



TOWN OF EXETER, NEW HAMPSHIRE

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 772-4709
www.exeternh.gov

LEGAL NOTICE EXETER PLANNING BOARD AGENDA

The Exeter Planning Board will meet virtually via ZOOM (see connection info below*) on Thursday, June 11, 2020 at 7:00 P.M. to consider the following:

APPROVAL OF MINUTES: May 28, 2020

NEW BUSINESS: PUBLIC HEARINGS

Continued public hearing on the application of Brian Griset for review of a Yield Plan in conjunction with a proposed 16-unit single-family condominium open space development and associated site improvements on property located off of Tamarind Lane and Cullen Way. The properties are located in the R-1, Low Density Residential and NP-Neighborhood Professional zoning districts. Tax Map Parcel S #96-15 and #81-53. Case #20-2.

OTHER BUSINESS

- Garrison Glen, LLC – PB Case #17-29
Request for extension of conditional approval for 24 Continental Drive, TM #56-3.1

EXETER PLANNING BOARD

Langdon J. Plumer, Chairman

Posted 05/29/20: Exeter Hall kiosk and Town of Exeter Website

***ZOOM MEETING INFORMATION:**

Virtual Meetings can be watched on Channel 22 and on Exeter TV's Facebook and YouTube pages.

To participate in public comment, click this link: <https://exeternh.zoom.us/j/87028074341>

To participate via telephone, call: +1 646 558 8656 and enter the Webinar ID: 870 2807 4341

Please join the meeting with your full name if you want to speak.

*Use the "Raise Hand" button to alert the chair you wish to speak. On the phone, press *9.*

More instructions for how to participate can be found here: <https://www.exeternh.gov/townmanager/virtual-town-meetings>

Contact Bob Glowacky at rglowacky@exeternh.gov or 603-418-6425 with any technical issues.

**TOWN OF EXETER
PLANNING BOARD
MAY 28, 2020
VIRTUAL MEETING
DRAFT MINUTES**

Zoom ID: 867 9311 9492

Phone: 1 646 558 8656

I. PRELIMINARIES:

BOARD MEMBERS PRESENT BY ROLL CALL: Chair Langdon Plumer, Pete Cameron, Clerk, Gwen English, John Grueter, Jen Martel, Molly Cowan, Select Board Representative, Pete Steckler, Alternate, and Nancy Belanger, Alternate.

STAFF PRESENT: Town Planner Dave Sharples and Kristen Murphy, Natural Resource Planner

II. CALL TO ORDER: Chair Plumer called the meeting to order at 7:04 PM and read out loud the meeting preamble which indicated that an emergency exists and the provisions of RSA 91-A:2 III (b) are being invoked. As federal, state and local officials have determined gatherings of ten or more people pose a substantial risk to the community and the meeting imperative to the continued operation of Town and government and services which are vital to public, health, safety and confidence. This meeting will be conducted without a quorum physically present in the same location and welcome members of the public accessing the meeting remotely.

III. OLD BUSINESS

APPROVAL OF MINUTES

May 14, 2020 - Tabled

Mr. Grueter motioned to table approval of the May 14, 2020 minutes. Mr. Cameron seconded the motion. A roll call vote was taken, Cameron – aye, Plumer – aye, Grueter – aye, English – aye, Martel – aye, Cowan – aye, Steckler - aye. With 7 in favor, approved 7-0-0.

IV. NEW BUSINESS

PUBLIC HEARINGS

1. The application of Gateway at Exeter, LLC for a proposed lot line adjustment and subdivision at 170 Epping Road. The lot line adjustment will transfer 2.10 acres of land from Tax Map parcel #47-7 to Tax Map parcel #47-6; and subsequently a proposed subdivision of Tax Map parcel #47-7 into two lots in conjunction with a mixed use development being proposed for the site.
C-3, Epping Road Highway Commercial zoning district

42 PB Case #19-15

43

44 2. The application of Gateway at Exeter, LLC for a site plan review and a Wetlands Conditional Use
45 Permit for the proposed construction of a mixed-use development at 170 Epping Road (TM #47-6 and
46 #47-7). The proposal includes a 224-unit multi-family residential complex, a 2-story 48,560 square foot
47 mixed use building that may include a 20,040 YMCA day care facility, office/retail space and possibly a
48 restaurant along with associated site improvements.

49 C-3, Epping Road Highway Commercial zoning district

50 PB Case #19-16

51

52 Mr. Sharples indicated the cases are ready to be heard.

53

54 **Mr. Grueter motioned to open both cases for review. Mr. Cameron seconded the motion. A roll call**
55 **vote was taken – Plumer – aye, Grueter – aye, Steckler – aye, Cameron – aye, English – aye, Martel –**
56 **aye and Cowan – aye. With all in favor, the motion passed 7-0-0.**

57

58 Mr. Cameron noted the two cases are interconnected. If the lot line adjustment is denied, then #19-16
59 cannot move forward.

60

61 Mr. Sharples indicated the applicant is seeking lot line adjustment with subdivision into three lots. The
62 applicant has submitted a CUP application. There are three multifamily buildings proposed with
63 approximately 50,000 SF in the C-3 zone.

64

65 The applicant went to the ZBA and got relief. Part of it was affordability component. The applicant
66 appeared before the Planning Board for design review on October 10. Comments regarding wildlife
67 corridor in rear portion of site. The applicant appeared before Conservation Commission twice and also
68 before the TRC. The comment letters are provided.

69

70 The applicant is requesting eight waivers, CUP and Site Plan application. A traffic study was done but
71 was deemed insufficient by scope and was asked to expand the scope, developer a corridor study. The
72 application triggers review from DOT as well because it impacts the state right of way.

73

74 If the Board wishes to act Mr. Sharples indicated he has prepared Conditions of Approval but don't feel
75 it is appropriate to have conditions of approval in light of traffic study insufficiencies.

76

77 Jim Petropulos indicated he is representing Tom Monahan who is present. Dave Tencza, Brendan
78 Quigley, Mark Fouger are here as well.

79

80 Mr. Petropulos noted there is a simple lot line adjustment plan and site plan. The property was
81 purchased in 2018. There have been numerous development proposals on this property. The idea was
82 to develop front and back part of project and convey back part to Town. The ZBA granted variances to
83 allow multifamily residence in this area (mixed use) workforce housing for thirty years with 60 acres, a
84 small house lot along Epping Road, 700' of frontage on Epping Road. The property is fairly flat. Wetland
85 flagging was done on the front 20 acres and there were no less than ten vernal pools. The lot line is

86 being relocated between small lot and parent lot. There are 43.5 acres of backland to remain
87 untouched and mixed development of two multifamily residential buildings and a commercial building
88 with retail spaces, offices and a daycare facility.

89

90 Mr. Petropulos indicated the YMCA is interested in the space. There will be 98 parking spaces on Lot 6.
91 Lot 7 will contain multifamily residential portion of property with 322 total spaces there. Common areas
92 will be shared off Epping Road with notion of shared parking and home delivery van spots. Stormwater
93 would be captured in two places. The project will be well vegetated. Open space will be 59%. Lighting
94 will be dark sky compliant. Landscape plan is provided. Fiscal Impact Report is provided estimating
95 revenues and evaluates impact to Town facilities. The addition of workforce housing will help. The
96 traffic study determined impact to corridor and site distance of two driveways. There are plans to do
97 corridor study along Epping Road. The Town voted to add a center town lane closer to Continental
98 Drive. Construction will be phased to show what site improvements will go with each part of the
99 building. Will work within Conservation overlay district and have further discussions on TRC comments.

100

101 Ms. English noted she saw what appeared to be a body of water on the plan. Mr. Petropulos noted that
102 area is a combination of upland and wetland with no defined outlet.

103

104 Ms. Martel asked about identifying endangered species and Mr. Quigley indicated a species of Bearded
105 Iris. Fish & Game asked them to include spotted turtles in the endangered species list but the
106 Conservation Commission identified a wood turtle.

107

108 Mr. Quigley noted to protect the endangered species that they address design requirements with
109 stormwater management.

110

111 Ms. Martel asked about parking counts and shared parking and Mr. Petropulos indicated they are
112 requesting a waiver for the parking count. 538 spaces are required and 420 are proposed. Mr.
113 Petropulos did a study on percent usage during different times and according to those calculations the
114 requirement would be just under 400 spaces. Mr. Petropulos indicated he reached out to the director
115 of the YMCA concerning the daycare and there would be one bus per day that enters, parks in the aisle
116 and drops off kids. Mr. Petropulos noted it would be a condition if a restaurant were to come into the
117 development they would have to go back to the Planning Board.

118

119 Mr. Plumer asked about the number of employees and Mr. Petropulos noted there would be 40
120 employees. Mr. Petropulos added in terms of a restaurant that people would not be inclined to do
121 business there without adequate parking.

122

123 Mr. Grueter asked about recreation and Mr. Petropulos noted there is 59% open space with fire pits and
124 a pool. Mr. Petropulos indicated there are 168 one-bedroom apartments and 56 two-bedroom. There
125 are no three-bedrooms.

126

127 Mr. Steckler expressed concerns with the east-west connectivity and NH Fish and Game Wildlife area
128 because that is the last undeveloped spot on Epping Road and an important area for wildlife. Mr.
129 Steckler noted the wetlands on the site are more valuable than the applicant has indicated. Mr. Steckler

130 asked if there were any vernal pool species in the body of water Ms. English noted on the plan and Mr.
131 Quigley noted there was not much potential for movement to and from the Town Forest. Mr.
132 Petropulos added there is 700' of frontage on Epping Road where the wildlife area is but a good half of
133 that is already developed land. Mr. Quigley noted minnow traps were deployed which mainly found the
134 presence of predatory frogs which explained the lack of vernal species and no egg masses were found.

135

136 Ms. English asked if the tree cutting done years ago may have affected the viability of those pools and
137 Mr. Quigley indicated that activity helps rather than decreases it.

138

139 Ms. English asked about the phased construction of buildings and Mr. Monahan noted the intention was
140 to do the buildings at the same time with phasing done for financial purposes.

141

142 Ms. English asked if the road to the YMCA would be public and Mr. Petropulos noted all proposed roads
143 would be private.

144

145 Ms. English asked if underground parking was considered and Mr. Petropulos indicated it wasn't
146 financially viable.

147

148 Ms. Martel asked about trash removal and moving vans and Mr. Petropulos indicated there is a good
149 turning radius throughout designed for fire apparatus and would look into moving van loading spaces.

150

151 Mr. Cameron asked the status of the traffic study and Mr. Sharples noted it was in the works as the
152 study initially provided was deemed inadequate by the TRC.

153

154 Mr. Plumer indicated the DOT should be involved with the traffic study. Mr. Sharples indicated the
155 applicant was asked to include the Route 101 interchange in the study and that was not done in the
156 original study.

157

158 Mr. Petropulos indicated waivers are being requested for:

159

- 160 • 7.5.4 High Intensity Soil Survey (HISS) – to provide site specific mapping required for AOT permit
- 161 • 9.7.5.5 Landscape Islands within Parking Lots
- 162 • 9.9.2 Working within 75' buffer of poorly drained soils – identical to wetlands CUP. Applicant
163 did a function and values assessment and has a mitigation proposal.
- 164 • 9.12.1 Requirement of five loading docks – more industrial than commercial, noted companies
165 like Amazon are doing deliveries and have designated spots for such
- 166 • 9.13.1 Parking Spaces
- 167 • Granite Curbing – using concrete where sidewalks
- 168 • 11.3.4 Recreation Space waiver. Recreation space require 90,000 SF of space and the applicant
169 is conveying 43 acres to the Town which can be used for passive recreation.
- 170 • 11.7.2 Impact Fee waiver.

171

172 Ms. Martel asked to provide a diagram showing distinction between curbing. Mr. Steckler indicated the
173 initial UEI letter did not recommend waivers for parking, loading and recreation space. Mr. Sharples
174 indicated the Board would be receiving an updated letter from UEI.

175

176 Ms. Belanger asked about the Conservation Commission opinion about the back area discussed at the
177 last meeting concerning recreation space and access to the area. Ms. Murphy noted passive recreation
178 was discussed at the last meeting and there was potential for limited passive recreation but wanted to
179 defer to a site walk. The public access and trail parking would be discussed at the next meeting. Mr.
180 Plumer asked about a possible access point off Continental Drive. Ms. Murphy indicated there is a
181 Conservation easement there and it is very wet and steep. Ms. Murphy noted there are no existing
182 trails on the property.

183

184 Mr. Grueter asked about the Impact Fee Waiver and justification and Mr. Monahan indicated it was
185 about keeping the cost down for workforce housing with 56 units for workforce. Mr. Tencza noted they
186 were requesting a full waiver due to the land being conveyed to the Town and the applicants believe the
187 value of the land exceeds the impact fees.

188

189 Mr. Grueter asked about the per unit impact fee. Mr. Fougier indicated \$711 per unit for recreation.
190 The calculation is from 2003. An easement could be provided to access the recreation space. Mr.
191 Sharples noted the calculations were updated in 2009 but found no record of it being adopted.

192

193 Mr. Plumer asked about any deadlines and Mr. Monahan indicated there has been no change despite
194 circumstances. The deadline as of now is the end of June.

195

196 Mr. Petropulos indicated he was okay with tabling until the 25th so the traffic study could be done.

197

198 ***Mr. Cameron motioned to table Planning Board Cases #19-15 and #19-16 to June 25, 2020 at 7:00 PM.***
199 ***Ms. Martel seconded the motion. A roll call vote was taken Plumer – aye, Cameron – aye, Steckler –***
200 ***aye, Grueter – aye, English – aye, Martel – aye, Cowan – aye. With all in favor, the motion passed 7-0-***
201 ***0.***

202

203 **V. OTHER BUSINESS**

204

205 Mr. Sharples indicated he is having an intern from UNH working on a greenhouse gas inventory.

206

207 **VI. TOWN PLANNER'S ITEMS**

208 **Field Modifications**

209 **Announcements**

210 **VII. CHAIRPERSON'S ITEMS**

211 **VIII. PB REPRESENTATIVE'S REPORT ON "OTHER COMMITTEE ACTIVITY"**

212 **IX. ADJOURN**

213 ***Mr. Grueter moved to adjourn at 9:47 PM. Mr. Steckler seconded the motion. A roll call vote was***
214 ***taken, Cameron – aye, Plumer – aye, Grueter – aye, English – aye, Martel – aye, Cowan – aye, Steckler***
215 ***- aye. With all in favor, the motion passed unanimously.***

216 Respectfully submitted,

217 Daniel Hoijer,
218 Recording Secretary



TOWN OF EXETER

Planning and Building Department

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 772-4709

www.exeternh.gov

Date: June 4, 2020
To: Planning Board
From: Dave Sharples, Town Planner
Re: Brian Griset Yield Plan PB Case #20-2

As previously noted, the applicant has submitted a Yield Plan in advance of an Open Space Development as required per Section 7.7.1 of the Zoning Ordinance that states: "The dwelling unit density shall be determined using a "Yield Plan" which shall be provided by the applicant and reviewed and accepted by the Planning Board prior to proposing an Open Space Development Plan." The subject parcel is located off of Tamarind Lane and Cullen Way, in the R-1, Low Density Residential district and is identified as Tax Map Parcel #96-15.

The Applicant appeared before the Board at the May 14th, 2020 meeting to discuss the Yield Plan. The public hearing was opened and abutter comments were received. The Board tabled further discussion on the application to the June 11th, 2020 meeting to provide the Applicant adequate time to submit supplemental materials supporting the application.

Subsequently, we have received a letter, dated 6/1/20, from the abutting property owners of 8 Tamarind Lane, Anne and Patrick Flarety, expressing their support of the Applicant's plan. The letter is enclosed for your review. I also received an email dated June 5, 2020 from Allison Rees that I also enclosed that clarifies her statements made in an earlier email.

Prior to the Board voting on the Yield Plan, I would recommend that they go through the criteria for the waivers and vote to grant or deny the waivers. The applicant has supplied a letter with enclosures dated June 3, 2020 that sets forth their position on the waivers. The criteria for granting the perimeter buffer waiver is set forth in Section 9.6.2 that states: "The Board may approve a partial or total waiver to the buffer strip if the configuration or location of the parcel, with consideration of abutting properties, warrants flexibility to the proposed green space." The waiver from Section 7.13 is governed by section 13.7 and the applicant's letter noted above sets forth the arguments regarding this request. Please note that the letter argues a waiver is not needed and requests that the board consider

this question at the meeting. I would recommend the Board discuss if the criteria is being met prior to acting on the perimeter waiver and then discuss if the board feels that a waiver is needed from Section 7.13 and proceed accordingly. If the Board grants the waiver(s), then the Board can proceed to a vote on the Yield Plan. I have provided motions below for your convenience.

Waiver Motions

Perimeter Buffer Waiver Motion: After reviewing the criteria to waive a portion of the 100' perimeter buffer strip in accordance with Section 9.6.1.2 of the Site Plan Review and Subdivision Regulations, I move that the waiver request of Brian Griset (PB Case #20-2) be APPROVED / APPROVED WITH THE FOLLOWING CONDITIONS / TABLED / DENIED.

Yield Plan waiver motion: After reviewing the criteria for granting waivers, I move that the request of Brian Griset (PB Case #20-2) for a waiver from the requirement to provide a Yield Plan that shall not require a variance from existing zoning ordinances be APPROVED / APPROVED WITH THE FOLLOWING CONDITIONS / TABLED / DENIED.

Planning Board Motions

Yield Plan Motion: I move that the request of Brian Griset (PB Case #20-2) for Yield Plan approval of a ____ unit Single Family Open Space development be APPROVED / APPROVED WITH THE FOLLOWING CONDITIONS / TABLED / DENIED.

Thank You.

Anne and Patrick Flaherty
8 Tamarind Lane
Exeter, NH 03833
June 1, 2020

Dear members of the Town of Exeter Planning Board:

We live at 8 Tamarind Lane in Exeter. Our property abuts that of Mr. Brian Griset, who has filed a Yield Plan in advance of submitting his plans for an open space development (PB Case # 20-2).

We have worked with Mr. Griset on an agreement related to the site plan for the proposed open space development. We recognize that this current hearing is on the Yield Plan, and not the site plan itself, so our comments do not address any specifics of the proposal for the open space development and site plan. We will withhold those comments for the relevant Planning Board session.

We submit this letter of support for the Yield Plan with the understanding that the Yield Plan is a required component of the process for the proposed open space development. We also recognize that the Yield Plan depictions are not actually intended to be built, but the properties must be viable and feasible under conventional design.

The Yield Plan depicts single family homes, which are reasonable and allowed in the R-1 and NP districts. As abutters to homes depicted on the Yield Plan, we would not oppose a waiver to allow for a 50' rather than a 100' buffer as requested by Mr. Griset for the purpose of building single family homes.

During the May 14 Planning Board meeting, there was a question about the right of way across our property. We confirm that there is a legal, deeded right of way across our property over which Mr. Griset has access to his property. The Yield Plan depicts access to potential units over our property using this legal right of way.

Thank you for your consideration.

Sincerely,

Anne and Patrick Flaherty

RECEIVED

JUN 1 2020

EXETER PLANNING OFFICE



Barbara Mcevoy <bmcevoy@exeternh.gov>

Fwd: Tamarind Lane yield plan

1 message

David Sharples <dsharples@exeternh.gov>
To: Barbara Mcevoy <bmcevoy@exeternh.gov>

Fri, Jun 5, 2020 at 10:20 AM

----- Forwarded message -----

From: Allison Rees <arees@underwoodengineers.com>
Date: Fri, Jun 5, 2020 at 9:59 AM
Subject: RE: Tamarind Lane yield plan
To: David Sharples <dsharples@exeternh.gov>

Dave,

In response to your request for clarification of my comment which I highlighted below, I would like to amend my choice of the word "buildable" to the word "desirable".

Thank you,

Allison

**Allison Rees, P.E.***Senior Project Engineer***Underwood Engineers**

99 North State Street

Concord, NH 03301

(603) 230-9898

From: Allison M. Rees <arees@underwoodengineers.com>**Sent:** Thursday, March 5, 2020 10:57 AM

To: 'David Sharples' <dsharples@exeternh.gov>

Subject: RE: Tamarind Lane yield plan

Dave,

Although in practicality, some of these lots would not be buildable, on paper they appear to meet the requirements. I have no further comments.

Thank you,

Allison



Allison Rees, P.E.

Senior Project Engineer

Underwood Engineers

99 North State Street

Concord, NH 03301

(603) 230-9898

From: David Sharples [mailto:dsharples@exeternh.gov]

Sent: Thursday, March 5, 2020 10:43 AM

To: Allison M. Rees <arees@underwoodengineers.com>

Cc: Christian Smith <CSmith@bealsassociates.com>

Subject: Re: Tamarind Lane yield plan

Hi Allison,

Our regulations do not stipulate a building envelope for yield plans. However, on two prior applications (Rose Farm and 98 Linden St), the PB discussed this issue and decided that a minimum of a 25' x 25' building envelope is what needs to be shown. I understand that most homes do not fit into this footprint and likely every home that gets built if this project gets that far will be larger than that but that is what the PB settled on as a minimum building envelope acceptable for yield plan purposes.

Thanks,

Dave

On Thu, Mar 5, 2020 at 10:36 AM Allison M. Rees <arees@underwoodengineers.com> wrote:



Barbara Mcevoy <bmcevoy@exeternh.gov>

Yesterday's Filing

1 message

Justin L. Pasay <jpasay@dtclawyers.com>

Thu, Jun 4, 2020 at 11:50 AM

To: Barbara McEvoy <bmcevoy@exeternh.gov>

Cc: David Sharples <dsharples@exeternh.gov>, Stephanie Carty <scarty@dtclawyers.com>

Hi Barb – thanks so much for meeting Steph yesterday to retrieve our filing. I noticed last night that in the first paragraph of page 12, where I reference the property identified as Town Tax Map 96, Lot 16, I also referenced that property as [35 Tamarind Lane](#), which is incorrect. The actual address is [28 Tamarind Lane](#). I'll correct that mistake on the record at the Planning Board hearing next week. Thank you and have a great weekend!

Best,

Justin

Justin L. Pasay, Esq.

Donahue, Tucker & Ciandella, PLLC

111 Maplewood Ave., Suite D

Portsmouth, NH 03801

Phone (603) 766-1686

Fax (603) 766-1687

Email: jpasay@dtclawyers.comWeb: www.dtclawyers.com**Visit our website:** www.dtclawyers.com

Now with offices in Exeter, Portsmouth and Meredith, NH

Please Note: Our Exeter office has moved to 16 Windsor Lane, Exeter, NH 03833. For directions, please click [here](#).

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CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

3 June 2020

Langdon Plumer, Chairman
Town of Exeter Planning Board
10 Front Street
Exeter, NH 03833

RECEIVED

JUN 3 2020

Re: Supplemental Filing, Planning Board Case #20-2

EXETER PLANNING OFFICE

Dear Chairman Plumer and Members –

This supplemental filing in the above captioned matter follows the 14 May 2020 Planning Board hearing and is intended to:

- 1) Address an issue that was raised by a member of the public regarding application of Section 7.13 of Site Plan Review and Subdivision Regulations for the Town of Exeter New Hampshire (the “Regulations”) to the revised yield plan which is filed herewith and is being considered by the Planning Board in this case (the “Yield Plan”) (“Issue 1”);
- 2) Address a comment made by Alison Rees of Underwood Engineering, Inc., which is referenced in the meeting package provided to the Planning Board by David Sharples, the Town Planner (“Mr. Sharples”), in advance of the 14 May 2020 meeting and was discussed at that meeting (“Issue 2”);
- 3) Formalize the Grisets’ waiver request from Section 7.13 of the Regulations (“Issue 3”);
- 4) Formalize the Grisets’ partial waiver request from Section 9.6.1.2 of the Regulations to permit a 50’ perimeter buffer strip on Lot 5 where 100’ is required in the R-1 District (“Issue 4”).

Analysis

1) Issue 1

a. Executive Summary

Section 7.13 of the Regulations describes the purpose of yield plans within the context of open space development and details the information which must be depicted on same. Among other requirements, yield plans must be proposed by the applicant’s engineer and “*shall comply with the conventional subdivision regulations and shall not require a variance from existing zoning ordinance in order to achieve the layout supporting the proposed density.*” Regulations,

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

Section 7.13 (emphasis added). We understand that a member of the public raised the issue of whether the Grisets' variance in this case¹ violates the above-bolded language and therefore prohibits use of the Yield Plan, and that the Town Attorney has provided an opinion to the Planning Board regarding same.

To summarize the Grisets' argument in this context, any interpretation of Section 7.13 of the Regulations that would prohibit use of the Yield Plan in this matter would violate the plain language of Section 7.13, would make the word "shall" contained within the regulation superfluous, would violate the Grisets' rights under the State and Federal Constitutions, and would lead to an absurd result. Further, neither Mr. Eastman's Administrative Decision nor the underlying Zoning Board of Adjustment ("ZBA") approvals, discussed below, were appealed, and they are the law of this case. As such, use of the Yield Plan is permitted and no waiver from Section 7.13 of the Regulations should be required.

b. ZBA Procedural History

In the Fall of 2019, the Grisets sought clarification from Douglas Eastman via a request for administrative decision regarding the zoning relief necessary, if any, to utilize the Yield Plan in the Grisets site plan review application to the Planning Board. In that request, the Grisets provided to the Town their legal analysis regarding relevant portions of the Town's Zoning Ordinance and Site Plan Review and Subdivision Regulations, to include Section 7.13, as well as the Town and Planning Board's historic interpretation and application of same in other open space developments.²

In response to the Grisets' request for administrative decision, on 30 October 2019 Mr. Eastman stated the following:

I have reviewed your request for an administrative decision, dated October 28th, 2019 regarding the Zoning Board of Adjustment (ZBA) relief needed to utilize the current draft yield plan for the Grisets' proposal to the Planning Board for a single-family open space development. It is my opinion that the ability to transfer the density of residential units from the NP-Neighborhood Professional zoning district would first require obtaining a special exception from the ZBA to permit residential uses in the NP zone. This relief alone would not allow for the ability to transfer the permitted residential density from the NP zone to the Grisets' property situated in the R-1, Low Density Residential zoning district but only permit the 'use'. *It is my opinion that additional relief from the ZBA, by seeking a variance, would be necessary for the request to transfer density, as described.*

I concur with your opinion that the Grisets' have reserved the development rights for the three subject parcels.

¹ See Footnote 2.

² The entirety of the Grisets' 4 November 2019 filing to include their Appeal from Administrative Decision (Case #19-17) (the "Administrative Appeal"), Special Exception (Case #19-18) (the "Special Exception") and Variance (Case #19-19) (the "Variance"), are enclosed herewith and incorporated into the underlying Planning Board case. These documents are collectively referenced herein as "Enclosure 1."

Please accept this as my administrative decision regarding the Grisets' proposed open space project.

Please feel free to give me a call if you should have any further questions.

Enclosure 1 (emphasis added).

Upon receipt of Mr. Eastman's administrative decision, undersigned counsel for the Grisets sent an email response that stated:

Thank you very much Doug. Our only question is from what zoning ordinance we need variance relief from. Thanks again.

Id. In response to this question, on 31 October 2019 Mr. Eastman stated:

There is nothing in our ordinance that allows density transfer between zones, therefore it is not permitted so any request would require a variance, Hope this helps. Doug³

Id.

On 4 November 2019, the Grisets filed with the ZBA: 1) an Administrative Appeal from Mr. Eastman's decision; 2) a Special Exception Application to permit residential uses in the NP District, and 3) a Variance Application to permit a single family open space development in the R-1 District which draws density from contiguous unimproved property in the NP District. *See* Enclosure 1.

The ZBA heard all three cases at its meeting on 21 January 2020 at which time it denied the Grisets' Administrative Appeal by a vote of 3-2 and approved the Grisets' Variance and Special Exception applications. No motion for rehearing was filed with the ZBA by any party, and no appeal was taken to the Superior Court pursuant to the statutory process detailed in RSA 677.

c. Analysis

- i. Any interpretation of Section 7.13 that would prohibit use of the Yield Plan because it previously obtained variance relief would violate the plain language of Section 7.13, would make the word "shall" contained within the regulation superfluous, would not constitute a reasonable exercise of the Town's police powers, would violate the Grisets' rights under the State and Federal Constitutions, and would lead to an absurd result.**

In New Hampshire, statutes and regulations are interpreted to give meaning to all words,

³ Mr. Eastman's 30 and 31 October 2019 emails to undersigned counsel are collectively referred to as "the Administrative Decision".

to avoid rendering any word superfluous, and to avoid absurd results.

Section 7.13 of the Regulations states that yield plans in Exeter “shall not require a variance” from the Zoning Ordinance. The word “shall” denotes the future tense in general and in Section 7.13 of the Regulations specifically. By its plain language, Section 7.13 comprises a list of requirements and data yield plans in Exeter must include to be accepted and approved by the Planning Board. For example, yield plans must be proposed by the applicant’s engineer, must contain appropriate topography, manmade features, easements and rights-of-way, abutting streets and lot lines, public and private utilities, and potential lots including their dimensions, lot sizes and applicable setbacks. If yield plans do not depict this information, they cannot be approved by the Planning Board.

Similarly, yield plans cannot be approved by the Planning Board if they would require variance relief to achieve the layout depicted. This language on its face concerns *relief yet to be obtained*. For example, pursuant to Section 7.13, the Planning Board could not approve a yield plan that depicts lots with insufficient frontage, or inadequate lot size, or inadequate setbacks because the purpose of yield plans is to show “the available and viable building development that is feasible under a conventional design.” Regulations, Section 7.13. A subdivision design which depicts lots that require variance relief, would not, by definition, be available, viable or feasible, and would be appropriately denied because the Planning Board does not have the authority to provide such relief, which authority is reserved by statute with the ZBA. *See* RSA 674:33.

Here, nothing depicted on the Yield Plan requires variance. All lots comply in all respects with all zoning requirements. On the contrary, and as detailed at length in Enclosure 1, the Grisets’ *previously* obtained a variance which expressly authorizes use of the Yield Plan, which variance was not appealed. As a result, interpreting Section 7.13 of the Regulations to prohibit the Yield Plan because it *previously* obtained a variance would violate the plain language of the regulation, which is on its face referring to variance relief that has not been obtained, and would make the word “shall” superfluous and unnecessary because as a matter of fact, the Yield Plan does not require variance relief, it already obtained the same. Such an interpretation would be inconsistent with the principals of statutory and regulatory interpretation in New Hampshire. By way of further example, if an applicant presented a true subdivision proposal to the Planning Board vice an open space proposal which requires a yield plan, and if that proposal depicted lots that required variance relief, the Planning Board could not approve the same. However, if the applicant obtained the required variance relief first, the Planning Board could, and regularly does, approve such subdivisions.

More importantly, however, any interpretation of Section 7.13 of the Regulations that would obviate the Variance the Grisets obtained in January would make that regulation confiscatory and unconstitutional both on its face, and as applied to the Grisets and their property. The purpose of a yield plan is to show a conventional subdivision design which could be developed for the purpose of calculating the permissible density in an open space development. As such, Section 7.13’s statement that a yield plan “shall not require a variance” is logical, as explained above. That interpretation, however, is significantly different than an interpretation that would require the Planning Board to deny a yield plan that previously obtained

variance relief. As Attorney Peter Loughlin notes in his *New Hampshire Land Use and Zoning Treatise*:

[A] variance is an authorization for the establishment of a use which is otherwise prohibited by a zoning ordinance. It is relief granted by a zoning board of adjustment from the literal import and strict application of zoning regulations. It is designed as a relief valve from the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus possibly amount to confiscation. It is designed to correct maladjustments and inequities in the operation of zoning regulations. It is designed to eliminate unnecessary hardship resulting from a literal application of the zoning ordinance in regard to unique properties. Variances are permitted by the terms of a zoning ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated.

Loughlin, 15 *Land Use Planning and Zoning*, § 24.02 (2019) (*citing* *Quimette v. Somersworth*, 119 N.H. 292 (1979); *Sprague v. Acworth*, 120 N.H. 641 (1980); *Associated Home Utils. v. Bedford*, 120 N.H. 812 (1980)).

Here, Douglas Eastman interpreted the Zoning Ordinance to not permit the Yield Plan as depicted and expressly held that variance relief was required to utilize same in the Planning Board site plan review process. *See* Enclosure 1. The Grisets relied on this determination and sought and obtained a variance from the ZBA to utilize the Yield Plan in the Planning Board review process. As such, the Planning Board is without authority to interpret its regulations in a manner that obviates the variance relief the Grisets have already obtained. Any such interpretation would not be a reasonable exercise of the Town's police powers, would nullify and obviate the constitutional relief valve the Variance approval provided the Grisets under New Hampshire law, would deny the Grisets the beneficial use of their land, would amount to a confiscation, and would lay waste to the considerable investment of time, emotions and finances that went into obtaining the Variance relief in the first place. Such an interpretation would make Section 7.13 unconstitutional on its face and through its application to the Grisets specifically, and would violate the Grisets' substantive due process and equal protection rights under the State and Federal Constitutions.⁴

As any interpretation of Section 7.13 that would obviate the Variance obtained by the Grisets would be unconstitutional and constitute an absurd result, such interpretation is not supported by New Hampshire law. The more reasonable interpretation in accordance with New Hampshire law, and the one that better-alleviates the legal liability of the Town and the Grisets, is the interpretation that the Yield Plan complies with Section 7.13 of the Regulations and no waiver from same is required.

⁴ *See* Loughlin, 15 *Land Use Planning and Zoning*, § 2.11 ("A substantive due process challenge to an ordinance questions the fundamental fairness of an ordinance both generally and in the relationship of the particular ordinance to particular property under particular conditions existing at the time of litigation. In contrast, an equal protection challenge to an ordinance is an assertion that the government impermissibly established classifications and, therefore, treated similarly situated individuals in a different manner")(citations and quotations omitted).

ii. Because neither Mr. Eastman's Administrative Decision nor the ZBA's Variance approval were appealed, they are the law of this case.

Decisions of the Town of Exeter's Building Inspector / Code Enforcement Officer may be appealed within 30 days to the ZBA. Zoning Ordinance, §9.4.9; RSA 676:5. Decisions which are not appealed within 30 days are final and cannot be appealed. Similarly, to appeal a decision of the ZBA, an aggrieved party must file a motion for rehearing within 30 days after such decision. RSA 677:2. Thereafter, said party must file a petition with the superior court within 30 days after the date upon which the ZBA voted to deny the motion for rehearing. RSA 677:4. The superior court has no subject matter jurisdiction to consider petitions where these procedural requirements are not met. See RSA 677:3; see e.g., Keene v. Zoning Bd. of Adjustment, 114 N.H. 744, 746 (1974) ("Compliance with [the rehearing] requirement is a necessary prerequisite to maintenance of an appeal, and to the jurisdiction of the superior court on an appeal, since such procedural limits are generally strict and frequently mandatory." (quotation and brackets omitted)).

In this case, Mr. Eastman's Administrative Decision expressly states that variance relief from the ZBA is needed to utilize the Grisets' yield plan in the Planning Board review process. See Enclosure 1 ("It is my opinion that additional relief from the ZBA, by seeking a variance, would be necessary for the request to transfer density, as described"). The clear holding of this decision is that with variance relief, the Yield Plan may be utilized in the site plan review context. The only party to appeal that decision was the Grisets, and only to argue that variance relief was not required in the first instance, an issue the Grisets narrowly lost by a 3-2 vote of the ZBA in their Administrative Appeal. Importantly, no one appealed Mr. Eastman's determination that variance relief would permit the Grisets to utilize the Yield Plan during the Planning Board's site plan review process. As no one appealed the Administrative Decision with regard to that issue, that issue is resolved and is the law of the case.

Similarly, the Grisets' Variance approval from 21 January 2020 provided authorization for the Grisets to develop an open space development "in the R-1, Lot Density Residential zoning district which draws density from contiguous unimproved property in the NP-Neighborhood Professional zoning district, as presented."⁵ As such, the Variance approval constitutes express authority to use the Yield Plan through the Planning Board review process. Were anyone aggrieved by the ZBA's decision to permit the Grisets to utilize the Yield Plan through the Planning Board site plan review process, the law requires that a motion for rehearing and subsequent superior court appeal be filed pursuant to RSA Chapter 677. As no such appeal was filed, the Grisets are entitled to use the Yield Plan currently being considered by the Planning Board.

The law of this case is clear, the Grisets are entitled to utilize the Yield Plan through the Planning Board site plan review process because the variance relief provided by the ZBA was unchallenged and is final. This conclusion is of course consistent with the constitutional nature of variance relief as discussed above.

⁵ See Planning Board Package for 14 May 2020 Meeting.

2) Issue 2

Mr. Sharples' Planning Memorandum dated 13 April 2020 which was provided to the Planning Board in advance of the 14 May 2020 meeting with other materials stated the following:

The Yield Plan was also reviewed by our third party engineer, UEI via email and the email thread was enclosed for your review. You will note in the email thread, between myself and Allison Reese from UEI, that there was discussion about the size of the building envelope. Our regulations do not stipulate a minimum building envelope size but, during two prior Yield Plan reviews, the Board determined that the plan should show that a 25' x 25' structure should be able to fit within the building envelope to be considered a viable lot.

Also included in the package provided to the Planning Board is an email exchange between Mr. Sharples and Ms. Rees. Therein Mr. Sharples explains that "on two prior applications (Rose Farm and 98 Linden St.), the PB discussed this issue and decided that a minimum of 25' x 25' building envelope is what needs to be shown." In response, Ms. Rees states "[a]lthough in practicality, some of these lots would not be buildable, on paper they appear to meet the requirements. I have no further comments."

At the Planning Board hearing on 14 May 2020 a question was raised regarding what Ms. Rees meant when she said "[a]lthough in practicality, some of these lots would not be buildable, on paper they appear to meet the requirements." We understand that Mr. Sharples may or may not be obtaining clarification from Ms. Rees and we provide the following regardless.

It is unclear whether Ms. Rees had the benefit of the Grisets' comprehensive analysis to Mr. Sharples dated 26 February 2020⁶, which outlined in detail why the Yield Plan constitutes a reasonably achievable, available and viable development that meets all of the Town's zoning requirements, or not. That analysis included a financial viability/feasibility section and an enclosure (enclosure 3), which is a construction cost estimate which accounts for the expense of the entire subdivision depicted on the Yield Plan to specifically include the construction of the new subdivision road, the extension of the Cullen Way cul-de-sac, the construction of all associated drainage and utility infrastructure (water, sewer), three minor wetland crossings, the construction of a retaining wall, and the construction of extended driveways to serve Lots 6, 7, 13, and 17. This evidence, in conjunction with all of the additional analysis provided to the Planning Board to include Gove Group's updated financial analysis provided herewith⁷, proves beyond any doubt that the subdivision depicted in the Yield Plan is practical, reasonably achievable, available and viable. As Ms. Rees herself notes, the Yield Plan "appear[s] to meet the requirements."⁸

⁶ The referenced 26 February 2020 letter was also included in the Planning Board package for the 14 May 2020 meeting and is now a part of the administrative record of this case.

⁷ See Enclosure (2).

⁸ See also David Sharples Memo dated 23 April 2020 ("The applicant has addressed all staff and UEI comments and we have no further comment on the Yield Plan as currently proposed").

Beyond this, the Yield Plan depicts building envelopes on each of the lots which exceed the 25' x 25' minimum standards previously established by the Planning Board.

As the Yield Plan meets the standard established by Section 7.13 of the Regulations and is consistent with the Planning Board's own past practices regarding open space development, it should be approved by the Planning Board.

3) Issue 3

For the reasons stated in Enclosure 1 and above, a waiver from Section 7.13 of the Regulations is not required and as a preliminary matter, the Grisets request that the Planning Board take that question up at the 11 June 2020 meeting. The Grisets acknowledge however, that the Planning Board has been provided with a legal opinion from Town Counsel, that Mr. Sharples has recommended that the Grisets seek a waiver from Section 7.13, and that the Planning Board may require the same. Accordingly, reserving all rights, the Grisets request a waiver from Section 7.13 of the Regulations pursuant to the standard outlined in Section 13.7 of the Regulations.

Section 13.7 of the Regulations permit the Planning Board to grant waivers where it finds that: 1) the granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property; 2) the conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property; 3) because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out; 4) the granting of the waiver will not be contrary to the spirit and intent of the regulations; and 5) the waiver will not, in any manner, vary the provisions of the Zoning Ordinance or Master Plan.

The Grisets obtained a Variance that expressly permits them to utilize the Yield Plan pursuant to its development scheme for the underlying property. The waiver standard articulated in Section 13.7 to justify the issuance of a waiver from the Planning Board is a less arduous standard than the Variance relief standard articulated in RSA 674:33, I and already met by the Grisets which required a finding by the ZBA that use of the Yield Plan in this case: 1) is not contrary to the public interest, 2) satisfies the spirit of the Zoning Ordinance, 3) accomplishes substantial justice, 4) does not diminish surrounding property values, and 5) that literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. That variance was not challenged or appealed and is the law of this case. While we undertake the relevant analysis below regarding Section 13.7 of the Regulations, the waiver request should be granted on this basis alone.

a. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property.

Pursuant to New Hampshire jurisprudence, satisfaction of the first two variance criteria (public interest and spirit of the ordinance) requires a finding that the proposed variance does not

unduly, and in a marked degree conflict with the Zoning Ordinance such that it violates the Zoning Ordinance's basic objectives, and requires further that the variance does not alter the essential character of the neighborhood or threaten the public health, safety or welfare. *See Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577 (2005); *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102 (2007); *Farrar v. City of Keene*, 158 N.H. 684 (2009); *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011). Satisfaction of the fourth variance criteria requires a finding that the variance will not diminish surrounding property values.

Accordingly, for the reasons articulated within the Grisets' Variance application vis-à-vis the public interest and spirit of the ordinance criteria, the analysis undertaken by Grisets at the 21 January 2020 ZBA hearing at which the Variance was approved, and the ZBA's rationale for approval, all of which have been provided to the Planning Board and are incorporated herein by reference⁹, the waiver will not be detrimental to the public safety, health, or welfare and not injurious to other property.

Moreover, the open space development that will result through utilization of the Yield Plan proposes to convey a significant piece of land to the Town of Exeter for Conservation purposes which, by definition, benefits the public safety, health and welfare and improves surrounding properties.

b. The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property.

As detailed within the Grisets' Appeal of Administrative Decision, the circumstances under which they were required to obtain zoning relief for use of the Yield Plan in this matter are indeed unique to the Grisets and the underlying property, as other recent open space developments, most notably the Rose Farm development, were not required to obtain zoning relief and were not required to obtain a waiver from Section 7.13 of the Regulations despite yield plans which actually did transfer higher density from abutting property to accommodate open space development, where the Grisets' Yield Plan does no such thing.

Beyond this, denying the requested waiver will obviate and nullify the Variance obtained by the Grisets on this precise issue and therefore contravene New Hampshire jurisprudence and violate the Grisets' constitutional rights, as outlined above.

Finally, the fifth statutory variance criteria requires a finding by the ZBA that literal enforcement of the ordinance would result in an unnecessary hardship, which criteria is generally considered the most difficult criteria to meet and which is a more difficult standard than that articulated above within the context of a Planning Board waiver.

To satisfy the hardship criteria, an applicant must show that due and owing to special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision

⁹ See Enclosure 1.

and the specific application of that provision to the property, and the proposed use is a reasonable one. *See* RSA 674:33, I. Accordingly, for the reasons articulated within the Grisets' Variance application vis-à-vis the hardship criteria, which are incorporated herein by reference¹⁰, the analysis undertaken by Grisets at the 21 January 2020 ZBA hearing at which the Variance was approved, and ZBA's rationale for approval, the conditions upon which the request for a waiver is based are unique to the property for which it is sought and are not applicable generally to other property.

Here, the properties' special conditions include their large size, the location and existence of the challenging wetlands on the property and the location of the uplands, and the fact that the Conservation Property is landlocked and has no frontage on a public road despite its existence within the NP-District which makes use of the same a virtual impossibility.

All of these conditions make the underlying properties unique and create a situation whereby the Grisets' proposed open space development constitutes a conservative and appropriate proposal.

- c. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.**

As noted above, the properties are burdened by special conditions to include their large size, the location and existence of significant jurisdictional wetlands, the location of the uplands, and the fact that the Conservation Property is landlocked and has no frontage on a public road despite its existence within the NP-District. These special conditions differentiate the underlying property from all the other property in the area. For the reasons articulated within the Grisets' Variance application vis-à-vis the hardship criteria, which are incorporated herein by reference¹¹, the analysis undertaken by Grisets at the 21 January 2020 ZBA hearing at which the Variance was approved, and ZBA's rationale for approval, a particular hardship would result, separate and apart from the constitutional violations that would result as well, if the strict letter of Section 7.13 of the Regulations are carried out.

- d. The granting of the waiver will not be contrary to the spirit and intent of the regulations.**

Use of the Yield Plan by the Grisets will not violate the express language of Section 7.13 as described above, let alone its spirit and intent. The express language of Section 7.13 and its spirit and intent is to not allow yield plans that would require variance relief from the ZBA to be developed, as the Planning Board does not have the authority to grant variances. The express language and the spirit and intent of Section 7.13 is *not* to prohibit the use of yield plans that benefit from the constitutional release valve afforded by already-obtained variance relief. To find otherwise would contravene New Hampshire jurisprudence as detailed above.

¹⁰ ¹⁰ See Enclosure 1.

¹¹ ¹¹ See Enclosure 1.

Moreover, for the reasons articulated within the Grisets' Variance application vis-à-vis the public interest and spirit of the ordinance criteria, incorporated herein by reference¹², the analysis undertaken by Grisets at the 21 January 2020 ZBA hearing at which the Variance was approved, and ZBA's rationale for approval, the granting of the waiver will not be contrary to the spirit and intent of the regulations which favor and require open space development of this nature under the circumstances presented by this case.

e. The waiver will not, in any manner, vary the provisions of the Zoning Ordinance or Master Plan.

A waiver from Section 7.13 of the Regulations will not vary the provisions of the Zoning Ordinance or Master Plan because the plain language of Section 7.13 permits use of the Yield Plan, because the Grisets otherwise obtained a variance to use the Yield Plan in this development, because open space development is required under the circumstances presented by this case, and because the proposed open space development advances the express language of the Master Plan which calls for the underlying area to represent a transitional area between the more dense downtown and the more rural western area of the Town.

Moreover, for the reasons articulated within the Grisets' Variance application vis-à-vis all the variance criteria, incorporated herein by reference¹³, the analysis undertaken by Grisets at the 21 January 2020 ZBA hearing at which the Variance was approved, and ZBA's rationale for approval, the granting of the waiver will not vary the provisions of the Zoning Ordinance or Master Plan. Nothing in the Zoning Ordinance prohibits or prevents use of the Yield Plan as proposed, and, by virtue of the Variance approval which was not appealed, the Town has already indicated that use of the Yield Plan for this project is appropriate and that there is no fair and substantial relationship between the public purposes of the Zoning Ordinance and their application to the underlying properties.

As use of the Yield Plan benefits from Variance approval and because all of the waiver criteria within Section 13.7 of the Regulations are satisfied, the Planning Board should approve the requested waiver.

4) Issue 4

As Mr. Sharples indicates in his Planning Memo, and as depicted in the revised Proposed Yield Plan enclosed herewith as Enclosure 3, a waiver from the 100' perimeter buffer requirement contained within Section 9.6.1.2 of the Regulations is required to make Lot 5 a viable lot. As also indicated by Mr. Sharples, the criteria for full or partial waivers from this requirement are found within Section 9.6.1.2 which states that "[t]he Board may approve a partial or total waiver to the buffer strip if the configuration or location of the parcel, with consideration of abutting properties, warrants flexibility to the proposed green space." For the reasons outline below, the Grisets request a partial waiver to depict a 50' perimeter buffer strip on Lot 5 instead of the required 100' perimeter buffer strip and submit that were this a true subdivision proposal, approval of the same would be reasonably achievable.

¹² ¹² See Enclosure 1.

¹³ ¹³ See Enclosure 1.

As discussed and described throughout the Grisets' Planning Board filings, Lots 1 - 7 on the Yield Plan are proposed to be accessed via an extended Cullen Way cul-de-sac and would, pursuant to the Grisets' authority as the Declarant of the Exeter Green Subdivision, be added to the existing Exeter Green Protective Covenants. As such, Lot 5 is bound to the north and east by Lots 4, 6 and 7 and to the west by an existing property located within the Exeter Green Subdivision at 35 Cullen Way, which is further identified as Tax Map 96, Lot 16 ("35 Cullen * Way"). The building envelope for Lot 5 depicted on the Yield Plan observes a greater-than required 50' setback from the common boundary with 35 Cullen Way and the single family dwelling located at 35 Cullen Way is approximately 25' from the same common boundary. As a result, the proposed structure on Lot 5 would be at least 75' from the structure at 35 Cullen Way, which is consistent with the average distance between homes within the Exeter Green Subdivision. Similar separation is observed between the building envelopes on Lot 5 and those on Lots 4, 6 and 7, all of which comply with the Zoning Ordinance's dimensional requirements. To the south, Lot 5 is bound by the railroad line owned by Boston and Maine Railroad, which property is identified as Town Tax Map 73, Lot 47.

In addition to these considerations, the development contemplated by the Yield Plan would serve, in essence, as the third phase of the development of the underlying parcel which began with development of the Exeter Green Subdivision and was advanced further by the Grisets' development of Greybird Circle in the 1990s and the Grisets' 1991 agreement with the Town of Exeter which permits conventional development of the remaining land per the underlying Protective Covenants, as has been discussed at length during these proceedings.

Finally, the 100' perimeter buffer required by Section 9.6.1.2 is observed on all other lots within the R-1 District, and the 50' required perimeter buffer is observed on all lots within the NP-District. Additionally, the Yield Plan contemplates a 10.46 acre recreational easement area in close proximity to Lot 5 and the average size of the lots within the subdivision is 150,443 sf, nearly four times the required lot size in the R-1 District.

To Summarize, a partial waiver to the 100' buffer strip requirement in the R-1 District to permit a 50' buffer on Lot 5 is reasonable and appropriate in this case due to Lot 5's anticipated inclusion within the Exeter Green Subdivision, the configuration and location of the parcel vis-à-vis surrounding properties, the nature of the this development as the third phase of development on the remaining land of the Exeter Green Subdivision, and the context and character of the development depicted on the Yield Plan which has extremely large lots and considerable green space.

* per Justin Pasay
correct address
is 28 Cullen Way

Conclusion

We respectfully request the opportunity to discuss this filing and all corresponding issues at the 11 June 2020 Planning Board meeting we plan to attend. We also recommend that after entertaining comment and testimony on these matters, the Board determine first whether use of the Yield Plan requires any relief in the first instance. Thereafter, to the extent the Planning Board determines that a waiver from Section 7.13 of the Regulations is required, we recommend the Board take of the issue of that waiver, and the waiver filed herewith with regard to the perimeter buffer strip on Lot 5 of the Yield Plan.

Thank you very much for your time and attention.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink, appearing to be 'Justin L. Pasay', written in a cursive style.

Justin L. Pasay
JLP/sac

Enclosures (3)

cc: Brian Grisct
Christian Smith, P.E., Beals Associates, PLLC



CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS



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NICHOLAS R. AESCHLIMAN

HAND DELIVERED

November 4, 2019

Joanne Petito, Chair
Exeter Zoning Board of Adjustment
10 Front Street
Exeter, NH 03833

Re: Map 95, Lot 15, Map 81, Lot 53 and 57
Applications of Brian Grisct

Dear Chair Petito and Board Members:

Enclosed please the following:

- Appeal from Administrative Decision
- Application for Variance
- Application for Special Exception

Each of the enclosed applications relate to the same open space development proposed by Brian and Adela Grisct and Brett Neeper, Trustee of the Mendez Revocable Real Estate Trust (collectively, the "Grisets") for property located at 26 Cullen Way, off of Tamarind Lane, which is in the Town's R-1 Zoning District, is 23.6 acres in size and is further identified as Town Tax Map 96, Lot 15 (referred to throughout as the "Development Property"). As described in greater detail within the enclosed applications, to accomplish the proposed open space development and to determine the permitted density therein, the Grisets have developed a yield plan which depicts conventional R-1 density lots across three properties to include: 1) the Development Property, 2) a large (30.76 acre) abutting property under common control that is located in the Neighborhood Professional ("NP") Zoning District and is identified as Town Tax Map 81, Lot 53 (referred to throughout as the "Conservation Property"), and 3) a third abutting property owned by the Town of Exeter over which

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

Joanne Petito, Chair
Exeter Zoning Board of Adjustment
November 4, 2019
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the Grisets retain density rights for open space development, which is identified as Town Tax Map 81, Lot 57 (referred to throughout as the "Town Property").

By way of brief overview, the Grisets hope to develop a 16-unit single family open space development and a corresponding standard single-lot subdivision on the Development Property, and hope to convey the entirety of the Conservation Property (30.76 acres), plus 1.62 additional acres of the Development Property, to the Town of Exeter for permanent conservation. Additionally, the Grisets intend to preserve as open space adjacent to the proposed development, an approximately 10 acre wet meadow, which will serve as a natural buffer between the existing residences on Tamarind Lane, and the proposed new development, and which, combined with the rest of the proposed development, will constitute a reasonable and environmentally sound use of the underlying land in manner consistent with the Town's recent amendments to the Exeter Master Plan.

Douglas Eastman, the Town's Code Enforcement Officer, has issued an administrative interpretation regarding the Grisets' proposed yield plan. Specifically, Mr. Eastman has determined that the Grisets' open space development, proposed to be sited on the Development Property in the R-1 Zoning District, cannot utilize R-1 density from the Conservation Property in the NP Zoning District, even where residential uses are permitted by special exception under the Zoning Ordinance, and even where such special exception is obtained by the Grisets, without also obtaining variance relief.

The Grisets maintain that their proposed yield plan is consistent with the Town's land use regulations and consistent with the Town's previous treatment of open space developments which calculated permissible density based on contiguous properties within disparate zoning districts. The Grisets maintain further that the only zoning relief required for them to utilize their conceptual yield plan in the anticipated Planning Board review process, is a special exception to depict portions of six (6) large conventional R-1 density lots in the NP District.

Also enclosed with the above mentioned applications are the following exhibits which are uniformly referenced across the applications as follows:

Joanne Petito, Chair
Exeter Zoning Board of Adjustment
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1. Concept Site Plan ("Exhibit 1")
2. Preliminary Yield Plan ("Exhibit 2")
3. Agreement with Town ("Exhibit 3")
4. White Appraisal ("Exhibit 4")
5. Concept Multi-Use Site Plan ("Exhibit 5")
6. Existing Conditions Plan ("Exhibit 6")

Further, the following Exhibits, also contained herewith, relate to the Appeal from the Administrative Decision and the Variance Application:

Exhibit A - Letter to Douglas Eastman from Justin Pasay, Esq. dated October 28, 2019

Exhibit B - Douglas Eastman's e-mail to Justin Pasay, Esq. on behalf of Brian Griset dated October 30, 2019

The Grisets propose that the ZBA first take up their Appeal from Mr. Eastman's Administrative Decision and thereafter consider the Grisets' Special Exception application. Depending upon the ZBA's determination on the Appeal from Administrative Decision, the Grisets propose that the ZBA take up their Variance Application, enclosed herewith in case the ZBA denies their Appeal of Mr. Eastman's decision.

Finally, enclosed herewith please find a letter of authorization, other required data and information, and all required filing fees. We respectfully request that these matters be placed on the Board's November 19, 2019 agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sag
Enclosures

cc: Brian Griset
Christian Smith, P.E.
James Gove
Brian White, MAI, SRA

Town of Exeter
APPLICATION FOR AN
**APPEAL FROM AN ADMINISTRATIVE
DECISION**

| | |
|-------------------|----------|
| Case Number: | _____ |
| Date Filed: | _____ |
| Application Fee: | \$ _____ |
| Abutter Fees: | \$ _____ |
| Legal Notice Fee: | \$ _____ |
| TOTAL FEES: | \$ _____ |
| Date Paid | _____ |
| Check # | _____ |

Name of Applicant: Brian Griset

Address: 26 Cullen Way, Exeter, NH 03833

Owner: Adela Griset, Mendez Real Estate Trust and the Town of Exeter

**Location of Property: Route 111 & Tamarind Lane
Map 96, Lot 15
Map 81, Lot 57
Map 81, Lot 53**

Description of Property: See attached letter from Attorney Justin Pasay to Douglas Eastman, Code Enforcement Officer dated October 28, 2019 (Exhibit A).

NOTE: This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if space is inadequate.

Current use and/or situation: See attached letter from Attorney Justin Pasay to Douglas Eastman, Code Enforcement Officer dated October 28, 2019 (Exhibit A).

THE UNDERSIGNED ALLEGES THAT AN ERROR HAS BEEN MADE IN THE DECISION, DETERMINATION OR REQUIREMENT, BY DOUGLAS EASTMAN, CODE ENFORCEMENT OFFICER.

ON: October 30, 2019

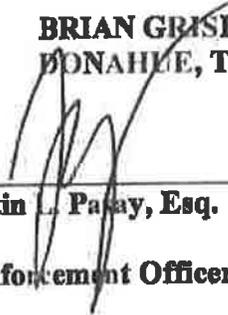
TO: Justin Pasay, Esq. on behalf of Brian Griset

IN RELATION TO ARTICLE IV, SECTION 4.3, SCHEDULE II AND ARTICLE 7 OF THE ZONING ORDINANCE AND HEREBY APPEALS SAID DECISION.

DATE: November 4, 2019

**BRIAN GRISET, BY HIS ATTORNEYS,
BONAHLE, TUCKER & CIANDELLA, PLLC**

SIGNED


Justin L. Pasay, Esq.

Decision of the Enforcement Officer to be reviewed:

Mr. Eastman's decision that a single family open space development located in the R-1 Zoning District cannot utilize density from unimproved contiguous property in the Neighborhood Professional ("NP") District, even where residential uses are permitted by special exception in the NP District, and even where such special exception is obtained by the applicant, without also obtaining variance relief. *See* e-mail from Douglas Eastman to Attorney Justin Pasay dated October 30, 2019 attached as **Exhibit B**.

Applicant's Position: *See* Applicant's letter to Doug Eastman dated October 28, 2019 attached as **Exhibit A**.

Exhibit A



CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

ROBERT D. CIANDELLA
LIZABETH M. MACDONALD
JOHN J. RATIOAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
JEDI J. BARRETT-KITCHIN
JUSTIN I. PABAY
ERIC A. MAHER
AMELIA G. SRIFTER
BRENDAN A. O'DONNELL

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
NICHOLAS R. AERSCHLJMAN

28 October 2019

Douglas Eastman
Code Enforcement Officer/Building Inspector
Town of Exeter
10 Front Street
Exeter, NH 03833

Re: Request for Administrative Decision

Dear Doug –

This follows our recent phone call conversation regarding the single family open space development proposed by our clients, Brian and Adela Griset (the "Grisets"), for property located at 26 Cullen Way and further identified as Town Tax Map 96, Lot 15, which is 23.6 acres in size and is the site of the Grisets' home (the "Development Property"), and requests an administrative decision regarding the Zoning Board of Adjustment ("ZBA") relief needed to utilize the current draft yield plan in the Grisets' anticipated site plan review application to the Town's Planning Board. We have enclosed herewith said draft yield plan (Exhibit 1) and the corresponding draft site plan for the open space development (Exhibit 2).

Introduction and Overview

By way of brief overview, the Grisets' open space project proposes to calculate density using three distinct parcels, as described below, which have functionally common ownership and happen to be located in two different zoning districts, each of which permit residential uses by right. More specifically, in addition to the Development Property which is owned by Adela Griset individually and is located in the R-1 District, the proposed open space development proposes to draw density from two additional properties to include a parcel identified as Town Tax Map 81, Lot 54, 9.3 acres of which the Grisets conveyed to the Town in 1991 (the "Town Property"), over which the Grisets retain the density rights via an agreement with the Town dated 14 August 1991, and Tax Map 81, Lot 53, which parcel is 30.76 acres in size and is owned by the Mendez Revocable Real Estate Trust, of which Adela Griset is the sole beneficiary (the "Conservation Property"). The Conservation Property is located within the Neighborhood Professional ("NP") District. For all intents and purposes, the Development Property and Conservation Property are under common ownership and are controlled by Adela Griset.

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

Douglas Eastman
Code Enforcement Officer/Building Inspector
28 October 2019
Page 2

Rather than merging the Development Property and Conservation Property and subdividing, as was the model in the Exeter Rose Farm ("Rose Farm") open space subdivision project which involved four (4) distinct parcels, the Grisets are pursuing a condominium form of ownership for the open space development which is expressly permitted in the Zoning Ordinance. The proposed open space development will be located exclusively on the Development Property, and the Grisets plan to convey all 30.76 acres of the Conservation Property to the Town.

As an initial observation, an open space development proposing to utilize multiple distinct parcels, under disparate ownership, within different zoning districts, is not a novel concept. Not only is this practice plainly authorized and contemplated by the Town's Open Space Development Ordinance (Zoning Ordinance, Article 7) and other land use regulations, as described in greater detail below, it is exactly what happened in the recent Rose Farm subdivision case which involved four distinct properties across three distinct zoning districts (R-1, R-2 and R-4), which properties had two unrelated owners. Beyond this, and importantly, as described in greater detail below, the Town did not require the applicant in the Rose Farm matter to obtain variance relief for its yield plan, despite a yield plan *that actually does send higher density from the R-2 and R-4 zoning districts to the R-1, where the majority of the subdivision is sited.*

In this case, the draft yield plan (Exhibit 1) depicts portions of six (6) large conventional lots, which satisfy the R-1 density standards, on the Conservation Property in the NP District. *See Zoning Ordinance, Article 4.3, Schedule III. Residential uses, including conventional R-1 density development, are permitted by right subject to a special exception in the NP District. See Zoning Ordinance, Article 4.2, Schedule I. This point deserves emphasis. The Grisets draft yield plan merely depicts conventional R-1 density lots in the NP District, which use is allowed by right pursuant to a special exception. The site plan (Exhibit 2) does not, therefore, depend on higher density technically allowed in the NP District, via a multi-use development for example, to accomplish the depicted units.*

We understand that the above referenced zoning district demarcation, and the project's proposal to draw density from the Conservation Property located in the NP District as depicted on the current draft yield plan (Exhibit 1), has raised questions in the Town and we are aware of the suggestion that the Grisets must obtain variance relief to utilize the draft yield plan in the Planning Board review process. The purpose of this letter is to provide the Town with the Grisets' interpretation of the underlying matter as well as a statement regarding the ZBA relief the Grisets believe they are required to obtain, and to solicit your written interpretation regarding the same, all as a means to help shape our strategy moving forward as we approach the 4 November 2019 filing deadline for the November ZBA hearing.

Executive Summary

The Grisets' proposal and draft yield plan are not contrary to any provision of the Town's zoning regulations and do not constitute the transfer of density or development rights pursuant to RSA 674:21, I(d). Further, the Grisets' open space development proposal and underlying circumstances are not analogous to the situations in the 80 Epping Road (ZBA case #1486) or Felder-Kuehl Properties, LLC (ZBA case #1325) matters, which should not be relied on by the

Town to require variance relief. Lastly, as evinced by the Planning Board's recent approval of the Rose Farm open space subdivision, the Town has not required applicants to obtain variance relief even when open space density calculations incorporate higher densities than are allowed in the zoning district of the actual development, which the Grisets do not propose to do. As a result, requiring the Grisets to obtain variance relief to utilize the draft yield plan is contrary to the nature of variance relief and New Hampshire law and contrary to the practice in Exeter. *We seek an interpretation that the Grisets are permitted to proceed to the Planning Board with their current yield plan after obtaining a special exception to depict conventional R-1 density lots in the NP District.*

Analysis

The Grisets' respectfully assert that utilizing the draft yield plan (Exhibit 1) in the Planning Board review process only requires obtaining a special exception to depict an allowed residential use in the NP District for the purpose of a single-family open space development, and does not require obtaining a variance, for the following reasons.

1) Neither the Zoning Ordinance nor the Site Plan Review and Subdivision Regulations prohibit the draft yield plan.

As a foundational matter, neither the Zoning Ordinance nor the Site Plan Review and Subdivision Regulations prohibit any aspect of the draft yield plan, as depicted in Exhibit 1, and therefore no variance relief is required. Rather, the only ZBA relief required is to obtain a special exception to depict conventional R-1 density lots within the NP District on the yield plan.

The New Hampshire Supreme Court has defined variance relief as the "authority granted to the owner of land to use his property in a manner *otherwise violative of the zoning regulations.*" 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.02 (4th Ed.) *citing Stone v. Cray*, 89 N.H. 483 (1938), *New London v. Leskiewicz*, 110 N.H. 462 (1970) (emphasis added). Here, as the Grisets' yield plan is not violative of any provision of the Zoning Ordinance, no variance relief is required.

Article 7 of the Zoning Ordinance articulates the general regulations governing open space development in Exeter. Single-family open space development is permitted on contiguous parcels with a minimum area of at least five (5) acres in the R-1, where the Development Property is located.¹ Zoning Ordinance, Articles 7.5.1 and 7.5.2. Dwelling unit density for open space development is determined using a yield plan that depicts the density on the parcels in question that is "reasonably achievable under a conventional subdivision following the requirements of the Zoning Ordinance and Subdivision and Site Plan Review regulations of the Town." Zoning Ordinance, Article 7.7.1. The Town's Site Plan Review and Subdivision Regulations elaborate further on the requirements for yield plans stating that they must comply with conventional subdivision regulations "and shall not require a variance from existing zoning ordinances in order to achieve the layout supporting the proposed density." Site Plan Review and Subdivision Regulations, Article 7.13.

¹ In fact, where lots of record have a total combined area of 20 or greater acres, as is the case here, open space development is required under the Zoning Ordinance. See Article 4.3, Schedule II, Footnote 19.

Importantly, no provision of the Zoning Ordinance or Site Plan Review and Subdivision Regulations prohibit any aspect of the Grisets' draft yield plan. There is no zoning regulation which prohibits developing an open space subdivision utilizing contiguous parcels in disparate zoning districts, where residential uses are permitted in both. There is no zoning regulation which prohibits developing an open space subdivision utilizing contiguous parcels under disparate ownership, indeed such arrangements are common within the joint-venture context. There is no zoning regulation which prohibits using R-1 density lots in the NP District for an open space subdivision in the R-1 district, especially where a special exception to depict such R-1 density lots in the NP District on the yield plan has been obtained from the ZBA. Further, as addressed below, the Grisets' proposal does not constitute a transfer of density or development rights pursuant to RSA 674:21, I(d). As the Grisets' proposal is not in conflict with any zoning regulation, no variance relief is required.

Finally, any argument that open space development is not permitted in the NP District is unavailing. First, the open space development is not proposed for the NP District, it is proposed for the R-1 district, and the Conservation Property in the NP District is proposed to be deeded in its entirety to the Town of Exeter for conservation purposes. Beyond this, residential uses, defined by the Zoning Ordinance as "single family, two-family, or multi-family; a combination thereof or separate uses[.]" which is plainly inclusive of open space development, are permitted by right in the NP District subject to a special exception. See Zoning Ordinance, Article 2.2.72.

As the Grisets' proposal and draft yield plan do not violate any Town of Exeter zoning regulation, there is no zoning ordinance provision from which variance relief is required, and the Grisets should not be made to pursue the same, as explained in greater detail below.

2) The Grisets' proposal and draft yield plan do not contemplate or utilize a transfer of density or development rights pursuant to RSA 674:21, I(d).

The Grisets are aware that the Town may hold the perspective that the draft yield plan, and the proposed use of R-1 density in the NP District for the purpose of the open space development, constitutes the "transfer of density rights" pursuant to RSA 674:21, I(d) and that because the Town has not acted to adopt such innovative land use control, variance relief is required. Because the Grisets' proposal does not constitute the transfer of density rights as contemplated by the State's Innovative Land Use Control statute, and otherwise complies completely with the Town's Open Space Development Ordinance and other applicable regulations, the fact that the Town has not adopted RSA 674:21, I(d) is irrelevant, and variance relief is not required.

RSA 674:21 permits municipalities in New Hampshire to adopt innovative land use controls to include, *inter alia*, "[t]ransfer of density and development rights." See RSA 674:21, I(d). Prior to 2004, RSA 674:21, I(d) merely referred to the transfer of "development rights" and did not reference density. We conducted relevant legislative history research to determine the basis for the addition, in 2004, of the word "density" to this statutory provision, and the results of that research reveal both the true legislative intention behind the transfer of density and

Douglas Eastman
Code Enforcement Officer/Building Inspector
28 October 2019
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development rights as an innovative land use control, and the concept's inapplicability to the Grisets' proposal.

At a Senate Public Affairs Committee hearing on 31 March 2004, Attorney Benjamin Frost, then the Senior Planner, NH Office of Energy & Planning, spoke in favor of HB761, which added the word "density" to RSA 674:21, I(d). In response to a question asking for an explanation of the benefit of density rights, Mr. Frost stated as follows:

Generally speaking transfer of development rights[,] [w]hich means in [a] municipality acting through both the master plan and then through the zoning ordinance[,] will figure out what areas it wants to have more highly developed and the areas of the municipality wants to be less developed, less dense. One of the tools to get that to fulfill that vision and yet also allow the property owners in the areas targeted to be less developed to fulfill their values of their property[] [i]s to allow people who want to develop the denser area to buy the rights of development for the less dense area and apply it to the more dense area. So in effect they buy a bonus beyond which they would normally get. So what you are doing is reducing sprawl within a community, yet allowing property owners to get the highest and best value even if it is not going to be used for a specific purpose.

This testimony, summarizing the intention of adding "density" rights to RSA 674:21, I(d), is important for several reasons. First, and foremost, the transfer of density and development rights has nothing to do with open space development which itself is a distinct innovative land use control that has been adopted by the Town and which permits the use of contiguous parcels to obtain density, as explained above. More accurately, the transfer of density and development rights is a planning mechanism that deals with distinct parcels of land which are not contiguous but rather, in distinct areas of a municipality which have distinct, and oftentimes contrary, planning goals. As designed and envisioned, the transfer of density and development rights process allows owners of property in dense areas where development is encouraged, to satisfy dimensional and other zoning requirements by purchasing density and/or other development rights from unimproved properties in areas designated to be maintained as less dense, all while allowing the owners of the property in such less dense areas, to derive a financial benefit from said property. In other words, this innovative land use control provides a mechanism for developable land to meet zoning requirements it does not otherwise meet, through the procurement of development rights on distinct unimproved property, which concept is totally unrelated to open space development. Practically speaking, this innovative land use control has been employed in New Hampshire to encourage development and redevelopment of property suitable for development whilst preserving ecologically sensitive property better suited for conservation and similar uses.²

Needless to say, the Grisets' proposal and corresponding yield plan do not utilize or depend on a transfer of density or development rights, it simply relies on the plain language of the Town's Open Space Development ordinance. The Development Property is not deficient in

² See Dover Zoning Ordinance, § 170-27.2 ("Transfer of Development Rights") for an example of a local municipality's implementation of the transfer of density and development rights innovative land use control.

any zoning context such that it needs development or density rights from a distinct property. Rather, both properties have development potential, with a 67-unit multi-use development possible on the Conservation Property alone. Both properties permit residential uses, and the Town's Open Space Development ordinance specifically contemplates contiguous parcels of land being utilized in the density calculation. Perhaps most importantly, however, pursuant to the Grisets proposal, the yield plan is merely depicting conventional R-1 density lots in the NP District for the purpose of determining the density permitted in the open space development in the R-1. The yield plan *does not*, as discussed in greater detail below, propose to lend higher density from the NP District for use in the R-1 district.

As the Grisets' yield plan does not utilize a transfer of density or development rights, as that term is intended and understood within RSA 674:21, I(d), and as the Grisets' yield plan complies in all other respects with the Town's zoning regulations, the fact that the Town has not adopted this innovative land use control is irrelevant, and no variance relief is required as long as the Grisets obtain a special exception to depict conventional R-1 lots in the NP District for the purpose of the yield plan.

- 3) The Grisets' proposal is distinct from the 80 Epping Road (ZBA case #1486) and Felder-Kuehl Properties, LLC (ZBA case #1325) matters, which should not be relied upon by the Town to require variance relief in this case.**

We also understand that the Town may view the 80 Epping Road (case #1486) and Meeting Place (case #1325) variance applications as having bearing on the issue at hand. Because the 80 Epping Road and Meeting Place applications have no bearing on the issues at hand, they are not persuasive in this context.

On 21 October 2014, the ZBA approved the application of Tuck Realty Corp. for, among other things, a variance from Article 4, Section 4.4, Schedule III, Note #20 to permit the transfer of permitted unit density from the portion of the subject property located in the C-2 (Highway Commercial) zoning district to the rear portion which is located in the R-4 (Multi-Family Residential) zoning district (the "80 Epping Road Application"). The Town's treatment of this application is inapposite to the issues in this case.

The 80 Epping Road Application involved a single property identified as Town Tax Map 55, Lot 3 which proposed three (3) 27-unit buildings in the rear R-4 portion of the property and 10 residential units in a multi-use building on the front of the property located within the C-2. Per the density regulations, one (1) residential multi-use dwelling unit per 5,000 sq. ft. of lot area was permitted in the C-2 district. One (1) dwelling unit per 7,000 sq. ft. of lot area was permitted in the R-4 district. In other words, the C-2 district permitted a higher density than the R-4.

The base density allowed by right in the R-4 portion of the 80 Epping Road lot, applying the conservation bonus and accounting for the open water, wetlands, 100-year flood and access road area, was 63 units. The base density permitted in the C-2 portion of the property, assuming a multi-use concept and accounting for open water, wetlands and access road area, was 28 units.

Douglas Eastman
Code Enforcement Officer/Building Inspector
28 October 2019
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To accomplish the 80 Epping Road concept, inclusive of 91 total units across the whole lot, the applicant had to send 18 units' worth of density from the C-2 portion of the lot to the R-4 district in the back portion of the lot. This density was *higher* density (one (1) dwelling unit per 5,000 sq. ft. instead of the permitted one (1) dwelling unit per 7,000 sq. ft. permitted in the R-4) than was allowed in the R-4. In other words, had the applicant applied the R-4 density standards to the multi-use in the front of the property located in the C-2, it would have only had two (2) residential dwelling units to propose on that portion of the lot, instead of the 10 depicted on the plan.

These facts are substantially and materially different than the facts in the instant case. First and foremost, the 80 Epping Road project *was not* an open space development. In this sense, that project did "borrow" or "transfer" density from the C-2 to the R-4, which action is distinct from the process of creating a yield plan in the open space development context. Second, in the 80 Epping Road case, the applicant sought to transfer higher density from the C-2 District which was not permitted in the R-4 district, to the R-4 district. As a result, were it not for the relief granted by the ZBA, the applicant could not have depicted 10 multi-use dwelling units in front portion of the lot; it would have been left with only two (2). Moreover, in reviewing the application itself, the ZBA appeared to find that variance relief was not, in fact, required. *See* minutes of 21 October 2014 ZBA, pg. 10, where Member Hauschildt said that with regard to "swapping density" he does not believe variance approval is necessary, where Ms. Davies agree, and where Mr. Hauschildt said that there was "nothing in the regulations that says the applicant needs a variance."

Similarly, the ZBA application of Felder-Kuehl Properties, LLC ("Felder") for a variance from Article 4, Section 4.2, Schedule I-Permitted Uses in case number 1325 with regard to property located at Town Tax Map 55, Lots 75/76, off of what is now Meeting Place Drive, heard at the 20 March 2007 ZBA meeting, is equally inapposite. In that case, Felder sought a use variance to permit a multi-family residential use in an area of the lot designated as C-2. In this sense, the application had nothing to do with the transfer of density at all, it was a straight use variance to permit a residential use in the C-2 district.

Here, the Grisets are simply depicting conventional R-1 density lots for use in an open space development in the R-1 District. No higher density from the NP District is being lent to the R-1, as was the case in the 80 Epping Road, and no use variance is needed for residential uses in the NP District. Rather, all that is needed is a special exception to depict conventional R-1 lots in the NP District, which is what the Grisets propose to pursue.

- 4) The Town has not previously required applicants in the Grisets' position to obtain variance relief. In fact, the Town has not required open space development applicants to obtain variance relief even when the open space density calculation includes lots from higher density zoning districts which are not permitted by right in the location of the proposed development itself.**

In early 2019, the Planning Board approved a 41-lot open space subdivision in the Rose Farm project. As mentioned above, that project involved four distinct parcels of land (Tax Map 54, Lot 5; Tax Map 54, Lot 6; Tax Map 54, Lot 7; and Tax Map 63, Lot 205). Tax Map 54,

Douglas Eastman
Code Enforcement Officer/Building Inspector
28 October 2019
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Lots 6 and 7, the area in which the vast majority of the development will occur, is located in the R-1 District, where the applicable minimum lot size is 40,000 sq. ft. Tax Map 63, Lot 205 is located in the R-2 District, where the applicable minimum lot size requirement is 15,000 sq. ft. Tax Map 54, Lot 5 is located in the R-4 District, where the applicable density requirement is one unit per 7,000 sq. ft. of lot area.

As depicted on the approved yield plan in the Rose Farm matter, of the 11 lots depicted within the higher density R-2 and R-4 zoning districts, five (5) of them (Lots 13, 14, 15, 16 and 22) were significantly smaller than the required 40,000 sq. ft. density requirement in the R-1. In other words, in calculating the permitted density for the entire multi-parcel tract, the Planning Board allowed the applicant to utilize the higher densities of the R-2 and R-4 zoning districts, and further allowed some of that density from those districts to be used in the R-1 District, where the vast majority of the open space development will be built. More specifically, on the Rose Farm yield plan, only 26 conventional lots appear in the R-1 District were 32 are depicted in the same space on the overall open space subdivision plan. Importantly, the applicant in Rose Farm *was not* required to obtain variance relief to utilize this yield plan. Moreover, despite vigorous opposition and an appeal to the Superior Court, no one argued that the Rose Farm applicant should have been required to obtain variance relief.

Here, the Grisets' draft yield plan (Exhibit 1) simply depicts conventional R-1 density lots in the NP District. As such, the site plan (Exhibit 2) does not rely on higher density lots from the NP District for use in the R-1, which is exactly what happened in the Rose Farm project without any variance relief. Because the Town has not required open space development applicants to get variance relief even when said developments actually do rely on higher density from other zoning districts which is not permitted in the zoning district where the development will take place, the Town should not require the Grisets to obtain variance relief, especially where the Grisets' yield plan *does not* depict lots with densities that are higher than what is permitted in the zoning district in which the open space development will be built. Rather, R-1 density lots are permitted by right subject to a special exception in the NP District which is the only relief the Grisets should be required to obtain.

- 5) A requirement to obtain variance relief under the circumstances of this case is contrary to the nature of variance relief and New Hampshire law.**

For the reasons outlined above, requiring the Grisets to obtain variance relief would be contrary to the fundamental nature of variance relief itself and will needlessly expose the Grisets to the liabilities associated with the variance process. Variance relief is designed to be foundational, constitutional; it is designed to offer relief to a land owner who has no reasonable use of his/her land. As Attorney Peter Loughlin notes in his land use treatise "It should be clear . . . that it is not easy to obtain a variance and it should not be. The zoning ordinance in every community was voted upon by the legislative body and should not be lightly varied." 15 Loughlin, *New Hampshire Practice, Land Use Planning and Zoning*, §24.21 (4th Ed.). Similarly, a Town's act in referring applicants to the ZBA to obtain variance relief should be resorted to only where there is clear conflict between the proposal and the terms of the local zoning regulations. Here, no such conflict exists, and the terms of the Town's land use regulations, the legislative history of RSA 674:21, I(d), and the Town's historic treatment of open space

Douglas Eastman
Code Enforcement Officer/Building Inspector
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development all support the conclusion that variance relief is not required under the circumstances of this case.

Conclusion

As a result of the above, the Grisets seek an interpretation that the draft yield plan (Exhibit 1) complies with the Zoning Ordinance save for the requirement that they obtain a special exception from the ZBA to depict the conventional R-1 density lots within the NP District.

We would appreciate your response in writing at your earliest convenience to afford the Grisets time to file the necessary applications on or before the 4 November filing deadline if at all possible.

Thank you very much for your time and attention.

Very truly yours,
DONAHUE, PUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/LH

cc: Brian Griset
David Sharples

Exhibit B

Justin L. Pasay

From: Doug Eastman <deastman@exeternh.gov>
Sent: Thursday, October 31, 2019 2:00 PM
To: Justin L. Pasay
Subject: Re: Administrative Decision for Griset proposal

There is nothing in our ordinance that allows density transfer between zones, therefore it is not permitted so any request would require a variance, Hope this helps. Doug

On Thu, Oct 31, 2019 at 10:18 AM Justin L. Pasay <jpasay@dtclawyers.com> wrote:

Thank you very much Doug. Our only question is from what zoning ordinance we need variance relief from. Thanks again.

Best,

Justin

Justin L. Pasay, Esq.

Donahue, Tucker & Clandella, PLLC

111 Maplewood Ave., Suite D

Portsmouth, NH 03801

Phone (603) 766-1686

Fax (603) 766-1687

Email: jpasay@dtclawyers.com

Web: www.dtclawyers.com

Visit our website: www.dtclawyers.com

With offices in Exeter, Portsmouth and Meredith, NH

The information in this transmission contains information from the law firm of DONAHUE, TUCKER and CIANDELLA, PLLC which is privileged and confidential. It is intended to be used for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents is prohibited. If you receive this

transmission in error, please notify us by telephone at (603) 778-0686 so that we can take appropriate steps to protect confidentiality and/or attorney-client privilege of this information. Thank you.

From: Doug Eastman [mailto:deastman@exeternh.gov]
Sent: Wednesday, October 30, 2019 4:03 PM
To: Justin L. Pasay <jpasay@dtclawyers.com>
Subject: Administrative Decision for Grisets proposal

Dear Justin,

I have reviewed your request for an administrative decision, dated October 28th, 2019 regarding the Zoning Board of Adjustment (ZBA) relief needed to utilize the current draft yield plan for the Grisets' proposal to the Planning Board for a single-family open space development. It is my opinion that the ability to transfer the density of residential units from the NP-Neighborhood Professional zoning district would first require obtaining a special exception from the ZBA to permit residential uses in the NP zone. This relief alone would not allow for the ability to transfer the permitted residential density from the NP zone to the Grisets' property situated in the R-1, Low Density Residential zoning district but only permit the 'use'. It is my opinion that additional relief from the ZBA, by seeking a variance, would be necessary for the request to transfer density, as described.

I concur with your opinion that the Grisets' have reserved the development rights for the three subject properties.

Please accept this as my administrative decision regarding the Grisets' proposed open space project.

Should you, or your client, disagree with my decision, you may file an Appeal from an Administrative Decision within 30 days from this date and be placed on the next Zoning Board of Adjustment agenda for further consideration.

Please feel free to give me a call if you should have any further questions.

Town of Exeter
APPLICATION FOR A

VARIANCE

Case Number: _____

Date Filed: _____

Application Fee: \$ _____

Abutter Fees: \$ _____

Legal Notice Fee: \$ _____

TOTAL FEES: \$ _____

Date Paid _____ Check # _____

Name of Applicant: Brian Griset

(If other than property owner, a letter of authorization will be required from property owner)

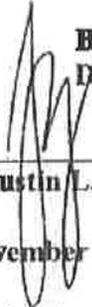
Address: 26 Cullen Way, Exeter, NH 03833

Telephone Number: 603-686-1139

Property Owner: Adela Griset, Mendez Real Estate Trust and Town of Exeter

Location of Property: Route 111 and Tamarind Way, Map 96, Lot 15, Map 81, Lots 53 & 57

**Applicant
Signature**


**BRIAN GRISET, BY HIS ATTORNEYS,
DONAHUE, TUCKER & CIANDELLA, PLLC**

Justin L. Pasay, Esq.

Date: November 4, 2019

**NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if space is inadequate.**

APPLICATION FOR A VARIANCE

Variance relief is requested from Zoning Ordinance Article 4.3, Schedule II, the Town's Density and Dimensional Regulations – Residential, and Article 7, the Town's Open Space Development Ordinance, to permit what the Code Enforcement Officer describes as a "density transfer between zones." The Grisets recognize the novelty of the circumstances before the ZBA. Though the Grisets maintain that their proposed open space development and corresponding yield plan do not require variance relief, and merely constitute permitted open space development subject only to a requirement to obtain a special exception to depict residential uses in the NP District on the yield plan, as outlined in other ZBA submissions filed contemporaneously herewith, the Grisets seek relief from the above mentioned zoning ordinances as a prophylactic, in the event that the ZBA denies their Appeal of Administrative Decision.

FACTS SUPPORTING THIS REQUEST:

- 1. The variance will not be contrary to the public interest;**

See attached

- 2. The spirit of the ordinance is observed;**

See attached

- 3. Substantial justice is done;**

See attached

- 4. The values of surrounding properties are not diminished;**

See attached

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

See attached

**VARIANCE APPLICATION FOR
BRIAN AND ADELA GRISET AND BRETT NEEPER, TRUSTEE OF THE MENDEZ
REVOCABLE REAL ESTATE TRUST (COLLECTIVELY, THE "GRISSETS") REGARDING
PROPERTY IDENTIFIED AS TAX MAP 96, LOT 15, TAX MAP 81, LOT 53 AND TAX
MAP 81, LOT 57.**

**VARIANCE FROM ZONING ORDINANCE ARTICLE 4.3, SCHEDULE II AND ARTICLE 7
TO PERMIT A SINGLE FAMILY OPEN SPACE DEVELOPMENT IN THE R-1 ZONING
DISTRICT WHICH DRAWS DENSITY FROM CONTIGUOUS UNIMPROVED PROPERTY
IN THE NEIGHBORHOOD PROFESSIONAL ("NP") ZONING DISTRICT**

Introduction

The Grisets are long-time residents of Exeter who live at property located at 26 Cullen Way, off of Tamarind Lane, which property is in the Town's R-1 Zoning District, is 23.6 acres in size and is further identified as Town Tax Map 96, Lot 15 (the "Development Property"). The Mendez Revocable Real Estate Trust, for which Adela Griset is the grantor, owns the large 30.76 acre parcel adjacent to the Development Property, located in the NP District, which is identified as Tax Map 81, Lot 53 (the "Conservation Property"). The Grisets are proposing a 16-unit single family open space development on the Development Property and a conventional one-lot subdivision, as depicted in the enclosed conceptual site plan (Exhibit 1). To accomplish the open space development, the Grisets have developed a conceptual yield plan (Exhibit 2) and propose to use density from both the Conservation Property and a third property identified as Town Tax Map 81, Lot 57, which is currently owned by the Town, and which is improved with recreation fields (the "Town Property"). In 1991, the Grisets conveyed 9.3 acres of the Town Property to the Town, and, via agreement with the Town dated 14 August 1991, retain the density rights over the same. *See Exhibit 3.*

In many respects, the proposed open space development has been contemplated by the Grisets for decades. More specifically, in 1990 the Grisets purchased the "Remaining Land" of the Meadows Subdivision (Tamarind Lane and Cullen Way) which Remaining Land included what now exists as the Development Property, the property that became the Greybird Farm subdivision, and the Town Property, and which Remaining Land was proposed for future development and was referenced as such within the Meadows Subdivision Restrictive Covenants. In 1991, utilizing a portion of the Remaining Land, the Grisets subdivided and developed Greybird Farm and conveyed 9.3 acres of what is now the Town Property to the Town, all with the agreement (*see Exhibit 3*) and understanding that such conveyance would satisfy the recreation and open space requirements of the future development. In 1993, the Grisets purchased lot 5 of the Meadows Subdivision (what is now 8 Tamarind Lane) from the Town's Conservation Commission, performed a lot line adjustment on the same and retained a 75' development right of way to access the Remaining Land. The only limitation agreed to by the Grisets through this process, which otherwise obtained all required Town approvals, was that final development of the Remaining Land (as proposed now) would not occur within 15 years, which period expired in 2008. Further, Mr. Griset personally informed the purchasers of 8 Tamarind Lane and 7 and 8 Greybird Farm Circle of the retained development rights referenced here, and confirmed the same with subsequent purchasers. Suffice it to say, the Grisets' current proposal is the product of considerable forethought and planning.

As depicted on the conceptual site plan, the single family open space development is thoughtfully proposed to be located on the uplands of the Development Property in a manner that will cause minimal wetland buffer impacts. Moreover, the Grisets plan to commit in excess of 42 additional acres across the two properties to open space and conservation land in a manner that satisfies the Town's vision for these properties as articulated in the 2018 amendments to the Exeter Master Plan. More specifically, and as detailed below, the Grisets intend a large portion of the Development Property to be maintained by the underlying condominium association as an open meadow, as it exists today, which open meadow will form a beautiful buffer between the proposed new development and the existing residences along Tamarind Lane. Further, the Grisets plan to convey the entirety of the Conservation Property, 30.76 acres, plus 1.62 acres from the Development Property to the Town, to ensure such land is retained for conservation and ecologically friendly purposes forever. On Friday, 1 November, the Grisets filed a request to meet with the Conservation Commission on a conceptual basis at their November meeting to discuss the Grisets' plan, and the Grisets anticipate a positive response. In addition to the Conservation Commission, the Grisets recently met with the Planning Board in a design review context and received positive comments.

The Grisets' proposal to draw density from the Conservation Property, located in the NP District, pursuant to its open space development design, however, has raised questions in the Town regarding the zoning relief the Grisets may need to do so. More specifically, the Grisets were informed that drawing density from the NP District was tantamount to the transfer of development or density rights pursuant to RSA 674:21, I(d). Moreover, there has been a suggestion that the Town has previously required applicants in similar situations to obtain variance relief. The Grisets respectfully disagreed with the perspective of the Town in this context and, as a result, provided a comprehensive analysis of the situation, including their belief that they are only required to obtain a special exception to depict residential uses within the NP District on the underlying yield plan, in a letter to Douglas Eastman dated 28 October 2019, which letter requested Mr. Eastman's administrative decision regarding the same. As outlined in the email correspondence from Mr. Eastman dated 30 October 2019, which is included in our corresponding appeal of administrative decision, Mr. Eastman's administrative decision regarding this situation is as follows:

In my opinion, the ability to transfer the density of residential units from the NP-Neighborhood Professional zoning district would first require obtaining a special exception from the ZBA to permit residential uses in the NP zone. This relief alone would not allow for the ability to transfer the permitted residential density from the NP zone to the Grisets' property situated in the R-1, Low Density Residential zoning district but only permit the "use." It is my opinion that additional relief from the ZBA, by seeking a variance, would be necessary for the request to transfer density, as described.

I concur with your opinion that the Grisets' have reserved the development rights for the three subject properties.

See Exhibit B. In response to this email, the Grisets sought guidance on specifically which Zoning Ordinance provision they needed relief from. Mr. Eastman's response was "[t]here is nothing in our ordinance that allows density transfer between zones, therefore it is not permitted

so any request would require a variance.” In light of this interpretation, and while the Grisets stand on their appeal from Mr. Eastman’s administrative decision and maintain their belief that the only zoning relief they require to utilize the conceptual yield plan is a special exception to depict residential uses in the NP District, the Grisets seek, out of an abundance of caution, a variance from Article 4.3, schedule II and Article 7 to permit a single family open space development in the R-1 Zoning District (the Development Property) which draws density from contiguous unimproved property in the NP District (the Conservation Property) as depicted in the conceptual site plan and yield plan (Exhibits 1 and 2).

By way of final background, open space developments are expressly permitted in the R-1 District. “Residential uses”, defined by the Zoning Ordinance as “single family, two-family, or multi-family; a combination thereof or separate uses[,]” are allowed by special exception within the NP District, via amendment to the Zoning Ordinance in 2008. As shown on the conceptual yield plan, the Grisets are simply depicting portions of six (6) large R-1 density lots within the NP District for the purpose of the yield plan.

A. VARIANCE CRITERIA.

Pursuant to Section 2.2.83 of the Zoning Ordinance and State statute (RSA 674:33, I(b)), to obtain a variance, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The Grisets assert that the application meets each of the criteria on the following bases.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 580 (2005); *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 105-06 (2007); and *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Chester Rod & Gun Club*, 152 N.H. at 581; *Farrar*, 158 N.H. at 691. *See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct us to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or

“threaten the public health, safety or welfare” and to make that determination by examining where possible the language of the Zoning Ordinance and Master Plan.

Because the Grisets’ open space development plan does not conflict with the Zoning Ordinance at all, does not alter the essential character of the neighborhood, and does not threaten the public health safety or welfare, this prong of the variance criteria is satisfied.

First in foremost, there is nothing in the Town’s Zoning Ordinance which prohibits what the Grisets are proposing, and as detailed in the Grisets’ appeal of administrative decision application, incorporated herein by reference, the use of density from different zoning districts pursuant to open space development is not a “transfer of development or density rights” pursuant to the State’s innovative land use statute (RSA 674:21) and has been permitted in Exeter without the need to obtain variance relief. Beyond this, the Grisets’ proposal is specifically contemplated and permitted by the Zoning Ordinance.

In Exeter, where lots of record have a total combined area of 20 or greater acres, as is the case with the Development Property individually (23.6 acres) and certainly the combined size of the Development Property and Conservation Property (approximately 54 acres), open space developments as the Grisets are proposing are required. *See* Zoning Ordinance, Article 4.3, Schedule II, Footnote 19. Dwelling unit density for open space development is determined using a yield plan that depicts the density on the parcels in question that is “reasonably achievable under a conventional subdivision following the requirements of the Zoning Ordinance and Subdivision and Site Plan Review regulations of the Town.” Zoning Ordinance, Article 7.7.1. The Town’s Site Plan Review and Subdivision Regulations elaborate further on the requirements for yield plans stating that they must comply with conventional subdivision regulations “and shall not require a variance from existing zoning ordinances in order to achieve the layout supporting the proposed density.” Site Plan Review and Subdivision Regulations, Article 7.13. So as a foundational point, Exeter’s land use regulations specifically contemplate use of contiguous parcels in open space developments, open space development is required on contiguous lots that are greater than 20 acres in size, and density is calculated by depicting conventional subdivision that is reasonably achievable and does not require a variance. Here, the combined area of the parcels in question are more than 54 acres in size (not accounting for the additional 9.3 acres of the Town Property) and no variance relief is required to obtain the subdivisions depicted on the yield plan.

In this sense, the Grisets’ proposal does not constitute a “transfer” of density, it simply constitutes an open space development proposal that is in accord with the Zoning Ordinance and, not only does the Grisets’ proposal not conflict with the Zoning Ordinance, it is required by the same by virtue of the combined size of the properties in question.

Further, the Griset proposal does not alter the essential character of the neighborhood. If anything, it preserves the character of the neighborhood and protects it from other uses which the Conservation Property, located in the NP District, could be put to. *See* Exhibit 5. As outlined in the “Introduction” section above, this development has been contemplated by the Grisets since the early 1990s. Further, as detailed in the appraisal enclosed herewith as Exhibit 4, from Brian W. White, MAI, SRA, the proposed open space development will add well-sited tasteful homes to the neighborhood in a manner that is consistent with several other subdivision developments in Town,

will not compromise property values, and will preserve approximately 42 acres of land for open space and conservation purposes such that the natural beauty and essential character of the neighborhood will be preserved forever. Further, the open meadow proposed for the Development Property will serve as a beautiful buffer between the proposed development and Tamarind Lane such that there will be no impact on the character of the neighborhood.

Beyond this, the Griset Proposal is specifically consistent with the 2018 changes to the Master Plan for the Town of Exeter which specifically addresses the Development Property and Conservation Property and states that the area is a “transition between the denser neighborhoods that abut Downtown and the more suburban/rural landscape of the western part of town.” See Exeter Master Plan, pg. 30-31. The Master Plan goes on to state that “new development . . . in this area should provide the transition needed from the two residential areas.” *Id.* The Grisets’ proposed open space development, required by the Zoning Ordinance, depicts the exact kind of transitional use of the underlying properties that was contemplated by the Master Plan and ensures 42 acres remain untouched conservation land forever.

The Griset proposal certainly does not threaten the public health, safety, or welfare. On the contrary, the proposed use represents a conservative, well-planned, ecologically friendly approach to developing these parcels in a manner that is totally consistent with the Master Plan.

As the Grisets’ proposed open space development is required by the Zoning Ordinance, and therefore consistent with the same, as it is consistent with the recent updates to the Exeter Master Plan, and as it will neither alter the essential character of the neighborhood or threaten the public health, safety or welfare, this prong of the variance criteria is satisfied.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variances observe the spirit of the underlying ordinance provisions involved. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be “contrary to the public interest” is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, this variance is consistent with the spirit of the Ordinance because of the reasons stated in Section 1, and is further consistent with the 2018 changes to the Exeter Master Plan. Similarly, for the reasons stated above, the Grisets respectfully asserts that granting the variances would not “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare”. Accordingly, the Grisets respectfully requests that the ZBA find that by granting their application, the spirit of the ordinance is observed.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, “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, supra, citing 15 P. Loughlin, New Hampshire Practice. Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the applicant from its denial.

In this case, there is a clear loss to the Grisets that is not outweighed by any gain to the community if the variances are denied. The variances will allow the Grisets to undertake development which has been specifically contemplated for decades, all in a manner which has a *de minimis* impact on the environment and which preserves unto the neighborhood and the public itself, a significant portion of conservation property which it otherwise would not have access to, all while specifically satisfying the edicts of the Master Plan. Given these factors, and the corresponding realities regarding the negligible impact of the proposed development to the neighborhood, as outlined in Exhibit 4, there is no gain to be had by the public by denying the variances. On the contrary, a denial of the variances will impose a severe loss to the Grisets who, over decades, painstakingly took efforts, in a totally transparent and neighborly way, to preserve their rights to develop the underlying properties. Given these factors, and personal factors held by the Grisets which we anticipate will be discussed at the public hearing, the Grisets respectfully urge this Board to find that there is no public benefit to be obtained from denying this application. Accordingly, the Grisets respectfully request that the ZBA find that granting this application would do substantial justice while denying this variance would be a substantial injustice in light of the circumstances set forth above.

4. The Proposed Structures will not diminish surrounding property values.

Brian W. White, MAI, SRA, of White Appraisal performed a comprehensive analysis of the Grisets' open space development proposal which includes an analysis of this prong of the variance criteria, which is enclosed as Exhibit 4 and which is incorporated herein by reference. Therein, Mr. White analyzes the impact of the proposed open space development on Tamarind Lane, Cullen Way, and surrounding properties, and ultimately concludes that the proposed use of the Development Property is compatible with the surrounding area, consistent with other secondary development off existing subdivisions in Exeter, many of which added significantly more houses to the underlying neighborhoods than what is being proposed here, and will not diminish surrounding property values.

This conclusion squares with common sense, especially when considering the well-known potential for development on the Development Land over the years, the nature of what is actually proposed for the properties which is conservative, consistent with the Master Plan, and which will preserve indefinitely approximately 42 acres of conservation property, and the nature of what could be developed on the Conservation Property by right, without the need for any zoning relief, like a multi-use.

In light of these circumstances and the data and evidence included with Exhibit 4, the Grisets respectfully encourage the ZBA to find that the values of surrounding properties will not be diminished by the granting of this application.

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

As set forth in Town's Zoning Ordinance and the provisions of RSA 674:33, I, there are two options by which a ZBA can find that an unnecessary hardship exists:

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

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The Proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The "special conditions" of the Development Property and Conservation Property, for purposes of this Variance criterion, are their large size and the wetlands on the same. As depicted within Exhibit 6, both properties are encumbered by considerable jurisdictional wetlands to include vernal pools, a prime wetland, property within Exeter's shoreland district, and poorly and very poorly drained soils, much of which was created by the development in the surrounding area. As a result, the Grisets are left with two large tracts which are largely undevelopable save for a few areas of pocketed uplands, some of which could be developed for high-density multi-use, which use is permitted by right in the NP District, without the need for any zoning relief.

Moreover, the Conservation Property is essentially landlocked as it has no frontage on a public road and is a considerably deep lot in a zoning district in which properties are envisioned to have long frontage and shallow depth, all to accommodate professional and medical offices, child day care facilities, multi-uses, and related uses, i.e., properties easily accessed by the public. Here, access to the Conservation Property is via a 50' deeded right-of-way over property owned by the Brickyard Condominiums. As such, these the Conservation Property stands out from other properties in the area, as being particularly burdened, in addition to its considerable wetlands, a lack of frontage and accessibility.

Collectively, these special conditions, i.e., the properties' large size, the wetlands, and, in the case of the Conservation Property its location in the NP District and its lack of frontage, distinguish them from other properties in the area.

As discussed above, there is nothing within the Zoning Ordinance which expressly prohibits that which is being proposed, and, on the contrary, the Zoning Ordinance requires open space developments in circumstances such as these, and the Grisets' plan is compatible with the surrounding neighborhood and the Exeter Master Plan's specific vision for the underlying properties. As such, there is no fair and substantial relationship between the general inferred

purpose of the underlying Zoning Ordinances in question and a prohibition on what the Grisets are proposing. The Grisets' plan is consistent with the intent and purpose of the Town's dimensional regulations and Open Space Development Ordinance.

Accordingly, the Grisets respectfully urge the ZBA to find that there is no fair and substantial relationship between the general inferred purpose of these specific Zoning Ordinance provisions and their application to the properties.

The Grisets also respectfully remind the ZBA that the mere fact that the Grisets are seeking the variances from the express provision of the Zoning Ordinance is not a valid reason for denying the variance. *See Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007); *see also Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011) ("mere conflict with the terms of the ordinance is insufficient"). The ZBA, therefore, cannot deny the variance request for the very reason that the proposed density "transfer" is not expressly contemplated by the Zoning Ordinance.

Finally, the proposed open space development is consistent with other development in the area, is required by the Zoning Ordinance, and preserves approximately 42 acres of land for conservation purposes. As a result, the Grisets' proposed open space development, and the use of R-1 District type density in the NP District should be deemed reasonable. *Vigant v. Town of Hudson*, 151 N.H. 747, 752 - 53 (2005); and *Malachy Glen*, 155 N.H. at 107; *see also Harborside* at 518-519 (applicant did not need to show signs were "necessary" rather only had to show signs were a "reasonable use"). Accordingly, the Grisets assert that they comply with the standard for Option A of the unnecessary hardship criterion.

Alternatively, if the Board determines for some reason that the standard for Option A is not met, then the Grisets assert that they comply with Option B of the unnecessary hardship criterion as listed above. Due to the special conditions of the Property listed above, the most feasible and practical use of the property (which happens to also be the use required by the Zoning Ordinance short within the context of residential uses short of a multi-use) is an open space development on the uplands portion of the Development Property and if such use requires a variance, no other use is reasonable without variance relief. Similarly, no other use would be as compatible and as ecologically friendly as the proposed use.

Accordingly, the Grisets assert that literal enforcement of the Towns' density requirements and the Open Space Development Ordinance would result in unnecessary hardship as defined using the above-noted criteria.

Town of Exeter
APPLICATION FOR
SPECIAL EXCEPTION

| | |
|----------------------|-------|
| Case Number: | _____ |
| Date Filed: | _____ |
| Application Fee: \$ | _____ |
| Abutter Fees: \$ | _____ |
| Legal Notice Fee: \$ | _____ |
| TOTAL FEES: \$ | _____ |
| Date Paid | _____ |
| Check # | _____ |

Name of Applicant: Brian Griset
(If other than property owner, a letter of authorization will be required from property owner)

Address: 26 Cullen Way, Exeter, NH 03833

Telephone Number (603) 686-1139

Property Owner Adela Griset, Mendez Real Estate Trust and Town of Exeter

Location of Property Route 111 & Tamarind Lane

**BRIAN GRISÉT
BY HIS ATTORNEYS, DONAHUE, TUCKER & CIANDELLA, PLLC**

**Applicant
Signature**


Justin L. Pasay, Esq.

Date November 4, 2019

*NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if space is inadequate.*

APPLICATION FOR A SPECIAL EXCEPTION

1. Currently existing use and/or situation:

This special exception application relates to a proposed single family open space development (*see* concept site plan, Exhibit 1) on property located at 26 Cullen Way and further identified as Town Tax Map 96, Lot 15 within the R-1 Zoning District (the "Development Property"), which open space development proposes to draw density from two additional properties to include property identified as Town Tax Map 81, Lot 57 within the R-1 Zoning District, which property is owned by the Town but over which the Grisets have retained density rights (the "Town Property"), as well as property identified as Town Tax Map 81, Lot 53 within the Neighborhood Professional ("NP") Zoning District, owned by the Mendez Revocable Real Estate Trust for which Adela Griset is the grantor (the "Conservation Property"). As such, the Grisets are charged with determining the permitted density within the open space development via utilization of a yield plan, which yield plan is required by Exeter's regulations to depict what a conventional subdivision of the underlying land (the Development Property, the Town Property and the Conservation Property) could reasonably yield without the need for any variance relief.

The purpose of this application is to seek a special exception to depict portions of six (6) large conventional R-1 density lots over the existing Conservation Property on the proposed yield plan (*see* Exhibit 2), for the purpose of calculating the permitted density of the open space development proposed to be sited on the Development Property. Two things are important to note at the outset. First, the Grisets have depicted large conventional lots in the NP District that easily satisfy the R-1 density requirements but require a special exception instead of depicting much higher density allowed by right in the NP District without the need for any zoning relief, like a multi-use residential use, for example. *See* Exhibit 5. Second, upon approval from the Planning Board of their open space development site plan, the Grisets propose to convey the entirety of the Conservation Property, over which the six (6) residential lots which are the subject of this application are depicted on the yield plan, as well as 1.62 acres of the Development Property, to the Town for conservation purposes, which ultimate purpose is beneficial to the public at large and is consistent with Exeter's Master Plan.

The existing use of the Conservation Property within the NP District is unimproved land and the proposed ultimate use of the Conservation Property, as noted above, after Planning Board approval of an open space development site plan, is unimproved conservation land owned by the Town.

2. Proposed use and/or situation:

The proposed use, as explained above, is portions of six (6) large conventional R-1 density lots depicted over the Conservation Property within the NP District for the purpose of the open space development's yield plan (Exhibit 1). The yield plan will be used to calculate allowed density in the proposed development to be sited on the Development Property. "Residential uses", defined by the Zoning Ordinance as "single family, two-family, or multi-family; a combination thereof or separate uses[.]" are permitted in the NP District subject to a special exception pursuant to Section 4.2, Schedule I of the Zoning Ordinance. As explained above, in

reality, the Grisets propose to convey the entirety of the Conservation Property to the Town after Planning Board approval. The sole intent of the requested special exception is to permit the depiction of conventional residential lots within the NP District on the yield plan.

Finally, none of the lots depicted on the yield plan (Exhibit 2) require any zoning or other land use relief to accomplish.

Note: Proposed change of use may result in applicable impact fees.

3. List all maps, plans and other accompanying material submitted with the application:

See Cover Letter

APPLICATION FOR SPECIAL EXCEPTION:

Special Exceptions:

A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

Special Exceptions, as enumerated in Article 4.2, Schedule I, shall be permitted only upon authorization by the board of adjustment. Such exceptions shall be found by the board of adjustment to comply with the following requirements and other applicable requirements as set forth in this ordinance.

NOTE: Please use a separate piece of paper if additional space is needed to complete the following information:

4. Explain the justification for special exception by addressing the following criteria:

A. That the use is a permitted special exception as set forth in Article 4.2, Schedule I hereof;

“Residential uses”, to include single family R-1 density lots, as depicted on the yield plan in question, are permitted in the NP Zone by special exception pursuant to Section 4.2, Schedule I of the Zoning Ordinance.

B. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected;

As depicted on the yield plan (Exhibit 2), portions of six (6) large residential lots are depicted within the NP District (lots 3, 6, 7, 15, 16 and 17 on the yield plan). Lot 3 derives its frontage from Tamarind Lane but would be accessed off the proposed extension of the existing Cullen Way cul-de-sac. Lot 6 derives its frontage from Tamarind Lane but would be accessed via a shared driveway from the same Cullen Way cul-de-sac extension. Similarly, Lot 7 derives its frontage from the proposed new private development road but would be accessed via the same shared driveway used to access Lot 6. Lots 15, 16 and 17 on the yield plan would each derive frontage from the new private development road, but would be accessed via the right-of-way off of Kingston Road. These proposed residential lots, permitted via special exception in the NP Zoning District, and depicted on the yield plan simply to establish the density permitted in the proposed open space development on the Development Property, are designed, located and proposed to be operated such that no zoning or other regulatory relief is required and such that the public health, safety welfare and convenience are protected.

More specifically, the Grisets have depicted large conventional R-1 density lots in the NP District rather than depicting far higher density such as multi-use residential, permitted by right in the NP District with no need for any zoning relief. As depicted on the concept multi-site plan (Exhibit 5), significantly higher density could be attained on the Conservation Property. Rather than pursuing this development scheme, however, the Grisets have championed a conservative approach to developing the underlying property, in keeping with their stewardship of the same over the last several decades. To summarize, rather than proposing high density (one unit per 5,000 sq. ft. of lot area) permitted by right in the NP District without any zoning relief (multi-use residential), the Grisets are merely depicting portions of six (6) lots over 30.76 acres of space to draw a reasonable amount of density from the Conservation Property for use in the open space site plan, which requires a special exception. Further, each of the six (6) lots in question, minimize wetland and wetland buffer impacts by accessing the building envelopes on each lot in a manner that satisfies the Zoning Ordinance and subdivision regulations alike. Moreover, each of the lots are reasonably sited in a manner such that the appearance and character of the surrounding area would be preserved.

Ultimately, the public's health, safety and welfare are championed by the Grisets proposal here because they are proposing reasonable, modest residential density and are *not* depicting higher densities technically allowed in the NP District to inflate the density in the proposed open space development. These sentiments are made even more true through consideration of the fact that Grisets plan to preserve and/or convey to the Town approximately 42 acres across the Development Property and Conservation Property for open space/conservation land after approval of an open space site plan by the Planning Board.

Accordingly, the Grisets respectfully suggest that the ZBA determine that this prong of the special exception criteria is met because the use is designed, located and proposed to be operated such that the public health, safety, welfare and convenience will be protected.

A. That the proposed use will be compatible with the zone district and adjoining post 1972 development where it is to be located;

Note: Adjoining principal uses in existence prior to 1972 (generally referred to as grand-fathered uses) that are not permitted uses as listed in 4.1 Schedule I: Permitted Use, shall not be considered in determining the compatibility of an applicant's proposed use.

The six (6) proposed residential lots are compatible with the Zoning District, where residential uses are allowed by special exception, are compatible with the use of the vast majority of the surrounding properties to include Cullen Way, Tamarind Lane and Greybird Farm Circle, and are compatible with the Exeter Master Plan, which, on pages 30-31, recommends a transitional residential use on the underlying Properties. For these reasons, the Grisets respectfully suggest that the ZBA determine that this prong of the special exception criteria is met.

B. That adequate landscaping and screening are provided as required herein;

Each of the proposed six (6) lots depicted in the NP District are very large and the vast majority of each lot is proposed to remain in its natural vegetative state, save for the building envelopes on each lot, which use is consistent with the surrounding properties, and which provides more than adequate landscaping and screening.

C. That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets;

Each lot, as proposed, has sufficient off-street parking per the terms of the Zoning Ordinance.

D. That the use conforms with all applicable regulations governing the district where located, except as may otherwise be determined for large-scale developments;

The use conforms with all applicable regulations governing the NP District and, as noted above, would complement the neighborhood and surrounding existing residential uses.

G. As a condition of Special Exception approval, the applicant may be required to obtain Town Planner review and/or Planning Board approval of the site plan. Additionally, the Board of Adjustment may require the applicant to obtain Planning Board approval of the site plan prior to rendering a decision on an application for Special Exception.

The yield plan will have to be approved by the Planning Board pursuant to the open space development site plan review process. Generally speaking, no site plan review is required for conventional residential subdivision. The Grisets are happy to comply with the standard processing of their yield plan pursuant to the Town's land use regulations.

H. That the use shall not adversely affect abutting or nearby property values;

The six (6) large residential lots in question, if actually developed, would not adversely affect abutting or nearby property values, as explained in great detail in Exhibit 4, the appraisal report of Brian W. White, MAI, SRA, which report is incorporated herein by reference. Beyond the data and analysis in Exhibit 4, common sense demands the conclusion that the six large residential lots depicted on the yield plan will not affect nearby property values because the character of the underlying neighborhood will be preserved and because the use is substantially consistent with the surrounding properties and is not obnoxious in any sense.

- I. If the application is for a Special Exception for the bulk storage of a material which is, in the opinion of the Planning Board, potentially explosive, than landscaping, per Article 5.20, shall be deemed to include such blast containment, blast dampening or blast channeling features as the Board may require;**

N/A

- J. If the application is for a use in the "Professional/Tech Park District," such exception will not:**

- 1. Affect the water quality of Water Works Pond or other water supplies;**
- 2. Constitute a health hazard to the community;**
- 3. Permit temporary structures;**
- 4. Permit the recycling, disposal or transfer of materials defined as hazardous waste and set forth in Article 5.10.5 of this ordinance;**

N/A

Note: The applicant shall demonstrate that handling, storage and containment of any chemicals or substances defined as "hazardous" will be handled in strict accordance with the regulations and recommendations of the EPA and/or any other governmental body charged with enforcing compliance with any laws or statutes regulating hazardous substances.

**ZONING BOARD OF ADJUSTMENT
APPLICATION CHECKLIST**

For an application to be considered complete, you must have the following:

- ✓ ○ Application Form.
- ✓ ○ Complete Abutters List.
- ✓ ○ Three (3) pre-printed 1" x 2 5/8" labels for each abutter, the applicant and all consultants.
- ✓ ○ Letter of Explanation.
- ✓ ○ Vicinity Ownership Map.
- ✓ ○ Ten (10) copies of Entire Application. (10 plus original)
- ✓ ○ Letter from Owner Authorizing Applicant to file on Owner's behalf.

○ Filing Fees: *effective January 1, 2008*

\$100.00 Application Fee. $\times 3 = 300$
\$10.00 Per Abutter $\times 33 = 330$
Legal Notice Fee: Actual Cost of Advertisement. \$630-

Note: All of the above referenced items must be submitted to the Planning Office on or before deadline dates. See Schedule of Deadlines and Public Hearings for more information.

LETTER OF AUTHORIZATION

I, Adela Griset, owner of property depicted on Tax Map 96, Lot 15, and Brett Neeper, Trustee of the Mendez Real Estate Trust, owner of property depicted as Tax Map 83, Lot 53, do hereby authorize Brian Griset, Donahue, Tucker and Ciandella, PLLC and Beals Associates to execute any land use applications to the Town of Exeter and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: 11-4-19

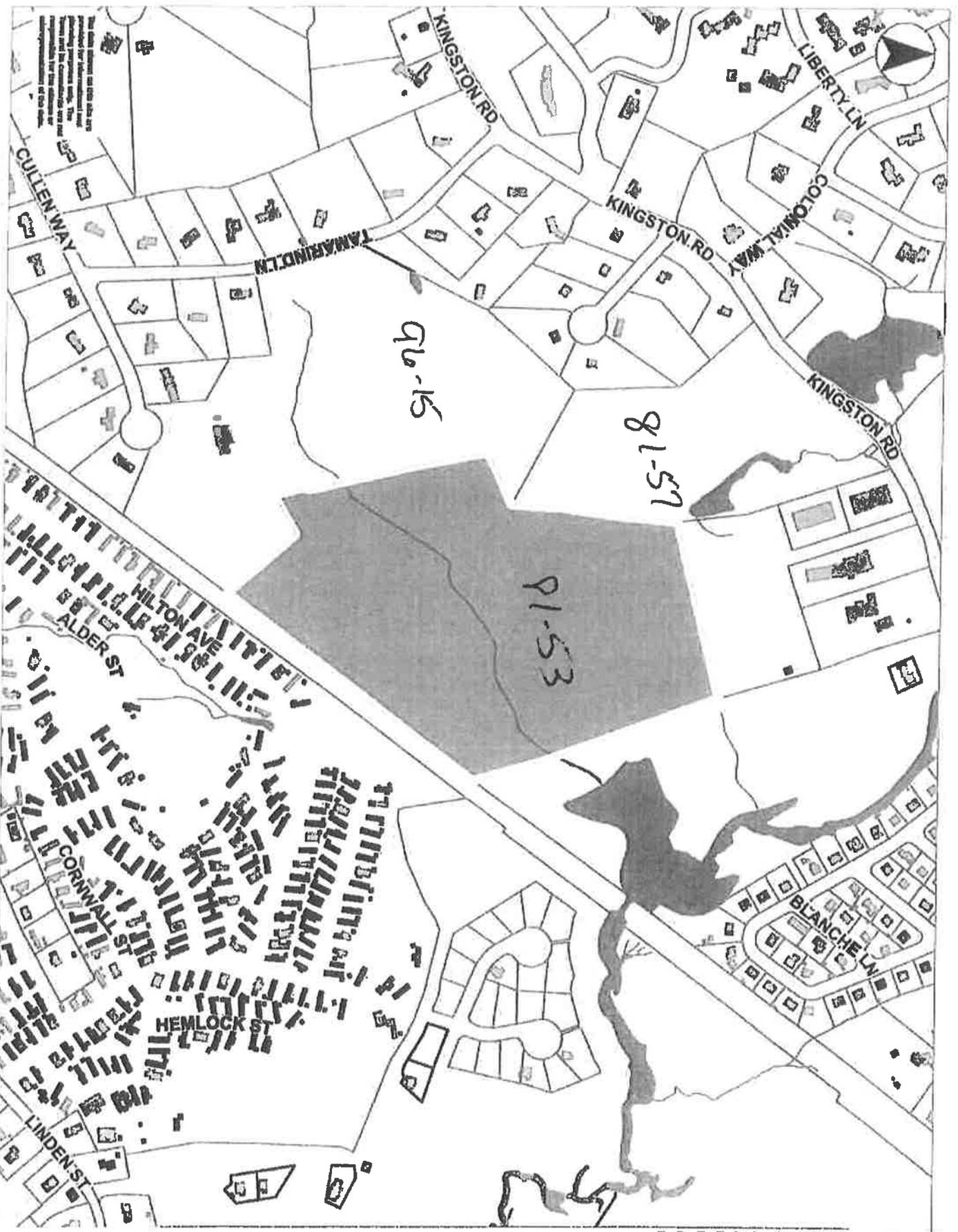


Adela Griset

MENDEZ REAL ESTATE TRUST



Brian T. Griset, attorney in
fact for Brett Neeper,
Trustee



- Legend**
- State Highway
 - US Highway
 - State Highway
 - Town Boundary
 - Assessing Towns
 - Single (Updated Feb 2016)
 - Water
 - Public Streets
 - Other Water
 - Other
 - Buildings



0 640 1280 Feet
 Printed on 11/04/2019 at 10:23 AM

ABUTTERS LIST
Map 96, Lot 15 and Map 81 Lot 53
Adela Griset and Mendez Real Estate Trust

| <u>Tax Map</u> | <u>Lot No.</u> | <u>Name & Address</u> |
|------------------|----------------|--|
| Owner: | | |
| 96 | 15 | Adela Griset 26 Cullen Way Exeter, NH 03833 |
| 81 | 53 | Brett Neeper, Trustee Mendez Real Estate Trust 26 Cullen Way Exeter, NH 03833 |
| 81 | 57 | Town of Exeter 10 Front Street Exeter, NH 03833 |
| Abutters: | | |
| 96 | 16 | Robert & Debra O'Neill 28 Cullen Way Exeter, NH 03833 |
| 96 | 17 | Alyson & Christopher Wood 35 Cullen Way Exeter, NH 03833 |
| 96 | 14 | Robert & Dawn Cardeiro 24 Cullen Way Exeter, NH 03833 |
| 96 | 9 | Patrick & Anne Flaherty 8 Tamarind Lane Exeter, NH 03833 |
| 96 | 11 | Michael & Julie Lanigra 12 Tamarind Lane Exeter, NH 03833 |
| 96 | 13 | Lisa Roseberry, Trustee Lisa Roseberry Trust 22 Cullen Way Exeter, NH 03833 |

| | | |
|----|----|---|
| 81 | 78 | William & Deborah Sheehan 1 Colonial Way Exeter, NH 03833 |
| 74 | 81 | Judith Fraumeni, Trustee Judith Fraumeni Rev. Trust 7 Glen Drive Lynnfield, MA 01940 |
| 81 | 54 | Brickyard Business Condo Assoc. 16 Kingston Road #13 Exeter, NH 03833 |
| 81 | 55 | Brickyard Business Condo Assoc. 16 Kingston Road #13 Exeter, NH 03833 |
| 81 | 52 | Brickyard Business Condo Assoc. 16 Kingston Road #13 Exeter, NH 03833 |
| 81 | 58 | Nathaniel & Nicole Fuller 2 Greybird Farm Circle Exeter, NH 03833 |
| 81 | 60 | Rachel & Jeff Henry 6 Greybird Farm Circle Exeter, NH 03833 |
| 81 | 61 | Stephen & Sarah Leavitt 8 Greybird Farm Circle Exeter, NH 03833 |
| 81 | 59 | Charles & Maryann Pottle 4 Greybird Farm Circle Exeter, NH 03833 |
| 81 | 62 | Craig Lawry 7 Greybird Farm Circle Exeter, NH 03833 |
| 81 | 50 | Owen Baril Barbara Michaud PO Box 975 Exeter, NH 03833 |
| 81 | 51 | Patrick & Faye Castonguay, Trustees 122 Kelsey Road Nottingham, NH 03290 |

| | | |
|----|----|---|
| 81 | 49 | John Hennessey, Murray Family Rev. Trust Christine Henderson Rev. Liv. Trust 12 Pendexter Road Madbury, NH 03823 |
| 73 | 47 | Boston & Maine Railroad 1700 Iron Horse Park N. Billerica MA 01862 |
| 95 | 64 | Exeter River MPH Cooperative, Inc. c/o Hodges 201 Loudon Road Concord, NH 03301 |
| 96 | 10 | Edward Liptak Ann Elizabeth Bennett 10 Tamarind Lane Exeter, NH 03833 |
| 96 | 29 | Thomas & Linda Smith 7 Tamarind Lane Exeter, NH 03833 |
| 96 | 28 | Paul & Lisa Michaud 9 Tamarind Lane Exeter, NH 03833 |
| 96 | 08 | Jonathan & Colene Elliott 6 Tamarind Lane Exeter, NH 03833 |
| 96 | 30 | Jason & Patricia Conway 5 Tamarind Lane Exeter, NH 03833 |
| 81 | 79 | Town of Exeter 10 Front Street Exeter, NH 03833 |
| 96 | 31 | Robert & Rebecca Lietz 3 Tamarind Lane Exeter, NH 03833 |

Attorney:

Justin L. Pasay, Esquire
Donahue, Tucker & Ciandella, PLLC
111 Maplewood Avenue, Suite D
Portsmouth, NH 03801

Engineer:

**Christian Smith, P.E.
Beals Associates
70 Portsmouth Avenue
Stratham, NH 03885**

S:\GM-GR\Griset, Adela\ZBA\2019 11 01 abutter list.docx

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Exeter, NH 03833

Brett Neeper, Trustee
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Exeter, NH 03833

Town of Exeter
10 Front Street
Exeter, NH 03833

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Exeter, NH 03833

Alyson & Christopher Wood
35 Cullen Way
Exeter, NH 03833

Robert & Dawn Cardeiro
24 Cullen Way
Exeter, NH 03833

Patrick & Anne Flaherty
8 Tamarind Lane
Exeter, NH 03833

Michael & Julie Lanigra
12 Tamarind Lane
Exeter, NH 03833

Lisa Roseberry, Trustee
Lisa Roseberry Trust
22 Cullen Way
Exeter, NH 03833

William & Deborah Sheehan
1 Colonial Way
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Judith Fraumeni Rev. Trust
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Lynnfield MA 01940

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Charles & Maryann Pottle
4 Greybird Farm Circle
Exeter, NH 03833

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4 Greybird Farm Circle
Exeter, NH 03833

Craig Lawry
7 Greybird Farm Circle
Exeter, NH 03833

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7 Greybird Farm Circle
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Owen Baril & Barbara Michaud
PO Box 975
Exeter, NH 03833

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Trust, Christine Henderson
Rev. Trust
12 Pendexter Road
Madbury, NH 03823

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Donahue, Tucker & Ciandella
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Portsmouth, NH 03801

Christian Smith, P.E.
Beals Associates
70 Portsmouth Avenue
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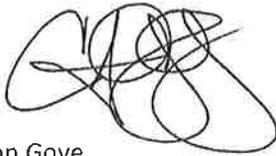
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May 18th, 2020

As an update to my original opinion of value letter dated February 25th, 2020, the proposed lots would have only increased in value since the original letter. Because of the lack of available inventory on the market we saw the average sales price of homes in Rockingham County set an all-time record high last month. The original values placed on the lots remain a very conservative estimate.



Colton Gove
The Gove Group Real Estate

THIS MAP PRODUCT IS WITHIN THE TECHNICAL STANDARDS OF THE NATIONAL COOPERATIVE SOIL SURVEY. IT IS A SPECIAL PURPOSE PRODUCT, INTENDED FOR INFILTRATION REQUIREMENTS BY THE NH DES ALTERATION OF TERRAIN BUREAU. IT WAS PRODUCED BY A PROFESSIONAL SOIL SCIENTIST, AND IS NOT A PRODUCT OF THE USDA NATURAL RESOURCES CONSERVATION SERVICE. THERE IS A REPORT THAT ACCOMPANIES THIS MAP.

THE SITE SPECIFIC SOIL SURVEY (SSSS) WAS PRODUCED DECEMBER 17, 2019, AND WAS PREPARED BY JAMES P. GOVE, CSS # 004, GOVE ENVIRONMENTAL SERVICES, INC. THE SURVEY AREA IS LOCATED AT TAMARIND LANE, EXETER, NH.

SOILS WERE IDENTIFIED WITH THE NEW HAMPSHIRE STATE-WIDE NUMERICAL SOILS LEGEND, USDA NRCS, DURHAM, NH, ISSUE # 10, JANUARY 2011. THE NUMERIC LEGEND WAS AMENDED TO IDENTIFY THE CORRECT SOIL COMPONENTS OF THE COMPLEX.

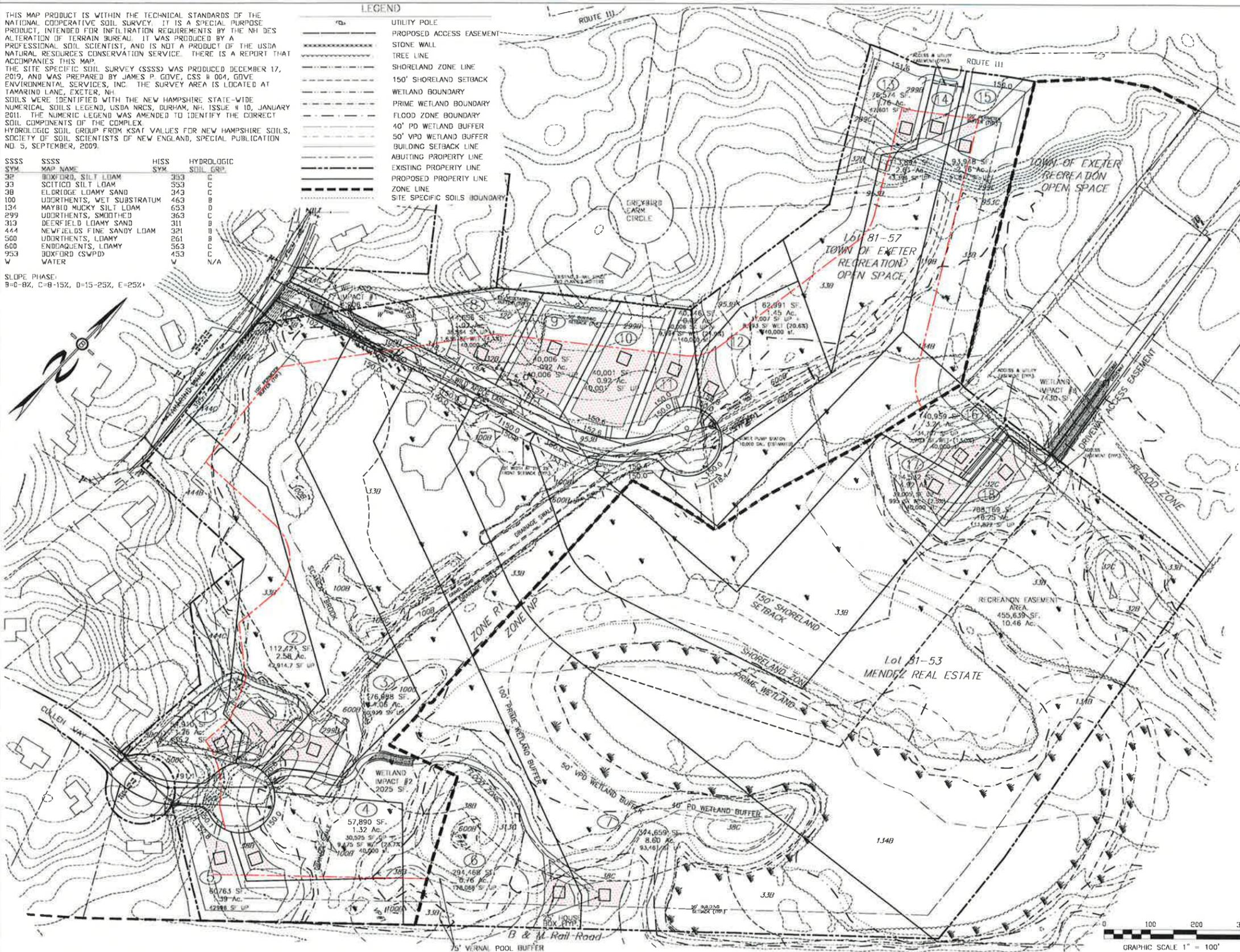
HYDROLOGIC SOIL GROUP FROM KSAT VALUES FOR NEW HAMPSHIRE SOILS, SOCIETY OF SOIL SCIENTISTS OF NEW ENGLAND, SPECIAL PUBLICATION NO. 5, SEPTEMBER, 2009.

| SSSS SYM | SSSS MAP NAME | HISS SYM | HYDROLOGIC SOIL GRP |
|----------|---------------------------|----------|---------------------|
| 32 | BOWTIE SILT LOAM | 353 | C |
| 33 | SCITICO SILT LOAM | 353 | C |
| 38 | ELDRIDGE LOAMY SAND | 343 | C |
| 100 | UDRTHENTS, WET SUBSTRATUM | 463 | B |
| 134 | MAYBID MUCKY SILT LOAM | 653 | D |
| 299 | UDRTHENTS, SMOOTHED | 363 | C |
| 313 | DEERFIELD LOAMY SAND | 311 | B |
| 444 | NEWFIELDS FINE SANDY LOAM | 321 | B |
| 500 | UDRTHENTS, LOAMY | 261 | B |
| 600 | ENDOQUENTS, LOAMY | 563 | C |
| 953 | BOXFORD (SWPD) | 453 | C |
| W | WATER | W | N/A |

SLOPE PHASE:
B=0-8%, C=8-15%, D=15-25%, E=25%+

LEGEND

| | |
|--|------------------------------|
| | UTILITY POLE |
| | PROPOSED ACCESS EASEMENT |
| | STONE WALL |
| | TREE LINE |
| | SHORELAND ZONE LINE |
| | 150' SHORELAND SETBACK |
| | WETLAND BOUNDARY |
| | PRIME WETLAND BOUNDARY |
| | FLOOD ZONE BOUNDARY |
| | 40' PD WETLAND BUFFER |
| | 50' VPD WETLAND BUFFER |
| | BUILDING SETBACK LINE |
| | ABUTTING PROPERTY LINE |
| | EXISTING PROPERTY LINE |
| | PROPOSED PROPERTY LINE |
| | ZONE LINE |
| | SITE SPECIFIC SOILS BOUNDARY |



PREPARED FOR:
BRIAN GRISET
26 CULLEN WAY
EXETER, NH 03833

BEALS ASSOCIATES PLLC
70 PORTSMOUTH AVE, STRATHAM, N.H. 03885
PHONE: 603-583-4860, FAX: 603-583-4863

ZONING REQUIREMENTS

| ZONE | RI | NO |
|---|-----------|-----|
| LOT SIZE = | 40,000 SF | |
| MIN FRONTAGE | 150' | |
| MIN DEPTH | 150' | |
| LOT WIDTH | 150' | |
| MAX HEIGHT | 35' | |
| BUILD. SETBACKS: | | |
| FRONT | 25' | |
| SIDE | 15' | |
| REAR | 25' | |
| PERIMETER BUFFER | 100' | 50' |
| WET PD & VPD | 75' | |
| RECREATION AREA | 100' | |
| WETLANDS BUFFER | 75' | |
| 40' POORLY DRAINED NO-CUT, NO DISTURBANCE BUFFER | | |
| 50' VERY POORLY DRAINED NO-CUT, NO DISTURBANCE BUFFER | | |
| WETLANDS CONSERVATION OVERLAY DISTRICT | | |
| SHORELAND PROTECTION OVERLAY DISTRICT | | |
| LOT AREA PER ARTICLE 9:19, SOX UPLAND, SOX WETLAND, OZ OPEN WATER | | |

TOTAL ACREAGE NOTES: YIELD PLAN - PARCEL 81-57 INCLUDED PER TOWN AGREEMENT DATED AUG. 4, 1991.

LAND AREAS:
TOTAL AREA = 63.83 AC
UPLAND AREA = 23.60 AC
WETLAND AREA = 40.23 AC
VPD SOIL - 10.75 AC
PD SOIL - 29.47 AC

TOTAL ESTIMATED WETLAND IMPACT 13,661 SF

NET TRACT AREA CALCULATION:
TOTAL TRACT AREA = 63.83x10X = 57.45 AC
LESS VPD = 10.76 AC
LESS 75% PD = .75x29.47 AC = 22.10 AC
NET TRACT AREA = 24.59 AC
30% OPEN-SPACE REQUIRED = 7.38 AC

PUBLIC OPEN-SPACE CALCULATION:
32.39 AC + 9.38 AC PREVIOUSLY DEEDED TO THE TOWN "BRICKYARD PARK" = 41.77 AC = 65% OF 63.83 AC.

YIELD PLAN DENSITY CALCULATIONS:
18 LOTS + 10% DENSITY BONUS FOR DEEDING TO TOWN OVER 50% OF PARCEL FOR CONSERVATION OPEN SPACE. SEE CONSERVATION COMMISSION VOTE OF 11-12-19.
32.39 AC + 9.38 AC PREVIOUSLY DEEDED TO THE TOWN "BRICKYARD PARK" = 41.77 AC = 65% OF 63.83 AC.

REC. AREA NOTES: YIELD PLAN -
PER ARTICLE 9.6.3. REC/PARK = 10% OF TOTAL TRACT AREA
73.8 AC, ORIGINAL NUTRIE PARCEL (PHASES 1, 2 & 3) + 30.76 AC, MENDES TRUST PARCEL = 104.56x10 = 10.46 AC.

ALLOWED DRIVES OFF KINGSTON ROAD CALCULATED PER STATE STATUTE AND DRIVEWAY REGULATIONS. ACCESS PER PLAN RGRD: C-1746 "PLAN OF LAND IN EXETER, NH DATED MAR 28, 1970 BY MATT HAUTALA, IN ACCORDANCE WITH NHDOT DRIVEWAY POLICY #8, PARCEL "A" = 2-DRIVES; PARCEL "B" = 3-DRIVES (SEE REFERENCED PLAN). PHASE 3 OF THIS OVERALL DEVELOPMENT, THERE ARE 2-REMAINING CURB CUTS FOR PARCEL "A".

NOTE: EXETER GREEN COVENANTS ALLOW DEVELOPER TO ADD LOTS TO THE PREVIOUSLY APPROVED SUBDIVISION.

ON JANUARY 21, 2020 THE EXETER ZBA GRANTED A SPECIAL EXCEPTION TO PER ARTICLE 4, SECTION 4.2 SCHEDULE I: PERMITTED USES AND ARTICLE 5, SECTION 5.2 TO PERMIT RESIDENTIAL USE OF A 30.76-ACRE PARCEL LOCATED WITHIN THE NP-NEIGHBORHOOD PROFESSIONAL ZONING DISTRICT FOR THE SOLE PURPOSE OF CALCULATING DENSITY OF A PROPOSED OPEN SPACE DEVELOPMENT.

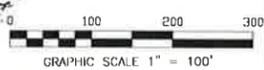
ON JANUARY 21, 2020 THE EXETER ZBA GRANTED A VARIANCE FROM ARTICLE 4, SECTION 4.3 SCHEDULE II: DENSITY AND DIMENSIONAL REGULATIONS - RESIDENTIAL AND ARTICLE 7, OPEN SPACE DEVELOPMENT TO PERMIT A SINGLE-FAMILY OPEN SPACE DEVELOPMENT IN THE R-1, LOW DENSITY RESIDENTIAL ZONING DISTRICT WHICH DRAWS DENSITY FROM CONTIGUOUS UNIMPROVED PROPERTY IN THE NP-NEIGHBORHOOD PROFESSIONAL ZONING DISTRICT.

| | |
|---------------------------|---------|
| ADD 100' PERIMETER BUFFER | 5/28/20 |
| REVISED PER TRC | 7/24/20 |
| REVISIONS: | DATE: |

PROPOSED YIELD PLAN

PLAN FOR:
RESIDENTIAL DEVELOPMENT
TAMARIND LANE
EXETER, NH

DATE: FEB. 5, 2020 SCALE: 1"=100'
PROJ. NO: NH-1154.1 SHEET NO. 1 OF 1





TOWN OF EXETER

Planning and Building Department

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 772-4709

www.exeternh.gov

Date: June 4, 2020
To: Planning Board
From: Dave Sharples, Town Planner
Re: PB Case #17-29 Garrison Glen LLC - 24 Continental Drive

The Applicant has submitted the enclosed request for a one-year extension of the site plan and Conditional Use Permit approvals granted by the Planning Board on January 11, 2018 for the proposed construction of a single story, 116,288 square foot building and associated site improvements on the property located at 24 Continental Drive. The proposed building will contain office space, assembly spaces, and warehouse and distribution areas. The subject property is 20.68 acres in area, and identified as Tax Map Parcel #56-3.1 and located in the CT-1, Corporate Technology Park-1 zoning district.

As customary with all applications, I provide a suggested motion below for your convenience.

Conditional Approval Extension request motion: I move that a one-year extension to the conditional approvals granted for the site plan for Garrison Glen LLC (PB Case #17-29) be APPROVED / APPROVED WITH THE FOLLOWING CONDITIONS / TABLED / DENIED. This conditional approval will now be valid through July 11, 2021.

Thank you.

Enclosure – 1



Barbara Mcevoy <bmcevoy@exeternh.gov>

Fwd: PB #17-29 Garrison Glen LLC 24 Continental Drive COA Extension-let(2).pdf

1 message

David Sharples <dsharples@exeternh.gov>

Fri, May 22, 2020 at 10:32 AM

To: Barbara Mcevoy <bmcevoy@exeternh.gov>, Kathleen Croteau <kcroteau@exeternh.gov>

For PB agenda at some point. Probably can put it on the next agenda (June 11) as it is only an extension request.

Thanks,
Dave

----- Forwarded message -----

From: **Thomas Monahan** <thomasfmonahan@hotmail.com>

Date: Fri, May 22, 2020 at 9:56 AM

Subject: PB #17-29 Garrison Glen LLC 24 Continental Drive COA Extension-let(2).pdf

To: David Sharples <dsharples@exeternh.gov>

Dave , I would like to request an extension of this approval for 1 year.

Thanks,
Tom Monahan

2 attachments **ATT00001.txt**
1K **PB #17-29 Garrison Glen LLC 24 Continental Drive COA Extension-let(2).pdf**
47K



TOWN OF EXETER, NEW HAMPSHIRE

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www.exeternh.gov

June 14, 2019

Thomas F. Monahan, Manager
Garrison Glen LLC
20 Trafalgar Square, Suite 620
Nashua, New Hampshire 03063

Re: PB Case #17-29 Garrison Glen LLC
N/R Site Plan Review and Wetland/Shoreland Conditional Use Permits
24 Continental Drive, Exeter, N.H
Tax Map Parcel #56-3.1

Dear Mr. Monahan:

Please be advised that at the meeting of June 13, 2019, the Exeter Planning Board voted to **APPROVE** a one-year extension, to expire on July 11, 2020, to meet all remaining conditions precedent for the above project approval granted by the Planning Board on January 11, 2018.

Please feel free to contact the Planning Department at 773-6114 with any questions.

Sincerely,

Langdon J. Plumer
Chairman
Exeter Planning Board

cc: James N. Petropulos, P.E. , Hayner/Swanson, Inc.
Douglas Eastman, Building Inspector/Code Enforcement Officer
Jennifer Mates, P.E., Ass't. Town Engineer
Janet Whitten, Deputy Assessor

LJP:bsm

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**TOWN OF EXETER
PLANNING BOARD
APPROVED MINUTES
JUNE 13, 2019**

1. **CALL TO ORDER:** Session was called to order at 7:12 pm by Chair Plumer.

2. **INTRODUCTIONS**

Members Present: Chair Langdon Plumer, Vice-Chair Aaron Brown, Pete Cameron, Clerk, John Grueter, Gwen English, Niko Papakonstantis, Select Board Representative, Marcia Moreno-Baez, Alternate, Nick Gray, Alternate, Jennifer Martel, Alternate, Robin Tyner, Alternate, Pete Steckler, Alternate

Staff Present:

Chair Plumer indicated that Alternate Nick Gray would be active.

3. **APPROVAL OF MINUTES**

May 23, 2019 - Tabled

4. **NEW BUSINESS**

HEARINGS: None

5. **OTHER BUSINESS**

 **Garrison Glen, LLC
24 Continental Drive 116,288 SF multi-tenant, light manufacturing/distribution
facility
Case #17-29
Request for One-Year Extension of Approval**

Chair Plumer referenced a letter dated May 30, 2019 from Thomas F. Monahan on behalf of Garrison Glen, LLC requesting a one-year extension.

Chair Plumer indicated a one-year extension had been granted on 1/11/18 and another through 7/11/19. This is to give additional time to satisfy conditions imposed.

Vice-Chair Brown motioned to grant a one-year extension as requested by Garrison Glen, LLC, Planning Board Case #17-29. Mr. Gray seconded the motion, with all in favor, the motion passed unanimously.

Master Plan Discussion