



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-21-15

DATE FILED 6/16/21

C.M.

ZONING BOARD CLERK

Applicant:

ACACIA LLC, Paul Delisle, Manager

E-mail: delisle47@gmail.com

Phone: 603-502-2771

Applicant Address: 1 Old Dover Road, Rochester, NH 03867

Property Owner (if different): Same

Property Owner Address: Same

Variance Address: 165 Charles Street, Rochester, NH

Map Lot and Block No: Map 128 Lot 221

Description of Property: 12 Unit Office Building

Proposed use or existing use affected: Change to a 12 unit residential building

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 18 & 19

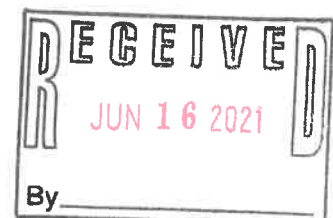
and asks that said terms be waived to permit the conversion of the existing 12 unit

office building to 12 residential one bedroom units

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. **I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.**

Signed: Paul Delisle

Date: 6/15/2021





City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

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

The existing empty 12 unit commercial office building would be converted to 12 one bedroom residential units providing needed housing for single individuals. There would be no change in the character of the neighborhood which is currently a mix of commercial and residential use.

2) If the variance were granted, the spirit of the ordinance would be observed because: The zoning is currently mixed use commercial and residential and making this building all residential will not threaten the public health, safety or welfare of the public.

3) Granting the variance would do substantial justice because:

There is no harm to the general public who would actually benefit from less traffic from the commercial use and provide much needed affordable one bedroom apartments.

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

Value of the surrounding properties will likely be increased by converting the current 12 office commercial uses to 12 residential uses that produce much less traffic.

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 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:

There are no other buildings in the area that comprise 12 commercial office units. The current zoning allows mixed commercial and residential use but not residential use alone. It would be fair and serve a public purpose to allow the all residential use.

And:

ii. The proposed use is a reasonable one because:

The proposed use is reasonable as it will simply allow the 12 commercial uses to be converted to 12 residential uses that does not alter the character of the neighborhood and in fact, improves it.

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 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.

If the variance is not allowed the units cannot be converted to all residential use due to the requirements of the mixed use commercial-residential district with respect to both all residential uses and total square footage required for the 12 residential units.

REQUEST FOR A VARIANCE – NARRATIVE

Paul Delisle, manager of Acacia LLC is requesting a variance to allow the conversion of 12 office commercial units at 165 Charles Street to 12 one-bedroom residential units.

The current structure on the lot which is 7,200 square feet would continue to exist but would change from 12 office suites to 12 one-bedroom residential apartments. It was originally built in 1979. The building is located in a Neighborhood Mixed Use District. Present zoning would require a variance to allow all of the 12 office units to be converted to all residential units, as well as a variance to the now required total 60,000 square foot lot where only 40,510 square feet currently exists. These two variances would be necessary for the conversion to occur.

To address the five required criteria:

1. The variance will not be contrary to public interest as the zone currently allows residential use. The public will actually be better served by the one-bedroom units which will meet a drastic need for such units in Rochester.
2. The spirit of the ordinance is preserved by uses which are currently allowed while the mixed use is not feasible in the current location nor is the lot size requirement.
3. Substantial justice will be done by providing much needed smaller residential housing in Rochester.
4. The values of the surrounding properties will not be diminished as the residential nature of the change will have no detrimental effect on the surrounding properties. There are commercial uses on both sides of the property and a dedicated buffer on the rear of the property separating it from the residential neighborhood.
5. Literal enforcement of the provisions of the current zoning ordinance shows that there is no fair and substantial relationship that exists between the general public purposes of the zoning provisions and the specific application of those provisions to the property.

In this situation the approval of the variance would be to increase the residential density in an area that has adequate infrastructure services and is close to other significant residential activity.

Given the existing use zoning, the variance request is a responsible one.

Chapter 275. Zoning

Article 18. Use Regulations

§ 275-18.6. Uses not permitted/prohibited uses.

A use denoted in the tables by a dashed line "-" is not permitted in that zoning district.

Chapter 275. Zoning

Article 19. Dimensional Regulations

§ 275-19.2. Dimensional provisions.

General dimensional regulations and regulations (as well as clarifications, notes, and references) specifically referenced to the tables follow:

A. Building height.

- (1) Adjacent to residences. In any zone, required setbacks shall be increased by one foot for each foot buildings exceed 35 feet in height.
- (2) Barns. In the AG District barns may exceed the height limit.
- (3) Exceptions. Unless subject to FAA requirements, the height limits specified in the tables shall not apply to the following: chimneys, flares, stacks, storage silos, satellite dishes, antennas, elevator shafts, rooftop mechanical equipment, ventilators, skylights, church towers, cupolas, domes, pinnacles, spires, silos, water tanks, and similar elements, provided the combination of the building and element does not exceed 100 feet in height (unless otherwise specifically provided for in this chapter).

B. Building separation. Except within the DC Zone, all buildings or open covered structures situated on the same lot must be separated from one another by a minimum of 10 feet or as regulated by the New Hampshire State Building or Fire Code.

C. Building stories.

- (1) Floors below grade. Floors with any portion below grade do not count toward meeting requirements for a minimum number of stories. Any floor with at least 1/3 of the floor to ceiling space situated at or above grade shall count toward the maximum number of stories permitted.
- (2) Upper floors. Upper story/attic spaces count toward the minimum required number of stories specified in the dimensional tables if a portion of the floor area of those upper story/attic spaces equal to at least 1/2 the floor plate of the building has a ceiling height of at least seven feet.

D. Corner lots. On corner lots, for the purpose of setbacks, there shall be established a front, a street-side side, a (regular) side, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). The street-side setback shall apply to that side of the lot facing the other street. The street-side setback shall be the ordinary side setback in that district.

E. Density rings. The density rings are shown on the Official City of Rochester Zoning Map that is adopted as part of this chapter and only apply to multifamily dwellings/developments. The rings are defined as follows:
[Amended 2-6-2018; 5-7-2019]

- (1) There is no minimum lot area per dwelling unit applicable within the Downtown Commercial (DC) Zone District. For areas outside of the DC Zone District, the minimum lot area per dwelling unit within a one-mile radius of the center of Rochester shall be 5,000 square feet. The minimum lot area per dwelling unit outside of the one-mile radius of the center of Rochester shall be 7,500 square feet.
- (2) The minimum lot area per dwelling unit within a one-half-mile radius of the center of Gonic and East Rochester shall be 5,000 square feet. The minimum lot area per dwelling unit outside of the one-half-mile

radius of the center of Gonic and East Rochester, shall be 7,500 square feet.

- (3) Any lot that is partially within the radius of a density ring shall be treated as if it were entirely within the radius of the density ring.
- F. Double frontage lots. On double frontage lots, for the purpose of setbacks, there shall be established a front, two sides, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). The regular rear setback shall apply to that section of the lot opposite the front.
- G. Exempt structures. Nonhabitable utilities and utility-type structures erected by a governmental, public utility or nonprofit agency which customarily are built within the road right-of-way, on undersized lots, or close to property lines, and which cannot reasonably be made to conform to the requirements of the dimensional tables, are exempt from those requirements.
- H. Frontage and access. Access to lots shall be taken from the same road where the lot frontage is located unless waived by conditional use.
- I. Frontage.
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
- (1) Continuous. An area used to meet frontage requirements must be continuous and unbroken. Two or more discrete areas may not be added together to meet frontage requirements.
- (2) Culs-de-sac. The Planning Board may reduce the required frontage on the curved end portion of a cul-de-sac by up to 20% by conditional use (due to the narrower frontage relative to lot width that naturally occurs along a cul-de-sac).
- (3) Depth. The front portion of every lot must be at least the width of the required frontage from the front property line extending back at least the depth of the setback from the front property line.
- J. Lot area; usable area. No lot shall be approved unless a rectangle measuring at least 3,000 square feet can be fit inside the lot beyond any required setbacks, wetlands, wetland buffers, or slopes greater than 25%. The rectangle must be located in an accessible part of the lot and its width must measure at least 30 feet.
- K. Lot coverage. All of the following elements are considered part of lot coverage: buildings, roofed structures, or impervious surfaces.
- L. Multiple principal uses. Where there are multiple principal uses on one lot or parcel, minimum required lot sizes are not aggregated except where there are multiple residential uses; i.e., it is necessary only that the lot size meet the minimum requirement for any use proposed for the lot. (Example: A certain zoning district stipulates a minimum lot size of 40,000 square feet for all permitted uses, including single-family and commercial both of which are allowed. To accommodate a single-family house and a commercial use on the same lot, a lot 40,000 square feet would be required, rather than a lot 80,000 square feet. However, to establish duplexes, townhouses, and apartments on the same lot, the minimum lot size would be based on the total number of dwelling units.) Nonetheless, as part of site plan review, the Planning Board may stipulate appropriate conditions to ensure compatibility of the multiple uses.
- M. Nonconformities, creation of. Except for open space lots and conservation land, lots and sites may not be created or modified in any manner that would make them nonconforming in terms of any dimensional requirements of this chapter.
- N. Open space lots; frontage. It is not necessary for open space lots and conservation land to be in compliance with any requirements of the dimensional tables. Minimum frontage of 12 feet is required in order to ensure access.
- O. Right-of-way encroachments. Within commercial districts where there is no minimum front setback, encroachments may occur within the public right-of-way as follows:
- (1) Footings below grade may encroach as needed subject to approval of the Director of Building, Zoning, and Licensing Services and Public Works Department.
- (2) Awnings over the sidewalk provided there is a vertical clearance of at least seven feet.

- (3) Architectural elements, such as balconies, bay windows, and cornices, on upper floors provided the encroachment does not exceed two feet and provided there is a vertical clearance of at least 10 feet.
- P. Rounding off. In any calculation, where the final number results in a fraction of a unit, the number of units shall be rounded up to the next whole number where the fraction is $\frac{1}{2}$ or greater. It shall be rounded down to the next whole number where the fraction is less than $\frac{1}{2}$.
- Q. Setbacks for accessory uses. Setback requirements apply to buildings and roofed structures accommodating accessory uses in similar fashion as those accommodating principal uses except where otherwise specified.
- R. Setback application.
- (1) Required setbacks apply to buildings, roofed structures, open air decks, porches, ground-mounted mechanical equipment, ground-mounted satellite dishes, fuel tanks, and bulkheads. The setback requirement applies whether the element is a principal or an accessory use. [See extensions beyond setbacks (i.e., into setback areas) below; special exception provisions for porches; and several other specific exceptions and special provisions regarding setbacks in this chapter.]
- (2) Setbacks are measured to the building foundation, except where a portion of the building containing usable floor area extends beyond the foundation (such as on the upper floors in a garrison-style house). Where a building foundation is not present or not applicable, setbacks are measured to the most appropriate vertical fascia, eave board, or header joist for that part of the structure. For ground-mounted mechanical equipment, ground-mounted satellite dishes, fuel tanks, and bulkheads, setbacks are measured to the nearest part of the structure.
- S. Extensions beyond setbacks (i.e., into setback areas).
- (1) Appurtenant elements to buildings or structures which do not contribute to usable floor area and do not have a foundation and which are not specifically included in Subsection R above may extend into the setback areas but may not extend beyond any property line. This includes, but is not limited to, architectural trim, awnings, bay windows, chimneys, decorative architectural elements, downspouts, window air-conditioning units, exterior steps, fire escapes, gutters, place of refuge decks, building-mounted satellite dishes, roof eaves, siding materials, and vents.
- (2) In cases where any landing serving exterior steps exceeds 24 square feet in area, that landing (but not the steps) must meet all required setbacks.
- T. Triangular lots. Triangular lots shall contain one front lot line and two side lot lines.
- U. Triple frontage lots. On triple frontage lots, for the purpose of setbacks, there shall be established a front, two sides, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). For any side which faces a street the setback shall be the ordinary side setback in that district. The ordinary rear setback shall apply.

Unofficial Property Record Card - Rochester, NH

General Property Data

Parcel ID 0128-0221-0000
Prior Parcel ID
Property Owner ROCHESTER HOUSING AUTHORITY

Mailing Address 77 OLDE FARM LN

City ROCHESTER
Mailing State NH Zip 03867
ParcelZoning NMU

Account Number 439

Property Location 165 CHARLES ST
Property Use PILOT AGREE
Most Recent Sale Date 10/9/2017
Legal Reference 4518-628
Grantor FORREST JANE L
Sale Price 0
Land Area 0.930 acres

Current Property Assessment

Card 1 Value	Building Value 429,500	Xtra Features Value 25,700	Land Value 89,600	Total Value 544,800
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Building Description

Building Style MED OFFICE
of Living Units 0
Year Built 1979
Building Grade AVG. (-)
Building Condition Average
Finished Area (SF) 7200
Number Rooms 0
of 3/4 Baths 0

Foundation Type CONCRETE
Frame Type WOOD
Roof Structure GABLE
Roof Cover ASPH SHINGLE
Siding TEX 1 11
Interior Walls DRYWALL
of Bedrooms 0
of 1/2 Baths 12

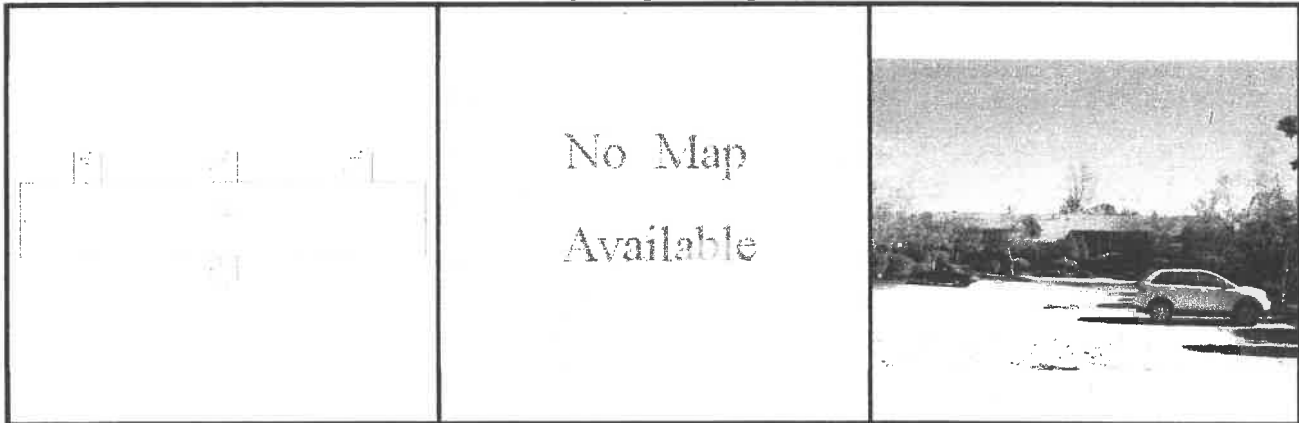
Flooring Type AVERAGE
Basement Floor CONCRETE
Heating Type FORCED H/W
Heating Fuel OIL
Air Conditioning 0%
of Bsmt Garages 0
of Full Baths 0
of Other Fixtures 0

Legal Description

Narrative Description of Property

This property contains 0.930 acres of land mainly classified as PILOT AGREE with a(n) MED OFFICE style building, built about 1979 , having TEX 1 11 exterior and ASPH SHINGLE roof cover, with 12 commercial unit(s) and 0 residential unit(s), 0 room(s), 0 bedroom(s), 0 bath(s), 12 half bath(s).

Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.



165 Charles Street

Rochester, NH



June 18, 2021

1 inch = 50 Feet

www.cai-tech.com



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Stacey Price
Executive Director

Rochester Housing Authority

77 Olde Farm Lane
Rochester, N.H. 03867
(603) 332-4126 Fax (603) 332-0039

email: Staceyp@rhanh.org Website: www.rhanh.org

June 15, 2021

TO: Rochester Zoning Board of Adjustment

FROM: Stacey Price, Executive Director

Rochester Housing Authority

RE: Variance Application for 165 Charles Street

This will confirm that the Rochester Housing Authority is aware of the variance request being submitted by Paul Delisle, manager of Acacia LLC to the Zoning Board of Adjustment for conversion of 12 commercial units to 12 residential units at 165 Charles Street currently owned by the Rochester Housing Authority.

Sincerely,

Stacey Price




Google Maps 169 Charles St



Image capture: Sep 2019 © 2021 Google

Rochester, New Hampshire

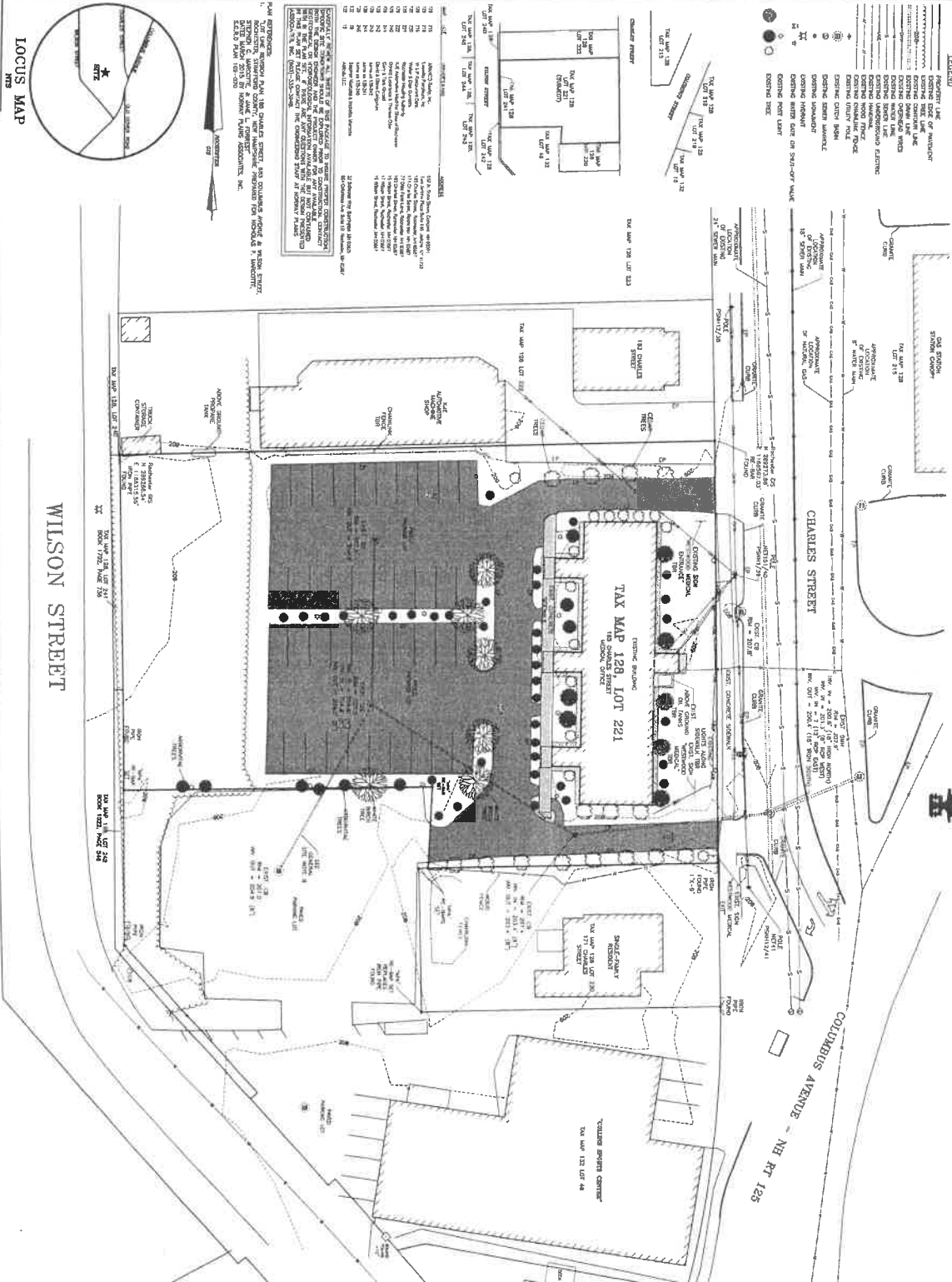
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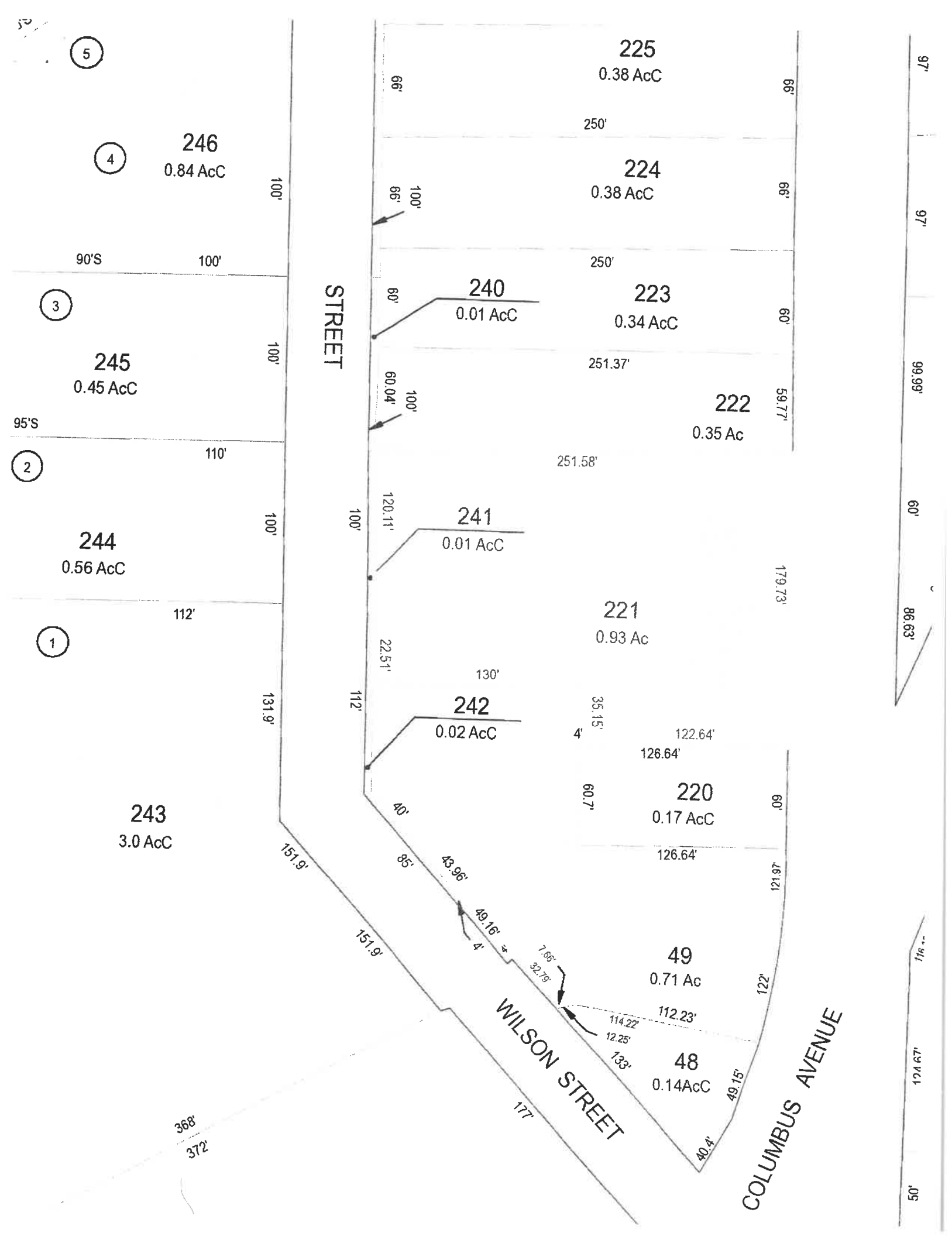
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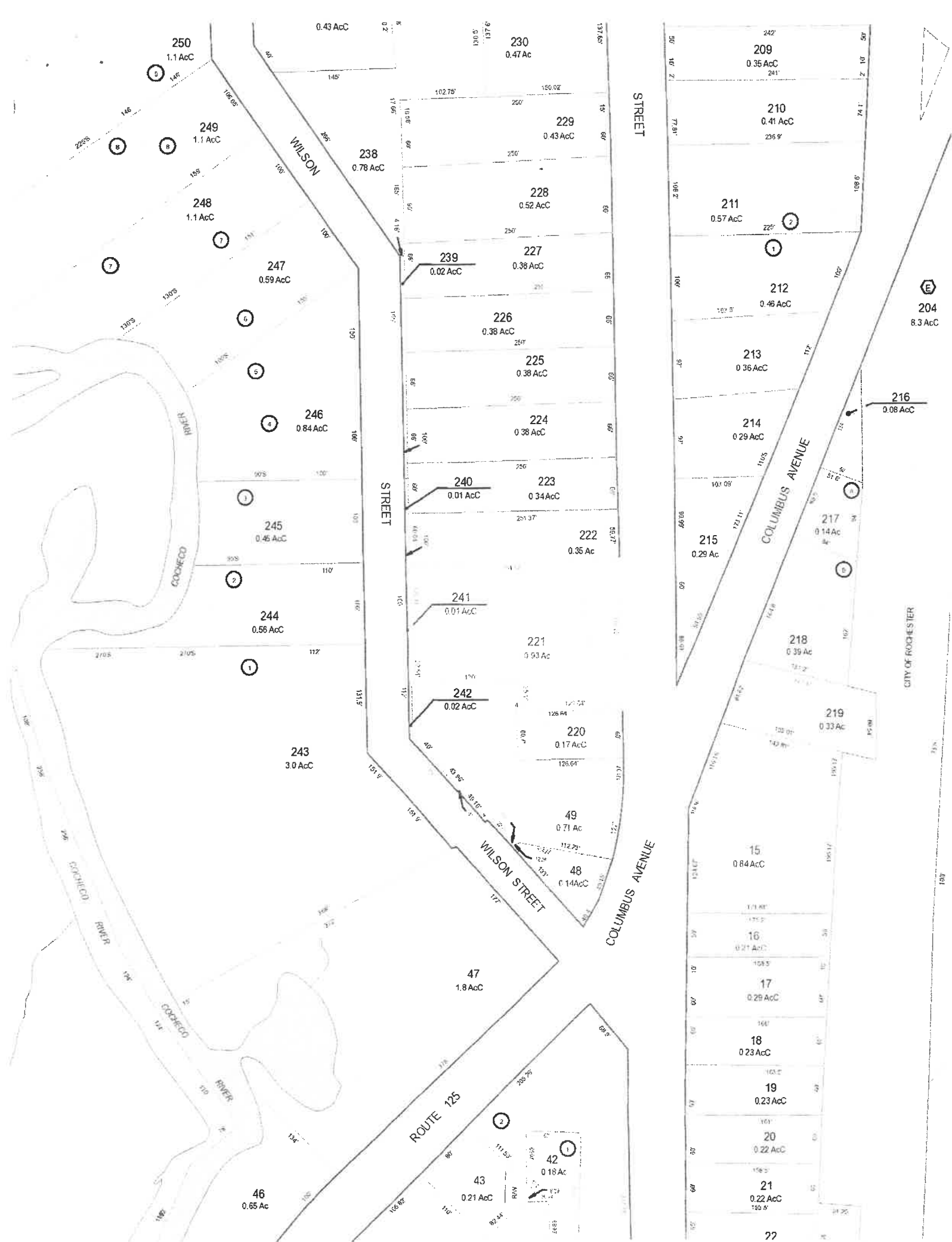
CIVIL ENGINEERS

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TAX MAP 128, LOT 221
OWNER OF RECORD:
ROCHESTER HOUSING AUTHORITY
ROCHESTER, NH 03867
SC8B BOOK 65.8, PAGE 658
EXISTING FEATURES PLANNED
TAX MAP 128, LOT 221
165 CHARLES STREET
ROCHESTER, NH
PREPARED BY
ROCHESTER HOUSING
AUTHORITY
DECEMBER 2017

NORWAY PLAINS ASSOCIATES INC







140 foot Abutters List Report

Rochester, NH
June 13, 2021

Subject Property:

Parcel Number: 0128-0221-0000
CAMA Number: 0128-0221-0000
Property Address: 165 CHARLES ST

Mailing Address: ROCHESTER HOUSING AUTHORITY
77 OLDE FARM LN
ROCHESTER, NH 03867

Abutters:

Parcel Number: 0128-0215-0000
CAMA Number: 0128-0215-0000
Property Address: 162 CHARLES ST

Mailing Address: ARANCO REALTY INC
557 N STATE ST
CONCORD, NH 03301-3236

Parcel Number: 0128-0219-0000
CAMA Number: 0128-0219-0000
Property Address: 656 COLUMBUS AVE

Mailing Address: LIU KEVIN & STEPHANIE
67 BRIERBROOK ST
MILTON, MA 02186-5207

Parcel Number: 0128-0220-0000
CAMA Number: 0128-0220-0000
Property Address: 171 CHARLES ST

Mailing Address: DUMONT DIANE & DAVID B
171 CHARLES ST
ROCHESTER, NH 03867-3422

Parcel Number: 0128-0222-0000
CAMA Number: 0128-0222-0000
Property Address: 163 CHARLES ST

Mailing Address: KJE PROPERTIES LLC
163 B CHARLES ST
ROCHESTER, NH 03867-3422

Parcel Number: 0128-0241-0000
CAMA Number: 0128-0241-0000
Property Address: 17 WILSON ST

Mailing Address: KINCAID GARY A & TARA L
17 WILSON ST
ROCHESTER, NH 00000

Parcel Number: 0128-0243-0000
CAMA Number: 0128-0243-0000
Property Address: 19 WILSON ST

Mailing Address: CARIGNAN D P & D L REV TRUST
CARIGNAN DAVID P & DIANE L
19 WILSON ST
ROCHESTER, NH 03867-3441

Parcel Number: 0128-0244-0000
CAMA Number: 0128-0244-0000
Property Address: 17 WILSON ST

Mailing Address: KINCAID GARY A & TARA L
17 WILSON ST
ROCHESTER, NH 03867-3441

Parcel Number: 0132-0049-0000
CAMA Number: 0132-0049-0000
Property Address: 663 COLUMBUS AVE

Mailing Address: C S C PROPERTIES LLC
663 COLUMBUS AVE
ROCHESTER, NH 03867-3495


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6/13/2021

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