



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

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

Michael A. Klass
mklass@bernsteinshur.com

April 3, 2017

Via Hand Delivery

Dana Pendergast
Town of Allentown
16 School Street
Allentown, NH 03275

Re: Owner: Michael Nickerson; Applicant: 4NH Homes, LLC
Property: NH Rte. 28 and Pine Acres Road (Tax Map 102, Lot 8)
Application for Variance

Dear Mr. Pendergast:

Please find the enclosed variance application and supporting documents for filing in connection with the above-referenced property:

1. Application for Variance;
2. Owner's Letter of Authorization;
3. Variance narrative;
4. Supporting materials including one full-sized plan;
5. Abutter's list (labels); and
6. Filing fee in the amount of \$554.00.

Please place this application on the ZBA's next available agenda. Thank you and please do not hesitate to contact me should you have any questions.

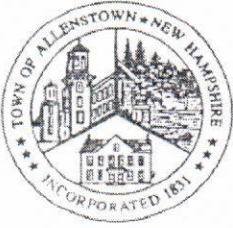
Sincerely,

A handwritten signature in blue ink, appearing to read "Michael A. Klass".

Michael A. Klass

MAK

Enclosures



Zoning Board of Adjustment

Town of Allenstown

16 School Street

Allenstown, NH 03275

Tel: (603)-485-4276

Fax: (603) 485-8669

APPLICATION FOR VARIANCE OF USE OR AREA

I hereby apply for a hearing requesting a VARIANCE to the terms of Article VI, Section 602(I)(n)(1) of the Town of Allenstown Zoning Ordinance

Case #: _____

Applicant: 4NH Homes, LLC c/o Roy Tilsley, Esq. Telephone: c/o 623-8700

Address: c/o Bernstein, Shur, Sawyer & Nelson, PA PO Box 1120 Manchester, NH 03105

Email: c/o rtilsley@bernsteinshur.com

Owner: Michael Nickerson Telephone: n/a

Address: 50 Caldwell's Farm Road, Byfield, MA 01922

Email: n/a

Property Address or Location: NH Rte. 28 and Pine Acres Road

Tax Map 102, Lot # 8 Zone: R2


Property Description (Length of Frontage, Side and Rear Lines, Etc.): The Property contains approximately 32.7 acres located on the corner of Route 28 and Pine Acres Road. The Property's specific dimensions are depicted on the plans filed herewith.


Proposed Use or Existing Use Affected: The Property is currently vacant. A cluster subdivision is proposed on a portion of the Property with eight (8) buildable lots proposed for single-family residential use, with the remainder lot to be held in common ownership by the lot owners. The proposed subdivision would be serviced by existing public roads, individual site wells, and septic systems.

Why Does Your Proposed Use Require An Appeal To The Zoning Board Of Adjustment? The Applicant seeks a variance from Article VI, Section 602(I)(n)(1) to permit a cluster subdivision with no structures closer than fifty (50) feet to any town road or property line of the parent tract (where a minimum of 200 feet is required under the zoning ordinance).

All information must be filled out completely and required documentation submitted with application in order to be accepted.

4NH Homes, LLC

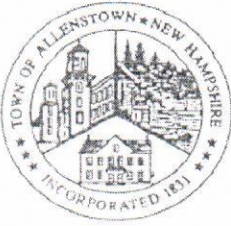
Applicant:  Date: 3/30/17
(Signature) By: Mike Gallo
Its: Manager

Owner:  Date: 03/20/2017
dotloop verified 03/20/17 3:32PM EDT x86c-pjdz-4e7j-25x2
(Signature- If not same as applicant)

FOR DEPARTMENT USE ONLY

Case No: _____

Date filed: _____ Received By: _____ Fees: _____



Zoning Board of Adjustment

Town of Allenstown

16 School Street

Allenstown, NH 03275

Tel: (603)-485-4276

Fax: (603) 485-8669

APPLICATION FOR VARIANCE OF USE OR AREA

Before you undertake completing this application we strongly encourage you to read the entire application first. Upon reading the entire application go back and answer the questions 1 through 5 with as much specific factual detail as required. The obligation of demonstrating facts sufficient to support your appeal is your responsibility.

The undersigned hereby respectfully requests a variance to the terms of **Article VI, Section 602(I)(n)(1)** of the Town of Allenstown's Zoning Ordinance ("Ordinance") and asks that said terms be waived to permit: a cluster subdivision with no structures closer than fifty (50) feet to any town road or property line of the parent tract (where a minimum of 200 feet is required).

Introduction

This is an application for a variance concerning certain property located at NH Route 28 and Pine Acres Road, which is also referred to as Tax Map 102, Lot 8 ("Property"). The Property is located in the R2 zone and the agricultural conservation overlay area. It contains approximately 32.7 acres of land, which extends from Pine Acres Road and Route 28 to the Suncook River. The buildable portion of the Property is widest adjacent to Pine Acres Road and narrows toward the wetlands located on the westerly portion of the Property. The character of the neighborhood is residential with neighborhood lots of various sizes and shapes

The Applicant has been working on this Project for some time and, as this Board may recall, the Applicant previously obtained variances from Sections 601(a), 602(I)(n)(2)(c), and 701(a) to allow the proposed cluster subdivision in the R2 district with R2 densities and utilizing onsite septic systems.

The Applicant has communicated with the Town on this project from its inception, including conceptual review by the Planning Board and meetings with staff prior to formal zoning and planning board meetings. When the Applicant was before this Board last, it understood that the 200-foot lot line buffer (which is the subject of this application) did not apply. Recently the buffer issue was raised, which necessitated the pending application.

As discussed below, because of the Property's unique features, a variance from Section 602(I)(n)(1)'s lot line buffer is warranted.

You are required by law to demonstrate:

- 1. That there will not be a diminution of value of the surrounding properties as a result of the granting of this variance because:**

The requested variance will not diminish the character of the neighborhood, which includes existing single-family lots. The proposed lots will be used in a manner consistent with these neighboring lots and, thus, should not produce different or significant traffic, noise, or odors or other detrimental impacts to the surrounding area. Granting the variance, therefore, will not result in a diminution of property values for neighboring properties.

- 2. That the granting of the variance will not be contrary to the public interest because:**

As the courts have said, to be contrary to the public interest, the variance must unduly and in a marked degree conflict with the Ordinance such it violates the Ordinance's basic zoning objectives.

While the purpose of a cluster subdivision is not specifically expressed in Section 602(n) of the Ordinance, it is generally understood that cluster development is a tool that encourages open space conservation and more efficient uses of land. See The Planning Board in New Hampshire, A Handbook for Local Officials, November 2016 at p. III-16.

Here, the proposed cluster subdivision proposes dedicating almost 26 acres to conservation space, with residential lots proposed to be clustered away from the wetlands and toward the existing public roads. As such, the proposed cluster subdivision would neither negatively impact the essential character of the surrounding locality, nor would it threaten the public health, safety, or welfare. Moreover, the subdivision proposes 50-foot buffers in a zoning district that requires setbacks of 20 feet (front), 15 feet (side), and 30 feet (rear), and the proposed staggered house placement, open space, and adjacent public ways provide additional effective buffer areas.

In light of the above, the requested variances do not conflict with the purpose of the Ordinance and granting the requested relief will not be contrary to the public interest.

- 3. That the literal enforcement of the zoning ordinance will create an unnecessary hardship because:**

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

The Property's particular characteristics create a parcel of land that is special and distinct from other properties in the neighborhood. For one, the Property's large size, unique shape, and particular orientation differentiate it from other land in the neighborhood. The Property's developable area is located near the junction of Route 28 and Pine Acres Road, with rear wetlands extending to Suncook River. While the Property abuts both Pine Acres

Road and Route 28, access from Route 28 is not allowed, such that the Property is only accessible for ingress and egress from Pine Acres Road. The portion of the Property that abuts Pine Acre Road, however, is relatively narrow in proportion to the Property's size. Moreover, the Property's northerly lot line tapers down, creating a pinch-point on the Property.

a. 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 for the following reasons:

The purpose of a cluster subdivision is to encourage open space preservation and the efficient use of land. Minimum buffer requirements in this context seek to position cluster development in the interior portion of a lot.

Here, the proposed subdivision seeks to cluster houses toward existing public ways and away from wetlands, in a manner consistent with the general purpose of cluster subdivisions and consistent with the character of the neighborhood. Moreover, due to the irregular shape of the Property, together with its position with respect to Pine Acres Road and Route 28, there is no substantial relationship between the general public purpose of the cluster provisions of the Ordinance and its application to the property at issue.

b. And, the proposed use is a reasonable one for the following reasons:

It contemplates residential use in the R-2 district in a manner consistent with the existing use of the neighborhood.

If the criteria in subparagraph (A) above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of "unnecessary hardship" set forth in subparagraph (3) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

In the event that the Board determines that the criteria in subparagraph A are not established, variance relief is appropriate under this section because the Property cannot be reasonably used in strict conformance with the Ordinance and a variance is thus necessary to enable its reasonable use.

As noted, the Property is special and distinct from other lots in the area because of its size, shape, and location adjacent to Route 28 and Pine Acres Road. Because of these characteristics, denial of this application will preclude the reasonable use of the Property for residential homes in a manner consistent with the character of the locality.

4. That through the granting of relief by a variance substantial justice will be done because:

Substantial justice is done when the loss of denying a variance exceeds the gain to the general public in strictly enforcing the ordinance.

Here, granting the requested variance will allow the Property to be developed in a way that strikes a balance of community needs, conservation of the natural environment, and provides for access and safety for the homeowners in the proposed development. On the other hand, strictly enforcing the ordinance and denying the variance request will not result in an appreciable gain to the general public.

As the potential loss to the Applicant is not outweighed by a gain to the general public, granting the variance will do substantial justice.

5. The use, for which the variance is requested, the spirit of the ordinance will be observed because:

This analysis is similar to the discussion concerning public interest. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 105 (2007).

Again, the rationale behind cluster subdivisions is to promote development that conserves land and encourages open space. This project contains a significant dedication of open space for conservation purposes, with proposed homes clustered toward existing infrastructure, which aligns with the purpose behind cluster subdivisions. Moreover, the proposed 50-foot buffer minimum, together with the proposed location of the homes, adjacent open space, and adjacent public roads, results in an effective buffer around the Property. Finally, the proposed use is consistent with the character of the neighborhood and proposes a safe and reasonable use of the Property.

Thus, the requested variance and proposed development observes the spirit of the ordinance.

Signature: _____

M. Allen
- Counsel for Applicant -

Date: _____

4/3/17

TOWN OF ALLENSTOWN

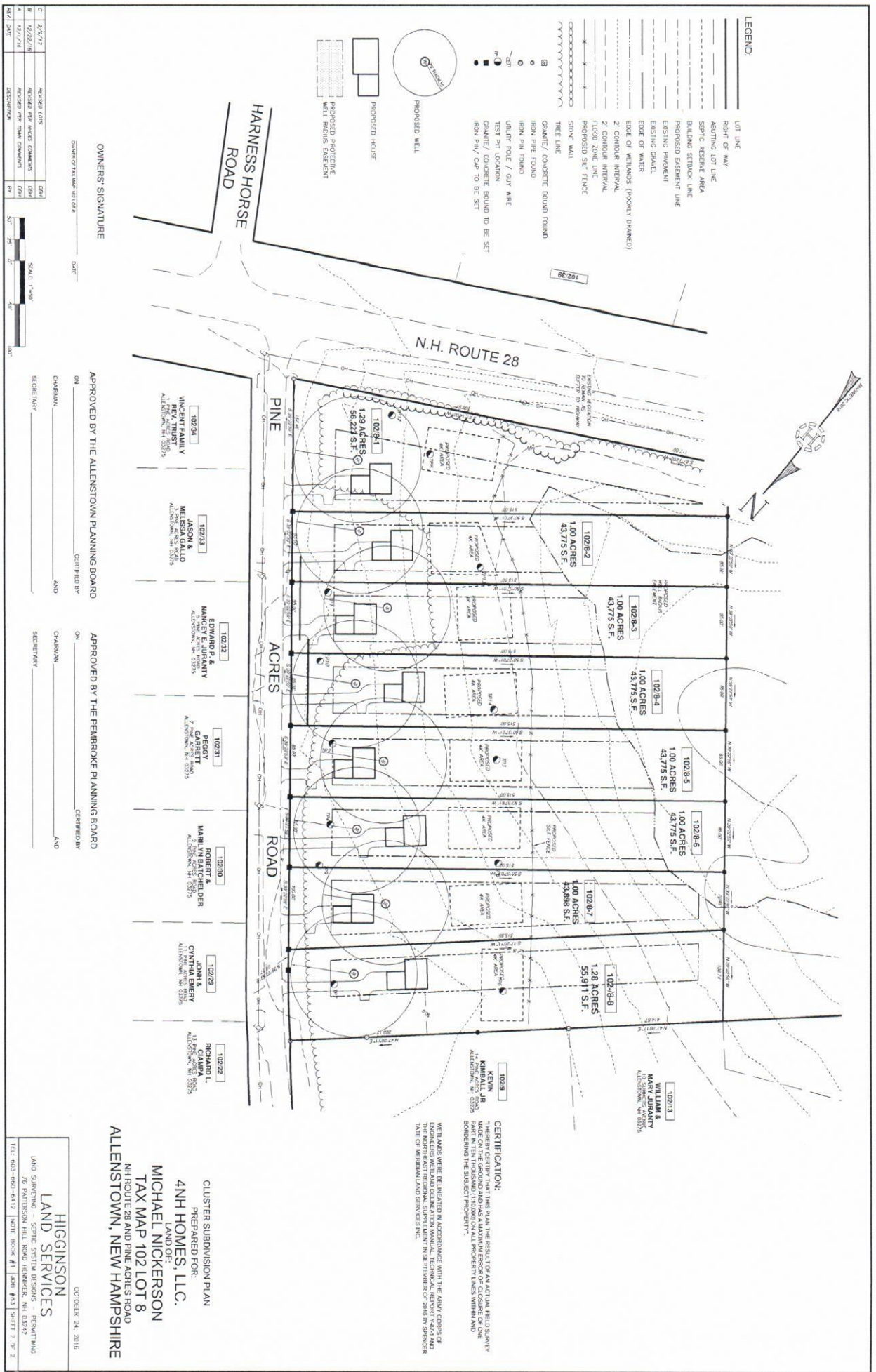
OWNER AUTHORIZATION

Re: Variance Application;

Property located at NH Route 28 and Pine Acres Road (Map 102, Lot 8)

I, the undersigned owner of the property located at NH Route 28 and Pine Acres Road (also known as Tax Map 102, Lot 8) in Allenstown, hereby authorize 4NH Homes, LLC (as applicant) and its attorneys at the law firm of Bernstein, Shur, Sawyer, and Nelson, P.A. to apply for all necessary land use permits and to appear before all necessary local land use boards and commissions, in context of the applicant's efforts to permit a subdivision on the above-referenced property.

Owner	<i>Michael Nickerson</i>	dotloop verified 03/20/17 3:32PM EDT OFND-31EX-REWH-KOHT
	Michael Nickerson	
Date: Mar	<u>03/20/2017</u>	



LEGEND

- LOT LINE
- RIGHT OF WAY
- SEPTIC RESERVE AREA
- BELT/ING STUB/CK LINE
- PROPOSED EASEMENT LINE
- EXISTING PAVEMENT
- EXISTING GRAVEL
- EXIST. OF WATER
- 2' CONTOUR INTERVAL
- 2' CONTOUR INTERVAL
- FLOOD ZONE LINE
- PROPOSED SET FENCE
- SPRING WALL
- TREE LINE
- GRANITE/ CONCRETE BOUND FOUND
- IRON PIPE FOUND
- IRON PIPE FOUND
- ULTIM. POLE / CUY WIRE
- TEST PIT LOCATION
- GRAVEL/ CONCRETE BOUND TO BE SET
- IRON PIPE/ CAP TO BE SET
- PROPOSED WELL
- PROPOSED HOUSE
- PROPOSED SEPTIC WELT BOUNDS PAVEMENT

OWNERS' SIGNATURE

APPROVED BY THE ALLENSTOWN PLANNING BOARD

APPROVED BY THE PEMBROKE PLANNING BOARD

CHAIRMAN _____ AND SECRETARY _____

CHAIRMAN _____ AND SECRETARY _____

CERTIFICATION:
 I, THE ENGINEER, HEREBY CERTIFY THAT THIS PLAN, THE RESULT OF AN ACTUAL FIELD SURVEY, ACCURATELY REPRESENTS THE TRUE AND CORRECT LOCATION AND BOUNDARIES OF THE SUBJECT PROPERTY.

CLUSTER SUBDIVISION PLAN
 PREPARED FOR:
4NH HOMES, LLC.
 LAND OF:
MICHAEL NICKERSON
 TAX MAP 102 LOT 8
 N.H. ROUTE 28 AND PINE ACRES ROAD
 ALLENSTOWN, NEW HAMPSHIRE

OCTOBER 24, 2015
HIGGINSON
LAND SERVICES
 LAND SURVEYING - SEPTIC SYSTEM DESIGNS - REMEDIATING
 76 PATTERSON HILL ROAD HENNINGER, NH 03242
 TEL: 603-660-4412 | MOBILE: 603-660-4413 | JOHN #31 SHEET 2 OF 2



1157 ft

© 2016 Google

Imagery Date: 4/27/2016 43°08'33.43" N



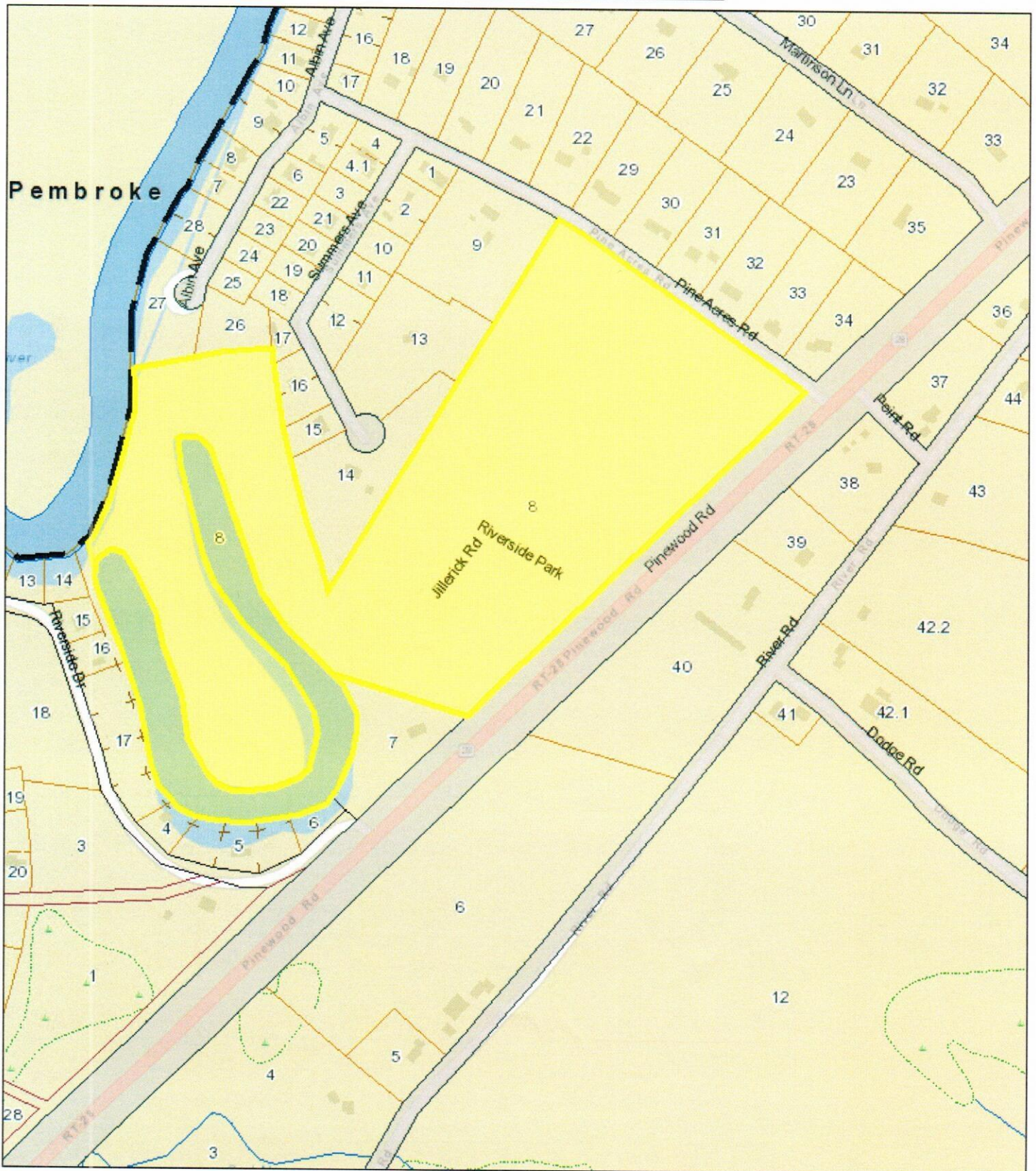
Allenstown, NH

1 inch = 350 Feet



March 16, 2017

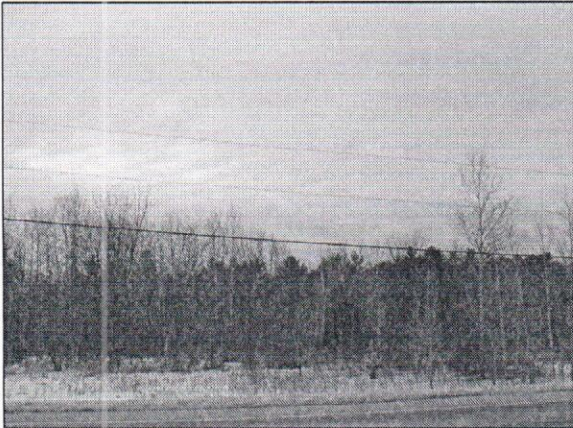
www.cai-tech.com



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.



Property Card: 166 PINWOOD ROAD
 Town of Allenstown, NH



Parcel ID: 102-008
PID: 000102000008000000

Owner: NICKERSON, MICHAEL
Co-Owner:
Mailing Address: 50 CALDWELL FARM ROAD
 BYFIELD, MA 01922

General Information		Assessed Value	
Map: 000102 Lot: 000008 Sub: 000000 Land Use: 1F RES Zone: R2 - RESIDENTIAL 2 Land Area in Acres: 32 Current Use: N Neighborhood: N-E Frontage: 165079 Waterfront: N View Factor:		Land: \$230,700 Buildings: \$0 Extra Features: \$0 Total: \$230,700	
		Sale History	
		Book/Page: - Sale Date: 12:00:00 AM Sale Price:	
Building Details			
Model Description: Total Gross Area: 0 Year Built: 0 Building Grade: Stories:		Condition: Depreciation: 0 No. Bedrooms: 0 No. Baths: 0 Adj Bas: 0	



LIST OF ABUTTERS FOR
166 PINWOOD ROAD, ALLENSTOWN, NH

102/8 Michael Nickerson 50 Caldwell Farm Road Byfield, Ma 01922	103/17 Town of Allenstown 16 School Street Allenstown, NH 03275	102/13 William & Mary Juranty 10 Summers Avenue Allenstown, NH 03275
102/37 Henry & Frances St. Germain 206 River Road Allenstown, NH 03275	103/16 George & Elaine Tousignant 60 Riverside Drive Allenstown, NH 03275	102/9 Kevin Kimball Jr 14 Pine Acres Road Allenstown, NH 03275
102/38 Claire A. & Robert A. Chaput 200 River Road Allenstown, NH 03275	102/27 Town of Allenstown 16 School Street Allenstown, NH 03275	101/22 Richard L. Ciampa 13 Pine Acres Road Allenstown, NH 03275
102/39 Norman D. & Alice E. Pion 196 River Road Allenstown, NH 03275	102/26 Town of Allenstown 16 School Street Allenstown, NH 03275	102/29 John & Cynthia Emery 11 Pine Acres Road Allenstown, NH 03275
102/40 Ann A. Rehlander 2014 Trust 194 River Road Allenstown, NH 03275	102/17 Alicia Lastowka 125 Town Farm Road New Boston, NH 03070	102/30 Robert & Marilyn Batchelder 9 Pine Acres Road Allenstown, NH 03275
410/6 Herbert R. & Priscilla L. Blake 16118 4 th Street, East Redington Beach, Fl 33708	102/16 Dawn I & Kevin P. Landry 15 Summers Avenue Allenstown, NH 03275	102/31 Peggy Garrett 7 Pine Acres Road Allenstown, NH 03275
102/7 William & Mary S. Dobe 154 Pinewood Road Allenstown, NH 03275	102/15 Nancy Drew 17 Summers Avenue Allenstown, NH 03275	102/32 Edward P. & Nancey E. Juranty 5 Pine Acres Road Allenstown, NH 03275
102/6 Town of Allenstown 16 School Street Allenstown, NH 03275	102/14 Michael & Patricia Juranty 19 Summers Avenue Allenstown, NH 03275	102/33 Jason & Melissa Gallo 3 Pine Acres Road Allenstown, NH 03275
102/5 Paul F. & Ryan P. Carter 76 Riverside Drive Allenstown, NH 03275		102/34 Vincent Family Rev. Trust 1 Pine Acres Road Allenstown, NH 03275

LIST OF ABUTTERS FOR
166 PINWOOD ROAD, ALLENSTOWN, NH

102/4
Lisa & Robert Macdonald
70 Riverside Drive
Allenstown, NH 03275

941/5-1
Estate of Williard & Nevley Hillard
c/o Russell F. Hillard
579-9 Sagamore Avenue
Portsmouth, NH 03801

266/144-2
New Hampshire Soccer Association
1600 Candia Road Suite 3
Manchester, NH 03109

OTHER INTERESTED PARTIES:

4NH Homes, LLC
34 Rundlett Hill Road, Unit 34
Bedford, NH 03110

Meridian Land Services Inc.
P.O. Box 118
Milford, NH 03055

Higginson Land Services
76 Patterson Hill Road
Henniker, NH 03242

Michael Klass, Esq.
Bernstein Shur
P.O. Box 1120
Manchester, NH 03105-1120