlin, Land Use, Planning and Zoning, New Hampshire Practice, Vol. 15, 4th ed., at § 24.11. See also, Farrar v. City of Keene, 158 N.H. 684, 692 (2009); and, Harborside at 515. In this balancing test, the board is required to measure the loss to the applicant should the variance be denied versus the gain to the general public.

There is no loss to the Applicant should the variance be denied. The Applicant will be able to finalize its previously approved plan to construct a 12-bed Elderly Assisted Care facility, or, alternatively, utilize the property for any of the intended commercial uses allowed in the Hotel/Retail District. Without question, substantial justice will be done by denying the variance and protecting the neighboring Public Well and other area groundwater from potential contamination, while a substantial injustice will be done by granting the variance.

D. If the variance is granted, the values of surrounding properties will be diminished because the proposed Assisted Living Facility use has the potential of contaminating the water supply and is inconsistent and incompatible with the commercial uses contemplated for the Hotel/Retail District.

In Harborside, the Court held that it is for the ZBA to resolve conflicts in evidence and assess the credibility of the offers of proof regarding the property value factor. See Continental Paving v. Town of Litchfield, 158 N.H. 570, 575 (2009) (zoning board need not accept conclusions of experts); cf. Appeal of Pennichuck Water Works, 160 N.H. 18, 41, (2010) (duty of public utilities commission to resolve issues of fact and conflicts of opinion; public utilities commission may accept or reject such portions of evidence as it deems proper and was not required to accept even uncontroverted evidence). In reaching its decision, the ZBA was also entitled to rely upon its own knowledge, experience and observations. See Continental Paving, 158 N.H. at 576.

The Applicant will be hard pressed to present any evidence to meet its burden of proving that the value of surrounding properties will not be diminished. Indeed, allowing a 24-bed assisted living facility will diminish neighboring property values as it is functionally a multi-family residential use in a Hotel/Retail District that contemplates high volume commercial uses. Naturally, to the extent the use of the Applicant's property contaminates or presents the risk of contaminating local drinking water for neighboring properties, the value of such surrounding properties will be severely diminished.

E. Literal enforcement of the Ordinance does not result in an unnecessary hardship because there are no special conditions of the property that distinguish it from the other properties in the area, the permitted uses are feasible on this property, and the proposed elderly residential use is unreasonable in a zone the contemplates large scale commercial uses.

In order to be granted a variance, the Applicant must demonstrate that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. RSA 674:33, I(a)(2)(E). To show an “unnecessary hardship”, the Applicant must demonstrate that owing to special conditions of the property that distinguish it from other properties in the area: (i) no fair and substantial relationship 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. RSA 674:33, I(b)(1). If the criteria described is 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. RSA 674:33, I(b)(2).

The Applicant will not be able to point to any property specific features that distinguish its property from other properties in the area. In prior applications, the Applicant claimed that the size and shape of its property distinguished it from area properties. However, the size and shape of the Applicant’s property is, in fact, consistent with area properties. Of the fifteen (15) parcels in the Hotel/Retail District, the subject property is the seventh (7th) largest and its shape

is the most common shape of all shapes in the Hotel/Retail District (five (5) of fifteen (15) lots, or 33% of the total, are triangular).

<u>Size Rank</u>	<u>Property Address</u>	<u>Acreage</u>	<u>Shape</u>
1	282 Durham Road	30.00	Odd
2	275 Durham Road	13.92	Odd
3	Dover Fields Condominium	10.85	Square(ish)
4	Durham Road	10.00	Triangular
5	217 Durham Road	5.43	Odd/Rectangular
6	294 Durham Road	3.68	Square
<u>7</u>	<u>Subject Property</u>	<u>2.95</u>	<u>Triangular</u>
8	299 Durham Road	1.96	Rectangle
9	283 Durham Road	1.15	Square
10	291 Durham Road	0.91	Rectangle
11	308 Durham Road	0.62	Triangular
12	Durham Road	0.50	Triangular
13	211 Durham Road	0.35	Rectangle
14	304 Durham Road	0.23	Square
15	Durham Road	0.09	Triangular

Accordingly, the subject property is a very common configuration to area properties and has no distinguishing features.

Even if there were special features of the Applicant's property, the variance must be denied as: (i) there is a fair and substantial relationship between the general public purposes of the use restrictions in the Ordinance and the specific application of use restrictions to the Applicant's property; and (ii) the proposed use is not reasonable. The Applicant's proposed 24 bed assisted living facility is not permitted in the Hotel/Retail District. The Ordinance does not allow Assisted Living Facilities in the Hotel/Retail District because the Hotel/Retail District

contemplates large scale commercial projects, whereas an Assisted Living Facility is, essentially, a residential use for elderly habitants who are not capable of independent living. As discussed in Section (A) above, the purpose of the use restriction is to provide for uniformity of development within districts, and separate incompatible uses. Moreover, the purpose of the Ordinance is also to require Assisted Living Facilities to connect to public sewer and there is a fair and substantial relationship between the purpose of that restriction and its application to the Applicant's property; namely, preventing groundwater contamination risk is particularly applicable to Applicant's proposal to site a Leach Field abutting a Primary Wellhead Protective Area which is required to protect the Public Well. The proposed use is also not reasonable, given the incompatibility of uses discussed previously, as well as the absence of a connection to public sewer.

In addition, the property can be reasonably used in strict conformance with the ordinance and a variance is therefore unnecessary to enable a reasonable use of it. If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Here, the use is not permitted. If the integrity of the Ordinance is maintained and the variance is denied, the Applicant can still use the property for any of the permitted uses in the Hotel/Retail District, as well as its previously permitted 12-bed Elderly Assisted Care facility. The hardship to the Applicant appears purely economic and that alone is not a sufficient reason to grant a variance. See, e.g., Harrington v. Town of Warner, 152 N.H. 74, 81 (2005) ("Special conditions" are to be found in the property itself and not in the individual plight of the applicant) and Garrison v. Town of Henniker, 154 N.H. 26, 30 (2006).

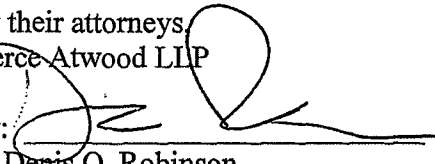
For the foregoing reasons, there is no unnecessary hardship, or any other basis to support a variance, and the Applicant's variance request should be denied.

Respectfully submitted,

Coldstream Properties, LLC

By their attorneys
Pierce Atwood LLP

Date: December 20, 2018

By: 
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Madbury Zoning Ordinances

- a. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time or exceeding reportable quantities under listed under 40 CFR 302, 7-1-05 edition or as amended.
 - b. Any use that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater.
 - c. Any activities that involve blasting of bedrock.
 - d. General service and repair shops, including but not limited to: furniture stripping, painting, and refinishing; photographic processing; printing; appliance and small engine repair; boat repair, service and refinishing; refrigeration, heating, ventilating and air conditioning shops.
 - e. Metalworking shops, including, but not limited to: machine shops; metal plating shops; heat treating shops; smelting shops; and jewelry making shops.
 - f. Manufacturing facilities, including but not limited to: electronics and chemical manufacturing, processing, and reclamation; paper, leather, plastic, fiberglass, rubber, silicon and glass making; pharmaceutical production; pesticide manufacturing; and chemical preservation of wood and wood products.
 - g. Receipt, processing and storage of ferrous and non-ferrous metals and related byproducts produced in the recycling of vehicles, appliances and other predominately metal items.
 - h. Laboratories and professional medical offices, including but not limited to: medical, dental, and veterinary offices; and research and analytical laboratories.
 - i. Cleaning services, including but not limited to: dry cleaner; laundromats; and car washes.
 - j. Storage of petroleum or related products in quantities greater than 550 gallons for on-premises use.
2. In granting a Conditional Use Permit the Planning Board must first determine:
 - a. The applicant has demonstrated the proposed use and design are consistent with the purpose of this Article:
 - b. That the proposed use is not a prohibited use (as listed in Section 5 B of this Article): and
 - c. Will be in compliance with the Performance Standards in Section 7 of this Article as well as all applicable local, state and federal requirements and the criteria of Article 4, Section 9, D of this ordinance.
 3. The Planning Board, at its discretion, may require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities and the future monitoring and/or periodic inspection of same required for compliance with the Performance Standards. Additionally, The Planning Board, at its discretion, may require routine monitoring and inspection activities to assure, confirm and document compliance with Performance Standards and other applicable provisions of this Article IX-A.

Section 6. Primary Wellhead Protection Area

- A. The area within 400 feet of an identified public water supply wellhead is hereby designated as a Primary Wellhead Protection Area.
- B. Land use in this area is strictly limited to protect this critical water resource. The provisions of this section apply to these areas in addition to those for the Aquifer and Wellhead Protection Overlay District.
- C. The following land uses are permitted in the Primary Wellhead Protection Area. All other land uses are prohibited in these areas.

Madbury Zoning Ordinances

1. Construction, operation, and maintenance of wells, dams and water conservation apparatus.
2. Conservation, education and recreational activities that do not cause erosion or necessitate the application of chemicals.
3. Maintenance and repair of any existing structure, provided that there is no increase in the area of impermeable surfaces.
4. Town Transfer Station and operations on Pudding Hill Road.

Section 7. Performance Standards

- A. All uses within the Aquifer and Wellhead Protection Overlay District shall conform to the standards and practices delineated in the following documents on file with the Planning Board, unless this Ordinance specifies more strict standards:
 1. Manual of Best Management Practices for Agriculture in New Hampshire, NH Dept. of Agriculture, June 2011, or as amended.
 2. Best Management Practices to Control Nonpoint Source Pollution--A Guide for Citizens and Town Officials, NH DES, WD-03-42, January, 2004, or as amended.
 3. Best Management Practices, New Hampshire Code of Administrative Rules, Env-Wq 401, or as amended.
 4. State of New Hampshire Septage Management Rules, New Hampshire Code of Administrative Rules, Env-Wq 1600, or as amended
 5. State of New Hampshire Sludge Management Rules, New Hampshire Code of Administrative Rules, Env-Wq 800, or as amended.
 6. Best Management Practices for Forestry: Protecting New Hampshire's Water Quality, University of New Hampshire Cooperative Extension, 2005, or as amended.
 7. Pesticide Management Guidelines for Groundwater Protection, UNH Cooperative Extension, November 1992, or as amended.
 8. Manual of Best Management Practices--Biosolids, UNH Cooperative Extension, 1995, or as amended.
- B. For any use that will render impervious more than 15 percent or more than 2,500 square feet of any lot, a stormwater management plan shall be prepared. The stormwater management plan shall comply with New Hampshire Stormwater Manual Volumes 1-3, December 2008 (or as amended), NH Department of Environmental Services. Such plan shall address control of parking lot pollutants including but not limited to petroleum product residue.
- C. Design shall accommodate equipment failures and operational errors without environmental impact, including:
 1. Below ground level--removal and replacement of leaking parts, a leak detection system with monitoring, and an overfill protection system.
 2. Above ground level--liquid and leaching monitoring of primary containment systems, the replacement or repair and cleanup and/or repair of the impervious containment surface.
- D. All underground storage facilities shall conform to the requirements of DES Rules Env-Wm-1401 as revised.
- E. All regulated substances stored in containers with a capacity of five gallons or more must:
 1. be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains; and
 2. secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner.
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems.

Madbury Zoning Ordinances

- G. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s).
- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.
- I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.
- J. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells.
- K. All Limited and Regulated Uses as defined in Section 5 C of this Article shall also be subject to the following:
 - 1. Submission of an Environmental Protection Plan prepared by an appropriately licensed expert that:
 - a. Demonstrates conformance to DES rule ENV-Wq-401 "Best Management Practices for Groundwater Source Protection".
 - b. Specifies the amount and composition of any industrial or commercial waste that will be generated on-site and details the method for disposal of such waste outside of the Aquifer and Wellhead Protection Overlay District.
 - c. Provides description of a routine inspection and monitoring program.
 - 2. Submission of a Spill Prevention, Control and Countermeasure (SPCC) Plan when using regulated substances to the Madbury Fire Chief and the Madbury Planning Board. The Fire Chief shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:
 - a. Information consistent with *Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators* (US EPA, Feb 2009 or as amended). The plan shall demonstrate that the use will:
 - (1) Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within *the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post-Construction) Stormwater Management, (DES, 2008 or later edition)*; and
 - (2) Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.
 - b. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
 - c. Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
 - d. A list, including amounts, of all regulated substances in use and locations of use and storage;
 - e. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
 - f. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

Hospital (H) District

Added 11-28-12 by Ord. No. 2012-11-14-24, Amended on 06-22-2016 by Ord. No. 0-2016-06-08-010, on 12-26-2016 by Ord. No. 2016-10-12-015



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE
- ASSEMBLY HALL
- ASSISTED LIVING FACILITY [3]
- Bank
- BED and BREAKFAST
- CHILD CARE FACILITY
- Clinic
- CONGREGATE CARE [4]
- CONTINUING CARE COMMUNITY FACILITY [3]
- Dwelling, 2 Family
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSITUION, POST SECONDARY
- EDUCATIONAL INSITUION, K-12
- ELDERLY ASSISTED CARE [5]
- Funeral Parlor
- Hospital
- NURSING HOME [4]
- OFFICE
- PUBLIC RECREATION
- Public Utility [6]
- ROOMING HOUSE

Uses Permitted by Conditional Use Permit

- Eating and Drinking Establishment
- Retail Store
- GROUP HOME FOR MINORS

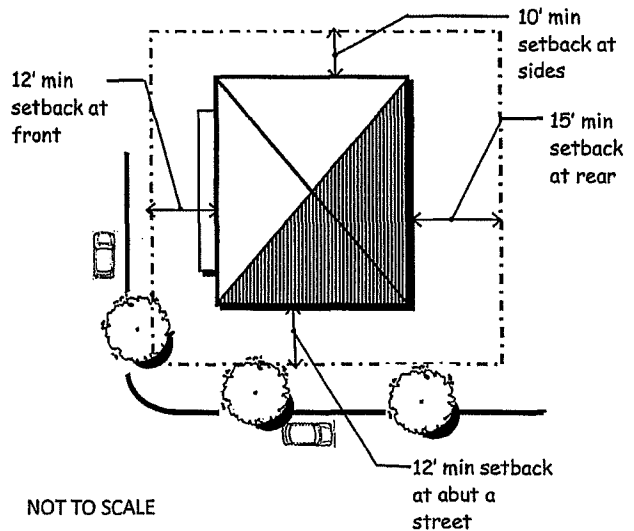
Sign Regulations

Size	H District
Total signs permitted	1 [per tenancy, and is for lot (excluding development identification signs)]
Total area permitted	12 sf
Type	
FREESTANDING	permitted, provided that the principal building is set back at least 20 ft (if multiple tenants, max size is 4 sf per tenant; max ht 8 ft)
PROJECTING	not permitted
WALL/ Awning	permitted (max ht 16 ft above ground elevation, or to bottom of sills of first level of windows above the first floor, whichever is lowest)
Temporary	permitted

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size	10,000 sf
Maximum LOT COVERAGE	50%
Minimum FRONTAGE	100 ft
PRINCIPAL BUILDING	
Front SETBACK	12 ft
Abut a Street SETBACK	12 ft
Side SETBACK	10 ft
Rear SETBACK	15 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	12 ft
Front Secondary SETBACK	12 ft
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	65 ft max
OUTBUILDING	40 ft max

Principal Building Placement



**Footnotes**

- [1] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [2] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [3] An ASSISTED LIVING FACILITY or CONTINUING CARE COMMUNITY FACILITY shall be serviced by municipal sewer, have a density of one unit requirement per 2,000 square feet of lot area. Parking lots and service areas are screened from abutting residential uses, and the facility shall obtain a license from the State of New Hampshire.
- [4] A CONGREGATE CARE Facility shall require a minimum lot size of 1,000 sq. ft. per unit, and a NURSING HOME Facility shall require a minimum lot size of 1,000 sq.ft. per bedroom. [Amended 09-15-93 by Ord. No. 19-93]
- [5] An ELDERLY ASSISTED CARE FACILITY larger than 6 bedrooms shall meet the density of one bedroom per 2,500 sq. ft. Provide parking and service areas that are screened from abutting residential uses. Also, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]
- [6] The utility facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within. [Amended 10-28-88 by Ord. No. 18-88]
- F. Any loading or unloading of products shall not disrupt NEIGHBORHOODS or traffic flow.
- G. The proposed use shall be compatible with the surrounding NEIGHBORHOOD.
- H. Hours of operation shall be limited to 6 am to 10 pm Sunday – Thursday, and 6 am to 11 pm Friday and Saturday.
- I. If a new building is proposed for the use, it shall be a minimum of two stories.
- J. The applicant shall provide proof that they have conducted a Preliminary Code Review for an Eating and Drinking Establishment with the Inspection Services Office.

Retail Store: A Retail Store shall be allowed if a Conditional Use Permit is granted by the Planning Board upon a finding that the following criteria are met:

- A. The store shall contribute to a NEIGHBORHOOD feel and be pedestrian friendly.
- B. The store shall be no larger than 2,000 square feet.
- C. The store shall not include DRIVE-IN SERVICE.
- D. The required parking may be reduced by fifty percent (50%) if on street parking is available in the neighborhood.
- E. All onsite parking shall be screened from abutting residential LOTS.
- F. Any loading or unloading of products shall not disrupt NEIGHBORHOODS or traffic flow.
- G. The proposed use shall be compatible with the surrounding NEIGHBORHOOD.
- H. Hours of operation shall be limited to 6 am to 9 pm Sunday – Thursday, and 6 am to 10 pm Friday and Saturday.
- I. If a new building is proposed for the use, it shall be a minimum of two stories.

Conditional Use Permit Criteria

Eating and Drinking Establishment: An Eating and Drinking Establishment shall be allowed if a Conditional Use Permit is granted by the Planning Board upon a finding that the following criteria are met:

- A. The Eating and Drinking Establishment shall contribute to a NEIGHBORHOOD feel and be pedestrian friendly.
- B. The Eating and Drinking Establishment shall be no larger than 2,000 square feet.
- C. The Eating and Drinking Establishment shall not include DRIVE-IN SERVICE.
- D. The required parking may be reduced by fifty percent (50%) if on street parking is available in the neighborhood.
- E. All onsite parking shall be screened from abutting residential LOTS.
- A. The group home site shall be compatible with abutting uses.
- B. The group home shall be located in areas of transitional land use or mixed land uses.
- C. Parking and service areas shall be screened from abutting residential uses, unless the abutter chooses to not want said screening.
- D. Open space shall be maintained on the property in an amount comparable to the neighborhood.
- E. The planned occupancy of the group home shall be compatible with the permitted density of the surrounding neighborhood.

GROUP HOME FOR MINORS [Added 09-01-93 by Ord. No. 20-93]

GROUP HOME FOR MINORS shall be subject to the following conditions:

Office (O) District

Amended 11-28-12 by Ord. No. 2012-11-14-24, 06-22-2016 by Ord. No. O-2016-06-03-010, on 12-26-2016 by Ord. No. 2016-10-12-015



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE
- ASSEMBLY HALL
- Bank
- BED and BREAKFAST
- CHILD CARE FACILITY
- Clinic
- CONGREGATE CARE [3]
- Dwelling, 2 Family
- Dwelling, 3-4 Family [4]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSITUION, POST SECONDARY
- EDUCATIONAL INSITUION, K-12
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [5]
- Funeral Parlor
- NURSING HOME [3]
- OFFICE
- PUBLIC RECREATION
- Public Utility [6]
- ROOMING HOUSE

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size	10,000 sf
Maximum LOT COVERAGE	50%
Minimum FRONTAGE	100 ft
PRINCIPAL BUILDING	
Front SETBACK	12 ft
Abut a Street SETBACK	12 ft
Side SETBACK	10 ft
Rear SETBACK	15 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	12 ft
Abut a Street SETBACK	12 ft
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	45 ft max
OUTBUILDING	40 ft max

Uses Permitted by Conditional Use Permit

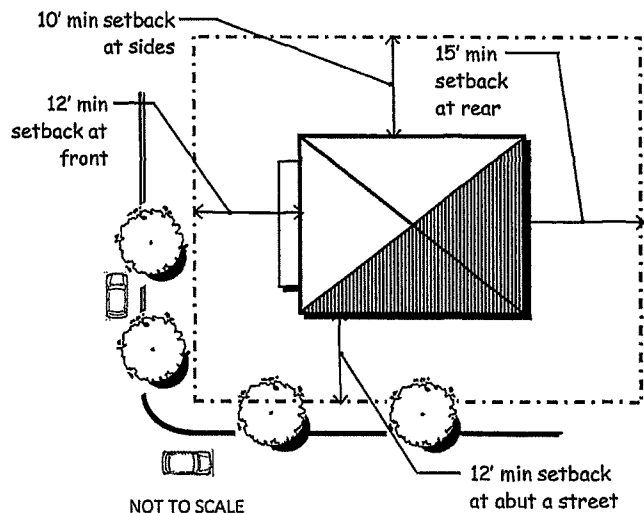
- Eating and Drinking Establishment
- Retail Store

Uses Permitted by Special Exception

- ASSISTED LIVING FACILITY
- CONTINUING CARE COMMUNITY FACILITY
- ELDERLY ASSISTED CARE
- GROUP HOME FOR MINORS

Sign Regulations

Size	O District
Total signs permitted	1 [per tenancy, and is for lot (excluding development identification SIGNS)]
Total area permitted	12 sf
Type	
FREESTANDING	permitted, provided that the principal building is set back at least 20 ft (if multiple tenants, max size 4 sf per tenant; max ht 8 ft)
PROJECTING	not permitted
WALL/ Awning	permitted (max height 16 ft above ground elevation, or to bottom of sills of first level of windows above first floor, whichever is lowest)
Temporary	permitted





Footnotes

- [1] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [2] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [3] A CONGREGATE CARE FACILITY shall require a minimum lot size of 1,000 sq. ft. per unit, and a NURSING HOME Facility shall require a minimum lot size of 1,000 sq.ft. per bedroom. [Amended 09-15-93 by Ord. No. 19-93]
- [4] Provided that the lot contain at least five thousand (5,000) square feet for each dwelling unit. Dwelling units are allowed only in the second story or higher of a newly constructed structure. [Amended 8/13/08 by Ord. No. 2008.07.23-9]
- [5] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line. [Amended 12-08-10 by Ord. No. 2010-10.27-13]
- [6] The utility facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within. [Amended 10-28-88 by Ord. No. 18-88]

Conditional Use Permit Criteria

Eating and Drinking Establishments: An Eating and Drinking Establishment shall be allowed if a Conditional Use Permit is granted by the Planning Board upon a finding that the following criteria are met:

- A. The Eating and Drinking Establishment shall contribute to a NEIGHBORHOOD feel and be pedestrian friendly.
- B. The Eating and Drinking Establishment shall be no larger than 2,000 square feet.
- C. The Eating and Drinking Establishment shall not include DRIVE-IN SERVICE.
- D. The required parking may be reduced by fifty percent (50%) if on street parking is available in the neighborhood.
- E. All onsite parking shall be screened from abutting residential LOTS.
- F. Any loading or unloading of products shall not disrupt NEIGHBORHOODS or traffic flow.
- G. The proposed use shall be compatible with the surrounding NEIGHBORHOOD.
- H. Hours of operation shall be limited to 6 am to 10 pm Sunday – Thursday, and 6 am to 11 pm Friday and Saturday.
- I. If a new building is proposed for the use, it shall be a minimum of two stories.
- J. The applicant shall provide proof that they have conducted a Preliminary Code Review for an Eating and Drinking Establishment with the Inspection Services Office.

Retail Store: A Retail Store shall be allowed if a Conditional Use Permit is granted by the Planning Board upon a finding that the following criteria are met:

- A. The store shall contribute to a NEIGHBORHOOD feel and be pedestrian friendly.
- B. The store shall be no larger than 2,000 square feet.

- C. The store shall not include DRIVE-IN SERVICE.
- D. The required parking may be reduced by fifty percent (50%) if on street parking is available in the neighborhood.
- E. All onsite parking shall be screened from abutting residential LOTS.
- F. Any loading or unloading of products shall not disrupt NEIGHBORHOODS or traffic flow.
- G. The proposed use shall be compatible with the surrounding NEIGHBORHOOD.
- H. Hours of operation shall be limited to 6 am to 9 pm Sunday – Thursday, and 6 am to 10 pm Friday and Saturday.
- I. If a new building is proposed for the use, it shall be a minimum of two stories.

Special Exception Criteria (see 170-52(C)(3) for additional regulations)

ASSISTED LIVING FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 2,000 square feet of lot area in the O District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

CONTINUING CARE COMMUNITY FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 2,000 square feet of lot area in the O District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

ELDERLY ASSISTED CARE HOME [Added 09-15-93 by Ord. No. 19-93]:

ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms shall meet the following density requirements: In the O District at a density of one bedroom per 2,500 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

GROUP HOME FOR MINORS [Added 09-01-93 by Ord. No. 20-93]: GROUP HOME FOR MINORS shall be subject to the following conditions:

- A. The group home site shall be compatible with abutting uses.
- B. The group home shall be located in areas of transitional land use or mixed land uses.
- C. Parking and service areas shall be screened from abutting residential uses, unless the abutter chooses to not want said screening.
- D. Open space shall be maintained on the property in an amount comparable to the neighborhood.
- E. The planned occupancy of the group home shall be compatible with the permitted density of the surrounding neighborhood.

Rural Residential (R-40) District

Amended 11-28-12 by Ord. No. 2012-11-14-24



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE [5]
- ASSEMBLY HALL
- Bank [5]
- Beauty and Barber Shop [5]
- BED and BREAKFAST
- CHILD CARE FACILITY
- CHILD CARE HOME
- Clinic
- CONSERVATION LOT
- Conversion of Existing Dwelling to Accommodate not more than 2 units [6]
- COUNTRY CLUB [7]
- Dwelling, 2 Family [8]
- Dwelling, 3 To 4 family [8]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- EXCAVATION [7]
- FARM [9]
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [10]
- Hospital
- MANUFACTURED HOUSING
- OFFICE [5] [11]
- PERSONAL SERVICE ESTABLISHMENT [5]
- PUBLIC RECREATION
- Public Utility
- Recreational Camp
- Retail Sale of Agricultural or Farm Products Raised on Site
- Theater [5]
- Veterinary Office, Animal Hospital or KENNEL [12]
- WHOLESALING of Farm Products [7]

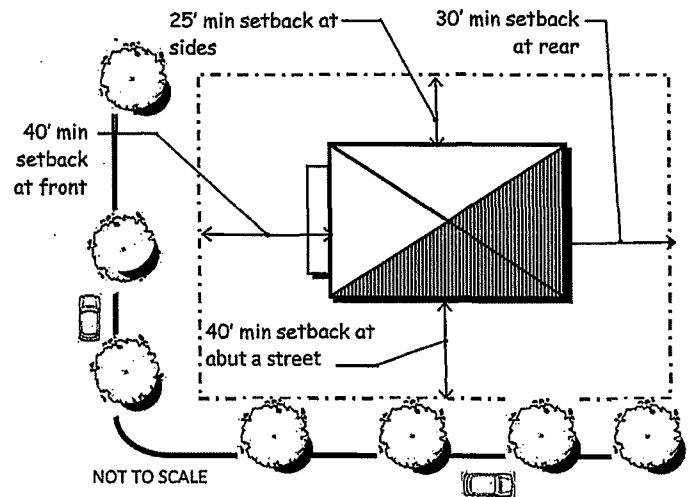
Uses Permitted by Special Exception

- ASSISTED LIVING FACILITY
- CONGREGATE CARE FACILITY
- CONTINUING CARE COMMUNITY FACILITY
- EDUCATIONAL INSTITUTION, POST SECONDARY
- ELDERLY ASSISTED CARE HOME
- Helicopter Take Offs & Landings
- JUNKYARD
- MANUFACTURED HOUSING Park
- NURSING HOME

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size [3] [4]	40,000 sf
Maximum LOT COVERAGE	10%
Minimum FRONTAGE	150 ft
PRINCIPAL BUILDING	
Front SETBACK	40 ft
Abut a Street SETBACK	40 ft
Side SETBACK	25 ft
Rear SETBACK	30 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	40 ft
Abut a Street SETBACK	40 ft
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	35 ft max
OUTBUILDING	35 ft max

Principal Building Placement



Sign Regulations

Size	R-40 District
Total signs permitted	1
Total area permitted	16 sf (customary home occupation sign 2 sf max, development identification SIGN 20 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted

**Footnotes**

- [1] In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 155 of the Code of Dover, the dimensional requirements shall be as specified in 155-22 of the Code of the City of Dover, 1983. [Added 6-10-87 by Ord. No. 13-87]
- [2] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [3] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [4] Refer to Chapter 155, Subdivision of Land, Article IV for the minimum lot size for a major Subdivision. In an R-40 district, any major subdivision must follow the procedures for an Open Space Subdivision (OSS). [Amended 1-22-2003 by Ord. No. 35]
- [5] Use is allowed as a commercial component to an Open Space Subdivision. (See 155.22 section 7). [Added 1-22-2003 by Ord. No. 35]
- [6] Any dwelling unit existing on or before May 27, 1964, may be converted, provided that the lot shall contain at least four thousand (4,000) square feet per dwelling unit and a minimum floor area of five hundred (500) square feet per dwelling unit.
- [7] Use is not allowed as a commercial component to an Open Space Subdivision. (See 155.22 section 7). [Added 1-22-2003 by Ord. No. 35]
- [8] Use is allowed when included within an Open Space Subdivision with commercial components. (See 155.22 section 7). [Added 1-22-2003 by Ord. No. 35]
- [9] FARM ANIMALS permitted, provided that the tract upon which such animals are kept shall support a minimum land area of one hundred thousand (100,000) square feet. In no instance shall the shelters used to contain said animals be closer than one hundred (100) feet from any property boundary.
- [10] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line. [Amended 12-08-10 by Ord. No. 2010-10-27-13]
- [11] Permitted only if operated as a customary home occupation (Refer to definition in 170-6B)
- [12] Veterinary Office, Animal Hospital uses are allowed as a commercial component to an Open Space Subdivision. (See 155.22 section 7) . [Added 1-22-2003 by Ord. No. 35]. Shelters and runs used to house and/or contain animals shall be no closer than one hundred (100) feet from any property line and must support a minimum tract size of one hundred thousand (100,000) square feet. [Amended 8-1-90 by Ord. 8-90]

Special Exception Criteria**ASSISTED LIVING FACILITY:**

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 sf of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

CONGREGATE CARE FACILITY [Added 09-15-93 by Ord. No. 19-93]: CONGREGATE CARE FACILITY is allowed as a Special Exception in accordance with the density and

provisions stated below:

- A. In the R-40 District in areas not serviced by City water and sewer utilities at a density of one unit per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one unit per 7,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

CONTINUING CARE COMMUNITY FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 square feet of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

ELDERLY ASSISTED CARE HOME [Added 09-15-93 by Ord. No. 19-93]: ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms shall meet the following density requirements: In the R-40 District in areas not serviced by City water and sewer utilities at a density of one bedroom per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one bedroom per 7,500 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

Helicopter Take offs and Landings: Helicopter take offs and landings are allowed as a special exception subject to the following conditions:

- A. There shall be a distance of one thousand (1,000) feet between any existing residential structure and any proposed helicopter landing pad.
- B. Except in the case of an emergency, no helicopter take offs or landings shall occur between the hours of 9:00 p.m. and 7:00 a.m.
- C. The facility shall be accessory to the principal use located on the lot.
- D. All facilities shall be located and designed so that the operation thereof will not adversely affect adjacent residential areas, particularly with respect to noise levels.
- E. The conditions for granting a Special Exception, contained in Chapter 170-52-C(3), must also be satisfied

JUNKYARD: A JUNKYARD may only be permitted upon the determination that the property values of land adjacent to such use will not be compromised. Conditions may include but not be limited to the provision of adequate and properly maintained screening around land so used.

MANUFACTURED HOUSING Parks: MANUFACTURED HOUSING parks shall be subject to the following regulations:

- A. The proposed park must conform to the Manufactured Home Chapter of the Code (Ch. 126, Manufactured Home Parks)
- B. All plans for the proposed park must have been granted preliminary approval from the Dover Planning Board.
- C. A determination by the Zoning Board of Adjustment that the proposed MANUFACTURED HOUSING will not adversely affect overall land values in the neighborhood.
- D. A determination by the Zoning Board of Adjustment that the proposed MANUFACTURED HOUSING will not result in the creation of hazardous traffic conditions.

NURSING HOME [Added 09-15-93 by Ord. No. 19-93]: NURSING HOME is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-40 District in areas not serviced by City water and sewer utilities at a density of one bedroom per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one bedroom per 7,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

Low Density Residential (R-20) District

Amended: 11-28-12 by Ord. No. 2012-11-14-24, 08-19-2015 by Ord. No. 2015-07-22-017



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE [5]
- ASSEMBLY HALL
- Bank [5]
- Beauty and Barber Shop [5]
- BED and BREAKFAST
- CHILD CARE FACILITY
- CHILD CARE HOME
- CONSERVATION LOT
- Conversion of Existing Dwelling to Accommodate not more than 2 units [6]
- Dwelling, 2 Family [7]
- Dwelling, 3 To 4 family [7]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- FARM [8]
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [9]
- OFFICE [10] [5]
- PERSONAL SERVICE ESTABLISHMENT [5]
- PUBLIC RECREATION
- Public Utility [11]
- Retail Sale of Agricultural or Farm Products Raised on Site
- ROADSIDE FARM STAND [12]
- Theater [5]
- Veterinary Office, Animal Hospital or KENNEL [13]

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size [3]	20,000 sf
Maximum LOT COVERAGE	30%
Minimum FRONTAGE	125 ft
PRINCIPAL BUILDING	
Front BUILD TO LINE	20 ft min, 35 ft max*
About a Street BUILD TO LINE	20 ft min, 35 ft max*
Side SETBACK	20 ft
Rear SETBACK	30 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	No closer than the principal BUILDING or 35 feet whichever is less
About a Street SETBACK	No closer than the principal BUILDING or 35 feet whichever is less
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	35 ft max
OUTBUILDING	35 ft max

*Expansions to, or renovations of, existing structures have a twenty (20) foot setback.

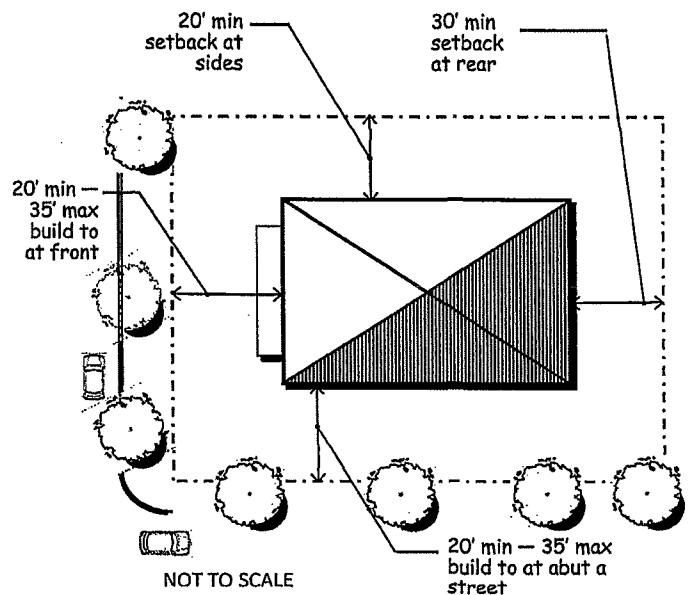
Uses Permitted by Special Exception

- ASSISTED LIVING FACILITY
- CONGREGATE CARE FACILITY
- CONTINUING CARE COMMUNITY FACILITY
- EDUCATIONAL INSTITUTION, POST SECONDARY
- ELDERLY ASSISTED CARE HOME
- Helicopter Take Offs & Landings
- NURSING HOME

Sign Regulations

Size	R-20 District
Total signs permitted	1
Total area permitted	16 sf (CUSTOMARY HOME OCCUPATION SIGN 2 sf max, development identification SIGN 20 sf max)
Type	
FREESTANDING	permitted (10 ft SETBACK required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted

Principal Building Placement



Low Density Residential (R-20) District

Amended 11-28-12 by Ord. No. 2012-11-14-24



Footnotes

- [1] In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 155 of the Code of Dover, the dimensional requirements shall be as specified in 155-22 of the Code of the City of Dover, 1983. [Added 6-10-87 by Ord. No. 13-87]
- [2] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [3] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [4] Refer to Chapter 155, Subdivision of Land, Article IV for the minimum lot size for a major Subdivision. Any major subdivision in an R-20 district, must follow the procedures for an OSS if the original lot meets the minimum lot size required. [Amended 1-22-2003 by Ord. No. 35]
- [5] Use is allowed as a commercial component to an Open Space Subdivision. (See 155.22 section 7). [Added 1-22-2003 by Ord. No. 35].
- [6] Any dwelling unit existing on or before May 27, 1964, may be converted, provided that the lot shall contain at least four thousand (4,000) square feet per dwelling unit and a minimum floor area of five hundred (500) square feet per dwelling unit.
- [7] Use is allowed when included within an Open Space Subdivision with commercial components. (See 155.22 section 7). [Added 1-22-2003 by Ord. No. 35].
- [8] FARM ANIMALS permitted, provided that the tract upon which such animals are kept shall support a minimum land area of one hundred thousand (100,000) square feet. In no instance shall the shelters and pens or runs used to contain said animals be closer than one hundred (100) feet from any property boundary.
- [9] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line. [Amended 12-08-10 by Ord. No. 2010-10.27-13]
- [10] Permitted only if operated as a customary home occupation (Refer to definition in 170-68).
- [11] The utility facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within. [Amended 10-28-88 by Ord. No. 18-88]
- [12] ROADSIDE FARM STANDS shall be set back a minimum of twenty (20) feet from all abutting vehicular rights-of-way. The area of any BUILDING associated with the ROADSIDE FARM STAND shall not be greater than two hundred (200) square feet in area, and shall be considered an accessory structure if a residence is also located on the property. The total of the display area and BUILDING area shall not exceed six hundred (600) square feet. Off-street parking shall be provided in the amount of one (1) off-street parking space per 250 sq. ft. of display and BUILDING area, and all required parking spaces shall have safe access to and from a public street. A certificate of use issued by the Zoning Administrator and a driveway permit shall be required in all cases.
- [13] Veterinary Office, Animal Hospital uses are allowed as a commercial com-

ponent to an Open Space Subdivision. (See 155.22 section 7) [Added 1-22-2003 by Ord. No. 35]. Shelters and runs used to house and/or contain animals shall be no closer than one hundred (100) feet from any property line and must support a minimum tract size of one hundred thousand (100,000) square feet.

Special Exception Criteria (see 170-52(C)(3) for additional regulations)

ASSISTED LIVING FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 5,000 square feet of lot area in the R-20 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

CONGREGATE CARE FACILITY [Added 09-15-93 by Ord. No. 19-93]:

CONGREGATE CARE FACILITY is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-20 District at one unit per 5,000 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

CONTINUING CARE COMMUNITY FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 5,000 square feet of lot area in the R-20 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

ELDERLY ASSISTED CARE HOME [Added 09-15-93 by Ord. No. 19-93]: ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOME is larger than 6 bedrooms shall meet the following density requirements: In the R-20 District at a density of one bedroom per 5,000 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (OFF STREET PARKING). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

Helicopter Take-offs and Landings: Helicopter Take-offs and Landings are allowed as a special exception subject to the following conditions:

- A. There shall be a distance of one thousand (1,000) feet between any existing residential structure and any proposed helicopter landing pad.
- B. Except in the case of an emergency, no helicopter take offs or landings shall occur between the hours of 9:00 p.m. and 7:00 a.m.
- C. The facility shall be accessory to the principal use located on the lot.
- D. All facilities shall be located and designed so that the operation thereof will not adversely affect adjacent residential areas, particularly with respect to noise levels.
- E. The conditions for granting a Special Exception, contained in Chapter 170-52-C(3), must also be satisfied.

NURSING HOME [Added 09-15-93 by Ord. No. 19-93]: NURSING HOME is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-20 District at one unit per 5,000 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

Medium Density Residential (R-12) District

Amended: 11-28-2012 by Ord. No. 2012-11-14-24, 08-19-2015 by Ord. No. 0-2015-07-22-017



Permitted Uses

- ACCESSORY DWELLING UNIT
- ASSEMBLY HALL
- BED and BREAKFAST
- CHILD CARE FACILITY
- CONSERVATION LOT
- CHILD CARE HOME
- Conversion of Existing Dwelling to Accommodate not more than 2 units [6]
- Dwelling, 2 Family [7]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- EDUCATIONAL INSTITUTION, POST SECONDARY
- FARM [8]
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [9]
- OFFICE [10]
- PUBLIC RECREATION
- Public Utility [11]
- ROADSIDE FARM STAND [12]

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size [3] [4]	12,000 sf
Maximum LOT COVERAGE	30%
Minimum FRONTAGE	100 ft
PRINCIPAL BUILDING	
Front BUILD TO LINE	15 ft min, 25 ft max [5]
Abut a Street BUILD TO LINE	15 ft min, 25 ft max [5]
Side SETBACK	15 ft
Rear SETBACK	30 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	No closer than the principal BUILDING
Abut a Street SETBACK	No closer than the principal BUILDING
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	35 ft max
OUTBUILDING	35 ft max

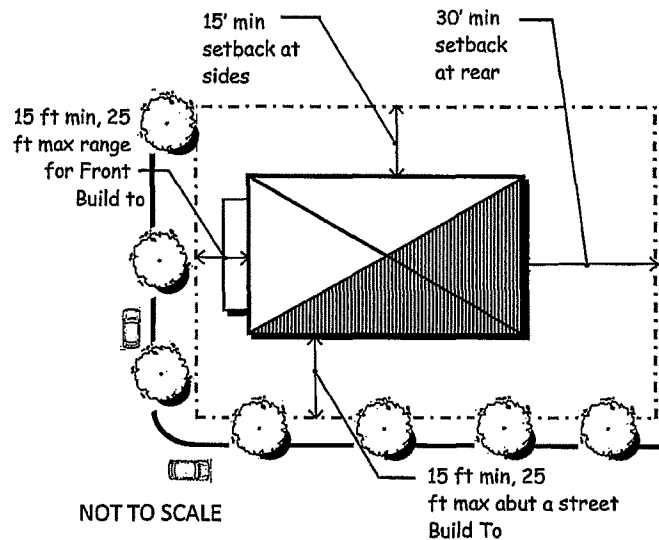
Uses Permitted by Special Exception

- ELDERLY ASSISTED CARE HOME

Sign Regulations

Size	R-12 District
Total SIGNS permitted	1
Total area permitted	16 sf (CUSTOMARY HOME OCCUPATION SIGN max 2 sf, development identification sign 20 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted

Principal Building Placement





Footnotes

- [1] In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 155 of the Code of Dover, the dimensional requirements shall be as specified in 155-22 of the Code of the City of Dover, 1983. [Added 6-10-87 by Ord. No. 13-87]
- [2] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [3] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [4] Refer to Chapter 155, Subdivision of Land, Article IV for the minimum lot size for a major Subdivision. Any major subdivision in an R-12 district, must follow the procedures for an OSS if the original lot meets the minimum lot size required. [Amended 1-22-2003 by Ord. No. 35]
- [5] Expansions to, or renovations of, STRUCTURES on existing lots have a five (5) foot SETBACK.
- [6] Any dwelling unit existing on or before May 27, 1964, may be converted, provided that the lot shall contain at least four thousand (4,000) square feet per dwelling unit and a minimum floor area of five hundred (500) square feet per dwelling unit.
- [7] Two family dwellings are permitted in the R-12 Districts when incorporated in an open space subdivision and comply with all regulations specified in Chapter 155, Subdivision of Land, Article IV, Open Space Subdivisions, of the Code of the City of Dover, 1983. [Added 9-14-88 by Ord. No. 13-88] [Amended 1-15-03 by Ord. No. 35-11]
- [8] Shall not include the raising and sale of FARM ANIMALS; the breeding, boarding, and training of equines, and equine riding instruction; the commercial raising, harvesting, and sale of fresh water fish or other aquaculture products; and/or the breeding of poultry or game birds.
- [9] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line. [Amended 12-08-10 by Ord. No. 2010-10.27-13]
- [10] Permitted only if operated as a CUSTOMARY HOME OCCUPATION (Refer to definition in 170-6B).
- [11] The Utility Facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within. [Amended 10-28-88 by Ord. No. 18-88]
- [12] ROADSIDE FARM STANDS shall be set back a minimum of twenty (20) feet from all abutting vehicular rights-of-way. The area of any BUILDING associated with the ROADSIDE FARM STAND shall not be greater than two hundred (200) square feet in area, and shall be considered an accessory structure if a residence is also located on the property. The total of the display area, including the building, shall not exceed four hundred (400) sq. ft. Off-street parking shall be provided in the amount of one (1) off-street parking space per 250 sq. ft. of display and building area, and all required parking spaces shall have safe access to and from a public street. A certificate of use issued by the Zoning Administrator and a driveway permit shall be required in all cases."

Special Exception Criteria (see 170-52(C)(3) for additional regulations)

ELDERLY ASSISTED CARE HOME [Added 09-15-93 by Ord. No. 19-93]:

ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOME is larger than 6 bedrooms shall meet the following density requirements: In the R-12 District at a density of one bedroom per 3,000 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

Suburban Density Multi Residential (RM-SU) District

Amended: 11-28-12 by Ord. No. 2012-11-14-24, 06-22-2016 by Ord. No. 0-2016-06-08-010



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE
- ASSEMBLY HALL
- CHILD CARE FACILITY
- CHILD CARE HOME
- Conversion of Existing Dwelling to Accommodate 5 or more units [3]
- Conversion of Existing Dwelling to Accommodate not more than 4 units [3]
- Dwelling, 2 Family
- Dwelling, 3-4 Family [3]
- DWELLING, MULTI-FAMILY [3]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- FARM [5]
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [6]
- OFFICE [7]
- PUBLIC RECREATION
- Public Utility [8]
- ROADSIDE FARMSTAND [9]

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size [3] [4]	20,000 sf
Maximum LOT COVERAGE	40%
Minimum FRONTAGE	100 ft
PRINCIPAL BUILDING	
Front SETBACK	50 ft
Abut a Street SETBACK	50 ft
Side SETBACK	20 ft
Rear SETBACK	20 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	50 ft
Abut a Street SETBACK	50 ft
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	40 ft max
OUTBUILDING	40 ft max

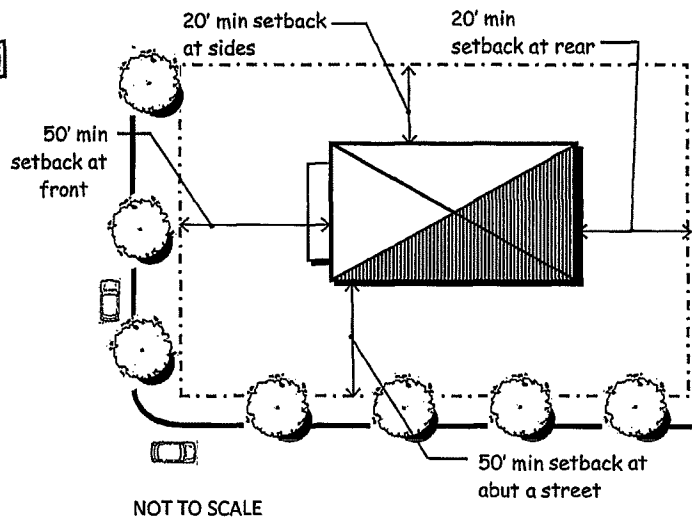
Uses Permitted by Special Exception

- ELDERLY ASSISTED CARE HOME

Sign Regulations

Size	RM-SU District
Total signs permitted	1
Total area permitted	16 sf (CUSTOMARY HOME OCCUPATION SIGN 2 sf max, development identification SIGN 20 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted

Principal Building Placement





Footnotes

- [1] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [2] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [3] Provided that the lot upon which such multifamily residence is to be constructed shall contain at least ten thousand (10,000) square feet for each dwelling unit. [Amended 02/17/99 by Ord. No. 25-98]
- [4] Reserved
- [5] Shall not include the raising and sale of FARM ANIMALS; the breeding, boarding, and training of equines, and equine riding instruction; the commercial raising, harvesting, and sale of fresh water fish or other aquaculture products; and/or the breeding of poultry or game birds.
- [6] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line. [Amended 12-08-10 by Ord. No. 2010-10.27-13]
- [7] Permitted only if operated as a customary home occupation. (Refer to definition in 170-6B)
- [8] The utility facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within. [Amended 10-28-88 by Ord. No. 18-88]
- [9] ROADSIDE FARM STANDs shall be set back a minimum of twenty (20) feet from all abutting vehicular rights-of-way. The area of any BUILDING associated with the ROADSIDE FARM STAND shall not be greater than four hundred (400) square feet in area, and shall be considered an accessory structure if a residence is also located on the property. The total of the display area and building area shall not exceed 1,000 sq. ft. Off-street parking shall be provided in the amount of one (1) off-street parking space per 250 sq. ft. of display and building area, and all required parking spaces shall have safe access to and from a public street. A certificate of use issued by the Zoning Administrator and a drive-

way permit shall be required in all cases.

Special Exception Criteria (see 170-52(C)(3) for additional regulations)

ELDERLY ASSISTED CARE HOME [Added 09-15-93 by Ord. No. 1993]:

ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms shall meet the following density requirements: In the RM-SU District at a density of one bedroom per 5,000 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

Urban Density Multi Residential (RM-U) District

Amended: 11-28-12 by Ord. No. 2012-11-14-24; 08-19-2015 by Ord. No. 0-2015-07-22-017



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE
- ASSEMBLY HALL
- CHILD CARE FACILITY
- CHILD CARE HOME
- CONSERVATION LOT
- Conversion of Existing Dwelling to Accommodate not more than 2 units [4]
- Dwelling, 2 Family
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [5]
- Funeral Parlor
- OFFICE [6]
- PUBLIC RECREATION
- Public Utility [7]
- ROOMING HOUSE

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size	10,000 sf
Maximum LOT Coverage	40%
Minimum FRONTAGE	80 ft
PRINCIPAL BUILDING	
Front SETBACK	[3]
Abut a Street SETBACK	[3]
Side SETBACK	15 ft
Rear SETBACK	15 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	No closer than the principal
Abut a Street SETBACK	No closer than the principal
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	40 ft max
OUTBUILDING	40 ft max

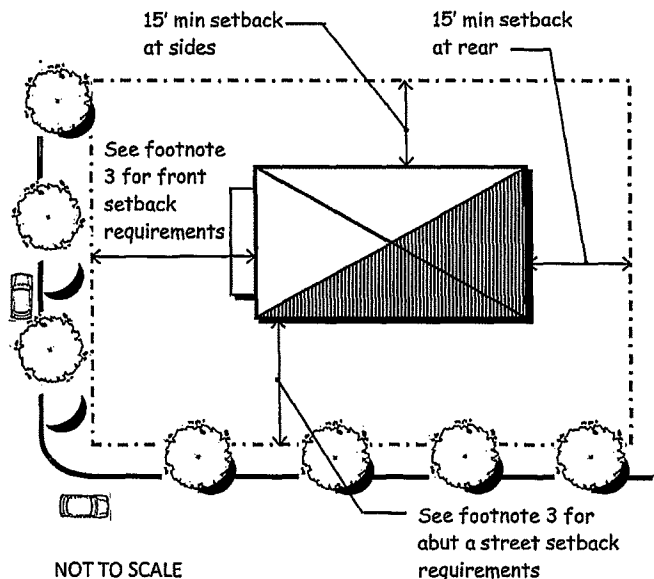
Uses Permitted by Special Exception

- ASSISTED LIVING FACILITY
- Beauty and barbershop
- CONGREGATE CARE FACILITY
- CONTINUING CARE COMMUNITY FACILITY
- Conversion of Existing Dwelling to accommodate not more than 4 units
- Dwelling, 3 to 4 Family
- ELDERLY ASSISTED CARE HOME
- GROUP HOME FOR MINORS
- NURSING HOME
- Retail Store

Sign Regulations

Size	RM-U District
Total signs permitted	1
Total area permitted	16 sf (CUSTOMARY HOME OCCUPATION SIGN 2 sf max, development identification sign 20 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted

Principal Building Placement





Footnotes

- [1] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [2] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. [Amended 1-22-2003 by Ord. No. 35]. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [3] The property owner shall calculate the average front SETBACKS of all LOTS within the same zone located on the same side of the STREET, two hundred fifty (250) feet in each direction from the center of the front LOT LINE. This front SETBACK dimension shall be considered to be a BUILD TO LINE. STRUCTURES may be constructed within five (5) feet plus or minus of the average. Porches or steps may be located an additional five (5) feet beyond the front façade of the STRUCTURE. Expansions to existing STRUCTURES shall be subject to a minimum SETBACK equal to the calculated average SETBACK minus five (5) feet.
- [4] Provided that the lot contains at least two thousand (2,000) square feet for each dwelling unit plus an additional five hundred (500) square feet for every bedroom contained in such multiunit residence. A maximum of four (4) units per lot is allowed.
- [5] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line. [Amended 12-08-10 by Ord. No. 2010-10-27-13]
- [6] Permitted only if operated as a customary home occupation (Refer to definition in 170-6B).
- [7] The utility facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within. [Amended 10-28-88 by Ord. No. 18-88]

Special Exception Criteria (see 170-52(C)(3) for additional regulations)

ASSISTED LIVING FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 2,500 square feet of lot area in the RM-U District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

Barber and Beauty Shops: Barber and beauty shops shall be subject to the following regulations:

- A. No more than one (1) operator's chair is permitted.
- B. No assistants are to be employed.
- C. All operators are to be members of the immediate family who reside in the home.
- D. All such uses shall conform to the regulations governing customary home occupations in 170-18.

CONGREGATE CARE FACILITY [Added 09-15-93 by Ord. No. 19-93]:

CONGREGATE CARE FACILITY is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the RM-U District at one unit per 2,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

CONTINUING CARE COMMUNITY FACILITY:

- A. The facility shall be serviced by municipal sewer.
 - B. The density per unit requirement is 5,000 square feet of lot area in the R-20 District.
 - C. Parking lots and service areas are screened from abutting residential uses.
 - D. The facility shall obtain a license from the State of New Hampshire.
- Conversion to, or creation of Dwelling, 3-4 Family.[Added 3-25-87 by Ord. No. 6-87]:** Three- or four-family dwellings and conversions of existing dwellings to three (3) or four (4) units shall be subject to the following regulations:
- A. The specific site must have an amount of open space, either landscaped or left natural, at least equal to the average amount of open space on all developed lots in the RM-U District that are wholly or partly within two hundred (200) feet of the subject parcel. Existing parking areas, either gravel, paved or unpaved, shall not be considered to be open space.
 - B. Off-street parking, in accordance with Chapter 149, Site Review, shall be provided as to avoid vehicles backing into the street. Two (2) parking spaces per unit shall be required.
 - C. Parking lots shall be at least five (5) feet from a side property line and ten (10) feet from a front property line.
 - D. Parking areas shall be screened from the street and from abutting lots.
 - E. Structures shall be at least twenty (20) feet from a front property line, fifteen (15) feet from a rear property line and fifteen (15) from a side property line unless abutting a street, in which case, the distance from the side property line shall be twenty (20) feet.

ELDERLY ASSISTED CARE FACILITY [Added 09-15-93 by Ord. No. 19-93]:

ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms shall meet the following density requirements: In the RM-U District at a density of one bedroom per 2,500 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

GROUP HOME FOR MINORS [Added 09-01-93 by Ord. No. 20-93]:

GROUP HOME FOR MINORS shall be subject to the following conditions:

- A. The group home site shall be compatible with abutting uses.
- B. The group home shall be located in areas of transitional land use or mixed land uses.
- C. Parking and service areas shall be screened from abutting residential uses, unless the abutter chooses to not want said screening.
- D. Open space shall be maintained on the property in an amount comparable to the neighborhood.
- E. The planned occupancy of the group home shall be compatible with the permitted density of the surrounding neighborhood.

NURSING HOME [Added 09-15-93 by Ord. No. 19-93]:

NURSING HOME is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the RM-U District at one unit per 2,000 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

Retail Store [Added 12-08-10 by Ord. No. 2010-10-27-13]:

A Retail Store shall be subject to the following regulations:

- A. The store shall contribute to a NEIGHBORHOOD feel and be pedestrian friendly.
- B. The store shall be no larger than 2,000 square feet.
- C. No more than half of the required parking necessary shall be on-site parking, which shall be screened from abutting residential LOTS.
- D. Any loading or unloading of products shall not disrupt NEIGHBORHOODS or traffic flow.
- E. The proposed use shall be compatible with the surrounding NEIGHBORHOOD.
- F. Hours of operation shall be limited to 6 am to 9 pm Sunday – Thursday,

Heritage Residential (HR) District

Adopted: 08-19-2015 by Ord. No. 6-2015-07-22-017, 08-22-2016 by Ord. No. 2016-08-22-009



Permitted Uses***

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE
- CHILD CARE HOME
- Conversion of Existing Dwelling to Accommodate not more than 2 units [5]
- CUSTOMARY HOME OCCUPATION
- Dwelling, 2 Family [5]
- DWELLING, SINGLE FAMILY
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [6]
- PUBLIC RECREATION
- Public Utility [7]
- ROADSIDE FARM STAND [8]

Dimensional Regulations* [1] [2]

LOT	
Minimum LOT Size	10,000 sf
Maximum LOT Coverage	40%
Minimum FRONTAGE	80 ft
PRINCIPAL BUILDING***	
Front BUILD TO LINE	[3]
Abut a Street BUILD TO LINE	[3]
Side SETBACK	15 ft
Rear SETBACK	30 ft
OUTBUILDING/ACCESSORY USE***	
Front SETBACK	[4]
Abut a Street SETBACK	[4]
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	24 ft min**, 40 ft max
OUTBUILDING	40 ft max

*Deviations from these requirements are permitted by Conditional Use Permit, subject to the requirements of Section 170-20.B(1), where applicable.

Uses Permitted by Conditional Use Permit***

- BED AND BREAKFAST (permitted on Silver Street only)
- CHILD CARE FACILITY
- Conversion of Existing Dwelling to Accommodate not more than 4 units
- Dwelling, 3 to 4 Family
- ELDERLY ASSISTED CARE HOME
- GROUP HOME FOR MINORS
- OFFICE

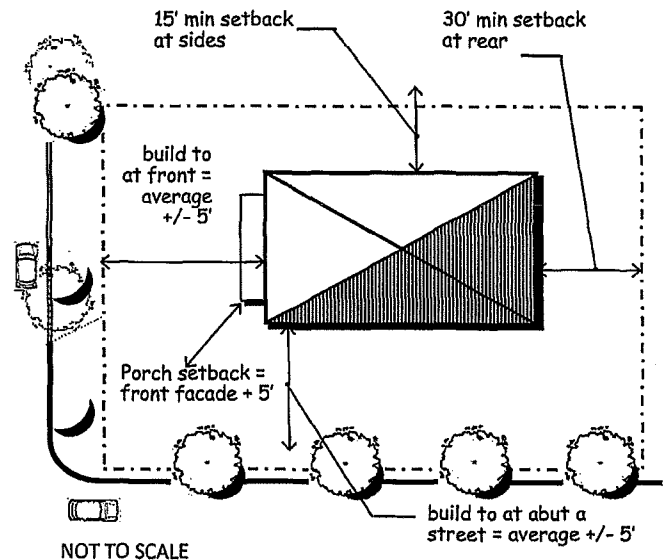
**The minimum principal building height shall not apply to additions constructed onto the rear of the PRINCIPAL BUILDING, provided that where the addition will be closer to either side lot line than the existing PRINCIPAL BUILDING, the addition shall be located no closer than 45 ft from the front lot line.

***See reverse side for architectural considerations.

Sign Regulations

Size	HR District
Total signs permitted	1
Total area permitted	8 sf (CUSTOMARY HOME OCCUPATION SIGN 2 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted

Principal Building Placement





Footnotes

- [1] Refer to 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements.
- [2] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. Wetland buffers shall only be allowed to count for 40% of the min lot size required.
- [3] The property owner shall calculate the average front setbacks of all lots within the same zone located on the same side of the street, 250 ft in each direction from the center of the front lot line. This front setback dimension shall be considered to be a build to line. Structures may be constructed within five (5) ft plus or minus of the average. Porches or steps may be located an additional five (5) ft beyond the front façade of the structure. Expansions to existing structures shall be subject to a minimum setback equal to the calculated average setback minus five (5) feet.
- [4] Accessory structures must be setback at least 20 feet from the average front setback of all lots within the same zone located on the same side of the street, 250 feet in each direction from the center of the front lot line.
- [5] 2 family dwellings shall be designed to look like SINGLE FAMILY DWELLINGS (i.e. the 2 family dwelling should not look like it was designed to occupy more than one family). At a minimum, this shall mean that only one entrance shall be visible from a public street. Notwithstanding any other provision of Chapter 170, a legal or legal non-conforming accessory structure existing as of the effective date of these regulations may be converted into a second unit, provided that it shall not be enlarged, nor shall any exterior improvements be made to alter its appearance as an accessory structure.
- [6] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line.
- [7] The utility facility shall be appropriately fenced to protect the public. Landscaping materials shall be required to provide a visual screen from any structures and storage within.
- [8] ROADSIDE FARM STANDS shall be set back a minimum of twenty (20) feet from all abutting vehicular rights-of-way. The area of any BUILDING associated with the ROADSIDE FARM STAND shall not be greater than two hundred (200) square feet in area, and shall be considered an accessory structure if a residence is also located on the property. The total of the display area, including the building, shall not exceed four hundred (400) square feet. Off-street parking shall be provided in the amount of one (1) off-street parking space per 250 square feet of display and building area, and all required parking spaces shall have safe access to and from a public street. A certificate of use issued by the Zoning Administrator and a driveway permit shall be required in all cases.

Architectural Considerations

The goal of the Heritage Residential District is to recognize, celebrate, and enhance the unique character of this area, in part by promoting architecture with a strong sense of place, fine detailing, quality materials, and designed with the site context and adjacent development in mind. To that end, applicants for new construction are encouraged to refer to the Dover Historic Preservation Guide (June, 1991) for examples of architecture and design that is fitting for the Heritage Residential District. This document is available for viewing on the Planning Department webpage and at the offices of the Planning Department and Inspection Services, and is intended to serve as a guide to help encourage and inspire thoughtful and attractive development.

Conditional Use Permit Criteria

The requirements of 170-20.B(2) and (3) shall apply to all uses permitted by Conditional Use Permit, in addition to the requirements set forth below.

CHILD CARE FACILITY: CHILD CARE FACILITIES shall be subject to the requirements set forth in the "CHILD CARE FACILITY" definition, Chapter 170-6.

Conversion to, or creation of Dwelling, 3-4 Family: Three- or four-family dwellings and conversions of existing dwellings to three (3) or four (4) units shall be subject to the following regulations:

- A. The specific site must have an amount of open space, either landscaped or left natural, at least equal to the average amount of open space on all developed lots in the HR District that are wholly or partly within two hundred (200) feet of the subject parcel. Existing parking areas, either gravel, paved or unpaved, shall not be considered to be open space.
- B. Off-street parking, in accordance with Chapter 149, Site Review, shall be provided as to avoid vehicles backing into the street. Two (2) parking spaces per unit shall be required.
- C. Parking lots shall be at least five (5) feet from a side property line and ten (10) feet from a front property line.
- D. Parking areas shall be screened from the street and from abutting lots.
- E. Structures shall be at least twenty (20) feet from a front property line, thirty (30) feet from a rear property line and fifteen (15) from a side property line unless abutting a street, in which case, the distance from the side property line shall be twenty (20) feet.
- F. For new construction, the building must be designed to look like a SINGLE FAMILY DWELLING. At a minimum, this shall mean that only one entrance shall be visible from a public street. For conversions, the building must retain its appearance as a SINGLE FAMILY DWELLING or a 2 family dwelling, whichever is the current use. Notwithstanding any other provision of Chapter 170, a legal or legal non-conforming accessory structure existing as of the effective date of these regulations may be converted into one or more residential units, provided that the building shall not be enlarged, nor shall any exterior improvements be made to alter its appearance as an accessory structure.

ELDERLY ASSISTED CARE HOME: ELDERLY ASSISTED CARE HOME is allowed in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms are permitted at a density of one bedroom per 2,500 square feet
- B. Parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure.

GROUP HOME FOR MINORS: GROUP HOME FOR MINORS shall be subject to the following conditions:

- A. The group home site shall be compatible with abutting uses.
- B. The group home shall be located in areas of transitional land use or mixed land uses.
- C. Parking and service areas shall be screened from abutting residential uses, unless the abutter chooses to not want said screening.
- D. Open space shall be maintained on the property in an amount comparable to the neighborhood.
- E. The planned occupancy of the group home shall be compatible with the permitted density of the surrounding neighborhood.
- F. Hours of operation shall be limited to 6 am to 9 pm Sunday – Thursday, and 6 am to 10 pm Friday and Saturday.

W / M
BETA FRANKLIN
a few years
in Franklin Road
South, in 1982
402 / 105

MAP H LOT 1
128,641 S.F.
2.95 Ac.
3583/238

L.P.(Ind) IRON PIPE FOUND
S.F. SQUARE FEET
AC ACRE
(TYP.) MORE OR LESS
TYPICAL
S.G.R.D. STAFFORD COUNTY REGISTRY OF DEEDS
STR STRAFTMONT RADIOS
CDC CAPE COD BEACH
ICC SLOPE GRANITE CURB
SGC SLOPE GRANITE CURB
VGC VERTICAL GRANITE CURB
E-GEN EMERGENCY GENERATOR
OHW OVERHEAD WIRES
G EXISTING GAS LINE
D EXISTING DRAIN LINE
P PAVEMENT WITH CURB
C CONSTRUCT FENCE
(NO) PARKING LOT
& SEWER MANHOLE
HANDICAP HANDICAP PARKING SYMBOL
CONSTRUCT CONSTRUCT CONCRETE
CONSTRUCT CONSTRUCT CONCRETE SIDEWALK
CONSTRUCT CONSTRUCT TIE LINE
EXISTING EXISTING TIE LINE

TAX MAP 9, LOT
24A
87,185.4 S.F.
(2.0 AC)
(RESIDUAL 0.8 AC)

Radius

THOMAS F. EAM
CHRYL L. DAI
34 FREEMAN RD
MASSACHUSETTS 01028 / 1028

8 / 89

SITE NOTES

1. THE INTENT OF THIS PLAN IS TO SHOW SITE IMPROVEMENTS ASSOCIATED WITH CONSTRUCTION OF A 10,100 S.F. ELDERLY ASSISTED CARE HOME FOR 24 RESIDENTS WITH TWO (2) ACCESSORY APARTMENTS. FOR STAFF ONLY CONTAINED WITHIN THE EXISTING STRUCTURE.
2. OWNER OF RECORD:
LOCAL MOUNTAIN PARTNERS, LLC
P.O. BOX 1727
DOVER, NH 03821
SC93: BOOK 3363 PAGE 238
3. THE PARCEL IS SHOWN AS LOT 1 ON MAP H OF THE CITY OF DOVER AN ASSESSOR'S MAP.
4. THE PROJECT PARCEL CONTAINS 2.95 ACRES OR 128,641 SF.
5. THE PARCEL IS LOCATED IN THE B-4, HOTEL/RETAIL DISTRICT AND IS SUBJECT TO THE FOLLOWING ZONING DISCREPANCY: 160 DENSITY REQUIREMENTS
- | | REQUIRED | PROVIDED |
|-------------------------|----------|----------------|
| MINIMUM LOT SIZE | 5 ACRES | 2.95 ACRES |
| MINIMUM FRONT SETBACK | 400 FT | 338.11 FT |
| MINIMUM YARD SETBACKS | | |
| FRONT | | 50 FT ± 85 FT |
| SIDE | | 75 FT ± 78 FT |
| REAR | | 75 FT ± 420 FT |
| MAXIMUM LOT COVERAGE | 33% | 8.25% |
| MAXIMUM BUILDING HEIGHT | 55 FT | 31 FT |
6. LAND USE CALCULATIONS
- | | REQUIRED | EXISTING(%) | CONSTRUCTION |
|--------------------|-----------|-----------------|-------------------|
| BUILDINGS | 33% (MAX) | 2,570 SF (2%) | 12,278 SF (9.5%) |
| PARKING/PEDERWALKS | 33% (MAX) | 14,973 SF (12%) | 18,862 SF (14.5%) |
| GREEN SPACE | 33% (MIN) | 14,890 SF (12%) | 58,364 SF (45.5%) |
7. PARKING REQUIREMENTS PER CHAPTER 149-A(4)(1)
ELDERLY CARE: 24 UNITS, 0.5 SPACES/UNIT = 12 SPACES
EMPLOYEES: 13 (MAX SHIFTS) 1 SPACE/EMP = 13 SPACES
APARTMENTS: 2 APARTMENTS: 18 SPACES/UNIT = 4 SPACES
TOTAL REQUIRED: 29 SPACES
TOTAL PROVIDED: 29 SPACES (27 STANDARD AND 2 ACCESSIBLE)

REFERENCE FLANG:

1. DEEDING CONDITIONS PLAN, PREPARED FOR REAL MOKKY PROPERTIES LLC, TAX MAP H, LOT 1, 301 DURHAM ROAD, CITY OF DOVER, COUNTY OF STRAFFORD, STATE OF NEW HAMPSHIRE, SCALE: 1"=30', DATED: APRIL 2010, PREPARED BY WHEANEY SURVEY ASSOCIATES, INC., P.O. BOX 681 - 24 CHESTNUT STREET, DOVER NH 03820 (603) 742-2011.

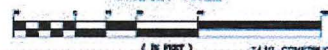
PLANNING FILE NO.: P15-38A

4	8-20-20	SJH	UPDATE PER TRC COMMENTS
3	8-20-20	SJH	UPDATE SITE PLAN
2	8-20-20	SJH	REVISED PARKING LAYOUT / 24 BEDS
1	8-19-20	SJH	REVISION PER ARCHITECTURAL UPDATE
No.	DATE	BY	REVISION

OVERALL SITE PLAN

JOHNSON CREEK VILLAGE
CARE HOME
TAX MAP H, LOT 1
DOVER, NEW HAMPSHIRE

GRAPHIC SCALE



CIVILWORKS NEW ENGLAND

181 Watson Road, P.O. Box 1166
Dover, New Hampshire 03820
(603) 742-1954

DESIGN: DCL
SCALE: 1"=30'
DATE: 2-12-16
SHEET: 3 OF 20
PROJECT #64102

December 11, 2018

Ms. Sarah Greenshields, Director
Little Tree Education Center and Coldstream Properties LLC
314 Route 108
Madbury, NH

Re: Johnson Creek Septic System Placement

Dear Ms. Greenshields,

Thank you for contacting me to perform an initial hydrogeologic evaluation of the proposed septic system for the Real McCoy Property LLC proposed Johnson Creek assisted living facility. The following is a summary of that review and conclusions and recommendations based on this review.

Background

Little Tree Education Center is located at 314 Route 108 in Madbury, NH. The education center is a preschool with children aged 6 weeks to 12 years with an average enrollment of 75 children per day. There are 25-35 employed staff members at the facility on a rotating basis. Many of these children are formula fed as their sole food source. Drinking water for the school is provided from an on-site public water supply (PWS) well which is permitted by New Hampshire Department of Environmental Services permit # 1458010.

The well draws water from bedrock and the pump is currently set at 500 feet below land surface according to Epping Well and Pump who installed a new pump in 2016. The pump has a maximum capacity of 10 gallons per minute. A treatment system installed and maintained by Aqua Specialties of Northwood treats for soluble arsenic at the point of withdrawal. Regular testing of water quality is required to maintain the PWS permit. The well is located beneath a porch at the school on the southeast side of the school building and is furnished with a concrete protective cover.

Little Tree is concerned about the impact of a septic leachfield proposed on a parcel in Madbury – Map 9 Lot 23. This leachfield is part of a larger septic system on an adjacent parcel in Dover (Map H, Lot 1) where the Johnson Creek assisted living facility is proposed. The project was approved for a 12-bed facility in 2015 and was substantially built in 2016. The project was then revised and a request to increase the capacity to a 24-bed facility was requested in November 2018.

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454 Court Street Suite 304 Portsmouth, NH 03801
p 603.766.6670 c 603.498.2916
danna@truslowRC.com www.truslowRC.com



The septic system for the facility was already installed and was sized for 12 beds so an additional leachfield was proposed on an adjacent lot in Madbury where septic system leachate would be distributed to accommodate the load of the additional 12 beds at the facility. The septic systems are each designed for a 1500-gallon per day discharge rate.

The well location shown on the map included in Madbury Planning Board minutes is incorrect. The actual location is approximately 35 feet southwest of the mapped location so this will impact the final leachfield location. We understand that this is being corrected for the next submittal.

Area Water Resources

This area of Dover and Madbury, which includes the land for the Johnson Creek facility in Dover, the proposed satellite septic field in Madbury, and Little Tree property, are near the southern boundary of an extensive sand and gravel deposit and aquifer that covers much of this area of Madbury and Dover (Mack and Lawlor, 1990).

This land is within Oyster River watershed and USGS mapping shows that groundwater flows to the south and southeast in this area. Less than 20 feet of saturated sand and gravel material lies beneath this area but has moderate transmissivity. Transmissivity is a measure of the capacity of the geologic material to transmit and store groundwater. These sand and gravel materials provide recharge to the large aquifer area and to nearby surface water bodies. This recharge also flows to underlying bedrock, and to nearby wells depending on the pumping rate and connectivity of the bedrock to the overburden sand and gravel.

The location of the existing or proposed septic fields (red boxes) and the Little Tree facility (blue box) are shown on the attached USGS maps. The red arrows show the approximate flow direction based on the USGS mapping. The flow from both septic leachfield areas is towards the Little Tree property.

Prescription Medication and Personal Care Products in Groundwater

One of the concerns voiced by Little Tree was that septic system discharge from the Johnson Creek facility may contain chemicals included in prescription medication, personal care products and cleaning products. Recent studies have shown that some of these organic wastewater compounds (OWCs) are present in groundwater that receive discharge from domestic septic systems and/or land application of treated municipal wastewater (Schaidler, et. al, 2014, Schaidler, et. al, 2017, McEachran et al, 2016). This research concludes that compounds that are most likely to be found in leachfield drain water are antibiotics, perflourinated compounds (PFAS), non-antibiotic prescription

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medication and flame-retardants. An elder care facility can be expected to have a higher than normal use and discharge of prescription and non-prescription drugs which may either be excreted in human waste or mistakenly disposed to drains and toilets. Additionally a substantial use of cleaning products/disinfectants is also likely.

Conclusions and Recommendations

The septic leachfields as proposed will discharge approximately 1500 gallons per day each. If the septic system capacity was increased at the existing location 3000 gallons per day would be discharged from one leachfield area.

The concerns about water quality impacts to your well are valid especially since there are babies and young children that may be more sensitive to these chemicals during development. Some degradation of compounds occurs in the subsurface during infiltration and groundwater transport but antibiotics appear to be in large enough abundance in the areas studied to still have significant concentrations in downgradient water. Additionally, PFAS compounds do not break down and can only be diluted to decrease overall concentrations. Toxicological studies are on the increase with the recent attention on PFAS compounds, but there is still little information on human impacts for OWSs.

The Little Tree well is deep and is somewhat isolated from the subsurface, but recharge from the septic fields will likely migrate to the bedrock based on local hydrologic conditions.

Additional well installation and pump testing could definitively determine the source of water to your well and other water supply wells in the vicinity. Bedrock wells tap fractures in bedrock that are connected in sometimes non-uniform ways. It seems that the discharge from an assisted living facility may be more appropriately routed to the nearby wastewater treatment systems than to an onsite septic system since this infrastructure is close by.

Additional information gathering on local well depths and locations could provide information on impacts to other nearby landowners in addition to Little Tree. Well testing may also be appropriate to evaluate water supply well impacts.

The facility should have a policy for product and drug usage and disposal to assure that best management practices are being followed and to avoid impacts to subsurface water quality. Cleaning and maintenance products should also be chosen to have the least environmental impact while being effective in keeping the facility sanitary.



Finally, the proposed leachfield should be sited so that it is 400 feet from the actual well location, since the map that was submitted to Madbury inaccurately places the well east of the building.

I hope this information is useful to the evaluation of your water supply well impacts. Please feel free to call with additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "D. Truslow", written over a light blue circular stamp.

Danna B. Truslow, PG, CG
Principal Hydrogeologist

References:

Mack, Thomas J. and Sean M. Lawlor, 1990, Geohydrology and Water Quality of Stratified Drift Aquifers in the Bellamy, Cochecho and Salmon Falls River Basins, Southeastern NH. USGS Water Resources Investigation 90-4161.

McEachran, Andrew, Damlan Shea, Wanda Bodnar, and Elizabeth Guthrie Nichols, 2016, Pharmaceutical Occurrence in Groundwater and Surface Waters in Forests Land Applied with Municipal Wastewater, Environmental Toxicological Chemistry, 35, pp. 898-905.

Schaider, Laurel A., Ruthann Rudel, Janet M. Ackerman, Sarah Dunagan and Julia Green Brody, 2014, Pharmaceutical, perfluorosurfactants, and other organic wastewater compounds in public drinking water wells in a shallow sand and gravel aquifer, Science of the Total Environment, Issue 468-469 pp. 384-393.

Schaider, Laurel A., Kathryn M. Rogers, Ruthann A. Rudel, 2017, Review of Organic Wastewater Compounds Concentrations and Removal in Onsite Wastewater Treatment Systems, Environmental Science and Technology, Issue 51, pp. 7304 – 7317.

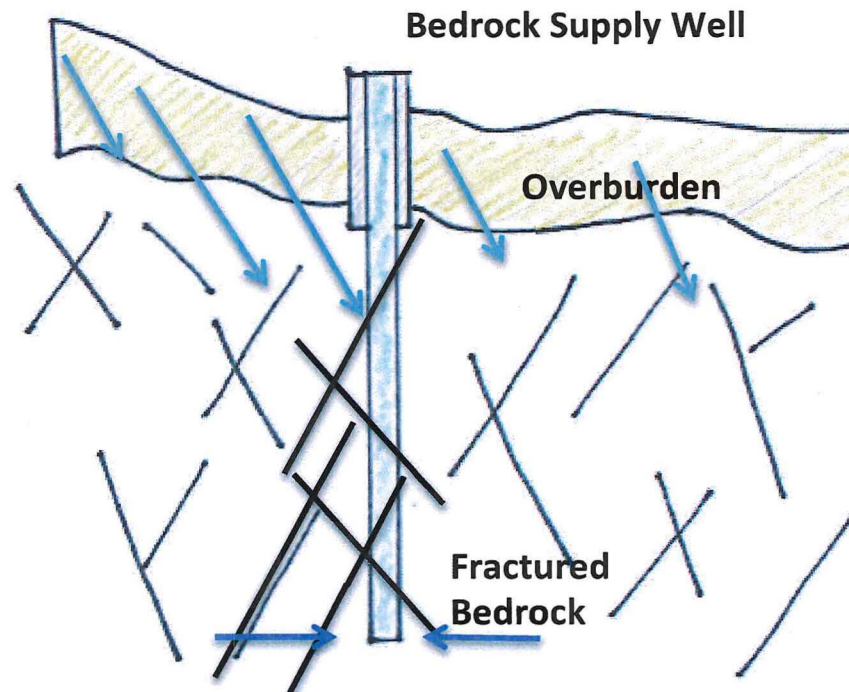
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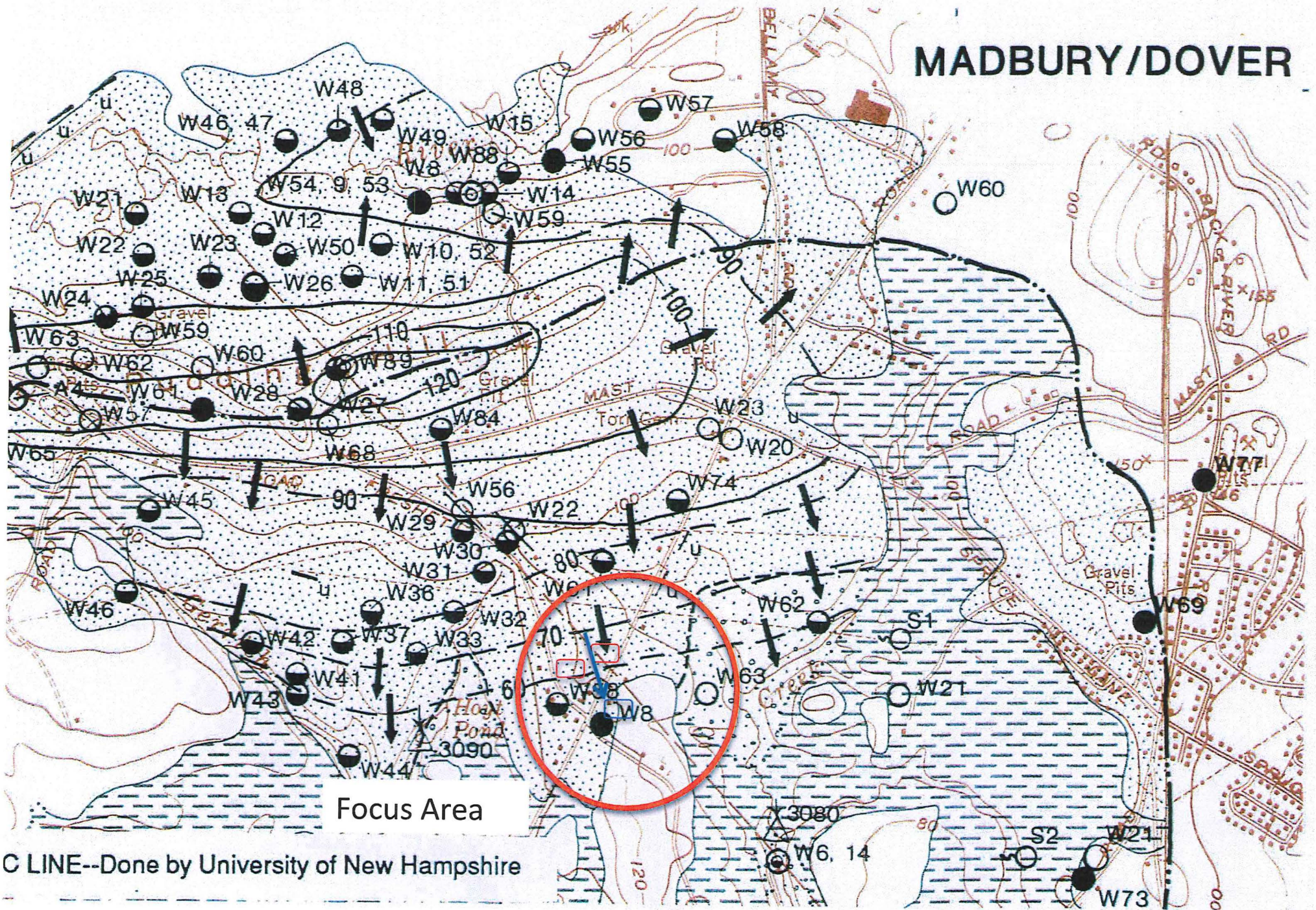
Bedrock Well Groundwater Flow

Groundwater flows to bedrock wells via fracture zones

- Casing driven to bedrock– open borehole in bedrock
- Yield based on needs of community/ business
- Overburden (unconsolidated material over bedrock) recharge to bedrock



MADBURY/DOVER



Focus Area

C LINE--Done by University of New Hampshire

Source: Mack and Lawlor, 1991



December 20, 2018

Ms. Sarah Greenshields, Director
Little Tree Education Center and Coldstream Properties LLC
314 Route 108
Madbury, NH 03823

Re: Supplemental Hydrogeologic Information - Johnson Creek Septic System Placement

Dear Ms. Greenshields,

I am providing some additional information regarding septic system function and information on some nearby wells.

Septic System Approval and Treatment

There was some discussion at the Zoning Board of Adjustment (ZBA) meeting last night about the approval of a septic system by NHDES. As you likely know, an approval by DES will confirm that State requirements including setbacks from water supply wells and lot lines, field design, soil suitability and field size are met based on the expected effluent flow rates. Conventional septic systems such as that specified for the Johnson Creek facility are designed to digest and/or separate solids from the effluent that then flows to the leach field. The percolation of effluent through the leach field helps to remove bacterial and other biological pathogens and to reduce or break down nutrients such as nitrogen and phosphorus. Other chemicals in the effluent are not specifically treated by the system but may be diluted or broken down by natural processes.

As stated in the my December 19, 2018 letter, recent studies completed in hydrogeologic settings similar to that in Madbury have shown that some of these organic wastewater compounds (OWCs) in septic field effluent from domestic and commercial septic systems and/or land application of treated municipal wastewater remain in groundwater and have been detected in monitoring and water supply wells (Elliot, et. al, 2018; Schaidler, et. al, 2014, Schaidler, et. al, 2017, McEachran et al, 2016).

This research reported that compounds that are most likely to be found in leachfield drain water or groundwater wells located downgradient are antibiotics, perflourinated compounds and flame retardants (PFAS), non-antibiotic prescription medication and the pesticide DEET. An assisted living facility can be expected to have a higher than normal use and discharge of prescription and non-prescription drugs which may either be excreted in human waste or mistakenly disposed to drains and toilets. Additionally a

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danna@truslowRC.com www.truslowRC.com



substantial use of cleaning products/disinfectants is also likely for sanitation at these facilities. A conventional septic system is not designed to treat or remove these chemical compounds from the septic system leachate.

Nearby Wells

I have compiled information on nearby domestic and public water supply wells based on information available in the NHDES One Stop database. This includes well completion reports that have been submitted to the state since 1984. There are likely other water supply wells installed prior to 1984 that are nearby, but are not listed in the DES database. Some of the nearby homes are older and do not appear to have wells listed in this database (24, 31, 34, 35 Freshet Road and 317 Route 108). Addresses, tax map and lot numbers are listed in the attached table along with depth and well yield/pumping rate provided by the well driller.

Finally, I had a brief conversation with Al Pratt of the City of Portsmouth Water Department and they will be evaluating the potential water quality impacts of the proposed septic system on the public water supply wells located at 60 Freshet Road in Madbury.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Danna', with a long horizontal stroke extending to the right.

Danna B. Truslow, PG, CG
Principal Hydrogeologist

cc: Elena Piekut, Planning Department, City of Dover, NH
Steve Haight, Civilworks



References:

Elliot, Sarah M., M. Erickson, A.L, Krall and B. Adams, 2018, Concentrations of pharmaceuticals and other micropollutants in groundwater downgradient from large on-site wastewater discharges, PLOS One (13) 11.

McEachran, Andrew, Damlan Shea, Wanda Bodnar, and Elizabeth Guthrie Nichols, 2016, Pharmaceutical Occurrence in Groundwater and Surface Waters in Forests Land Applied with Municipal Wastewater, Environmental Toxicological Chemistry, 35, pp. 898-905.

Schaider, Laurel A., Ruthann Rudel, Janet M. Ackerman, Sarah Dunagan and Julia Green Brody, 2014, Pharmaceutical, perfluorosurfactants, and other organic wastewater compounds in public drinking water wells in a shallow sand and gravel aquifer, Science of the Total Environment, Issue 468-469 pp. 384-393.

Schaider, Laurel A, Kathryn M. Rogers, Ruthann A. Rudel, 2017, Review of Organic Wastewater Compounds Concentrations and Removal in Onsite Wastewater Treatment Systems, Environmental Science and Technology, Issue 51, pp. 7304 – 7317.

**Water wells in NHDES OneStop database near Proposed Johnson Creek Septic System
Madbury, NH**

Well ID	Address	Tax Map	Lot	Total Depth (feet)	Depth to Bedrock below land surface (feet)	Tested Pumping Rate (gallons per minute)
67.0759	304 Durham Road, Dover	I	123	400	28	6
148.0044	23 Freshet Rd, Madbury	9	21A	362	11	7
148.0156	316 Rt 108 (Little Tree)	10	7	720	100	20
148.0202	49 Freshet Rd, Madbury	10	001C	623	7	18
148.0242	Hoyt Pond Rd (Sub Lot #4), Madbury	9	68	600	87	4
148.0243	" (Subdivision (Sub) Lot #6)	9	68	180	97	20
148.0251	" (Sub Lot #9) Madbury	9	68	600	47	1
148.0253	" (Sub Lot #3) Madbury	9	68	140	60	20
148.0254	" (Sub Lot #8) Madbury	9	68	440	63	8
148.0255	" (Sub Lot #2) Madbury	9	68	340	45	20
148.0256	" (Sub Lot #5) Madbury	9	68	640	92	15
148.0257	" (Sub Lot #10) Madbury	9	68	620	53	1
148.0324	60 Freshet Road, Madbury (City of Portsmouth)	9	12	93	NA	373
148.0326	11 Freshet Road, Madbury	9	20	420	135	15

From: Denis O. Robinson
Sent: Wednesday, January 2, 2019 4:45 PM
To: 'Piekut, Elena'; 'Danna Truslow'
Cc: 'Sarah Greenshields'; 'Victoria Bram'; 'Parker, Christopher G.'
Subject: RE: supplemetal comment letter - Johnson Creek project

Elena,

Thank you for your email. While I certainly respect the need for rules, the rules don't prohibit conversations that might be had with staff as opposed to the board generally. I would expect that as part of staff review of Danna's submittal that staff may have questions and may want or need additional information in order to provide informed feedback to the board – and there shouldn't be any harm to anyone in having staff fully informed on the concerns here. If the rules did prohibit such communication between an abutter and staff, that would be concerning in and of itself as abutters with technical or other concerns should be able to communicate with staff outside of a public hearing. I understand that the board gets to make the decision here – but feedback from staff carries a good amount of weight and should be fully informed.

Denis O. Robinson

PIERCE ATWOOD LLP

PH 603.373.2003

From: Piekut, Elena [mailto:E.Piekut@doover.nh.gov]
Sent: Wednesday, January 02, 2019 4:00 PM
To: Danna Truslow
Cc: Sarah Greenshields; Victoria Bram; Denis O. Robinson; Parker, Christopher G.
Subject: RE: supplemetal comment letter - Johnson Creek project

*****This message originated outside your organization*****

Thank you Ms. Truslow.

Ms. Greenshields and Atty. Robinson,

Unfortunately, similar to what Mr. Parker indicated about discussing your concerns with the Community Services Director after the public hearing has closed, it's not appropriate to provide this document to the Board at this point. I know we had briefly discussed otherwise, so I apologize.

The Zoning Board's rules of procedure address this in Article V, Section J.5:

5. The Applicant (or the Applicant's counsel or agent) shall be called by the Chair to present the application to the Board. Thereafter, those (or their counsel or agent) in favor of the application shall be allowed to speak. Once those in attendance in favor of the application have spoken, the Board shall hear those (or their counsel or agent) in opposition to the application. After those in opposition to the application have spoken, the Applicant (or the Applicant's counsel or agent) shall be allowed to speak in rebuttal. Once they have spoken in rebuttal, those in opposition (or their counsel or agent) shall be allowed to speak in final rebuttal. **Upon completion of the final rebuttal, questioning by the Board Members and presentation by the staff of the City's comments, if any, the public hearing shall be declared closed; and the Board shall deliberate on the application or defer action on the application to a later date and schedule a date for continuance. After close of the public hearing no further comment from Applicant, abutter, or any other member of the**

public shall be taken. (<http://www.dover.nh.gov/Assets/government/boards-commissions/zoning-board/document/ZBA%20Rules%20of%20Procedure%20-%20Adopted.pdf>)

As they closed the public hearing at last month's meeting, the Board is now in its deliberative process and reviewing only the additional comments they requested from staff.

The Assistant City Manager or I are happy to discuss further.

Sincerely,

Elena

Elena Piekut
Assistant City Planner
Zoning Administrator
City of Dover, NH
288 Central Avenue
Dover, NH 03820-4169
e: e.piekut@doover.nh.gov
p: 603.516.6008 f: 603.516.6049

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From: Danna Truslow [<mailto:danna@truslowrc.com>]
Sent: Thursday, December 27, 2018 7:33 AM
To: Piekut, Elena <E.Piekut@doover.nh.gov>
Cc: Sarah Greenshields <sarah@little-tree-education.com>; Victoria Bram <vicky@little-tree-education.com>; Denis O. Robinson <d robinson@pierceatwood.com>
Subject: supplemental comment letter - Johnson Creek project

Good morning

Attached is a supplemental letter that I prepared for the owners of Little Tree Education Center regarding septic system treatment of personal care and pharmaceutical products after the 12-20-18 ZBA meeting. The letter also provides a list of wells in the area of the proposed Johnson Creek assisted living facility project that are included in the NH Department of Environmental Services database.

Sincerely,

Danna Truslow

Please consider conserving our natural resources before printing this e-mail and/or any attachments.

This electronic message and any attachments may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. It is intended only for the use of the person and/or entity identified as recipient(s) in the message. If you are not an intended

recipient of this message, please notify the sender immediately and delete the material. Do not print, deliver, distribute or copy this message, and do not disclose its contents or take any action in reliance on the information it contains unless authorized to do so. Thank you.



ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE

Article I. Name

The name of the board is the Dover Zoning Board of Adjustment.

Article II. Authority and Duties

- A. These Rules of Procedure are adopted under the authority of New Hampshire RSA 676:1 and Chapter 5 (Boards, Commission, and Committees) and Chapter 170 (Zoning Ordinance) of the Code of the City of Dover, New Hampshire.
- B. The Zoning Board of Adjustment shall have duties and responsibilities pursuant to RSA Chapters 672-677. The members shall also perform the duties of a Building Code Board of Appeals pursuant to RSA 674:34.

Article III. Membership

- A. **Membership.** The Zoning Board of Adjustment shall consist of five (5) members and up to three (3) alternates, appointed by the City Council, in a manner prescribed by the Council, pursuant to RSA 673:3 and 673:6.
- B. **Terms of Membership.** Members shall be appointed to terms of three (3) years pursuant to RSA 673:5.
- C. **Alternates.** Alternates should attend all meetings to familiarize themselves with the workings of the Board so that they are ready to serve whenever a regular member is unable to fulfill his or her responsibilities. Alternate members shall substitute for regular members on any case when a regular member is absent or disqualified pursuant to RSA 673:14 and the Chair designates them to do so. See also Article III, paragraph E, and Article V, paragraph C.2.

On all other matters before the Board including but not limited to approval of meeting minutes, election of officers, and amendments to and/or the adoption of these Rules of Procedure, alternate members shall be permitted to deliberate and vote on such matters together with the regular members. This shall not, however, have any impact on the

ability of the Board to establish a quorum pursuant to Article V, Section C.1 below.

- D. Members must reside in Dover, New Hampshire and are expected to attend each meeting of the Board to fulfill their duties and responsibilities. Any member unable to attend a meeting shall notify the Chair or Clerk as soon as possible.
- E. Voting members shall be announced by the Chair prior to the consideration of the agenda item. Alternate members who are not voting may fully participate during the presentation of applications and the public hearing. Once the Board moves into deliberations, alternates may no longer participate.
- F. **Attendance, Vacancies and Removal.** All appointments to the Board shall serve for the terms appointed and until a successor shall have been appointed and qualified. Members who fail to attend four (4) meetings out of any twelve (12) consecutive meetings held without due cause may be recommended by the Board for replacement by the City Council. Such failure to attend shall be deemed sufficient cause for the City Council to remove the member pursuant to RSA 673:13. Appointments made to fill any vacancies shall be for full terms to begin the date of appointment by the appointing authority unless otherwise provided in state statute.

Article IV. Officers and Staffing

- A. A **Chair** shall be elected at the first regular meeting of the Board each new calendar year by a majority vote of the members of the Board in attendance. The Chair shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall sign documents on behalf of the Board.
- B. A **Vice-Chair** shall be elected at the first regular meeting of the Board each new calendar year by a majority vote of the members of the Board in attendance. The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters that come before the Board during the absence of the Chair.
- C. If the Chair and the Vice-Chair are not present, or cannot sit on a case due to a conflict of interest, then the Board shall elect a temporary Chair from its members for that particular case or meeting.
- D. The **Clerk** shall be the staff person designated by the Director of Planning and Community Development. If the City does not provide a staff person to perform the duties of the Clerk, then the Board may elect a temporary Clerk by majority vote of the members of the Board in attendance at the first regular meeting of the Board each new calendar year who shall serve as Clerk until approval and funding can be obtained to hire a dedicated Clerk as an employee of the City pursuant to RSA 673:16, I. The Clerk shall maintain a record of all meetings, transactions, and findings of the Board, as approved by the Board.
- E. All officers shall serve a term that expires at the first regular meeting of the Board each

new calendar year and shall be eligible for re-election.

Article V. Procedures

A. Site Visits.

1. Members may make site visits before the public meeting, if authorized by the Applicant. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board.
2. At no time shall more than two (2) members of the Board be present simultaneously during a site visit unless the site visit has been called as a public meeting and proper public notice as required by New Hampshire statutes has been given. Other than observations of the site, no evidence shall be taken; and there will be no discussions of the evidence or deliberations at such site visits.

B. Meetings.

1. Regular meetings shall be held at a municipal building at 7:00 p.m. on the third Thursday of the month. Other meetings may be held on call of the Chair. All meetings shall comply with the public notice provisions of RSA 91-A:2, II.
2. A maximum of six (6) Applicant related items, which includes the combination of new applications and old business, shall be placed on the agenda for each monthly meeting, unless the Chair approves additional items. If no applications have been submitted to the Planning Department and there is no other business, the regularly scheduled monthly meeting may be canceled by the Chair.
3. The order of business for regular meetings of the Board shall be as follows:
 - a. Call to order by the Chair
 - b. Board and Staff Introductions by the Chair
 - c. Approval of minutes from the previous meeting
 - d. Changes to the Agenda/Special Announcements
 - e. Old Business
 - f. New Business – Disposition of new applications under consideration
 - g. Other Board Business
 - h. Adjournment
4. Nonpublic meetings. If required, the Board may conduct nonpublic meetings pursuant to the laws of the State of New Hampshire. The Chair shall conduct nonpublic meetings utilizing the Checklist prepared by General Legal Counsel for nonpublic meetings.

- B. Appeals.** Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of

the decision. Any appeal made after this deadline will not be considered timely.

C. Quorum and Alternates.

1. A quorum for all meetings of the Board shall be three (3) regular members, which includes alternates sitting in place of regular members, as designated by the Chair on a case by case basis before the public hearing.
2. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting. The Chair shall use his or her reasonable discretion in choosing alternates, but shall endeavor to do so on a rotating basis, where possible and appropriate.
3. If there are less than five (5) members (including alternates) present, the Chair shall give the option to proceed or not to the Applicant. Should the Applicant choose to proceed with less than five (5) members present that shall not constitute grounds for a rehearing should the application fail.

D. Parliamentary Authority. All Meetings are conducted in accordance with Robert's Rules of Order, Eleventh Edition or later edition.

E. Minutes. Minutes shall be kept for all meetings of the Board. The minutes shall be kept in accordance with RSA 91-A and shall include the names of the members in attendance, persons appearing before the Board, all actions and motions coming before the Board including the votes of the members, and a general summary of all discussions. Draft minutes shall be provided to the City Clerk in accordance with RSA 91-A; minutes of public meetings shall be provided within five (5) business days of each meeting, and minutes of non-public meetings that have not been sealed pursuant to RSA 91-A:3 shall be provided within seventy-two (72) hours, for posting on the City website in draft form. Draft minutes shall be clearly marked "DRAFT". Draft minutes, with or without revisions, shall be approved by the Board at the next meeting of the Board or as soon as possible. Final approved minutes shall be provided to the City Clerk for posting on the City website.

F. Recording of Meetings. Recording of meetings shall be in accordance with Chapter 5 of the Dover Code ("Board, Commissions and Committees"), Section 5-1.M.

G. E-mail accounts. Board members may obtain a City of Dover e-mail address or use their own account to facilitate communications regarding meetings, agendas and the dissemination of information. Board members shall refrain from using e-mail to discuss the substance of any issue before or expected to be before the Board. Members shall not use email with other members where the e-mail discussion directly or indirectly involves a quorum of the Board. It is recommended that Board Members refrain from using the "reply all" feature of the email. In addition Board members shall refrain from conducting the official business of the Board outside the view of the

public and the press unless permitted by state law.

H. **Member Disqualification**

1. If any member finds it necessary to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, the member shall notify the Chair as soon as possible so that the Chair can designate an alternate to sit in the disqualified member's place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to make a non-binding vote on the question of disqualification; only the member can disqualify himself or herself. Any such request shall be made before the beginning of the public hearing. The Board's vote shall be advisory and non-binding.
2. Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. A disqualified member shall not sit with the Board during the public hearing and during all deliberations on the case.

I. **Applications**

1. **Applications.** Each application for a hearing shall be made on forms approved by the Board and provided by the Planning Department to the Applicant. At each meeting of the Board, the Clerk shall provide the Board with all applications received by the Planning Department which have been received no less than twenty-one (21) days before the date of the hearing.

All application forms for the Zoning Board of Adjustment, and any revisions thereto, shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.

2. **Fees.** Pursuant to RSA 673:16,II, all expenses incurred by the Board in connection with any Application shall be borne solely by the Applicant, including but not limited to fees and any expenses incurred for consultant services or investigative studies (as authorized by RSA 676:5,IV), unless otherwise waived by the Board for reason of special circumstance upon written request of an Applicant.
3. **Public Notice.** Public notice of hearings on each application shall be given in the Foster's Daily Democrat and shall be posted in two (2) public places not less than ten (10) days before the date of the hearing. Notice shall include the Applicant's name, description of the subject property, action desired by the Applicant, provisions of the zoning ordinance concerned, the type of relief being sought and the date, time and place of the hearing. Personal notice of the hearing shall be made by certified mail to the Applicant and all abutters not less than ten (10) days before the date of the hearing. Notice shall also be given to the Planning Board,

City Clerk and other parties deemed by the Board to have special interest in the application. The Applicant shall pay in advance for the cost of all required notice.

The Applicant must post near the front lot line of their property in clear view from the Street, the poster provided to them by the Planning Department. The poster must be posted no later than five (5) days before the hearing at which their application will be presented. If the poster is not posted, the Board may deem that as cause to disqualify the application.

J. Public Hearing. The conduct of public hearings shall be governed by the following rules:

1. The Chair shall open the public hearing by reading the public notice referring to the application.
2. Members of the Board may ask questions at any point during testimony after recognition from the Chair.
3. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
4. Everyone who speaks and is not a member of the Board or an advisor to the Board, shall be required to state his or her name and address and indicate whether he or she is a party to the case, an abutter or an agent or counsel to a party or an abutter.
5. The Applicant (or the Applicant's counsel or agent) shall be called by the Chair to present the application to the Board. Thereafter, those (or their counsel or agent) in favor of the application shall be allowed to speak. Once those in attendance in favor of the application have spoken, the Board shall hear those (or their counsel or agent) in opposition to the application. After those in opposition to the application have spoken, the Applicant (or the Applicant's counsel or agent) shall be allowed to speak in rebuttal. Once they have spoken in rebuttal, those in opposition (or their counsel or agent) shall be allowed to speak in final rebuttal. Upon completion of the final rebuttal, questioning by the Board Members and presentation by the staff of the City's comments, if any, the public hearing shall be declared closed; and the Board shall deliberate on the application or defer action on the application to a later date and schedule a date for continuance. After close of the public hearing no further comment from Applicant, abutter, or any other member of the public shall be taken.
6. Any person who speaks at a public hearing, other than the Applicant or an abutter, should clearly demonstrate and explain to the Board how he or she is affected directly by the proposal under consideration.
7. Any person who wants the Board to compel the attendance of a witness shall present his or her request in writing to the Chair not later than three (3) days prior to the public hearing.

K. Decisions. Decisions of the Board shall be governed by the following rules:

1. Any decision made by the Board that is in favor of the Applicant shall require three (3) votes, including the approval of any conditions.
2. The application shall be approved or denied based upon a majority vote by the members of the Board hearing the application. In the event an application is heard by only three (3) members, an affirmative vote shall require all three (3) votes.
3. The Board shall decide all cases within 31 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal.
4. All decisions shall be documented on a form that is approved by the ZBA. If the appeal is denied, the notice shall include the reasons therefore.
5. The Board has the authority to attach reasonable conditions in the granting of any relief. These reasons include, but are not limited to, those necessary to preserve the spirit of the Ordinance. The placing of conditions may also be designed to protect the adjacent landowners, preserve the essential character of neighborhoods, secure the basic values of the master plan, and attempt to provide that substantial justice is done. However, the condition or conditions must be related to the use of the land and not to the personal circumstances of the Applicant. Reasonable conditions shall also include the authority to make the decision conditional on placing on deposit with the City, in the manner provided by RSA 673:16 (II), sums of money to ensure compliance with such conditions. The conditions must be adhered to otherwise the granting of the appeal will be revoked. If the Board finds it necessary to attach conditions they must be spelled out in detail in the Board's decision. Pursuant to RSA 676:15 and 676:17 the Board may seek Injunctive Relief, a Fine, or both for the violation of a condition.
6. Notification of the decision shall be sent to the Applicant, shall be filed in the records of the Board, and shall be available to the public within five (5) business days.

L. Voting: The Chair may assign the task of making a motion to any Board member, or such motion may be made by any voting member. Should a motion result in a tie vote or not receive the necessary three (3) votes to decide in favor of the Applicant, the opposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.

M. Reconsideration by the Board: The Board may reconsider a decision to grant or deny an application, or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per *74 Cox Street, LLC v. City of Nashua*, 156 N.H. 228 (N.H. 2007). Motions for Rehearing can only be received at the Planning Department during normal business hours. See *Cardinal Development v. Winchester*, 157 N.H. 710 (N.H. 2008).

- N. Motions for Rehearing:** If the Board grants a motion for rehearing, a new public hearing shall be held within thirty (30) days of the decision to grant the rehearing, provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

Article VI. Joint Meetings and Hearings

- A.** RSA 676:2 provides that the Board may hold joint meetings or hearings with other “land use boards”, including the Planning Board, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
- B.** Joint meetings with any other land use board may be held at any time when called jointly by the Chairs of the two Boards.
- C.** A public hearing on any application before the Board of Adjustment will be held jointly with another board only under the following conditions:
1. The joint public hearing must be a formal public hearing on applications to both boards regarding the same subject matter; and
 2. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and
 3. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and
 4. The other board shall concur in these conditions.

Article VII. Amendment of Rules.

These Rules of Procedure may be amended by a majority vote of the members provided that such amendment is presented at the meeting immediately preceding the meeting at which the vote is to be taken.