Town of Allenstown
Zoning Board of Adjustment
16 School Street, Allenstown, NH 03275
603-485-4276 ext. 125
planning@allenstownnh.gov

ALLENSTOWN ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING NOTICE OF APPLICATION SUBMISSION

Notice is hereby given in accordance with RSA 676:4 that the Allenstown Zoning Board will review the following submitted application(s) for completeness on **Wednesday, September 22, 2021, at a meeting beginning at 6:30 pm at the Allenstown Town Hall, 16 School Street, Allenstown, NH.** If the application(s) are accepted as complete by the Board, a public hearing will follow immediately after. Applications that are continued to a subsequent meeting will not be re-noticed to the general public or abutters to the real estate parcel(s).

The following application(s) have been submitted for review and public hearing by the Zoning Board of Adjustment:

Variance Application: **Jack D. Hepburn Attorney on behalf of Paul Stauffacher**
ZBA Case # 2021-02 –91 Pinewood Road (Lot#105 Map#003)
Zone District: CLI-Commercial/Light Industrial

Requesting: to allow construction of a new residential single family dwelling (SFD) on a 36-acre parcel of Commercial/Light Industrial zone property, where a SFD is not an allowed use in the Zoning Ordinance -**Article V; Section 504 and Article X; Section 1001**

Variance Application: **Michael O'Meara**
ZBA Case # 2021-03 – 18 Notre Dame Avenue (Lot#108 Map#058)
Zone District: Residential

Requesting: To allow construction of a second bay to an existing carport to form a two stall fully enclosed garage with a 5.2' side yard setback, where 15' is required per the Town's Zoning Ordinance -**Article VII; Section 703 (b)**

The agenda for the meeting will be posted per RSA 91-A:2 and is posted at Town Hall, Police Station and on the Town's website under ZBA 24 hours before. Please refer to the agenda for a listing of other items before the Board, including applications and public hearings that were continued from previous meetings which may be heard prior to the above application.

Copies of the Zoning Board of Adjustment application and associated materials are available for review at Allenstown Town Hall, 16 School Street, during normal business hours:
Monday 7:30 am to 6:15 pm; Tuesday through Thursday 7:30 am to 5:15 pm.
Application material is also available online at http://www.allenstownnh.gov/Zoning-board.

The ZBA board will accept your written comments prior to the meeting or offer your comments at the meeting. Any comments provided will be read into the meeting record.

This meeting is live and in-person. Interested parties may also utilize the virtual option listed below using "Zoom:" Join Zoom Meeting - Meeting ID: 859 3616 1015 and Passcode: 092221

https://us02web.zoom.us/j/85936161015?pwd=Y2swdFdOWjZmNzFZTU5XR1c4T08wdz09

Or a Conference Call by calling 603-485-7321, Password 1234. Should these optional methods become unavailable, the meeting will continue; as the meeting place and meeting is fully open to the public. If you require any information about the application(s), call 485-4276 est. 125.

Town of Allenstown - Zoning Board of Adjustment
Individual Board Member Variance Worksheet

The purpose of this worksheet is to assist individual board members in reviewing all five variance criteria. After reviewing the petition, considering all of the evidence, hearing all of the testimony, and by taking into consideration members' personal knowledge of the property in question, the board should vote on a motion that approves, approves with conditions, or disapproves with reasons, the application under consideration. All five variance criteria must be met to grant a variance.

Petition for a Variance Case No. 2021-02-91 Pinewood Road

1. Granting the variance (would/would not) be contrary to the **public interest** because:

2. The **spirit of the ordinance** (would/would not) be observed because:

3. Granting the variance (would/would not) do **substantial justice** because:

4. For the following reasons, the **values of the surrounding properties** (would/would not) be diminished:

5. **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:

      (i) There **(is/is not)** a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

      (ii) The proposed use **(is/is not)** a reasonable one because:

a. The criteria in subparagraph (a) having not been 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 property **(can/cannot)** be used in strict conformance with the ordinance because:

APPENDIX B:
INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

The board strongly recommends that before making any appeal, you become familiar with the zoning ordinance and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672- 678, covering planning and zoning.

Four types of appeals can be made to the board of adjustment:

Variance: A **variance** is an authorization which may be granted under special circumstances to use your property in a way that is not permitted under the strict terms of the zoning ordinance.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often this determination is a denial of a building permit. A copy of the determination must be attached to your application.

For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. Granting the variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.
4. The proposed use would not diminish surrounding **property values**.
5. Denial of the variance would result in **unnecessary hardship** to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33, I(b)(5) provides the criteria for establishing unnecessary hardship:

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

   (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

   (ii) The proposed use is a reasonable one.

   (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The following chart may be helpful in completing a variance application:

VARIANCE CRITERIA GUIDELINES

Statutory Requirements (RSA 674:33, I(b)) ***APPLICANT MUST SATISFY ALL OF THE FOLLOWING***	**Explanation**
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights." As it is in the public's interest to uphold the spirit of the ordinance, these two criteria are related.
2. The spirit of the ordinance is observed.	
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public.
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special condition of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. *Alternatively*, unnecessary hardship exists 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 applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area. (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a "fair and substantial" way. (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. *Alternatively*, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

Do Not Write in this Space.

Date Filed: _____
Case No.: _____

APPLICATION FOR VARIANCE
ZONING BOARD OF ADJUSTMENT
TOWN OF ALLENSTOWN

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

Address: 1 Capitol Street, Concord, NH 03301

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 **[X]** 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 encloses a septic plan for the proposed residence, entitled "Plan of Site Development and Effluent Disposal System" prepared by Richard J. Kohler, dated March 29, 2021. Said plan is attached hereto as "Exhibit A."

Abutting Properties

See attached abutter list.

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:

1. and 2. 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.

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.

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.

All variances violate the strict terms of the Ordinance. By saying that a variance request fails the "public interest" and "spirit of the ordinance" criteria simply because the proposed use is prohibited by the Ordinance would be a tautology, and a misinterpretation of these criteria. Using that logic, no variances could ever be granted, as these criteria would never be satisfied. Instead, the Board must ask whether the requested variance is consistent with the *spirit*, and not the letter, of the Ordinance.

3. 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. Nine abutting parcels contain residences. 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.

Precluding the Applicant from making one of the only viable uses of his Property (constructing a residence), in an area where nine abutting parcels already contain residences, would be an injustice.

4. 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. Nine abutting parcels already contain residential homes despite being located in either the CLI or Industrial 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 herein. Applicant's property will still be zoned Commercial/Light Industrial, and Applicant therefore will retain the ability to attempt to develop the property commercially in the future. Accordingly, the building of a residence will not, in any way, negatively impact the value of surrounding properties.

5. 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 parcels that abut the Applicant's Property, nine 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 residences on nine abutting parcels, none of which, to the Applicant's knowledge, have created issues with neighbors or 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 quantity and location of wetlands and the floodplain on a portion of the Property), make the Property not viable from a commercial perspective. As the wetlands are dispersed throughout the parcel, it is a hardship to the Applicant to forbid him from enjoying a use that the land will allow, especially considering that the proposed use is consistent with the surrounding properties and will cause none of the issues that the Ordinance aims to prevent.

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.

Additionally, the Applicant is willing to accept a condition that only one residence be permitted on the Property, so as to maintain the Property's (limited) commercial potential.

Respectfully submitted.

Paul R. Stauffacher

By Jack D. Hepburn, His Attorney

Signature of Applicant/Property Owner

7-13-2021

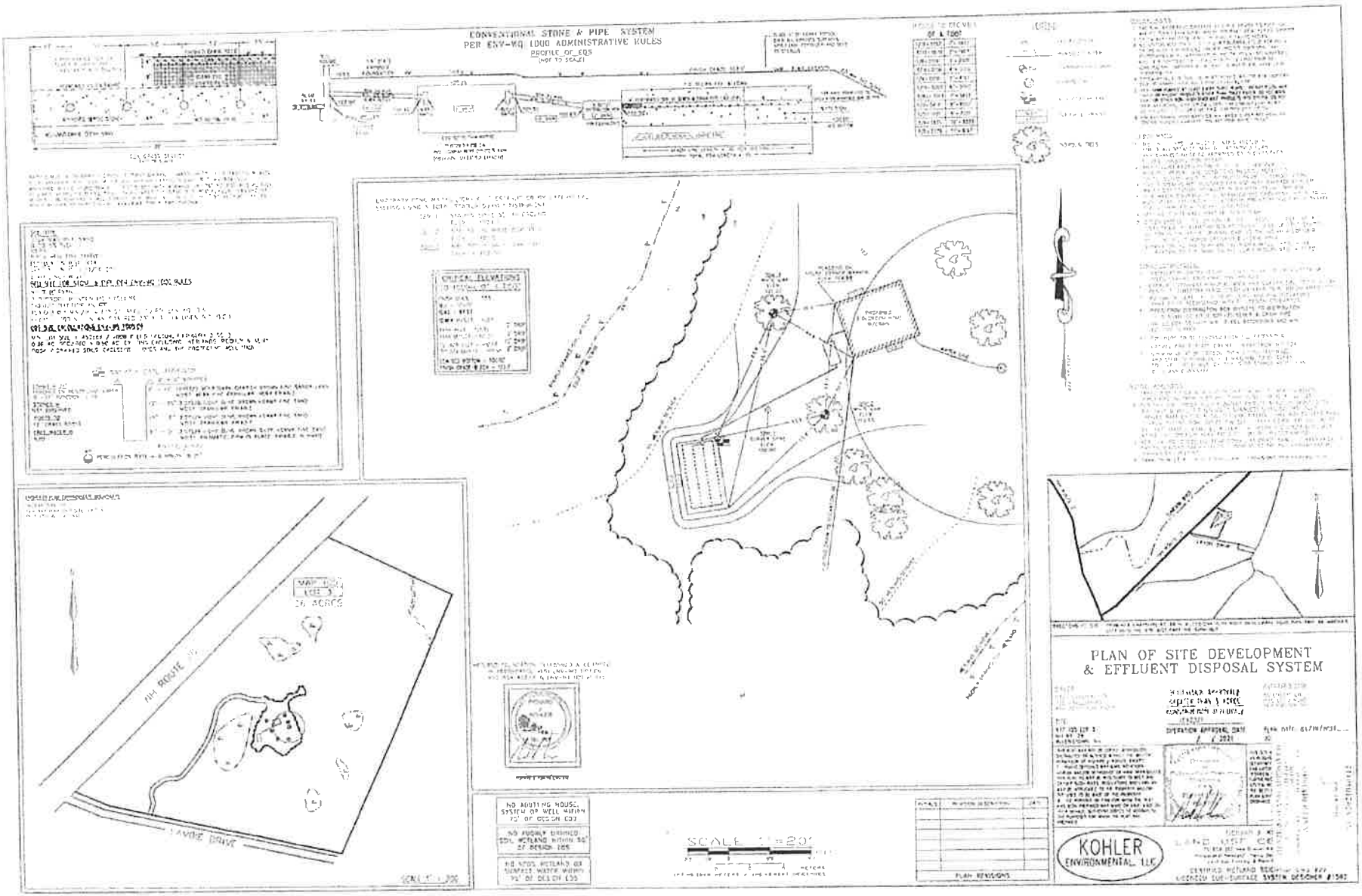
Date

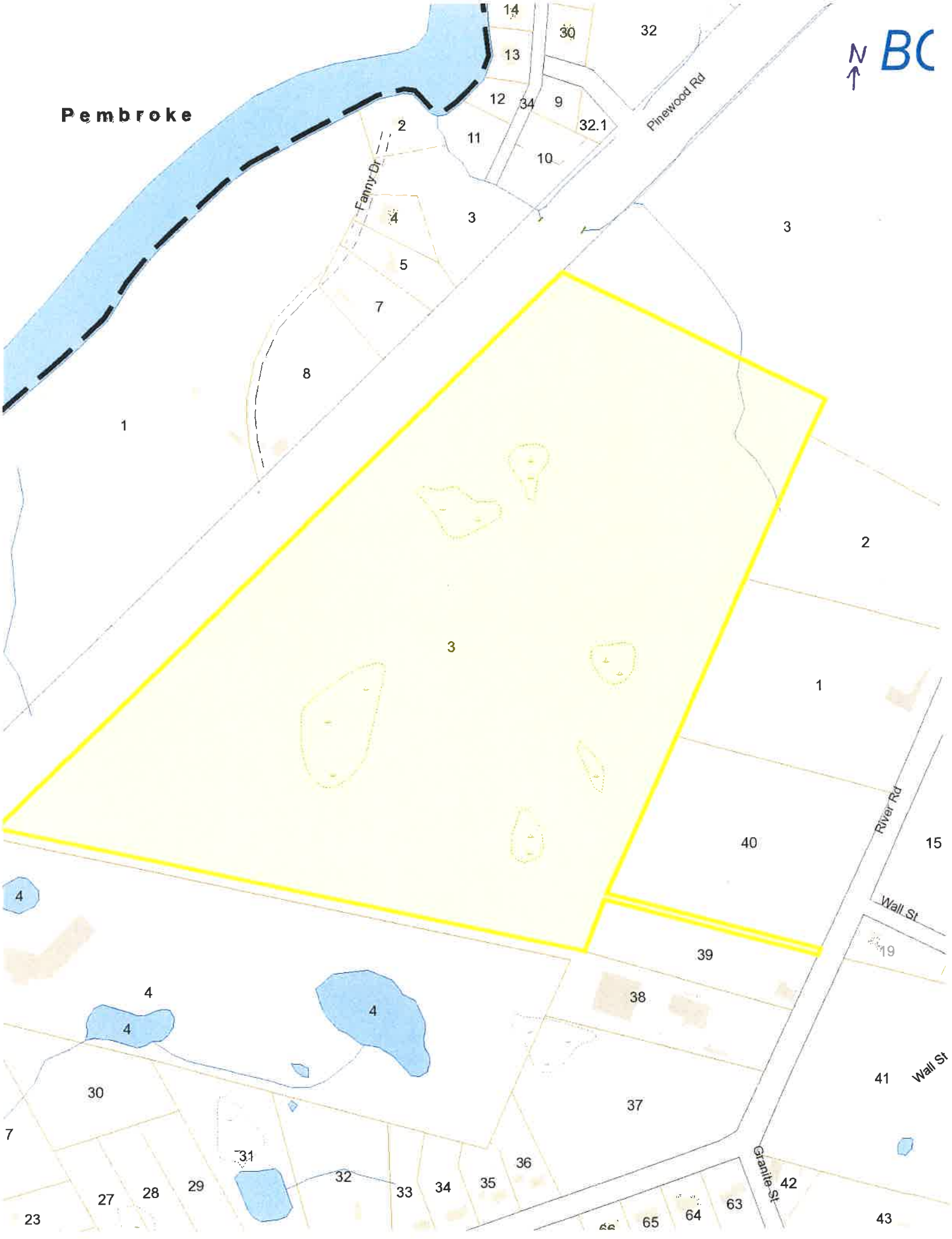
Abutter List

The following is a list of the Tax Maps and Lots of the parcels that abut Mr. Stauffacher's property (Tax Map 105, Lot 3):

- Subject Property: Tax Map 105, Lot 3. Current Owner: Paul R. Stauffacher, 730 Borough Road, Pembroke, NH 03275.
- Tax Map 105, Lot 4. Current Owner: MRF RE Holdings, LLC, 11519 Kingston Pike, Suite 305, Knoxville, TN 37934.
- Tax Map 105, Lot 38. Current Owner: Casella Waste Management, Inc., c/o Harding & Carbone, Inc., 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, 106 River Road, Allenstown, NH 03275.
- Tax Map 105, Lot 40. Current Owner: Robert H. Marier, Jr., 120 River Road, Allenstown, NH 03275.
- Tax Map 105, Lot 41. Current Owner: Phillip B. and Lynn M. Plourde, Trustees of the Phillip B. and Lynn M. Plourde Revocable Family Trust, P.O. Box 96, Suncook, NH 03275.
- Tax Map 410, Lot 1. Current Owner: Paul and Pamela Vezina, 124 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 2. Current Owner: Todd D. and Jacquelyn D. Fredriksen, 126 River Road, Allenstown, NH 03275.
- Tax Map 410, Lot 3. Current Owner: Catholic Bishop of Manchester, c/o Diocese of Manchester, 153 Ash Street, Manchester, NH 03104.
- Tax Map 410, Lot 19. Current Owner: Hunter Judd, 109 River Road, Allenstown, NH 03275.
- Tax Map 104, Lot 1: Bobcat Realty Trust c/o Suncook River Family Camp, 147 Middle Road, Deerfield, NH 03037.
- Tax Map 104, Lot 3. Current Owner: Town of Allenstown, 16 School Street, Allenstown, NH 03275
- Tax Map 104, Lot 5. Current Owner: Jessica R. Caputo and Christopher A. Betts, 15 Fanny Drive, Pembroke, NH 03275.
- Tax Map 104, Lot 7. Current Owner: Debra L. and Christopher W. Gagnon, 11 Fanny Drive, Pembroke, NH 03275.
- Tax Map 104, Lot 8. Current Owner: Thomas A. Gagnon, 92 Pinewood Road, Allenstown, NH 03275.

EXHIBIT A


CONVENTIONAL STONE & PIPE SYSTEM
PER ENV-HC 1000 ADMINISTRATIVE RULES
PROFILE OF EOS
NOT TO SCALE!
CRITICAL ELEVATIONS
NO ROUTING HOUSE, SYSTEM OR WELL WITHIN 75' OF DESIGN EOS
NO FREQUENTLY FLOODED SOIL WITHIN 50' OF DESIGN EOS
NO KNOWN WETLANDS OR SURFACE WATER WITHIN 75' OF DESIGN EOS
SCALE 1"=20'
PLAN REVISIONS
PLAN OF SITE DEVELOPMENT
& EFFLUENT DISPOSAL SYSTEM
KOHLER
ENVIRONMENTAL, LLC


Pembroke
Fanny Dr
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Docket Number: 202100010858
Recorded in Merrimack County,NH
Susan Cragin, Register
BK: 3735 PG: 2330, 4/27/2021 1:47 PM
LCHIP $25.00 RECORDING $18.00
SURCHARGE $2.00

(1)

Return to:
Ransmeier & Spellman, P.C.
One Capitol Street, P.O. Box 600
Concord, NH 03302-0600

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WARRANTY DEED

DAN G. STAUFFACHER AND PAMELA A. STAUFFACHER, with a mailing address of 16 Sherwood Meadows, Pembroke, New Hampshire 03275, (the "Grantors"), for good and valuable consideration, grant to **PAUL R. STAUFFACHER,** with a mailing address of 730 Borough Road, Pembroke, New Hampshire 03275, (the "Grantee"), WITH WARRANTY COVENANTS, all of their right, title and interest in and to:

All that certain tract or parcel of land with any buildings thereon situated in Allenstown, County of Merrimack and State of New Hampshire and bounded and described as follows:

Beginning on the southerly line of the right-of-way of New Hampshire Route #28 as shown on a Plan of Allenstown-Pembroke F-023-1 (1) P-2416 project, recorded in Merrimack County Registry of Deeds, at the northwesterly corner of the premises hereby described and at the northeasterly corner of land now or formerly of Stephen A. Bates near Station 58 and 35 on said Plan; thence

(1) easterly by the southerly line of said right-of-way to an iron pipe at land now or formerly of the Roman Catholic Bishop of Manchester near Station 77 and 60 on said Plan; thence

(2) southerly by said Bishop's land to a stone post at the end of a chain link fence; thence

(3) westerly by said fence and said Bishop's land ninety-four (94) feet, more or less, to a corner in said fence at the northeasterly corner of land of Frank Fleury; thence

(4) continuing westerly on the same course by said Fleury land to the northerly end of a stone wall at the northwesterly corner of said Fleury land; thence

(5) southerly by said wall and said Fleury land to the River Road, so-called, thence

(6) westerly by said road one (1) rod to land formerly of Lymen Clark; thence

(7) northerly by said Clark land on a line parallel to and one (1) rod distant from the westerly line of said Fleury land to a stone post at the northeasterly corner of said Clark land; thence

(8) westerly by said Clark land to said Bates land; thence

(9) northerly by said Bates land to the point of beginning.

The above-described premises are further subject to current use assessment, and this conveyance is made subject to the lien in favor of the Town of Allenstown for the Land Use Change Tax. The Grantee herein, by acceptance of this deed and as part of the consideration therefore, accepts full responsibility for the Land Use Change Tax and agrees to identify and hold harmless the Grantors from any liability with respect to said tax. This provision is binding upon the heirs, administrators and assigns of the parties hereto.

MEANING AND INTENDING to describe and convey all and the same premises conveyed by deed of Suncook Business Park, Inc. to the within Grantors dated August 31, 2007 and recorded September 5, 2007 in the Merrimack County Registry of Deeds at Book 3016, Page 1167.

The property conveyed herein is not homestead property of the Grantors.

The within conveyance is exempt from New Hampshire real estate transfer tax pursuant to RSA 78-B:2, IX.

Dated this 23rd day of April, 2021.

Dan Stauffacher
Dan G. Stauffacher

Pamela A. Stauffacher
Pamela A. Stauffacher

STATE OF New Hampshire
COUNTY OF Merrimack

On this 23rd day of April, 2021, before me the undersigned officer, personally appeared **Dan G. Stauffacher**, as his voluntary act and deed for the purposes therein contained. The identity of the subscribing party was determined by **(check box that applies and complete blank line, if any)**:

- ☑ My personal knowledge of the identity of said person **OR**
- ☐ The oath or affirmation of a credible witness, _____ (name of witness), the witness being personally known to me **OR**
- ☐ The following identification documents: (driver's license, passport, other _____).

Susan W. Chrabolowski
Notary Public/Justice of the Peace
My Commission Expires:
SUSAN W. CHRABOLOWSKI, Notary Public
My Commission Expires October 5, 2021

STATE OF New Hampshire
COUNTY OF Merrimack

On this 23rd day of April, 2021, before me the undersigned officer, personally appeared **Pamela A. Stauffacher**, as her voluntary act and deed for the purposes therein contained. The identity of the subscribing party was determined by **(check box that applies and complete blank line, if any)**:

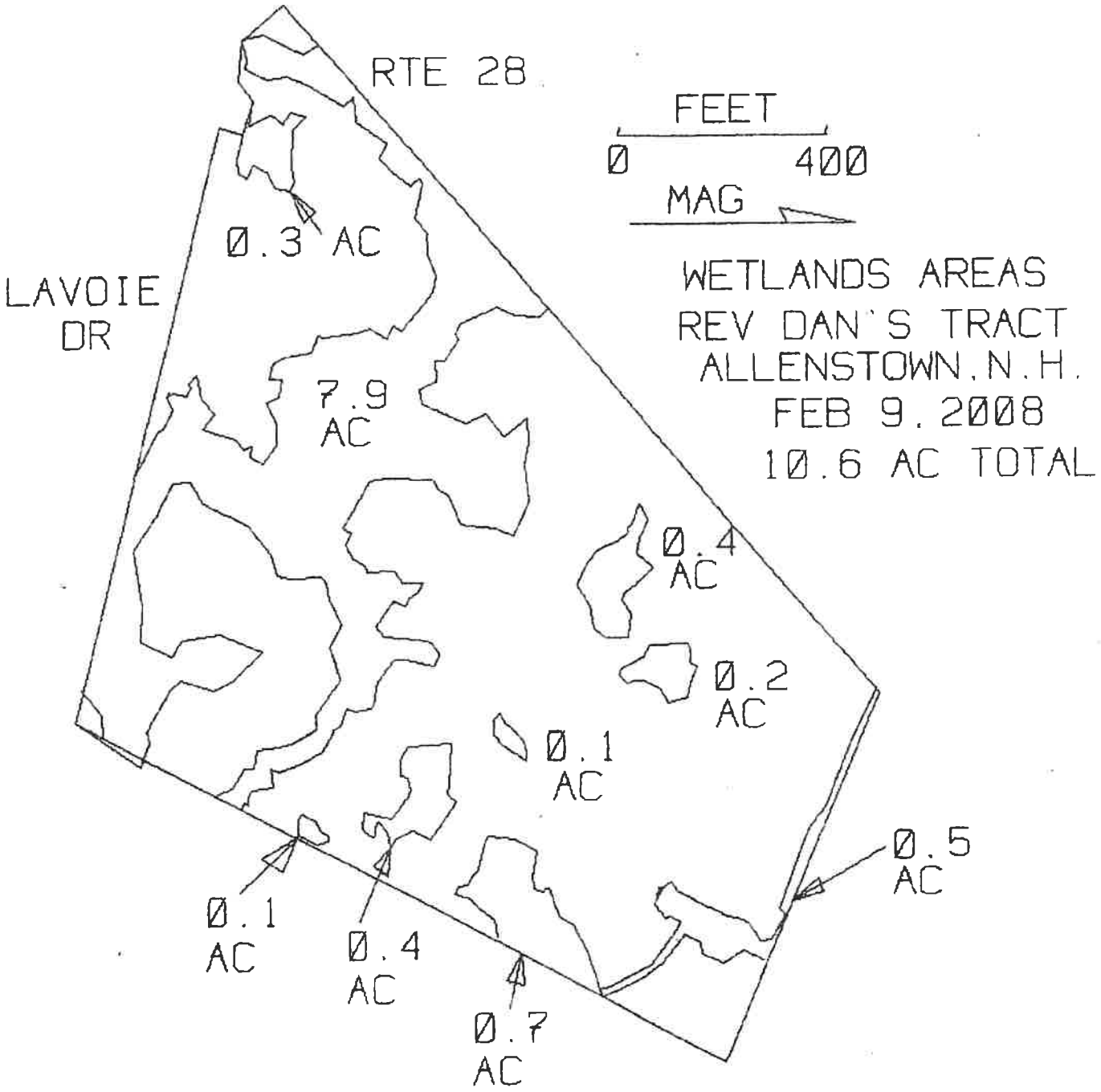
- ☑ My personal knowledge of the identity of said person **OR**
- ☐ The oath or affirmation of a credible witness, _____ (name of witness), the witness being personally known to me **OR**
- ☐ The following identification documents: (driver's license, passport, other _____).

Susan W. Chrabolowski
Notary Public/Justice of the Peace
My Commission Expires:
SUSAN W. CHRABOLOWSKI, Notary Public
My Commission Expires October 5, 2021

Note: This deed was prepared by Ransmeier & Spellman P.C. at the request of the Grantors and for their benefit. It was based solely on information provided by the Grantors. In the course of preparing the deed, no examination of title was requested and none was performed. Consequently, the said Ransmeier & Spellman P.C. makes no representations as to any matters concerning title.

4847-2757-7058, v. 1 13744 1

ALLENS 68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ALLENSTOWN, N.H.
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NICHOLAS R. AESCHLIMAN

July 1, 2021

Jack D. Hepburn, Esq.
Ransmeier & Spellman, P.C.
One Capital Street
P.O. Box 600
Concord, NH 03302

Re: Town Zoning Board of Adjustment's June 23, 2021 Decision to Grant a Variance to Paul R. Stauffacher regarding 91 Pinewood Road

Dear Attorney Hepburn:

The purpose of this letter is to inform you that the Zoning Board of Adjustment's ("ZBA") decision to grant a variance to your clients was unfortunately invalid and not effective because all abutters were not properly notified as required by statute. As a result, the ZBA must schedule and notice a new hearing to hear your variance request. This letter follows my previous attempts to reach you to discuss this issue.

Background:

Your client, Paul R. Stauffacher, owns property located on 91 Pinewood Road in Allenstown, further identified as Town Tax Map 105, Lot 003. Mr. Stauffacher applied to the ZBA for a variance to construct a residence on their Property. The Town ultimately sent notice to the Applicant and to the owners of twelve abutting parcels. On June 23, 2021, the ZBA granted a variance.

Statutory Requirement to Notify Abutters:

By statute, the ZBA must schedule a hearing on all applications for variances. The applicant and "every abutter shall be notified" regarding such hearing, in accordance with RSA 676:7, I. The

requirement that every abutter receive statutory notice is a matter of jurisdiction. In other words, if every abutter did not receive notice, then the ZBA lacked jurisdiction to consider the request for a variance. See Hussey v. Barrington, 135 N.H. 227, 232 (1992).

RSA 672:3 defines "abutter" to mean: "any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board." Significantly, a person whose land is directly across the street from a parcel constitutes an abutter.

The Supreme Court has ruled that the failure to provide notice to every abutter renders a variance "invalid and of no effect," and therefore the purported variance "confer[s] no rights" upon the applicant.

Failure to Notify all Abutters:

Here, the property for which you sought a variance is 91 Pinewood Road, further identified as Tax Map 105 Lot 003 (the "Property"). Notice was given to the applicant and well as 12 additional abutters:

105-003	91 Pinewood Road
410-001	122 River Road
410-002	126 River Road
410-003	138 River Road
104-040	120 River Road
105-039	106 River Road
105-038	104 River Road
105-004	65 Pinewood Road
105-001	80 Pinewood Road
104-008	92 Pinewood Road
104-007	11 Fanny Drive
104-005	15 Fanny Drive
104-003	19 Fanny Drive

However, notice was not provided to the owner of 109 River Road (Map 410-019), nor to the owner of 103 River Road (Map 105-041). These properties are each located directly across a street from the 91 River Road Property.

Therefore, because notice was not provided to every abutter, the ZBA lacked jurisdiction to grant the Property a variance, and the variance the ZBA granted is invalid and of no effect. Accordingly, the ZBA will be scheduling and noticing a new hearing to hear your variance request. In considering your application at this new hearing, the ZBA cannot and will not consider any evidence or arguments that were presented at the first, improperly noticed hearing.

As a result, you must present anew all evidence and arguments that you wish the ZBA to consider.

Please let me know if you have any questions,

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers

Sharon Cuddy Somers
ssomers@dtclawyers.com

cc:
Client
Brendan O'Donnell, Esq.

S:\AA-AL\Allenstown, Town of\general\Zoning-91 Pinewood Road\2021 07 12 Ltr to Stauffacher re ZBA Variance for 91 Pinewood Road.docx

TOWN OF ALLENSTOWN
Zoning Board of Adjustment
Allenstown Town Hall –16 School Street
Allenstown, New Hampshire 03275
June 23, 2021

Call to Order

The Allenstown Zoning Board of Adjustment Meeting of June 23, 2021 was called to order at 6:35 PM by Chair Klawes.

Chair Klawes called for the Pledge of Allegiance.

Roll Call

Present on the Board: Dawna Baxter, Keith Klawes, Matt Pitaro, Steve LaPorte

Excused: Matt L'Heureux

Allenstown Staff: Derik Goodine, Town Administrator

Also present: Brian Arsenault, Code Enforcement Officer (virtually), Paul Stauffacher (Applicant), Jack D. Hepburn, Esq. (Agent for Applicant), Scott McDonald, Economic Development Committee member

Correspondence & Other Business

- ZBA to vote in a new Chair, Vice-Chair and Secretary

Mr. Pitaro made a Motion to nominate Keith Klawes as Chair of the Zoning Board of Adjustment. Ms. Baxter seconded the Motion.

Roll call vote was taken.
Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte –Aye
Matt Pitaro-Aye
Motion was passed unanimously.

Chair Klawes made a Motion to nominate Matt Pitaro as Secretary of the Zoning Board of Adjustment. Ms. Baxter seconded the Motion.

Roll call vote was taken.

Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte –Aye
Matt Pitaro-Aye
Motion was passed unanimously.

Chair Klawes said they are looking for more members of the Planning Board, including alternates.

Old Business

- **Receipt of Applications & Public Hearings**

None.

New Business - Receipt of Applications & Public Hearings –

- ***ZBA Case #2021-01- 91 Pinewood Road (Lot#105-map #003)***

Mr. Hepburn requested to put a single family residence on 36 acres of a property that is zoned commercial and industrial. He said one the main reasons he thinks this is justified is because of the character of the surrounding neighborhood currently. He asked if the abutting residences were granted a variance or whether they were constructed before the zoning took place. He said one of the main things to consider when thinking about variance is the essential character of the neighborhood, and since it is currently mixed use now with both commercial and residential, putting a single home will not change that very much.

Mr. Hepburn said the next thing to consider in addition to putting in a single family residence, the Applicant also hopes to run his general contractor business out of his home and this would add a commercial aspect to it. He said the topography of the property with the prevalence of wetlands seems to have made it not commercially viable.

Chair Klawes asked that he go through each criteria on the application.

Mr. Hepburn said the first and second criteria, that it will not be contrary to public interest and the spirit of the ordinance is observed should be considered together. He said based on what he was saying previously, the ordinance seems to segregate residential and commercial because of issues with mixing them, such as traffic and noise. He said in this case, because the property as it stands is already mixed, the spirit of the ordinance and what it is trying to accomplish isn't applicable.

Chair Klawes says that he is asking them to read the application and then they will ask questions afterward. He said they look at every Applicant individually.

Mr. Stauffacher reads the following:

The subject property consists of 36 acres of undeveloped land on Pinewood Road in Allenstown, NH . 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.

He proposed that he wishes to:

[C]onstruct a residence on the property despite that it is zoned Commercial/Light Industrial. The Applicant proposes to construct the residence in accordance with a certain site plan and proposed septic plan which the State has approved and is prepared by Richard J. Kohler, dated March 29, 2021.

He said with regard to zoning issues:

The zoning ordinance provisions at issue here are Article V, § 504, and Article X, § 1001 of the Town of Allenstown Zoning 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 that zone.

With regard to 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.

Mr. Stauffacher said the facts that will support this:

> 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 in 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 of 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.

Chair Klawes said that they will have to make a Motion that they do not need to read the list of abutting properties.

Mr. Stauffacher said the abutting parcels that zoned Commercial/ Light Industrial are Tax Map 410, Lots 1 and 2; and Tax Map 105, Lot 40.

Mr. Stauffacher said if you go up River Road, those next three parcels of land that contain residences are zone C/LI and he is sure they are grandfathered in.

Mr. Pitaro made a Motion to confirm that the listed Abutting Properties in the Application should be entered into the record. Mr. Klawes seconded the Motion.

Roll call vote was taken.
Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte –Aye
Matt Pitaro-Aye
Motion was passed unanimously.

Mr. Stauffacher said granting the variance is not contrary to the public interest and is consistent with the spirit of the ordinance. He read:

> 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.

Mr. Klawes said that he doesn't have to read the legal cases.

He further read:

> 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. 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. 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. It is also appropriate to consider whether the locus is especially suited for the proposed use.

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.

He said with regard to the "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."

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.

Mr. Stauffacher said before he took over sole ownership of the land, they put the land on the market as a favor and it sat for a year and a half, and then Allenstown approached them about the new school, there was a back and forth and they weren't quite sold on it. He said then Thibeault Construction made them an offer on the land, and they agreed to the offer. Mr. Stauffacher said Thibeault Construction had it surveyed and to them, the cost to mitigate the wetlands was too much money and they could no longer do it at that price.

Mr. Arsenault said the order of the Application criteria is confusing in the way it is numbered.

Mr. Arsenault said that wetlands can be moved, or consolidated. He said he did not see the plans with Thibeault Construction plans but did find the 2008 survey that was done along with an attachment from Army Corps showing the wetlands. He said the location of the residential home is shown on the plan, and doesn't indicate where it is on the overall parcel, and whether there are wetlands where the proposed house is, or where the driveway will be in relation to the wetlands. Mr. Stauffacher provided the 2020 Thibeault survey with a basic overlay, and he can shows where the driveway, septic, etc. is on the current survey.

Mr. Stauffacher said that with regard to "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. 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.

He said in summary with respect to the variance requests:

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.

Mr. Arsenault said that the Planning Board would have to approve if the Zoning Board grants the variance. He said that running his business on the residential property would need to be explained before the Planning Board. Mr. Stauffacher said he would eventually like to build a two or three garage to store scrap material in.

Chair Klawes asked how much of the 36 acres is usable. Mr. Stauffacher said approximately 8 acres is wetlands spread out, and 28 acres of dryland.

Chair Klawes said the property will stay Commercial/ Light Industrial.

Chair Klawes asked Mr. Arsenault what his concerns are. Mr. Arsenault said it was that Residential is not allowed on a Commercial /Light Industrial. He said if he is trying to build on the wetlands, that is a State issue.

Chair Klawes asked Mr. Arsenault if there are requirements regarding the garage that will be built with an office, such as a bathroom. Mr. Arsenault said no, but if it turned into a sales office, then it becomes retail or warehouse space and you have to reconfigure the septic system.

Chair Klawes said it is his experience is that you never can anticipate what could come up in the future and he said they want to make the right decision for both the Town and the owner. Mr. Stauffacher said that further development of the land is not his intent on any level.

Scott McDonald is there to represent the Economic Development Committee. He recommended against granting the variance. He said looking at the topography of the Town and where the water and sewer goes in the future, there is very limited space to develop Commercial and Industrial. Mr. Stauffacher says as a land owner, he has zero interest in selling that land under any circumstance. He said building a residential home on the property will net the Town more money than they are getting right now with nothing on it.

Chair Klawes said that the Zoning Board doesn't take tax implications into consideration when making their decision.

Mr. Goodine said looking at the Maps and plans, he would like to know where the home would be built. Mr. Goodine said he is concerned that of all the areas on the property, that you will put a residential home right in the middle of it which changes what the property is going to be in the future.

There was discussion between Mr. Stauffacher and the Board regarding the right-of-way and access to the property.

Chair Klawes asked how long the property was for sale. Mr. Stauffacher said two years and he only had a few inquiries.

Mr. Stauffacher said that he just wants this to be as simple as possible and that he wants to put down roots in the community.

Mr. Arsenault would like to reiterate testimony that Thibeault is still interested in the property, the easement coming off River Road is a great spot to put a water main on this commercial property, and also it is not difficult to build a building that is not on utilities. He wanted the Board to consider that information.

Mr. Pitaro made a Motion to end the hearing portion of the meeting and enter deliberations. Ms. Baxter seconded the Motion.

Roll call vote was taken.
Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte–Aye
Matt Pitaro-Aye
Motion was passed unanimously.

Chair Klawes asked for comments relating to whether it would "Diminish the Value of the Surrounding Property." Ms. Baxter said the argument that was made was there were other properties that had homes already on them. Mr. Pitaro he does not think there will be a diminution. Chair Klawes said he doesn't know if they can answer the question from a commercial standpoint, by having another parcel that has a house on it that is zoned Commercial/Light Industrial. Mr. Pitaro is not sure that he agreed with Chair Klawes fully. Chair Klawes said there could be a diminish to the properties around it because you are changing the landscape of it. Mr. Pitaro said he is not sure it would diminish or increase if he put the house on it.

With regard to the next criteria, "Granting the Variance is not Contrary to the Public Interest," Chair Klawes said he does not know if it was or not. Mr. Pitaro said the Applicant's family has been enjoying the property as it were, and whatever they have been doing has not been obstructive. He said the other homes that are abutting it, does not seem to cause a contradiction to the interest of the public. Chair Klawes said that with regard to the other homes, we do not know what came first. Ms. Baxter said some of the homes were built a long time ago. She said that no one had asked for a variance to build those homes, so the zone changed afterwards.

Mr. Arsenault said the "term" grandfathered is often misunderstood. He said the homes existed prior to the zoning, and it's a bonus for them, because they could remove their residential home and build a small machine shop.

With regard to "Spirit of the Ordinance" and "Literal Enforcement of the Provision of the Ordinance Will Result in an Unnecessary Hardship," Mr. Pitaro said someone did point out that the single family home would be in the middle of the plot of land where the access road is located. He said the Applicant did seem like they got approval for a septic, and that it is a very good application, but his only pause for thought is putting the house there. Chair Klawes said regardless of where the house gets located, do they need a variance because it is a hardship on the family. Mr. Pitaro said it is a hardship, because he is applying to build a home and there is a roadblock in the form of zoning.

Mr. Arsenault said you really have to think about the word "hardship." He said the zoning has been in place since 1978.

Mr. Pitaro said that the Applicant's testimony satisfied this criteria between figuring out what to do, putting in on the market, etc. Chair Klawes disagreed and does not think it is a hardship. He said there were offers made on the property that the Applicant's did not accept. Ms. Baxter said he doesn't have a full 36 acres because of the wetlands and part of that wetland affects the good land, and it limits the commercial space and makes it extremely expensive to do. She said if it were not for the wetlands, she would agree there was no hardship.

Ms. Baxter said the cost to move the wetlands would offset what the land is valued at. Chair Klawes said that we don't know why Thibeault came in with such a low offer. She asked what would keep him from subdividing down the road if he builds this house, because there still will be some land left over. Mr. Pitaro said in terms of the wetlands, if they grant the variance, they still need to go before the Planning Board as well.

Chair Klawes asked how long did Mr. Stauffacher's family own it. He said they have owned it for 12 years and they knew it was zoned Commercial/ Light Industrial when they bought it. Chair Klawes said he does not know how that creates a hardship because they knew at the time of purchase how it was zoned. Ms. Baxter said it has changed zones several times.

Chair asked if there were any comments regarding "Substantial Justice Would be Done by Granting the Variance."

Chair Klawes asked if they had any no's on any of the criteria. Mr. Pitaro said he does not. Ms. Baxter said she does not. Mr. LaPorte said he does not. Chair Klawes is not convinced that he has met all five criteria at all. He does not think he met any of the criteria.

Mr. LaPorte made a Motion to exit deliberations. Ms. Baxter seconded the Motion.

Roll call vote was taken.
Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte–Aye
Matt Pitaro-Aye
Motion was passed unanimously.

Mr. Pitaro made the Motion to approve the application from Paul Stauffacher to grant a variance to build a single family home on 91 Pinewood Road, Allenstown, NH. Mr. seconded the Motion.

Chair Klawes made an Amendment to the Motion to add the words "as presented" and "no further residential structures" are allowed. Mr. Pitaro and Ms. Baxter agreed with this. Ms. Baxter seconded the Motion.

Chair Klawes said it should be worded to grant ZBA case 2021-01-91 Pinewood Road, Tax Map #103, Lot 3 to allow the application to go forward as presented and allow no further residential structures on the property.

Roll call vote was taken on the Amendment.
Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte–Aye
Matt Pitaro-Aye
Motion was passed 4-0.

Roll call vote was taken on the Motion as amended.
Keith Klawes- No
Dawna Baxter- Aye
Steve LaPorte–Aye
Matt Pitaro-Aye
Motion was passed 3-1.

Mr. Stauffacher asked if this will prevent him from building a garage for his cars. The Board said no.

Mr. Arsenault said within 30 days, anyone who has standing in the community can request a rehearing on the variance, including Zoning Board members.

Unapproved Minutes & Unsigned Minutes

- **December 9, 2020**

Ms. Baxter made a Motion to approve the minutes from December 9, 2020. Mr. Pitaro seconded the Motion.

Roll call vote was taken on the Motion as amended.
Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte–Abstained
Matt Pitaro-Aye

The Motion was passed.

Staff Update

None.

Adjourn

Mr. Pitaro a motion to adjourn meeting which was seconded by Ms. Baxter at 9:00 PM. Roll call vote was taken.

Keith Klawes- Aye
Dawna Baxter- Aye
Steve LaPorte–Aye
Matt Pitaro-Aye
Motion was passed 4-0.

Zoning Board of Adjustment
SIGNATURE PAGE
June 23, 2021

SIGNATURE	MEMBER	DATE
_____	Keith Klawes, Chairman	
_____	Dawna Baxter, Member	
_____	Steve LaPorte, Member	
_____	Matt Pitaro, Secretary	
_____	Matt L'Heureux, Member	

Town of Allenstown
Code Enforcement Officer
16 School Street
Allenstown, NH 03275
603-485-4276 ext. 125
barsenault@allenstownnh.gov

Letter of Denial for ZBA Variance Application on 06/07/2021

Date:	June 8, 2021
Name of Applicant:	Attorney Jack D. Hepburn, Agent
Phone:	603-228-0477
Address of Applicant:	1 Capital Street Concord, NH 03301
Email of Applicant:	jhepburn@ranspell.com
Name of Owner:	Paul R. Stauffacher
Phone:	603-340-5709
Address of Owner:	730 Borough Road Pembroke, NH 03275
Location of Property ID:	**105-003**
Zoning:	**Commercial Light Industrial**
Street Address of Property:	**91 Pinewood Road**

Dear Applicant: You have been denied permission to allow construction of a new residential single family dwelling (SFD) on a Commercial/Light Industrial zone property, where a SFD is not an allowed use.

Denial is for the following reason(s): **Article V; Section 504 and Article X; Section 1001**

You have the right to appeal this decision or request a variance from the Zoning Board of Adjustment where you will be assigned a hearing.

Denied by: Brian Arsenault – Code Enforcement Officer

Attachments: Property Card
Zoning Ordinance References

Town of Allenstown
Zoning Board of Adjustment
16 School Street
Allenstown, NH 03275

RE: ZBA Variance Hearing: Case No. 2021-01

Letter of Authorization

To Whom It May Concern:

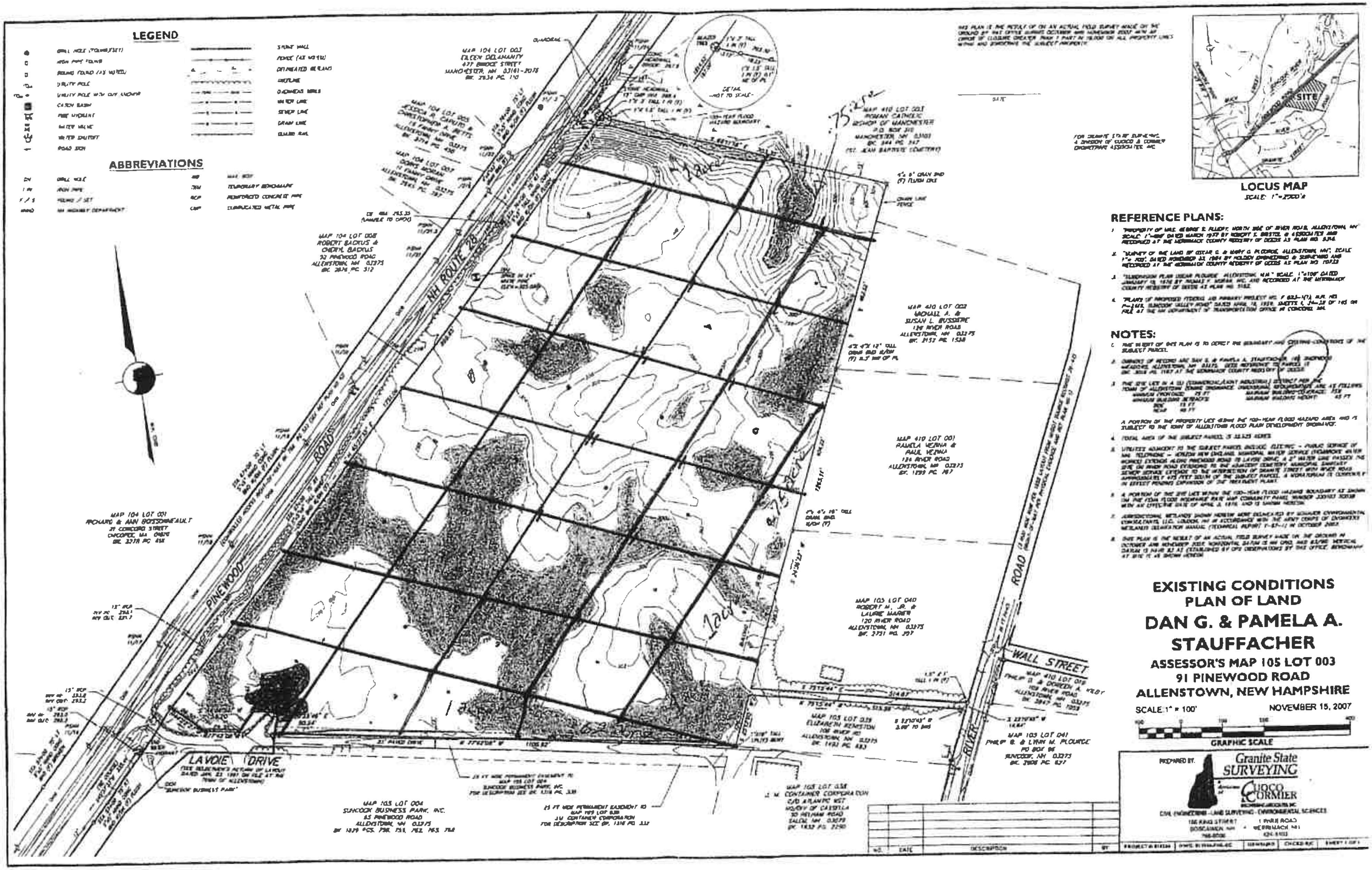
I, Paul R. Stauffacher, am the applicant for the above-referenced application for variance filed with the Zoning Board of Adjustment. I hereby authorize Jack D. Hepburn, Esq. of Ransmeier & Spellman, P.C. to communicate with the Town of Allenstown on my behalf regarding this application, and to represent me at any hearing associated with this application. I do also wish to retain the right to speak on my behalf at the hearing.

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

Sincerely,

Paul R. Stauffacher

4830-1250-9166, v. 1 13744 1


LEGEND
ABBREVIATIONS
NH ROUTE 28
PINEWOOD ROAD
LAVOIE DRIVE
WALL STREET
RIVER ROAD
LOCUS MAP
SITE
REFERENCE PLANS:
NOTES:
EXISTING CONDITIONS
PLAN OF LAND
DAN G. & PAMELA A.
STAUFFACHER
ASSESSOR'S MAP 105 LOT 003
91 PINEWOOD ROAD
ALLENSTOWN, NEW HAMPSHIRE
SCALE 1" = 100'
NOVEMBER 15, 2007
GRAPHIC SCALE
Granite State
SURVEYING
CUOCO & CORMIER

Town of Allenstown
Code Enforcement Officer
16 School Street
Allenstown, NH 03275
603-485-4276 ext. 125
barsenault@allenstownnh.gov

Letter of Denial for ZBA Variance Application on 08/12/2021

Date:	September 2, 2021
Name of Applicant:	Attorney Jack D. Hepburn, Agent
Phone:	603-228-0477
Address of Applicant:	1 Capital Street Concord, NH 03301
Email of Applicant:	jhepburn@ranspell.com
Name of Owner:	Paul R. Stauffacher
Phone:	603-340-5709
Address of Owner:	730 Borough Road Pembroke, NH 03275
Location of Property ID:	**105-003**
Zoning:	**Commercial Light Industrial**
Street Address of Property:	**91 Pinewood Road**

Dear Applicant: You have been denied permission to allow construction of a new residential single family dwelling (SFD) on a Commercial/Light Industrial zone property, where a SFD is not an allowed use.

Denial is for the following reason(s): **Article V; Section 504 and Article X; Section 1001**

You have the right to appeal this decision or request a variance from the Zoning Board of Adjustment where you will be assigned a hearing.

Denied by: Brian Arsenault – Code Enforcement Officer

Town of Allenstown - Zoning Board of Adjustment
Individual Board Member Variance Worksheet

The purpose of this worksheet is to assist individual board members in reviewing all five variance criteria. After reviewing the petition, considering all of the evidence, hearing all of the testimony, and by taking into consideration members' personal knowledge of the property in question, the board should vote on a motion that approves, approves with conditions, or disapproves with reasons, the application under consideration. All five variance criteria must be met to grant a variance.

Petition for a Variance Case No. 2021-03-18 Notre Dame Ave.

1. Granting the variance (would/would not) be contrary to the **public interest** because:

_____

_____

2. The **spirit of the ordinance** (would/would not) be observed because:

_____

_____

3. Granting the variance (would/would not) do **substantial justice** because:

_____

_____

4. For the following reasons, the **values of the surrounding properties** (would/would not) be diminished:

_____

_____

5. **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:

      (i) There **(is/is not)** a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

      _____

      (ii) The proposed use **(is/is not)** a reasonable one because:

a. The criteria in subparagraph (a) having not been 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 property **(can/cannot)** be used in strict conformance with the ordinance because:

APPENDIX B:
INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

The board strongly recommends that before making any appeal, you become familiar with the zoning ordinance and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672- 678, covering planning and zoning.

Four types of appeals can be made to the board of adjustment:

Variance: A **variance** is an authorization which may be granted under special circumstances to use your property in a way that is not permitted under the strict terms of the zoning ordinance.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often this determination is a denial of a building permit. A copy of the determination must be attached to your application.

For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. Granting the variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.
4. The proposed use would not diminish surrounding **property values**.
5. Denial of the variance would result in **unnecessary hardship** to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33, I(b)(5) provides the criteria for establishing unnecessary hardship:

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

   (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

   (ii) The proposed use is a reasonable one.

   (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The following chart may be helpful in completing a variance application:

VARIANCE CRITERIA GUIDELINES

Statutory Requirements (RSA 674:33, I(b)) ***APPLICANT MUST SATISFY ALL OF THE FOLLOWING***	**Explanation**
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights." As it is in the public's interest to uphold the spirit of the ordinance, these two criteria are related.
2. The spirit of the ordinance is observed.	
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public.
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special condition of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. *Alternatively*, unnecessary hardship exists 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 applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area. (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a "fair and substantial" way. (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. *Alternatively*, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

APPLICATION FOR A VARIANCE

Do not write in this space.
Case No. _____
Date Filed _____
_____
(signed - ZBA)

To: Zoning Board of Adjustment,

City/Town of Allenstown, NH

Name of Applicant Michael O'Meara

Address 18 Notre Dame Ave, Allenstown, NH 03275

Owner Same as applicant

(if same as applicant, write "same")

Location of Property 18 Notre Dame Ave, Lot # 000108-000058

(street, number, sub-division and lot number)

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

Application for a Variance

A variance is requested from article VII (Residential Zone) section 703 b. of the zoning ordinance to permit the construction of a second bay to an existing carport on the property in the R1 - Residential Zone, and to then enclose the entire structure to form a two-stall garage with double doors. If granted, the south side of the resulting structure would fall within the 15' side setback requirement and be 5' 2" from the side property line at its closest point.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public **interest** because:

There is an existing dwelling with a single bay carport already on the property. Construction of a second bay and enclosing the resultant structure would enhance the overall aesthetic of the property by creating a similar look to other dwellings and be consistent with enclosed garages in the neighborhood.

2. If the variance were granted, the **spirit** of the ordinance would be observed because:

The current property conforms to both building and setback requirements for the R1 Residential Zone. Granting the variance will allow the owner to make better use of the existing property. The improvements to the property will add to the overall neighborhood aesthetic without detracting from the look of surrounding properties.

3. Granting the variance would do substantial **justice** because:

Granting this variance will allow the owner to make their home more useable by providing cover for the owners' vehicles, while not detracting from the look and feel of the existing neighborhood.

4. If the variance were granted, the **values** of the surrounding properties would not be diminished because:

The proposed improvements will only help to increase the property value of the home and help support the value of other homes in the neighborhood.

5. 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:

      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 because:

Due to the prior placement of structures on the property, the location of the driveway, and the topography of the ground on the north side of the lot, there is no other suitable location for the proposed structure.

- and -

      ii. The proposed use is a reasonable one because:

The owner would like to house vehicles under cover and in a more secure manner, that does not detract from, but rather enhances the overall look of the neighborhood and surrounding properties.

   b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

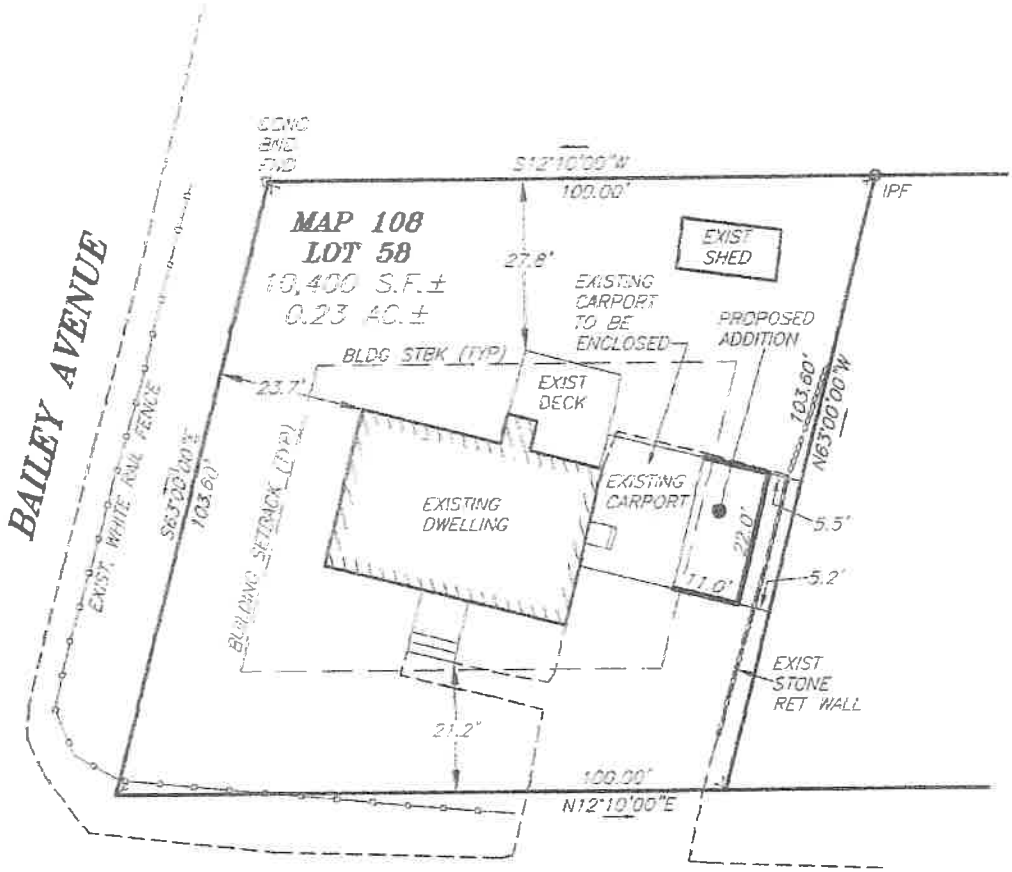
Due to the prior placement of structures on the property, the location of the driveway, and the topography of the ground on the north side of the lot, there is no other suitable location for the proposed structure.

Applicant Michael A. O'Meara Date 31-August-2021
(Signature)

CERTIFIED PLOT PLAN

18 NOTRE DAME AVENUE
ALLENSTOWN, NH 03275

COPY



REFERENCE PLAN:

SUB-DIVISION RIDGEWOOD TERRACE, NOTRE DAME AVENUE ALLENSTOWN, NH. OWNERS: BERNARD & NORMAN RIOPEL SURVEYED BY: P.O. BARTLETT. SCALE: 1"=50', DATED: JUNE, 1968. RECORDED AT THE MCRD AS PLAN 2481

CERTIFICATION:

"I HEREBY CERTIFY THAT THE CONTENTS OF THIS PLAN ARE ACCURATE BASED ON PLANIMETRIC EVIDENCE AND FIELD INSTRUMENT SURVEY PERFORMED IN AUGUST 2021."

SCALE 1" = 20'

DATE AUGUST 17, 2021

MEISNER BREM CORPORATION
202 MAIN STREET, SALEM, NH 03079 (603) 893-3381
142 LITTLETON ROAD, SUITE 16, WESTFORD, MA 01886 (978) 692-1313

18 NOTRE DAME AVENUE
ALLENSTOWN, NH

PREPARED FOR:
MICHAEL O'MEARA
18 NOTRE DAME AVENUE
ALLENSTOWN, NH 03275

JOB NO. 8394

ZONE DISTRICT: R1
MIN. BUILDING SETBACKS:
FRONT = 20 FEET
SIDE = 15 FEET
REAR = 30 FEET

PLAN IS INVALID WITHOUT RED SURVEYOR'S SEAL

20 Notre Dame Ave
Allenstown, NH 03275

31 August 2021

To: Allenstown Zoning Board of Adjustment

Ref: 18 Notre Dame Ave, Allenstown NH

Dear Chair and Members of the ZBA,

This is to advise you that I have spoken with Michael O'Meara regarding his plan to add another bay to his existing carport and to then enclose the structure to make a two-car garage.

I have no objection to the proposal as discussed with Mr. O'Meara.

Sincerely,

Mrs Jo-Ann Scheyd

Mrs. Jo-Ann Scheyd

90 foot Abutters List Report

Allenstown, NH
August 30, 2021

Subject Property:

Parcel Number:	108-058	Mailing Address:	O'MEARA, MICHAEL
CAMA Number:	108-058		18 NOTRE DAME AVENUE
Property Address:	18 NOTRE DAME AVENUE		ALLENSTOWN, NH 03275

Abutters:

Parcel Number:	108-027	Mailing Address:	VALENTIN, JOSHUA
CAMA Number:	108-027		4 BAILEY AVENUE
Property Address:	4 BAILEY AVENUE		ALLENSTOWN, NH 03275
Parcel Number:	108-056	Mailing Address:	OCASIO, MELISSA SANTIAGO, YOVANNY
CAMA Number:	108-056		1 PARK STREET
Property Address:	1 PARK STREET		ALLENSTOWN, NH 03275
Parcel Number:	108-057	Mailing Address:	LAMBERT, MATTHEW
CAMA Number:	108-057		1 BAILEY AVENUE
Property Address:	1 BAILEY AVENUE		ALLENSTOWN, NH 03275
Parcel Number:	108-059	Mailing Address:	SCHEYD, WAYNE F. SCHEYD, JOANN L
CAMA Number:	108-059		20 NOTRE DAME AVENUE
Property Address:	20 NOTRE DAME AVENUE		ALLENSTOWN, NH 03275
Parcel Number:	113-003	Mailing Address:	BLAZON, ROGER R. BLAZON, DONNA L.
CAMA Number:	113-003		16 NOTRE DAME AVENUE
Property Address:	16 NOTRE DAME AVENUE		ALLENSTOWN, NH 03275
~~Parcel Number:~~	~~113-008~~	~~Mailing Address:~~	~~MARTIN, VICTOR A JR. MARTIN, STACY A~~
~~CAMA Number:~~	~~113-008~~		
~~Property Address:~~	~~23 NOTRE DAME AVENUE~~		~~2 LUBERN AVENUE~~
			~~ALLENSTOWN, NH 03274~~
Parcel Number:	113-009	Mailing Address:	GUILMETTE, JONATHAN MATTHEW
CAMA Number:	113-009		STACHE, SAMANTHA ANN
Property Address:	21 NOTRE DAME AVENUE		21 NOTRE DAME AVENUE
			ALLENSTOWN, NH 03275
Parcel Number:	113-027	Mailing Address:	KELLY, JAMES M KELLY, JENNA L.
CAMA Number:	113-027		19 NOTRE DAME AVENUE
Property Address:	19 NOTRE DAME AVENUE		ALLENSTOWN, NH 03275

MICHAEL A OMEARA
18 NOTRE DAME AVE
ALLENSTOWN, NH 03275

319
54-7/114
47

9/02/2021
Date

Pay to the Order of TOWN OF ALLENSTOWN $ 226.73

Two hundred twenty six and 73/100 Dollars

Photo Safe Deposit®

Bank
America's Most Convenient Bank®

For APP FOR VARIANCE

Michael A. O'Meara

:011400071: 924548674411 0319

Harland Clarke

TD Bank N.A.

Received 9/2/21 @ 11:07
Brian Arsenault
Brian Arsenault

Town of Allenstown
Code Enforcement Officer
16 School Street
Allenstown, NH 03275
603-485-4276 ext. 125
barsenault@allenstownnh.gov

Letter of Denial for ZBA Variance Application on 08/12/2021

Date:	September 2, 2021
Name of Applicant:	Michael O'Meara
Phone:	603-867-6100
Address of Applicant:	18 Notre Dame Avenue Allenstown, NH 03275
Email of Applicant:	momeara@allenstownnh.gov
Name of Owner:	Michael O'Meara
Phone:	603-867-6100
Address of Owner:	18 Notre Dame Avenue Allenstown, NH 03275
Location of Property ID:	**108-058**
Zoning:	**Residential**
Street Address of Property:	**18 Notre Dame Avenue**

Dear Applicant: You have been denied permission to allow construction of a second bay to an existing carport to form a two stall fully enclosed garage with a 5.2' side yard setback, where 15' is required.

Denial is for the following reason(s): **Article VII; Section 703 (b)**

You have the right to appeal this decision or request a variance from the Zoning Board of Adjustment where you will be assigned a hearing.

Denied by: Brian Arsenault – Code Enforcement Officer