

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. <u>2-21-22</u>
DATE FILED <u>9/22/21</u>
<u>C. H.</u>
ZONING BOARD CLERK

Applicant:

Packy's Investment Properties, LLC c/o Francis X. Bruton, III, Esquire, Bruton & Berube, PLLC

E-mail: FX@brutonlaw.com

Phone: (603)749-4529

Applicant Address: 601 Central Avenue, Dover, New Hampshire 03820

Property Owner (if different): Raven Realty, LLC

Property Owner Address: PO Box 8, Waitsfield, VT 05671

Variance Address: 18 Sterling Drive, Rochester, NH

Map Lot and Block No: Map 208, Lot 18-1

Description of Property: The parcel currently is a vacant lot.

Proposed use or existing use affected: The Applicant intends to construct a self-storage facility on the lot.

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 20.2 (H)

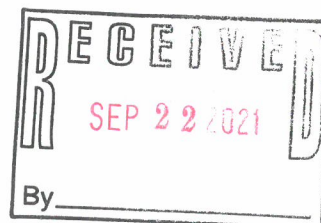
and asks that said terms be waived to permit the construction of a storage facility within the 100 foot setback area,
and within 75 feet from a residential use.

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:

Packy's Investment Properties, LLC, By: Wayne Packy Campbell, Member

Date: 9/21/2021





City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

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

See attached.

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

See attached.

3) Granting the variance would do substantial justice because:

See attached.

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

See attached.

5.) Unnecessary Hardship:

- a. Owning 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:

See attached.

And:

- ii. The proposed use is a reasonable one because:

See attached.

- 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.

See attached.

**Packy's Investment Properties, LLC
Tax Map 208, Lot 18-1
18 Sterling Drive
Rochester, New Hampshire**

BOARD OF ADJUSTMENT APPLICATION

INTRODUCTION

Packy's Investment Properties, LLC (the "Applicant") is under agreement to purchase property located at 18 Sterling Drive, Rochester, New Hampshire from Raven Realty, LLC (the "Owner"). The lot is depicted on the Rochester tax maps as Map 208, Lot 18-1 (the "Property"). The property is located in the Granite Ridge District. The property is comprised of 2.08 +/- acres, and is currently vacant land. The property is adjacent to Lot 18-0 (17 Sterling Drive), which is under construction, with four (4) mini-storage structures being installed by the same Applicant. The Applicant intends to construct three (3) mini-storage structures on the Property (see the existing Site Sketch prepared by Norway Plains Associates, Inc.).

The property is located on Sterling Drive which contains three (3) parcels. The third parcel is currently utilized as a dialysis center. Sterling Drive presents itself as a mini-commercial park, with no visibility to the neighboring NH Route 11. In addition, the frontage for all three lots is unique as it is premised upon a cul-de-sac, thus creating a curved, rather than straight, area from where the frontage is measured. The entrance to Sterling Drive is adjacent to the existing Walmart shopping Plaza. Sterling Drive is located downslope from Walmart and NH Route 11, and is buffered by a tree line which is to remain post-construction of the mini-storage structures intended to be constructed (see attached pictures of existing conditions).

Section 275, 20.2 (H) of the Rochester Zoning Ordinance requires the front setback for all mini-storage structures to be 100 feet. In addition, this Section also requires a setback from a residential property of 75 feet.¹ As depicted on the Site Sketch, given the size and the odd-shape configuration of the Property, in order to construct typical storage structures in a manner to not have a negative affect upon the public health, welfare or safety, the 100-foot and 75-foot setback restrictions cannot be met, resulting in an unnecessary hardship, particularly given the location from the general public or streetscape of NH Route 11². As such, for the reasons set forth herein, the Applicant respectfully requests variances from these restrictions.

FACTS SUPPORTING THIS REQUEST

1. The variances will not be contrary to the public interest.

To be contrary to the public interest or injurious to public rights of others, the variances

¹ In the past the City of Rochester has determined that that the 75-foot setback does not apply for grandfathered residences in a commercial district, such as the Granite Ridge District. Thus, further discuss with Code Enforcement may resolve the need for the variance request from this 75-foot setback.

² The residence is approximately 130 feet from the proposed storage structures (shed is approximately 78 feet away) and the closest storage structure is approximately 36 feet from the residential property line.

must unduly, and in a marked degree, conflict with the ordinance such that they violate the ordinance's basic zoning objectives. To determine whether a variance would violate the basic zoning objectives, it is appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten the public health, safety or welfare. It is respectfully submitted that the essential character of the locality will not be changed or altered by the granting of the variances, and will not be contrary to the public interest. Specifically, the use will be consistent with an existing planned and approved use and will adhere to typical setback requirements, without visibility to the travelling public along NH Route 11. In addition, the project will not be visible to the existing residence.

2. The variances will not be contrary to the spirit of the ordinance.

The Applicant respectfully submits that if the variances are granted, the spirit of the ordinance would be observed as the use in question is suitable, considering the location, buffering and lack of visibility to the general public and the residence. With the presumption that the 100-foot and 75-foot restrictions have no relationship to safety concerns, but more as to location and visibility of the structures themselves away from the general public and a residential use, in this instance, the need for such a large setback seems unwarranted given the characteristics of the proposal.

Within its general purpose and intent clause, the Rochester Zoning Ordinance indicates that its intent is to protect health and safety by encouraging an orderly pattern of development and encourage the most appropriate use of land, while respecting the rights of property and business owners. The Applicant respectfully submits that the general purposes and intent of the Zoning Ordinance will be maintained to the extent that the variances requested herein are granted.

3. Substantial justice is done.

The guiding rule in determining whether the requirement for substantial justice is satisfied is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. In considering this test, boards typically look at whether a proposed development is consistent with the area's present use. The grant of the variances would result in substantial justice as such would allow the Property to be utilized in a similar to the approved use on the adjacent lot. The lack of frontage, vis-à-vis the 100-foot requirement and the 75-foot restriction are unnecessary given the location of the lot, which has no visibility to NH Route 11 or to the general travel through Rochester or to the residence. In addition, the level of use by the general public for access to the mini-storage units will be minimal and very intermittent. Thus, denial of the variances would result in a loss to the Applicant that is not outweighed by any gain to the general public. Thus, granting of the requested relief would result in substantial justice.

4. Value of surrounding properties will not be diminished.

It is respectfully submitted that all of the surrounding properties have a value associated with them which is premised upon the existence of the existing buildings and uses located upon the properties. In this instance, it is believed, and therefore averred, that the location of the proposed storage structures, still meeting standard set-back criteria, and considering the existing

uses of the surrounding property, particularly with a lack of visibility for the residence, will not result in a diminution of surrounding property values.

5. Explain how the literal enforcement of the provisions of the ordinance would result in an unnecessary hardship owing to special conditions of the property that distinguish it from other properties in this area because:

- (i) no fair or substantial relationship exists between the general purposes of the of the ordinance provision and the specific application of that provision to the property:**

The general purposes of the ordinance are to promote health and safety by encouraging an orderly pattern of development and encourage the most appropriate use of land, while respecting the rights of property and business owners. For the reasons set forth herein, the Applicant respectfully submits that the restrictions that cannot be met are not necessary to be met in order to protect the purpose of the ordinance. Thus, there is no conflict between the general public purpose of the ordinance, and enforcing the restrictions for which the Applicant seeks the variances.

The Property contains unique characteristics as it is smaller than other lots on Sterling Drive (see portion of tax map attached hereto). Assuming the purpose of the 100-foot and 75-foot setback requirements for mini-storage relates to locating such uses away from major streetscapes within Rochester and visibility to residential uses, imposing the restrictions, as they relate to the Property, is unnecessary given the down-slope nature of the parcel, the existing buffering between the Property and NH Route 11 and the residence, and given the surrounding existing and approved uses on the other two adjacent lots. Given the affect the new development will have with respect to resulting in no negative affect as to the health safety and general welfare of the inhabitants of the City, as outlined herein, and given the existing and proposed use of the property, it is respectfully submitted that the granting of this variance would not result in a conflict with the general purpose set forth within the Zoning Ordinance, but would rather promote the general purpose of the ordinance.

And,

- (ii) the proposed use is a reasonable one:**

The Applicant proposes to use the property in a manner that is similar to approved use on an adjacent lot. The use is reasonable given the size of the lot, the buffering from other uses, as indicated herein, and given that the Property is located with frontage on a cul-de-sac within a relatively small commercial park, with little visibility to the major streetscapes within Rochester or the identified residential use.

Chapter 275. Zoning

Article 20. Standards for Specific Permitted Uses

§ 275-20.2. Conditions for particular uses.

For each individual use listed below, all of the specific conditions attached to that use must be met along with any other requirements of this chapter.

- A. Contractor's storage yard. Minimum setbacks from all property lines shall be 25 feet or as specified in the dimensional regulations table, whichever is greater. No structures or stockpiled materials related to the storage yard operation shall be situated within these setbacks. Heavy vehicles or equipment in working order may be parked within the setbacks provided that none is parked within 15 feet of a property line. A contractor's storage yard shall not be established in a floodplain.
- B. Day care-2 (day care - family). This use is not considered a home occupation. However, the review process for this use, where it is permitted by right, shall be the same as for home occupations where no special exception is involved. See § 275-24.5.
- C. Earth excavation.
 - (1) Regulations. No person shall perform earth excavation except in compliance with the provisions of RSA 155-E, as amended, this chapter, and the Site Plan Regulations applicable to earth excavation.
 - (2) Existing operation. Any existing excavation activity operating under a permit issued prior to the date of adoption of this chapter may continue until the expiration of the permit, except that any expansion or change in operation not covered by that permit shall be in compliance with the provisions of this section.
 - (3) Buffers. Buffers/setbacks are established as set forth in RSA 155-E and in Article 12, Conservation Overlay District. No excavation, processing, or removal of vegetation may occur within the buffers/setbacks specified. Where the buffer/setback has been removed or is not adequate, the Planning Board may stipulate reestablishment of the buffer/setback, as appropriate.
 - (4) Water table. For excavation of sand, gravel, or other subsurface materials (also see RSA 155-E), the seasonal high water table must be determined prior to Planning Board approval and it must be demonstrated that no ground disturbance or excavation will occur within four feet of that seasonal high water table except as provided below.
 - (a) Applicants shall submit the following as part of any review:
 - [1] Information about any types of fill material that may be deposited on the site.
 - [2] Recognizing that sand and gravel pits sometimes become unlawful dumps (due to no fault of the property owner or operator) posing potential harm to the underlying groundwater, the applicant shall submit a plan to discourage use of the site as a dump during and after excavation.
 - (b) The excavation of gravel materials below four feet above the stated seasonal high water table may be allowed by special exception if the applicant can clearly demonstrate that such excavation will not adversely affect groundwater quality (in addition to other general conditions listed in Article 22, Special Exceptions). The Zoning Board of Adjustment and the Planning Board shall be required to review the reports provided and may require additional information, experts or studies to assist it in its review and approval of its issuance of any special exception and permit allowing such excavation.
 - (c) See Article 10, Aquifer Protection Overlay District, for other provisions within that district.
 - (5) Abandoned sites. In the event the Director of Building, Zoning, and Licensing Services determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be

required, following a public hearing before the Planning Board, to comply with any timetable and bonding requirements to be established by the Planning Board to complete reclamation. Should reclamation not be completed, the Board may request the City to authorize reclamation at the City's expense. The City's costs shall then constitute an assessment against the owner and shall create a lien against the property on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

D. Farm; farm, crop.

- (1) Lot size. The minimum lot size is five gross acres for a farm and five gross acres for a crop farm.
- (2) Housing. The Planning Board is empowered to consider and approve special on-site housing arrangements to accommodate farm workers, such as cluster housing or temporary/seasonal housing, under site plan review.
- (3) Retail sales. Any farm goods produced on site along with limited related products, such as baked goods, non-alcoholic cider, etc., may be sold on site.
- (4) Livestock. Housing for any livestock for a farm shall be set back at least 100 feet from any side or rear lot lines. Housing for fowl, fur-bearing animals, and swine shall be set back at least 150 feet from any side or rear lot lines. The ZBA may reduce or waive this requirement by special exception. There is no setback for open pens and fencing provided animals are not left in such pens overnight.
- (5) Manure. Any significant storage areas for manure shall be set back at least 200 feet from any lot lines. Best management practices shall be followed in the handling of manure.
- (6) Performance standards. The general provisions of Article 28 of this chapter and RSA 432:33 shall apply.

E. Gas station.

- (1) The minimum lot area shall be 30,000 square feet.
- (2) Lot frontage shall be at least 150 feet.
- (3) Pumps, lubricating and other outdoor service devices shall be located at least 30 feet from any lot lines.
- (4) All automobile parts and dismantled vehicles are to be stored within a building, and no repair work is to be performed outside a building.
- (5) The minimum setback for all portions of canopies shall be 20 feet from all lot lines or the required district setbacks, whichever is greater.
- (6) Limited light maintenance activity is an accessory use and includes engine tune-ups, lubrication, brake repairs, tire changing, battery charging, car washing, detailing, polishing, and carburetor cleaning. Such activities as engine overhaul, vehicle painting, welding, and body or fender work would not be an accessory use.

F. Junkyard. All materials shall be fully screened from the road and from all abutting property by a solid wall or fence at least eight feet in height. The Planning Board may stipulate a taller wall or fence, as appropriate.

G. Lodging facility. For a lodging facility, the minimum lot size shall be 30,000 square feet plus 1,000 square feet per unit. Minimum lot size for a bed-and-breakfast shall be the minimum lot size for a single-family home according to the applicable zone district. The minimum lot size for a hotel in the Downtown Commercial (DC) Zone District shall be 7,500 square feet.
[Amended 5-7-2019]

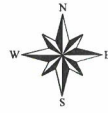
H. Mini-warehouse. The front setback for all storage structures shall be 100 feet. Side and rear setbacks from any residential property shall be 75 feet.

I. Manufactured housing subdivision, not part of an existing mobile home park. See Chapter **135** of the City Code for existing mobile home parks.

(1) Overall development.

[Amended 9-6-2016]

- (a) All requirements otherwise applicable to subdivision of lots for conventional houses within a conservation subdivision shall apply.
- (b) Additions to manufactured housing units (or "homes"). There shall be no additions constructed onto manufactured homes with the exception of garages, skirting, carports, cabanas, awnings, canopies,



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

LEGEND

- PROPERTY LINE
- - - JURISDICTIONAL WETLANDS
- ~ ~ ~ EXISTING TREE LINE
- EXISTING OVERHEAD WIRES
- EXISTING HYDRANT
- EXISTING WATER GATE OR SHUT-OFF VALVE
- EXISTING UTILITY POLE
- EXISTING SEWER MAN HOLE
- EXISTING CATCH BASIN
- EXISTING LIGHT POLES
- PROPOSED BUILDING
- PROPOSED PAVEMENT
- PROPOSED PAVEMENT
- PROPOSED SIGNS
- PAVEMENT RADIUS (20')



UTILITY
EASEMENT
REF. PLAN #2

FEMA FLOOD
ZONE LINE

RESET SMH RIM
ELEV. = 238.05'

EXISTING SEWER PUMP
STATION WITH FENCE
ENCLOSURE

PROP. 12' X 30' PAVED
PARKING FOR
PUMP STATION

PROPOSED
STONE
RIPRAP

PROPOSED
CAPE COD
BERM

PROP. GRAVEL
PUMP STATION
ACCESS

PROPOSED
LIGHT
POLE

PROPOSED
FIRE HYDRANT

PROPOSED
6" DI WATER
MAIN
GATE VALVE

PAVED
SIDEWALK

25' CEMETERY
BUFFER

ELEC. TRANS.

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SITE SKETCH
TAX MAP 208, LOTS 18-1
18 STERLING DRIVE
ROCHESTER, NH
 PREPARED FOR:
PACKYS INVESTMENT
PROPERTIES LLC
 JANUARY 2021
 GRAPHIC SCALE
 30 0 15 30 60 120
 (IN FEET)
 1 INCH = 30 FEET

FILE NO. 116
 PLAN NO. C-3077
 DWG. NO. 19273/SK-1







**ABUTTERS LIST
FOR
PACKY'S INVESTMENT PROPERTIES LLC
18 Sterling Drive
Rochester, NH
(MAP 208, LOT 18-1)
September 21, 2021**

OWNER OF RECORD:

TAX MAP 208, LOT 18-1

Raven Realty, LLC
P.O. Box 8
Waitsfield, VT 05673-0008

APPLICANT:

Packy's Investment Properties LLC
PO Box 77
Farmington, NH 03835-0077

ABUTTERS:

TAX MAP 201, LOT 17

Jones Clifton
127 Farmington Road
Rochester, NH 03867-4306

TAX MAP 201, LOT 18

Packy's Investment Properties LLC
PO Box 77
Farmington, NH 03835-0077

TAX MAP 208, LOT 18-2

Elliot Bay Healthcare Realty LLC
617 Eastlake Ave, Ste 305
Seattle, WA 98109-5682

TAX MAP 208, LOT 19

Graykell Realty LLC
427 Winnacunnet Road
Hampton, NH 03842-3808

TAX MAP 208, LOT 19-2

JMB Automotive Group LLC
67 Mallard Drive
Alton, NH 03809

**ABUTTERS LIST
FOR
PACKY'S INVESTMENT PROPERTIES LLC
18 Sterling Drive
Rochester, NH
(MAP 208, LOT 18-1)
September 21, 2021**

CONTINUED

TAX MAP 216, LOT 13

State of New Hampshire
Dept. of Transportation
1 Hazen Drive
Concord, NH 03301

PROFESSIONALS/INTERESTED PARTIES:

Scott A. Lawler, P.E.
Norway Plains Associates, Inc.
2 Continental Blvd.
Rochester, NH 03867

Francis X. Bruton, III, Esquire
Bruton & Berube, PLLC
601 Central Avenue
Dover, NH 03820