



TOWN OF EXETER, NEW HAMPSHIRE

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LEGAL NOTICE EXETER ZONING BOARD OF ADJUSTMENT AGENDA

The Exeter Zoning Board of Adjustment will meet on Tuesday, February 21, 2023 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: PUBLIC HEARINGS

The application of 107 Ponemah Road LLC for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of the existing single-family dwelling and attached barn located at 50 Linden Street into three (3) residential condominium units. The subject property is situated in a R-2, Single Family Residential zoning district. Tax Map Parcel #82-11. ZBA Case #22-17.

The application of Twenty-Nine Garfield Street, LLC for a variance from Article 4, Section 4.4 for relief from side and rear yard setback and building coverage requirements; and a variance from Article 6, Section 6.19.3.A.5 to exceed the maximum height requirement for the proposed construction of a three-story, 36-unit apartment building, parking and a first floor “Ambassador Station” providing services for patrons of the abutting train station. The subject property is located at 29 Garfield Street, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #73-225. ZBA Case #22-21.

The application of Janine L Richards for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of the existing single-family home and accessory structures (detached barn and garage) located at 14 Hobart Street into four (4) residential condominium units. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #74-88. ZBA Case #23-4.

The application of Samuel Lightner for a variance from Article 4, Section 4.3 Schedule II: Density & Dimensional Regulations-Residential to permit the proposed construction of a 200 S.F. addition to the existing residence at 25 Clover Street with less than the required minimum front yard setback. The subject property is located in the R-3, Single Family Residential zoning district. Tax Map Parcel #64-66. ZBA Case #23-5.

OTHER BUSINESS:

- Approval of Minutes: January 17, 2023

EXETER ZONING BOARD OF ADJUSTMENT

Kevin M. Baum, Chairman

Town of Exeter
Zoning Board of Adjustment
January 23, 2023, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Laura Davies, and Martha Pennell - Alternate. Code Enforcement Officer Doug Eastman was also present.

Members Absent: Dave Mirsky - Alternate, Joanne Petito - Alternate,

Call to Order: Chair Kevin Baum called the meeting to order at 7 PM.

I. **New Business**

A. Continued discussion on the application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of “Elderly Congregate Health Care” to permit skilled nursing care off site on related campus. The subject property is located at 7 RiverWoods Drive in the R1, Low Density Residential zoning district. Tax Map Parcel #97-23. ZBA Case #22-15.
[Considered with 22-16 below]

B. Continued discussion on the application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of “Elderly Congregate Health Care Facilities” to permit skilled nursing care off site on related campus. The subject property is located at 5 Timber Lane, in the R-1, Low Density Residential zoning district. Tax Map Parcel #98-37. ZBA Case 22-16.

Robert Prior and Martha Pennell recused themselves from cases #22-15 and 22-16. Mr. Baum said he’s reopening the public hearing for these cases. The Board will continue to consider the cases together, and he asked for public comments on both cases at the same time.

Attorney Sharon Somers of DTC was present to represent Riverwoods. Riverwoods CEO Justine Vogel and Interim Executive Director Kim Gaskell were also present.

Attorney Somers presented correspondence from Attorney Mark McCue of Hinckley Allen, who serves as Healthcare counsel for Riverwoods. Attorney Somers said that during the last meeting, the Board asked whether Insurance Commissioner review was required; Attorney McCue definitively indicated that it was not, and said that this proposal is in compliance with the resident contract. Regarding the issue that the variance runs with the land, Attorney McCue said it’s not practical that it would be divided in the future, but we also asked the Trustees to pass a resolution that if Riverwoods is to be conveyed to a third party

45 at any time in the future, then the corporation must convey together all three
46 parcels of land on which the retirement community is operated, and no parcel
47 may be sold individually. This resolution is dated Jan 6, will be effective on the
48 date the variance is granted, and is not appealable or modifiable while the
49 variance is in effect. Attorney Somers added that Administration was contacted
50 by numerous residents at the Woods, who were concerned that the ZBA may
51 have a one-sided view of what residents think of this proposal. Many of them
52 vigorously support this proposal, and there is a petition in favor signed by 140
53 residents of the Woods. Finally, she noted that the application is proceeding
54 tonight with less than a full Board, and she sent a letter to the Select Board that
55 the choice to proceed tonight with less than a full Board is not a substantive
56 choice. Mr. Baum said there is a quorum, but he appreciated her letter because
57 he thinks they need more members on the Board.

58 Ms. Davies asked about the phrase “a going concern reservation” in the
59 letter from Attorney McCue. Attorney Somers said she doesn’t think it has a
60 bearing on this discussion. Ms. Vogel said “a going concern reservation” means
61 you would not be able to continue as a going concern. We could not put our
62 invested assets at risk, we’d have to have enough liquid assets to continue our
63 business.

64 Mr. Baum opened the discussion to the public.

65 Ellen Kingsbury of the Woods said the current Healthcare Facility at the
66 Woods is out of code, and it’s wasteful and unsustainable to have three separate
67 facilities. There’s a standard of care that must be delivered. Nurses must be
68 experts and adapt to new technology. Consolidation would have a positive effect
69 on nursing staff.

70 Nancy Caudette of the Woods read a statement from another Woods
71 resident, Joan Caldwell, who couldn’t be present. Ms. Caldwell’s husband is in
72 the long term care facility at Monadnock, and while visiting him he had dementia
73 patients aimlessly wandering into his room. The facilities are outdated and
74 residents spend time staring out the window instead of being involved in
75 activities. Riverwoods should build one new Healthcare Facility with dedicated
76 memory care and a central space for recreation.

77 Nancy Caudette read another letter from Paul Henchy of 16 Sandstone
78 Way at the Boulders. He and his wife live in a cottage at the Boulders campus.
79 He supports a centralized Healthcare Facility. He has spoken with healthcare
80 staff who talked about the burden of three facilities and how it makes staffing and
81 retention more difficult. Long term quality care can only be ensured if Riverwoods
82 creates a centralized facility.

83 Nancy Caudette said we sent 140 letters, including three from retired
84 MDs and three from residents who have spouses in Monadnock who see the
85 advantage of a combined Healthcare Center. We feel we are one community with
86 three campuses.

87 Deanna Graham of 5 Douglas Way, who is the Director of Community
88 Engagement at Riverwoods, said we pride ourselves on being a vibrant

89 community for both residents and staff. There has been a staffing crisis since
90 Covid that's not going away. This is how we will give the best level of care to our
91 residents.

92 Bob Cully of the Boulders said the Riverwoods campuses are separate
93 communities, not one big community. Boulders residents receive healthcare on
94 the Boulders campus. When he came to Riverwoods, he was told he would have
95 a home campus with on-site healthcare. Centralized healthcare would isolate
96 patients from the Boulders community. There's nothing close to the type of
97 transportation that would be needed to ferry people around. Regarding criteria
98 #3, substantial justice is not done. Residents moved to Riverwoods with the
99 understanding that lifetime healthcare would be provided there. The current
100 congregate healthcare design should not be eliminated based on their general
101 statements. There will be four fewer beds than the combined health centers of
102 each campus, 145 instead of 149, and there will be a 25% increase in the
103 residential population from the conversion of Health Centers to residential
104 facilities. The Riverwoods Exeter resident handbook was updated in Jan 2023,
105 and states the composition of individual campuses, such as healthcare units, and
106 also states that campuses function as individual neighborhoods within the
107 Riverwoods Exeter community. He asked that the variance request be denied.

108 Tracy Jeffers of 12 Ridgewood Terrace, an employee of Riverwoods, said
109 Riverwoods has three campuses in one community. Change is hard. The
110 majority of residents and staff appreciate that this is needed in order to have a
111 state of the art facility and quality care for our residents.

112 Pete Cameron of 15 Sandstone Way at the Boulders said he thought that
113 there were going to be two parts to this hearing. Mr. Baum said no, his intent was
114 to hear both applications together, but they will be deliberated and voted on
115 separately. It was the applicant's choice to present the applications this way and
116 it's the most efficient way to do it. The concerns are very similar for both
117 variances. Mr. Cameron said he's not against optimizing healthcare, but the
118 Board must focus on the five variance criteria and whether Riverwoods has met
119 the burden of proof.

120 Roy Chaney of the Boulders said he believes that people have been
121 getting first-class healthcare. Relocating all healthcare to the Woods, across NH
122 111, is against the public interest because it will create a public safety hazard at
123 that intersection. It will alter the character of the small residential neighborhood
124 adjacent to the campus. More residential housing will also be created, resulting in
125 more traffic. There could be 200 more crossings per day just by residents who
126 have spouses in health care, which was not accounted for in the traffic study. We
127 are permitted as a congregate elderly health care facility; moving skilled nursing
128 off-site from the Boulders campus substantially changes the living environment
129 for current residents. Physically separating loved ones and friends and is a
130 violation of the understanding residents had when they moved in. Without
131 healthcare on-site, the Boulders will become an active adult community, which is
132 not what they signed a contract for. The physical connection and emotional

133 benefits of on-site care can't be duplicated with off-site care, so substantial
134 justice is not done and the request for a variance should not be approved.

135 Ivor Freeman of the Boulders said he doesn't feel that he has enough
136 information to support or oppose this. There will be more need for staff to
137 accommodate the extra independent living residents added, and no presentation
138 has been made on decreased nursing staff or increased residential staff. When
139 he signed up to be a resident, the understanding was that healthcare would be in
140 the same campus as he lived in.

141 Mr. Baum asked the applicant to make closing comments.

142 Attorney Somers said the Board must weigh the evidence on the variance
143 criteria and not the emotional items presented tonight. Regarding comments that
144 we have not met the burden of proof, the resident objections have not described
145 the variance criteria accurately under NH law relative to public purpose, spirit,
146 and intent, diminution of property values, or hardship. Regarding "public interest,"
147 the variance must not be contrary to the public interest by being unduly or to a
148 marked degree violating the relevant ordinances' zoning objectives, which in this
149 case is to ensure that the healthcare service provided is at the locality rather than
150 across town. This ordinance was created many years ago, and they were
151 probably concerned about creating an assisted living facility with healthcare way
152 off-site. The basic zoning objective is to make sure the healthcare provided is not
153 far away. The other half of the variance criteria for public interest is whether it will
154 alter the essential character of the locality or threaten public health, safety, or
155 welfare. That doesn't reflect the comments that have been made by abutters.
156 Riverwoods will still be there, and will still have healthcare and assisted living.
157 The residential perimeter of the facility will still be there.

158 Regarding traffic, she looked at the traffic study, and it was prepared
159 solely for the purpose of studying the impact of the 35 potential independent
160 living units, not the impact of having a centralized health center. It was included
161 when they thought they needed a variance for those additional units, but they
162 don't, and perhaps it should not have been included in the materials. The traffic
163 issue will be examined by the Planning Board if this variance is granted, and a
164 further study done at that time will examine traffic and the impact to abutters.

165 There was some concern in resident letters about there not continuing to
166 be a "mini health care center" on each campus, but that service will continue.
167 Another resident concern is that the nursing shortage is being exaggerated or is
168 temporary, but statistics presented at a recent Hospital Association meeting, a
169 statement from the Chairman of the Reserve, and a recent report by McKenzie
170 and Company projecting nursing shortages in 2025 suggest otherwise. Lots of
171 opinions have been presented by residents, but when it comes to contracts,
172 according to NH case law, pure opinion cannot supersede evidence. Also
173 according to case law, any comments made as part of marketing are not to be
174 considered part of residential contract agreements.

175 Attorney Somers said regarding resident support, we haven't done a poll,
176 but we have 600 residents; we had no comments from the Ridge, 140 from the

177 Woods in support, another 20 from the Boulders in support, and 10 from the
178 Boulders against, which indicates how the residents feel. The concern that
179 residents would not be able to visit those in the healthcare center and the
180 uncertainty of transportation will not apply, because the language of the criteria of
181 whether the benefit to the applicant will be outweighed by the detriment or loss to
182 any individual. It's not a question of degrees of discomfort expressed; that is not
183 a detriment or loss. The benefit to the applicant is moving forward with what it
184 has determined will provide the best care possible, with consistent nursing staff.
185 It's not a loss, since there would be the same or even a better level of service. A
186 sense of disappointment is not a loss.

187 Attorney Somers said regarding the idea of a poll, this is not a condo
188 association where people vote on how they want to operate. Riverwoods is run
189 by a nonprofit manager with a duty to current and future residents. The
190 transportation element we recognize as an issue. We will commit to having a
191 transportation plan for the Planning Board submittal.

192 Attorney Somers said that Riverwoods has as a matter of right the ability
193 to merge the Boulders lot and the Ridge lot, meaning that one facility could be
194 created for both of those campuses without ZBA approval.

195 Attorney Somers said there's a sense of disappointment expressed by
196 some people. If they confer with us, Riverwoods would try to address that
197 disappointment in a way that's tailored to the individuals. However, that's not the
198 Board's jurisdiction; their only consideration should be whether they meet the
199 criteria, and she thinks they do.

200 Ms. Davies said she thought this was about the consolidation of skilled
201 nursing beds, but does this also include all assisted living? Attorney Somers said
202 yes, "Health Center" includes both skilled nursing and assisted living. Part of the
203 confusion may be in the terminology of the ordinance, which references a
204 "nursing home facility" needing to be on the same lot of the service. Ms. Davies
205 said it reads "on-site nursing home facilities as licensed by the State of NH", but
206 that doesn't say all assisted living and skilled nursing would be consolidated into
207 one place. Attorney Somers said the Health Centers currently contain all assisted
208 living and skilled nursing. We talked about it extensively at the last meeting, and
209 also indicated that it would include memory care. The purpose is to centralize
210 everything for the purpose of efficiency.

211 Ms. Davies asked how many units are currently in assisted living. Ms.
212 Vogel said 150, including assisted living and nursing. We haven't determined
213 how many units would be in the centralized building, but an actuarial study
214 suggested we need 27% of population number, which is 111 units for the current
215 population. Mr. Baum said that doesn't account for any increased units, and Ms.
216 Vogel said that's correct. Currently, Riverwoods sells the extra 30 units to people
217 who are not Riverwoods residents, but in the future we would allocate those beds
218 to Riverwoods residents. It will be less than 150 units, but it will be an appropriate
219 number for our population. Ms. Davies said there's a big difference between
220 assisted living and skilled nursing, will they have a certain number of each type of

221 unit? Ms. Vogel said we will have the appropriate number for each, although we
222 can provide a higher level of care for a resident without them moving units. We
223 started out projecting 144: 36 memory support beds, 20 skilled nursing beds, 60
224 assisted living 2, and 28 assisted living apartments. Some of the numbers may
225 be a little lower, but not lower than the actuarial minimum that we need, including
226 projections for a future increase in residents.

227 Mr. Baum asked if the new facility will be at the Ridge, and Ms. Vogel said
228 yes, it will be on the Ridge parcel, likely on the site of a current Admin building,
229 not attached to the Ridge building. Based on feedback, the residents of the Ridge
230 preferred it in the separate location.

231 Ms. Vogel said the requirement is that we have a nursing home on site.
232 We've come to ask for a variance for the Woods and Boulders because there will
233 no longer be a nursing home there. Ms. Davies said there will no longer be one
234 as part of the Ridge building either. Ms. Vogel said we hear resident
235 disappointment, but we have to consider what's right for the whole in the long
236 term, which is centralizing healthcare in a new building that provides the kind of
237 amenities that allow residents to live their best lives. We will work out the details
238 of transportation etc.

239 Recused Board member Robert Prior asked to speak as a member of the
240 public, but Mr. Baum said public comment was closed.

241 Ms. Gaskell, the Interim Executive Director of Riverwoods, said involving
242 residents doesn't mean that they are the ultimate decisionmakers moving
243 forward. We've done our due diligence to evaluate whether or not this is worth
244 moving forward on. We heard resident feedback in the Ridge because they didn't
245 want to move twice, once during construction and once it was complete. With this
246 proposal, we can move all healthcare residents when needed. We had design
247 charettes where we brought in our architects to talk to residents. We have a
248 dedicated email for feedback and we have 44 pages of suggestions submitted by
249 residents. There will be a resident task force to help us solve challenges with this
250 proposal. There are five resident Trustees that are full Board members. She
251 added that Riverwoods is one community that needs to move forward with one
252 health care facility.

253 Mr. Baum closed the public session and brought the discussion back to
254 the Board.

255 Ms. Davies went through the variance criteria. 1) The variance will not be
256 contrary to the public interest and 2) The spirit of the ordinance will be observed;
257 the ordinance is clear that there has to be a nursing facility associated with these
258 communities. Although they like to call it one community, it's three parcels on two
259 sides of a State route, and they can't be tied together as a single entity. Mr.
260 Baum said they are tied together as a single entity. He agrees that this is
261 contrary to the ordinance, which is why they are here for the variance, but this
262 sounds like there is significant overlap between the campuses in ownership and
263 activities. Does this meet the spirit of the ordinance by providing nursing facilities
264 as part of the overall facility of Riverwoods? It's not what the members bought

265 into, and they have a valid argument, but ultimately we can't pass judgment on
266 what their contract says or what was marketed to them. Mr. Baum said he does
267 think this meets the criteria. Ms. Davies said it's not about emotional issues,
268 these are real concerns related to real estate and zoning. This ordinance was
269 created for Riverwoods, and they are the only ones in town under it. She
270 understands the need to find a solution to the shortage of healthcare workers, but
271 it's not something we can resolve with a variance. This doesn't fit "the spirit of the
272 ordinance is observed," because the heart of this special exception was that the
273 levels of care be available to residents in the same facility. Mr. Baum said it's the
274 same "site," not the same "facility." It does not have to be attached to meet the
275 definition, which is why no variance is required at the Ridge. He's comfortable
276 considering the three campuses as a site, given the overlapping administration.
277 He would be more comfortable if there were more details to the plan. Ms. Olson-
278 Murphy agreed, saying they're saying "we'll figure it out," "we'll have security do it
279 on weekends", there are so many little details that should be fleshed out to prove
280 there will be the same level of safety and care. Ms. Davies said the labor
281 shortage also affects food service, housekeeping, and transportation. For the
282 Board to make a permanent change in the only user that avails itself of these
283 provisions, it affects a lot of people. This is a management and workforce
284 problem, and the variance is not a tool to address that. Mr. Baum said it makes
285 sense to give the applicant flexibility to manage that. It comes down to the intent
286 of this provision; was it only that these smaller distinct facilities based on the lots,
287 or does it contemplate a larger unit? If they were adjoining, it would be an easier
288 decision. He'd like to have a traffic study, but this is a constant battle in ZBA and
289 Planning Board; the Planning Board is in a better position to consider this aspect
290 and can put in conditions of road and intersection improvements.

291 Ms. Davies continued with the variance criteria: 3) Substantial justice is
292 done; she does think the applicant is genuinely trying to solve a problem.
293 Independent units are more profitable than assisted living or skilled nursing, and
294 consolidated units would be a benefit to management, but she thinks their
295 overriding concern is how to serve their community. However, she doesn't know
296 if this proposal as a zoning variance will solve problems of management and
297 workforce. This is a big change to what many residents wanted when they
298 bought in. Ms. Olson-Murphy said this variance will fix one issue, but there are a
299 lot of other issues that will come behind it, and she would feel better if there were
300 plans to address those. Mr. Baum said he can live with it given the suggested
301 conditions by the applicant that the transportation plan be part of the Planning
302 Board review. They need this first approval before they make a major investment
303 in design. Ms. Olson-Murphy said she had first-hand experience of a shortage of
304 care units there. Mr. Baum said that's a reason to give them flexibility on how and
305 where they provide this. Regarding substantial justice, the benefit to the applicant
306 is not outweighed by the harm to the general public. The applicant showed that
307 there is a benefit to them. We've had vocal opponents speak to us, but there's
308 also a counter. Ms. Olson-Murphy said she can see that they're meeting this

309 criteria. Ms. Davies said there's room to agree, but it's not clearcut. 4) The value
310 of surrounding properties will not be diminished; Ms. Davies said she's not
311 worried about this criteria. Mr. Baum said there had been no testimony on this
312 point. 5) Literal enforcement of zoning ordinance will result in an unnecessary
313 hardship; Ms. Davies said that one part of the definition of "unnecessary
314 hardship" is that the property cannot be reasonably used in strict conformance
315 with the ordinance. Mr. Baum said that isn't the case, since it's currently being
316 used in conformance. Ms. Davies said there is a hardship here but it comes from
317 a workforce concern and not from the property. Mr. Baum said this is the hardest
318 criteria. It comes down to whether you think it's reasonable to consider the three
319 campuses as a "site" according to the intent of the ordinance, given the close
320 location and common administration between the three campuses. Ms. Davies
321 asked if Mr. Baum would have an issue if he were being asked to create the
322 whole of Riverwoods as a single site, and Mr. Baum said that's why they need a
323 variance. When we vote, we should break out the two requests. The Boulders
324 request is far easier, as they are adjoining and could be merged. The three
325 parcels have common ownership and administration. There are residents that go
326 between campuses. The intent of the ordinance is to provide care in close
327 proximity and not have people being shipped off-site. It's harder for the Woods,
328 but it's a short jump between the two in terms of transportation. Ms. Davies said it
329 makes sense to have a central memory care facility. That's not part of the
330 requirements of the ordinance. She does have trouble with the hardship piece of
331 it. Ms. Olson-Murphy said she has an easier time with hardship with the Ridge
332 and the Boulders because they're in close proximity. The Woods is across the
333 street. Ms. Davies said it's a big process to leave a building and go to a separate
334 building when you're in that stage of life. That's why this ordinance was created.
335 Mr. Baum said leaving the building isn't a factor, this is about "on-site nursing
336 facilities." Ms. Davies said being in the same building was in the Planning Board
337 language, but she agreed that the ordinance only said "on-site."

338 Ms. Davies moved to deny the application for a variance from Article 2, Section 2.2.26,
339 Definition of "Elderly Congregate Health Care" for 7 Riverwoods Drive, ZBA Case #22-
340 15, based on not meeting variance criteria 3 and 5. Ms. Olson-Murphy seconded. Mr.
341 Baum asked her to elaborate the reasons. Ms. Davies said regarding criteria 3, it's
342 difficult to weigh the benefit to the applicant and whether it's outweighed by harm to
343 individuals, especially existing residents. It would be a benefit to the applicant and some
344 members of the community, but other members of the community have said it would be
345 a harm to them. Regarding 5, she doesn't think there are special conditions unique to
346 the property that create a hardship. There's a hardship related to the labor force and the
347 management of the facility, but it's not a property hardship. Ms. Olson-Murphy said
348 they're currently operating it, so it can't be a hardship in that way. Ms. Davies and Ms.
349 Olson-Murphy voted aye, and Mr. Baum voted nay. The motion to deny passed 2-1.

350
351

352 Ms. Davies moved to deny the application of RiverWoods Company of Exeter for a
353 variance from Article 2, Section 2.2.26, to permit skilled nursing care off site on related
354 campus for property is located at 5 Timber Lane, ZBA Case 22-16, for the same
355 reasons, that it doesn't meet criteria 3 and 5: the benefit to the applicant would not
356 outweigh the harm to individuals, and the property does not meet the hardship criteria.
357 Ms. Olson-Murphy seconded. Mr. Baum asked if the reasoning was the same. Ms.
358 Olson-Murphy said criteria 3 regarding impact is not as clear-cut for her because of the
359 proximity of these parcels. Riverwoods could make these one parcel if they chose,
360 whereas the other property is across the way. The impact on residents here would be
361 less, since it is just an extra 100 feet to get from the Ridge to the Boulders. For her, the
362 issue for this application is more criteria 5. Ms. Olson-Murphy asked if she should amend
363 the motion. Ms. Davies said if she supports one criteria to deny, that's all she needs to
364 vote aye. The reasoning was included for clarity to the applicant. Ms. Davies and Ms.
365 Olson-Murphy voted aye, and Mr. Baum voted nay. The motion to deny passed 2-1.

366
367 Mr. Baum told the applicant that their applications had been denied, and
368 they have 30 days to request a re-hearing. The Board took a brief recess and
369 reconvened at 9:24 PM. Mr. Prior and Ms. Pennell rejoined the Board.

- 370
371 C. The application of 107 Ponemah Road LLC for a special exception per Article 4,
372 Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
373 conversion of the existing single-family dwelling and attached barn located at 50
374 Linden Street to a three-family home. The subject property is situated in a R-2,
375 Single Family Residential zoning district. Tax Map Parcel #82-11. ZBA Case #22-
376 17.

377 Mr. Baum said this applicant has asked to continue the application to the
378 meeting of Feb 21.

379 Mr. Baum made a motion to continue ZBA Case #22-17 to the meeting of February 21,
380 2023. Ms. Olson-Murphy seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Baum, Mr.
381 Prior, and Ms. Pennell voted aye. The motion for continuance passed 5-0.

- 382
383 D. The application of River Bend Trust (Peter Mahar and Keri Marshall, Trustees)
384 for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses to
385 permit the existing single family home (with an in-law unit) at 2 River Bend Circle
386 to be converted to a two-family residential structure. The subject property is
387 located in the R-2, Single Family Residential zoning district. Tax Map Parcel
388 #104-34. ZBA Case #23-2.

389 Applicants Keri Marshall and Peter Mahar, the owners of 2 Riverbed
390 Circle, were present to discuss the application for a special exception. Ms.
391 Marshall said the property was constructed in 1985 as a two family home.
392 There's a breezeway that connects a garage to the main house. The smaller unit
393 is to the back of the garage, so it's not visible from the front of the property, and
394 nothing will change with respect to that. There will be no exterior changes to the

395 property. The tax card says both that it's a two-family and a single-family with an
396 in-law. In the zoning ordinance, she didn't see a definition of an in-law. She's
397 proposing that the home be converted into two condominiums.

398 Ms. Marshall went through some of the special exception criteria: A) The
399 use is a permitted special exception as set forth in Article 4.2, Schedule 1; yes,
400 this is in the R2 zone, which allows condominiums. Another property about ½
401 mile away has three condominiums, and there are other two-families on Court
402 Street. B) That the use is so designed, located and proposed to be operated that
403 the public health, safety, welfare, and convenience would be protected; yes, the
404 minimum lot size is 15,000 square feet, while this lot is 29,990 square feet. Most
405 of the property is fenced. Each unit has separate laundry facilities and kitchens.
406 The small unit is 864 square feet, and the large is 2400 square feet. D) That
407 adequate landscaping and screening are provided; yes, the front yard is a bit of a
408 wreck but that will be addressed in the spring. The septic line was clogged up
409 with trees, so we dug that up. There are new sills, roofs, skylights, and siding.
410 We want the place to look as good as possible. Having separate condominiums
411 will improve the integrity of the neighborhood because of pride of ownership of
412 each property. E) That adequate off-street parking and loading is provided and
413 ingress and egress is so designed as to cause minimum interference with traffic
414 on abutting streets; there are separate doors with a common breezeway. Use of
415 the garage would be split down the middle. There's plenty of parking, with two
416 spots inside the garage and more spots outside. Mr. Eastman said three spots
417 are required.

418 Mr. Prior said it meets the guidelines for an accessory dwelling unit. Was
419 it approved as an ADU by the Zoning Board? Ms. Marshall said she didn't know.
420 When the initial permits were taken, it was built with this as a separate unit. Mr.
421 Prior said until two years ago, it was required that an ADU be less than 700
422 square feet, but now this meets the definition. As an ADU, it requires one of the
423 two units to be owner-occupied. With the condo unit, neither is required to be
424 owner-occupied, so it would not increase pride of ownership. Ms. Marshall said
425 she would write into the condo docs that they can't be rented. Mr. Prior asked if
426 she were planning on occupying one of the units herself, and Ms. Marshall said
427 no.

428 Mr. Baum asked if it was under single ownership with an in-law, it
429 wouldn't need to be permitted? Mr. Eastman said that's correct. It does meet the
430 conversion criteria and could be either rentals or condos. If it's rentals, one has to
431 be owner-occupied, but condos would not. Ms. Pennell asked if the initial permit
432 when it was constructed was for a two-family house, and Mr. Eastman said no.
433 The understanding is that it was for an in-law and was not a two-family. Mr. Prior
434 said on the tax card, it's a two-family, so at some point the deed must have been
435 changed. Ms. Pennell said on the tax card, it says "number of kitchens: 1." Mr.
436 Eastman said what happened in 1985 is irrelevant, we're trying to clean this up.
437 Mr. Baum said the property meets size and open space requirements.

438 Mr. Prior said that Ms. Marshall mentioned other uses on Court Street
439 that are condos, would this be the first on Riverbend Circle? Ms. Marshall said
440 yes, she thinks so.

441 Ms. Pennell said she drove by and saw a chimney. Ms. Marshall said
442 that's the vent for the furnace for the small unit, which is in the garage. There's a
443 fireplace in the main house, but not in the garage or the smaller unit. Ms. Pennell
444 asked how the garage will be separated, and Ms. Marshall said the smaller unit's
445 furnace is on the left, so the left side will go to the smaller unit, and the right side
446 will go to the bigger unit.

447 Mr. Prior went through the special exception criteria: A) The use is a
448 permitted special exception as set forth in Article 4.2, Schedule 1; yes. B) That
449 the use is so designed, located and proposed to be operated that the public
450 health, safety, welfare, and convenience would be protected; yes, there's really
451 no difference between the existing usage as an accessory dwelling unit and the
452 proposed use as a condominium or residential two-family conversion. Mr. Baum
453 said he agrees. It's also screened from the neighborhood and there's plenty of
454 parking. C) That the proposed use will be compatible with the zone district and
455 adjoining post-1972 development where it is to be located; Mr. Prior said there
456 are many ADUs in the R2 zones and some condominiums on Court Street, so
457 he's a little shaky on this one but it's ok. Ms. Davies said there's no physical
458 change. Mr. Baum said it won't impact the neighborhood. The lot's large enough.
459 Mr. Prior asked if as a condominium, the individual owners would have the right
460 to make exterior changes to their property, and Mr. Baum said it would be up to
461 the condominium docs, not the ZBA. D) That adequate landscaping and
462 screening are provided; Mr. Prior said this doesn't really apply as there are no
463 exterior changes. Mr. Baum said the unit is screened by the garage anyway. E)
464 That adequate off-street parking and loading is provided and ingress and egress
465 is so designed as to cause minimum interference with traffic on abutting streets;
466 yes, ingress and egress are immaterial and we've heard testimony that off-street
467 parking is sufficient given the number of bedrooms. F) That the use conforms
468 with all applicable regulations governing the district where located; yes, it seems
469 to. G) The applicant may be required to obtain Planning Board or Town Planning
470 approval; he does not believe this review would be required, since there's no
471 external change being made. H) That the use shall not adversely affect abutting
472 or nearby property values; yes, we've had no testimony to that effect. I) and J) do
473 not apply.

474 Mr. Prior said for conversions, there are additional 8 criteria that have to
475 be met: 1) The number of spaces for off-street parking comply with article 5.6; it
476 does comply. 2) Minimum lot size; it does meet that. 3) The structure shall have
477 been a residence for 10 years; it has. 4) The lot must meet a minimum of 20%
478 open space; it does. 5) For conversions intended to be rental units, one of the
479 units must be owner-occupied; that is not an issue here, since they are not
480 proposed to be rentals. 6) The proposal may require Planning Board review;
481 that's not appropriate here, because there's no site plan for the outside of the

482 property. Conversions of three or more units require Planning Board approval;
483 this is for two. 7) We may allow expansion to an existing structure for the purpose
484 of providing additional area to the units; that's not part of the proposal. 8) Septic
485 requirements; Mr. Baum said it's on public sewer. Ms. Davies added that they
486 fixed the issue with the pipe.

487 Mr. Prior said it does meet all of the criteria for a special exception.
488

489 Mr. Prior made a motion to approve the application of River Bend Trust for a special
490 exception to permit the existing single family home at 2 River Bend Circle to be
491 converted to a two-family residential structure. Ms. Davies seconded. Ms. Davies, Ms.
492 Olson-Murphy, Mr. Baum, Mr. Prior, and Ms. Pennell voted aye. The motion for approval
493 passed 5-0.

494
495 **II. Other Business**

496 A. Approval of Minutes

497 1. December 20, 2022

498 Ms. Davies said regarding one of the residents who testified, in line 184, "Colley"
499 should read "Cully."

500 Ms. Davies moved to approve the minutes of December 20, 2022 as amended. Mr. Prior
501 seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Baum, Mr. Prior, and Ms. Pennell voted
502 aye. The motion passed 5-0.

503
504 **III. Adjournment**

505
506 Mr. Prior moved to adjourn. Ms. Davies seconded. All were in favor and the meeting was
507 adjourned at 10 PM.

508
509 Respectfully Submitted,
510 Joanna Bartell
511 Recording Secretary

512
513

CALLER Bob

2/13/2023

10:30 AM

TO DISCUSS @
MEETING

Robert D. Cully

4 Timber Lane

Exeter, NH 03833

603-658-1636

bob265@comcast.net

February 8, 2023

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

REFERENCE: Application for variance from Article 2, Section 2.2.26 filed September 30, 2022 By The RiverWoods Company at Exeter for 5 Timber Lane, R-1 Low Density Residential zoning district. Tax Map Parcel #98-23. Case #22-16.

REFERENCE: Draft minutes of Zoning Board of Adjustment meeting on January 23, 2023 regarding the above variance application.

The draft minutes contain an error on line 361: "since it is just an extra 100 feet to get from the Ridge to the Boulders." The actual distance from Ridge to the Boulders is 2713 feet.

Following is information about this measurement and other Exeter measurements:

Ridge to the Boulders: 2713 feet (0.51 mile)

Proposed Centralized Health Care site at Campus Crossing

Boulders to Campus Crossing: 4294 feet (0.81 mile)

Ridge to Campus Crossing: 1581 feet (0.30 mile)

Woods to Campus Crossing: 2314 feet (0.44 mile)

Distances were measured with a Rolatape walker.

Distances are from front door to front door, walking on sidewalks.

Please consider my request to correct the minutes to show that the distance from Ridge to Boulders is 2713 feet, not 100 feet.

Thank you,


Robert D. Cully



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
ELAINA L. HOEPPNER
WILLIAM K. WARREN
BRIANA L. MATUSZKO

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

February 13, 2023

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

Re: 107 Ponemah Road, LLC, Tax Map 82, Lot 11
Application for Special Exception, ZBA Case 22-17

Dear Chair Baum and Board Members

This letter follows on the application for special exception which was filed with the Board on October 3, 2022 and which has been continued a number of times. The Applicant is still working to gather the necessary information and hopes to submit again for the April hearing date. Accordingly, the Applicant respectfully withdraws its Application for Special Exception, without prejudice, and intends to refile with further information in the near future.

If you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers
SCS/sac

cc: 107 Ponemah Road, LLC
Henry Boyd

S:\01-99\107 Ponemah Road, LLC\Town of Exeter\ZBA Special Exception\2023 02 02 ZBA Letter re withdrawal.docx

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

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

November 18, 2022

VIA HAND DELIVERED

Robert Prior, Vice-chair
Exeter Zoning Board of Adjustment
10 Front St.
Exeter, NH 03833

Re: Twenty-Nine Garfield Street LLC, Owner/Applicant
29 Garfield St., Exeter, NH
Tax Map 73/Lot 225
C-1, MUND Zones

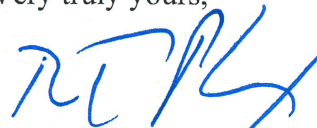
Dear Vice Chair Prior and Zoning Board members:

On behalf of Twenty-Nine Garfield Street, LLC, Owner/Applicant, enclosed please find an original and ten (10) copies of the following in support of requested zoning relief:

1. Application for variance.
2. Owner Authorization
3. 11/18/22 Memorandum in support of zoning relief with exhibits.

Also enclosed is our check in the amount of \$190.00 to cover the \$100 application fee plus \$10 for each of nine (9) abutters on mailing labels (x3). Please advise of the amount due for the legal notice. We look forward to presenting this application to the Zoning Board of Adjustment at its December 20, 2022 meeting.

Very truly yours,



R. Timothy Phoenix

RTP/msw
Encl.

cc: Client (email)
Millennium Engineering (email)
Dennis Mires, P.A. (email)

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON

OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

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 Twenty-Nine Garfield Street, LLC
(If other than property owner, a letter of authorization will be required from property owner)

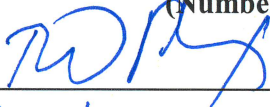
Address 9672 Warburton Drive, Huntington Beach, CA 92646

Telephone Number (603) 548-6592

Property Owner Same

Location of Property 29 Garfield Street, Exeter, NH 03833
Map 73, Lot 225; C-1 and MUND Zones

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

Applicant Signature 

Date 11/18/22

*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 See attached section _____ of the Exeter zoning ordinance to permit:
Removal of existing commercial/industrial building, redevelop with 3 level apartment building (36 units), 36 parking spaces beneath building; first floor Ambassador Station at north end nearest train station parking lot.

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.
- n/a 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.**

29 Garfield Street
Map 73/Lot 225

RELIEF REQUIRED

<u>EZO Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>§4.4¹</u> <u>Side Setback</u>	10'	Right 23.6' Left 0.2'	5.4' left 7.0' right
<u>§4.4</u> <u>Rear Setback</u>	20'	>20'	5.2'
<u>§4.4</u> <u>Building Coverage</u>	75%	<75%	16848 s.f. (76.3%)
<u>§619.3.A.5</u> <u>Height</u>	35'	<35'	46.58' 57.08 (tower) ²

¹ MUND allows zero front setback and height at 35' EZO§6.19.3.A.1,5 , in the C-1 district. Area per dwelling unit does not apply EZO§6.19.3.A.6.

² We believe that the tower requires no relief, as towers are excluded from the definition of building height. EZO§2.2.15. It is included here in an abundance of caution.

OWNER'S AUTHORIZATION

I, Mark Kearns, Manager of Twenty Nine Garfield Street, LLC Owner/Applicant of 29 Garfield Street, Tax Map 73/Lot 225, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all Town of Exeter Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date: 7-29-2022


Mark Kearns, Manager

MEMORANDUM

To: Exeter Zoning Board of Adjustment (“ZBA”)
From: R. Timothy Phoenix, Esq.
Date: November 18, 2022
Re: 29 Garfield St.
Tax Map 73, Lot 225
Twenty-Nine Garfield Street, LLC, Owner/Applicant
Zoning District C-1, Mixed Use Neighborhood Development (“MUND”)

On behalf of owner and applicant Twenty-Nine Garfield Street, LLC, and its principal member, Mark Kearns (“Kearns”), we are pleased to submit this memorandum and the attached exhibits in support of zoning relief for consideration by the Zoning Board of Adjustment at its December 20, 2022 meeting.

I. EXHIBITS

- A. 10/18/22 Site Plan Set-By Millennium Engineering
 - Existing Conditions
 - Proposed Conditions
- B. 10/18/22 Architectural Plan Set – By Dennis Mires P.A.
 - A-001-Schematic
 - A-001-Ground level parking
 - A-201-Elevations
 - X-101- Perspectives
- C. Site Photographs.
- D. Tax Map 73.
- E. Exeter Zoning Ordinance§6.19 et seq., Mixed Use Neighborhood Development.

II. PROPERTY/PROJECT

29 Garfield Street is a 22,075 sq. ft. rectangular lot with 68.43 feet of frontage within the C-1 zoning district. Upon the lot is a nondescript 7064 sq. ft. (footprint) two-story metal commercial/industrial/warehouse building located essentially on the left (west) property line. The remainder of the lot is unimproved gravel access, drive, parking, and truck/equipment storage area. (**Exhibits A, C**). The lot/building directly abuts the Boston and Maine railroad corridor to the west

and the train station parking lot to the north. To the east are similar metal commercial/industrial buildings. *Id.* The larger Garfield Street "neighborhood" includes primarily residences. *Id.*

Via the requested variances and a Conditional Use Permit ("CUP") from the Planning Board for a Mixed Use Neighborhood Development ("MUND") pursuant to Exeter Zoning Ordinance ("EZO")§6.19 (**Exhibit E**), Kearns proposes to raze the existing building in favor of a 3-story 36 unit apartment building with 36 parking spaces under the building ¹at ground level, together with a publicly accessed, thus commercial "Ambassador Station" closest to the train station and its parking lot, in compliance with MUND requirements for residential and commercial uses. EZO§6.19.1.B. The Ambassador Station will provide restroom facilities for those parking and/or boarding/unboarding trains at the adjacent station. ²EZO§6.19.2.B. The Ambassador station will be used primarily, if not exclusively, by those boarding/unboarding trains, including use of the abutting train station parking lot. Accordingly, adequate parking to support the Ambassador Station exists off-site. The Ambassador Station will be monitored and locked/unlocked according to a schedule to be approved by the Planning Board. Additional amenities under consideration include a ticket kiosk, train schedule, handicap restroom and a public walking path from Garfield Street to the train station parking lot.

Kearns' motivation for the project is the MUND ordinance. Given the surrounding residential neighborhood and the train station, this area is *a de facto* a "Gateway" to the town from those utilizing train services. As such, it is believed that converting the immediately

¹ In a MUND development "For residential use, the minimum number of parking spaces shall be one space per unit regardless of the number of bedrooms." EZO§6.19.2.A.1.

² No additional on-site parking to support the Ambassador station is provided. "The Planning Board may allow the applicant to provide up to 100% of the minimum parking requirements off-site. The applicant must demonstrate through the use of maps and/or site plans that the number of spaces is adequate and access will be safe and convenient."

abutting the commercial/industrial site to primarily residential use will be more aesthetically pleasing, may encourage train users to live in the apartments, and is consistent with Exeter's Master Plan as implemented through the passage of the MUND ordinance, EZO§6.19.4:

A. Purpose And Authority

1. Pursuant to the Exeter Master Plan, the Town wishes to expand housing diversity in mixed use districts in order to increase the vibrancy of these districts, stimulate the local economy, and provide access to rental and homeownership options that are not possible in other districts.
2. Pursuant to RSA 674:21, IV (a), MUND (and the associated inclusionary zoning requirement) is one of many allowable uses in the zoning districts where it is offered and is therefore voluntarily pursued by an applicant. Further, consistent with the aforementioned statute, the MUND uses inclusionary zoning in response to a series of incentives, including:
 - a. Maximum multi-family density in the C-1 district is one unit per 3500 sq. ft. . Maximum multifamily density in the WC district is one unit per 750 sq.ft. MUND removes these density caps and allows for parking requirements, maximum building height, and site constraints to dictate the number of allowable residential units.
 - b. Allowable building height is increased in two of the three C-1 zoning districts where an applicant pursues MUND.
 - c. Parking requirements for MUND applications are significantly reduced.

Based upon the foregoing, Kearns proposes the 36 unit apartment building with an pleasing architectural design, compliant covered parking for the residential units, the proposed Ambassador Station with parking on the adjacent town/train station lot, together with 10% of the units(here 4), all of which are intended to be rental units, as "affordable", meaning "rented to a household with an income not more than 60% of the HUD median area income for a family of 3 as most recently reported by New Hampshire housing." EZO§ 6.19.B.3. The project will also comply with the rest of the EZO§3.19.B.1-10 Restrictions On Sales And Rental Price as well as

the remainder of the EZO§6.19 MUND requirements, which include, *inter alia*, detailed design standards.EZO§6.19.5 *et seq.*

III RELIEF REQUIRED

After meeting with the Town Planning and Building Inspector staff, it has been determined that the following zoning relief is required:

<u>EZO Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>§4.4³ Side Setback</u>	10'	Right 23.6' Left 0.2'	5.4' left 7.0' right
<u>§4.4 Rear Setback</u>	20'	>20'	5.2'
<u>§4.4 Building Coverage</u>	75%	<75%	16848 s.f. (76.3%)
<u>§619.3.A.5 Height</u>	35'	<35'	46.58' 57.08 (tower) ⁴

IV. Variance Requirements

- 1. The variance will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

The first step in the ZBA’s analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H.

³ MUND allows zero front setback and height at 35’ EZO§6.19.3.A.1,5 , in the C-1 district. Area per dwelling unit does not apply EZO§6.19.3.A.6.

⁴ We believe that the tower requires no relief, as towers are excluded from the definition of building height. EZO§2.2.15. It is included here in an abundance of caution.

102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Id.* “Mere conflict with the zoning ordinance is not enough.” *Id.*

The purpose of the Zoning Ordinance, as stated in Article I, §1.2, is to:

- Lessen congestion in the streets – as set forth above, the goal of the MUND ordinance in furtherance of the Master Plan is to expand housing diversity in mixed use districts in order to increase the vibrancy of these districts, stimulate the local economy, and provide access to rental and homeownership options. This includes providing “affordable” housing as defined in EZO§6.19.4.B.3. The proposal provides 36 (4 affordable) units with covered on-site parking for each unit in a location close to the train station/parking lot, encouraging train users to live in the area. It also addresses the area as a form of Gateway, more consistent with the surrounding residential neighborhood than the existing industrial structure and use. These factors will allow the reasonable and orderly occupation and use of the premises, avoiding congestion, including large-truck traffic, in the streets.
- Secure safety from fire, panic and other dangers – the proposed building will be fully code compliant, including sprinklers. The proposal will improve safety from fire, panic and other dangers.
- Promote health and the general welfare – because the proposal provides alternate rental options essentially downtown and near the train station, including covered parking, and workforce housing in accordance with the MUND/Master Plan, approval of the project and thus the variances requested promotes health and the general welfare.
- Promote adequate light and air – the project only very slightly exceeds lot coverage limits. Given the surrounding area, including the open spaces afforded by the Boston and Maine corridor and train station parking lot, adequate air and light will be provided.
- Prevent the overcrowding of land – the number of units and covered parking is permitted, in fact encouraged. Given the open areas nearest the lot and proposed building, the land will not be overcrowded.
- Avoid undue concentration of population – 36 units in this particular area of Exeter as a form of Gateway from the train station, providing affordable housing and apartment living close to the train station and downtown, the population is not unduly concentrated.
- Facilitate adequate provision of transportation, solid waste, water, sewerage, school and recreation facilities – required parking, covered, with head in and head out access to and from Garfield Street, facilitates transportation as does the proximity to the train station. Town water and sewer will facilitate municipal utilities. The size and location of the apartments is not expected to have a significant effect upon school and recreation facilities. The planning board will

further vet these and other MUND requirements via the Conditional Use Permit process.

- Assure proper use of natural resources and other public requirements – there will be no adverse effect, particularly in light of the intention to provide affordable housing and compliance with the goals of the MUND ordinance and Master Plan

Clearly, the required variances do not “in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives”. *Malachy Glen, supra*, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality... Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The character of the locality in this area is somewhat eclectic since there are commercial/industrial/storage uses near a train station and parking lot, other commercial uses across the tracks, and residences along Garfield and other nearby streets. An apartment building in this area will improve and thus will not negatively alter the essential character of the locality. Likewise, replacing the nondescript metal building and its related heavy commercial activity including significant large truck traffic through the residential area, with aesthetically pleasing fully code compliant apartment building will benefit so will not threaten the public health safety or welfare.

3. Substantial justice will be done by granting the variance.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen, supra* at 109.

The side and rear setback variances are along the railroad corridor and train station parking lot respectively. Neither individual neighbors nor the general public is harmed by its location and the variances required. The height variance is required in order to provide the living units and requisite parking beneath the building. Moreover, in this “Gateway” area the proposed pitched roof that results in the request for the height variance is more architecturally/aesthetically pleasing than a flat roof, also allowing for a solar array on the southeast side of the roof. Again, given its location nearest the rail corridor and parking lot, separated at least by a street from residential uses, there is no harm to the public. Indeed, the other downtown areas permitting a MUND application permit 50 feet in height. It is understood that there are those in town that would prefer a 50 foot limit at this location. Either way, a 46.58 foot height (exclusive of the tower), primarily resulting from the architecturally favored pitched roof, harms no one given its location. Similarly, building coverage at 76.3% is only 1.3% over the limit essentially *de minimis*. Viewing the site, the general public could not even decipher the difference between coverage as proposed and as required. Accordingly, there is no harm whatsoever to the general public from the from granting the variances.

Conversely, Kearns will be significantly harmed if any of the variances are denied, as it will disallow the project from proceeding as proposed, thus jeopardizing the project, and the possible loss of the public and private benefits occasioned by the ordinance in furtherance of the Master Plan/MUND

4. The surrounding property values are not diminished by granting the variance.

The existing property, with its nondescript metal building and gravel access, parking and exterior truck/equipment storage, is bounded by the railway corridor, train station parking lot, other commercial/industrial/storage metal buildings and Garfield Street. This project is step one to:

encourage additional use of trains for transportation while reducing potential parking burden on the train parking lot; providing access to rental options, including affordable housing near the train station and downtown; improving the beauty/aesthetics of the mostly residential area. The project's improvements are likely to help increase the value of surrounding properties and certainly will not decrease them.

5. Denial of the variance results in an unnecessary hardship.

- a. Special conditions distinguish the property/project from others in the area.

The subject property is a long narrow lot surrounded by the rail corridor, train station parking lot, other similar nondescript metal commercial/industrial/storage buildings, being a few in an otherwise mostly residential area. It is also subject to and provides the benefit of a diversity of type, size, location and affordability of housing near the train station and the downtown via a CUP from the Planning Board pursuant to the MUND Ordinance. These factors combine to create special conditions that distinguish the property from others in the area.

- b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

Side and rear setback requirements are intended to promote ample air and light, distance between neighbors, provide sightlines and stormwater treatment. The side and rear setback variances abut a railway corridor and the parking lot, thus adequate air and light exists. There are no close neighbors in that vicinity so sightlines up and down the street are not affected. Stormwater treatment will be dealt with in the Planning Board process and is intended to provide for infiltration on site. There is thus no reason to apply the side and rear setback requirements.

Building coverage limits are intended to provide essentially the same public benefits: air, light, neighbor separation, sightlines and stormwater treatment. For the same reasons, and since

the building coverage limits and requirements are only very slightly exceeded, there is no reason to apply them.

Height limits are intended to avoid over bulking and provide for air and light. This must be balanced against the benefit of providing covered parking beneath and the architecturally superior pitched roof. With the building and lot surrounded by the rail corridor, parking lot, other industrial buildings and the street, the extra height which provides for aesthetic/visual improvement, causes no harm to neighbors or the public.

In summary, balancing the private and public benefits of this project to provide vibrancy, stimulate the local economy and increase rental options, including affordability, near the train station and downtown, against any harm to neighbors or the general public from granting these variances, it is clear that the equities weigh heavily in favor of granting the variances in order to allow the project to proceed with no corresponding harm to the neighbors, the public, or the community at large.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Town of Hudson, 151 N.H. 747, 752 (2005). The uses are permitted and indeed encouraged via the MUND ordinance.

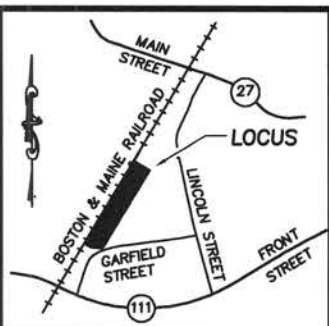
V. Conclusion

For all of the reasons stated, Mark Kearns and Twenty-Nine Garfield Street, LLC respectfully request that the ZBA grant the required variances.

Respectfully Submitted,

Twenty-Nine Garfield Street, LLC

By: 
R. Timothy Phoenix Esq.



NOTES

1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.

2) THIS PARCEL (DOES NOT) LIE WITHIN A FLOOD ZONE. SEE F.L.R.M. COMMUNITY PANEL 3301500 0420 E EFFECTIVE DATE MAY 17, 2005.

RECORD OWNER

73
225

29 GARFIELD STREET LLC
29 GARFIELD STREET
EXETER, NH 03833
BK. 8076 PG. 1168
22,075 S.F.
0.51 ACRES

EXISTING CALCULATIONS

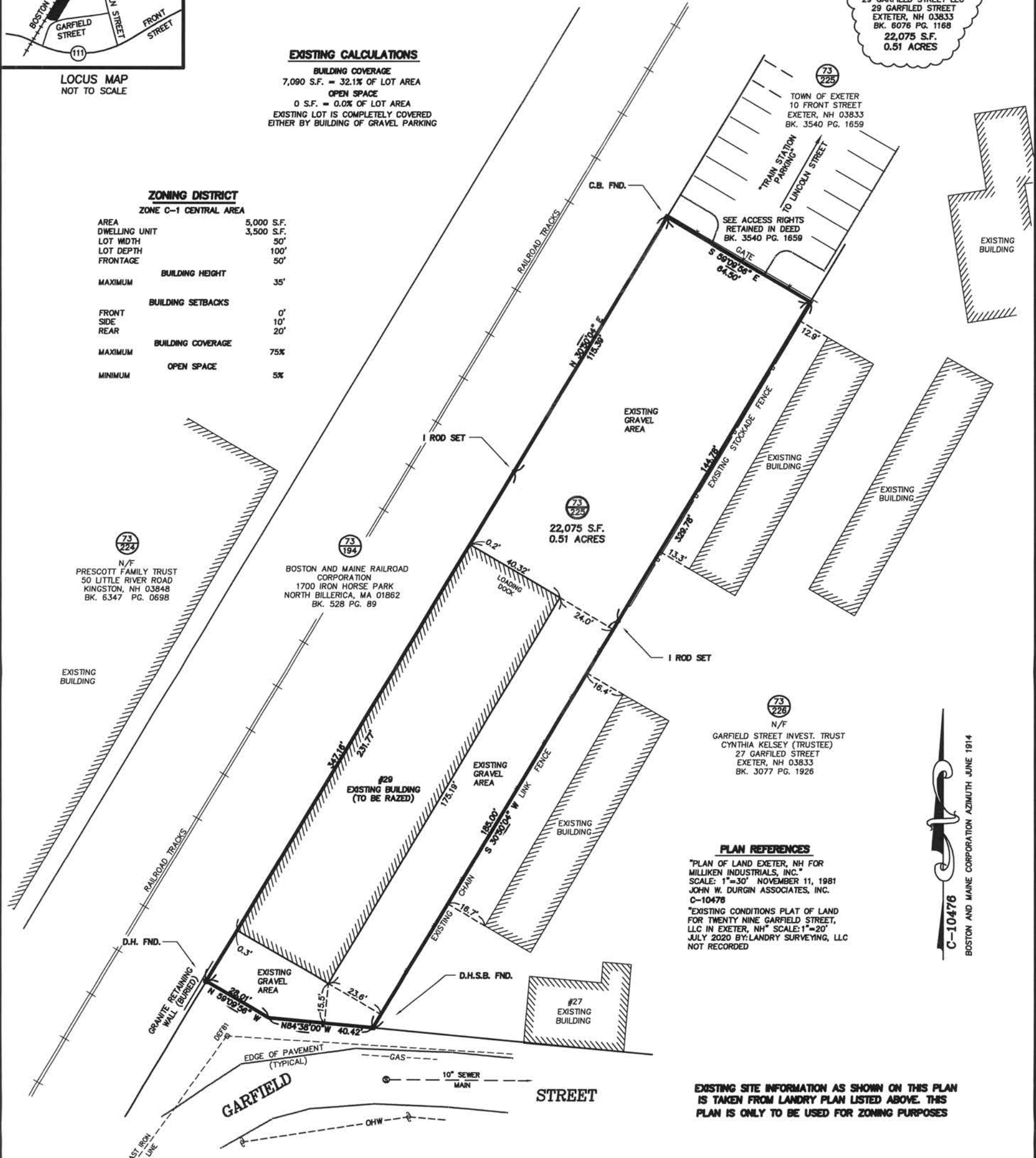
BUILDING COVERAGE
7,090 S.F. = 32.1% OF LOT AREA

OPEN SPACE
0 S.F. = 0.0% OF LOT AREA

EXISTING LOT IS COMPLETELY COVERED EITHER BY BUILDING OR GRAVEL PARKING

ZONING DISTRICT
ZONE C-1 CENTRAL AREA

AREA	5,000 S.F.
DWELLING UNIT	3,500 S.F.
LOT WIDTH	50'
LOT DEPTH	100'
FRONTAGE	50'
BUILDING HEIGHT	35'
BUILDING SETBACKS	
FRONT	0'
SIDE	10'
REAR	20'
BUILDING COVERAGE	75%
OPEN SPACE	5%



PLAN REFERENCES

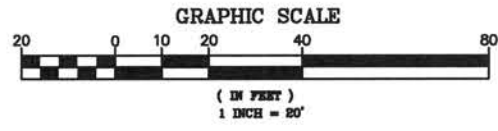
"PLAN OF LAND EXETER, NH FOR MILLIKEN INDUSTRIALS, INC."
SCALE: 1"=30' NOVEMBER 11, 1981
JOHN W. DURGIN ASSOCIATES, INC.
C-10476

"EXISTING CONDITIONS PLAT OF LAND FOR TWENTY NINE GARFIELD STREET, LLC IN EXETER, NH" SCALE: 1"=20'
JULY 2020 BY: LANDRY SURVEYING, LLC
NOT RECORDED

EXISTING SITE INFORMATION AS SHOWN ON THIS PLAN IS TAKEN FROM LANDRY PLAN LISTED ABOVE. THIS PLAN IS ONLY TO BE USED FOR ZONING PURPOSES

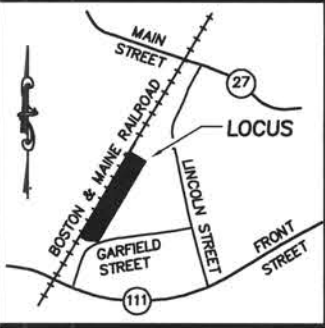
C-10476
BOSTON AND MAINE CORPORATION AZIMUTH JUNE 1914

- LEGEND**
- C.B. CONCRETE BOUND
 - S.B. STONE BOUND
 - D.H. DRILL HOLE
 - I.P. IRON PIPE
 - I ROD IRON ROD
 - FND. FOUND
 - ASSESSORS MAP AND PARCEL
 - UTILITY POLE
 - OHW --- OVER HEAD WIRE



EXISTING CONDITIONS		
VARIANCE PLAN		
IN EXETER, NH		
SHOWING PROPOSED SITE REDEVELOPMENT 29 GARFIELD STREET (ASSESSORS MAP 73 LOT 224)		
RECORD OWNER 29 GARFIELD STREET LLC 29 GARFIELD STREET EXETER, NH 03833		
MILLENNIUM ENGINEERING INC. ENGINEERS AND LAND SURVEYORS P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833 PHONE:(603)778-0528 FAX:(603)772-0689 WWW.MEI-NH.COM		
SCALE: 1"=20'	CALC. BY: H.H.B.	PROJECT:E222942
DATE: OCT. 18, 2022	CHKD. BY: R.S.G.	SHEET 1 OF 2

A



NOTES:

- 1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- 2) THIS PARCEL (DOES NOT) LIE WITHIN A FLOOD ZONE. SEE F.L.R.M. COMMUNITY PANEL 3301500 0420 E EFFECTIVE DATE MAY 17, 2005.

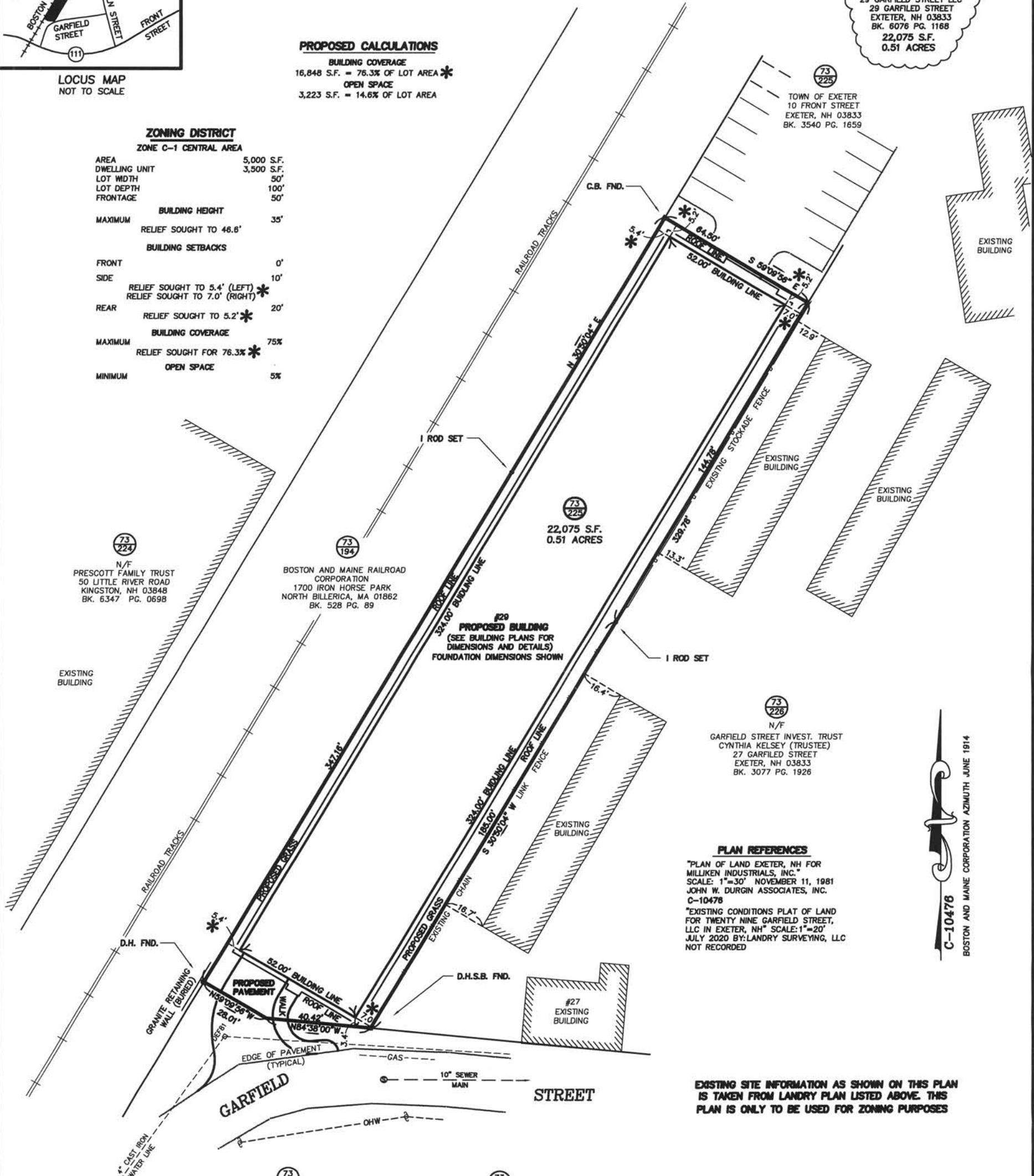
RECORD OWNER
 73
 225
 29 GARFIELD STREET LLC
 29 GARFIELD STREET
 EXETER, NH 03833
 BK. 6076 PG. 1168
 22,075 S.F.
 0.51 ACRES

PROPOSED CALCULATIONS

BUILDING COVERAGE
 16,848 S.F. = 76.3% OF LOT AREA *
 OPEN SPACE
 3,223 S.F. = 14.6% OF LOT AREA

ZONING DISTRICT
 ZONE C-1 CENTRAL AREA

AREA	5,000 S.F.
DWELLING UNIT	3,500 S.F.
LOT WIDTH	50'
LOT DEPTH	100'
FRONTAGE	50'
BUILDING HEIGHT	35'
MAXIMUM RELIEF SOUGHT TO 46.6'	
BUILDING SETBACKS	
FRONT	0'
SIDE	10'
REAR	20'
RELIEF SOUGHT TO 5.4' (LEFT) RELIEF SOUGHT TO 7.0' (RIGHT) *	
RELIEF SOUGHT TO 5.2' *	
BUILDING COVERAGE	75%
MAXIMUM RELIEF SOUGHT FOR 76.3% *	
MINIMUM OPEN SPACE	5%



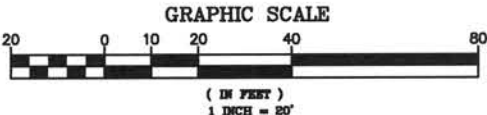
PLAN REFERENCES
 "PLAN OF LAND EXETER, NH FOR MILLIKEN INDUSTRIALS, INC."
 SCALE: 1"=30' NOVEMBER 11, 1981
 JOHN W. DURGIN ASSOCIATES, INC.
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 "EXISTING CONDITIONS PLAT OF LAND FOR TWENTY NINE GARFIELD STREET, LLC IN EXETER, NH" SCALE: 1"=20'
 JULY 2020 BY: LANDRY SURVEYING, LLC
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EXISTING SITE INFORMATION AS SHOWN ON THIS PLAN IS TAKEN FROM LANDRY PLAN LISTED ABOVE. THIS PLAN IS ONLY TO BE USED FOR ZONING PURPOSES

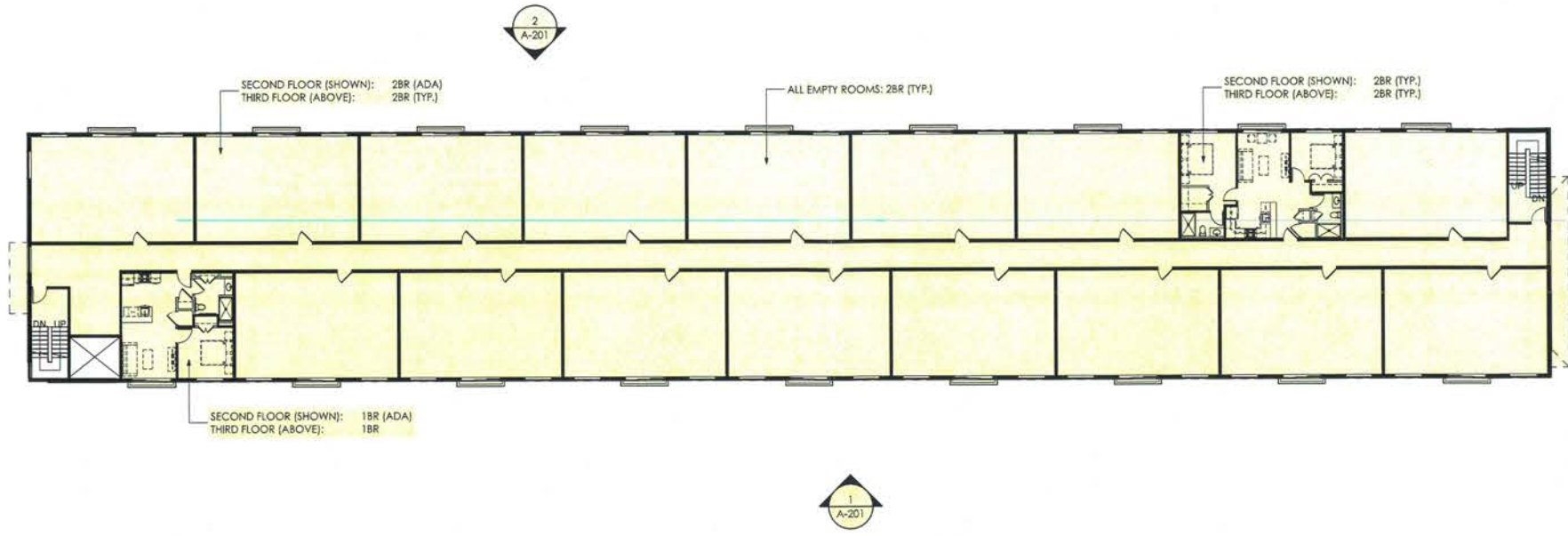
C-10476
 BOSTON AND MAINE CORPORATION AZIMUTH JUNE 1914

LEGEND

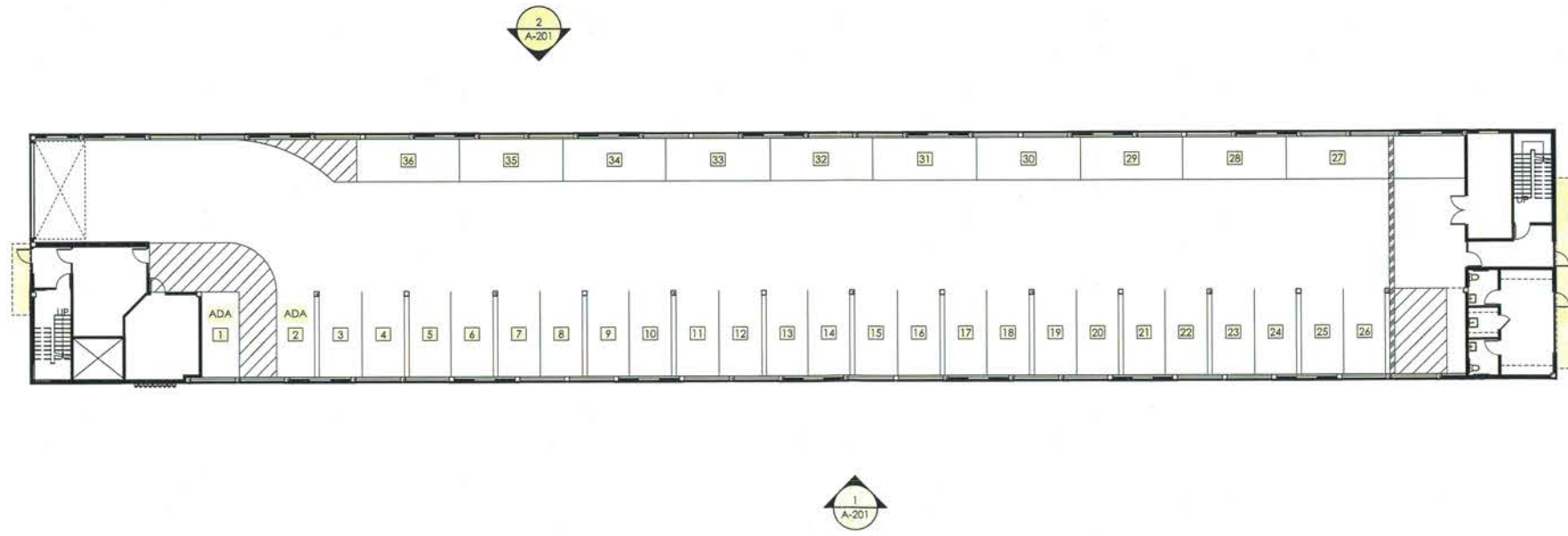
- C.B. CONCRETE BOUND
- S.B. STONE BOUND
- D.H. DRILL HOLE
- I.P. IRON PIPE
- I ROD IRON ROD
- FND. FOUNDATION
- ASSESSORS MAP AND PARCEL
- UTILITY POLE
- OHW OVER HEAD WIRE



PROPOSED CONDITIONS		
VARIANCE PLAN		
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SHOWING PROPOSED SITE REDEVELOPMENT 29 GARFIELD STREET (ASSESSORS MAP 73 LOT 224)		
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SCALE: 1"=20'	CALC. BY: H.H.B.	PROJECT:E222942
DATE: OCT. 18, 2022	CHKD. BY: R.S.G.	SHEET 2 OF 2



2 FLOOR PLAN - UPPER LEVELS
SCALE: 1/16" = 1'-0"



1 FLOOR PLAN - MAIN LEVEL
SCALE: 1/16" = 1'-0"

TWENTY NINE GARFIELD STREET LLC
29 GARFIELD STREET • EXETER • NH

DENNIS MIREX, P.A.
THE ARCHITECTS
697 UNION STREET, MANCHESTER, NH
(603) 625-4548 www.thearchitects.net

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SCHEMATIC

REV. #	DESCRIPTION	DATE

FLOOR PLANS

ISSUED: 10/18/22
PROJECT #: 2020.090

A-101

- ELEVATION GENERAL NOTES:**
1. BLACK ALUMINUM CLAD WINDOWS (TYPICAL)
 2. WHITE BRICK (@ TOWER)
 3. WHITE CLAPBOARD SIDING (TYPICAL)
 4. WHITE SHINGLE SIDING (@ GABLES)



3 WEST ELEVATION
SCALE: 1/16" = 1'-0"



4 EAST ELEVATION
SCALE: 1/16" = 1'-0"



2 SOUTH ELEVATION
SCALE: 1/16" = 1'-0"



1 NORTH ELEVATION
SCALE: 1/16" = 1'-0"

TWENTY NINE GARFIELD STREET LLC
29 GARFIELD STREET • EXETER • NH

DENNIS MIREX, P.A.
THE ARCHITECTS
697 UNION STREET, MANCHESTER, NH
(603) 625-6548 www.thefirmarchitects.net

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SCHEMATIC

REV. #	DESCRIPTION	DATE

ELEVATIONS

ISSUED: 10/18/22
PROJECT #: 2020.090

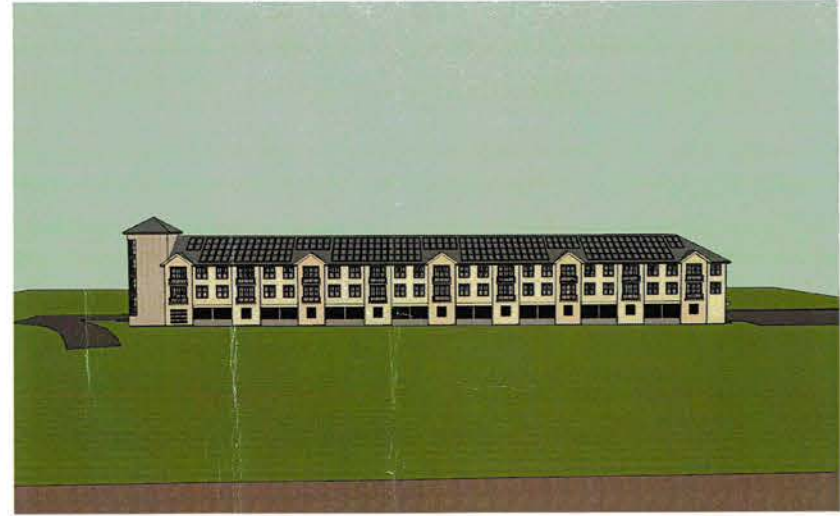
A-201



4 PERSPECTIVE @ ENTRY CORNER



5 PERSPECTIVE @ REAR CORNER



6 PERSPECTIVE @ BUILDING SIDE



1 PERSPECTIVE @ ENTRY CORNER



2 PERSPECTIVE @ REAR CORNER



3 PERSPECTIVE @ BUILDING SIDE

TWENTY NINE GARFIELD STREET LLC
29 GARFIELD STREET • EXETER • NH

DENNIS MILES, P.A.
THE ARCHITECTS
697 UNION STREET, MANCHESTER, NH
(603) 625-4548 WWW.THEARCHITECTS.NET

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SCHEMATIC

REV. #	DESCRIPTION	DATE

PERSPECTIVES

ISSUED: 10/18/22
PROJECT #: 2020.090

X-001



28 Garfield St

Exeter, New Hampshire
Google
Street View - Sep 2019



Google

Image capture: Sep 2019 © 2022 Google

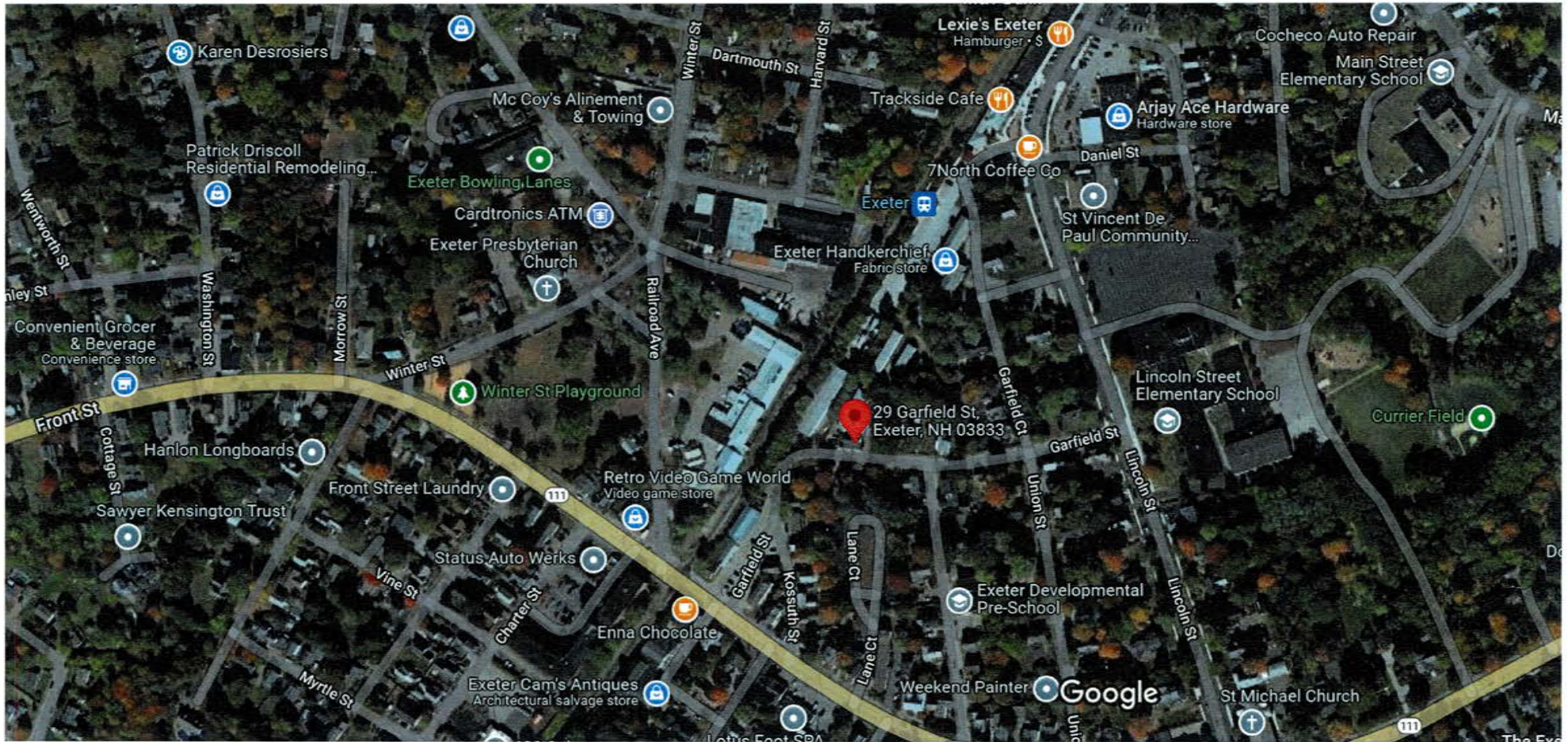


Google Maps 29 Garfield St

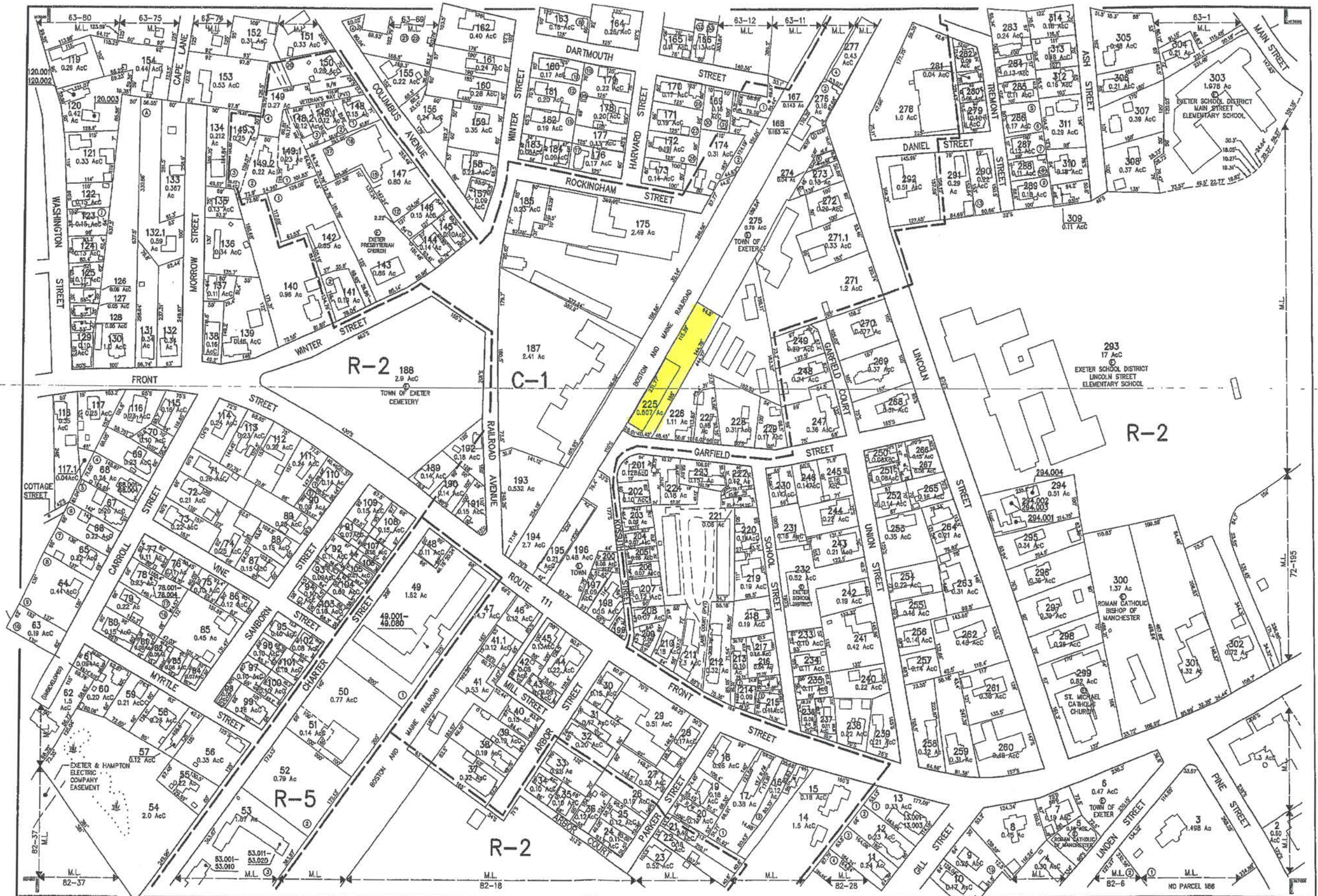


Imagery ©2022 MassGIS, Commonwealth of Massachusetts EOE, Maxar Technologies, Map data ©2022 50 ft

Google Maps 29 Garfield St



Imagery ©2022 MassGIS, Commonwealth of Massachusetts EOEa, Maxar Technologies, USDA/FPAC/GEO, Map data ©2022 Google 200 ft



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 29, 1995

PRODUCED IN 1995 BY

07:1 Technologies

11 PUGASSETT STREET LITTLETON CO. 80120
303.322.4549 - WWW.071-TECH.COM

LEGEND	
AREA SURVEYED Ac
AREA CALCULATED Ac
RECORD DIMENSION 100'
SCALED DIMENSION 100'S
MATCH LINE	← M.L. →
WATER	—W—
EXEMPT PROPERTY	⊙
SUBDIVISION LOT NO.	①
ZONE LIMIT	—Z—
RIGHT OF WAY	—R—
COMMON OWNERSHIP	—C—
BUILDING	—B—
WETLANDS	—W—

SCALE 1" = 100'

REVISOR TO: APRIL 1, 2021

PROPERTY MAPS

EXETER

NEW HAMPSHIRE

INDEX DIAGRAM		MAP NO.
82	83	73
74	72	
81	83	

- B. Such proposal does not impair the integrity of the cemetery walls, facilities, drainage, or other physical attributes.
- C. The proposed use does not diminish the general solemnity and solitude of the cemetery setting. In this regard, the Board may require appropriate buffering or screening from such proposed use.
- D. The proposed use does not pose a public safety hazard to the cemetery or patrons thereof.
- E. There are no practical alternatives to the proposed use.

E

6.19 MIXED USE NEIGHBORHOOD DEVELOPMENT

6.19.1 Eligibility for Conditional Use Permit

An applicant may petition the Planning Board for a Conditional Use Permit, in conjunction with Site Plan Review, to develop a Mixed Used Neighborhood Development (MUND) in accordance with the following criteria:

- A. **Allowed as a Use:** MUND must be identified as an allowable use for the zoning district in which the MUND would be developed, per Section 4.2 of the Zoning Ordinance.
- B. **Collection of Uses:** The development would result in a mix of residential and non-residential uses on site. The collection of proposed uses may include only those enumerated in Schedule I for the zoning district in which the MUND would be developed, except that multi-family residential uses will be deemed a permitted use when included as part of a MUND application. Therefore, any multi-family residential units contained within the MUND do not require a Special Exception.
- C. **Required Outcome:** Where the site on an application contains non-residential use, and an applicant proposes infill residential development to complement the non-residential use, or vice versa, the application may be reviewed as a MUND project. A mix of newly developed uses is not required as part of a MUND application so long as the resulting development will include a mix of uses on site.
- D. **Expansions or Alterations to Previous MUND Projects:** Expansions or alternations to projects previously approved as MUND projects may be reviewed under this section of the Zoning Ordinance.

- E. Design and Inclusionary Housing:** Compliance with the terms of 6.19.4 (Inclusionary Housing) and 6.19.5 (MUND Design Standards) is required unless some ability for relief is specifically identified in those sections.

6.19.2 Parking Requirements

A. Minimum Parking Space Requirements

1. For residential use, the minimum number of parking spaces shall be one space per unit regardless of the number of bedrooms.
2. For non-residential use, the minimum requirements listed in Section 5.6.6 of the Zoning Ordinance shall be reduced by 50%.

B. Alternatives to Strict Compliance with Minimum Parking Requirements

The Planning Board may allow the applicant to provide up to 100% of the minimum parking requirements off-site. The applicant must demonstrate, through the use of maps and/or site plans, that the number of spaces is adequate and access will be safe and convenient.

6.19.3 Dimensional Requirements

The dimensional requirements provided in the zoning district in which the MUND would be developed shall govern with the following exceptions. These standards are unique to MUND applications.

A. The C-1 District

1. Minimum front yard setback shall be zero feet.
2. Maximum setback for newly constructed frontage building shall be twenty-five (25) feet. The design of frontage area shall comply with Section 6.19.5.D.
3. For the C-1 District located in Exeter's Downtown—bordered generally by Water Street, Maple Street and Spring Street—this C-1 District shall have a maximum building height of fifty (50) feet or four stories.
4. For the C-1 District located along Portsmouth Avenue, this C-1 District shall have a maximum building height of fifty (50) feet or four stories.
5. For the C-1 District that contains portions of Lincoln Street, Garfield Street, and Rockingham Street, this C-1 District shall have a maximum building height of thirty-five (35) feet.
6. The area per dwelling unit requirement shall not apply to MUND applications.

B. The WC District

1. Minimum front yard setback shall be zero feet.
2. Maximum setback for newly constructed frontage building shall be twenty-five (25) feet. The design of frontage area shall comply with Section 6.19.5.E.
3. Maximum building height shall be fifty (50) feet.
4. The area per dwelling unit requirement shall not apply to MUND applications.

6.19.4 Inclusionary Housing

A. Purpose and Authority

1. Pursuant to the Exeter Master Plan, the Town wishes to expand housing diversity in mixed use districts in order to increase the vibrancy of these districts, stimulate the local economy, and provide access to rental and homeownership options that are not possible in other districts.
2. Pursuant to RSA 647:21, IV(a), MUND (and the associated inclusionary zoning requirement) is one of many allowable uses in the zoning districts where it is offered and is therefore voluntarily pursued by an applicant. Further, consistent with the aforementioned statute, the MUND uses inclusionary zoning in response to a series of incentives, including:
 - a. Maximum multi-family density in the C-1 District is one unit per 3,500 SF. Maximum multi-family density in the WC District is one unit per 750 SF. MUND removes these density caps and allows for parking requirements, maximum building height, and site constraints to dictate the number of allowable residential units.
 - b. Allowable building height is increased in two of the three C-1 Zoning Districts where an applicant pursues MUND.
 - c. Parking requirements for MUND applications are significantly reduced.

B. Restrictions on Sales and Rental Price

1. A minimum of 10% of all units proposed will be sold or rented at the prices specified herein for rental or home ownership. For the inclusionary units, the applicant may propose exclusively rental, exclusively home ownership, or some combination of the two. Units shall be calculated as whole numbers and rounded up. For example, if 22 units of housing are proposed, three units are needed to meet a minimum of 10%.
2. For home ownership, the initial sales price shall be affordable for a household with an income not more than 80% of the HUD area median

- income for a family of four as most recently reported by New Hampshire Housing.
3. For rental property, rental rates shall be affordable to a household with an income not more than 60% of the HUD median area income for a family of three as most recently reported by New Hampshire Housing.
 4. The inclusionary housing units shall be on-site and shall be designed and constructed in a manner that makes them fully consistent in form, materials, architectural details, and internal systems with market rate units in the same development.
 5. Inclusionary housing units will be sold or rented at the required level of affordability in perpetuity using a deed restriction that includes a housing agreement. The deed restriction and housing agreement the owner proposes to use shall be submitted to the Planning Board as part of the development application process. Applicants are encouraged to contact the Planning Department for guidance on the development of an acceptable housing agreement.
 6. No certificate of occupancy shall be issued for an inclusionary housing unit without written confirmation of the income eligibility of the tenant or buyer of the inclusionary housing unit and confirmation of the rent or price of the inclusionary housing unit as documented by an executed lease or purchase and sale agreement.
 7. On-going responsibility for monitoring the compliance with resale and rental restrictions on inclusionary housing units shall be the responsibility of the Planning Board or its designee.
 8. For rental inclusionary units, the owner or his/her designee shall prepare an annual report, due on January 31, certifying that the gross rents of affordable units, the sale and resale price, and the household income of renters/buyers are in compliance with this ordinance. Such reports shall be submitted to the Planning Board or its designee. Failure to submit the annual report, or an annual report that shows non-compliance, will be treated as violations of the Zoning Ordinance.
 9. Where monitoring of income levels in rental inclusionary units shows the tenant no longer qualifies based on increases in income, the next available rental unit in the development shall be rented and restricted to the income level specified in subsection B.3 (above).
 10. Inclusionary units offered for sale and approved by the Planning Board as part of a MUND and subject to RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Exeter. The initial value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town's lien is indexed over time at a rate equal to a consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a

transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the housing unit's fair market value, minus the adjusted lien value.

6.19.5 MUND Design Standards

A. Purpose

Pursuant to the Exeter Master Plan, the Town provides design standards herein to ensure the districts where MUND can occur will continue to develop in a manner that creates active, safe, and walkable neighborhoods. Development approved as part of MUND applications will follow core principles of good urban design by locating buildings, parking areas, sidewalks, and walkways in a manner that facilitates comfortable pedestrian travel. Further, the architectural style of new buildings will incorporate important principles of traditional New England architecture to ensure new construction is consistent with Exeter's architectural heritage. The Town also recognizes that these areas are heavily developed, and it may not be possible to redevelop properties or develop infill projects while strictly adhering to these principles of urban design and traditional architecture. These standards therefore include opportunities to deviate from strict compliance where it is in the best interest of the Town.

B. Applicability of Design Standards

The following design standards apply to MUND applications. These standards are in addition to other building and development standards found in these regulations and supersede other standards where a conflict may exist. As part of the Conditional Permit application, the applicant may propose, and the Planning Board may allow, deviation from any of the design standards below where an applicant can demonstrate one of the following conditions:

1. The proposed deviation represents a need that goes beyond convenience for the applicant or is requested primarily as a cost-saving measure.
2. The scope of site disturbance and construction improvements will not include any work related to a particular site design standard. For example, if a pre-existing parking area will be retained and remain undisturbed through the redevelopment process, the Planning Board may deem that site design standards for parking will not apply and the parking lot may remain in its pre-existing form. The Planning Board shall review these requests on a case-by-case basis and may condition the approval of an application on future improvements to the site creating greater compliance with these design standards.

3. The scope of development and construction improvements will not include any work related to a particular building standard. For example, if a pre-existing building will be retained and unimproved, building standards will not apply and the building may remain in its pre-existing form. The Town may still require conformance with standards related to signage, lighting, and similar features where practicable.
4. The location of pre-existing buildings, utilities, accessways, or other built features creates a situation where it is not practicable to achieve compliance with the design standards.
5. Site topography, the condition of underlying soils, or pre-existing contamination create a situation where it is not practicable to achieve compliance with the design standards.
6. Landscaping requirements would make it impossible to provide parking spaces that would otherwise enable the development of housing.
7. Deviation from site design standards would facilitate better stormwater management or site circulation.

C. Application Contents

The applicant shall provide the materials called for in the Site Plan Review and Subdivision Regulations for the Town of Exeter. It is the responsibility of the applicant to depict site design, architectural elevations, and street level renderings in a manner that allows the Planning Board to clearly determine compliance with these design standards.

D. Circulation

The design of individual properties or groups of properties shall reinforce the purposes of MUND by encouraging pedestrian and bicycle circulation. Pedestrian and bicycle infrastructure shall be provided using the following site design techniques:

1. Pedestrian connections between sidewalks and buildings and between buildings separated by a parking lot shall be designed to be safe, broad, and easily identifiable.
2. Pedestrian connections that cross parking lots must be designed to clearly show that the space is primarily dedicated to pedestrian traffic using raised or alternative surfaces, signage or raised landscaped islands that serve as a safe resting area for pedestrians between automobile travel lanes.
3. Where sidewalks or other pedestrian or bikeways intersect with automobile driveways or lanes, raised surfaces and/or durable, decorative alternatives to conventional pavement must be used to connect sidewalks or bikeways across the automobile lane. On its own, striping across the

asphalt used for an automobile lane to connect sidewalks or walkways is not adequate to achieve this goal.

E. Property Frontage (see Figure 6.19.5.1)

Buildings located along the property frontage (frontage buildings) shall be located and oriented to engage pedestrians that may pass along the frontage of the property.

1. Frontage buildings, whether newly constructed or re-used, shall be connected to the right-of-way in a manner that facilitates pedestrian and/or bicycle activity. The areas between the front façade of frontage buildings and the right-of-way shall accommodate pedestrian/bicyclist space and associated amenities.
2. Travel lanes for automobiles shall not be located in the frontage area except where access driveways into the site are needed.
3. Frontage sidewalks should be reinforced concrete and have a minimum width of eight (8) feet. The Planning Board may approve varied finishes for the reinforced concrete or alternative materials that are consistent with the purposes of MUND. Standard asphalt coverage is not appropriate for sidewalk areas. Where the distance between the edge of pavement in the street and the building façade allows, sidewalks may be greater than eight (8) feet wide. The remainder of this area may include benches, lighting, landscaping, street trees, trash receptacles, and other amenities. Where space in the frontage is adequate, site plans shall identify which amenities the applicant is committed to providing.

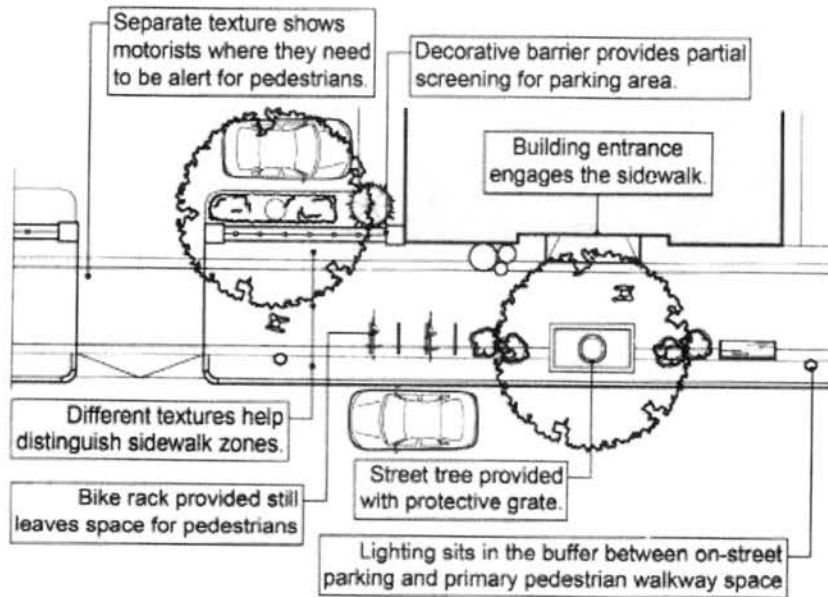


Figure 6.19.5.1

F. Landscaping

1. Street trees must be spaced along the sidewalk at an average frequency of one tree every 40 feet.
2. All areas of a site that are not rendered impervious through the development of structures, parking features, circulation features, or other hardscape features should be landscaped with vegetation.
3. Native species should be used wherever possible in landscaped areas. No tree, shrub, or any other plant shall be installed that has been included on the most recently published list of prohibited plants by the New Hampshire Department of Agriculture, Markets and Food.
4. Landscaping, trees, and plants must be planted in a growing condition according to accepted horticultural best practices and shall be maintained in a healthy growing condition. Where applicable, ANSI A300 Standards for Tree Care Operations, as revised, shall apply. All landscaping shown on plans shall be maintained and any dead or dying vegetation shall be replaced, no later than the following growing season, as long as the site plan remains valid. This condition is not intended to circumvent the revocation procedures set forth in State statutes.

- a. All-Season: Landscaped areas should be designed to remain functional and attractive during all seasons through a thoughtful selection of deciduous, evergreen, berrying, and flowering plant varieties.
- b. Turf: Turf is discouraged and, where it is used, must not be planted in strips less than five (5) feet wide. Turf seed mixes should be drought resistant. To achieve a high level of drought tolerance, turf seed mixes may include, but shall not be limited to, a predominance of fine fescues.
- c. Plant Hardiness: Plant varieties should be selected for cold-hardiness as well as resistance to drought, moisture, salt, urban conditions, or insects and other pests depending on the location of landscaping and the specific stressors anticipated for different areas of the site.
- d. Minimal Care: Plants should be selected so that landscaping can be maintained with minimal care and the need for irrigation, pesticides, or fertilizers can be minimized or eliminated.

G. Surface Parking

1. For surface parking areas associated with newly developed sites, parking areas shall be located behind or to the side of frontage buildings on the property.
2. Where a pre-existing surface parking area is adjacent to a sidewalk, internal walkway, or other pedestrian space, the parking area may remain in use so long as the applicant provides a landscaped buffer between the parking area and the pedestrian space as follows:
 - a. At a minimum, the landscaped buffer shall include a decorative barrier, which may be designed as brick or stone finish walls, decorative fencing, or a combination of these treatments.
 - b. In addition to and inclusive of a decorative barrier, to the extent practicable, the landscaped buffer should include planted areas designed to provide separation between the surface parking area and the pedestrian space while allowing pedestrians to maintain visual awareness between the two areas. The parking area shall not be fully screened from the pedestrian way. (see Figure 6.19.5.2)

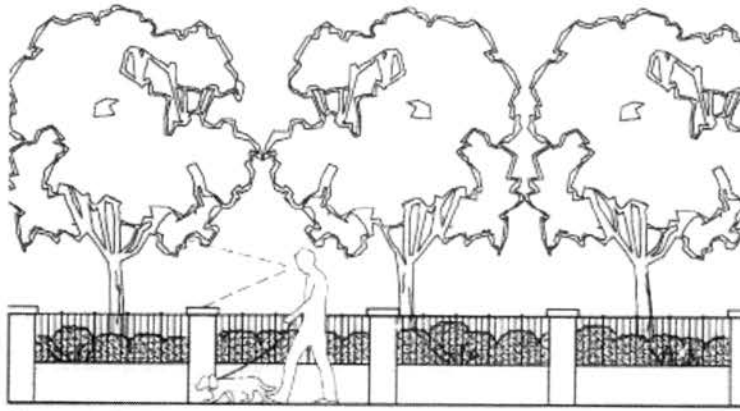


Figure 6.19.5.2

3. For developments with proposed surface parking areas of ten (10) spaces or more, a minimum of ten percent (10%) of the designated parking area shall be landscaped. This calculation may include any landscaped borders surrounding the parking lot where the landscaped borders are predominantly ornamental vegetation and/or are specifically designed to provide stormwater treatment. Borders that are predominantly stone, turf, fencing, or screening shall not be counted toward this requirement.
4. The ends of parking aisles in surface lots that are more than fifteen (15) spaces in length must incorporate landscape islands at either end of the row. Each island shall include at least one tree that is two (2) inches in caliper at the time of planting. Where the length of a parking aisle exceeds twenty-five (25) spaces, additional landscaped islands must be installed at regular intervals. This interval must not be more than every thirteen (13) spaces.
5. Parking areas for five (5) or more cars or any travel lane that lie along a side or rear lot line shall be separated from adjacent properties by a landscaped buffer at least five (5) feet in width. This standard does not apply where the travel lane or parking area is intentionally designed to cross the property line to facilitate better circulation and/or shared parking.

H. Fencing and Screening

1. All solid waste enclosures, service areas, mechanical equipment, and utilities must be screened from view through the use of fencing and/or landscaping that is effectively opaque.
2. Chain link fencing is prohibited in front and side yards within MUND proposals unless it is necessary for security standards unique to the

individual use, is vinyl coated, and is screened using evergreen trees (minimum six (6) feet in height) and/or shrubs.

I. Lighting (see Figure 6.19.5.3)

1. Lighting for parking areas and public/gathering spaces shall be decorative in shape, scale, and finish, with detailed, articulated treatments for the base, post, fixture, and crown. Where decorative street lighting is already installed, the design of proposed lighting standards and fixtures must be consistent with or complementary to said lighting.
2. Light poles and fixtures must not exceed twenty (20) feet in height.
3. Height is measured from finished grade to the highest point of the structure. Structural features used to anchor light standards (e.g., concrete pilings) must not protrude more than six (6) inches from the ground.

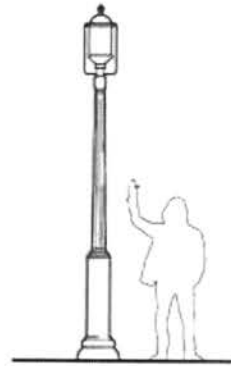


Figure 6.19.5.3

This illustration shows the proper scale and attention to aesthetic detail.

J. Building Form (see Figures 6.19.5.6 and 6.19.5.7)

1. Multi-story buildings must clearly articulate the base, middle (where applicable), and top of the building using cornices, borders of distinct material, or other articulating features on every visible surface of the building.
2. In new non-residential or mixed-use construction, ground floors in a MUND application shall be a minimum of eleven (11) feet from floor to ceiling to enhance the pedestrian streetscape, regardless of the overall building height.
3. All buildings with façades longer than forty (40) feet must articulate the façade with varied rooflines, distinct signage for multiple tenants, awnings, arcades, pilasters, columns, recessed spaces and/or entrances, and any other features that serve to add texture to these longer façades.
4. The front façade of any new frontage building shall be designed to appear as the front of the building and shall have a primary entrance.

K. Building Entranceways (see Figures 6.19.5.6 and 6.19.5.7)

1. All buildings must have a principal façade and entry (with operable doors) facing a street or other area dedicated to pedestrian circulation. Buildings may have more than one principal façade and/or entry. Primary entrances

not facing a street must open onto sidewalks or other designated pedestrian areas that are at least ten (10) feet in width. The street façade must be designed to appear to be a principal point of entry for the building.

2. Main entrances must incorporate architectural features that draw attention to the entrance. These features may include covered porches, distinct sidewalk surfacing, porticos, recessed doorways, and awnings.

L. Roofline Form (see Figures 6.19.5.6 and 6.19.5.7)

1. The roof design for new buildings shall provide a variety of building heights and varied roofline articulation. Local models reflecting traditional New England architecture shall provide context for the selection of roof forms. These models include gables, gambrels, flat roofs, mansards and any jointed configuration of these styles. Decorative spires or towers may also be used to articulate rooflines and to provide focal points within a complex of principal buildings.
2. For new buildings or replacement roofing, industrial style metal materials visible from the street shall not be permitted. Metal roofing materials that use decorative finishes and textures for visual accent may be allowed. Visible metal materials necessary for structural integrity, fastening, sealing or other essential purpose are also allowed.
3. Where flat roof lines are proposed, flat roofs shall have decorative cornices or parapets that shield all views of any mechanical systems located on the roof from the street or from windows at a lower elevation in adjacent buildings.
4. Downspouts shall match or be complementary to gutters in material and finish.
5. Utilities and protuberances through or on the front facing roofs are highly discouraged and should generally be shielded from view.

M. Dormers (see Figure 6.19.5.4)

1. On pitched rooflines, dormers shall be used to break up roof surfaces and shall be provided at a minimum frequency of one per thirty (30) horizontal feet or fraction thereof.
2. Dormer styles may include doghouse, eyebrow, or shed dormers.



Figure 6.19.5.4

The dormer on the left shows the proper scale and form of a dormer window. The dormer on the right provides a window that is too small and shows no aesthetic detail.

3. Windows shall fill the face wall of the dormer to the maximum extent practicable and match the windows in the rest of the building.

N. Fenestration (see Figure 6.19.5.5)

1. Window bays in façades above the first floor (above street level) shall have a minimum width-to-height ratio of 1:2. Multiple bays may be placed immediately adjacent to one another in order to create larger window areas. This does not apply to dormers (see subsection L)
2. Mullion pattern and thickness shall reflect traditional New England design with broad decorative surfaces between windows. Mullion finishes that would be highly reflective or industrial in nature are not allowed.
3. Windows on the ground floor shall begin no lower than two (2) feet above street level and shall extend at a minimum height of seven (7) feet from street level.
4. Clear, non-reflective glass with minimal tinting shall be used at street level to allow maximum visual interaction between pedestrians and the interior of the building.
5. Street level façades shall have a transparency of at least fifty (50) percent.



Figure 6.19.5.5
These windows show how different treatments still comply with the basic design standards.

O. Building Materials

1. Materials and building treatments shall be used that reduce the visibility of buildings from distant vantage points and shall be consistent and compatible with traditional New England design and construction.
2. Where more than one material is used for siding, traditionally heavier materials (stone, brick, concrete with stucco, etc.) shall be located below lighter materials (wood, fiber cement board, siding, etc.). The change in material shall occur along a horizontal line, preferably at the floor level.
3. For finished siding and foundations, natural materials such as brick, stone, wood/concrete clapboards and shingles, and slate are allowed. Asphalt shingles or similar materials for roofing are allowed. High-quality cement-fiber siding designed to preserve the traditional aesthetic character of the district is also allowed.
4. Finish colors should be used to differentiate between important features

(e.g., foundations, entranceways, windows, decorative borders, etc.) and can be used to differentiate between building stories. Generally, it is preferable to use two or three colors inclusive of masonry. The main color(s) on a building should generally be nature blending, earth tone, neutral, or pastel in character. Bright colors should be limited to accent features and/or entranceways. High intensity colors, metallic colors, or fluorescent colors should not be used.

6-33



Figure 6.19.5.6

This image is designed to illustrate several of the MUND Design Standards.

Roofline Form: The image shows the interplay between dormers and jointed roofs. In this case, a jointed gable configuration along the "doghouse" dormers reflects typical New England architecture.

Ground Floor Design: The ground floor is slightly taller than floors above it and incorporates a high level of transparency to visually connect people on the sidewalk with what is available inside the building.

Entrances: The entranceways to the building are made more prominent through the use of signage and different materials.

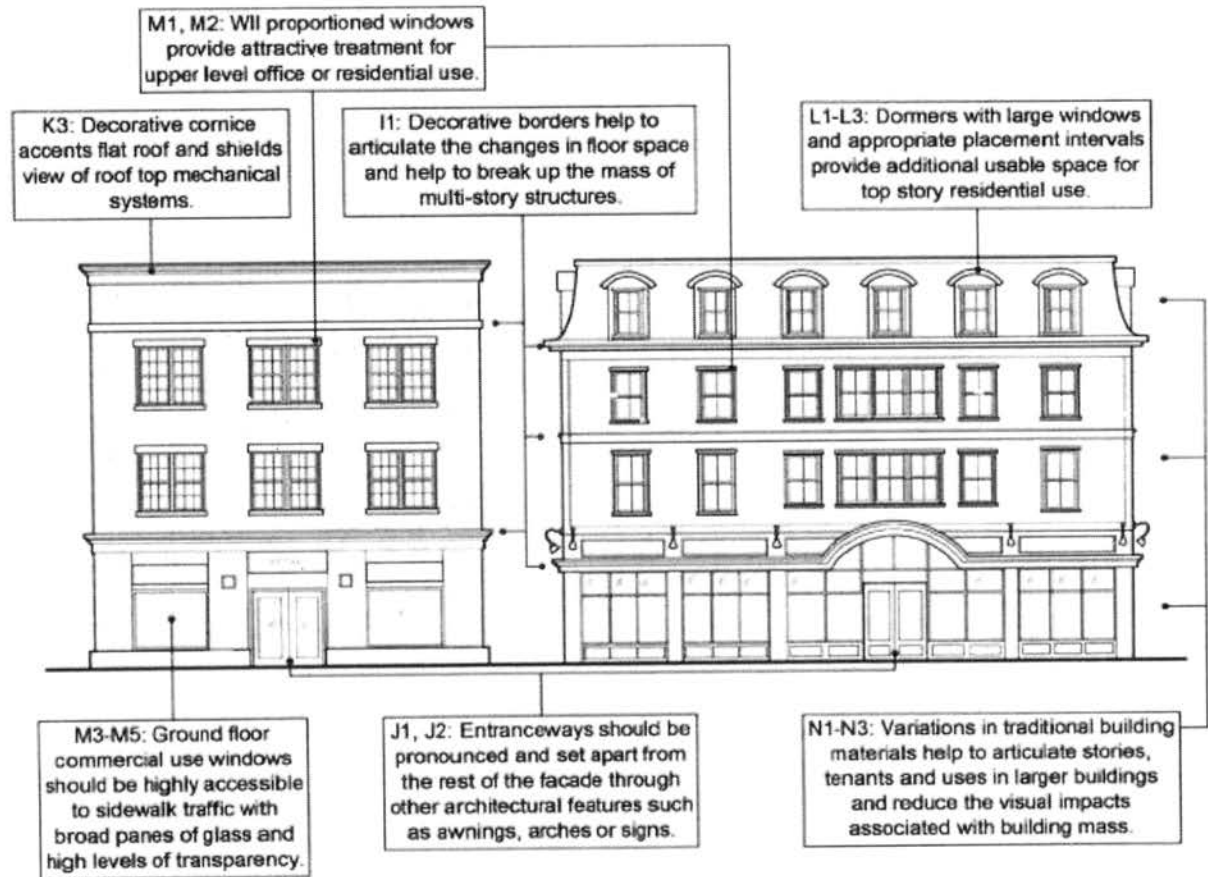


Figure 6.19.5.7

Twenty Nine Garfield Street, LLC
9672 Warburton Drive
Huntington Beach, CA 92646
Tax Map 73 /Lot 225

Twenty Nine Garfield Street, LLC
9672 Warburton Drive
Huntington Beach, CA 92646
Tax Map 73 /Lot 225

Twenty Nine Garfield Street, LLC
9672 Warburton Drive
Huntington Beach, CA 92646
Tax Map 73 /Lot 225

Gregory L. Coussoule
25 Kossuth Street
Exeter, NH 03833
Tax Map 73/Lot 201

Gregory L. Coussoule
25 Kossuth Street
Exeter, NH 03833
Tax Map 73/Lot 201

Gregory L. Coussoule
25 Kossuth Street
Exeter, NH 03833
Tax Map 73/Lot 201

Boston and Marine Railroad Corporation
1700 Iron Horse Park
North Billerica, MA 01862
Tax Map 73/Lot 194

Boston and Marine Railroad Corporation
1700 Iron Horse Park
North Billerica, MA 01862
Tax Map 73/Lot 194

Boston and Marine Railroad Corporation
1700 Iron Horse Park
North Billerica, MA 01862
Tax Map 73/Lot 194

Michelle C. Wasserman
James S. Applegarth
28 Garfield Street
Exeter, NH 03833
Tax Map 73/Lot 224

Michelle C. Wasserman
James S. Applegarth
28 Garfield Street
Exeter, NH 03833
Tax Map 73/Lot 224

Michelle C. Wasserman
James S. Applegarth
28 Garfield Street
Exeter, NH 03833
Tax Map 73/Lot 224

Garfield St Investment Trust
27 Garfield Street
Exeter, NH 03833
Tax Map 73/226

Garfield St Investment Trust
27 Garfield Street
Exeter, NH 03833
Tax Map 73/226

Garfield St Investment Trust
27 Garfield Street
Exeter, NH 03833
Tax Map 73/226

Town of Exeter
10 Front Street
Exeter, NH 03833
Tax Map 73/Lot 275

Town of Exeter
10 Front Street
Exeter, NH 03833
Tax Map 73/Lot 275

Town of Exeter
10 Front Street
Exeter, NH 03833
Tax Map 73/Lot 275

R. Timothy Phoenix
127 Parrott Avenue
Portsmouth, NH 03801

R. Timothy Phoenix
127 Parrott Avenue
Portsmouth, NH 03801

R. Timothy Phoenix
127 Parrott Avenue
Portsmouth, NH 03801

Millennium Engineering, Inc.
c/o Henry Boyd
PO Box 745
Exeter, NH 03833

Millennium Engineering, Inc.
c/o Henry Boyd
PO Box 745
Exeter, NH 03833

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c/o Henry Boyd
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Exeter, NH 03833

Dennis Mires, P.A
697 Union Street
Manchester, NH 03104

Dennis Mires, P.A
697 Union Street
Manchester, NH 03104

Dennis Mires, P.A
697 Union Street
Manchester, NH 03104

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

December 19, 2022

VIA EMAIL & US MAIL

Robert Prior, Vice-Chair
Exeter Zoning Board of Adjustment
10 Front St.
Exeter, NH 03833

Re: Twenty-Nine Garfield Street LLC, Owner/Applicant
29 Garfield St., Exeter, NH
Tax Map 73/Lot 225
C-1, MUND Zones
Case#22-21

Dear Vice-Chair Prior:

This matter is scheduled to be heard before the Exeter Zoning Board of Adjustment on December 20, 2022. The reason for the extension is the lack of a full five-member board for the December meeting. We respectfully request to be continued to the February 21, 2023 Zoning Board Meeting. The two-month extension is necessitated because I have a conflict due to previously scheduled hearings in another town on the date of the January 17, 2023 meeting.

Very truly yours,


R. Timothy Phoenix

RTP/msw

cc: Client (email)
Millennium Engineering (email)
Dennis Mires, P.A. (email)
Attar Engineering (email)

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON

OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN



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
ELAINE L. HOEPPNER
WILLIAM K. WARREN

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

February 6, 2023

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

Re: 14 Hobart Street, Tax Map 74, Lot 88

Dear Chair Baum and Board Members:

Enclosed please find Application for Special Exception to convert the single-family home at 14 Hobart Street into four units using the existing buildings on the property. Also enclosed is supporting information, abutter list and labels and check in the amount of \$210.00 for filing and abutter fees.

We respectfully request that this matter be placed on the Board's February 21, 2023 agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Janine Richards
Alex Ross, P.E.

S:\RA-RL\Richards, Janine & David\2023 02 06 ZBA Filing\2023 02 06 ZBA Letter.docx

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

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

SPECIAL EXCEPTION

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

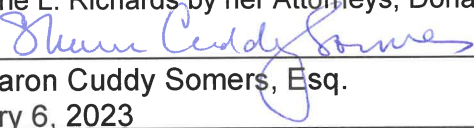
Name of Applicant Janine L. Richards
(If other than property owner, a letter of authorization will be required from property owner)

Address 14 Hobart Street, Exeter, NH 03833

Telephone Number (603) 501-9268

Property Owner same

Location of Property 14 Hobart Street, Map 74, Lot 88, R-2 and Shoreland Protection District

Applicant Janine L. Richards by her Attorneys, Donahue, Tucker & Ciandella
Signature 
Date February 6, 2023

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

APPLICATION FOR A SPECIAL EXCEPTION

1. **Currently existing use and/or situation:** _____

single family home with detached barn and garage

2. **Proposed use and/or situation:** _____

Conversion of the existing home into 2 units and conversion of the barn and garage to living units for a total of four (4) units

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

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

Existing Conditions Plan

Site Plan

Annotated Tax Map

Tax Card

APPLICATION FOR SPECIAL EXCEPTION:

Special Exceptions:

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

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

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

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

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

see attached

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

see attached

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

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

see attached

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

see attached

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

see attached

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

see attached

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

see attached

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

see attached

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

N/A

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

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

N/A

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

ZONING BOARD OF ADJUSTMENT

**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.

Janine Richards – 14 Hobart Street
Application For Conversion of Existing Single Family Home into Two Dwelling Units and
Conversion of Existing Accessory Structures into Two Dwelling Units

INTRODUCTION

Janine L. Richards is the owner of Map 74, Lot 88, located at 14 Hobart Street, Exeter, New Hampshire. The property is situated in the R-2 zone and within the Shoreland Protection District. The property is depicted on Exhibit 1, Existing Conditions Plan and Exhibit 2, Site Plan. The property includes an existing single family home which the applicant seeks permission to convert into two residential units. The property also contains a barn and an existing garage, both of which are accessory to the primary residential use and both of which the applicant seeks permission to convert into a total of two residential units. If the requests for relief are granted, then a total of four residential units will exist on the property. Access to the street will be provided by an existing curb cut serving the existing house and the existing garage and a new driveway will provide additional access to the existing house and to the barn. The property is served by municipal water and sewer.

CRITERIA FOR SPECIAL EXCEPTION
SET FORTH IN ARTICLE 4, SECTION 4.2, SCHEDULE I, NOTES 1 AND 2

The buildings to be converted are all existing and are either a principal residential structure or accessory structures thereto. No more than four dwelling units will result from the requested conversion.

Adequate off street parking is provided and complies with Article 5, Section 5.6, off street parking, which requires 2 spaces for each 2+ bedroom unit and 1 additional guest space per every 4 units. The total required parking is 9 spaces for all units and this calculation is based on 3-4 bedrooms in unit 1, 3 bedrooms each in units 2 and 3 and 2 bedrooms in unit 4. Garage space for three of the four units will address the majority of on-site parking demand and there is adequate space in the driveway to meet any remaining demand.

The minimum lot size in the district is 15,000 sq feet per dwelling. Each of the four units will be provided with at least 5,000 square feet of lot size per dwelling required by this district for a total of 20,000 square feet. As a result of the lot line adjustment completed in 2021, the total size of the lot is now 46,308 sq feet which more than satisfies the lot size requirement.

The existing residential structure has been a residence since 1920 (see attached Tax Card).

The lot meets the 20% open space requirement.

The applicant intends to convey the units as condominium units, and to prevent all from becoming rental units, the condominium documents will require that the units be owner occupied.

Garages will be added to the existing residential structure and the proposed unit to be created from the barn. Each garage will be no larger than 400 sq feet in accordance with the provision of Schedule I notes (g).

CRITERIA FOR SPECIAL EXCEPTION
SET FORTH IN ARTICLE 5 , SECTION 5.2, SPECIAL EXCEPTION CRITERIA

The use is a permitted special exception under Article 4, Section 4.2, Section I.

The use is designed, located and proposed to be operated so as to protect the public health, safety and welfare in that adequate off street parking is available and the property is served by municipal water and sewer.

The proposed use of stand-alone residential units are compatible with the zone district and post 1972 development which is adjacent to the property because adjacent lots contain residential uses and several properties contain more than one residence, located at Map 74, Lots 86 (2 units), 89 (2 units), 102 (2 units), 104 (2 units), 121 (5 units) and 117 (2 units) (See attached Exhibit 3).

Adequate landscaping and screening are provided.

Adequate off street parking is provided as described above and two approved driveways will serve the converted buildings.

The use conforms with all applicable regulations governing the district in that the structures to be converted conform to use and dimensional regulations, and, to the extent that any dimensional irregularities may exist, they are pre-existing non-conforming uses.

Planning Board approval of the site plan will be required as this is a project with four residential structures.

The use will not adversely affect abutting or nearby property values because the proposed use will remain residential and adjacent properties contain either single family residences or residences containing between 2 and 5 units.

14 HOBART ST

Location 14 HOBART ST

Mblu 74 / 88 / 1

Acct# K5701R

Owner RICHARDS JANINE L

Assessment \$314,900

Appraisal \$314,900

PID 3147

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2021	\$153,500	\$161,400	\$314,900

Assessment			
Valuation Year	Improvements	Land	Total
2021	\$153,500	\$161,400	\$314,900

Parcel Addresses

Additional Addresses
No Additional Addresses available for this parcel

Owner of Record

Owner RICHARDS JANINE L
Co-Owner
Address 14 HOBART ST
EXETER, NH 03833

Sale Price \$181,000
Certificate
Book & Page 5670/2078
Sale Date 11/03/2015
Instrument 37

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
RICHARDS JANINE L	\$181,000		5670/2078	37	11/03/2015
WELLS FARGO BANK	\$232,700		5613/0803	51	12/29/2014
GLEASON DAVID E	\$125,000		3464/1734	00	04/03/2000
KLEMARCZYK JANET C	\$0		3089/2951		

Building Information

Building 1 : Section 1

Year Built: 1920
Living Area: 2,070
Replacement Cost: \$243,391
Building Percent Good: 60
Replacement Cost Less Depreciation: \$146,000

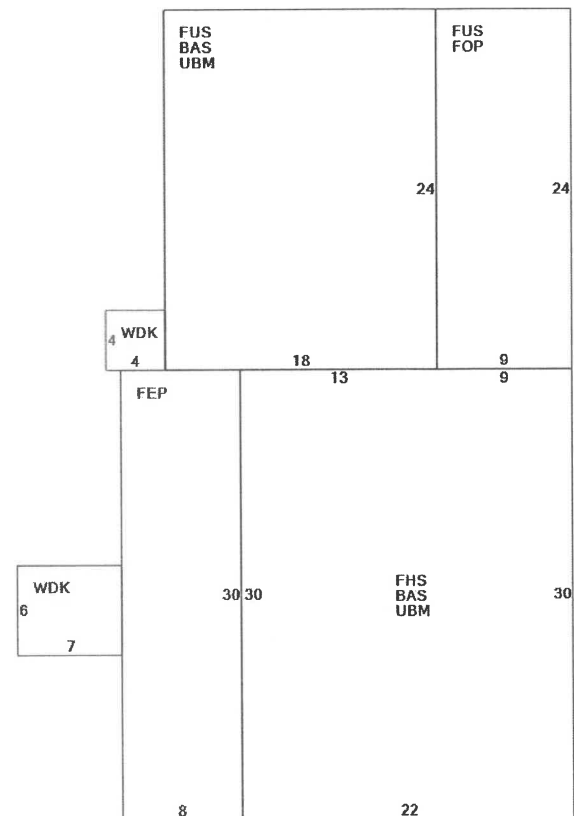
Building Attributes	
Field	Description
Style:	Cape Cod
Model	Residential
Grade:	Average
Stories:	1 1/2 Stories
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Plastered
Interior Wall 2	Drywall/Sheet
Interior Flr 1	Hardwood
Interior Flr 2	Inlaid Sht Gds
Heat Fuel	Oil
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	3 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	
Total Rooms:	7
Bath Style:	Average
Kitchen Style:	Average
Num Kitchens	01
Cndtn	
MHP	
Fireplaces	
Fndtn Cndtn	
Basement	

Building Photo



(<https://images.vgsi.com/photos/ExeterNHPhotos/A00\01\12\148.jpg>)

Building Layout



(ParcelSketch.ashx?pid=3147&bid=3147)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,092	1,092
FUS	Upper Story, Finished	648	648
FHS	Half Story, Finished	660	330

FEP	Porch, Enclosed, Finished	240	0
FOP	Porch, Open, Finished	216	0
UBM	Basement, Unfinished	1,092	0
WDK	Deck, Wood	58	0
		4,006	2,070

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Use Code 1010
Description Single Fam MDL-01
Zone R-2
Neighborhood 50
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 0.86
Frontage 0
Depth 0
Assessed Value \$161,400
Appraised Value \$161,400

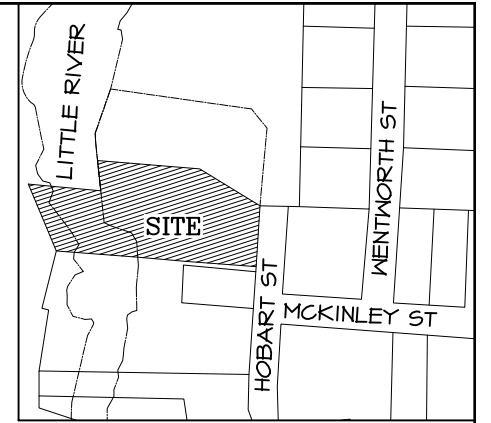
Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Assessed Value	Bldg #
BRN5	2 STORY			580.00 S.F.	\$4,100	1
FGR1	GARAGE-AVE			480.00 S.F.	\$2,900	1
RPV1	PAVED DRIVE - SM			1.00 UNITS	\$500	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2021	\$153,500	\$161,400	\$314,900
2020	\$153,500	\$161,400	\$314,900
2019	\$153,500	\$161,400	\$314,900

Assessment			
Valuation Year	Improvements	Land	Total
2021	\$153,500	\$161,400	\$314,900
2020	\$153,500	\$161,400	\$314,900
2019	\$153,500	\$161,400	\$314,900



**LOCUS PLAN
N.T.S.**

NOTES

- 1) OWNER OF RECORD:
JANINE L RICHARDS REVOCABLE TRUST-2022
TAX MAP 74, LOT 88
14 HOBART ST
EXETER, NH 03833
RCRD: 6444-1232
AREA: 46,308 SF, 1.06 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #2.
- 3) PARCEL IS IN RESIDENTIAL SINGLE FAMILY ZONE (R-2) & SHORELAND PROTECTION DISTRICT:
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACKS:
FRONT.....25 FT
SIDE.....15 FT
REAR.....25 FT
MAXIMUM BUILDING HEIGHT.....35 FT
MAXIMUM BUILDING COVERAGE.....25%
MINIMUM OPEN SPACE.....40%
MAXIMUM LOT COVERAGE.....10%
- 4) THE PARCEL IS PARTIALLY WITHIN FEMA FLOOD ZONE AE AND REGULATORY FLOODWAY "LITTLE RIVER", AS PER FLOOD INSURANCE RATE MAP #33015C0401E, PANEL 401 OF 681, DATED MAY 17, 2005. VERTICAL DATUM IS NGVD 1921.
- 5) AS PER EXETER ZONING ORDINANCE 9.3.3.A, THIS LOT IS WITHIN THE SHORELAND PROTECTION DISTRICT.
- 6) NO BUILDING, SEPTIC SYSTEM, OR LEACH FIELD SHALL BE CONSTRUCTED WITHIN 150' OF THE SHORELINE OF THE LITTLE RIVER AS PER EXETER ZONING ORDINANCE 9.3.4.C.
- 7) NO ALTERATION OF NATURAL VEGETATION OR MANAGED WOODLAND WITHIN 75 FEET OF THE SHORELINE OF THE LITTLE RIVER IS PERMITTED AS PER EXETER ZONING ORDINANCE 9.3.4.E.

REFERENCE PLANS

- 1) "SUBDIVISION PLAN" BY JONES & BEACH ENGINEERS, INC. DATED JULY 23, 2013. RCRD D-38224
- 2) "LOT LINE ADJUSTMENT HOBART STREET EXETER N.H." BY T.D. BROUILLETTE LAND SURVEYING DATED MARCH 8, 2013. RCRD D-37114

3	2/6/2023	ZBA SUBMITTAL
2	1/3/2023	FOR REVIEW
1	10/7/2022	FOR REVIEW
ISS.	DATE	DESCRIPTION OF ISSUE
SCALE 1" = 40'		
CHECKED	A.ROSS	
DRAWN	D.D.D.	
CHECKED		

ROSS ENGINEERING, LLC
Civil/Structural Engineering & Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

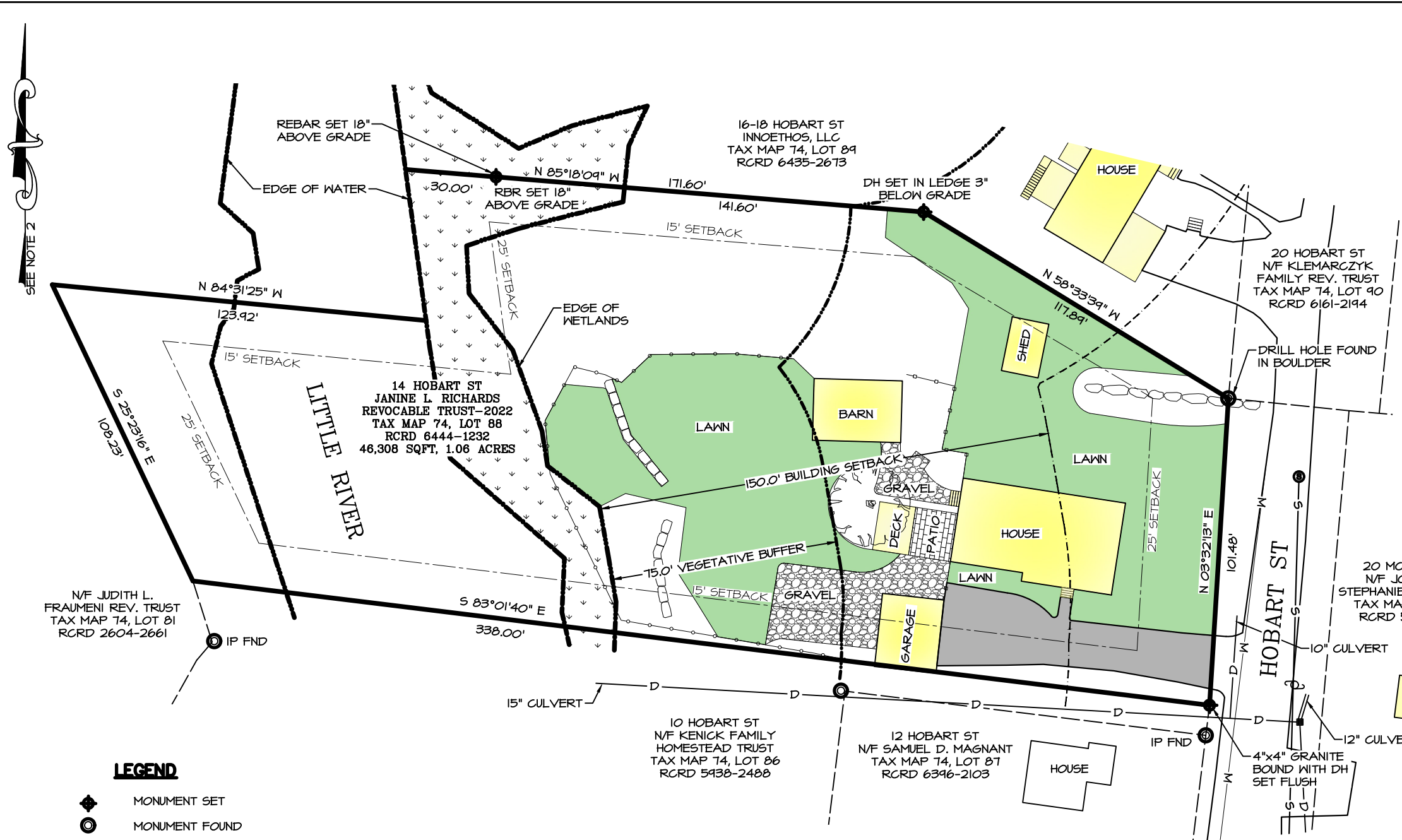
CLIENT
DAVID A. RICHARDS
14 HOBART ST
EXETER, NH 03833

TITLE

EXISTING CONDITIONS PLAN

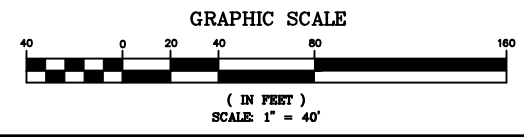
**14 HOBART ST
EXETER, NH 03833
TAX MAP 74, LOT 88**

JOB NUMBER	DWG. NO.	ISSUE
22-049	1 OF 2	2

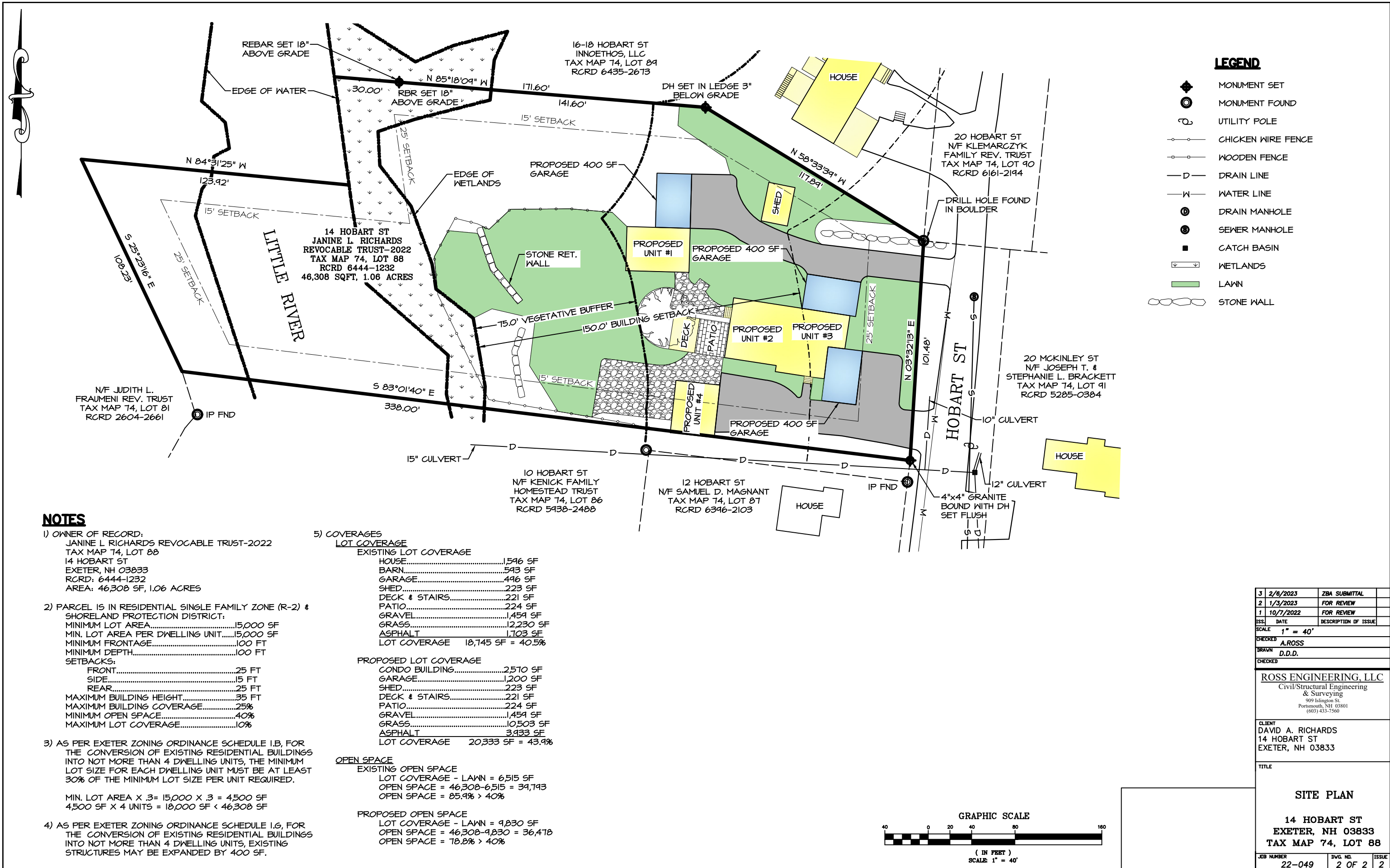


LEGEND

- ◆ MONUMENT SET
- ⊙ MONUMENT FOUND
- ⊕ UTILITY POLE
- CHICKEN WIRE FENCE
- WOODEN FENCE
- D— DRAIN LINE
- W— WATER LINE
- ⊙ DRAIN MANHOLE
- ⊙ SEWER MANHOLE
- CATCH BASIN
- ▭ WETLANDS
- LAWN
- ⊕ STONE WALL



SEE NOTE 2



LEGEND

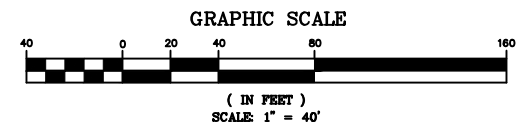
- ◆ MONUMENT SET
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- W— WATER LINE
- ⊙ DRAIN MANHOLE
- ⊙ SEWER MANHOLE
- CATCH BASIN
- ▭ WETLANDS
- ▭ LAWN
- ⊕ STONE WALL

- NOTES**
- 1) OWNER OF RECORD:
 JANINE L RICHARDS REVOCABLE TRUST-2022
 TAX MAP 74, LOT 88
 14 HOBART ST
 EXETER, NH 03833
 RCRD: 6444-1232
 AREA: 46,308 SF, 1.06 ACRES
 - 2) PARCEL IS IN RESIDENTIAL SINGLE FAMILY ZONE (R-2) & SHORELAND PROTECTION DISTRICT:
 MINIMUM LOT AREA.....15,000 SF
 MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
 MINIMUM FRONTAGE.....100 FT
 MINIMUM DEPTH.....100 FT
 SETBACKS:
 FRONT.....25 FT
 SIDE.....15 FT
 REAR.....25 FT
 MAXIMUM BUILDING HEIGHT.....35 FT
 MAXIMUM BUILDING COVERAGE.....25%
 MINIMUM OPEN SPACE.....40%
 MAXIMUM LOT COVERAGE.....10%
 - 3) AS PER EXETER ZONING ORDINANCE SCHEDULE 1.B, FOR THE CONVERSION OF EXISTING RESIDENTIAL BUILDINGS INTO NOT MORE THAN 4 DWELLING UNITS, THE MINIMUM LOT SIZE FOR EACH DWELLING UNIT MUST BE AT LEAST 30% OF THE MINIMUM LOT SIZE PER UNIT REQUIRED.

 MIN. LOT AREA X .3= 15,000 X .3 = 4,500 SF
 4,500 SF X 4 UNITS = 18,000 SF < 46,308 SF
 - 4) AS PER EXETER ZONING ORDINANCE SCHEDULE 1.G, FOR THE CONVERSION OF EXISTING RESIDENTIAL BUILDINGS INTO NOT MORE THAN 4 DWELLING UNITS, EXISTING STRUCTURES MAY BE EXPANDED BY 400 SF.

5) COVERAGES

LOT COVERAGE	
EXISTING LOT COVERAGE	
HOUSE.....	1,596 SF
BARN.....	593 SF
GARAGE.....	496 SF
SHED.....	223 SF
DECK & STAIRS.....	221 SF
PATIO.....	224 SF
GRAVEL.....	1,459 SF
GRASS.....	12,230 SF
ASPHALT.....	1,703 SF
LOT COVERAGE	18,745 SF = 40.5%
PROPOSED LOT COVERAGE	
CONDO BUILDING.....	2,510 SF
GARAGE.....	1,200 SF
SHED.....	223 SF
DECK & STAIRS.....	221 SF
PATIO.....	224 SF
GRAVEL.....	1,459 SF
GRASS.....	10,503 SF
ASPHALT.....	3,933 SF
LOT COVERAGE	20,333 SF = 43.9%
OPEN SPACE	
EXISTING OPEN SPACE	
LOT COVERAGE - LAWN =	6,515 SF
OPEN SPACE =	46,308 - 6,515 = 39,793
OPEN SPACE =	85.9% > 40%
PROPOSED OPEN SPACE	
LOT COVERAGE - LAWN =	9,830 SF
OPEN SPACE =	46,308 - 9,830 = 36,478
OPEN SPACE =	78.8% > 40%



3	2/6/2023	ZBA SUBMITTAL	
2	1/3/2023	FOR REVIEW	
1	10/7/2022	FOR REVIEW	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE 1" = 40'			
CHECKED	A.ROSS		
DRAWN	D.D.D.		
CHECKED			
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Kingston St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT DAVID A. RICHARDS 14 HOBART ST EXETER, NH 03833			
TITLE SITE PLAN 14 HOBART ST EXETER, NH 03833 TAX MAP 74, LOT 88			
JOB NUMBER	DWG. NO.	ISSUE	
22-049	2 OF 2	2	

Exhibit 3



**ABUTTER LIST
14 HOBART STREET
TAX MAP 74, LOT 88**

Owner/Applicant:
74/88

Janine L. Richards
14 Hobart Street
Exeter, NH 03833

Abutters:
74/81

Judith Fraumeni, Trustee
Judith Fraumeni Revocable Trust
7 Glen Drive
Lynnfield, MA 01940

74/89

Innoethos, LLC
14 Hobart Street
Exeter, NH 03833

74/92

Geoffrey & Tanya Simard
2 Crestview Drive
Exeter, NH 03833

74/91

Joseph & Stephanie Brackett
16 Mckinley Street
Exeter, NH 03833

74/87

Samuel Douglas Magnant
Paige Lindsey Smith
12 Hobart Street
Exeter, NH 03833

74/86

Joseph Kenick, Trustee
Kenick Family Homestead Trust
10 Hobart Street
Exeter, NH 03833

74/90

David & Ashley Klemarczyk, Trustees
Klemarczyk Family Trust
20 Hobart Street
Exeter, NH 03833

74/93

Brett & Katherine Kostolansky
4 Crestview Drive
Exeter, NH 03833

ATTORNEY:

Sharon Cuddy Somers, Esq.
Donahue, Tucker & Ciandella
16 Acadia Lane
Exeter, NH 03833

ENGINEER:

Alex Ross
Ross Engineering, LLC
909 Islington Street, Suite 6
Portsmouth, NH 03801

S:\RA-RL\Richards, Janine & David\2023 02 06 ZBA Filing\2023 02 02 Abutter List.docx

LETTER OF AUTHORIZATION

I, Janine L. Richards, owner of property depicted on Tax Map 74, Lot 88, 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:

2/1/23


Janine L. Richards



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

February 6, 2023

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

Re: 25 Clover Street, Tax Map 64, Lot 66

Dear Chair Baum and Board Members:

Enclosed please find Application for Variances construct a modest addition to the property at 25 Clover Street. Also enclosed is supporting information, abutter list and labels and check in the amount of \$210.00 for filing and abutter fees.

We respectfully request that this matter be placed on the Board's February 21, 2023 agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Samuel Lightner
Henry Boyd

S:\LA-L\Lightner, Samuel\ZBA Materials\2023 02 06 ZBA Letter.docx

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

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

Address 25 Clover Street, Exeter, NH 03833

Telephone Number (603) 781-6917

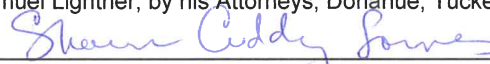
Property Owner same

Location of Property 25 Clover Street, Exeter, NH 03833

Map 64, Lot 66, R-3 Zone

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

Applicant Samuel Lightner, by his Attorneys, Donahue, Tucker & Ciandella

Signature 
Sharon Cuddy Somers, Esq.

Date Feb 6, 2023

*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 4 section 4.3, Schedule II of the Exeter zoning ordinance to permit:
a front yard setback of 12+/- feet where 25 feet is required

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.**

APPLICATION FOR VARIANCE

Samuel Lightner (“Lightner”) is the owner of property located at 25 Clover Street, further identified as Town Tax Map 65, Lot 66 (the “Property”). The Applicant seeks variance relief to permit a modest addition to the existing dwelling on the Property. The proposed addition will be situated at the front of the existing building and portions of the addition will encroach into the front yard setback (See Exhibit 1 – Variance Plan, Exhibit 2, Architectural and Floor Plans). As a result, the following relief will be required:

1. Article 4, Section 4.3, Schedule II, to permit a front setback of 12 +/- feet where 25 feet is required.

FACTS SUPPORTING THIS REQUEST:

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

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly and to a marked degree violate the relevant ordinance’s basic zoning objectives. In this case, the basic zoning objective is to avoid overcrowding or safety issues in the residential neighborhood by virtue of encroachment into front yard setbacks. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the neighborhood or whether it would threaten public health, safety or welfare. The proposal will not alter the essential character of the locality or threaten public health, safety or welfare. Rather, it will be consistent with the neighborhood which contains residential uses on relatively modest lots (see Exhibit 3 – Tax Map). Therefore, granting the variances will not alter the essential character of the neighborhood. Further, the modest addition will not threaten public health, safety or welfare.

2. The spirit of the ordinance is observed:

The New Hampshire Supreme Court has virtually merged the variance “public interest” standard with the “spirit of the ordinance” standard. The primary spirit of the Zoning Ordinance is to avoid overcrowding in a relatively densely populated neighborhood. As described above, granting the requested variances will have no meaningful impact to the essential character of the neighborhood. The Property will continue to appear consistent with the neighborhood. As a result, the spirit of the underlying ordinance is observed.

3. Substantial justice is done:

The relevant analysis under this element of the variance criteria is a balancing test, weighing the benefits and losses to the applicant and the public and whether the loss to the applicant of denying the variance is outweighed by a gain to any individual or to the public at large. As a result of the lot configuration, Lightner is unable to proceed with a modest addition which is an appropriate use of the property, and yet still comply with the setbacks. Here, the loss to Lightner if the variance is denied is that Lightner will not have the ability to construct the addition to expand the home’s living space. By contrast, there is no discernible gain to any individual or to the public from the denial of the variances, and certainly none that would outweigh the loss to Lightner if the variance

is denied and the expansion of the home's living space is not possible. Accordingly, substantial justice is done by granting the requested variance and denying the variance would be a substantial injustice based on the facts described above.

4. The values of surrounding properties are not diminished:

Given its minimal impact as explained above, the granting of the requested variance will not diminish the value of surrounding properties as it will remain as a residential use in an existing residential neighborhood and the proposed addition will be compatible with other residential structures in the vicinity. No additional traffic, noise or disruption is anticipated and granting the requested variance will enable the reasonable use of the property.

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

- (A) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

The subject property is irregularly shaped in that the front yard is configured such that it has varying widths along Clover Street (See Exhibits 1 and 3). Further, it is a corner lot and the east side of the house which might otherwise be a logical spot for the addition has a large maple tree which provides aesthetic value to the house and possibly to abutting properties as well (See Exhibit 4). The Applicant wishes to keep the maple tree intact and healthy, and these objectives will not be feasible if construction interferes with the tree. Likewise, the west side of the property contains a children's play area which is undesirable for construction. These facts, together with the current building configuration, make situating the addition in a different location on the property difficult. Given these facts, a denial of the Lightner request would result in an unnecessary hardship.

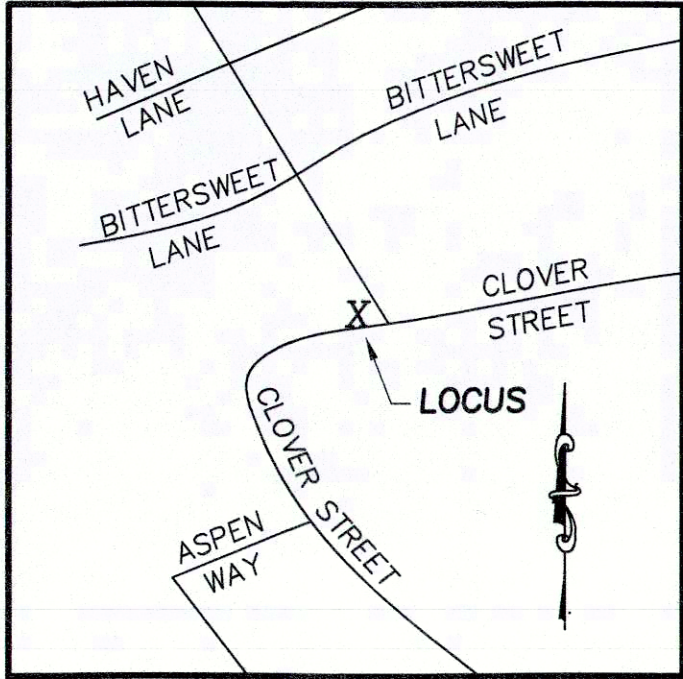
- (B) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The purpose of the zoning ordinance is to prevent a sense of overcrowding because of the encroachment into the setbacks. Here, in this densely populated neighborhood with relatively small lots, the addition will be consistent with the neighborhood and not give the appearance of an overly developed lot in the context of the neighborhood. Given the irregular shape of the lot and other limitations imposed by the current configuration of the building as well as the location of the maple tree, the denial of the request would be unreasonable.

- (C) The proposed use is a reasonable one:

The proposed residential addition is reasonably proportional to the size of the existing structure and will provide needed living space while not interfering with the existing garage.

Lightner respectfully concludes that all five criteria for the variance requested have been met so that this variance should be granted as presented.



- NOTES:**
- 1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
 - 2) THIS PARCEL DOES NOT LIE WITHIN A FLOOD ZONE SEE F.I.R.M. COMMUNITY PANEL 330130 0402 E EFFECTIVE DATE MAY 17, 2005.
 - 3) ELEVATIONS ARE BASED ON N.A.V.D.88.

ZONING DISTRICT

R-3 RESIDENTIAL

MINIMUM REQUIREMENTS

AREA FRONTAGE	12,000 S.F. 100'
BUILDING SETBACKS	
FRONT	25'
SIDE	15'
REAR	25'

RECORD OWNER

64
66
SAMUEL LIGHTNER
25 CLOVER STREET
EXETER, NH 03833
BK. 5062 PG. 0746
8,188 S.F.
0.19 ACRES

EXISTING IMPERVIOUS AREA
INCLUDES DECKS AND STEPS
2,582 S.F.=31.5% OF LOT AREA

PROPOSED IMPERVIOUS AREA
INCLUDES DECKS AND STEPS
2,875 S.F.=34.9% OF LOT AREA

EXISTING BUILDING COVERAGE AREA
INCLUDES DECKS AND STEPS
1,670 S.F.=20.4% OF LOT AREA

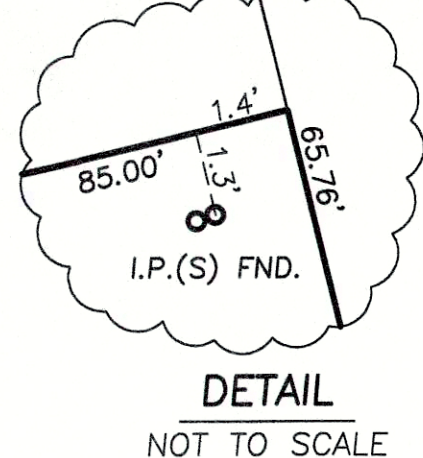
PROPOSED BUILDING COVERAGE AREA
INCLUDES DECKS AND STEPS
1,944 S.F.=23.7% OF LOT AREA

LEGEND

- I.P. IRON PIPE
- I ROD IRON ROD FOUND
- (00) ASSESSORS MAP AND PARCEL
- ⊗ WATER SHUT OFF
- UTILITY POLE
- OHW --- OVER HEAD WIRE
- ⊙ SEWER MAN HOLE
- ⊙ DRAIN MAN HOLE
- CATCH BASIN
- S — SEWER SERVICE (UNKNOWN)
- G — GAS SERVICE
- W — WATER SERVICE (UNKNOWN)

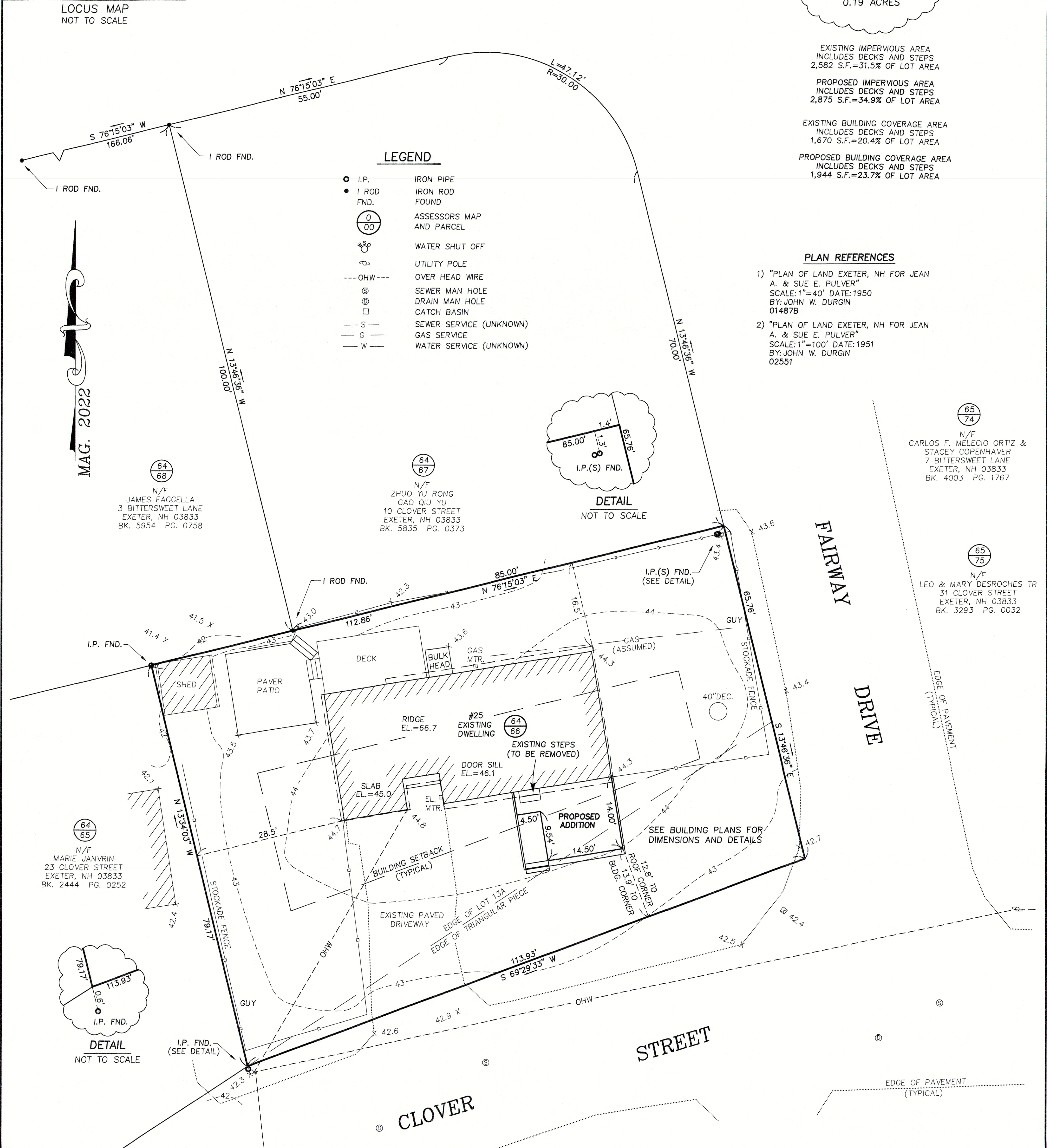
PLAN REFERENCES

- 1) "PLAN OF LAND EXETER, NH FOR JEAN A. & SUE E. PULVER"
SCALE: 1"=40' DATE: 1950
BY: JOHN W. DURGIN
01487B
- 2) "PLAN OF LAND EXETER, NH FOR JEAN A. & SUE E. PULVER"
SCALE: 1"=100' DATE: 1951
BY: JOHN W. DURGIN
02551



65
74
N/F
CARLOS F. MELECIO ORTIZ &
STACEY COPENHAVER
7 BITTERSWEET LANE
EXETER, NH 03833
BK. 4003 PG. 1767

65
75
N/F
LEO & MARY DESROCHES TR
31 CLOVER STREET
EXETER, NH 03833
BK. 3293 PG. 0032

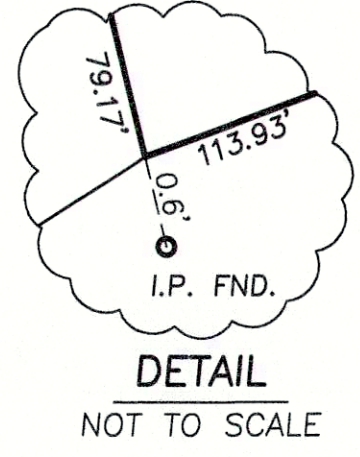


MAG. 2022

64
68
N/F
JAMES FAGGELLA
3 BITTERSWEET LANE
EXETER, NH 03833
BK. 5954 PG. 0758

64
67
N/F
ZHUO YU RONG
GAO QIU YU
10 CLOVER STREET
EXETER, NH 03833
BK. 5835 PG. 0373

64
65
N/F
MARIE JANVRIN
23 CLOVER STREET
EXETER, NH 03833
BK. 2444 PG. 0252

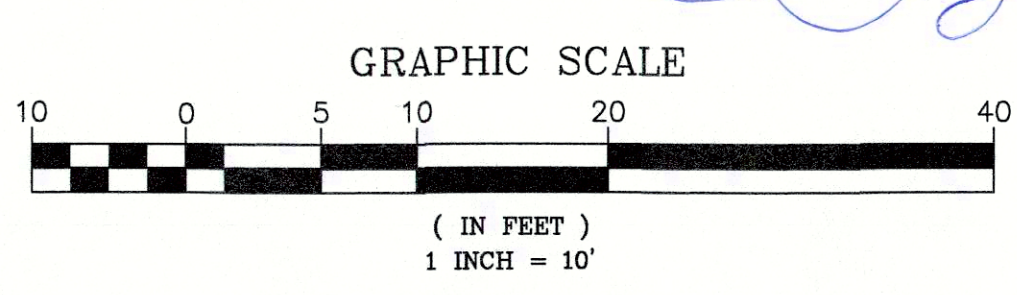


I CERTIFY:
THAT THIS ACTUAL SURVEY WAS MADE
ON THE GROUND IN AUGUST OF 2022.

THAT THIS SURVEY CONFORMS TO THE
REQUIREMENTS FOR ACCURACY FOR
N.H. URBAN SURVEY.

65
85
N/F
CAROL A. SCOGGINS REV. TR.
26 CLOVER STREET
EXETER, NH 03833
BK. 6400 PG. 1341

STATE OF NEW HAMPSHIRE
LICENSED LAND SURVEYOR
No. 604
HENRY H. BOYD, JR.
DATE: 02-06-2023



UTILITIES NOTE
THE LOCATION OF UTILITIES SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY OTHERS, AND WHERE POSSIBLE FROM MEASUREMENTS TAKEN IN THE FIELD, AND ARE FOR INFORMATIONAL PURPOSES ONLY. THE CONTRACTOR SHALL CONTACT "DIGSAFE" AT 1-888-344-7233 AT LEAST 72 HOURS PRIOR TO ANY EXCAVATION TO REQUEST MARKING OF UNDERGROUND UTILITIES. MILLENNIUM ENGINEERING, INC., ASSUMES NO RESPONSIBILITY FOR ANY DAMAGES INCURRED DIRECTLY OR INDIRECTLY RESULTING THEREFROM.

VARIANCE PLAN
IN
EXETER, NH

SHOWING
A PROPOSED ADDITION
AT 25 CLOVER STREET
(ASSESSORS MAP 64 LOT 66)

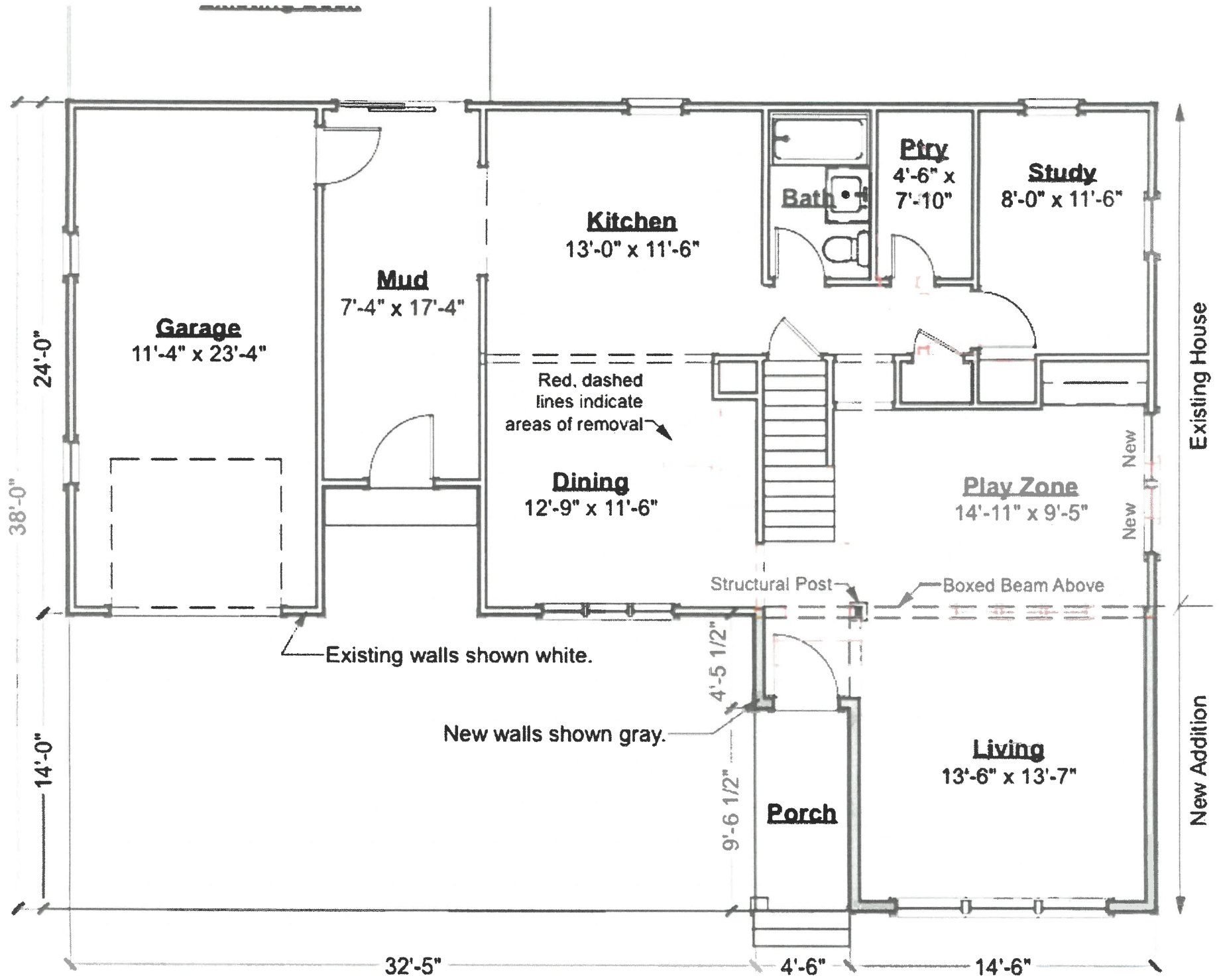
RECORD OWNER
SAMUEL LIGHTNER
25 CLOVER STREET EXETER, NH 03833

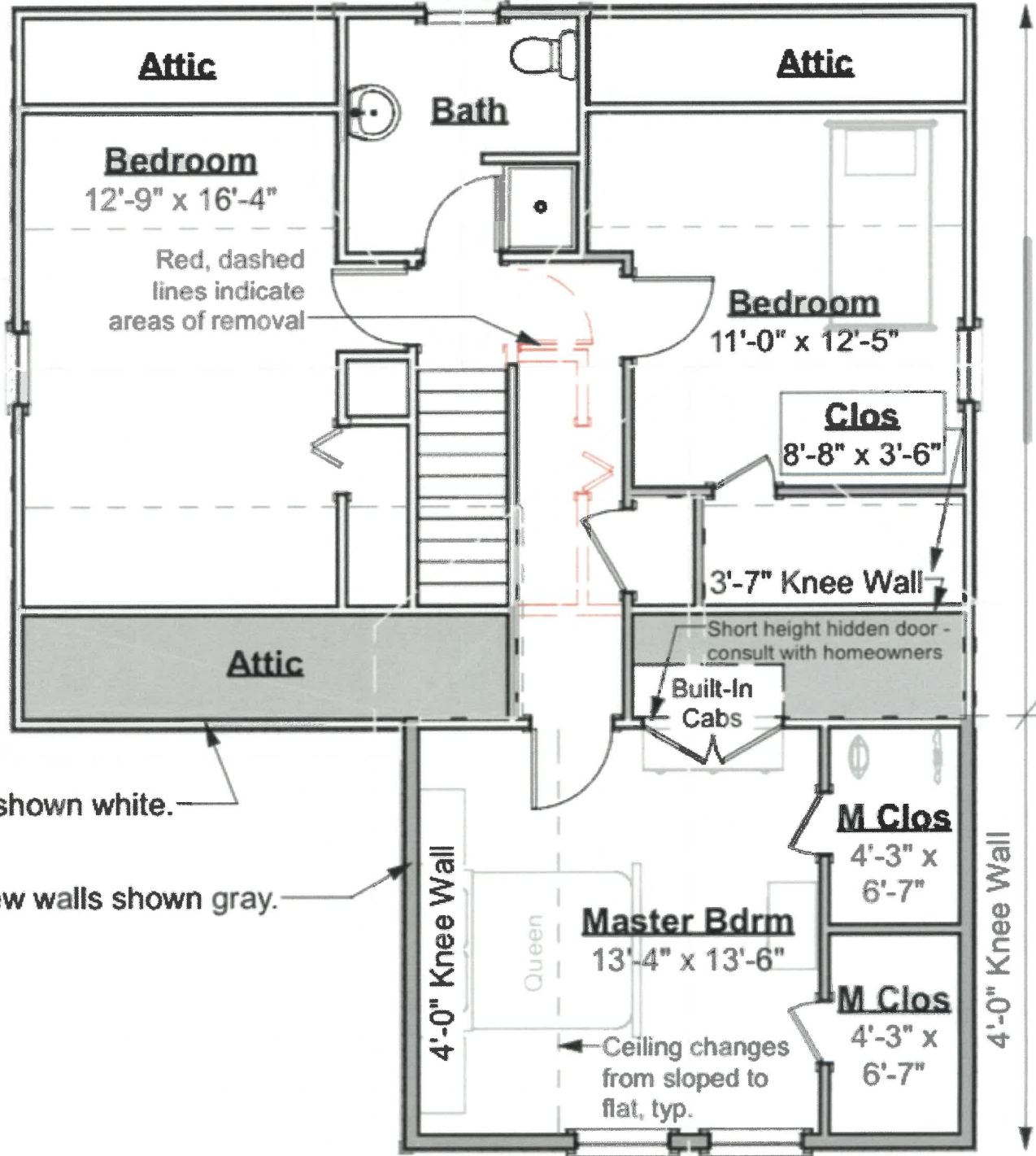
MILLENNIUM ENGINEERING INC.
ENGINEERS AND LAND SURVEYORS
P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833
PHONE: (603) 778-0528 FAX: (603) 772-0689 WWW.MEI-NH.COM

SCALE: 1"=10' DRWN. BY: R.S.G. PROJECT: E222929
DATE: FEB. 06, 2023 CHKD. BY: H.H.B.



©2022 Art Form Architecture, Inc.
Add/Reno - Lightner Residence





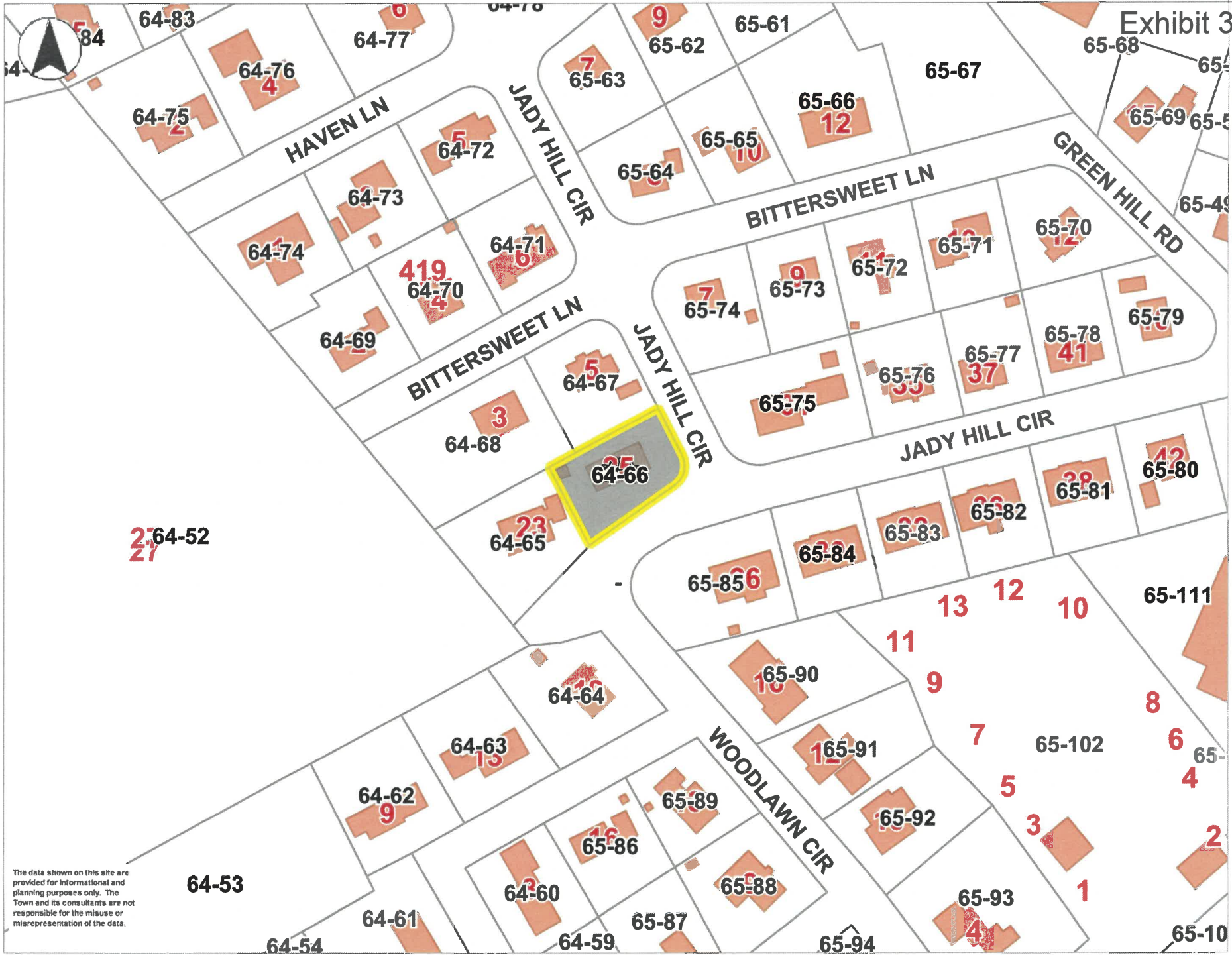
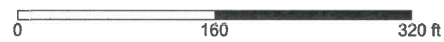


Exhibit 3



- Parcels
- NH Highways
 - Interstate
 - US Highway
 - State Highway
- Town Boundary
- Abutting Towns
- Streets (Updated Feb 2015)
- Misc Streams
- Parcel Streams
- Open Water
- Buildings

The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.



Printed on 12/08/2022 at 03:53 PM





**SAMUEL LIGHTNER
TAX MAP 65, LOT 66
25 CLOVER STREET
ABUTTER LIST**

OWNER/APPLICANT:

64/66 Samuel Lightner
25 Clover Street
Exeter, NH 03833

ABUTTERS:

64/64 Geoffrey Long
19 Clover Street
Exeter, NH 03833

65/85 Carol Scoggins, Trustee
26 Clover Street
Exeter, NH 03833

65/84 Kimberly Olson
PO Box 714
North Hampton, NH 03862

64/65 Marie Janvrin
23 Clover Street
Exeter, NH 03833

64/68 James & Anne Marie Faggella
3 Bittersweet Lane
Exeter, NH 03833

64/67 Yu Rong Zhuo
Yu Qiu Gao
10 Clover Street
Exeter, NH 03833

65/75 Leo & Mary Desroches
31 Clover Street
Exeter, NH 03833

65/74 Carlos Ortiz
Stacy Copenhaver
7 Bittersweet Lane
Exeter, NH 03833

ATTORNEY:

Sharon Cuddy Somers, Esq.
Donahue, Tucker & Ciandella, PLLC
16 Acadia Lane
Exeter, NH 03833

SURVEYOR:

Henry Boyd
Millennium Engineering
13 Hampton Road
Exeter, NH 03833

S:\LA-L\Lightner, Samuel\ZBA Materials\2023 01 24 abutter list.docx

LETTER OF AUTHORIZATION

I, Samuel Lightner, owner of property depicted on Tax Map 64, Lot 66, 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: 2/2/2023


Samuel Lightner