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Date Filed: _____

Case No.: _____

**APPLICATION FOR VARIANCE
ZONING BOARD OF ADJUSTMENT
TOWN OF ALLENSTOWN**

Name(s) of Applicant/Agent: Attorney Jack D. Hepburn, Agent

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Telephone Number: (603) 228-0477 Email: jhepburn@ranspell.com

Owner(s) of Property concerned: Paul R. Stauffacher

Address: 730 Borough Road, Pembroke, NH 03275

Telephone Number: (603) 340-5709

Street Location of Property: 91 Pinewood Road, Allenstown, NH 03275

Tax Map # **105** Lot # **3** Zone **C/LI**

Description of Property: Property contains 36 acres, more or less, and has frontage on Pinewood Road.

Size of Property: 36 acres

The undersigned hereby requests a variance of USE or AREA to the terms of **Article V, § 504** and **Article X, § 1001**, and asks that said terms be waived to: **permit Applicant to construct a residence on the Property, in accordance with the approved site plan filed herewith.**

APPLICATION FOR A VARIANCE

Property Involved with Application for a Variance

The subject property consists of 36 acres of undeveloped land, situated on Pinewood Road in Allenstown, NH (hereinafter the "Property"). The Property is identified as Lot 3 on Tax Map 105. The current owner of the Property, Paul R. Stauffacher, acquired title from Dan and Pamela Stauffacher by deed dated April 23, 2021 and recorded April 27, 2021 at Book 3735, Page 2330 of the Merrimack County Registry of Deeds.

Proposal

The Applicant wishes to construct a residence on the Property, despite the fact that the Property is zoned Commercial/Light Industrial (sometimes hereinafter abbreviated as "CLI"). The Applicant proposes to construct the residence in accordance with a certain site plan entitled "Plan of Site Development and Effluent Disposal System" prepared by Richard J. Kohler, dated March 29, 2021. Said site plan is attached hereto as "Exhibit A."

Abutting Properties

The following is a list of the Tax Maps and Lots of the parcels that abut the Property:

- Tax Map 105, Lot 4. Current Owner: MRF RE Holdings, LLC. Mailing address: 11519 Kingston Pike, Suite 305, Knoxville, TN 37934.
- Tax Map 105, Lot 38. Current Owner: Casella Waste Management, Inc. Mailing Address: 1235 North Loop West, Suite 20, Houston, TX 77008.
- Tax Map 105, Lot 39. Current Owner: Elizabeth A. Keniston, Trustee of the Elizabeth A. Keniston Trust. Mailing Address: 106 River Road, Allenstown, NH 03275.
- Tax Map 105, Lot 40. Current Owner: Robert Marier, Jr. Mailing Address: 120 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 1. Current Owner: Paul Vezina. Mailing Address: 124 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 2. Current Owner: Todd and Jacquelyn Fredriksen. 126 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 3. Current Owner: Catholic Bishop of Manchester. Mailing Address: 153 Ash Street, Manchester, NH 03104.

Three of these abutting parcels (Map 105, Lot 40, and Map 410, Lots 1 and 2) contain residences despite the fact that they are also located in the CLI Zone.

Zoning Issues

The zoning ordinance provisions at issue here are Article V, § 504, and Article X, § 1001 of the Town of Allenstown Zoning Ordinance ("Ordinance"). §504 provides, "Any use which is not expressly permitted in a zone shall be deemed forbidden in the zone." Article X sets out the

uses that are permitted in the Commercial/Light Industrial Zone. § 1001 does not expressly permit the construction of a residence in the zone.

Accordingly, the Applicant is requesting a variance from the prohibition of constructing a residence in the Commercial/Light Industrial Zone in order to permit him to do so.

Criteria for Granting a Variance

The criteria that must be met in order to obtain a variance are set forth in RSA 674:33-1(b). This statute allows the Zoning Board of Adjustment to grant a variance if:

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of the surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. The statute defines “unnecessary hardship” as follows:

“unnecessary hardship” means that, owing to special conditions of the Property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property; and
- (ii) The proposed use is a reasonable one.

Facts to support this request:

There Will be No Diminution of the Value of Surrounding Properties

The only change in the neighborhood resulting from the Applicant obtaining the requested variance will be the introduction of a single family home on a 36 acre parcel of land. Three abutting parcels (Tax Map 410, Lots 1 and 2, and Tax Map 105, Lot 40) already contain residential homes despite being located in the CLI Zone. Siting a single family residence on the Property is consistent with the uses enjoyed by several lots in the immediate area. The Applicant’s proposed construction is not contrary to the public interest and does not alter the essential character of the locality or threaten the public health, safety or welfare, as further explained below. Accordingly, the building of such a residence will not, in any way, negatively impact the value of surrounding properties.

Granting the Variance is Not Contrary to the Public Interest and is Consistent with the Spirit of the Ordinance

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance. Farrar v. City of Keene, 158 N.H. 684 (2009). Accordingly, these factors are considered together in this application.

The spirit and intent of § 504 and Article X, while not explicitly stated, can be presumed to center on the desire to segregate different uses in different parts of the community. Article X, § 1003, which lays out “uses not permitted” in the Commercial/Light Industrial Zone, establishes that no land, building, or premises may be introduced into the zone for a purpose that is “injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause.” The Ordinance seeks to promote the safety and well-being of the community while avoiding inconsistent Property uses that are likely to lead to community issues such as traffic, noise, pollution, and disputes between landowners.

The first step in analyzing whether the granting of a variance will be contrary to the public interest is to examine the applicable ordinance. See Loughlin, 15 N.H. Practice § 24.12. To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives. Id. See also Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577 (2005). In determining whether the grant of a variance would violate basic zoning objectives, it is appropriate to examine whether it would alter the essential character of the locality or threaten the public health, safety or welfare. Id. It is also appropriate to consider whether the locus is especially suited for the proposed use. Loughlin, § 24.10. See also Carter v. Nashua, 113 NH 407 (1973).

In this particular case, the Applicant proposes to construct a residence on his Property in accordance with all of the dimensional, frontage, and setback requirements of the Ordinance (see Article X, § 1003). Granting the variance would not alter the essential character of the locality, as several of the abutting parcels of land contain residences, despite similarly being located in the CLI Zone. Further, the public’s health, safety and welfare will not be threatened as a result of the residential construction. In almost all respects, a residential use of the Property will have a net positive on the community when considering public health, safety and welfare. Additionally, a residential construction will not pose issues that are sometimes associated with commercial developments, such as added traffic, noise, and pollution.

The construction of a residence will cause none of the negative consequences that Article X attempts to protect against (uses that are injurious, noxious or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise or other cause – see § 1003). Accordingly, the variance in this particular case is justified because it is not contrary to the public interest, and granting the variance is consistent with the spirit of the ordinance.

Literal Enforcement of the Provision of the Ordinance Will Result in an Unnecessary Hardship

Pursuant to RSA 674:33-1(b), “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

There is no substantial relationship between the general public purpose of the Ordinance and the specific application of the Ordinance to the Property here involved because any purported purpose of the prohibition of residences in the Commercial/Light Industrial Zone has already been undermined by the fact that there are several residences already allowed in the zone. Of the seven parcels that abut the Applicant’s Property in the CLI Zone, three of them contain residences. Accordingly, preventing the Applicant from constructing a residence on his Property would result in an unnecessary hardship in light of the Town’s allowance of his neighbors to do the same.

One additional residence will not trigger the harms addressed by the Ordinance, and will in no way, as previously discussed, alter the character of the neighborhood. Accordingly, there exists no fair and substantial relationship between the general public purposes of the Ordinance provision at hand and the specific application of that provision to the Applicant’s Property. In light of the foregoing, it is appropriate to grant the variance because doing so would be “more considerate of the [Applicant’s] constitutional right to enjoy property.” Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727 (2001).

Furthermore, the Applicant’s proposed use is a reasonable one. As previously discussed, there are several residences on abutting parcels, all of which are considered reasonable uses by the Town. The Applicant’s proposed residence will comply with all of the dimensional requirements applicable to the CLI Zone (see § 1004), and will result in none of the community issues prohibited in § 1003. The Applicant’s proposed use, therefore, is reasonable.

The specific conditions of the Applicant’s Property further strengthen the argument that literal enforcement of the Ordinance would result in an unnecessary hardship. The topography and layout of the parcel (specifically the location of wetlands and the floodplain on a portion of the Property), seem to indicate that there will not be overwhelming demand for commercial property on this lot. This fact, combined with the character of the neighborhood being a mixture of residential and commercial properties, favors the granting of the Applicant’s variance application.

Substantial Justice Would be Done by Granting the Variance

The guiding rule for this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Harborside Associates LP v. Parade Residents Hotel LLC, 162 N.H. 508 (2011). In evaluating this standard, the Zoning Board must look at whether the Applicant’s proposal is consistent with the area’s present use.

The area's present use is a mixture of commercial and residential properties. Of the seven parcels that abut the Applicant's parcel, four parcels are commercial and three are residential. Accordingly, there is no gain to the general public in preventing the Applicant's proposed residential construction as there will be no change to the area's present use. The loss to the Applicant in preventing him from constructing a residence on his land is substantial, and therefore outweighs the non-existent gain to the general public.

Additionally, the Applicant plans to run his general contractor business through the Property. The Applicant intends to construct a shop on the Property that will house stock for various construction projects, and use the Property as a de facto "headquarters" of the business. It is reasonable and commonplace for an individual to run a business out of their home. When considering this proposal from the public's perspective, it will be in the public's interest to allow both a residence and commercial activities on Applicant's Property in the Commercial/Light Industrial Zone, rather than the Applicant attempting to run his business out of a home in a residential zone. While both of the aforementioned scenarios would require a variance, siting a residence in the CLI Zone will result in no harm to the public.

Summary With Respect to Variance Request

The Applicant meets the requirements for the granting of a variance with respect to the construction of a residence on the Property as described in the above narrative. Permitting the residence to be built as requested by the Applicant on his Property is reasonable. Granting the variance would not alter the essential character of the locality. The area's present use is a mixture of commercial and residential properties. Additionally, the public's health, safety and welfare will not be threatened as a result of the proposed residential construction.


Respectfully submitted,

Paul R. Stauffacher


By Jack D. Hepburn, His Attorney

6-4-2021
Date

6-4-2021
Date


Signature of Applicant



Signature of Property Owner

EXHIBIT A

