



TOWN OF EXETER, NEW HAMPSHIRE

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

www.exeternh.gov

LEGAL NOTICE EXETER ZONING BOARD OF ADJUSTMENT AGENDA

The Exeter Zoning Board of Adjustment will meet on Tuesday, June 21, 2022 at 7:00 P.M. in the Nowak Room located in the Exeter Town Offices, 10 Front Street, Exeter, to consider the following:

NEW BUSINESS:

The application of Benham Investment for a variance from Article 5, Section 5.5.3 to permit the proposed construction of two (2) principal residential buildings on a 7.23-acre parcel located at 28 Newfields Road. The subject property is located in the RU-Rural zoning district. Tax Map Parcel #38-3. ZBA Case #22-13.

The application of 131 Portsmouth Avenue LLC for a variance from Article 5, Section 5.1.2 to permit the expansion of a non-conforming light industry use on the property located at 131 Portsmouth Avenue. The subject parcel is located in the C-2, Highway Commercial and CT-Corporate/Technology Park zoning districts. Tax Map Parcel #52-112. ZBA Case #22-12.

OTHER BUSINESS:

- Jones & Wilson - ZBA Case #18-14
Request for Extension – 173-179 Water Street (former Freedman property)
Tax Map Parcel #64-50
- Approval of Minutes: May 17, 2022

EXETER ZONING BOARD OF ADJUSTMENT

Kevin M. Baum, Chairman

Posted 06/10/22: Exeter Town Office and Town of Exeter website

Town of Exeter
Zoning Board of Adjustment
May 17, 2022, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Rick Thielbar, Laura Davies, Martha Pennell - Alternate

Call to Order: Chair Kevin Baum called the meeting to order at 7 PM. He asked for a moment of silence for alternate Board member Anne Surman, who has passed away.

I. **New Business**

- A. The application of Patricia Duval for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Schedule I, Note #2 and Article 5, Section 5.2 for the proposed construction of an accessory dwelling unit on the property located at 105 Brentwood Road. The subject parcel is located in the R-1, Low Density Residential zoning district. Tax Map Parcel #60-24. ZBA Case #22-9.

Patricia Duval said she is looking to build an accessory dwelling unit on her property. She briefly went through the special exception criteria: A) Yes, the accessory dwelling unit is a permitted special exception. B) It is designed to operate in the best interest of the public health, safety, and welfare. C) The dwelling unit is located within the zone R1, which is compatible. D) Loam and seed will be replaced and repaired. E) There is adequate off-street parking, with a State-approved driveway that was just installed last year. There are 4+ off-street parking spaces. Driveway access remains unchanged. Mr. Baum asked if the 4 spaces include the garage. Ms. Duval said there are 2 spaces next to the garage, 2 in the garage, and 2 to the right of the garage for the tenant. She continued with the criteria: F) The use conforms with the R1 zoning district. [Criterion G regarding possible Planning Board review was not addressed.] H) The betterment does not affect nearby property values. This installation will enhance the value of the neighborhood. This will not be contrary to the public interest, and the spirit of the ordinance is observed. Substantial justice is done.

Ms. Davies asked about the septic system; Ms. Duval said it's rated for 4 bedrooms, and there are currently 3 bedrooms. The system is 6 years old. There's a 20x40' leach field. There will also be a 500-gallon tank added behind the garage to assist. Ms. Davies asked if the property is well-watered; Ms. Duval said yes, it was tested and the water is at 10 gallons per minute.

Ms. Olson-Murphy asked how big the existing shed is. Ms. Duval said it's close in size to a 2-car garage, but it can't be saved since there's no foundation. The unit is in the same space but 5 feet over. Ms. Davies asked if Ms. Duval

44 would stay in the house, and she said yes, her intention is that it will be owner-
45 occupied.

46 Ms. Davies asked about laundry facilities. Ms. Duval said there would be
47 a stack washer/drier.

48 Mr. Baum opened the session to the public, but there was no one present
49 to speak. Mr. Baum closed the public session and the Board entered
50 deliberation, but there was no further discussion.
51

52 Mr. Thielbar made a motion to approve the request for a special exception per Article 4,
53 Section 4.2 Schedule I to permit the proposed construction of an accessory dwelling unit
54 on the property located at 105 Brentwood Road. Mr. Prior seconded. Mr. Baum, Mr.
55 Prior, Ms. Olson-Murphy, Mr. Thielbar, and Ms. Davies voted aye, and the motion
56 passed 5-0.

57
58 Mr. Thielbar commented on the situation with bed & breakfasts discussed
59 at the last meeting, saying that as the rules are written now, anyone who has
60 sufficient space on their property can ask for a special exception to install a
61 purpose-built four-room bed & breakfast. He doesn't think the town expected to
62 have a bunch of small motels. It's irresponsible to separate the bed & breakfast
63 from the primary residence. The main reason for that requirement is that people
64 will be more careful about taking care of their house if the bed & breakfast is in
65 the same space, rather than a separate building where there is no interaction
66 with the guests.

67 Mr. Baum said the zoning amendment had the support of the Planning
68 Board, the Select Board, and the voters. It's not the Board's purview whether we
69 agree with it or not, it was a zoning change. The recourse would be to address it
70 as another zoning change. Mr. Prior said he thinks it was an oversight on the part
71 of the town to let this through. Mr. Baum said it was a citizen's petition, adding
72 that he's nervous talking about a specific application that's not before the Board.
73 Ms. Davies said we often talk about how the code could be modified or improved.
74 We should look at other ordinances in New Hampshire to see how this has been
75 dealt with. This was not originated by the Planning Board or the Planning Office.
76 It would be nice if Planning could take another look at it. Mr. Baum said he will
77 engage Dave Sharples on the issue and how the Board can give input on issues
78 with the ordinance, such as parking.
79

80 **Other Business**

81 B. Election of Officers

- 82 1. Mr. Baum said he can continue as Chair, as long as the Vice Chair is
83 willing to step in if he is unavailable.
84

85 Mr. Prior nominated Kevin Baum for Chair for the coming year. Mr. Thielbar seconded.
86 Mr. Baum, Mr. Prior, Ms. Olson-Murphy, Mr. Thielbar, and Ms. Davies voted aye, and
87 the motion passed 5-0.

- 88
89 2. Mr. Prior asked Ms. Olson-Murphy if she would assume the Vice Chair
90 role, but she said she'd prefer to have another year of observation as
91 Clerk.

92 Ms. Davies nominated Bob Prior as Vice Chair and Esther Olson-Murphy as Clerk for
93 the coming year. Mr. Thielbar seconded. Mr. Baum, Mr. Prior, Ms. Olson-Murphy, Mr.
94 Thielbar, and Ms. Davies voted aye, and the motion passed 5-0.

95
96 Ms. Pennell said she's now the only alternate, so the Board should let her
97 know if she is needed at the meetings. Mr. Baum said he will make sure she
98 knows early.

99
100 C. Approval of Minutes: March 15, 2022 and April 19, 2022

101 1. March 15, 2022

102 Corrections: Ms. Olson-Murphy said in line 31, was it Doug Eastman or Dave
103 Sharples who was concerned? Mr. Baum said he thinks that Mr. Eastman's
104 name is appropriate here and it could stand as written.

105
106 Mr. Thielbar made a motion to approve the March 15, 2022 minutes as presented. Mr.
107 Prior seconded. Mr. Baum abstained, as he was not present at the meeting. Mr. Prior,
108 Ms. Olson-Murphy, Mr. Thielbar, Ms. Pennell, and Ms. Davies voted aye, and the motion
109 passed 5-0-1.

110
111 2. April 19, 2022

112 Corrections: Mr. Thielbar said there's a missing "e" in line 33 ["cost, *slope*, and
113 turning radius."] Ms. Pennell said her name was spelled incorrectly in line 74. Mr.
114 Prior said he in line 250, he would like the first "we" in the paragraph to specify
115 "the applicants" for clarity. Ms. Pennell asked if line 302 should say the property
116 is very "insulated" or "isolated"? Ms. Davies said they said it was "insulated" from
117 the abutters because of trees.

118
119 Mr. Prior made a motion to approve the April 19, 2022 minutes as amended. Mr.
120 Thielbar seconded. Mr. Baum abstained, as he was not present for the final case at the
121 April 19 meeting. Mr. Prior, Ms. Olson-Murphy, Mr. Thielbar, Ms. Pennell, and Ms.
122 Davies voted aye, and the motion passed 5-0-1.

123
124
125 **II. Adjournment**

126 made a motion to adjourn.

127

128

Mr. Prior moved to adjourn. Ms. Davies seconded. All were in favor and the meeting was adjourned at 7:30 PM.

129

130 Respectfully Submitted,

131 Joanna Bartell

132 Recording Secretary

June 1, 2022

Exeter Zoning Board
Exeter, NH

Good Afternoon,

I am requesting a variance for property located at 28 Newfields Road Map 38 Lot 3, to build two principle dwellings on one parcel of land consisting of 7.23 acres.

We received approval to build 3 detached units in 2009 but felt the impact would be greater than we wanted as far as clear cutting the lot.

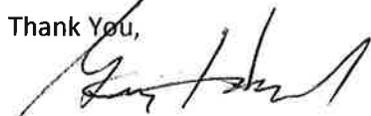
We then received approval for two pork chop lots but due to the economy decided to wait.

We waited too long and the warrant approved by the town now does not allow pork chop lots. Therefore we applied and were granted a variance to build two principle dwellings on one parcel on March 21, 2017.

I am now making plans to build but unfortunately my permit has expired. I am asking that the variance that was granted on March 21, 2017 be once again granted.

We hope you will consider the variance

Thank You,



Gerry Hamel
Benham Investment

Town of Exeter
APPLICATION FOR A

VARIANCE

Case Number:	<u>ZBA # 22-13</u>
Date Filed:	<u>6/6/22</u>
Application Fee: \$	<u>100.00</u>
Abutter Fees: \$	<u>50.00</u>
Legal Notice Fee: \$	<u>50.00</u>
TOTAL FEES: \$	<u>200.00</u>
Date Paid	<u>6/6/22</u> Check # <u>1168</u>

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

Address 17 Little Pine Lane EXETER NH 03833

Telephone Number (603) 770-7210

Property Owner BENHAM INVESTMENT

Location of Property 28 Newfield's ROAD
MAP 38 Lot 3
(Number, street, zone, map and lot number)

Applicant Signature [Signature]

Date 6/1/2022

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

A variance is requested from article 5 section 5.5.3 of the Exeter zoning ordinance to permit:
TWO PRINCIPLE DWELLINGS ON SINGLE LOT

FACTS SUPPORTING THIS REQUEST:

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

Newfield's Road is a Rural with Single Family homes. Variance is for Two single family homes on a 7+ Acre lot

2. The spirit of the ordinance is observed;

Received Variance on March 21 2017

3. Substantial justice is done;

Continuation of approved variance of March 21, 2017

4. The values of surrounding properties are not diminished;

Consistent with other homes and lot size

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

Has been approved for 3 dwellings and
also approved for 2 lots.
Has been approved on March 21 2017
and am seeking to re establish approval

ABUTTER LABELS AND LISTS:

Abutter labels and lists must be attached to this application. Please contact the Planning Office if you have any questions.

ADDITIONAL MATERIALS:

If provided with the application, additional submission materials will be sent to the ZBA members in their monthly packet of information. Please contact the Planning Office if you have any questions regarding additional submission materials.

ZONING BOARD OF ADJUSTMENT

**APPLICATIONS SKETCH PLAN
REQUIREMENTS/CHECKLIST**

- 1. Title Block – descriptive name of project, north arrow (approximate), street address, date and scale (not less than 1" = 40').
- 2. Location map showing relevant streets and zoning district boundaries.
- 3. Names and addresses of applicant, record owner and abutting property owners, including those across the street.
- 4. Existing and proposed streets, driveways, parking areas (with delineation of spaces) and sidewalks.
- 5. Location of existing and proposed buildings and property lines.
- 6. Distances on all sides between buildings and property lines.
- 7. Existing and proposed tree lines, landscape buffers, screening and fences.
- 8. Location of existing landmarks including streams, brooks, wetlands, rock outcroppings, wooded areas and other significant environmental features.
- 9. Generalized floor plans showing dimensions and the square footage of areas for proposed uses.

Plans should be no larger than 11" x 17" in size. They need not be prepared by an architect or land surveyor but they must be legibly drawn with printed labels. **PLANS MUST CONTAIN ALL OF THE ABOVE INFORMATION IN ORDER FOR THE APPLICATION TO BE PLACED ON THE AGENDA FOR A ZONING BOARD OF ADJUSTMENT HEARING.**

**28 Newfields Road
Abutter List**

Darrian and Alexander Lebrato
23 Newfields Road
Exeter, NH 03833

Timothy D. and Carey C. Rooney
27 Newfields Road
Exeter NH 03833

Ryan Ridgley
Rebecca Bendroth
30 Newfields Road
Exeter, NH 03833

Town of Exeter
10 Front Street
Exeter, NH 03833

N.H. DOT
POB 483
Concord, NH 03302- 0483



TOWN OF EXETER, NEW HAMPSHIRE

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

www.exeternh.gov

March 22, 2017

Mr. Gerry Hamel
Benham Investment
17 Little Pine Lane
Exeter, New Hampshire 03833

Re: Zoning Board of Adjustment Case #17-13 – Variance Request
28 Newfields Road, Exeter, N.H. Tax Map Parcel #28-3

Dear Mr. Hamel:

This letter will serve as official confirmation that the Zoning Board of Adjustment, at its March 21st, 2017 meeting, voted to approve the above-captioned application for a variance from Article 5, Section 5.5.3 to permit the proposed construction of two (2) single-family dwellings on the 7.23-acre parcel located at 28 Newfields Road, as presented.

Please be advised that in accordance with Article 12, Section 12.4 of the Town of Exeter Zoning Ordinance entitled "Limits of Approval" that all approvals granted by the Board of Adjustment shall only be valid for a period of three (3) years from the date such approval was granted; therefore, should substantial completion of the improvements, modifications, alterations or changes in the property not occur in this period of time, this approval will expire.

Please contact the Planning and Building Department office to obtain the necessary applications to continue with your project. If you should have any questions, please do not hesitate to contact the office.

Sincerely,

Laura J. Davies
Chairwoman
Exeter Zoning Board of Adjustment

cc: Douglas Eastman, Building Inspector/Code Enforcement Officer
Janet Whitten, Assessing Office

LJD:bsm



LOCUS MAP
NOT TO SCALE

(35)
2

N/F TOWN OF EXETER
10 FRONT STREET
EXETER, NH 03833
BK. 2900 PG. 2942

D.H. FND.
I.P. FND.
I ROD FND.
(CEMENTED IN BOULDER)

WETLANDS DELINEATION BY
WEST ENVIRONMENTAL
122 MAST ROAD
SUITE 6
LEE, N.H. 03824
IN ACCORDANCE WITH THE 1987 CORPS OF
ENGINEERS WETLANDS DELINEATION MANUAL,
AS REQUIRED BY THE DES WETLANDS BUREAU.

NOTES:

- 1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- 2) THIS PARCEL DOES NOT LIE WITHIN A FLOOD ZONE. SEE F.I.R.M. COMMUNITY PANEL 330130 0239 E EFFECTIVE DATE MAY 17, 2005.

PLAN REFERENCES

- D-35762 "PLAT OF LAND SHOWING A PERIMETER SURVEY AT 28 NEWFIELDS ROAD (ASSESSORS MAP 38 LOT 3) PREPARED FOR BENHAM INVESTMENT PROPERTIES, INC. RECORD OWNER STATE OF NH DEPARTMENT OF TRANSPORTATION" SCALE: 1"=60' DATE: DEC. 17, 2008 BY: MILLENNIUM ENGINEERING, INC.
- STATE OF NEW HAMPSHIRE HIGHWAY LAYOUT, RELOCATION OF ROUTE 101 AND ROUTE 85 STATE PROJECT NO. 10422D
- D-14275 "SUBDIVISION OF LAND FOR GERRY HAMEL IN EXETER, N.H." SCALE: 1"=50' DATE: SEPTEMBER 16, 1985 BY: BRUCE L. POHEK, LAND SURVEYOR
- D-21223 "BOUNDARY AND EASEMENT PLAN OF LAND PREPARED FOR EXETER CONSERVATION COMMISSION EXETER, NEW HAMPSHIRE" SCALE: 1"=200' DATE: JULY 1, 1991 BY: TF MORAN INC.

(38)
3

RECORD OWNER
BENHAM INVESTMENT PROPERTIES, INC.
17 LITTLE PINE LANE
EXETER, NH 03833
BK. 4972 PG. 1689

314,734 S.F.
7.23 ACRES

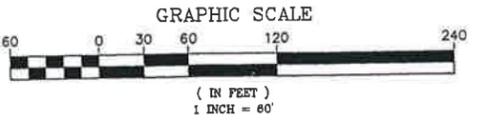
ZONING DISTRICT

ZONE RU - RURAL

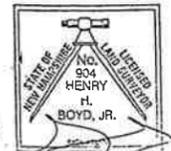
AREA	2 ACRES
FRONTAGE	200'
BUILDING SETBACKS	
FRONT	50'
SIDE	30'
REAR	50'
WETLAND	40'

LEGEND

- R.R. SPK. RAILROAD SPIKE
- C.B. CONCRETE BOUND
- S.B. STONE BOUND
- F.S.B. FIELD STONE BOUND
- D.H. DRILL HOLE
- MASONRY NAIL
- PK IRON PIPE
- I.P. IRON PIPE
- I ROD IRON ROD
- FND. FOUND
- N/FND. NOT FOUND
- (35) ASSESSORS MAP AND PARCEL
- ⊕ WATER SHUT OFF
- OHV OVER HEAD WIRE
- UTILITY POLE
- ⊕ SEWER MAN HOLE
- WETLANDS
- WETFLAG



I CERTIFY:
THAT THIS ACTUAL SURVEY WAS MADE ON THE GROUND IN JANUARY 2008.
THAT THIS SURVEY CONFORMS TO THE REQUIREMENTS FOR ACCURACY FOR N.H. URBAN SURVEY.



03-06-2017
DATE

LICENSED LAND SURVEYOR

NO.	DATE	DESCRIPTION	BY

VARIANCE PLAN

IN
EXETER, NH

SHOWING
2 PROPOSED DWELLINGS
AT 28 NEWFIELDS ROAD
(ASSESSORS MAP 38 LOT 3)

PREPARED FOR
BENHAM INVESTMENT PROPERTIES, INC.
17 LITTLE PINE LANE EXETER, NH 03833

MILLENNIUM ENGINEERING INC.
ENGINEERS AND LAND SURVEYORS
P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833
PHONE: (603) 778-0528 FAX: (603) 772-0689

SCALE: 1"=60' CALC. BY: P.D.B.
DATE: JULY 04, 2015 CHKD. BY: H.H.B. PROJECT: P07992

5-513



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
CHRISTOPHER D. HAWKINS
VASILIOS "VAS" MANTHOS
ELAINA L. HOEPPNER
WILLIAM K. WARREN

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

June 6, 2022

Via Hand Delivery

Kevin Baum, Chair
Zoning Board of Adjustment
Town of Exeter
10 Front Street
Exeter, NH 03833

Re: 131 Portsmouth Avenue, LLC, Map 52, Lot 112

Dear Chair Baum and Board Members:

Enclosed please find an Application for Variance regarding the above property. Also enclosed are supporting materials, abutters list and labels and check in the amount of \$210.00 for filing and abutter notice fees.

We respectfully request that this matter be placed on the Board's June 21, 2022 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/sac
Enclosures

cc: 131 Portsmouth Avenue, LLC

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

ABUTTER LIST
131 PORTSMOUTH AVENUE
MAP 52, LOT 112

OWNER:
52/112 131 Portsmouth Avenue, LLC
210 Commerce Way, Suite 300
Portsmouth, NH 03801

ABUTTERS:
65/123 Town of Exeter
10 Front Street
Exeter, NH 03833

52/112-1 Osram Sylvania, Inc.
Attn: Tax Dept.
200 Ballardvale Street
Wilmington, MA 01887

51/17 One Four Six Post Road, LLC
151 Portsmouth Avenue
Exeter, NH 03833

51/15 Kevin King Enterprises Co., LLC
c/o Hannaford Bros.
PO Box 6500
Carlisle, PA 17013

52/51 SAF Realty, LLC
c/o Steve's Diner
100 Portsmouth Avenue
Exeter, NH 03833

52/52 108 Heights, LLC
c/o Two Guys Self Storage
65 Post Road
Hooksett, NH 03106

52/53 Exeter Lumber Properties, LLC
120 Portsmouth Avenue
Exeter, NH 03833

52/111 Laurence Foss
30 Bunker Hill Avenue
Stratham, NH 03885

65/123-1 Exeter Sportsman's Club, Inc.
PO Box 1936
Exeter, NH 03833

ATTORNEY:

Justin L. Pasay, Esq.
Donahue, Tucker & Ciandella
16 Acadia Lane
Exeter, NH 03833

S:\01-99\131 Portsmouth Avenue, LLC\ZBA Materials\2022 05 23 Abutters List.docx

131 Portsmouth Avenue, LLC
210 Commerce Way, Ste. 300
Portsmouth, NH 03801

131 Portsmouth Avenue, LLC
210 Commerce Way, Ste. 300
Portsmouth, NH 03801

131 Portsmouth Avenue, LLC
210 Commerce Way, Ste. 300
Portsmouth, NH 03801

Town of Exeter
10 Front Street
Exeter, NH 03833

Town of Exeter
10 Front Street
Exeter, NH 03833

Town of Exeter
10 Front Street
Exeter, NH 03833

Osram Sylvania, Inc.
Attn: Tax Dept.
200 Ballardvale Street
Wilmington, MA 01887

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Wilmington, MA 01887

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Attn: Tax Dept.
200 Ballardvale Street
Wilmington, MA 01887

One Four Six Post Road, LLC
151 Portsmouth Avenue
Exeter, NH 03833

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151 Portsmouth Avenue
Exeter, NH 03833

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151 Portsmouth Avenue
Exeter, NH 03833

Kevin King Enterprises, LLC
c/o Hannaford Bros.
PO Box 6500
Carlisle, PA 17013

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c/o Hannaford Bros.
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Carlisle, PA 17013

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c/o Hannaford Bros.
PO Box 6500
Carlisle, PA 17013

SAF Realty, LLC
c/o Steve's Diner
100 Portsmouth Avenue
Exeter, NH 03833

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Exeter, NH 03833

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Exeter, NH 03833

108 Heights, LLC
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65 Post Road
Hooksett, NH 03106

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Justin L. Pasay, Esq.
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Portsmouth, NH 03801

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111 Maplewood Avenue
Portsmouth, NH 03801

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Donahue, Tucker & Ciandella
111 Maplewood Avenue
Portsmouth, NH 03801

TOWN OF EXETER
ZONING BOARD OF ADJUSTMENT

Application for
VARIANCE

JANUARY 2010

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.
 - \$10.00 Per Abutter
 - Legal Notice Fee: Actual Cost of Advertisement.

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.

INSTRUCTIONS TO APPLICANTS – UPDATED FEBRUARY 2010

IMPORTANT: READ CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

The Board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering planning and zoning.

Three types of appeal can be made to the Board of Adjustment:

VARIANCE: A variance is authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance. For a variance to be legally granted, you must show that your proposed use meets all five of the following conditions:

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.

APPEAL FROM AN ADMINISTRATIVE DECISION: If you have been denied a building permit or are affected by some other decision regarding the administration of the Exeter Zoning Ordinance, and you believe that the decision was made in error under the provisions of the ordinance, you may appeal the decision to the Board of Adjustment. The appeal will be granted if you can show that the decision was indeed made in error.

If you are **APPEALING AN ADMINISTRATIVE DECISION**, a copy of the decision appealed from must be attached to your application.

SPECIAL EXCEPTION: Certain sections of the zoning ordinance provide that a particular use of property in a particular zone will be permitted by special exception if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. Your appeal for a special exception will be granted if you can show that the conditions stated in the ordinance are met.

If you are applying for a **SPECIAL EXCEPTION**, you will probably also need site plan or subdivision approval, or both, from the Planning Board. Even in those cases where no Planning Board approval is necessary, presenting a site plan to the Planning Board will assist in relating the proposal to the overall zoning. This should be done before you apply for a special exception.

For any appeal, the application form must be filled out properly. The application form is intended to be self-explanatory, but be sure that you show:

WHO owns the property? If the applicant is not the owner, this must be explained.

WHERE is the property located?

DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc.

WHAT do you propose to do? Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior applications concerning the property.

WHY does your proposed use require an appeal to the Board of Adjustment?

WHY should the appeal be granted?

PREPARATION OF APPLICATION:

Prepare a list of all abutting property owners, having it verified at the Assessor's Office in the Town Office Building, and attach it to your application. If you have any difficulty, consult the Assessor's office, but the accuracy of the list is your responsibility.

Mail or deliver the completed application, with all attachments to the Planning Office. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. Make a check payable to the Town of Exeter and remit with your application.

The board will schedule a public hearing within thirty (30) days of receipt of your properly completed application. Public notice of the hearing will be posted and printed in a newspaper, and notice will be mailed to you and all abutters and to other parties whom the Board may deem to have an interest, at least five days before the date of the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.

After the public hearing, the Board will reach a decision. You will be sent a notice of decision. If you believe the Board's decision is wrong, you have the right to appeal. The Selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the Board for a re-hearing. The motion for a re-hearing may be in the form of a letter to the Board. The motion must be made within thirty (30) days of the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board may grant such a re-hearing if, in its opinion, good reason is stated in the motion. The Board will not re-open a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a re-hearing is held, you must have requested one before you can appeal to the courts. When a re-hearing is held, the same procedure is followed as for the first hearing including public notice and notice to abutters. See RSA Chapter 677 for more detail on rehearing and appeal procedures.

GUIDELINES FOR PROCESSING APPLICATIONS- Update January 2009.

The goal of the Zoning Board of Adjustment is to process applications as quickly and efficiently as possible. To this end, we have designed an application procedure which is simple and easy to follow (see attached). If some of the information requested seems irrelevant, please check with the Planning Department Office, it may be that your particular proposal does not warrant such information.

It is strongly recommended that prior to submitting an application you discuss your proposal informally with the Planning Director or Code Enforcement Officer. Your application will be reviewed to insure that it is in conformance with the Town's Zoning Ordinance and you will be advised as to the procedure for obtaining Zoning Board approval. Please contact the Planning Department Office at 778-0591 (x112) to schedule an appointment.

The key to receiving a prompt decision from the Zoning Board of Adjustment is to adhere closely to the Board's procedures. In order to be placed on the Zoning Board's agenda, you must submit your completed application to the Planning Department Office fifteen (15) days prior to the Board of Adjustment meeting at which your application will be heard. Please consult the "Planning Department Schedule of Public Hearings and Deadlines" to determine when the Board is scheduled to meet. The Board of Adjustment meets once a month unless scheduled otherwise.

Copies of the Zoning Ordinance are available for your review or purchase at the Planning Department Office on the second floor of the Town Office Building located at 10 Front Street, Exeter.

DEFINITIONS – Updated January 2009

ABUTTERS LIST

A list of all persons whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Board. This list is compiled from the Exeter Tax Assessor's records.

VICINITY OWNERSHIP MAP

Drawn to scale, a map at least 8 ½" x 11", showing all parcels in the vicinity adjacent to and surrounding the property. Each such parcel shall be designated by number to correspond with the abutter's list.

LETTER OF EXPLANATION

A letter explaining the nature and intent of the proposed development and reasons justifying the request. References to effects produced by the request upon surrounding neighborhoods, and the Town at large, should be included.

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 131 Portsmouth Avenue, LLC

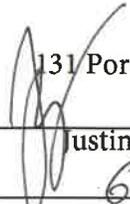
(If other than property owner, a letter of authorization will be required from property owner)

Address 210 Commerce Way, Suite 300, Portsmouth, NH 03801

Telephone Number (603) 430-4000

Property Owner same

Location of Property 131 Portsmouth Avenue, Map 52, Lot 112, Zone C-2

Applicant Signature  131 Portsmouth Avenue, LLC, by its Attorneys, Donahue, Tucker & Ciandella

(Number, street, zone, map and lot number)

Justin L. Pasay, Esq.

Date 6 JUNE 2022

*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

A variance is requested from article 5 section 5.1.2 of the Exeter zoning ordinance to permit: Extension of a nonconforming light industry use into the C-2 District.

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

ABUTTER LABELS AND LISTS:

Abutter labels and lists must be attached to this application. Please contact the Planning Office if you have any questions.

ADDITIONAL MATERIALS:

If provided with the application, additional submission materials will be sent to the ZBA members in their monthly packet of information. Please contact the Planning Office if you have any questions regarding additional submission materials.

ZONING BOARD OF ADJUSTMENT

**APPLICATIONS SKETCH PLAN
REQUIREMENTS/CHECKLIST**

1. Title Block – descriptive name of project, north arrow (approximate), street address, date and scale (not less than 1" = 40').
2. Location map showing relevant streets and zoning district boundaries.
3. Names and addresses of applicant, record owner and abutting property owners, including those across the street.
4. Existing and proposed streets, driveways, parking areas (with delineation of spaces) and sidewalks.
5. Location of existing and proposed buildings and property lines.
6. Distances on all sides between buildings and property lines.
7. Existing and proposed tree lines, landscape buffers, screening and fences.
8. Location of existing landmarks including streams, brooks, wetlands, rock outcroppings, wooded areas and other significant environmental features.
9. Generalized floor plans showing dimensions and the square footage of areas for proposed uses.

Plans should be no larger than 11" x 17" in size. They need not be prepared by an architect or land surveyor but they must be legibly drawn with printed labels. **PLANS MUST CONTAIN ALL OF THE ABOVE INFORMATION IN ORDER FOR THE APPLICATION TO BE PLACED ON THE AGENDA FOR A ZONING BOARD OF ADJUSTMENT HEARING.**

VARIANCE APPLICATION OF

131 Portsmouth Ave, LLC (the “Applicant”) for property located at 131 Portsmouth Ave, Exeter, NH 03833, which is further identified as Town of Exeter Tax Map 52, Lot 112 (the “Applicant’s Property”). The Property is located within both the Town’s Highway Commercial District (the “C-2 District”) and the Town’s Corporate/Technology Park District (the “CT District”).

A. Introduction and Factual Context

- **Property Description and Existing Conditions**

For years, Osram Sylvania, Inc. (“Osram”) owned and operated a roughly 32.21-acre parcel at 131 Portsmouth Avenue for the production of specialty lighting components, which constitutes a “light industry” use pursuant to the terms of the Town of Exeter’s Zoning Ordinance.¹ Osram’s property was improved with two primary buildings to include an approximately 74,000 sf building and an adjacent building which is approximately 135,000 sf in size. See Enclosure 1, Aerial Photograph. The majority of the property, to include that area along Holland Way, was located within the PP-Professional/Technology Park (the “PP District”). The remaining front portion of the parcel along Portsmouth Avenue, was located within the C-2 District.

At the 2019 Town Meeting, the Town’s Legislative Body voted overwhelmingly (1697 yays to 451 nays) to adopt Article 4 of the Town Warrant which rezoned the area identified as the PP-District, to the CT District. The Town Meeting took this initiative in an effort to “allow additional commercial uses to encourage the commercial development of this area.” See Enclosure 2, 2019 Exeter Town Meeting Official Ballot Results. More specifically, and as was discussed at Planning Board hearings regarding the proposed amendment before the 2019 Town Meeting, the Town’s proposal to rezone the PP District to the CT District was rooted in an effort to open Holland Way up to more commercial growth because there was “not much potential left in [the] PP zone.” See Enclosure 3, Town of Exeter Planning Board Minutes from 20 December 2018, and 10 January 2019. In fact, the Town Meeting was specifically hoping to attract light industrial uses to the area. See Enclosure 3 (“Development would be enhanced if more uses were permitted, *such as light industrial facility*”) (emphasis added).² To summarize, the Town Meeting took specific action in 2019 to, among other things, open the Osram parcel and parcels around it along Holland Way, to light industrial uses.

In August of 2020, Osram obtained minor subdivision approval from the Exeter Planning Board to create two lots. Osram continues to own and operate one of said lots which is identified as Town Tax Map 52, Lot 112-1 (the “Osram Property”), which is 16.94 acres in size, contains the larger 135,000 sf building, and is situated within the CT District. See Enclosure 4, Corrective Lot Line Adjustment Plan for Osram Sylvania, Inc., recorded at the Rockingham

¹ The Zoning Ordinance defines “Light Industry” as a “use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging incidental to storage, sales and distribution of such products; but excluding basic industrial processing such as casting and forging.” Zoning Ordinance, Article 2.2.44.

² The PP District did not permit light industry by right.

County Registry of Deeds as Plan D-42853.³ In June of 2021, Osram conveyed to the Applicant the second lot (the Applicant's Property) which is 15.26 acres in size, contains the 74,000 sf building referenced above, and lies within both the CT District and the C-2 District, as discussed below.

The Applicant's Property is nestled within a light-industrial and commercial area. To the east, the Applicant's Property is bound by Holland Way and by a large 21-acre unimproved parcel within the Town's CT District on the other side of Holland Way. That property has an address of 110 Holland Way and is further identified as Town Tax Map 51, Lot 17. See Enclosure 5, Town Tax Maps 51 and 52. To the south and east the Applicant's Property is bound by Osram's Property, which, as indicated above, accommodates a light industrial use. Id. To the south and southwest, the Property is bound by the 51-acre parcel located at 109 Portsmouth Avenue which is further identified as Town Tax Map 65, Lot 123, and which is home to the Exeter Reservoir and treatment plant. Id. The Applicant's western boundary is along Portsmouth Avenue. Id. To the north along Portsmouth Avenue, the Applicant's Property is bound by the Foss Motor property located at 133 Portsmouth Avenue, which is approximately 2.91 acres in size and further identified as Town Tax Map 52, Lot 111. The Applicant's Property is also bound to the north by the 6.96 acre parcel located at 137 Portsmouth Avenue and further identified as Town Tax Map 51, Lot 15, which is home to the Hannaford Plaza.

Despite the Town's stated intention to situate and define zoning district boundaries in a manner to follow existing lot lines⁴, the Applicant's Property is bifurcated by the zoning boundary between the CT District and the C-2 District. More specifically, and as depicted on the ZBA Site Plan produced by Tighe & Bond and enclosed herewith as Enclosure 6, that portion of the Applicant's Property along Holland Way, to include a significant majority of the existing 74,000 sf building on the Applicant's Property, lies within the CT District. See Enclosure 6. A sliver of the southwestern portion of the building, however, and the remaining portion of Applicant's Property up to Portsmouth Avenue, is located within the C-2 District. Id. Pursuant to Article 4.2, Schedule I of the Zoning Ordinance, light industry (defined above) is permitted within the CT District by right but is not permitted within the C-2 District. A portion of the light-industrial use of the 74,000 sf building is, therefore, nonconforming. The Applicant's Property otherwise complies with all dimensional and other requirements of the Town's Zoning Ordinance. See Zoning Summary, Enclosure 6.

- **Applicant's Proposal**

The Applicant is in the process of negotiating a purchase and sales agreement to sell a portion of the Applicant's Property for use by C/A Design, Inc. ("C/A Design"). C/A Design intends to use the existing 74,000 sf building on the Applicant's Property as well as a proposed 40,000 sf addition to the southwestern end of same in the C-2 District, for a new light industrial use which can be summarized as the production of brazed compact heat exchangers, cold plates,

³ In actuality, the true Subdivision Plan was recorded as Plan D-42514, however, Plan D-42853 was recorded to correct the existing and proposed area calculations for the lots as they were incorrectly identified on the original plan. As a result, Plan D-42853, enclosed herewith as Enclosure 4, depicts the current status of the two subdivided parcels.

⁴ See Zoning Ordinance, Article 3.3.1.

CNC machined components and electronic enclosures, and the provision of engineering services to the Defense Industry. See Enclosure 6. C/A Design's processes include component machining on 3, 4 and 5 axis CNC machines, assembly of components, Vacuum and Dip Brazing of those components and assemblies, as well as heat treatment and chromate chemical conversion coatings after assembly process.

To accomplish this proposal, the Applicant first needs the variance relief it seeks herein. Should the Applicant obtain said relief, it will pursue minor subdivision approval from the Town's Planning Board to create two new lots as depicted on Enclosure 6. One lot, referred to as Map 51, Lot 112A on Enclosure 6, will be 9.03 acres in size and accommodate the new 114,000 sf (in-total) C/A Design building and light industrial use. The second lot, referred to as Map 51, Lot 112B on Enclosure 6, will be 6.23 acres in size, will remain within the C-2 District in its entirety, and would be retained by the Applicant. With the exception of the aforementioned nonconformity of a portion of the existing 74,000 sf building on the Applicant's Property, both of the proposed subdivided properties depicted on Enclosure 6 would otherwise comply in all respects with all requirements of the Zoning Ordinance. See Zoning Summary, Enclosure 6. Should the Applicant obtain successful ZBA and Planning Board relief, ultimately, a Site Plan Review Application for the proposed 40,000 sf addition would have to be reviewed and approved by the Planning Board.

The proposed 40,000 sf addition will have a *de minimis* impact on the surrounding area as depicted in the Trip Generation Analysis performed by Tighe & Bond and enclosure herewith as Enclosure 7. Specifically, "the proposed addition to the existing light industrial building will result in approximately one additional vehicle trip every two minutes during the Weekday AM and PM peak hours which is anticipated to have a minimal impact to the surrounding roadway network during these peak times." Enclosure 7. The 40,000 sf addition will be nearly indiscernible from Holland Way and Portsmouth Avenue.

As discussed in greater detail below, this proposal for the Applicant's Property is perfectly aligned with the Town's vision for this area of Exeter because it will accommodate the continued growth of light industry along Holland Way in a manner that is insulated from other uses and adjacent to similar uses, while preserving the Portsmouth Avenue corridor for C-2 District development and uses. See Enclosures 2 and 3.

- **Variance Requested**

As the Applicant seeks to expand the nonconforming light industry use of that portion of the 74,000 sf building within the C-2 District, which is not permitted within the C-2 District, the Applicant seeks relief from Article 5, Section 5.1.2 to expand said nonconforming use.

B. Statutory Variance Criteria

Pursuant to Article 2, Section 2.2.82 and RSA 674:33, to obtain a variance in Exeter, 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. See RSA 674:33, I (b).

Because the Applicant's Project will not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the underlying ordinance provision and its application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that the requested variance be granted.

C. Analysis

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 boards of adjustment 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. See supra.

Article 5, Section 5.1.2 of the Zoning Ordinance does not have an express purpose provision but its zoning objective is to promote the public health, safety and general welfare through reasonable development that advances the Town's priorities as evidenced via action of the Town Meeting and the Master Plan. Article 5, Section 5.1.2 is also intended to limit development which is incompatible with the surrounding area.

Here, as a foundational point, the Applicant's proposal does not create any marked conflict with the underlying provision of the Zoning Ordinance because, to the contrary, the proposal is expressly advancing the clear will of Town's Legislative Body and Master Planning process. Specifically, as discussed above, the Town Meeting amended the Zoning Ordinance in

2019 to attract more light industry along Holland Way, which is exactly what this proposal contemplates, while simultaneously preserving land along Portsmouth Avenue for potential future C-2 District development. See Enclosure 2, 3 and 7. The Project will bring more jobs, prosperity and tax revenue to the Town of Exeter, which is in the public's best interest. Moreover, the Applicant's proposal advances the very commercial growth along Holland Way that is specifically referenced and prioritized in the Town of Exeter Master Plan, adopted 22 February 2018 (the "Master Plan").⁵ Further, the Applicant's Proposal does not contemplate development that is incompatible with the surrounding area. On the contrary, the Project contemplates a use that is entirely consistent with the area.

Because the Applicant's Project does not conflict in any regard with the basic zoning objectives of the underlying Zoning Ordinance in question, or with the Zoning Ordinance in general, as outlined above, the first two variance criteria are satisfied.

The Project also plainly satisfies the case law requirements because the essential character of the neighborhood will not be affected for the reasons explained throughout this narrative. The additional 40,000 sf of light industry space will complement the existing 74,000 sf of space on the Applicant's Property as well as the adjacent Osram Property which accommodates a light industry use, and will be sited behind the existing building in a manner all but indiscernible from Holland Way and Portsmouth Avenue. See Enclosure 6. The Project will cause negligible additional traffic. See Enclosure 7. Further, the Applicant's Property is otherwise surrounded by either commercial development or unimproved land which is envisioned for future consistent CT District development along Holland Way. As a result of these considerations, the character of the neighborhood will remain the same. For the same reasons, the Applicant's proposal will also not threaten the public health and safety.

As the Applicant's proposal will be consistent with the general intent of the Zoning Ordinance, the implied intent of Article 5, Section 5.1.2, the specific intent of the 2019 Zoning Amendment, and the express intent of the Master Plan, and because the Project will not alter the essential character of the neighborhood or threaten the public health or safety, it would be reasonable and appropriate for the ZBA to conclude that granting the Applicant's variance requests will satisfy the public interest prong of the variance criteria.

2. The spirit of the Ordinance is observed.

As referenced above, the requested variance observes the spirit of the Zoning Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's Project will be consistent with the general and implied purposes of the Zoning Ordinance in this case. Further, the Project will not compromise the character of the

⁵ See Master Plan, pg. 29 ("[Holland Way] was converted with the intention of commercial and corporate business park development . . . Holland Way itself is very sparsely developed, with a handful of corporate office buildings in a wooded setting accessed via Tycho Way at the southern end of Holland Way. Lower levels of development may be the result, in part, of limited access to sewer service. There are several undeveloped commercial sites on the market along Holland Way, some of which are challenged by significant areas of wetland. While the existing commercial operations are an asset to the community, it is uncertain whether Holland Way will draw significant investment in the future. The Town should continue to support existing commercial operations, but also be watchful for other opportunities that might present themselves such as conservation land or expansion of housing choice.")

neighborhood or threaten the public health, safety, or welfare. 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, the requested variance is consistent with the general spirit of the Zoning Ordinance in question as well as the implied intent of Article 5, Section 5.1.2, the actions of the Town Meeting in 2019 and the Master Plan. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the ZBA to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

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, the public does not gain anything by denying the requested variance. On the contrary, if the variance is denied, the express intent of the Town Meeting action in 2019 and of the Master Plan will be frustrated which is contrary to the public interest. Further, if the variance is denied the public will not benefit by the additional tax revenue and jobs created by the Applicant’s Project which itself will be virtually indiscernible from Holland Way and Portsmouth Avenue, and which will cause a *de minimis* impact. See Enclosure 6, 7. To summarize, the Project will advance the express intent of the Legislative Body and Master Plan and will constitute the very type of development envisioned for the properties along Holland Way.

Certainly, the Applicant will benefit from the variance as it facilitate the reasonable use of the Applicant’s Property in furtherance of the Applicant’s goals, which has been encouraged by the New Hampshire Supreme Court.

As the requested variance benefits the Applicant and does not detriment the public, there is no gain to the general public from denying the request that outweighs the loss to the Applicant from its denial, and this prong of the variance criteria is satisfied.

4. The proposal will not diminish surrounding property values.

Given the nature of the existing and proposed conditions of the Property and the surrounding area, as discussed above and depicted in the Enclosures, the Applicant’s proposal will not diminish surrounding property values. The proposed use, contemplating an addition to

an existing light industrial building, will be virtually indiscernible from Holland Way and Portsmouth Avenue, will be situated among other light industrial properties and properties zoned for same along Holland Way, or by commercial properties. If anything, the Applicant's Project will enhance the value of the Applicant's Property, thereby enhancing the value of surrounding properties in turn. Certainly, there is no evidence in the record that could reasonably support the conclusion that the proposed Project will diminish surrounding property values. Common sense requires that the ZBA find this prong of the variance criteria is satisfied.

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

a. Legal Standard

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment 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.

(the "First Hardship Test")

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 "Section Hardship Test").

The Applicant respectfully reminds the ZBA that the mere fact that the Applicant is seeking a variance from the express provisions 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, 162 N.H. at 2011 ("mere conflict with the terms of the ordinance is insufficient").

b. Summary of Applicable Legal Standard

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying property which is the subject of a variance request. This requirement finds its origins in the Standard State Zoning Enabling Act of the 1920s "since it is the existence of those 'special conditions' which causes the application of the zoning ordinance to apply unfairly to a particular property, requiring that variance relief be available to prevent a

taking.”⁶ The Supreme Court has determined that the physical improvements on a property can constitute the “special conditions” which are the subject of the first prong of the First Hardship Test. Harborside, 162 N.H. at 518 (the size and scale of the buildings on the lot could be considered special conditions); *Cf* Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

The second prong of the First Hardship Test analysis, pertaining to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question, is the codified vestige of a New Hampshire Supreme Court case called Simplex Technologies, Inc. v. Town of Newington (“Simplex”).⁷ To summarize, the ZBA’s obligation in this portion of its hardship analysis is to determine the purpose of the regulation from which relief is being sought and if there is no specific purpose identified in the regulation, then to consider the general-purpose statements of the ordinance as a whole, so that the ZBA can determine whether the purpose of said ordinance is advanced by applying it to the property in question.

The final prong of the First Hardship Test analysis is whether the proposed use is “reasonable.”

The Applicant respectfully reminds the ZBA of the New Hampshire Supreme Court’s substantive pivot in Simplex. The Simplex case constituted a “sharp change in the New Hampshire Supreme Court’s treatment of the unnecessary hardship requirement.” The Simplex Court noted that under the unnecessary hardship standard, as it had been developed by the Court up until that time, variances were very difficult to obtain unless the evidence established that the property owner could not use his or her property in any reasonable manner.”⁸ This standard is no longer the required standard in New Hampshire. The Applicant does not have an obligation to affirmatively prove that the underlying Property cannot be reasonably used without the requested variance modification. Rather, the critical question under the First Hardship Test is whether the purpose of the Zoning Ordinance is fairly and substantially advanced by applying it to the Applicant’s Property considering the Property’s unique setting and environment. This approach is consistent with the Supreme Court’s pivot away from the overly restrictive pre-Simplex hardship analysis “to be more considerate of the constitutional right to enjoy property”.⁹

The Second Hardship Test, which we will not focus on in this narrative, is satisfied by establishing that 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.

⁶ 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.20 (4th Ed.) citing The Standard State Zoning Enabling Act.

⁷ 145 N.H. 727 (2001).

⁸ 15 Loughlin, 24.16.

⁹ Id. citing Simplex, 145 N.H. at 731.

c. Analysis

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying Property which distinguish it from others in the area. Here, as discussed at length in Section A above, which is incorporated herewith by reference, the Property does have special conditions that distinguish it from others in the area to specifically include the fact that its existing physical improvements include a 74,000 sf light industrial building. The Property (and the 74,000 sf building) is also unique in the fact it is bifurcated by a zoning demarcation between the CT District and the C-2 District. Finally, the Property is unique in the fact that, as proposed, that portion of the Property which is best suited for a light industry use considering its proximity to the Osram Property will be used for same, while several acres of land along Portsmouth Avenue will be preserved and available for potential future C-2 District development. These characteristics make the Property uniquely situated to accommodate the proposed use.

As there are special conditions of the Property, the first prong of the First Hardship Test is satisfied.

The second prong of the First Hardship Test pertains to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question. To summarize, the ZBA must determine whether the purpose of the underlying ordinance is advanced by applying them to the property in question.

Here, as discussed above, the purpose of Article 5, Section 5.1.2 is to promote the public health, safety and general welfare through reasonable development that advances the Town's priorities as evidenced via action of the Town Meeting and the Master Plan, and to limit development that is incompatible with the surrounding area. As a result, the relevant question is whether denying the Applicant's variance request will advance these purposes, or not. The answer is that a denial would plainly not advance the purposes of the Zoning Ordinance.

Denying the variance will not advance the public health, safety and general welfare, will not reflect the will of the Town Meeting in light of the 2019 Zoning Ordinance amendment, will not reflect the intentions of the Master Plan, and will not prevent incompatible development. On the contrary, *granting* the requested variance will do all of those things, for the reasons stated throughout this narrative. The 40,000 sf addition in question will facilitate the very type of light industrial development along Holland Way that the 2019 Town Meeting sought to attract, and it will be consistent with the Master Plan's goals for properties along Holland Way. This development will benefit the public by providing new jobs and tax revenue. Finally, denying the requested variance will not prevent development that is incompatible with the surrounding area, because the opposite is true: the Applicant's Project contemplates development which is entirely consistent with the area.

To summarize, the Applicant's proposal would advance the general and implied purposes of the Zoning Ordinance for all the reasons detailed in this narrative and denying the requested variance would only serve to frustrate the will of the Town. As such, the second prong of the hardship criteria is satisfied in this case.

The final analysis under the First Hardship Test is to determine whether the proposed use is reasonable. Here, the proposed Project is a reasonable extension of an existing light industrial use which is immediately adjacent to a similar use. As explained above, the essential character of the neighborhood will remain the same and the development would achieve the purpose of recent Town Meeting actions and the Master Plan. As such, the Applicant's proposal is reasonable.

On these facts, the Applicant respectfully submits that its variance request satisfies the final prong of the statutory variance criteria.

D. Conclusion

The Applicant respectfully submits that they have satisfied the statutory variance criteria in this matter and their Application should be approved.



TOTAL BALLOTS CAST 2485



ABSENTEE OFFICIAL BALLOT ANNUAL TOWN ELECTION EXETER, NEW HAMPSHIRE MARCH 12, 2019

BALLOT 1 OF 4

Debra J. Kehler TOWN CLERK

INSTRUCTIONS TO VOTERS

- A. TO VOTE, completely fill in the OVAL to the RIGHT of your choice(s) like this:
B. Follow directions as to the number of candidates to be marked for each office.
C. To vote for a person whose name is not printed on the ballot, write the candidate's name on the line provided and completely fill in the OVAL.

FOR MODERATOR: PAUL SCAFIDI 1844
FOR TRUSTEES OF THE LIBRARY: SUSAN DRINKER 1847, LINDA TOBER 1563, BARBARA YOUNG 1587
FOR TRUSTEE OF THE ROBINSON FUND: BILL PERKINS 1849
FOR SELECTMEN: NIKO PAKONSTANTIS 1323, DARIUS THOMPSON 829, JORDAN DICKENSON 487, JULIE GILMAN 1435
FOR TRUSTEES OF THE LIBRARY: PAULA SEARS 1744
FOR TRUSTEE OF SWASEY PARKWAY: DWANE STAPLES 1308, S. M. WINTER 442
FOR TRUSTEE OF THE TRUST FUNDS: DONNA LEROY 1752

ARTICLES

Article 2 Zoning Amendment #1: Are you in favor of the adoption of Amendment #1 as proposed by the Planning Board for the town zoning ordinance, as follows: Removing the definition of fertilizer in Article 2, and adding it under Articles 9.2 Aquifer Protection and 9.3 Shoreland District for ease of access. YES 1812, NO 430

Article 3 Zoning Amendment #2: Are you in favor of the adoption of Amendment #2 as proposed by the Planning Board for the town zoning ordinance, as follows: To amend the Shoreland District Use Regulations removing striked language and adding language in italics as indicated below: 9.3.4. B. Use Regulations: Maximum Lot Coverage: Impervious surfaces, shall not cover more than ten percent (10%) of any lot or portion thereof within the Shoreland Protection District adjacent to the shoreline of the Exeter River, Squamscott River, Dearborn Brook, Water Works Pond, and Fresh River as defined in 9.3.3, unless a Conditional Use Permit is granted by the Planning Board under the terms of Article 9.3.4.G.2 Exeter Shoreland Protection District Ordinance - Conditional Use. YES 1903, NO 326

TURN BALLOT OVER AND CONTINUE VOTING

ARTICLES CONTINUED

Article 4

Zoning Amendment #3: Are you in favor of the adoption of Amendment #3 as proposed by the Planning Board for the town zoning ordinance, as follows: To rezone the area presently identified as the Professional/Technology Park (PP) zoning district to Corporate Technology Park (CT). The intent of this ordinance is to change the PP zoning district to CT that will allow additional commercial uses to encourage the commercial development of this area.

1697
 YES
 NO
 451

Article 5

Zoning Amendment #4: Are you in favor of the adoption of Amendment #4 as proposed by the Planning Board for the town zoning ordinance, as follows: Deleting "Assisted Living Facility" from the Permitted Principal use column in Table 4.2 Schedule I: Permitted Uses in the C-3 Epping Road Highway Commercial zoning district? The intent of this ordinance is to prohibit Assisted Living facilities in the C-3 Epping Road Highway Commercial zoning district. Assisted Living facilities would still be allowed in four other zoning districts in Exeter.

1794
 YES
 NO
 787

Article 6

Shall the Town raise and appropriate the sum of four million five hundred five thousand eight hundred and eighty five dollars (\$4,505,885) for the design and construction of renovations and repairs, including furniture, fixtures, replacement of the HVAC system, and equipment, of the Exeter Public Library, and to authorize the issuance of not more than \$4,505,885 of bonds or notes in accordance with the provisions of the Municipal Finance Act (RSA 33); and further to authorize the Select Board to issue and negotiate such bonds or notes and to determine the rate of interest thereon. Debt service will be paid from the general fund. (Estimated Tax Impact: assuming 15 year bond at 2.93% interest: .21/1,000, \$21.18/100,000 of assessed property value). Bond payments would begin approximately one year after issuance. (3/5 ballot vote required for approval.) Recommended by the Select Board 5-0.

1610
 YES
 NO
 785

6790

Article 7

Shall the Town raise and appropriate the sum of two hundred and fifty thousand dollars (\$250,000) for the purpose of creating final design and engineering plans for the Recreation Park Development Project. This project will include community input, surveying, and preliminary design of the Recreation Park followed by a final design proposal supported by the Recreation Advisory Board. Included will be construction documentation to initiate a multi-phased renovation and expansion of the Recreation Park at 4 Hampton Road, and authorize the issuance of not more than (\$250,000) of bonds or notes in accordance with the provisions of Municipal Finance Act (RSA 33), and authorize the Select Board to issue and negotiate such bonds or notes and determine the rate of interest thereon. Debt service will be paid from the general fund. (Estimated Tax Impact: assuming 5 year bond at 2.22% interest: .030/1,000, \$3.05/100,000 assessed property value). Bond payments would begin approximately one year after issuance. (A 3/5 ballot vote required for approval.) Recommended by the Select Board 4-1.

1447
 YES
 NO
 880

6290

Article 8

Shall the town raise and appropriate the sum of three hundred twenty-five thousand and zero dollars (\$325,000) for the purpose of design and engineering costs for utility improvements including water, sewer, roads and drainage in the Summer/Salem Street, Park Street, and Warren Avenue areas, and authorize the issuance of not more than (\$325,000) of bonds or notes in accordance with the provisions of Municipal Finance Act (RSA 33), and authorize the Select Board to issue and negotiate such bonds or notes and determine the rate of interest thereon. Debt service to be shared by the water, sewer and general funds. (Estimated Tax Impact: assuming 5 year bond at 2.22% interest: .0004/1,000, \$0.37/100,000 assessed property value). Bond payments would begin approximately one year after issuance. (A 3/5 ballot vote required for approval.) Recommended by the Select Board 5-0.

1774
 YES
 NO
 623

7790

Article 9

To choose all other necessary Town Officers, Auditors or Committees for the ensuing year. **BUDGET RECOMMENDATIONS COMMITTEE:** David Beavens, Nancy Belanger, Elizabeth Canada, Don Clement, Daniel Gray, Nicholas Gray, Robert Kelly, Judy Rowan, Christine Souter, Corey Stevens, Tie Chin Tung. **MEASURER OF WOOD & BARK:** Doug Eastman, **FENCE VIEWER:** Doug Eastman, **WEIGHER:** Jay Perkins

1905
 YES
 NO
 220

Article 10

Shall the Town of Exeter raise and appropriate as an operating budget, not including appropriation by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$19,066,857. Should this article be defeated, the default budget shall be \$18,920,969, which is the same as last year, with certain adjustments required by previous action of the Town of Exeter or by law, or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only. (Estimated Tax Impact: -.11/1,000 assessed property value, \$11.00/100,000 assessed property value). (Majority vote required) Recommended by the Select Board 4-1.

1543
 YES
 NO
 713

GO TO NEXT BALLOT AND CONTINUE VOTING



**TOWN OF EXETER
PLANNING BOARD
APPROVED MINUTES
December 20, 2018**

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1. CALL TO ORDER: Session was called to order at 7:09 pm by Chair Plumer.

2. INTRODUCTIONS

Members Present: Chair Langdon Plumer, Pete Cameron – Clerk, Aaron Brown, Gwen English, Kathy Corson – Select Board, Nick Gray, Alternate, Jennifer Martel – Alternate, John Grueter – Alternate, Kelly Bergeron, and Robin Tyner

Staff Present: Dave Sharples, Town Planner, Kristen Murphy, Natural Resource Planner

3. NEW BUSINESS

Public Hearings:

- Continuance of Anne C. Bushnell 2004 Trust
M/F Site Plan Review – 9 Units
12 Front Street
Tax Map Parcel #72-2
C-1, Central Area Commercial Zoning District
Case #18-12

Chair Plumer read out loud the Public Notice.

Cory Belden, PE, Altus Engineering, stated he would give a quick summary of changes. There has been a lot of positive feedback. Did Site Walk November 14th; met with the Select Board who recommended to proceed with driveway access easement, coordinated with DPW on their concerns, did not want to give up parking spot in municipal lot. The proposed plow service agreement, updated traffic memo, pulled three years of data on traffic flow, estimate 49 extra trips on Front Street. A waiver to reduce stall size to provide more space. Vehicles can maneuver through stalls, notable in single space turns, revised grading to collect more runoff water from roadway. The two trees by driveway connection can be saved and not removed. Have improved plan, providing opportunities for younger folks to get into housing market.

Alyssa Murphy stated the architectural plan has been improved. Still three stories. Reduced square footage and made regular footprint (all right angles). Mentioned balconies to provide on plan, not extending balconies. Looked at housing materials. Discussed dens versus bedrooms. Without doors it reinforces they will not be additional bedrooms.

Mr. Grueter asked the square footage difference in each unit – 1,010, 1008, 986, maybe 20 feet. Less than previous.

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4. OTHER BUSINESS

Proposed Zoning Amendments

At the December 6, 2018 meeting, Mr. Sharples provided drafts of potential amendments to be reviewed, which were publicly noticed on December 7, 2018. *Copies of the full text of the proposed amendments are available in the Planning Office.*

- Article 2, Section 2.2 Definitions
- Article 9, Section 9.2 Aquifer Protection District Ordinance
- Article 9, Section 9.3 Exeter Shoreland Protection District Ordinance
- **Article 3, Section 3.2 Zoning Map**
- Article 4, Section 4.2, Schedule I: Permitted Uses

TO AMEND:

- Article 2, Section 2.2 Definitions **by deleting “2.2.30 Fertilizer” in its entirety. (Definition to be added to applicable district regulations).**
- Article 9, Section 9.2 Aquifer Protection District Ordinance **by deleting in its entirety and replacing subsection 9.2.3K.12 (Use of Fertilizer) and amend subsection 9.2.4 Definitions by adding a definition for “fertilizer.”**
- Article 9, Section 9.3 Exeter Shoreland Protection District Ordinance **by deleting in its entirety and replacing subsection 9.3.4 F.12 (Use of Fertilizer) and amend subsection 9.3.2 Definitions by adding a definition for “fertilizer.”**
- **Article 3, Section 3.2 Zoning Map by changing the zoning district designation of the existing PP-Professional/Technology Park district to CT-Corporate Technology Park.**
- Article 4, Section 4.2, Schedule I: Permitted Uses **by deleting “Assisted Living Facility” as a permitted use in the C-3, Epping Road Highway zoning district.**

Mr. Sharples advised there will be five (5) Public Hearings, the first three regarding fertilizer, are proposed amendments to **Article 2, Section 2.2, Article 9, Section 9.2 and Article 9, Section 9.3**, are connected and will require one (1) Warrant Article.

Ms. Bergeron moved to open the hearing to the public at 7:09 pm. Ms. Corson seconded the motion, with all in favor, so moved. Approved 7-0.

Ms. Murphy, the Natural Resource Planning stated that amending Article 2 (definitions) and Article 9 relating to fertilizer use, currently is a prohibited use of all fertilizer in Aquifer and Shoreland Protection districts. Opportunities for waivers Intent was to limit nitrogen and phosphorous in rivers. Concerns were raised upon adopting ordinances. Significant differences between different types of fertilizer but all were treated the same. The proposed removal of Article 2.2.30 entirely for clarity. 9.2.3.K permit use and add restrictions.

- 256 • Best management Practices
- 257 • 50% slow release minimum
- 258 • Annual limited (1.5 lbs. N/1000 sq. ft per year)
- 259 • Phosphorous free
- 260 • Application rate limit (.5 lb. N/1000 sq. ft).

261 Also adjusting water provisions. Look to acquire turf management plans. Increase in
262 limits from .5 to 1 or 1.5 to 3.0 annual. Add in three-year timeline to turf management.
263 Returned water for restoration. Under Best Management Practices changed definition of
264 fertilizer.

265 Ms. Martel asked about organic versus non-organic. Not in final definition?

266 Ms. Murphy stated that even organics can be misused. Thought process guidelines
267 were more important than going organic.

268 Mr. Brown stated the three-year provision would encourage us to review the process as
269 it evolves. Ms. Murphy stated not prohibited by making changes to ordinance during
270 those three years. Encourage Board to rely on staff recommendations if things change.

271 Mr. Grueter asked how do you manage this criteria? Ms. Murphy stated s the
272 responsibility of the compliance officer to try to educate the public.

273 Chair Plumer asked if this would have an effect on stores that sell fertilizer? Ms. Murphy
274 advised we would try to educate everyone so that all stores were aware of change in
275 ordinance.

276 Ms. Murphy stated interested in keeping healthy lawns, clean water as a Committee.
277 Will go over impervious cover ordinance but will not discuss much until January. The
278 amendment to 9.3.4B not penetrable by water. Changing to state "shall not exceed 10%
279 on any lot of portion thereof within boundary of SPD." Historically applied to all areas
280 with SPD.

281 Mr. Sharples stated there are few options on fertilizer amendments. Can move forward
282 and vote on final form of ordinance or can give time for people to hear about it. Could
283 table if wanted to.

284 Chair Plumer closed the hearing to the public at 7:43 pm for deliberations.

285 **Ms. Bergeron moved to move forward the proposed amendment regarding**
286 **fertilizer use as presented by the Natural Resource Planner. Mr. Grueter seconded**
287 **the motion, with all in favor, so moved. Approved 7-0.**

288
289 **Mr. Sharples advised the proposed amendment of Article 3, Section 3.2 would change**
290 **PP-Professional/Technology Park district to CT-Corporate Technology Park.**
291 **Development would be enhanced if more uses were permitted, such as light industrial**
292 **facility. Try to encourage commercial growth along Holland Way Corridor. Not much**
293 **potential left in PP zone. Some wetland constraints throughout. Ten zoning districts**
294 **allow commercial and industrial uses, not a lot of difference between two types (PP &**
295 **CT). Can have a larger childcare area in CT. Lab research no special exception**
296 **needed for CT. Light industry and hotels allowed in CT, not allowed in PP. Prototype**

297 production prohibited in CT. Amusement centers and medical rehabilitation facilities
298 allowed via special exception in CT.

299
300 Mr. Gray inquired if definitions for districts specific to Exeter or State wide?
301

302 Mr. Sharples stated specific to Exeter but relatively consistent throughout Towns.
303

304 Ms. Corson stated she looked at other Towns but not listed state-wide.

305 Mr. Sharples advised ran by Master Plan Oversight Committee. Consensus was
306 positive. Don't think the two are terribly different aside from permitting a few more uses.
307

308 Mr. Brown asked if the Town notifies abutters if this changes? Mr. Sharples stated only
309 Public Notice but yes. Mr. Brown asked if any abutters greatly affected by this? Chair
310 Plumer asked if there are protections in place for direct abutters? Mr. Sharples advised
311 the process is via Special Exception. There was a time when we looked at all uses and
312 rezoned what's there.

313

314 Ms. Corson stated will be on ballot to vote as well. Good to notice people to see if
315 anybody has concerns.

316

317 Mr. Sharples suggested going on case by case basis if doing that process.
318

319 Mr. Brown stated that changes in zoning are important to abutters and stake holders.
320 Comfortable with your discretion on who is notified.

321

322 Chair Plumer opened the hearing to the public at 8:14 pm.
323

324

325 Nancy Belanger clarify road names on map.
326

327

328 **Mr. Cameron moved to continue the public hearing until January 10, 2019. Ms.
329 Corson seconded the motion, with all in favor, so moved. Approved 7-0.**

330

331 Mr. Sharples advised the proposed amendment of Article 4, Section 4.2, Schedule I:
332 Permitted Uses would prohibit Assisted Living Facilities in C-3 Epping Road Highway
333 zoning district.

334

335 The use would be removed from the list of permitted uses. The Housing Advisory
336 Committed heard of proposal to add AL amendment would not immediately affect that
337 proposal. ALF defined in zoning ordinances. Mr. Cameron stated everyone's definition
338 is different (for ALFs).

339

340 Ms. Corson stated there is not much left to major development.
341

342

343 Mr. Sharples stated there are possibilities for redevelopment. The new proposal is
344 mainly residential use. ALFs in Town already.
345

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**TOWN OF EXETER
PLANNING BOARD
APPROVED MINUTES
January 10, 2019**

1. **CALL TO ORDER:** Session was called to order at 7:01 pm by Chair Plumer.

2. **INTRODUCTIONS**

Members Present: Chair Langdon Plumer, Pete Cameron – Clerk, Aaron Brown, Gwen English, John Grueter, Kathy Corson – Select Board, Kelly Bergeron, and Jennifer Martel – Alternate.

Staff Present: Dave Sharples, Town Planner, Kristen Murphy, Natural Resource Planner

3. **OTHER BUSINESS**

Proposed Zoning Amendments

At the December 6, 2018 meeting, Mr. Sharples provided drafts of potential amendments to be reviewed, which were publicly noticed on December 7, 2018. *Copies of the full text of the proposed amendments are available in the Planning Office.*

- Article 2, Section 2.2 Definitions
- Article 9, Section 9.2 Aquifer Protection District Ordinance
- Article 9, Section 9.3 Exeter Shoreland Protection District Ordinance
- Article 3, Section 3.2 Zoning Map
- Article 4, Section 4.2, Schedule I: Permitted Uses

TO AMEND:

- Article 2, Section 2.2 Definitions ***by deleting “2.2.30 Fertilizer” in its entirety. (Definition to be added to applicable district regulations).***
- Article 9, Section 9.2 Aquifer Protection District Ordinance ***by deleting in its entirety and replacing subsection 9.2.3K.12 (Use of Fertilizer) and amend subsection 9.2.4 Definitions by adding a definition for “fertilizer.”***
- Article 9, Section 9.3 Exeter Shoreland Protection District Ordinance ***by deleting in its entirety and replacing subsection 9.3.4 F.12 (Use of Fertilizer) and amend subsection 9.3.2 Definitions by adding a definition for “fertilizer.”***
- Article 3, Section 3.2 Zoning Map ***by changing the zoning district designation of the existing PP-Professional/Technology Park district to CT-Corporate Technology Park.***

- Article 4, Section 4.2, Schedule I: Permitted Uses **by deleting “Assisted Living Facility” as a permitted use in the C-3, Epping Road Highway zoning district.**

Mr. Sharples advised there will be five (5) Public Hearings, the first three regarding fertilizer, are proposed amendments to Article 2, Section 2.2, Article 9, Section 9.2 and Article 9, Section 9.3, are connected and will require one (1) Warrant Article.

The Planning Board voted at the First Public Hearing on December 20, 2018 to move forward Article 2, Section 2.2, Article 9, Section 9.2, Article 9, Section 9.3 and Article 4, Section 4.2.

Article 9, Section 9.3 Exeter Shoreland Protection District Ordinance, subsection 9.3.4. Use Regulations by revising the definition of “B. Maximum Lot Coverage” and Article 3, Section 3.2 Zoning Map by changing the zoning district designation of the existing PP - Professional Technology Park district to CT – Corporate Technology Park (continued public hearing) were continued to this 2nd Public Hearing.

Ms. Bergeron moved to open the hearing to the public at 7:02 pm. Ms. Corson seconded the motion, with all in favor, so moved. Approved 7-0.

Mr. Sharples advised as requested by the Board, the Planning office has notified the property owners of those parcels located in the PP-Professional Technology Park zoning district as well as the abutting property owners to those parcels of the proposed amendment to change the zoning district designation from PP-Professional Technology park to CT-Corporate Technology Park. Included in the letter were copies of Mr. Sharples memorandum and the accompanying map.

Mr. Sharples advised the 1st Amendment is regarding the definition of maximum lot coverage.

Ms. Murphy, the Natural Resource Planner stated that amending Article 9, Section 9.3, Subsection 9.3.4 B relates to impervious cover, proposing to remove “adjacent to” to refer to the entire Shoreland Protection District boundary so it applies to all areas within the district. Historically this has been applied to all areas within the Shoreland Protection District.

Ms. Bergeron moved that zoning amendment Article 9, Section 9.3, Subsection 9.3.4 B be moved forward to the March warrant to be adopted. Mr. Brown seconded the motion, with all in favor, so moved. Approved 7-0.

Mr. Sharples advised the proposed amendment of Article 3, Section 3.2 would change PP-Professional/Technology Park district to CT-Corporate Technology Park.

Mr. Sharples advised currently there is only one of each district. Change would permit some additional uses. The main changes are permitting hotels and light industry and prohibiting prototype production. CT allows more retail space, amusement centers and medical facilities allowed via special exception.

89 Mrs. Corson asked if remove PP, need zoning amendment? – No, just gets removed.

90

91 Mr. Cameron asked if it would include assisted living facilities? No, those are not
92 allowed in either zone.

93

94 Lou Gargiulo, owner of lots on Holland Ave stated he would love to see this change, this
95 broadens opportunities.

96

97 **Ms. Bergeron moved that zoning amendment Article 3, Section 3.2 be moved**
98 **forward to the March warrant to be adopted. Mr. Brown seconded the motion, with**
99 **all in favor, so moved. Approved 7-0.**

100

101 4. NEW BUSINESS

102

103 Public Hearings:

104

- 105 • One Home Builders, LLC for a multi-family Site Plan Review for proposed
106 redevelopment including demolition of an existing 5-unit apartment building and the
107 abandoned auto body structures (formerly known as Brad's Auto Body) and
108 construction of nine (9) residential townhouse condominium units, parking and
109 associated site improvements
110 69 Main Street, C-1, Central Area Commercial zoning district
111 Tax Map Parcel #63-255, Case #18-18

112

113 Chair Plumer advised the applicant requested a continuance.

114

115 **Mr. Cameron motioned to table One Home Buildings until February 7, 2019. Ms.**
116 **Bergeron seconded the motion, with all in favor, so moved.**

117

- 118 • Scott Boudreau LLS for a lot-line adjustment of the common boundary between
119 Tax Map Parcel #22-15 (B&M Corporation) and Tax Map Parcel #22-17
120 67 Newfield's Road, RU-Rural zoning district
121 Case #18-19

122

123 Chair Plumer read out loud the public hearing notice.

124

125 Mr. Boudreau indicated that B&M Corp wants to convey Parcel A to Backyard Trust.
126 Chair Plumer asked to show the new boundary line. Mr. Boudreau indicated with the
127 pointer on the map.

128

129 **Ms. English moved that Case #18-19 be approved with the following**
130 **conditions:**

131

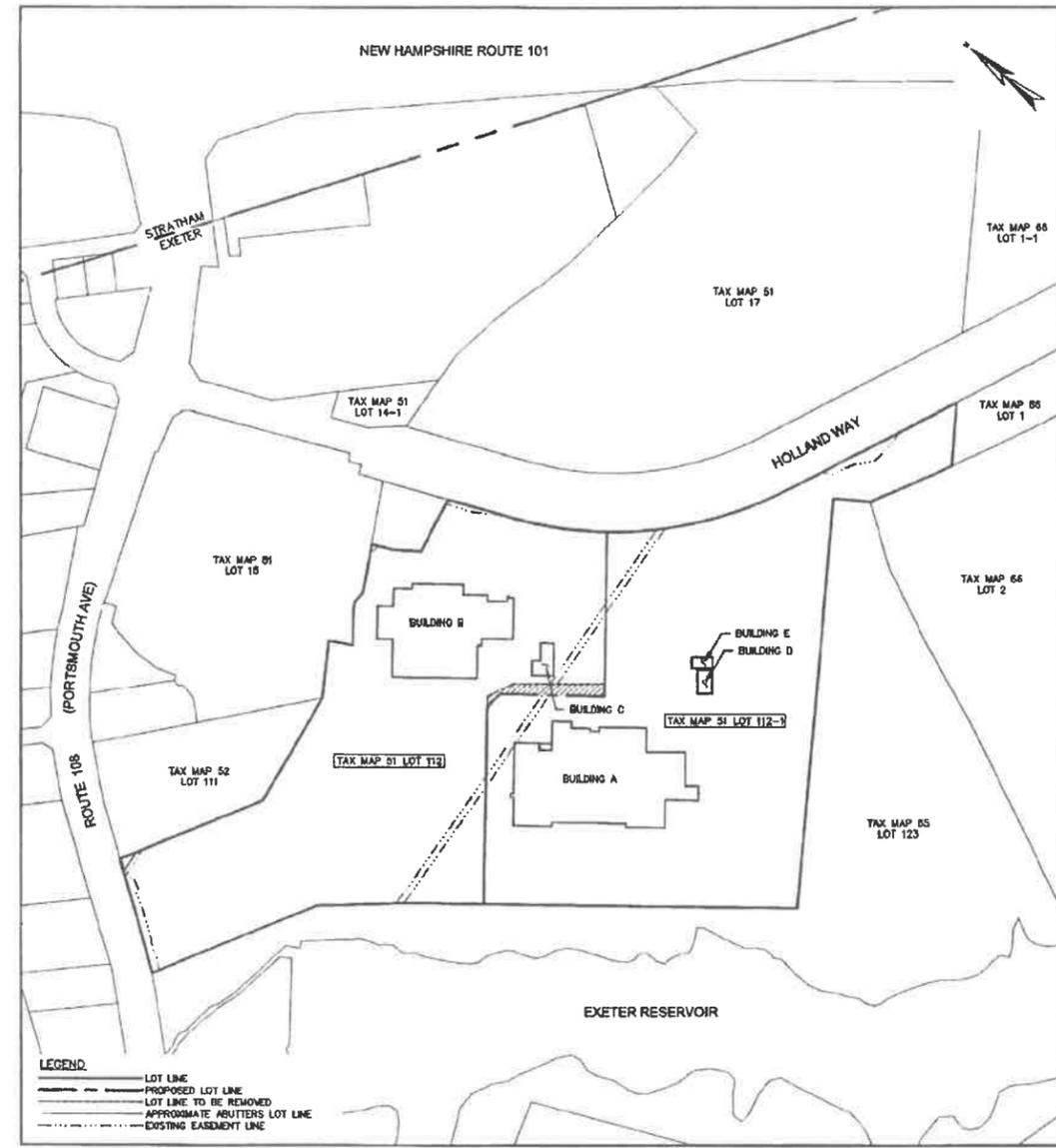
- 132 • **1. Monumentation shown on plan shall be installed in accordance with**
133 **Section 9.25 of the Site Plan Review and subdivision regulations prior**
134 **to signing final plan; and**

D-42853 07/01/2024 09:23:48 AM
 Register of Deeds, Rockingham County
 LOST PLAN ROADWAYS 23.00
 PLAN 52.00

- NOTES:
- REFERENCE: TAX MAP 51 LOT 112, TAX MAP 51 LOT 112-1, PORTSMOUTH AVE, EXETER, NEW HAMPSHIRE, D.S.I. PROJECT NO. 8692
 - TOTAL EXISTING PARCEL AREAS: LOT 112 15.08 AC, LOT 112-1 18.91 AC
 - OWNER OF RECORD: OSRAM SYLVANIA, INC., 100 ENKSCOTT ST., DANVERS, MA 01923, R.C.R.D. BOOK 4428, PAGE 2139
 - ZONE: C-2 & CT.
 - FIELD SURVEY PERFORMED BY D.C.B. & K.J.L. DURING SEPTEMBER 2019 USING A TRIMBLE S9/S7 TOTAL STATION AND A TRIMBLE R8/R10 SURVEY GRADE GPS WITH A TRIMBLE TSC3 DATA COLLECTOR AND A (SOKKA B21/TRIMBLE DNN DIGITAL) AUTO LEVEL. TRAVERSE ADJUSTMENT BASED ON LEAST SQUARE ANALYSIS
 - FLOOD HAZARD ZONE: "X" PER FIRM MAP #3301500409E, DATED 5/17/2005.
 - HORIZONTAL DATUM BASED ON NAD83(2011) NEW HAMPSHIRE STATE PLANE COORDINATE ZONE (2800) DERIVED FROM REDUNDANT GPS OBSERVATIONS UTILIZING THE KEYNET GPS VRS NETWORK.
 - THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH AND IN RELATION TO THE CURRENT LEGAL DESCRIPTION, AND IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP, OR DEFINE THE LIMITS OF TITLE.
 - DUE TO THE COMPLEXITY OF RESEARCHING ROAD RECORDS AS A RESULT OF INCOMPLETE, UNORGANIZED, INCONCLUSIVE, OBTUSCATED, OR LOST DOCUMENTS, THERE IS AN INHERENT UNCERTAINTY INVOLVED WHEN ATTEMPTING TO DETERMINE THE LOCATION AND WIDTH OF A ROADWAY RIGHT OF WAY. THE EXTENT OF THE ROADS AS DEPICTED HEREON ARE BASED ON RESEARCH CONDUCTED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS AND THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
 - SITE FEATURES NOT SHOWN HEREON. REFERENCE IS HEREBY MADE TO REFERENCE PLANS 14 & 15 FOR THAT INFORMATION.
 - THE SOLE PURPOSE OF THIS PLAN IS TO CORRECT THE EXISTING AND PROPOSED AREA CALCULATIONS FOR TAX MAP 51 LOT 112-1, AS THEY WERE INCORRECTLY IDENTIFIED ON REFERENCE PLAN 15.

- REFERENCE PLANS:
- "STATE OF NEW HAMPSHIRE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS PLANS OF PROPOSED FEDERAL AID PRIMARY PROJECT F016-2(1) N.H. NO. P-2428 SOUTH BIDE ROAD TOWNS OF EXETER AND STRATHAM COUNTY OF ROCKINGHAM" DATED 4-14-55 ON FILE AT THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
 - "THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLANS PROPOSED FEDERAL AID PROJECT STP-X-5123(005) N.H. PROJECT NO. 100298 NH ROUTE 108 TOWN OF EXETER COUNTY OF ROCKINGHAM" DATED 9/23/02 ON FILE AT THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
 - "STATE OF NEW HAMPSHIRE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS PLANS OF PROPOSED FEDERAL AID SECONDARY PROJECT S220(1) N.H. PROJECT NO. P-2381 HAMPTON ROAD TOWNS OF STRATHAM-EXETER COUNTY OF ROCKINGHAM" DATED 8-18-59 ON FILE AT THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
 - "THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLANS OF PROPOSED FEDERAL AID PROJECT STP-NHS-7-1-018-2(50) NEW HAMPSHIRE ROUTE 101 TOWNS OF STRATHAM & EXETER COUNTY OF ROCKINGHAM" DATED 9/26/02 ON FILE AT THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
 - "PLAN OF LAND FOR SYLVANIA ELECTRIC PRODUCTS INC EXETER NEW HAMPSHIRE" DATED DECEMBER 1982 BY G. L. DAVIS & ASSOCIATES R.C.R.D. PLAN DRAWER II, SEC. H., PLAN #1.
 - "ALTA/ACSM LAND TITLE PLAN 137, 138 PORTSMOUTH AVENUE NH ROUTE 108 TAX MAP 51 LOT 15 & TAX MAP 52 LOT 103 IN EXETER NEW HAMPSHIRE" DATED DECEMBER 11, 2013 BY VANASSE HANGEN BRUSTLIN, INC. R.C.R.D. PLAN D-38125.
 - "LOT LINE REVISION PORTSMOUTH AVENUE - NH ROUTE 108 EXETER, NEW HAMPSHIRE FOR THE RICHMOND COMPANY, INC." DATED 8/9/2000 BY JAMES VERRA AND ASSOCIATES, INC. R.C.R.D. PLAN D-30822.
 - "OVERALL PLAN ALTA / ACSM LAND TITLE SURVEY FOR TWO LABORATORIES INC. 1 TWO PARK HOLLAND WAY N.H. ROUTE 88 COUNTY OF ROCKINGHAM EXETER, N.H." DATED NOVEMBER 20, 2002 BY MILLETTE, SPRAGUE & COLWELL, INC. R.C.R.D. PLAN D-30806.
 - "LOT LINE ADJUSTMENT PLAN PREPARED FOR: EXETER CORPORATE PARK DEVELOPMENT, LLC HOLLAND WAY, EXETER, NH" DATED SEPT, 2012 BY BEALS ASSOCIATES PLLC R.C.R.D. PLAN D-37525.
 - "LOT LINE ADJUSTMENT PLAN TAX MAP & LOT 70-21" DATED 5/26/98 BY JONES & BEACH ENGINEERS, INC. R.C.R.D. D-28007.
 - "PRELIMINARY SUBDIVISION PLAN FOR CTE PRODUCTS CORP." DATED 9/10/03 BY JOSEPH M. WICHERT, L.L.S., INC., NOT RECORDED.
 - "ALTA/ACSM LAND TITLE SURVEY, PREPARED FOR ROBINSON, ST. JOHN & WAYNE", REVISED THROUGH 9/15/92 BY TF MORAN INC., NOT RECORDED.
 - "131 PORTSMOUTH AVENUE PROPERTY UTILITIES" BY TICHE & BOND INC., NOT RECORDED
 - "ALTA/ANSPS LAND TITLE SURVEY FOR TICHE & BOND OF OSRAM SYLVANIA INC." DATED OCTOBER 2019 BY DOUCET SURVEY LLC.
 - "SUBDIVISION PLAN OF OSRAM SYLVANIA INC." DATED OCTOBER 2020 BY DOUCET SURVEY LLC., R.C.R.D. D-42514.
 - "LOT LINE ADJUSTMENT PLAN OF TAX MAP 51 LOT 112 AND TAX MAP 51 LOT 112-1 FOR OSRAM SYLVANIA, INC., ROUTE 108 (PORTSMOUTH AVENUE) & ROUTE 88 CONNECTOR (HOLLAND WAY) EXETER, NEW HAMPSHIRE" DATED OCTOBER 2020 (SIGNED ON 8/17/21) BY DOUCET SURVEY, LLC, R.C.R.D. PLAN D-42799.

- EASEMENT NOTES:
- THE PARCELS ARE SUBJECT TO AND/OR IN BENEFIT OF THE FOLLOWING EASEMENTS, RESTRICTIONS, ETC.
- 15" WATER WORKS PIPELINE SHOWN ON REFERENCE PLAN 5. [AFFECTS THE SUBJECT PREMISES AND IS DEPICTED HEREON]
 - SLOPE, DRAINAGE & UTILITY EASEMENTS IN ROCKINGHAM COUNTY REGISTRY OF DEEDS BOOK 3198, PAGE 2298, BOOK 3198, PAGE 2300, BOOK 3198, PAGE 2301 AND BOOK 3198, PAGE 2302. [AFFECT THE SUBJECT PREMISES AND ARE DEPICTED HEREON]
 - EASEMENT TO LAURENCE E. FOSS DATED JULY 21, 1987 AND RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS AT BOOK 2693, PAGE 1344. [AFFECTS THE SUBJECT PREMISES AND IS DEPICTED HEREON]
 - EASEMENT DEED TO UNILIT ENERGY SYSTEMS, INC. DATED MARCH 15, 2018 AND RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS AT BOOK 3701, PAGE 1146. [AFFECTS THE SUBJECT PREMISES AND IS DEPICTED HEREON]



- ABUTTERS LIST:
- TAX MAP 51, LOT 14-1: MCFARLAND REALTY TRUST, 151 PORTSMOUTH AVE, EXETER, NH 03833, R.C.R.D. BOOK 4451, PAGE 502
 - TAX MAP 52, LOT 111: KING CHEVROLET & OLDS CO. INC, PO BOX 1000-NS 6000, PORTLAND, ME 04104
 - TAX MAP 55, LOT 1-1: LAURENCE D. FOSS, 30 BRINKER HILL AVE, STRATHAM, NH 03865, R.C.R.D. BOOK 2861, PAGE 2700
 - TAX MAP 55, LOT 1: PALMER & SICARD, INC, 140 EPPING ROAD, EXETER, NH 03833, R.C.R.D. BOOK 5998, PAGE 2789
 - TAX MAP 55, LOT 1-1: PALMER & SICARD, INC, 140 EPPING ROAD, PIPPCOTON, MA 01541, R.C.R.D. BOOK 3242, PAGE 2841
 - TAX MAP 55, LOT 2: NORTH COUNTRY TRUST, PO BOX 397, PIPPCOTON, MA 01541, R.C.R.D. BOOK 3242, PAGE 2841
 - TAX MAP 65, LOT 123: TOWN OF EXETER, 10 FRONT STREET, EXETER, NH 03833

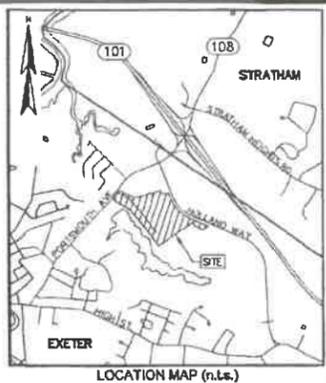
APPROVED BY THE EXETER PLANNING BOARD
 [Signature] 6/28/21 DATE



I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN SURVEY CLASSIFICATION OF THE NH CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. RANDOM TRAVERSE SURVEY BY TOTAL STATION, WITH A PRECISION GREATER THAN 1:15,000.

[Signature] L.L.S. #918
 6/25/2021 DATE

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET THE REQUIREMENTS OF THE NH CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN ASSESSORS' RECORDS.

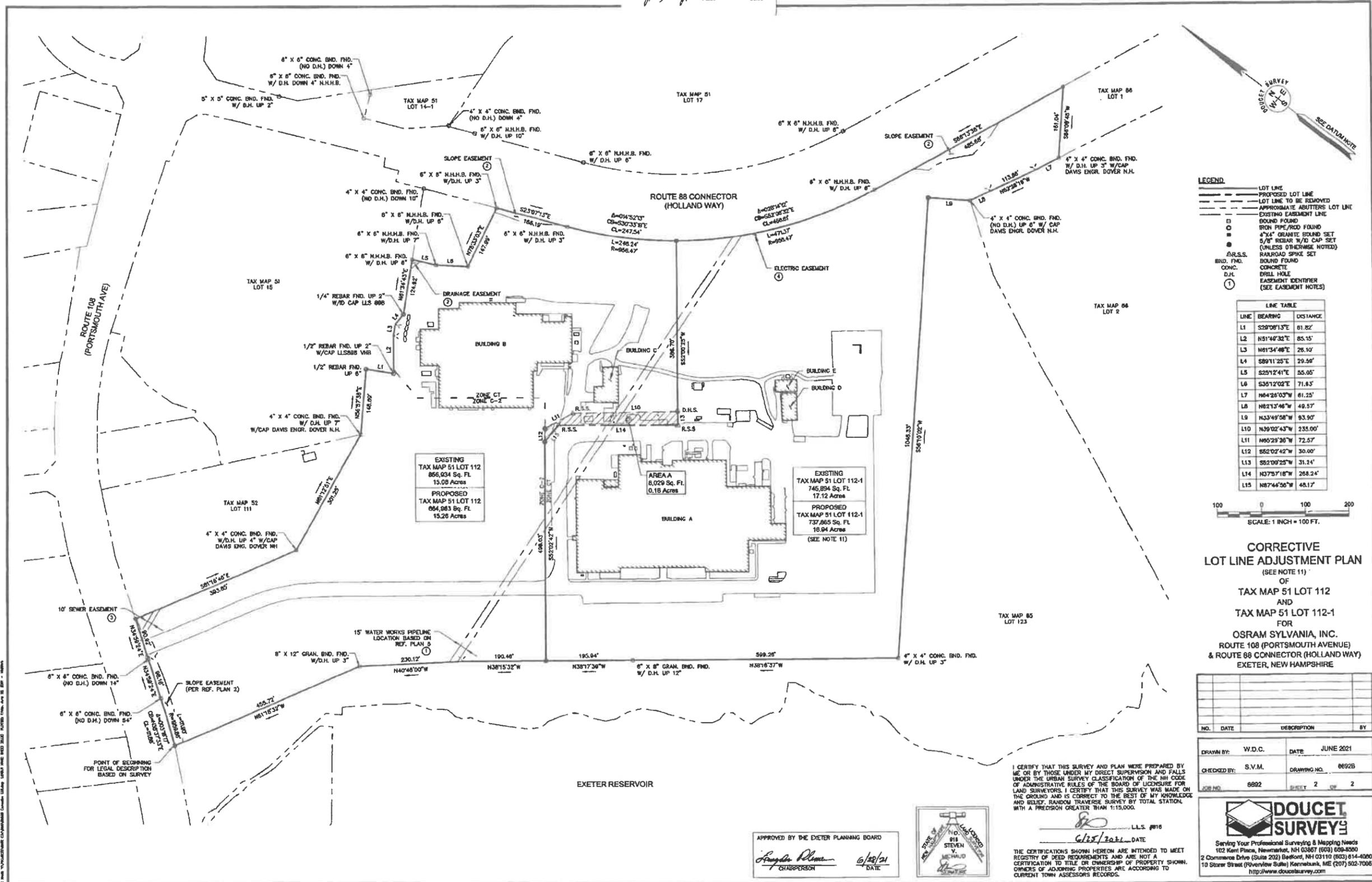


CORRECTIVE
 LOT LINE ADJUSTMENT PLAN
 (SEE NOTE 11)
 OF
 TAX MAP 51 LOT 112
 AND
 TAX MAP 51 LOT 112-1
 FOR
 OSRAM SYLVANIA, INC.
 ROUTE 108 (PORTSMOUTH AVENUE)
 & ROUTE 88 CONNECTOR (HOLLAND WAY)
 EXETER, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

DRAWN BY: W.D.C. DATE: JUNE 2021
 CHECKED BY: S.V.M. DRAWING NO.: 0602B
 JOB NO.: 0632 SHEET 1 OF 2

DOUCET SURVEY
 Serving Your Professional Surveying & Mapping Needs
 102 Kent Place, Newmarket, NH 03857 (603) 859-6690
 2 Commercial Drive (Suite 202) Safford, NH 03110 (603) 814-4050
 10 Stoner Street (Riverview Sub) Keene, NH 03501 (603) 502-7005
 http://www.doucetsurvey.com



LEGEND

- LOT LINE
- - - PROPOSED LOT LINE
- - - LOT LINE TO BE REMOVED
- - - APPROXIMATE ADJUTERS LOT LINE
- - - EXISTING EASEMENT LINE
- BOUND FOUND
- IRON PIPE/ROD FOUND
- 4"X4" GRANITE BOUND SET
- 5/8" REBAR W/D CAP SET (UNLESS OTHERWISE NOTED)
- R.R.S.S. RAILROAD SPIKE SET
- BOUND FOUND CONCRETE
- D.H. DRILL HOLE
- ① EASEMENT IDENTIFIER (SEE EASEMENT NOTES)

LINE TABLE

LINE	BEARING	DISTANCE
L1	S29°08'13"E	61.82'
L2	N51°40'32"E	85.15'
L3	N61°34'46"E	28.10'
L4	S89°11'25"E	29.59'
L5	S25°12'41"E	55.05'
L6	S35°12'02"E	71.83'
L7	N64°28'03"W	61.25'
L8	N82°13'46"W	49.57'
L9	N33°49'58"W	93.90'
L10	N39°02'43"W	233.00'
L11	N60°29'26"W	72.57'
L12	S82°02'42"W	30.00'
L13	S82°09'25"W	31.24'
L14	N37°57'18"W	268.24'
L15	N87°44'26"W	48.17'

SCALE: 1 INCH = 100 FT.

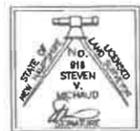
CORRECTIVE LOT LINE ADJUSTMENT PLAN
 (SEE NOTE 11)
 OF
 TAX MAP 51 LOT 112
 AND
 TAX MAP 51 LOT 112-1
 FOR
 OSRAM SYLVANIA, INC.
 ROUTE 108 (PORTSMOUTH AVENUE)
 & ROUTE 88 CONNECTOR (HOLLAND WAY)
 EXETER, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

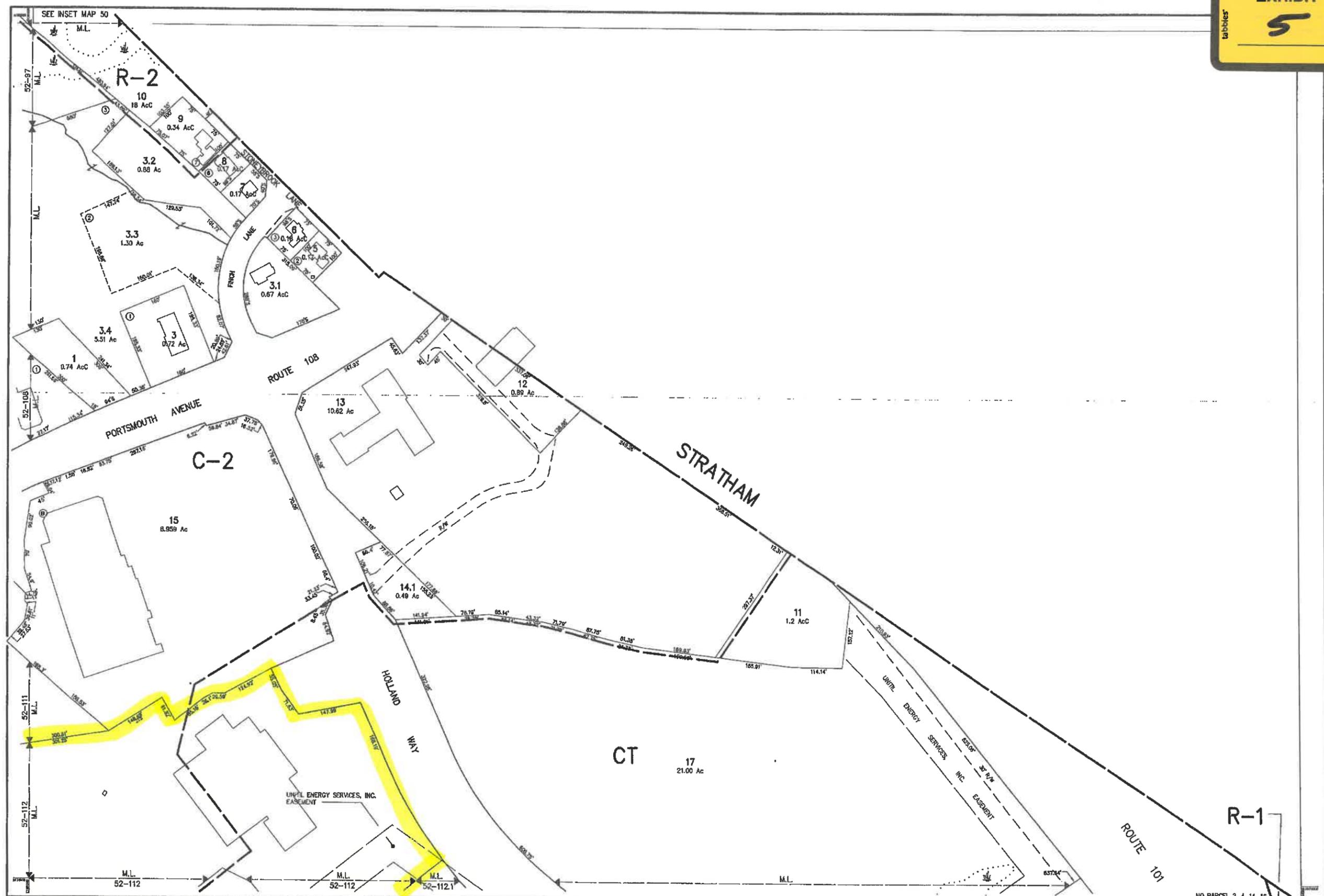
DRAWN BY: W.D.C. DATE: JUNE 2021
 CHECKED BY: S.V.M. DRAWING NO.: 6892B
 SHEET 2 OF 2

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN SURVEY CLASSIFICATION OF THE NH CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. RANDOM TRAVERSE SURVEY BY TOTAL STATION, WITH A PRECISION GREATER THAN 1:15,000.

APPROVED BY THE EXETER PLANNING BOARD
Angela Plante 6/29/21
 CHAIRPERSON DATE



DOUCET SURVEY
 Serving Your Professional Surveying & Mapping Needs
 102 Kent Plaza, Newmarket, NH 03857 (603) 658-4300
 2 Commerce Drive (Suite 202) Bedford, NH 03110 (603) 614-4000
 10 Starer Street (RiverView Suite) Kennebunk, ME (207) 502-7006
 http://www.doucetsurvey.com



THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR LEGAL DESCRIPTION OR CONVEYANCE.
 THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM.
 PHOTOGRAPHY DATE: APRIL 25, 1995
 COMPLETION DATE: MARCH 28, 1996

PRODUCED IN 1998 BY
CA Technologies
 11 PLEASANT STREET, LITTLETON, NH 03581
 603.322-4540 • WWW.CAT-TECH.COM

AREA SURVEYED	Ac
AREA CALCULATED	Ac
RECORD DIMENSION	100'
SCALED DIMENSION	100'S
MATCH LINE	M.L.
WATER	W

LEGEND

- EXEMPT PROPERTY
- SUBDIVISION LOT NO.
- ZONE LIMIT
- RIGHT OF WAY
- COMMON OWNERSHIP
- BUILDING
- WETLANDS

SCALE 1" = 100'

FEET 0 100 200 300

METERS 0 25 50 75

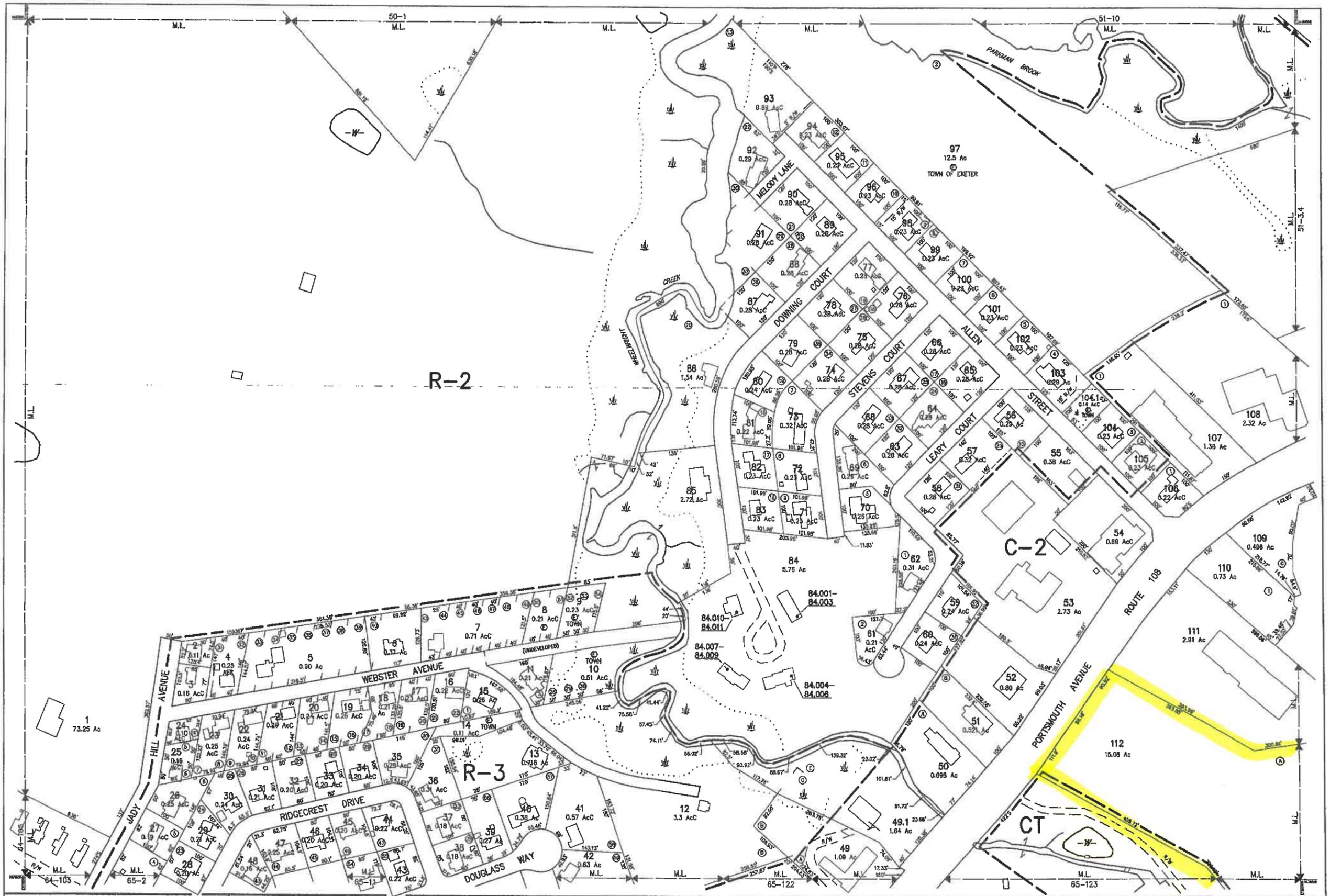
REVISED TO: APRIL 1, 2021

PROPERTY MAPS
EXETER
 NEW HAMPSHIRE

INDEX DIAGRAM

MAP NO.
51

NO PARCEL 2, 4, 14, 16



THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR LEGAL DESCRIPTION OR CONVEYANCE.

THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM.

PHOTOGRAPHY DATE: APRIL 25, 1995

COMPLETION DATE: MARCH 28, 1996

PRODUCED BY 1998 BY

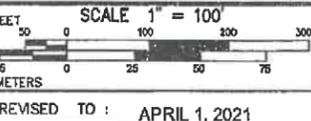
CAI Technologies

11 PLEASANT STREET, LITTLETON, NH 02791
603.322.4640 - WWW.CAI-TECH.COM

LEGEND

AREA SURVEYED	.....	Ac
AREA CALCULATED	.....	Ac
RECORD DIMENSION	.....	100'
SCALED DIMENSION	.....	100'S
MATCH LINE	.....
WATER	.....

EXEMPT PROPERTY	.....
SUBMISSION LOT NO.	.....
ZONE LIMIT	.....
RIGHT OF WAY	.....
COMADPT OWNERSHIP	.....
BUILDING	.....
WETLANDS	.....



PROPERTY MAPS

EXETER

NEW HAMPSHIRE

INDEX DIAGRAM

49	50
53	51
64	65
66	

MAP NO.

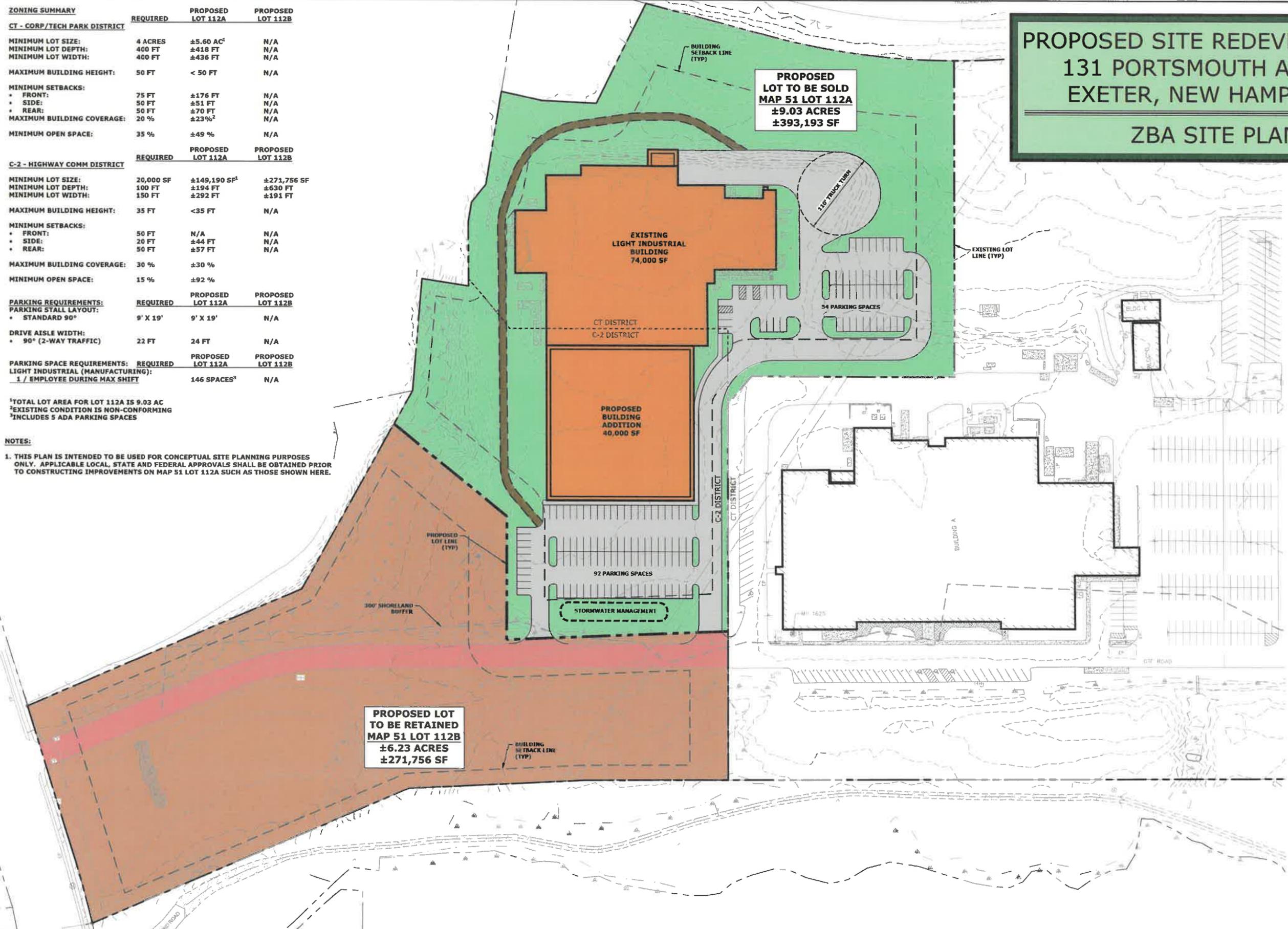
52

**PROPOSED SITE REDEVELOPMENT
131 PORTSMOUTH AVENUE
EXETER, NEW HAMPSHIRE
ZBA SITE PLAN**

ZONING SUMMARY	REQUIRED	PROPOSED LOT 112A	PROPOSED LOT 112B
CT - CORP/TECH PARK DISTRICT			
MINIMUM LOT SIZE:	4 ACRES	±5.60 AC ²	N/A
MINIMUM LOT DEPTH:	400 FT	±418 FT	N/A
MINIMUM LOT WIDTH:	400 FT	±436 FT	N/A
MAXIMUM BUILDING HEIGHT:	50 FT	< 50 FT	N/A
MINIMUM SETBACKS:			
• FRONT:	75 FT	±176 FT	N/A
• SIDE:	50 FT	±51 FT	N/A
• REAR:	50 FT	±70 FT	N/A
MAXIMUM BUILDING COVERAGE:	20 %	±23% ²	N/A
MINIMUM OPEN SPACE:	35 %	±49 %	N/A
C-2 - HIGHWAY COMM DISTRICT			
MINIMUM LOT SIZE:	20,000 SF	±149,190 SF ²	±271,756 SF
MINIMUM LOT DEPTH:	100 FT	±194 FT	±630 FT
MINIMUM LOT WIDTH:	150 FT	±292 FT	±191 FT
MAXIMUM BUILDING HEIGHT:	35 FT	<35 FT	N/A
MINIMUM SETBACKS:			
• FRONT:	50 FT	N/A	N/A
• SIDE:	20 FT	±44 FT	N/A
• REAR:	50 FT	±57 FT	N/A
MAXIMUM BUILDING COVERAGE:	30 %	±30 %	
MINIMUM OPEN SPACE:	15 %	±92 %	
PARKING REQUIREMENTS:			
PARKING STALL LAYOUT:	REQUIRED	PROPOSED LOT 112A	PROPOSED LOT 112B
• STANDARD 90°	9' X 19'	9' X 19'	N/A
DRIVE AISLE WIDTH:			
• 90° (2-WAY TRAFFIC)	22 FT	24 FT	N/A
PARKING SPACE REQUIREMENTS:			
LIGHT INDUSTRIAL (MANUFACTURING):	REQUIRED	PROPOSED LOT 112A	PROPOSED LOT 112B
1 / EMPLOYEE DURING MAX SHIFT		146 SPACES ³	N/A

¹TOTAL LOT AREA FOR LOT 112A IS 9.03 AC
²EXISTING CONDITION IS NON-CONFORMING
³INCLUDES 5 ADA PARKING SPACES

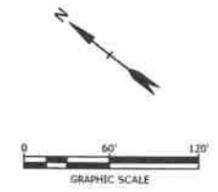
NOTES:
 1. THIS PLAN IS INTENDED TO BE USED FOR CONCEPTUAL SITE PLANNING PURPOSES ONLY. APPLICABLE LOCAL, STATE AND FEDERAL APPROVALS SHALL BE OBTAINED PRIOR TO CONSTRUCTING IMPROVEMENTS ON MAP 51 LOT 112A SUCH AS THOSE SHOWN HERE.



**PROPOSED LOT TO BE RETAINED
MAP 51 LOT 112B
±6.23 ACRES
±271,756 SF**

**PROPOSED LOT TO BE SOLD
MAP 51 LOT 112A
±9.03 ACRES
±393,193 SF**

Last Save Date: June 6, 2022, 11:04 AM By: CHM
 File Location: J:\P\0595-012-C-DRIVEWAY.dwg
 Title: 131 Portsmouth Ave Drawings - Figure 1 (AutoCAD) Sheet P-0595-012-C-DRIVEWAY.dwg Layout Tab: 1 OF 1





P0595-012
June 2, 2022

Mr. Michael Kane & John Stebbins
131 Portsmouth Ave, LLC
210 Commerce Way, Suite 300
Portsmouth, New Hampshire 03801

Re: **Trip Generation Analysis - 131 Portsmouth Avenue, Exeter, NH**

Dear Michael & John:

Tighe & Bond has performed a trip generation analysis related to the construction of a proposed 40,000 SF building expansion at 131 Portsmouth Avenue in Exeter, NH. This building expansion will be constructed onto the 74,000 SF light industrial building that currently exists on the parcel. This analysis was performed utilizing the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition. For the purposes of analysis, we have calculated the AM and PM peak hour trip generation for this building expansion utilizing average peak hour rates for ITE Land Use Code 110 – Light Industry.

Weekday AM Peak Hour	<u>Light Industry</u> <u>(ITE LUC 110)</u>
Trips Entering (88%)	26
Trips Exiting (12%)	4
<hr/>	
Total Vehicle Trips	30
Weekday PM Peak Hour	
Trips Entering (14%)	4
Trips Exiting (86%)	22
<hr/>	
Total Vehicle Trips	26

As depicted above, the proposed addition to the existing light industrial building will result in approximately one additional vehicle trip every two minutes during the Weekday AM and PM peak hours which is anticipated to have minimal impact to the surrounding roadway network during these peak times.

Please feel free to contact me if you have any questions or need any additional information.

Sincerely,

TIGHE & BOND, INC.

Patrick M. Crimmins, PE
Vice President

CC: Eben Tormey, XSS
Luke Pickett, The Kane Co.
Justin Pasay, DTC Lawyers



LETTER OF AUTHORIZATION

I, Michael Kane, Manager of 131 Portsmouth Avenue, LLC, owner of property depicted on Tax Map 52, Lot 112, do hereby authorize Donahue, Tucker and Ciandella, PLLC, 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: June 6, 2022

131 PORTSMOUTH AVENUE, LLC



Michael Kane, Manager

RECEIVED

JUN 13 2022

EXETER PLANNING OFFICE

June 10th, 2022

Jones & Wilson Realty, LLC
41 Industrial Drive, Unit 20
Exeter, NH 03833
(603) 778-9999

Barbara McEvoy
Deputy Code Enforcement Officer
Building Department
Town of Exeter, New Hampshire

Re: Zoning Board of Adjustment Case #18-14
Variance Request
173-179 Water Street, Exeter, N.H. Tax Map Parcel #64-50

Dear Ms. McEvoy:

Jones & Wilson Realty, LLC became owners of the property at 173-179 Water Street in September of 2021. Since then, we are still in the planning process for the future of the building and respectfully request a one-year extension to the variance from Article 4, Section 4.2 Schedule I-Permitted Uses and Article 2.2.55.

If you should have any questions, please do not hesitate to contact us.

Sincerely,



Steven Wilson
Jones & Wilson Realty, LLC



TOWN OF EXETER, NEW HAMPSHIRE

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

www.exeternh.gov

July 21, 2021

Bert Freedman, President
Freedman Realty Inc.
173 Water Street
Exeter, New Hampshire 03833

Re: Zoning Board of Adjustment Case #18-14
Variance Request for Excel Construction Management, LLC
(on behalf of Freedman Realty Inc.)
173 – 179 Water Street, Exeter, N.H. Tax Map Parcel #64-50

Dear Mr. Freedman:

This letter will serve as official confirmation that the Zoning Board of Adjustment, at its July 20th, 2021 meeting, voted to grant your request for a one-year extension of the approval for the above-captioned application. This approval will now be valid through July 17, 2022. .

If you should have any questions, please do not hesitate to contact the Building Department office.

Sincerely,

Kevin M. Baum
Chairman
Exeter Zoning Board of Adjustment

cc: Michael Todd, Excel Construction Management, LLC
Bert Freedman, Freedman Realty Inc., property owner
Douglas Eastman, Building Inspector/Code Enforcement Officer
Janet Whitten, Deputy Assessor

KMB:bsm



TOWN OF EXETER, NEW HAMPSHIRE

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

www.exeternh.gov

July 19, 2018

Derek R. Durbin, Esquire
Durbin Law Offices, PLLC
144 Washington Street
Portsmouth, New Hampshire 03801

Re: Zoning Board of Adjustment Case #18-14
Variance Request for Excel Construction Management, LLC
173 – 179 Water Street, Exeter, N.H. Tax Map Parcel #64-50

Dear Attorney Durbin:

This letter will serve as official confirmation that the Zoning Board of Adjustment, at its July 17th, 2018 meeting, voted to approve the above-captioned application for a variance from Article 4, Section 4.2 Schedule I-Permitted Uses and Article 2, Section 2.2.55 Multi-Use (definition) to permit residential use on the first floor of a multi-use building, as presented, with the understanding that dedicated parking spaces will be provided on-site for each dwelling unit only in accordance with Section 5.6.6 Off-Street Parking Schedule.

Please be advised that in accordance with Article 12, Section 12.4 of the Town of Exeter Zoning Ordinance entitled "Limits of Approval" that all approvals granted by the Board of Adjustment shall only be valid for a period of three (3) years from the date such approval was granted; therefore, should substantial completion of the improvements, modifications, alterations or changes in the property not occur in this period of time, this approval will expire.

If you should have any questions, please do not hesitate to contact the Building Department office.

Sincerely,

Laura J. Davies
Chairwoman
Exeter Zoning Board of Adjustment

cc: Michael Todd, Excel Construction Management, LLC
Bert Freedman, Freedman Realty Inc., property owner
Douglas Eastman, Building Inspector/Code Enforcement Officer
Janet Whitten, Deputy Assessor

LJD:bsm