



TOWN OF EXETER, NEW HAMPSHIRE

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

www.exeternh.gov

LEGAL NOTICE EXETER ZONING BOARD OF ADJUSTMENT AGENDA

The Exeter Zoning Board of Adjustment will meet on Tuesday, August 15, 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 Aaron Jefferson for a variance from Article 5, Section 5.1.2 B. for a change to an existing non-conforming use to permit a small auto repair operation on the property located at 165A Kingston Road. The subject property is located in the R-1, Low Density Residential zoning district. Tax Map Parcel 115-12. ZBA Case #23-12.

OTHER BUSINESS:

- Approval of Minutes: July 18, 2023

EXETER ZONING BOARD OF ADJUSTMENT

Robert V. Prior, Chairman

Posted 08/04/23: Exeter Town Office, Town of Exeter website

Town of Exeter
Zoning Board of Adjustment
July 18, 2023, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Robert Prior, Vice-Chair Esther Olson-Murphy, Clerk Theresa Page, Laura Davies, Kevin Baum, and Laura Montagno - Alternate.
Deputy Town Code Enforcement Officer Barb McEvoy was also present.

Members Absent: Martha Pennell - Alternate and Joanne Petito - Alternate.

Call to Order: Chair Robert Prior called the meeting to order at 7 PM.

I. **New Business**

- A. The application of Gateway at Exeter for a variance to modify the terms of a previously granted variance from Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.3 Schedule II: Density & Dimensional Regulations (ZBA Case #19-07) to permit a multi-family residential complex as part of a mixed-use development plan for property located on Epping Road. The proposed modification will require that 20% of the residential units qualify as workforce housing rental units as defined under the InvestNH Capital Grant Program where the prior approval required that 25% of the units qualify as workforce housing rental units as defined under the NH State Workforce Housing statute. The subject property is located in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-6 and #47-7. ZBA Case #23-10.

Morgan Hollis, an Attorney at Gottesman & Hollis of Nashua, spoke representing Gateway at Exeter LLC. Also present were Tom Monahan, the Principal of Gateway at Exeter LLC, and Paul Roy, the Business Manager of ProCon, the contractor on the project.

Attorney Hollis said this is a property which received a variance from the ZBA on May 21, 2019, to allow a multi-family residential complex as a portion of a mixed-use development. 25% of the residential units were to be defined as workforce housing as defined by NH law. The Planning Board approved it as a subdivision where the commercial part was subdivided off from the residential, and an area was subdivided off as conservation land. It came back to this Board on March 15, 2022 for clarification on technical matters and a one-year extension of the original ZBA approval, which was granted. The client has since begun construction. However, times have changed since 2019, especially the cost of construction and labor, which have nearly doubled. Interest rates have gone from near-zero to around 6%. In the original agreement, 25% of the rents would have been capped at the 60% AMI [average median income] rate, which now would

45 not generate enough money to pay for the project. The State of NH came out
46 with the Invest NH Grant program, which will give a grant if you meet their criteria
47 for workforce housing. Under this program, rents can be at 80% of AMI, meaning
48 higher rents than the State Workforce Housing threshold, and there is a lower
49 threshold, 20% of units rather than 25%. We're asking the Board to modify their
50 2019 approval to 20% of units as workforce, and workforce will be defined as
51 80% of AMI rent. If the Board approves this modification, funding can be attained,
52 and the project will go forward. The town will still receive the benefit of additional
53 housing, and the town will also receive \$10,000 per unit for 44 units, or \$440,000,
54 from Invest NH to address housing needs. There's no change other than the rent,
55 which means that some people will not be able to afford it, and that the
56 percentage of units goes down slightly. It will not change the density, design, or
57 layout of the project.

58 Attorney Hollis discussed the variance criteria as previously approved. He
59 said that the most difficult determination was related to variance criteria 5), that
60 literal enforcement of the zoning ordinance will result in an undue hardship. He
61 said that the Board determined that this is a unique piece of property, and that
62 has not changed. Previously, the applicant presented that the restriction
63 prohibiting multi-family in this zone has no fair and substantial relationship to the
64 purpose of the zoning restriction. This is still a multi-family project, so there is no
65 change there. Finally, the multi-family use with some affordable workforce
66 component was a reasonable use for this project. The overall number of units
67 and the density of units has not changed, so we think this is still a reasonable
68 use for this property. We believe the hardship criteria was met properly and
69 continues to be met notwithstanding the change in this condition.

70 Attorney Hollis continued with the criteria: 1) The variance will not be
71 contrary to the public interest; yes, in 2019, the Board found that it was in the
72 public interest to have more housing available, because of the shortage, and to
73 have a component of the housing be workforce housing. That has not changed,
74 so we believe that the application with the changed condition is still not contrary
75 to the public interest. 2) The spirit of the ordinance will be observed; yes, the
76 spirit and intent of the ordinance is keeping the values of property in the town. In
77 this case the housing, density, and location of this property would be in keeping
78 with the spirit and intent of the ordinance. Raising the rents slightly and lowering
79 by 5% the amount of affordable units does not change that determination. 3)
80 Substantial justice is done; yes, in 2019 the Board determined that granting a
81 variance would allow reasonable use of the property without any adverse impact
82 on private or public rights, so the balance falls to the benefit of the applicant. At
83 least there's an option here for workforce housing, and if the modification to the
84 variance is granted, that will continue on. 4) The value of surrounding properties
85 will not be diminished; yes, it was determined that there would be no adverse
86 impact from 224 units with 25% of those units at 60% AMI rents, and there is no
87 change to the impact by the change we're requesting.

88 Attorney Hollis added that the costs of the project have changed from
89 \$39M to \$57M.

90 Mr. Prior said the number 25% which was approved in 2019 was
91 suggested by the applicant. The cost of construction and financing have gone up;
92 what has the change in rents been in that period? Is there a way of quantifying
93 the increase in the cost of construction, rents, and financing? He thinks the cost
94 of rent has also gone up significantly. Mr. Monahan said rents have gone up, but
95 they haven't caught up to the interest rate increase or the construction cost
96 increase. The numbers that Attorney Hollis mentioned were only the hard costs;
97 the soft costs would be another 15% or 20%, around \$10M. The rents that we
98 would be charging today under the 80% AMI would be \$1,775 for a one bedroom
99 and \$2,130 for a two bedroom, including utilities. Mr. Prior asked what the
100 change would have been from 2019, but Mr. Monahan said he didn't know; the
101 rents have gone up considerably, but not commensurately. Mr. Baum said
102 looking in the minutes of the 2019 meeting, the applicant indicated that the rent in
103 2019 would have been \$1,270, but it's not clear whether that was a one or two
104 bedroom. Mr. Monahan said that would have been a one-bedroom at 60%. In
105 2019, we had our financing, but we ran into a problem with a Planning Board
106 condition that took a year or two to be resolved. In that time, we had Covid, and
107 following that rates went from zero to 6%.

108 Mr. Prior said 20% of the units would be 44.8, so it could be 44 or 45. Mr.
109 Monahan said we have to round up. Mr. Prior asked if that 20% number is
110 mandated by the grant program. Attorney Hollis said yes, that's the minimum
111 number from the grant. Mr. Prior asked if the grant financing is guaranteed. Mr.
112 Monahan said yes, we received the largest grant given by the State, although we
113 haven't received the money. We need this approval and to substantially complete
114 the project in two years to receive it.

115 Mr. Baum asked if the 30 year rental-only restriction of the original
116 approval would still apply. Attorney Hollis said yes.

117 Mr. Baum said in 2019 we talked about the site not going for any density
118 bonuses under the town Site and Subdivision regulations. Is that still the case?
119 Attorney Hollis said yes. Mr. Monahan said we were talking about a density
120 based on 67 acres, but we've deeded 45 of those 67 acres to the Town of Exeter
121 Conservation Commission. We've also paid the State wetland mitigation fees of
122 almost \$200,000.

123 Ms. Davies asked about the \$440,000 grant going to the Town of Exeter.
124 Mr. Prior said we just made it \$450,000 [by specifying 45 units rather than 44].
125 Mr. Monahan said the 25% would have been 56 units or \$560,000 to the Town.
126 This is part of Invest NH and the \$100M Covid money they received. 70% went
127 to hard building construction and 30% to running the business. Towns also have
128 the opportunity to apply, and he believes that Darren [Winham] and Russ [Dean]
129 have already applied. The grant is unrestricted, but Invest NH prefer it to be used
130 for some sort of affordable housing component.

131 Ms. Davies said going from 60% of AMI to 80% of AMI is a 33% increase,
132 which is a significant increase to a renter. It's a lot less affordable. When the
133 Board talked about why we were granting the variance, it's because we were
134 very impressed by the generous workforce housing proposal. It's disappointing to
135 see it become less units and less affordable. You're going to the minimum
136 numbers. Is there any play in there to make it more generous to the community?
137 Mr. Monahan said one of the main issues of financing is debt service coverage
138 ratio. Under the NH Housing Finance Authority, you have to be at 1.17% rate. In
139 the real world, the number's about 1.21%. At 20% [of units], he's at 1.10%; that
140 doesn't cover the ratio, which means that more equity is required. At 1.17%, will
141 require about \$6M extra dollars to cover the equity. This is the only way we can
142 make it work. If it were up to him, there would be 56 families living there now, but
143 it can't happen. Mr. Prior asked if the number of units was flexible. From 56 to 45
144 is a loss of 11 units. Mr. Monahan said he doesn't think he can do it. He looks at
145 this development as a family legacy development. He could make more money
146 with a food truck than he can here over the next few years. It will be manageable
147 at 20%.

148 Mr. Prior opened for public comment, but there was none. He closed the
149 public session and went into Board deliberations.

150 Ms. Davies said she's disappointed that it's not what the Board approved,
151 but she knows that these are the market conditions. This much housing would
152 make a difference for Exeter. We don't have enough rental housing period, not
153 just the workforce housing. Would the entire project remain rental housing? Mr.
154 Baum said that was his understanding, and he doesn't think that's changed. Ms.
155 Davies said it's a plus having 45 workforce units, although \$1,775 for a one-
156 bedroom is not that affordable.

157 Mr. Baum said he agrees that it's better than nothing, although it's not
158 where we wanted to be. There were a number of reasons and conditions that we
159 found that variance criteria were met. We also considered the preservation of
160 wetlands and the conveyance to the town of that land. It would all be rental, and
161 not for sale. It's disappointing that we won't have the same numbers and it won't
162 be as affordable, but that was just one factor in finding that the variance criteria
163 were met.

164 Ms. Page said that if we tie it back to the variance criteria, the conditions
165 are in place to ensure that the spirit of the ordinance is observed and that
166 substantial justice is done. There's the balancing act we have between the public
167 and the applicant. Although the balance has changed, it doesn't shift the balance
168 to where the criteria is no longer met.

169 Mr. Baum said at the time [the variance was granted], one of our biggest
170 concerns was the interplay between the residential use and the light
171 industrial/commercial use, and that's not changed by this. Ms. Davies said she
172 thinks the proximity to all this employment is a good thing, although that's not the
173 way our ordinance is written right now.

174 Mr. Prior asked if the Board would like to go through the variance criteria
175 again. Mr. Baum said he doesn't think the change proposed affects the
176 conditions.
177

178 Ms. Davies moved to approve the application of Gateway at Exeter for a variance to modify the
179 terms of a previously granted variance to permit a multi-family residential complex as part of a
180 mixed-use development plan, with the modification proposed: that 45 units, rather than 56, will
181 qualify as workforce housing rental units as defined under the InvestNH Capital Grant Program,
182 where the prior approval required that 56 of the units qualify as workforce housing rental units
183 as defined under the NH State Workforce Housing statute. Additionally, we're acknowledging
184 that the rental rate will be based on 80% of AMI for our area rather than 60%. Mr. Baum
185 seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Page, Ms. Davies, and Mr. Baum voted aye, and
186 the motion passed 5-0.

187
188 B. The application of 43 Winter Street LLC for a special exception per Article 4,
189 Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
190 conversion of an existing single-family residence into two (2) residential
191 condominium units. The subject property is located at 43 Winter Street. in the R-
192 2, Single Family Residential zoning district. Tax Map Parcel #63-21. ZBA Case
193 #23-11.

194 Brian Allen and Alex Higley of 43 Winter Street LLC were present to
195 discuss the application. Mr. Allen said the house has been around since 1890. It
196 started as a single-family farmhouse, was converted to a two-family and then a
197 three-family, and then went back to a single-family. We are proposing to turn it
198 back into a two-family home with condos, with both units for rental use. It's a five-
199 bedroom home and the need in Exeter for a five-bedroom home is not there in
200 the way that there is need for a two- and three-bedroom unit.

201 Mr. Prior asked Mr. Allen to describe the construction taking place. Mr.
202 Allen said when we purchased the home, it was in unlivable conditions. The
203 bathrooms didn't work and there was a slope in the kitchen floor due to broken
204 floor joists. It had leaking water. When we removed the drywall to investigate the
205 issues, we decided that turning it back into a two-family makes more sense. The
206 front of the home is the original 1800s home with the basement, and that would
207 be the two-bedroom unit of 1,400 square feet; the back unit would be 1,600
208 square feet. The back unit is three different iterations of construction, including a
209 recent addition of a staircase to the second unit which was removed about 10
210 years ago. Mr. Prior asked if that meant the work they're doing now is changing
211 the footprint of the building, and Mr. Allen said yes, with a 12' x 18' addition which
212 was approved by the Building Department. It's smaller than the addition that was
213 removed 10 years ago.

214 Ms. Davies said she's concerned that the proposal is increasing
215 impervious surfaces on the property with the addition and the driveway. Mr. Allen
216 said we've hired a site contractor to address that and the water relating to the
217 sump pump.

218 Mr. Prior asked if they would keep the existing driveway on the left of the
219 building and add a new driveway on the right, and Mr. Allen said yes, ideally we
220 would have two driveways, one for each unit. The size of the second driveway
221 could be smaller. We had proposed it to have enough space for two cars plus
222 guest parking for both units, so there would be no street parking. There are no
223 granite curbs in front of the house, but we wanted to have only off-street parking.
224 Ms. Davies said the drawing is vague and it looks like a giant driveway. Mr. Allen
225 said it was a rough estimate and we can make it smaller. The existing driveway
226 holds 2 vehicles, so we wanted the new driveway to fit 2 vehicles plus a guest
227 space for each unit. Ms. Davies said that's more than required. You only need 5
228 for two units. Mr. Allen said he would be okay with changing it to 5. Ms. Davies
229 asked if he would accept this as a condition, and Mr. Allen said yes.

230 Mr. Prior asked Ms. McEvoy if there would be any issue with adding a
231 second curb cut to the property, and Ms. McEvoy said the applicant would have
232 to ask the DPW. People can do a horseshoe driveway now. Where it would be is
233 up to the DPW.

234 Mr. Baum asked if there's a need for two driveways. Mr. Allen said the
235 current driveway only fits two vehicles, and extending it wouldn't work because it
236 would take up 50% of the yard. It's only 12 feet wide. Mr. Baum said the existing
237 driveway is on the property line with a neighbor. Mr. Prior suggested having a
238 single driveway on the right side of the house, eliminating the existing driveway.
239 They may want to discuss that with DPW. It would give them a single place to
240 plow.

241 Ms. Davies asked if access to the property on the corner of Whitley Road
242 is from Winter Street or Whitley. Mr. Allen said Winter Street. Ms. Davies said it
243 seems like a lot of driveways in a small area.

244 Mr. Prior said there's a building that encroaches on the property. Mr. Allen
245 said he thinks it's a tax map issue. We don't think the neighbor's garage is on our
246 property.

247 Ms. Montagno asked if they intended the units to be rental units. Mr. Allen
248 said we would like to hold them. Our financing is a commercial construction loan
249 that we'd like to transfer to us holding them as rental units. Ms. Montagno said
250 one of the units must remain owner-occupied. Mr. Allen said that's why we would
251 like to go for the condos, where we would own them both and rent them as
252 condos with the option to sell one or both in the future. 5 Winter Street, which is
253 five houses down, has two condos on a smaller lot. Mr. Prior asked if that's ok,
254 and Ms. McEvoy said yes, as long as they're condos.

255 Mr. Baum asked how big the addition is, and Mr. Allen said 12'x18'. Ms.
256 Page said the restriction is 400 square feet, and this would be 216 square feet.
257 Mr. Baum said it's less than the restriction. Ms. Page asked if it's in the same
258 place as the previous addition, and Mr. Allen said roughly yes. Mr. Baum said he
259 considers that to be gone and not existing, as it was removed 10 years ago, but it
260 does come in under the 400 square foot restriction. The Board can allow some
261 expansion. He asked Ms. McEvoy if she and Mr. Eastman are comfortable with

262 the dimensions and setbacks, and Ms. McEvoy said yes. Mr. Prior asked if they
263 have a building permit for the 12'x18' addition, and Mr. Allen said yes.

264 Mr. Prior asked for public comment, but there was none. He closed the
265 public session and entered into Board deliberations.

266 Ms. Davies said she would like to add the condition of only five parking
267 spaces plus whatever travel space is necessary. Mr. Prior said he doesn't think
268 we can mandate having one driveway instead of two, but we've made our
269 position clear on that. Ms. Davies said she doesn't think we can say they should
270 get rid of the existing driveway. Mr. Baum said he thinks we could, but it's hard to
271 know exactly what we're looking at with the limited information provided. It might
272 be that one driveway is worse due to conditions on the site. They are only asking
273 for the conversion, so we know that setbacks, building coverage, and open space
274 are met. That mitigates some of the concerns about the driveway. Ms. Davies
275 said it's a grandfathered structure and an existing driveway. We can only have a
276 say about the new driveway and the conversion. Ms. Davies asked Ms. McEvoy
277 if they have to comply with lot coverage restrictions, and Ms. McEvoy said we
278 can take a look at that when we determine where the driveway will be with Public
279 Works.
280

281 Ms. Davies moved to approve the application of 43 Winter Street LLC for a special exception
282 per Article 4, Section 4.2 Schedule I and Article 5, Section 5.2 to permit the conversion of an
283 existing single-family residence into two (2) residential condominium units, with the condition
284 that the paving onsite will be limited to that necessary to support five standard-sized parking
285 spaces and any necessary travel ways and turn-arounds. Ms. Olson-Murphy seconded. Mr.
286 Prior, Ms. Olson-Murphy, Ms. Page, Ms. Davies, and Mr. Baum voted aye, and the motion
287 passed 5-0.

288
289 **II. Other Business**

290 A. Approval of Minutes: June 20, 2023
291 Corrections: Ms. Page said in line 100, *Ms. Stewart* asked if it will require an occupancy permit
292 and septic approval, but it should read *Ms. Page*.

293 Mr. Baum moved to approve the minutes as amended. Ms. Olson-Murphy seconded. Mr. Prior,
294 Ms. Olson-Murphy, Ms. Page, and Mr. Baum voted aye, and the motion passed 4-0.

295
296 **III. Adjournment**
297

298 Mr. Baum moved to adjourn. Ms. Page seconded. All were in favor and the meeting was
299 adjourned at 8 PM.

300
301 Respectfully Submitted,
302 Joanna Bartell
303 Recording Secretary



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DENISE A. POULOS
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DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
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RETIRED
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ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

July 31, 2023

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

Re: 165A Kingston Road, Map 115, Lot 12

Dear Chairman Baum and Board Members:

The subject property is located in Zone R-1 and is a non-conforming use containing a commercial/industrial structure used for welding, storage of equipment for an excavation company and repair of the equipment associated with the excavation company. In more recent times, the property has also been used for storage of material for a landscape company and repair of the equipment associated with the landscape company and repair of various pieces of equipment of the owner.

The owner of the property, Dennis Biery is no longer operating the excavation property, but seeks to have the non-conforming status of the property continue, but only with a different use in the form of a small auto repair operation to be conducted by Aaron Jefferson, a local auto mechanic.

By way of background, the property has been used since the 1970s for various commercial activities, with particular emphasis on a welding company. In 1993, the lot was subdivided off the parent parcel which fronts on Kingston Road and is now serviced by a deeded right of way, with the front lot containing a residential dwelling.

Currently, the site is used by the landscape company as described above and is used by the owner for personal use to repair various equipment. The traffic generated from the current use is approximately six trips in and six trips out on a daily basis. Should the variance be granted, the auto repair shop would be operated within the confines of the existing building and would serve the public to repair vehicles. The hours of operation would be Monday through Friday from 9 am to 6 pm and Saturday morning by appointment only. The total number of vehicles to be serviced would be three to four per day. Waste oil generated during the course of the auto repair service would be contained in sealed drums and removed.

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

Kevin Baum, Chairman
Zoning Board of Adjustment
July 31, 2023
Page 2

We respectfully request the matter be placed on the Board's August 15, 2023 agenda. If you have any questions, do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink that reads "Sharon Cuddy Somers". The signature is written in a cursive, flowing style.

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Aaron Jefferson

S:\JA-JL\Jefferson, Aaron {12389-0000}\165A Kingston Road, Exeter, NH {12389-0001}\ZBA Materials\2023 07 31 ZBA Letter.docx

Town of Exeter
APPLICATION FOR A

VARIANCE

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

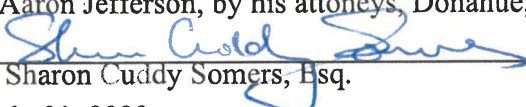
Name of Applicant Aaron Jefferson
(If other than property owner, a letter of authorization will be required from property owner)

Address 144 Tavern Road, Fremont, NH 03044

Telephone Number (603) 944-2371

Property Owner Dennis W. Biery

Location of Property 165A Kingston Road, Map 115, Lot 12, R-1 Zone

Applicant (Number, street, zone, map and lot number)
Aaron Jefferson, by his attorneys, Donahue, Tucker & Ciandella, PLLC
Signature 
Sharon Cuddy Somers, Esq.
Date July 31, 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 V section 5.1.2.B of the Exeter zoning ordinance to permit:

A change in use from a welding shop, equipment repair and material landscape storage
shop to an automotive service shop.

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.

VARIANCE APPLICATION NARRATIVE

165A KINGSTON ROAD, TAX MAP 115, LOT 12

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

The public interest element of the various criteria is analyzed by first looking at the underlying intent of the ordinance. Thereafter, the Board must determine whether granting the variance will unduly and to a marked degree violate the relevant ordinance's basic objective. The ordinance from which we seek relief is Section 5.12 (B) which allows a change in the purpose, manner or extent of a non-conforming use only by variance and the intent of this ordinance is arguably to regulate the change from one non-conforming use to another to ensure that the new proposed nonconformity will not injure abutters or the public. The second step in analyzing this variance criteria is to determine whether the variance will alter the essential character of the neighborhood or threaten the public health, safety or welfare. Here, the essential character of the neighborhood consists of a long standing non-conforming commercial use located amidst residential lots. The nonconforming use has, at various times, contained a welding shop, storage of excavation equipment and repair of same and storage of landscape materials. The proposed use of a small scale auto repair shop servicing three to four vehicles a day during regular hours will not deviate so drastically from the manner, purpose or extent of the existing non-conforming use as to alter the essential character of the neighborhood. The proposed transformation of the existing non-conforming use to a small scale auto repair will not threaten the health safety or welfare of the neighborhood as arrangements will be made for the proper disposal of waste oil and the hours of operation are limited. As a result, granting the variance will not alter the essential character of the neighborhood.

2. The spirit of the ordinance is observed

This variance criteria is deemed by the New Hampshire Supreme Court to be identical to the public interest criteria above. As described above, granting the variance will have no detrimental impact to the essential character of the neighborhood and as a result the spirit of the underlying ordinance is observed.

3. Substantial justice is done

The applicant is unaware of any gain to the general public which would outweigh the loss to the applicant if this variance is denied because if the variance is denied, the existing non-conforming commercial use could continue. The proposed operation will be a small scale operation, carried on entirely within the confines of the building and, while traffic will remain present, it will only be during the day. If the variance is denied, the applicant will be unable to proceed with his plan to establish a small auto repair shop in a location which suits his needs and which will not impact abutters due to noise or disruption.

4. The values of surrounding properties are not diminished

The applicant is unaware of any negative impact to the property values of surrounding properties. Additionally, it is noted that adjacent residential properties have long been in existence and at a time when the existing non-conforming use was in existence. As a result, the values of surrounding properties already reflect the existence of a welding company and other commercial activities historically used for this property. The impacts from the proposed small scale auto repair operation will not be substantially different to the welding company and therefore we do not anticipate that there will be negative impact to the values of abutting properties.

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 lot is unique relative to other lots in the area in that it was originally part of a larger lot and was subdivided off in 1993 specifically to create a stand-alone property for the non-conforming use of a welding company, and later an excavation company. The proposed non-conforming activity of auto repair will occur in the same building as the former welding company and on the same property having the excavation company and landscape storage company. Denial of the variance will mean that the long standing non-conforming use would be able to continue but the proposed one that we believe will have minimal impact to the residential abutters will not.

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 ensure that by changing the purpose, manner or extent of a non-conforming use from one use to another, that abutting properties and/or the public are not harmed. The proposed use is quite similar to the existing non-conformity in that the activity will not be visible to abutting properties, will not create noise because the work will be done in a building, and any traffic generated will enter and exit from the same access point that has been used for decades. As a result, there is no fair and substantial relationship between the public purpose of the application and the proposal at hand.

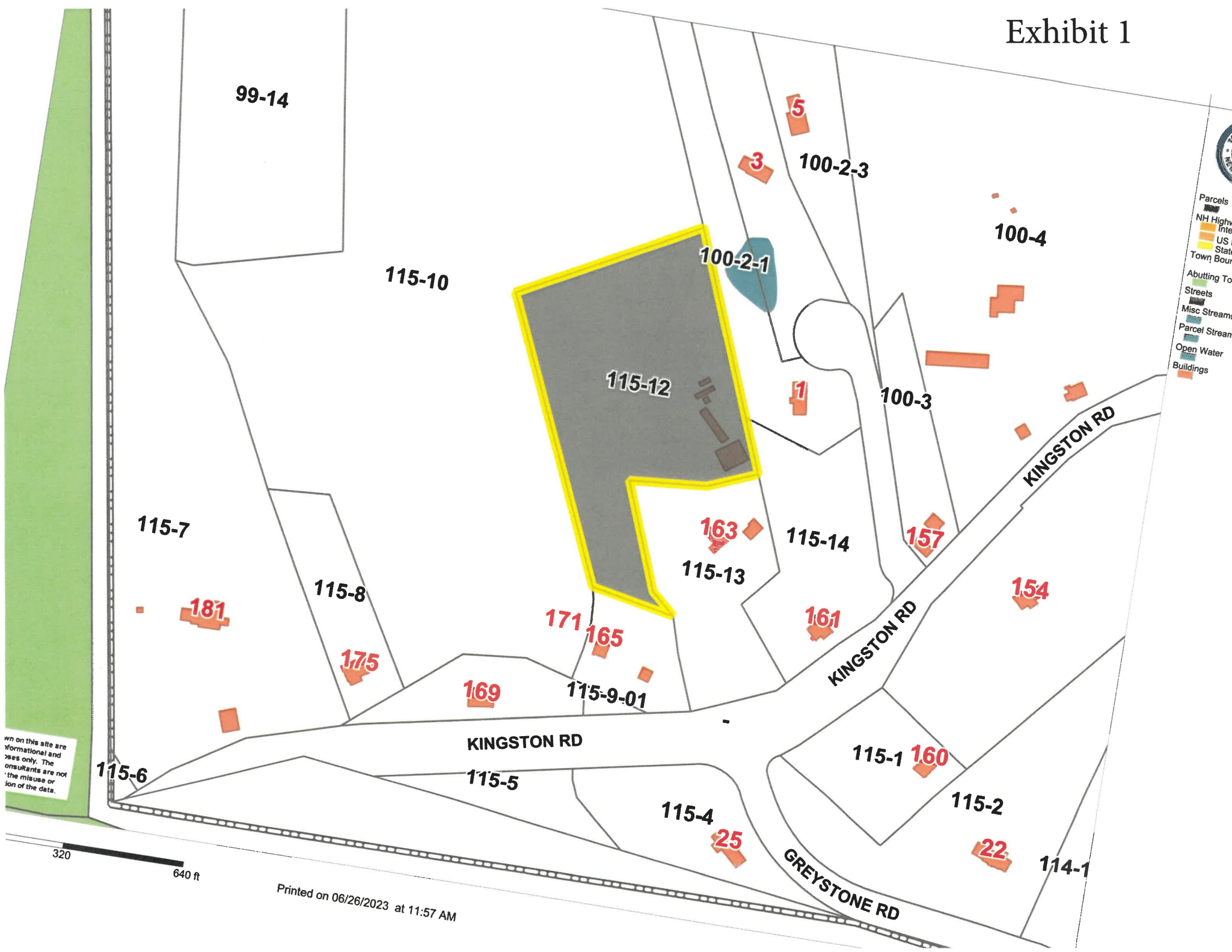
c) The proposed use is a reasonable one.

The use is reasonable. A small scale auto repair facility appears to be something that is needed in the area and would likely be welcome in Exeter. The location of the repair facility is well away from the road and the property will not change in appearance, thus there will be no altered

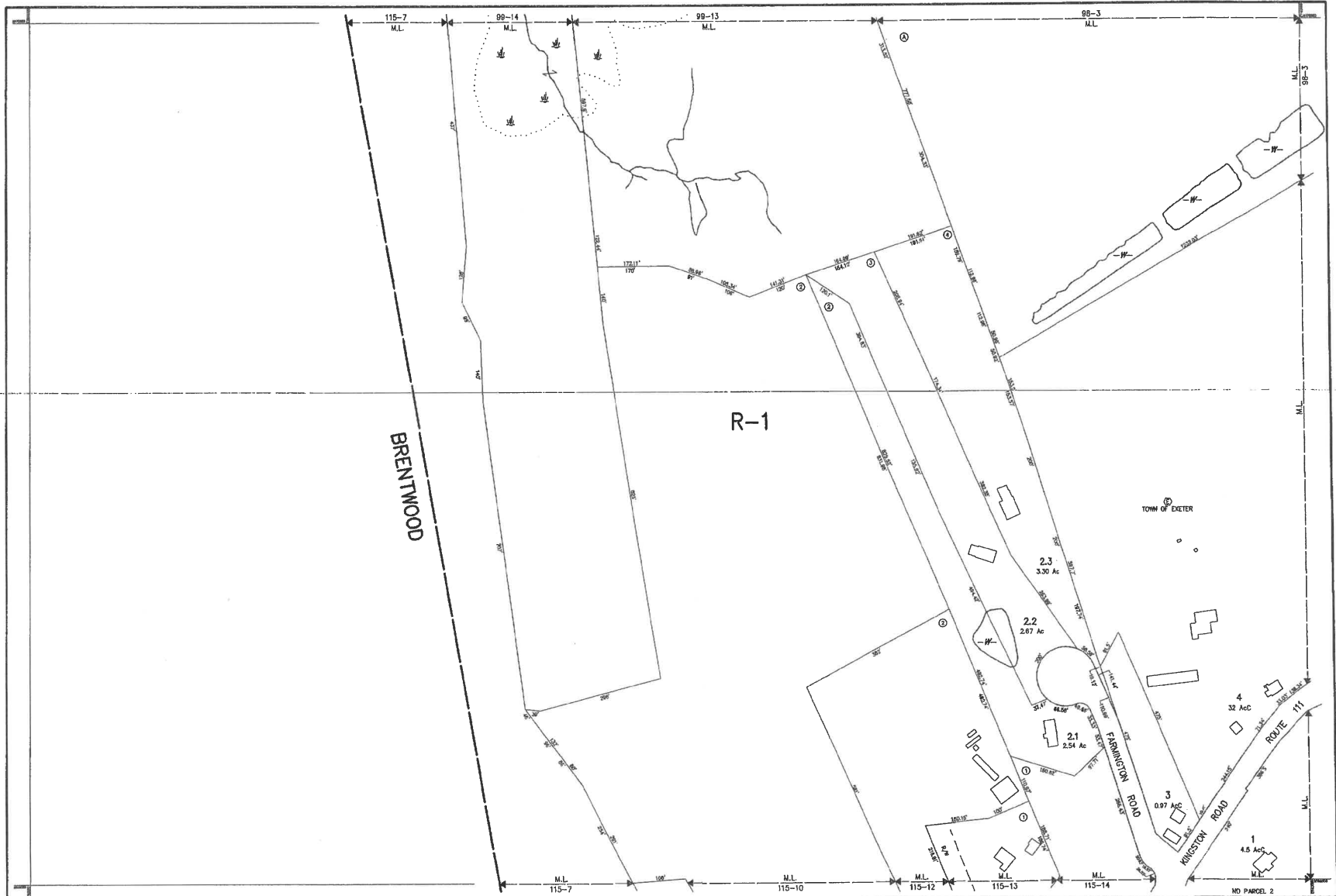
visual appearance to the two lots that might otherwise see it. The operation will occur indoors, thus neighbors will not need to worry about noise, and arrangements are in place to properly remove waste oil. Access to the lot will continue to be made through the deeded right of way crossing 163 Kingston Road (Tax Map 115, Lot 13), thus no new driveway will need to be created. The amount of traffic has varied over the years with the operation of the welding company and excavation company, and it may at first appear that there will be an increase in traffic resulting from the auto repair use. However, the nature of the traffic and thus the impact of same will be minimal as the traffic will consist only of customers dropping off and picking their vehicles within designated business hours.

The applicant respectfully concludes that all five criteria for the variance requested have been met and respectfully requests that this Board grant the variance.

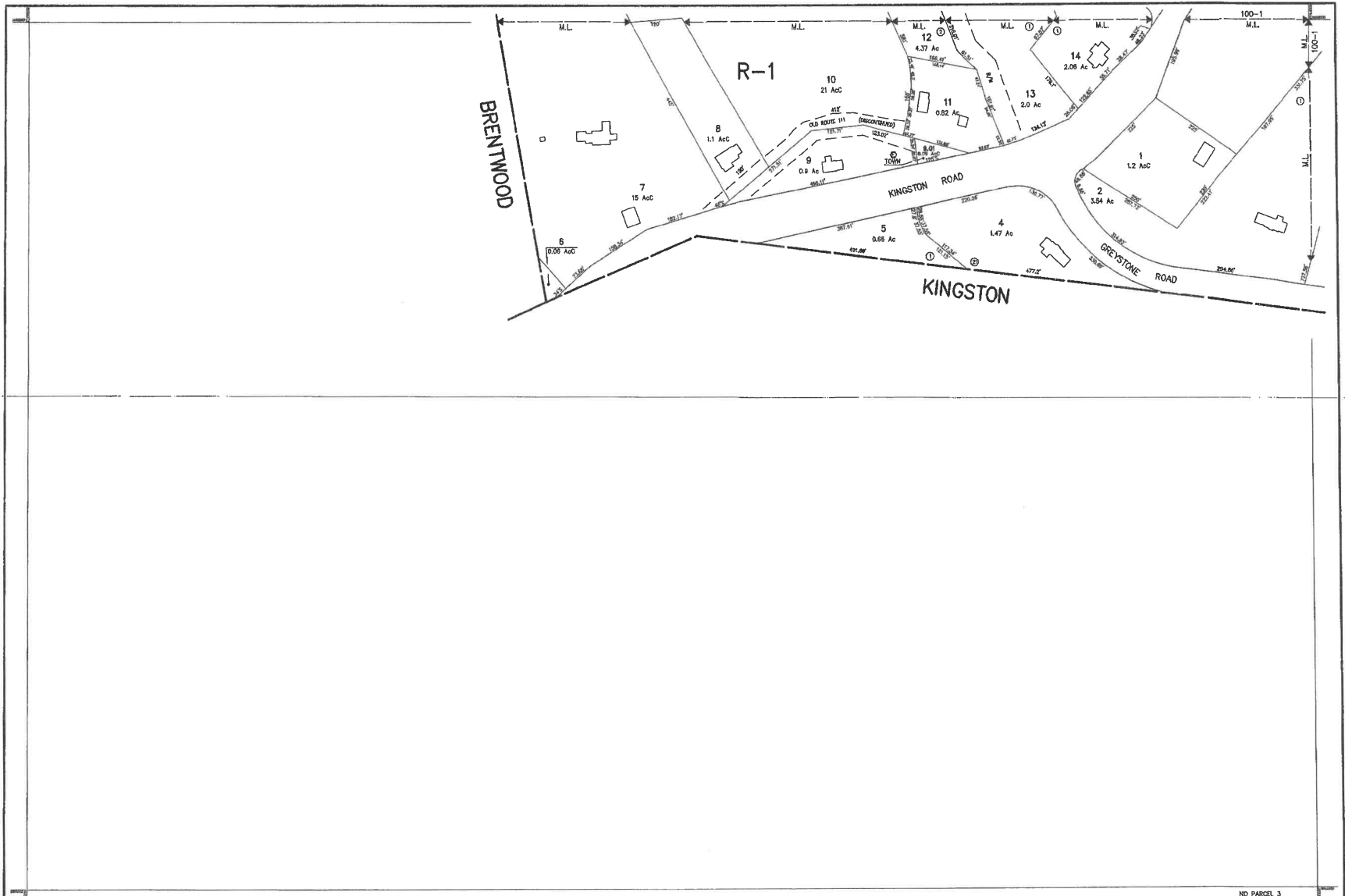
Exhibit 1



Information on this site is for informational purposes only. The consultants are not responsible for the misuse or misinterpretation of the data.



<p>THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR LEGAL DESCRIPTION OR CONVEYANCE.</p> <p>THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM.</p> <p>PHOTOGRAPHY DATE: APRIL 26, 1995</p> <p>COMPLETION DATE: MARCH 28, 1998</p>	<p>PRODUCED BY 1998 BY</p> <p>CA Technologies</p> <p>11 PLAZA STREET, LITTLETON, CO 80120</p> <p>800.333.3333</p>	<p>LEGEND</p> <p>AREA SURVEYED Ac</p> <p>AREA CALCULATED Ac</p> <p>RECORD DIMENSION 100'</p> <p>SCALED DIMENSION 100'</p> <p>MATCH LINE M.L.</p> <p>WATER W</p> <p>OWNER PROPERTY (circle with dot)</p> <p>SUBDIVISION LOT NO.</p> <p>ZONE UNIT (circle with 'Z')</p> <p>REST OF WAY (dashed line)</p> <p>COMMON OWNERSHIP (dotted line)</p> <p>INLANDS (star symbol)</p> <p>ISLANDS (star symbol)</p>	<p>SCALE 1" = 100'</p> <p>FEET 0 50 100 200 300</p> <p>METERS 0 25 50 75</p> <p>REVISED TO: APRIL 1, 2024</p>	<p>PROPERTY MAPS</p> <p>EXETER</p> <p>NEW HAMPSHIRE</p>	<p>INDEX DIAGRAM</p> <p>99 98</p> <p>101</p> <p>115 114</p> <p>MAP NO. 100</p>
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NO PARCEL 3

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, 1996

PRODUCED IN 1996 BY
 GeoM Technologies
 11 FLEWANT STREET, LITTLETON, NH 03041
 WWW.GEOMTECH.COM

LEGEND

AREA SURVEYED	Ac	EMPTY PROPERTY	⊙
AREA CALCULATED	Ac	SUBDIVISION LOT NO.	①
RECORD DIMENSION	10'	ZONE UNIT	Ⓜ
SCALD DIMENSION	100'	ROOT OF WALK	Ⓡ
SAVING LINE	←	COMMON OWNERSHIP	Ⓢ
WATER	←	BUILDING	Ⓣ
		NEW LINES	Ⓤ

SCALE 1" = 100'

FEET 0 50 100 200 300
 METERS 0 25 50 75
 REVISED TO: APRIL 1, 2024

PROPERTY MAPS
EXETER
 NEW HAMPSHIRE

INDEX DIAGRAM
 100 101 114
 MAP NO.
115





Google Earth

Imagery date: 10/11/20-newer

40 m

Camera: 298 m 42°57'39"N 71°00'04"W

37 m

LETTER OF AUTHORIZATION

I , Dennis W. Biery, owner of property depicted on Tax Map 115, Lot 12, do hereby authorize Aaron Jefferson and 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: 7/27/23



Dennis W. Biery

165A KINGSTON ROAD
TAX MAP 115, LOT 12
ABUTTER LIST

OWNER: Dennis W. Biery
165A Kingston Road
Exeter, NH 03833

APPLICANT: Aaron Jefferson
144 Tavern Road
Fremont, NH 03044

ABUTTERS:

115/11 Suzanne Speciale, Trustee
Charles Melchin, Trustee
Suzanne Speciale Trust
165 Kingston Road
Exeter, NH 03833

115/10 Daniel Jones, Trustee
Daniel Jones Trust
PO Box 526
Exeter, NH 03833

115/13 Caren Vencis
163 Kingston Road
Exeter, NH 03833

115/14 Katie & Zachary Fierman
161 Kingston Road
Exeter, NH 03833

100/2-1 Thomas Conklin, Jr.
Kelsey Formalarie
1 Farmington Road
Exeter, NH 03833

115/1 ECV Properties, LLC
3 Athena Drive
Portsmouth, NH 03801

ATTORNEY: Sharon Cuddy Somers, Esq.
Donahue, Tucker & Ciandella
PO Box 630
Exeter, NH 03833