



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, September 20, 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 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:

- Phillips Exeter Academy – ZBA Case #22-14
81 High Street – TM Parcel #71-97 - Request for Rehearing
- Approval of Minutes: August 16, 2022

EXETER ZONING BOARD OF ADJUSTMENT

Kevin M. Baum, Chairman

Posted 09/09/22: Exeter Town Office and Town of Exeter website

Town of Exeter
Zoning Board of Adjustment
August 16, 2022, 7 PM
Town Offices, Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Esther Olson-Murphy, Rick Thielbar, Laura Davies, Martha Pennell - Alternate, and Joanne Petito - Alternate

Members Absent: Kevin Baum, Robert Prior

Call to Order: Acting Chair Esther Olson-Murphy called the meeting to order at 7 PM. She announced that the applicant for 131 Portsmouth Ave LLC had requested a continuance to September 18, 2022, and the applicant for Riverwoods had requested a continuance until October 20, 2022.

I. **New Business**

A. Jones & Wilson - ZBA Case #18-14 Request for Extension – 173-179 Water Street (former Freedman property) Tax Map Parcel #64-50

Steve Wilson of Kensington, the co-owner of 173-179 Water Street (the old Woolworth's Building), was present to discuss this application. He said that the previous applicant for this property had requested a variance to have residential use on the first floor. They were also considering tearing $\frac{2}{3}$ of the building down and building a new three-story apartment building with parking underneath. He [Mr. Wilson] and Kevin Jones have a less aggressive plan; they're looking to take what's existing, put a shake roof on it, and preserve the residential use potential for one more year.

Ms. Davies asked if the proposal will change, but they would still like to preserve the residential use. Mr. Wilson said yes, he would use a 60 x 80 space of the front two stories as a retail/office environment, and turn the other 9,600 square feet into 5 or 6 apartments. The Board previously approved 17 apartments. He had a nice new facade approved at the HDC meeting, and is planning to build the units within the existing envelope of the building.

Ms. Davies asked if they would come back before the ZBA before building, and Mr. Wilson said no but they will go before the Planning Board for minor site plan approval.

Ms. Davies made a motion to approve the application for a one-year extension for ZBA case 18-14 for the relief granted to 173-179 Water Street, Tax Map Parcel #64-50. Mr. Thielbar seconded. The motion passed 5-0.

B. 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

44 7.23-acre parcel located at 28 Newfields Road. The subject property is located in
45 the RU-Rural zoning district. Tax Map Parcel #38-3. ZBA Case #22-13.

46 Gerry Hamel of 17 Little Pine Lane, the applicant, said this land is on the
47 corner of Route 85 and Route 101. He got a variance to build two principal
48 dwellings on the lot in March 2017. With the way the economy was in the last five
49 years, he didn't get a chance to do anything on the property. He would like to
50 have this variance reissued. He's looking to get two principals on one parcel. He
51 came back for an extension already, but then Covid hit and the one year ran out,
52 so he's starting over with the same plan. There is 225 feet of frontage where it
53 needs 200 for each parcel in an RU zone, and 200 acres of land.

54 Mr. Thielbar asked if they could get 3 properties on this land, and Doug
55 Eastman said they would still have to have relief because of the lack of frontage.

56 Mr. Hamel said these would be condos with a shared drive that owned
57 the land in common.

58 Ms. Olson-Murphy asked for public comment, but there was none. She
59 closed the public session.

60 Ms. Davies said despite the large size of the lot, with the wetlands, the
61 proximity to the highway, and the depth of the lot, it's a challenging property. Two
62 detached condos units close together would be fairly low impact.

63 Ms. Davies went through the variance criteria. 1) The variance will not be
64 contrary to the public interest and 2) The spirit of the ordinance will be observed;
65 yes, she does not think that it will be contrary to the public interest or alter the
66 character of the neighborhood in this rural area. It would be nice to see a couple
67 of houses on this property. 3) Substantial justice is done; yes, she doesn't see a
68 harm to the general public or other individuals, and none was mentioned in the
69 deliberations. 4) The value of surrounding properties will not be diminished; yes,
70 there's extensive open land at the back of the property and the right side is
71 abutted by 101. She doesn't think there's any property diminishment from this
72 low-impact proposal. 5) Literal enforcement of zoning ordinance will result in an
73 unnecessary hardship; yes, the hardship is the shape and configuration, with
74 minimal frontage, as well as the wetlands. A two-unit condo is a reasonable use
75 for this district and neighborhood.

76 Mr. Thielbar moved to approve the request from Benham Investment for a variance from Article
77 5. Section 5.5.3 to permit the proposed construction of two principal residential buildings on a
78 7.23-acre parcel located at 28 Newfields Road. Ms. Davies seconded. The motion passed 5-0.

- 79
80 C. The application of 131 Portsmouth Avenue LLC for a variance from Article 5,
81 Section 5.1.2 to permit the expansion of a non-conforming light industry use on
82 the property located at 131 Portsmouth Avenue. The subject parcel is located in
83 the C-2, Highway Commercial and CT-Corporate/Technology Park zoning
84 districts. Tax Map Parcel #52-112. ZBA Case #22-12.

85 This application was not reviewed at this meeting.
86

87 D. The application of Phillips Exeter Academy for a variance from Article 4, Section
88 4.2 Schedule I: Permitted Uses for a proposed change in use to permit faculty,
89 multi-family housing to occupy the existing structure at 81 High Street. The
90 subject property is located in the R-2, Single Family Residential zoning district.
91 Tax Map Parcel #71-97. ZBA Case #22-14.

92 Roy Tilsley of Bernstein, Shur, Sawyer, and Nelson spoke on behalf of
93 Phillips Exeter Academy. Mark Leighton, Director of Facilities at Phillips Exeter,
94 and Steve Wilson, current owner of the property at 81 High Street, were also
95 present.

96 Attorney Tilsley said this is a 2 acre lot with 2 buildings, with the main
97 building having over 12,000 square feet, in the R-2 zone. A variance was granted
98 by this board in 2011, and currently the property has multi-family housing with 14
99 age-restricted (55+) apartment units. The prior use was a nursing home, which
100 was a pre-existing non-conforming use. Phillips Exeter would like to acquire the
101 property and use a portion for its faculty housing needs. The applicant is seeking
102 this additional variance to permit faculty multi-family housing, in addition to the
103 current use of 55+ multifamily housing. The abutting properties are multi-family
104 as well. At 12,000 square feet, it's difficult to use the property in compliance with
105 the zoning as a single-family residence. Adding faculty would allow the applicant
106 to continue to use this property in a low-impact way as multi-family housing.
107 They're not proposing any changes to the property other than the tenant mix.

108 Attorney Tilsley went through the variance criteria. 1) The variance will
109 not be contrary to the public interest and 2) The spirit of the ordinance will be
110 observed; yes, the proposal does not alter the essential character of the
111 neighborhood, as it is already multi-family housing, and there is already multi-
112 family housing throughout the neighborhood, including on each side of the
113 property. The variance will not threaten the public health, safety, or welfare; there
114 would be no practical change in the use of the property, and will not increase the
115 intensity of use in a way that would impact public health safety or welfare. 3)
116 Substantial justice is done; yes, there are already multi-family apartments here,
117 so there's no gain to the general public by strict enforcement of the ordinance,
118 and the loss to the applicant is significant. The applicant will be unable to use this
119 property for faculty housing, for which the Academy has a legitimate need. They
120 envision a mixture of 55+ use and faculty housing, and plan to add faculty
121 housing over several years as tenants leave. 4) The value of surrounding
122 properties will not be diminished; yes, from the perspective of a neighboring
123 property, there's no real change of the usage of the property by expanding the
124 tenant mix to include faculty housing. It's still multi-family housing of 14 units with
125 the same footprint. 5) Literal enforcement of zoning ordinance will result in an
126 unnecessary hardship; yes, the Board already found in 2011 that the property is
127 subject to unnecessary hardship in granting the variance for the age-restricted
128 multi-family housing. There's no zoning-compliant use for the 12,000 square foot
129 building on the property. This is a historic building that no one wants to see
130 demolished to put up a single-family house. The current use of the building is the

131 most appropriate use of the property. A variance is necessary to allow a
132 reasonable use of the property. Expanding the tenant mix to include faculty in
133 addition to 55+ housing ensures that the multi-family use will continue, and will
134 allow the property to remain viable in a historic and renovated condition. The
135 proposed use is reasonable, as multi-family has existed on the site for 10+ years,
136 and expanding the tenant mix to include faculty is a reasonable request given the
137 unnecessary hardship of having the historic buildings on the property.

138 Ms. Davies asked about the occupancy history since the property's
139 conversion to apartment units. Mr. Wilson, the current owner, said it's had a good
140 mix of tenants. It has to allow appropriate under-55 in order not to practice age
141 discrimination. He was able to sustain relatively low rent because of low interest
142 rates, but with the rise in interest rates, the only options to maintain the property
143 in its current state would be to raise the rent significantly or condominiumize it.
144 The Academy can do the maintenance to it for a much lower cost and don't pay
145 the same interest rates for mortgages. He's spoken to some of the people
146 currently renting the property, and they won't be able to pay the market value for
147 the rentals.

148 Ms. Davies asked where the hardship is to justify taking the housing off
149 the market for the general public when there's a 1% vacancy rate. Attorney
150 Wilson said legally, the unnecessary hardship looks at what can be done with the
151 property under the zoning ordinance, so the 2011 finding of hardship still applies.
152 It's reasonable to expand the type of users. Faculty will be housed in this
153 community, whether at this property or not. It will not change over the day after
154 closing, we're looking to change the project through attrition. We can do this
155 without throwing the existing people out.

156 Ms. Davies asked if the Academy would entertain the condition of a
157 maximum number of units for faculty. PEA Faculties Director Mark Leighton said
158 we'd be open to that if it was necessary to make this project go forward. It's hard
159 for us to project exactly what the needs are for housing, but we have a near-term
160 need of 5-7 housing units over the next 3-5 years. Regarding taking housing off
161 the market, we're renting four houses right now. We don't have a huge amount of
162 land that we could continue to build on.

163 Ms. Petito asked whose hardship the Board is considering. In the
164 application it says if PEA doesn't get this variance, they can't use the building,
165 but they don't own the building right now. Should we be looking at the hardship to
166 the current owner? Mr. Thielbar said this is a contingent sale. Ms. Davies said
167 the hardship is related to the property, not to the owner. Attorney Wilson said the
168 hardship is the use of the 12,000 square foot building. Once you acknowledge
169 that, is it reasonable to extend the units to faculty in addition to 55+? The
170 hardship is the tenant restriction.

171 Mr. Thielbar said presumably if all the faculty they wanted to extend this
172 to were over 55, the applicant wouldn't have come before the Board. He's
173 concerned that if we pass this variance, all restrictions are gone. Would they be
174 willing to consider a restriction on the number of inhabitants in each unit? Ms.

175 Davies said she doesn't know if the ZBA can do that. Ms. Petito said there could
176 be complaints for discrimination against families. Mr. Thielbar said if we can do
177 55+, why not 35+ or 25+? Attorney Wilson said there's a legal allowance to have
178 55+ in the community without age discrimination, but to take a different number
179 would likely run afoul of the law. We're not asking to open this to all multi-family.
180 Part of the approach of having faculty housing is that they don't typically have
181 large families. These are not going to be heavy users of the property. The
182 academy has the resources to put a large family in more appropriate housing if
183 necessary. Right now, the owner has to have ¼ of the units available to anyone
184 to comply with the law. Ms. Olson-Murphy said in 15 years if the Academy sells,
185 then anyone can live there. Attorney Wilson said if that happened, it goes back to
186 55+. Ms. Davies said the 55+ restriction was created because they wanted to
187 give the opportunity for older people to live in a community that is comfortable for
188 them. These people might not want to be around children, they may want a
189 quieter environment. Faculty housing with a lot of young people around is a
190 different atmosphere. Her greater concern is taking more units off the market for
191 general housing. Attorney Wilson said the faculty are already in rental housing.
192 One alternative is to condominiumize this property, which would take more
193 housing off the rental market than the current proposal. Right now the Academy
194 doesn't need the whole thing. As long as the Academy has the right to come
195 back to the Board later if needed, we'd be open to the restrictions.

196 Mr. Leighton said students don't go to faculty housing. We're intending to
197 respect that these are 1 or 2 bedroom apartments. We'll try to find the right fit.
198 We intend this to be "postdorm," meaning that when a person has done their
199 dorm commitment for 10-15 years they could be moved here. The property we're
200 building on High Street is also intended to be post-dorm.

201 Mr. Wilson discussed the history of the 55+ restriction on the property,
202 which was a voluntary restriction from the Zoning Board after it was converted
203 from a nursing home.

204 Ms. Pennell said she's concerned about losing apartments for the over-55
205 people. If this is housing for the Academy, people will lose the ability to move into
206 Exeter. Mr. Wilson said he can't just raise the rent, since most of the tenants are
207 on fixed incomes. If he doesn't sell to the Academy, he will likely sell this as
208 condos and then the town would lose all the rental housing, whereas the
209 Academy proposal preserves some rental housing for the public.

210 Mr. Thielbar asked if the units all rent for the same price, and Mr. Wilson
211 said no, they vary in size from 700 square feet to 1300 square feet, with a \$500-
212 600 difference between them.

213 Attorney Tilsey said the Academy would never condominiumize this
214 project, because if they're going to have faculty in the building, they want to have
215 some control over who else is in the building. They would agree not to use half of
216 the units for faculty housing and not to come back for five years to change that.

217 Ms. Olson-Murphy asked if there'd been thought put to not raising the rent.

218 Attorney Tilsey said the Academy is not acquiring this property as a landlord

219 maximizing profits, it's looking to meet its faculty housing needs. He doesn't think
220 there's any intent to go in and jack up the rents.

221 Ms. Olson-Murphy asked if anyone from the public wished to speak.

222 Taran Allen of 92 High Street said the people who live there have made it
223 part of their neighborhood. She's concerned about what the Academy will do with
224 this property and what's going to happen in the future. The Board should
225 consider what will happen to the community.

226 Attorney Tilsey said the intent is to bring faculty in through normal
227 attrition. We won't come in with eviction notices or jack up the rents. This
228 proposal may be the best opportunity to keep it similar to what it is now.

229 Ms. Olson-Murphy closed the public session and brought deliberations
230 back to the Board.

231 Ms. Davies said the Academy is a good steward of property they own, but
232 her concern is losing rental apartments at a time that they are desperately
233 needed. Ms. Olson-Murphy said the alternative is to turn them into condos, in
234 which case we lose all of the rentals. Ms. Davies said that's one thing that might
235 happen. Another option is to raise rents to market level. Her concern is the
236 hardship part of it. In 5A of the variance criteria it says there's no fair and
237 substantial relationship between the general public purposes of the ordinance
238 provision and the specific application of that ordinance to the property. It's related
239 to the property, not the buyer. The hardship was addressed 10 years ago when
240 the previous variance was granted: the fact that the building isn't suitable for
241 single family housing. Ms. Petito said we should consider that it will not be able to
242 be maintained as a rental property. Ms. Davies said she doesn't see that there's
243 a new hardship here.

244 Mr. Eastman said that there was a member of the public who was locked
245 out of the building who wished to speak on this issue. Ms. Olson-Murphy
246 reopened the public session.

247 Richard Harmon of 95 High Street said he thought there was a restriction
248 on the deed to keep it as elderly housing. It's already gotten away from how it
249 was supposed to be used. The Academy tends to start off something one way
250 and go to something higher density. He hopes that if this is approved, it's limited
251 from further expansion. This is a single-family residential neighborhood.

252 Ms. Davies said that she appraised this property and doesn't know of any
253 endowment. Mr. Harmon said that's his understanding, that this was not what
254 was intended for this property. Attorney Tilsey said he's not aware of any deed
255 restrictions, but even if there were, that's a matter between whomever owns the
256 property and whomever has the right to enforce it, and shouldn't factor into the
257 Board's deliberations. There's no proposal to expand this building or make
258 physical changes to the property. Mr. Wilson said he ran the title and there are
259 no deed restrictions. There was a foundation that ran it when it was losing
260 money, but that didn't affect the deed.

261 Ms. Olson-Murphy closed the public session.

262 Ms. Olson-Murphy said the Academy is renting housing elsewhere, so
263 we're losing that many units either here or elsewhere. She'd rather keep all the
264 Academy people together versus them having random apartments in town.

265 Ms. Petito asked where the hardship is. Ms. Olson-Murphy said that 25%
266 of the building is not age-restricted anyway, so could the Academy put older
267 professors in and use the 25% for younger faculty? Ms. Davies said she'd never
268 heard that 25% have to be not age-restricted.

269 Mr. Thielbar said the proposal is too big and we don't have a clear sense
270 where it's going. If you put a restriction, it's difficult to see how that restriction will
271 play out. There's also no hardship. He would vote against this application.

272 Ms. Pennell said she also doesn't see what the hardship is.

273 Ms. Petito said it's not feasible to maintain it as it is now as rental
274 housing. It's going to be converted. Ms. Davies said it's not feasible to maintain
275 the current rents, which may affect the tenants, but we can't control that. It's
276 inconceivable in the current market that it can't remain rental housing, given the
277 current demand. Ms. Olson-Murphy said she would rather see seven units
278 available to rent rather than have it turned into condos. Mr. Thielbar asked if it
279 were condoized, if the 55+ restriction would go away, and Ms. Davies said no,
280 that runs with the land. That's what cured the hardship for the property.

281 Ms. Petito went through the variance criteria. 1) The variance will not be
282 contrary to the public interest and 2) The spirit of the ordinance will be observed;
283 yes, it doesn't seem like it alters the essential character of the neighborhood. Ms.
284 Davies said removing the 55+ restriction is a fine line. It would allow the
285 Academy in where it wasn't before. Ms. Petito said she doesn't think it impacts
286 the public health, safety or welfare. 3) Substantial justice is done; the benefit to
287 the applicant is another source of housing, and the harm to the general public is
288 a loss of rental units. Ms. Pennell said the applicant has other properties that
289 they could use. Ms. Olson-Murphy said if they had other properties available to
290 house faculty, they would use them. The problem is they need more. Mr. Thielbar
291 said they're building new stuff now. Ms. Olson-Murphy said they're renting out
292 other properties, so there's clearly a shortage. Ms. Davies said they own a large
293 portion of property in town, and likely have the means to pursue other options. 4)
294 The values of surrounding properties will not be diminished; yes, we haven't
295 heard any evidence on that. Ms. Davies said that in her professional opinion, it's
296 unlikely to have any impact on property values. 5) Literal enforcement of zoning
297 ordinance will result in an unnecessary hardship; because of special conditions
298 of the property that distinguish it from other properties available in the area, there
299 is no fair and substantial relationship between the general public purposes of the
300 ordinance provision and the specific application of that provision to this property,
301 and the proposed use is a reasonable one. We know that the property is unique,
302 it's a large historic building with a lot of units. The 55+ restriction was put in to
303 preserve rental units for that age group in the community, and we would be
304 losing some of those. Mr. Thielbar said the only hardship in the application is the
305 age restriction, and that's not a hardship for the property. Ms. Petito said the

306 property is being used successfully. Ms. Davies said the current owner is saying
307 there's economic hardship, but she has a problem with that because demand is
308 so high. The existing tenants may have an issue with market rent. Mr. Thielbar
309 said condos could be done without coming before the ZBA. Ms. Olson-Murphy
310 said then they'd lose all the rental units. Ms. Petito said regarding "the proposed
311 use is a reasonable one," the proposed use is to provide faculty housing, which
312 does seem reasonable. There's an alternative unnecessary hardship, that due to
313 special conditions of the property, it cannot be used according to the ordinance,
314 but that doesn't apply since it's currently being used. We're having a hard time
315 pinning down the unnecessary hardship and we're iffy on the first three.

316 Mr. Thielbar said the ask is vague. We don't know how any restrictions
317 will be applied or what the future will bring. Ms. Davies said she didn't think it was
318 more vague than any other application. If we restrict the faculty to 50% of units,
319 that's as specific as we ever get.

320 Ms. Pennell said she'd be happier if she had a real estate market
321 assessment on the building and what the current rental rates are. Ms. Davies
322 said the NH Housing Finance Authority publishes a state-wide housing
323 assessment, and their recent report said vacancy is very low, 1-3%, and rents
324 are very high. 5% is healthy and under that is tight. Ms. Pennell said she would
325 still like to see an analysis of this particular property. She would prefer to
326 continue this to next month and have the applicant come back with more specific
327 information. Attorney Tilsley said they'd be willing to come back. Ms. Pennell said
328 she'd like to hear about any deed restrictions and any restrictions from the
329 Eventide Trust. Ms. Olson-Murphy said she doesn't think those things matter. If
330 we say they can do it and it turns out a deed says they can't, then they can't. Ms.
331 Pennell said she'd also like an analysis from a local realtor. Ms. Olson-Murphy
332 said if he feels like he needs more money, he can raise the rent. These things
333 won't impact the decision. What he's charging for rent is not in our purview. Mr.
334 Thielbar said we can't deal with the renters' hardship, the question is whether
335 you can rent the property at a level to make a profit.

336 Ms. Davies said she's sympathetic to the application, but she doesn't see
337 a hardship.
338

339 Ms. Davies made a motion to deny the application for a variance from Article 4, Section 4.2
340 Schedule I: Permitted Uses at 81 High Street, case #22-14, specifically because of a lack of
341 hardship. Ms. Petito seconded. Ms. Davies, Ms. Pennell, Mr. Thielbar, and Ms. Petito voted aye,
342 and Ms. Olson-Murphy voted nay. The motion passed 4-1 and the application was denied.

343
344
345 E. The application of Riverwoods for a variance from Article 4, Section 4.3 to permit
346 the elimination of 60 skilled care beds and add 35 independent living units where
347 such units would exceed the allowed density of three (3) dwelling units per acre;
348 and a variance from Article 2, Section 2.2.26 to permit skilled nursing care off site
349 at related campus. The subject property is located at 7 RiverWoods Drive in the

350 R-1, Low Density Residential zoning district. Tax Map Parcel #97-23. ZBA Case
351 #22-15

352 This application was not reviewed at this meeting.

353

354 **II. Other Business**

355 A. Approval of Minutes, May 17, 2022

356 Ms. Davies made a motion to approve the minutes of May 17, 2022 as presented. Mr. Thielbar
357 seconded. Ms. Petito abstained, as she was not present at the May 17 meeting, and the motion
358 passed 4-0-1.

359 B. Ms. Davies said Mr. Baum has been in discussion with Dave Sharples about
360 expressing the Board's concern about certain zoning changes and ordinances to
361 the Planning Board. She asked if any Board members were interested in
362 attending such a meeting. Several Board members were interested, so it will be
363 planned as a public meeting, likely some time in October.

364

365 **III. Adjournment**

366 Ms. Davies moved to adjourn. Mr. Thielbar seconded. All were in favor and the meeting was
367 adjourned at 9:08 PM.

368

369 Respectfully Submitted,

370 Joanna Bartell

371 Recording Secretary

372

373



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

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

131 Portsmouth Avenue, LLC
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Portsmouth, NH 03801

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

Town of Exeter
10 Front Street
Exeter, NH 03833

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exeter Lumber Properties, LLC
120 Portsmouth Avenue
Exeter, NH 03833

Exeter Lumber Properties, LLC
120 Portsmouth Avenue
Exeter, NH 03833

Exeter Lumber Properties, LLC
120 Portsmouth Avenue
Exeter, NH 03833

Laurence Foss
30 Bunker Hill Avenue
Stratham, NH 03885

Laurence Foss
30 Bunker Hill Avenue
Stratham, NH 03885

Laurence Foss
30 Bunker Hill Avenue
Stratham, NH 03885

Exeter Sportsman's Club, Inc.
PO Box 1936
Exeter, NH 03833

Exeter Sportsman's Club, Inc.
PO Box 1936
Exeter, NH 03833

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PO Box 1936
Exeter, NH 03833

Justin L. Pasay, Esq.
Donahue, Tucker & Ciandella
111 Maplewood Avenue
Portsmouth, NH 03801

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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.

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

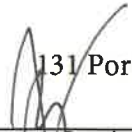
(If other than property owner, a letter of authorization will be required from property owner)

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.

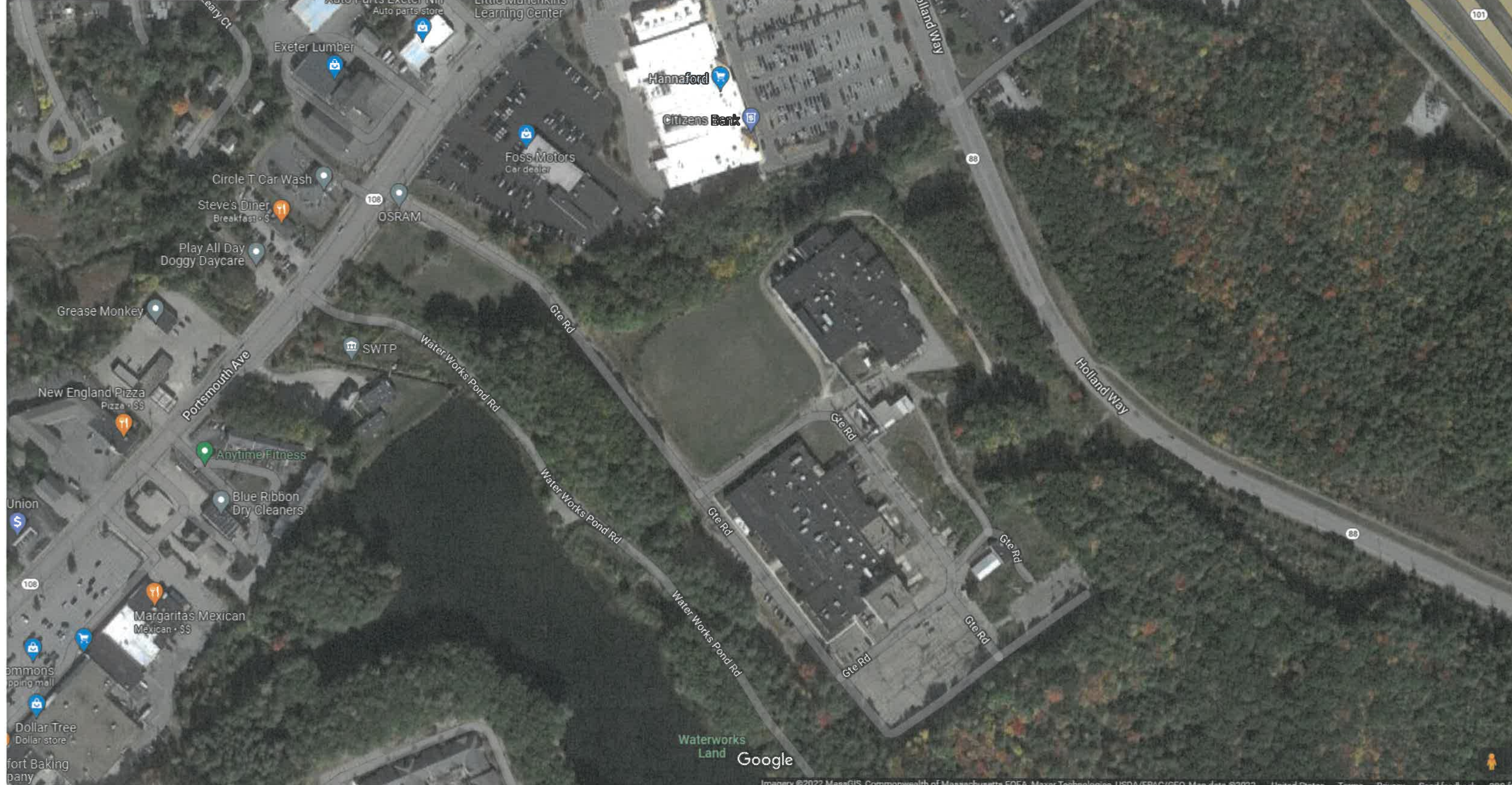
To summarize, the Applicant's proposal would advance the general and implied purposes of the Zoning Ordinance for all the reasons detailed in this narrative and denying the requested variance would only serve to frustrate the will of the Town. As such, the second prong of the hardship criteria is satisfied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

<p>FOR MODERATOR Two Year Term Vote for not more than ONE</p> <p>PAUL SCAFIDI 1844 ● <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>	<p>FOR TRUSTEES OF THE LIBRARY Three Year Term Vote for not more than THREE</p> <p>SUSAN DRINKER 1847 ● <input type="radio"/></p> <p>LINDA TOBER 1563 ● <input type="radio"/></p> <p>BARBARA YOUNG 1587 ● <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>	<p>FOR TRUSTEE OF THE ROBINSON FUND Seven Year Term Vote for not more than ONE</p> <p>BILL PERKINS 1849 ● <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>
<p>FOR SELECTMEN Three Year Term Vote for not more than TWO 1323</p> <p>NIKO PAKAKONSTANTIS ● <input type="radio"/></p> <p>DARIUS THOMPSON 829 <input type="radio"/></p> <p>JORDAN DICKENSON 487 <input type="radio"/></p> <p>JULIE GILMAN 1435 ● <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>	<p>FOR TRUSTEES OF THE LIBRARY One Year Term Vote for not more than ONE</p> <p>PAULA SEARS 1744 ● <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>	<p>FOR TRUSTEE OF SWASEY PARKWAY Three Year Term Vote for not more than ONE</p> <p>DWANE STAPLES 1308 ● <input type="radio"/></p> <p>S. M. WINTER 442 <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>
		<p>FOR TRUSTEE OF THE TRUST FUNDS Three Year Term Vote for not more than ONE</p> <p>DONNA LEROY 1752 ● <input type="radio"/></p> <p>(Write-in) <input type="radio"/></p>

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. Setting type, rate and annual fertilizer limits in the Aquifer Protection and Shoreland Districts, providing temporary waiver provisions for heavy use turf, restoration and the establishment of new landscaping. The intent of this amendment is to set standards for fertilizer use by allowing some flexibility to maintain heavy use turf areas while minimizing the potential for nitrogen and phosphorus runoff.

1812
YES ●
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.

1903
YES ●
NO
326

The intent of this amendment is to eliminate ambiguity in the language and align the ordinance with the way the Planning Board has consistently applied it in the past.

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



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

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

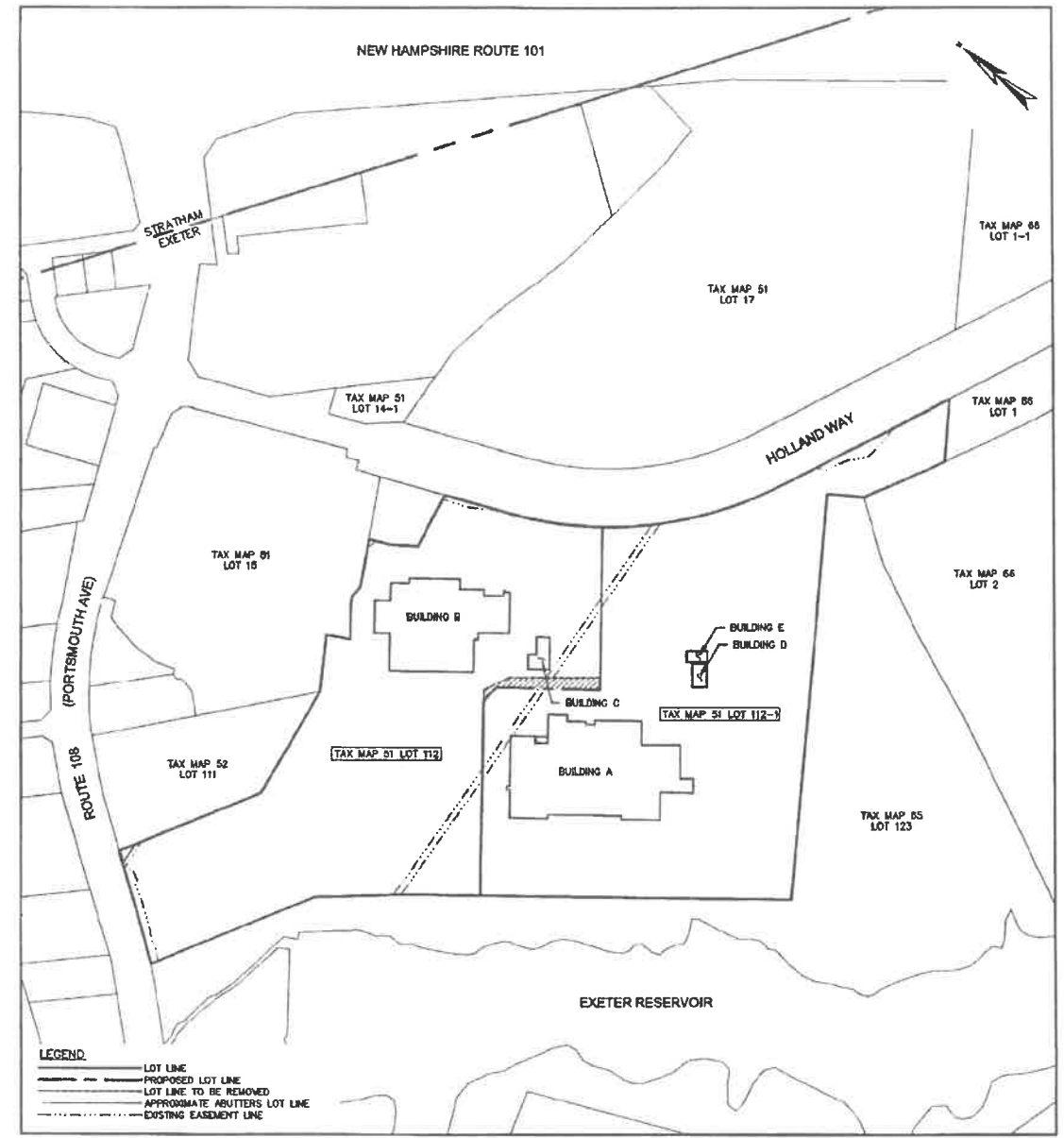
- 132 • **1. Monumentation shown on plan shall be installed in accordance with**
133 **Section 9.25 of the Site Plan Review and subdivision regulations prior**
134 **to signing final plan; and**

D-42853 07/01/2024 09:23:48 AM
 Register of Deeds, Rockingham County
 LOSEP 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 (SOKKIA 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-30808.
 - *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 51, LOT 15: KING CHEVROLET & OLDS CO. INC, PO BOX 1000-NS 6000, PORTLAND, ME 04104
 - TAX MAP 52, LOT 111: LAURENCE D. FOSS, 30 BRINKER HILL AVE, STRATHAM, NH 03865, R.C.R.D. BOOK 2861, PAGE 2700
 - TAX MAP 56, LOT 1: PALMER & SICARD, INC, 140 EPPING ROAD, EXETER, NH 03833, R.C.R.D. BOOK 5998, PAGE 2789
 - TAX MAP 56, LOT 1-1: PALMER & SICARD, INC, 140 EPPING ROAD, PIPPCOTON, MA 01541, R.C.R.D. BOOK 3282, PAGE 2841
 - TAX MAP 66, LOT 1-1: PALMER & SICARD, INC, 140 EPPING ROAD, EXETER, NH 03833, R.C.R.D. BOOK 5999, PAGE 2789
 - TAX MAP 65, LOT 123: TOWN OF EXETER, 10 FRONT STREET, EXETER, NH 03833

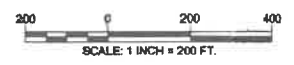
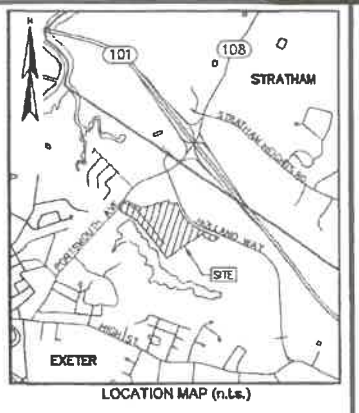
APPROVED BY THE EXETER PLANNING BOARD
 [Signature] 6/28/21 DATE



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 REGISTRY OF DEEDS REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.

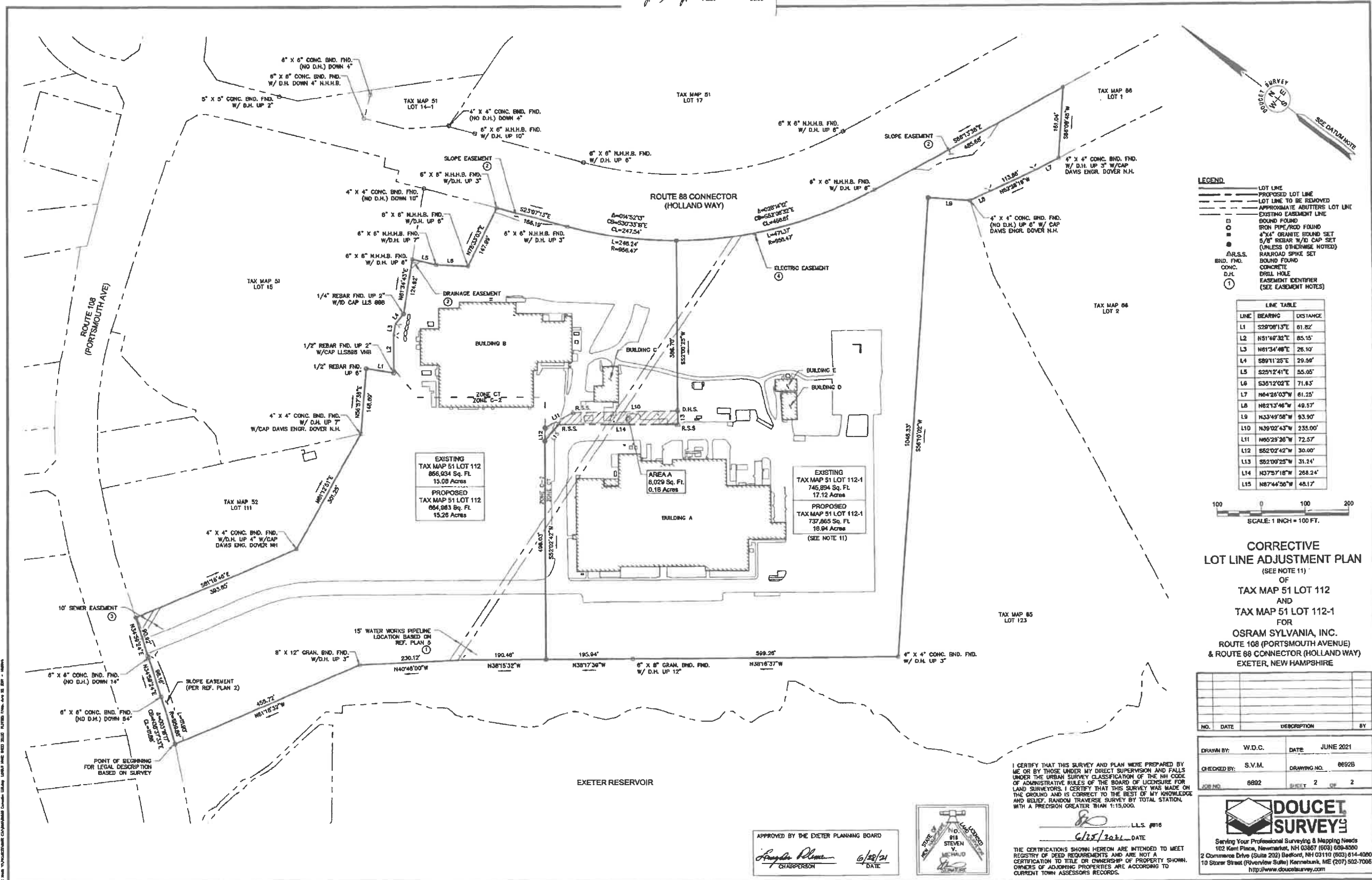


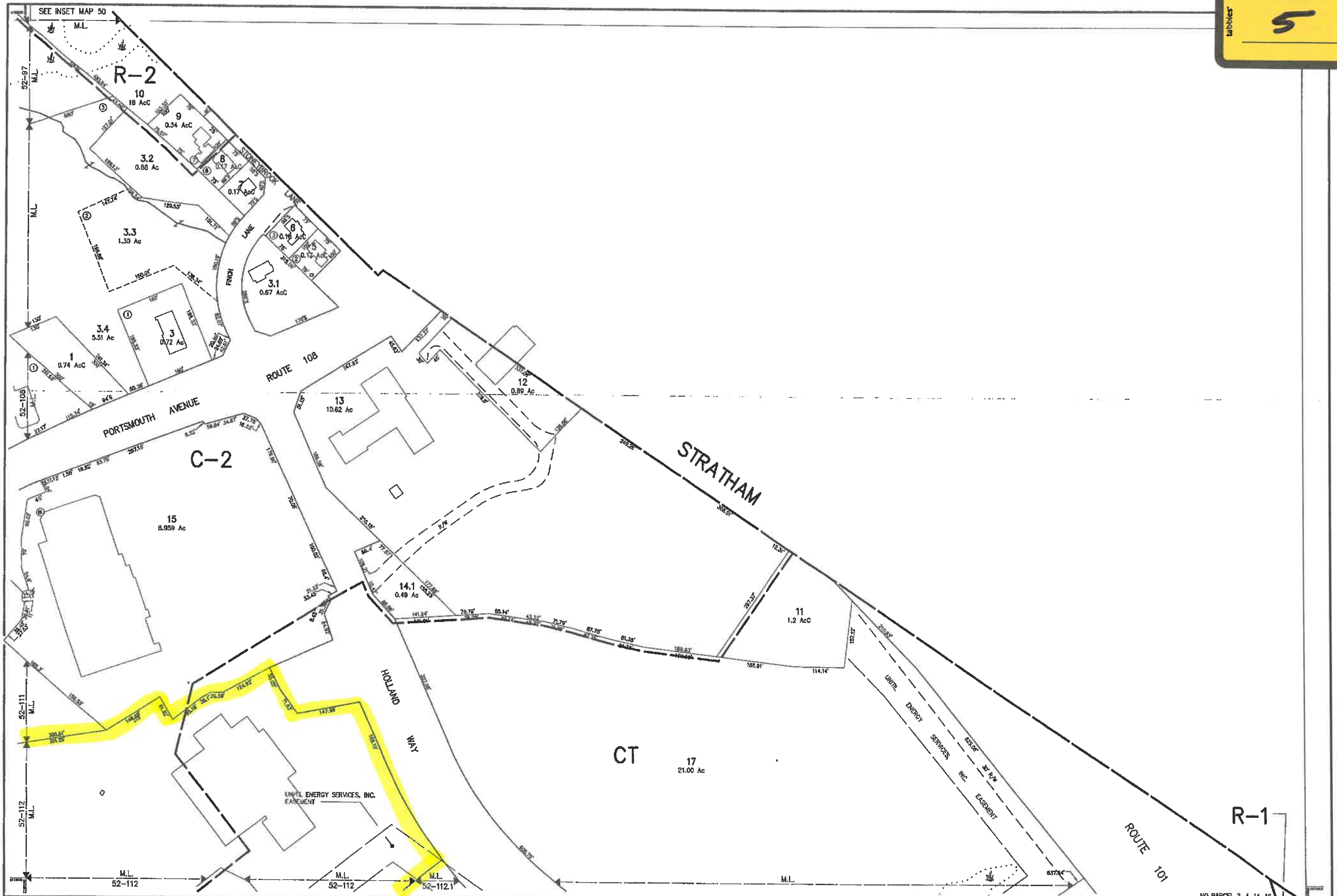
CORRECTIVE
 LOT LINE ADJUSTMENT PLAN
 (SEE NOTE 11)
 OF
 TAX MAP 51 LOT 112
 AND
 TAX MAP 51 LOT 112-1
 FOR
 OSRAM SYLVANIA, INC.
 ROUTE 108 (PORTSMOUTH AVENUE)
 & ROUTE 88 CONNECTOR (HOLLAND WAY)
 EXETER, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

DRAWN BY: W.D.C.	DATE: JUNE 2021
CHECKED BY: S.V.M.	DRAWING NO. 0692B
JOB NO. 0692	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 Suite) Keene, NH 03501 (603) 502-7005
 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.	⑩
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

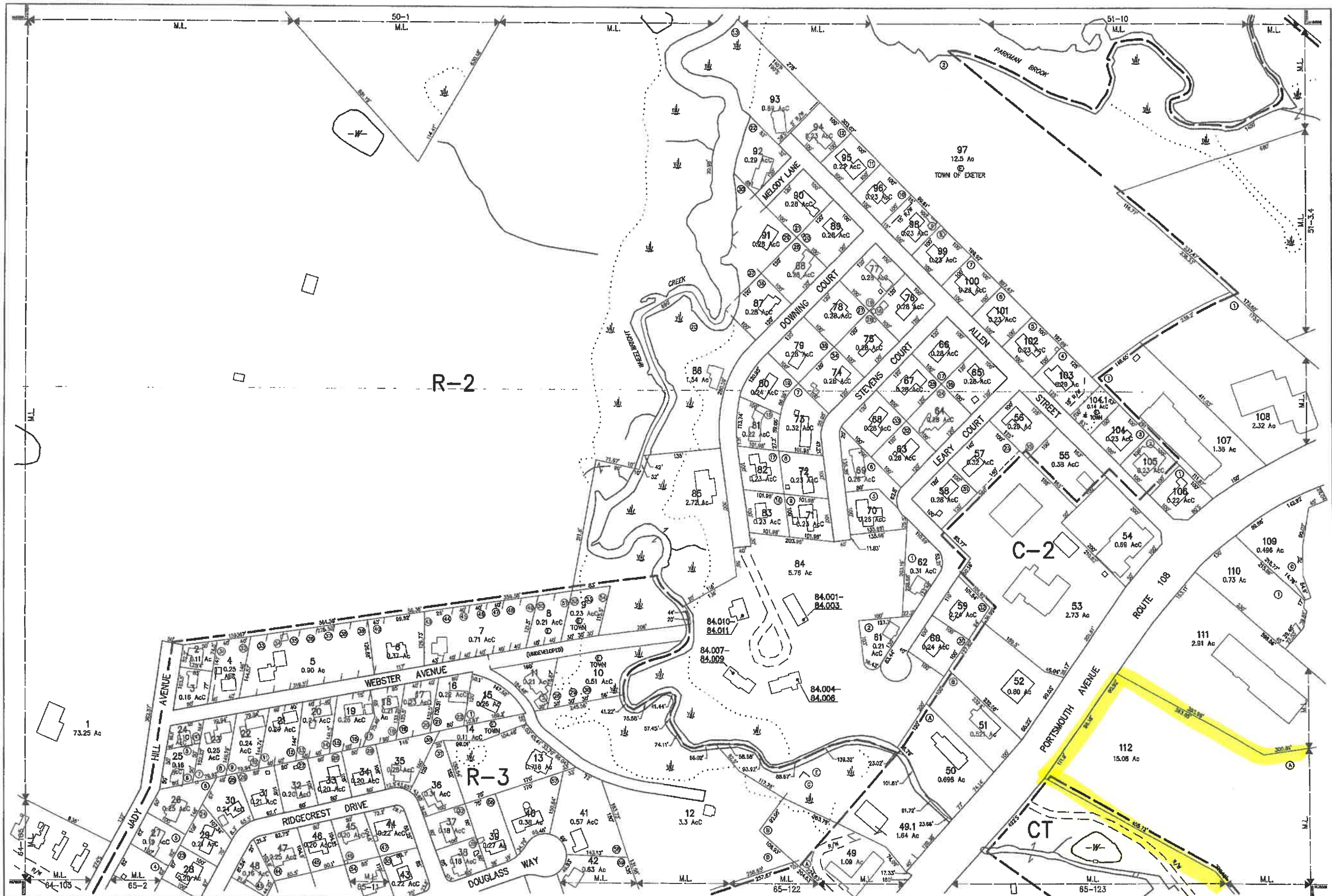
PROPERTY MAPS
EXETER
 NEW HAMPSHIRE

INDEX DIAGRAM

50	51	52
55	56	57

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

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

LEGEND

EXEMPT PROPERTY (E)
 SUBDIVISION LOT NO. (L)
 ZONE LIMIT (Z)
 RIGHT OF WAY (R/W)
 COMMON OWNERSHIP (C/O)
 BUILDING (B)
 WETLANDS (W)

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

49	50
53	51
64	65
66	

MAP NO.

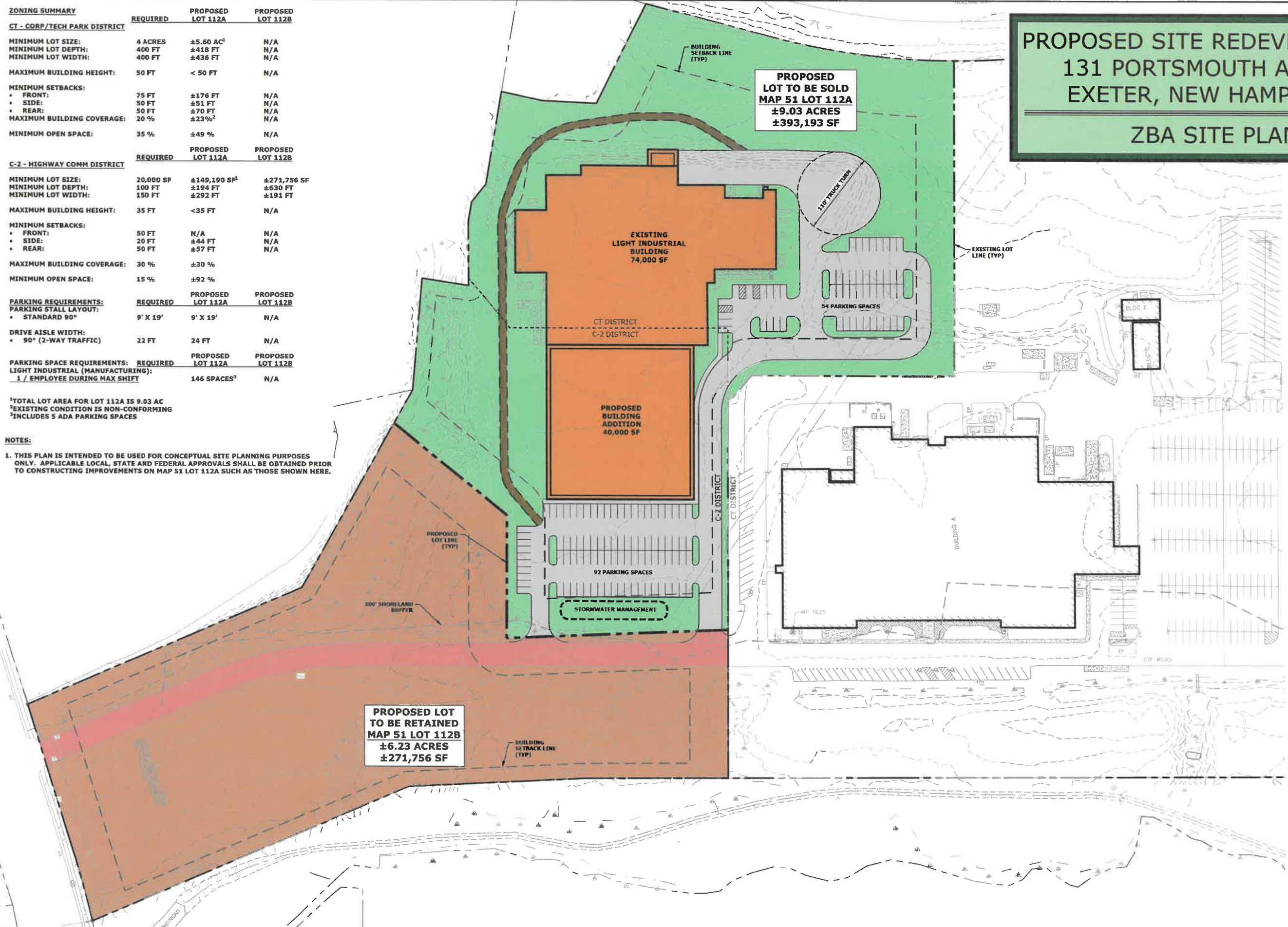
52

**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

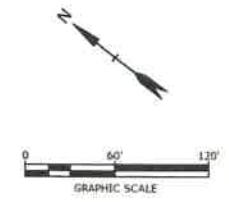
NOTES:
 1. THIS PLAN IS INTENDED TO BE USED FOR CONCEPTUAL SITE PLANNING PURPOSES ONLY. APPLICABLE LOCAL, STATE AND FEDERAL APPROVALS SHALL BE OBTAINED PRIOR TO CONSTRUCTING IMPROVEMENTS ON MAP 51 LOT 112A SUCH AS THOSE SHOWN HERE.



**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

Memo

To: Zoning Board of Adjustment
From: Darren Winham, Director
Date: 6.21.2022
Re: 131 Portsmouth Ave LLC variance request

Please consider this memo in support of 131 Portsmouth Ave LLC's variance request for the following reasons:

- Light industrial is one of several uses that is consistent with Department's vision for the Holland Way corridor and that part of Town
- Adjacent Osram operating building and currently vacant former Osram building are light industrial
- Opportunity to expand the currently vacant building with consistent light industrial use could bring up to 200 jobs to Town.

Thank you.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
Jefferson Mill Building
670 North Commercial Street
Suite 108
PO Box 1120
Manchester, NH 03105-1120

T (603) 623 - 8700
F (603) 623 - 7775

Roy W. Tilsley, Jr.
Shareholder
603-665-8823 direct
rtilsley@bernsteinshur.com

VIA E-MAIL AND HAND-DELIVERY

September 2, 2022

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

Re: Motion for Rehearing of August 16, 2022 Zoning Board of Adjustment Decision
81 High Street – Tax Map/Lot 71-97 – ZBA Case #22-14

Dear Members of the Board:

My firm represents Phillips Exeter Academy (“PEA”) in connection with its variance application (the “Application”) regarding the property at 81 High Street, in Exeter, New Hampshire (the “Property”). As you know, on August 16, 2022, the Exeter Zoning Board of Adjustment (“ZBA”) considered PEA’s application and denied it on the basis that PEA failed to demonstrate an “unnecessary hardship” under Section 2.2.82(B)(5) of the Exeter Zoning Ordinance (the “Ordinance”). For the reasons set forth herein, PEA submits that the ZBA erred in reaching its decision and requests that the ZBA grant the within Motion for Rehearing and reconsider its decision denying the Application. The ZBA may grant a “rehearing if in its opinion good reason therefor is stated in the motion.” RSA 677:2.

Prior to 2011, the Property had been operated as a nursing home as a pre-existing nonconforming use. In July 2011, the current owner of the Property, Hampshire Development Corporation, obtained a variance from this Board allowing the nursing home to be converted to multifamily housing on the condition that the proposed development would be age restricted for occupants 55 and older. On or around July 28, 2022, PEA applied for a variance from Article 4, Section 4.2 Schedule I of the Ordinance to expand the allowed residents at the Property to include PEA faculty.

At the August 16 meeting, the Board denied the Application on the grounds that there was no “unnecessary hardship” on the basis that the 2011 variance allowing multifamily housing for people 55 and over at the Property eliminated the unnecessary hardship on the Property. However, the Board erred by basing its conclusion on the 2011 variance, rather than by

VIA E-MAIL AND HAND-DELIVERY

Exeter Zoning Board of Adjustment

September 2, 2022

Page 2

analyzing the application of the Ordinance to the Property itself as required by the plain language of RSA 674:33 and the Ordinance.

RSA 674:33, I(a)(2) includes “unnecessary hardship” as one of the five criteria for granting a variance: “Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.” *See also* Exeter Zoning Ordinance § 2.2.82(B)(5). The statute provides that “‘unnecessary hardship’ means that, owing to special conditions of the property that distinguish it from other properties in the area . . . [n]o 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.” RSA 674:33, I(b)(1). Further, the statute states that if those criteria are not met, “an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.” RSA 674:33, I(b)(2).

As PEA set forth in its Application, the Board already found that an unnecessary hardship exists on the Property when it granted the 2011 variance. The same conditions that existed in 2011 continue to exist and the first two prongs—special conditions and no fair and substantial relationship between the Ordinance and the Property—are still met. As such, the Board should have focused solely on whether PEA’s proposed use of the Property was reasonable. In its discussion of this issue at the August 16 meeting, the Board appeared to conclude that PEA’s proposed use was reasonable. Thus, an unnecessary hardship exists and the Board should have granted the variance.

Further, the Board determined whether an unnecessary hardship existed as to the Property by applying the 2011 variance, rather than the Ordinance. However, RSA 674:33, I(b)(1)(A) requires the Board to assess the relationship between the Ordinance and the Property, not prior variances or exceptions. Thus, the Board’s determination was clear error.

Under the test set forth in RSA 674:33, I(b)(1) and Ordinance Section 2.2.82(B)(5)(a), which must be applied in the first instance, an unnecessary hardship clearly exists here. First, a special condition exists at the Property: its prior use as a nonconforming nursing home that cannot reasonably be used in strict conformance with the Ordinance. Second, as to the Property, “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” RSA 674:33, I(b)(1)(A). The Property is located in the R-2 Zone, which is designated for single-family residences. As mentioned above, the Property was operated for many years as a nursing home as a pre-existing non-conforming use. Since 2011, the Property has been used as a multifamily rental property, with 14 apartment units. Requiring that the Property be used in conformance with the allowed uses in the R-2 Zone—i.e., as a single-family home—would require departing from the Property’s historical uses and would likely require demolishing or significantly renovating the

VIA E-MAIL AND HAND-DELIVERY

Exeter Zoning Board of Adjustment

September 2, 2022

Page 3

historic buildings on the Property. Considering the unique conditions of the Property, such steps are unreasonable and economically unfeasible.

Additionally, the Board appears to have interpreted the “fair and substantial relationship” prong to include the 2011 variance as part of “the specific application of [the Ordinance] provision to the property.” Several Board Members appeared to construe the 55 and over restriction under the 2011 variance as alleviating the hardship. However, that reading is not supported by the plain language of RSA 674:33 or the Ordinance. RSA 674:33, I(b)(1)(A) requires the Board to apply the Ordinance to the Property, not a prior variance. Under that reading, there is “[n]o fair and substantial relationship” between the purpose of the Ordinance provision—to require single-family housing in the R-2 Zone—and the application of that provision to the Property, which would have unreasonable results.

Thus, the Board should have reached the same conclusion as it did in 2011—that an unnecessary hardship existed on the Property—and focused solely on the third part of the analysis—whether PEA’s proposed use of the Property was reasonable. At the August 16 meeting, the Board appeared to agree that PEA’s proposed use was reasonable. Importantly, the New Hampshire Supreme Court has held that “[t]he reasonable use factor ‘is the critical inquiry for determining whether unnecessary hardship has been established.’” *Garrison v. Town of Henniker*, 154 N.H. 26, 32 (2006) (quoting *Harrington v. Town of Warner*, 152 N.H. 74, 80 (2005)). Because the Board agreed that the use was reasonable, the third prong of the test is met and the variance should have been granted.

Based on the ZBA’s errors, as noted above, PEA respectfully requests that the ZBA grant the Motion for Rehearing, reconsider its decision, and rehear this matter at its September 20, 2022 meeting.

Sincerely yours,

/s/ Roy W. Tilsley, Jr.

Roy W. Tilsley, Jr.

CC: Mark Leighton, Phillips Exeter Academy