

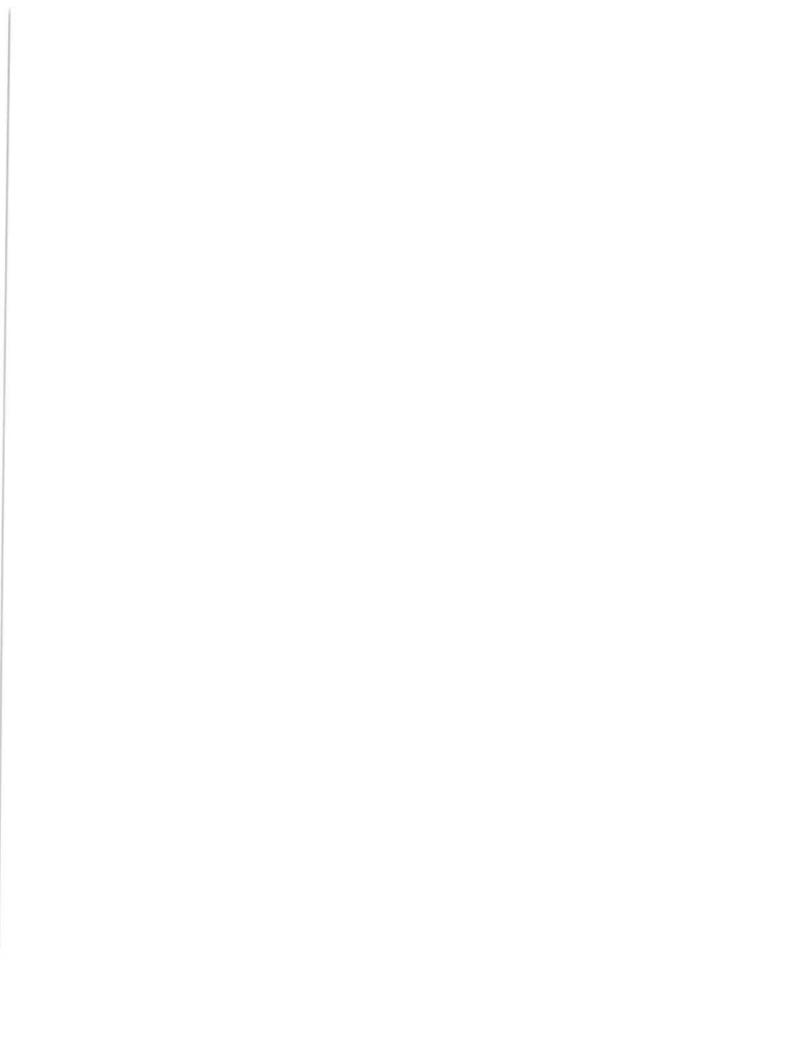
City of Rochester, New Hampshire

Department of Building, Zoning and Licensing Services
33 Wakefield Street * Rochester, NH 03867
(603) 332-3508

DO NOT WRITE IN THIS SPACE

Variance Application

TO: BOARD OF ADJUSTMENT CITY OF ROCHESTER	DATE FILED 1319 ZONING BOARD CLERK
Applicant: DOROTHY THONE	
E-mail: Phone:	
Applicant Address: #92 CHESLEY HICL POP	NO TO THE RESERVE TO
Property Owner Address: #92 CHESLEY HILL PO	AD POCHESTEL, NH
Variance Address: #92 CHESLEY HILL POAC	
Map Lot and Block No: TAX MAP 246 LOT 24 Description of Property: SEE ATTACHMENT	
Proposed use or existing use affected:SEE_ATTACH ME	w7
The undersigned hereby requests a variance to the terms of Article <u>for the substitution of the terms of Article</u>	A NEW LOT THAT
ENCOMPASSES AN ACCESSORY STRUCTU	RE WOOT A PRIMARY STRUCTURE
The undersigned alleges that the following circumstances exist which land under the strict terms of the Zoning Ordinance and thus constitutions.	
West Trools 21.	001 640 040



Description of Property:

The Applicant has received a Conditional Approval from the City of Rochester Planning Board on January 7, 2019 for the proposed Lot Line Adjustment / Subdivision of this subject lot. During the review of the Planning Board it was noted that the newly created lot #24-4 would be considered non-compliant with Article 42 Section 23.A.2.A of the City of Rochester Zoning Ordinance. This regulation prohibits a building lot to have an accessory structure without having a primary structure. This newly created lot #24-4 is proposed as an undeveloped building lot, but it is configured in a manner that encompasses the current barn being an accessory structure which makes is non-compliant.

Proposed use or existing use affected:

It is the desire of the property owner to leave the existing barn in place so that once a new dwelling is built on the lot that it would then be an accessory structure to the new primary structure, at which point it will then be compliant with the Zoning Ordinance.

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

Allowing an existing barn to remain in place, in a location that is compliant with all other setbacks defined within the Zoning Ordinance with the intent to utilize the structure in the same manner in which it currently serves has no detrimental effect to the public interest.

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

Granting of the variance would allow for reasonable use and development of one's property while preserving the spirit and intent of the ordinance by creating little or no effect to the residents of the local area or the City of Rochester.

3) Granting the variance would do substantial justice because:

The substantial justice that would be created by the approval of this variance request is the avoidance of the undue burden of having to demolish a perfectly fine, structurally sound, barn in order to create this lot, moreover, the barn could then be rebuilt in the exact location and then be considered compliant once a house is built on this lot in the future. The reasoning behind the creation of this section of the zoning ordinance is unknown, but the effects compliance with this ordinance has on this particular circumstance does not pass the straight face test of protecting the public.

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

The surrounding properties are developed in a similar fashion to that which is proposed for this lot that the variance is sought and therefore there is no justification for diminished values due to the approval of this variance.

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5) Unnecessary Hardship:

- a. Owning to special conditions of the property that distinguish it from properties in the area, denial of the variance would result in an 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:

The special condition of the property, making it unique from the surrounding properties, is that the property still existing as a larger tract of land, consisting of 27 acres, prior to this proposed development. Because the subject parcel encompassed such a large amount of undeveloped land the owner did not consider any effects the placement of an accessory structure at the time of construction would have in the consideration of any future subdivision, furthermore, it is unconfirmed if this ordinance was in effect at the time this barn was constructed, which brings into question, if the construction of the barn predates the inception of this ordinance, then shouldn't special consideration be given when considering its potential status of being "grandfarthered". There are not positive effects that the enforcement of this ordinance provision to this specific circumstance has for the general public, but yet, it creates a significant undue burden on the lot owner who is trying to exercise their inherent right of reasonable use and enjoyment of their property not detrimental to the City or its residents.

And:

ii. The propose use is a reasonable one because:

The proposed use is considered a reasonable use, due to the fact that accessory structures are permissible when accompanied with a primary structure, which is in the future plan for this lot. If considered in its entirety, the zoning ordinance essentially conflicts with itself without any exception clauses that allow for reasonable considerations of accessary structures.

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

Narrative:

The subject parcel is identified as Tax Map 246 Lot 24, and is located at #92 Chesley Hill Road in Rochester, NH. The applicant is also the owner of record, Dorothy Thone. Dorothy, and her husband Joel, have resided in the dwelling at this location for 25 years and have no immediate plans to move.

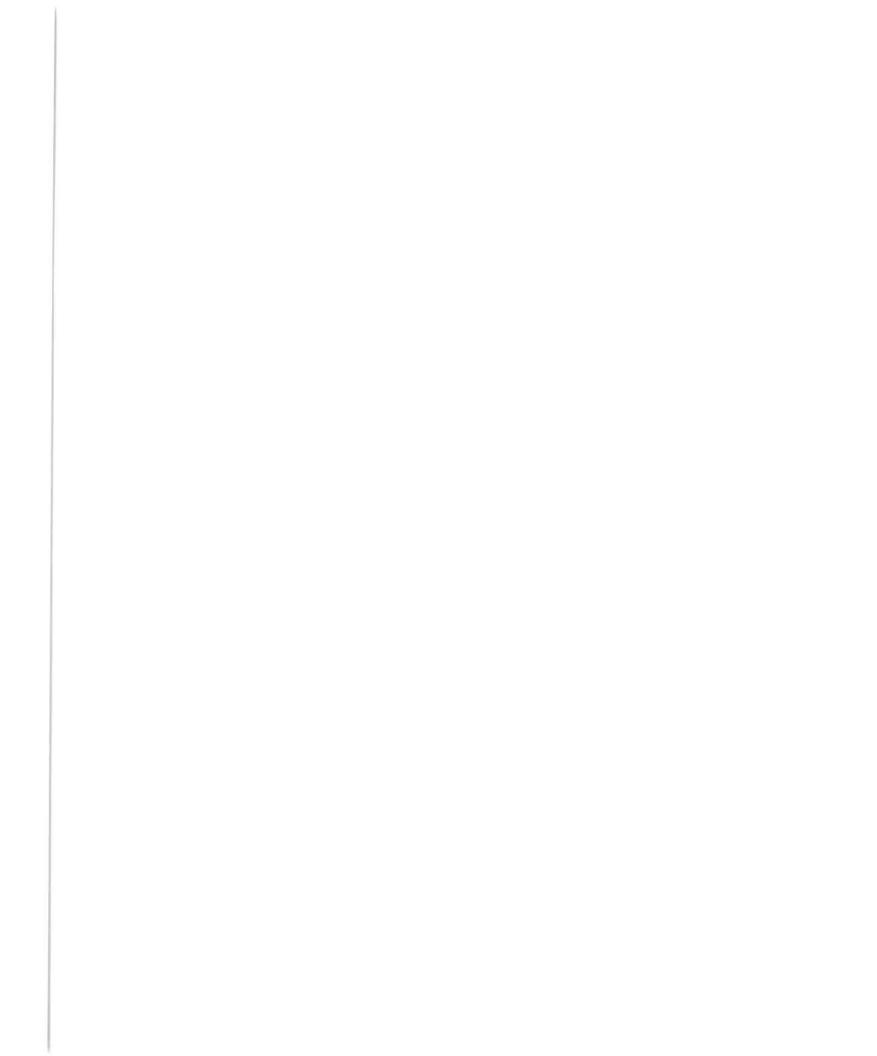
On January 7, 2019, the applicant received conditional approval for a Lot Line Adjustment & Subdivision from the City of Rochester Planning Board. Prior to the approval, during the review process, it was noted that the proposed lot configuration resulted in the existing barn being located on a separate lot other than the existing primary dwelling which is located on the remaining lands parcel, lot 24, and therefore is not compliant with the City Zoning Ordinance. This requirement was unbeknownst to the applicant, or the surveyor, at the time the initial conceptual conversations were being had regarding the subdivision, and it was always the intent of the applicant/owner to have the barn located on one of the new lots created. It was the vision of the applicant/owner to either; upgrade the barn to a primary structure as its location complies with all building setback requirements, or to leave it in place until such point in the future when a new primary structure is built on this lot 24-4, at which point the barn would again serve as an accessory structure to a different primary structure and again become compliant with the Zoning Ordinance.

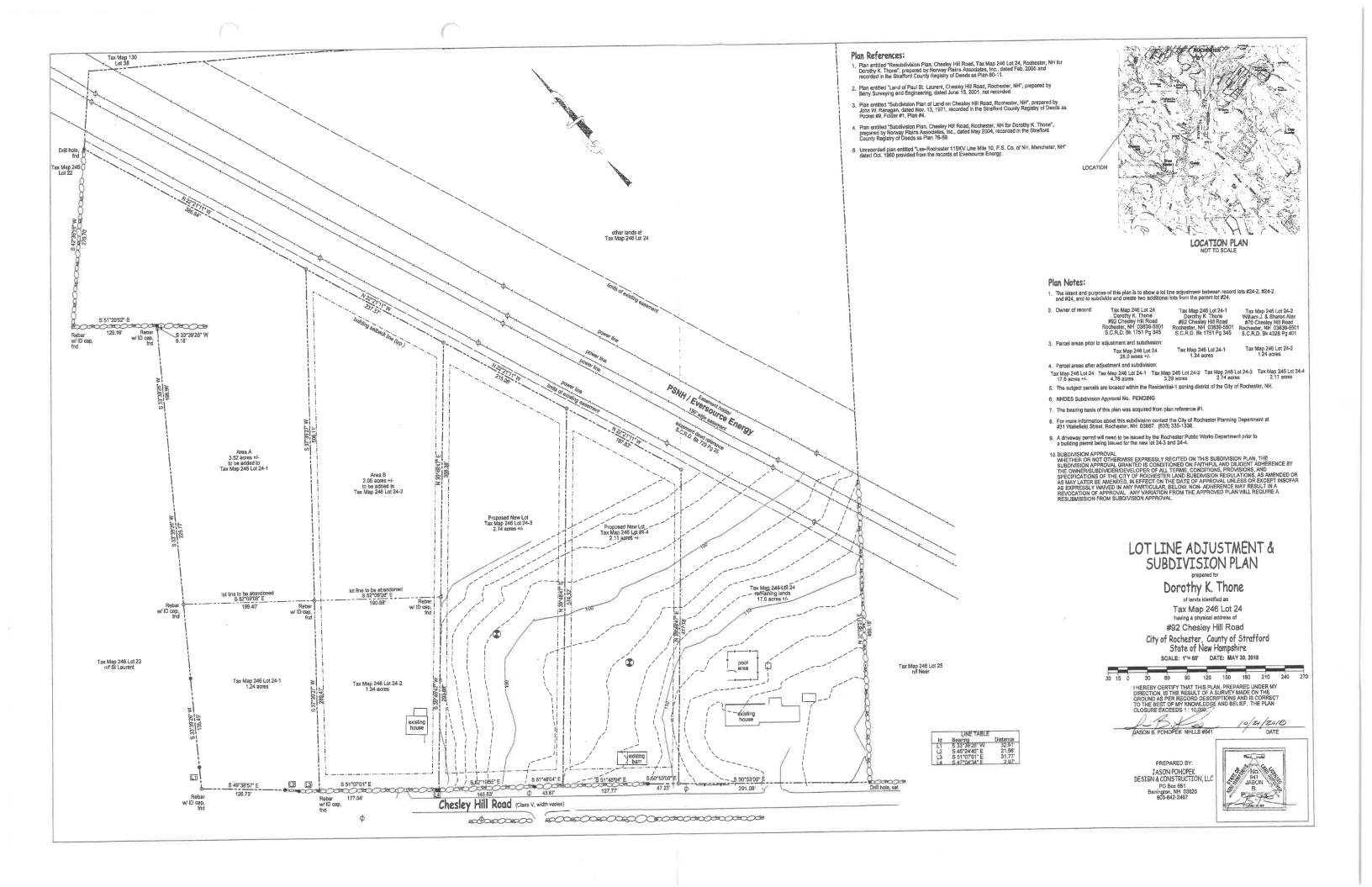
The applicant/owner has no immediate intentions to move from their current residence at #92 Chesley Hill Road and anticipates that they will remain living in that location for the foreseeable future. The subject barn, currently severs as an accessory structure to the Thone residence which it has for nearly two decades. Throughout that time, there have been no adverse effects reported to the City or the immediate neighborhood as the result of these circumstances. The applicant/owner has no immediate intention to sell the lot 24-4, so for all practical purposes, the situation for using the barn will remain the same. We will entertain any and all suggestions that allow the creation of this lot 24-4 while allowing the barn to remain in place. The barn is structurally sound and there is no other reason to take it down. The barn is valued at approximately \$15,000 and that would be lost, in addition to the fees form demolitions, if the board denies this variance request which would require the barn to be demolished for the creation of this new lot 24-4. At some point in the future a primary structure will be constructed on this lot and if the barn were to be reconstructed it would account for an additional \$15,000 to reconstruct and maybe more. This would result in a net \$30,000 difference to allow something that would be allowable in the future.

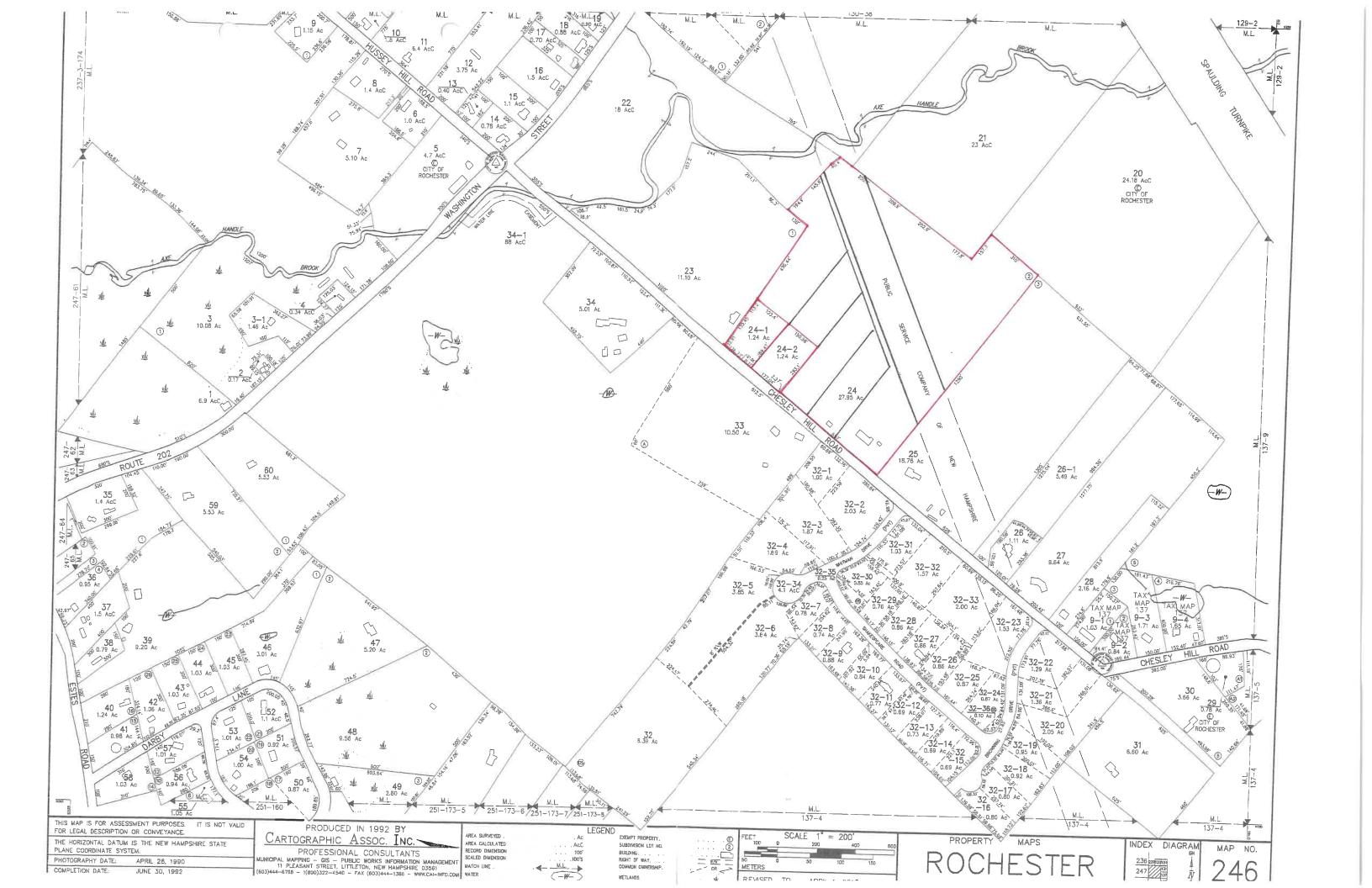
It is for these reasons that we respectfully request approval of the variance to allow for the barn to remain in place while creating lot 24-4.

Thank you for your consideration.

Jason Pohopek







Adopted by the City Council: 4-22-14
Certified by the Codes and Ordinances Committee: 8-7-14
Amendment [5]

42.23Accessory Uses

- **a.** General Provisions. The following provisions apply in evaluating proposed accessory uses, activities, structures, and situations.
 - 1. <u>List of Accessory Uses</u>. Accessory uses are included in Section 42.23 and are generally not included in the Tables of Uses 18-A through 18-E. The principal uses listed in those tables are permitted based upon zoning district. In contrast, accessory uses are allowed if the principal use to which they are accessory is allowed. Nonetheless, some accessory uses (such as home occupations and helipads) also are controlled by zoning district or are approved by special exception, in which cases they are included in the tables.

Section 42.23-b contains standards for specific accessory uses, activities, structures, and situations. This list is not exhaustive. Additional conditions articulated elsewhere may also apply.

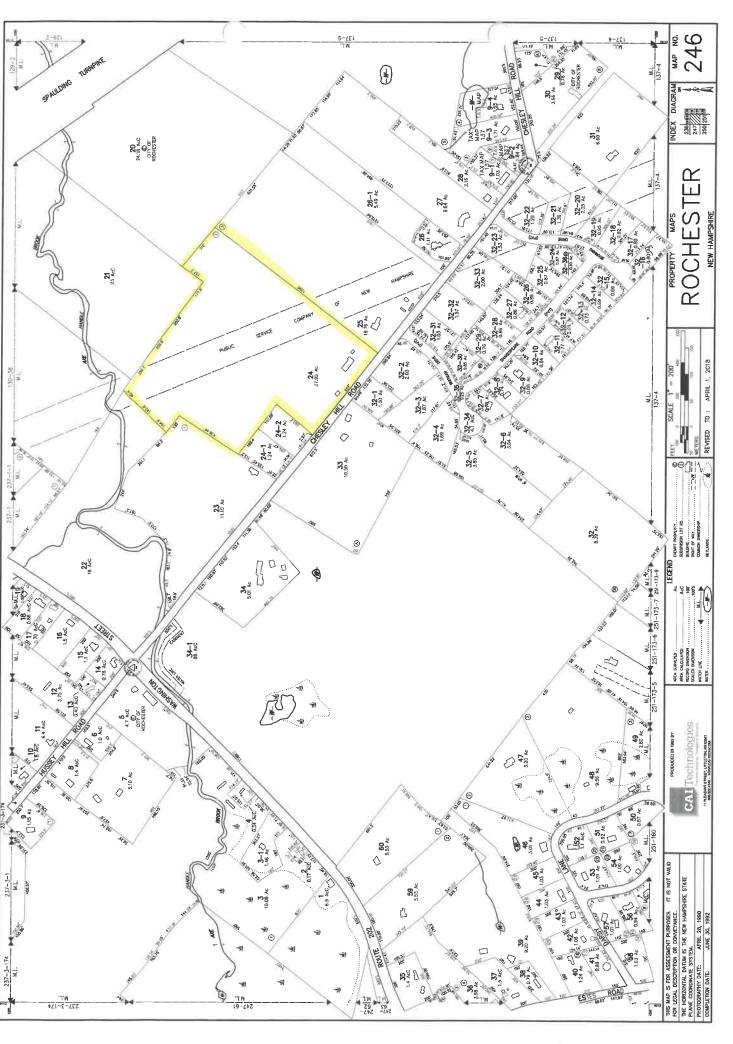
- 2. <u>Criteria.</u> If a proposed use is not listed within Section 42.23, the Director of Building, Zoning, and Licensing Services shall determine on a case by case basis whether it should be deemed an accessory use. This determination is based upon a judgment whether the proposed use:
 - A. is commonly or customarily observed as, or considered to be, an accessory use to the principal use;
 - B. is related to the principal use;
 - C. supports the principal use;
 - **D.** is subordinate to the principal use;
 - **E.** is in reasonable proportion to the principal use;
 - F. is incidental in its character; and
 - G. has relatively little impact, at least in comparison to the principal use

Where appropriate, the Director of Building, Zoning, and Licensing Services may stipulate conditions or parameters for a proposed use which would reasonably render it an accessory use rather than a second principal use.

3. <u>Accessory Uses to Residential Uses</u>. Accessory uses to principal residential uses should be established for the benefit of the resident, residential development, and guests, and not for commercial purposes.

In some cases, the Director of Building, Zoning, and Licensing Services may determine that a proposed use is *not* an accessory use due to the particular scale or nature of the proposed use. (Example: a garage for passenger vehicles is an accessory use, but it would cease to be if the property owner stores vehicles for customers for a fee.)

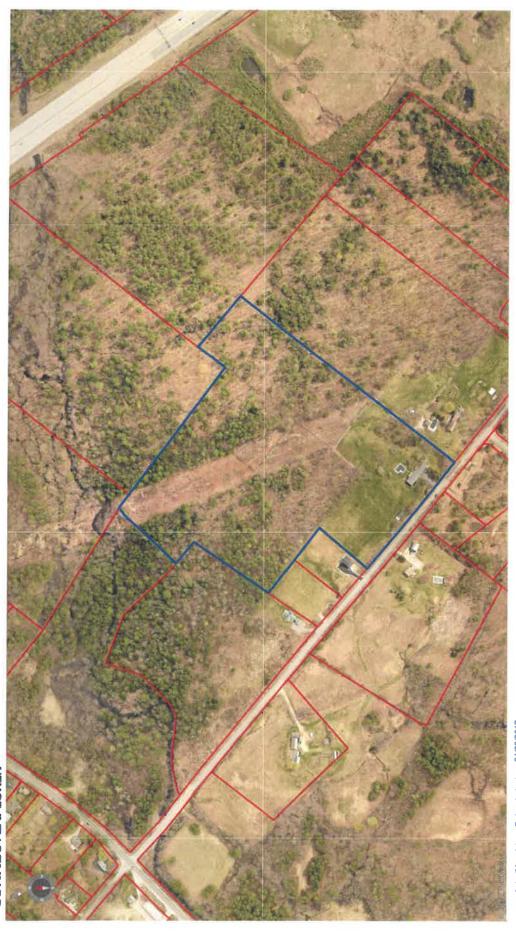
4. <u>Accessory Uses to Nonresidential Uses</u>. In some cases, the Director of Building, Zoning, and Licensing Services may determine that a proposed use is not an accessory use due to the particular scale or nature of the proposed use.





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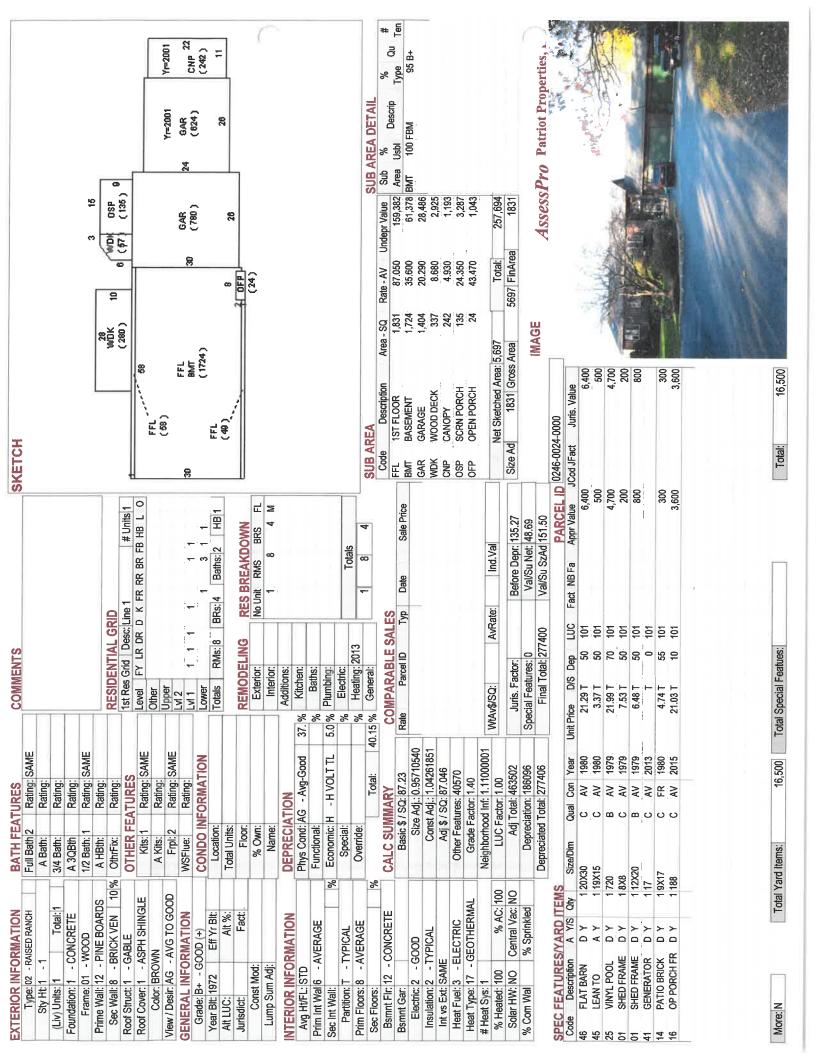
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1/24/2019

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Page 4	Parcel LUC: 016 MI	MIX RES/CU	Total AC/HA: 27.95000 Total SF/SM: 1217502.00 Parcel LUC: 016 MIX RES/CU Prime NB Desc RESIDENTIAL	SIDENTIAL		Total: 73	73 730 Sol Credit	24 747 Total	49 N24





Abutters List Report

Rochester, NH January 23, 2019

TB 47.04

Mailing Address:

Subject Property:

Parcel Number: 0246-0024-0000 CAMA Number:

0246-0024-0000 Property Address: 92 CHESLEY HILL RD Mailing Address: THONE DOROTHY K

92 CHESLEY HILL RD ROCHESTER, NH 03839-5501

Abutters:

Parcel Number: 0130-0038-0000 CAMA Number: 0130-0038-0000

Property Address: 160 WASHINGTON ST

Parcel Number: 0246-0020-0000 CAMA Number: 0246-0020-0000

Property Address: 0 WASHINGTON ST

0246-0021-0000 Parcel Number: CAMA Number: 0246-0021-0000

Property Address: 0 WASHINGTON ST

Parcel Number: 0246-0022-0000

CAMA Number: 0246-0022-0000 Property Address: 202 WASHINGTON ST

Parcel Number: 0246-0023-0000 CAMA Number: 0246-0023-0000

Property Address: 56 CHESLEY HILL RD

Parcel Number: 0246-0024-0000 CAMA Number: 0246-0024-0000 Property Address: 92 CHESLEY HILL RD

Parcel Number: 0246-0024-0001 CAMA Number: 0246-0024-0001

Property Address: 62 CHESLEY HILL RD

Parcel Number: 0246-0024-0002 CAMA Number: 0246-0024-0002 Property Address: 70 CHESLEY HILL RD

Parcel Number: 0246-0025-0000 CAMA Number: 0246-0025-0000 104 CHESLEY HILL RD Property Address:

Parcel Number: 0246-0032-0001 CAMA Number: 0246-0032-0001 Property Address: 89 CHESLEY HILL RD Mailing Address: OCW RETAIL ROCHESTER LLC %

WILDER CO

800 BOYLSTON ST STE 1300 PRU T **BOSTON, MA 02199**

CITY OF ROCHESTER

31 WAKEFIELD ST ROCHESTER, NH

OCW RETAIL ROCHESTER LLC Mailing Address:

%WILDER CO

PRUDENTIAL TOWER STE 300 800

BOYLSTON ST BOSTON, MA 02199

LAURION RITA A REVOC TRUST %

Mailing Address: LAURION RITA A TRUSTEE

2 ROCHESTER HILL RD **ROCHESTER, NH 03867-3210**

Mailing Address: ST LAURENT PAUL JR 56 CHESLEY HILL RD

ROCHESTER, NH 03839-5501

Mailing Address: THONE DOROTHY K

92 CHESLEY HILL RD **ROCHESTER, NH 03839-5501**

Mailing Address: RHEAUME JACOB & KATELYN

62 CHESLEY HILL RD ROCHESTER, NH 03839

Mailing Address: ALEX WILLIAM J & SHARON S

70 CHESLEY HILL RD **ROCHESTER, NH 03839-5501**

Mailing Address: NEER JOHN J & ELIZABETH A

104 CHESLEY HILL RD ROCHESTER, NH 03839-5501

Mailing Address: ROSE REALTY LLC

334 ROUTE 108 MADBURY, NH 03823-7626



1/23/2019

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Abutters List Report - Rochester, NH



Abutters List Report

Rochester, NH January 23, 2019

Parcel Number: CAMA Number: 0246-0032-0002

0246-0032-0002 Property Address: 3 WHITMAN DR Mailing Address: DUBOIS DAVID & LINDA

36 KINGSBURY DR **MILTON, NH 03851**

Parcel Number: 0246-0033-0000

CAMA Number: 0246-0033-0000 Property Address: 75 CHESLEY HILL RD Mailing Address: GILBERT DONALD J & RUTH E

75 CHESLEY HILL RD

ROCHESTER, NH 03839-5500



1/23/2019

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Abutters List Report - Rochester, NH