

### 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. 2-21-23
DATE FILED 9 22 21
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ZONING BOARD CLERK

	EOITHG DOARD CLERK
Applicant: SSG, LLC (Abigail S. Karoutas, Attorney)	
E-mail: akaroutas@wbtblaw.com	Phone: (603) 742-5222
Applicant Address: 120 Washington Street, Suite 302	Rochester, NH 03867
Property Owner: SSG, LLC	
Property Owner Address: 120 Washington Street, Suite	302, Rochester, NH 03867
Variance Address: 29 Wadleigh Road, Rochester, N.	н.
Map Lot and Block No: 0137-0035-0001	
Description of Property: 8.15 acres of land only (with	h cell tower)
Proposed use or existing use affected: See attached letter	r from Abigail Karoutas
The undersigned hereby requests a variance to the terms of the Roand asks that said terms be waived to permit <u>See attached</u>	ochester Zoning Ordinance, Ch. 275, Section See attached letter from Abigail Karoutas letter from Abigail Karoutas
The undersigned alleges that the following circumstances exist who the strict terms of the Zoning Ordinance and thus constitute group presenting my case the testimony should be confined to the 5 Signed:  **Fent How Gman	nds for a variance. I understand that while



## City of Rochester, New Hampshire Zoning Board of Adjustment

#### Variance Criteria

1) Grant See	ting the variance would not be contrary to the public interest because:  attached letter from Abigail Karoutas
2) If the See	variance were granted, the spirit of the ordinance would be observed because: attached letter from Abigail Karoutas
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3) Grant See	ing the variance would do substantial justice because: attached letter from Abigail Karoutas
•	
4.) If the See	variance were granted, the values of the surrounding properties would not be diminished because: attached letter from Abigail Karoutas
	<ul> <li>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: <ol> <li>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:</li> </ol> </li> <li>attached letter from Abigail Karoutas</li> </ul>
· · · · · · · · · · · · · · · · · · ·	Acal
	And: ii. The proposed use is a reasonable one because:
	attached letter from Abigail Karoutas
	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.  attached letter from Abigail Karontas

#### **AUTHORIZATION**

The undersigned Fenton Groen, as President of Groen Construction, Inc., a Member of SSG, LLC, owner of property located at:

29 Wadleigh Road, Rochester, New Hampshire (being Map/Lot 0137-0035-0001), by virtue of deed to said SSG, LLC from Jen-Scot Realty, Inc. dated September 28, 2018, recorded at the Strafford County Registry of Deeds Book 4605, Page 408,

hereby authorize Wyskiel, Boc, Tillinghast & Bolduc, P. A., specifically including, but not limited to, Attorneys Abigail Sykas Karoutas and Christopher A. Wyskiel, to represent SSG, LLC before the Zoning Board of Adjustment of the City of Rochester with respect to SSG, LLC's Application submissions regarding the above referenced property.

Dated this 22nd day of September, 2021.

SSG, LLC

By: Groen Construction, Inc., Member

By:

Witness

Fenton Groen, President

H:\RE & BUS\Groen Construction\Variance - Wadleigh\Authorization - ZBA.docx



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October 5, 2021

#### HAND DELIVERED

City of Rochester Zoning Board of Adjustment Attn: Larry Spector, Chairman 33 Wakefield Street Rochester, NH 03867



Tax Map 137, Lot 35.1

#### Dear Board Members:

As you know, this firm represents SSG, LLC ("SSG") with regard to its application for three (3) variances from the City of Rochester's Zoning Ordinance which was submitted by letter and accompanying application dated September 22, 2021.

Since the date of that letter and application, SSG's surveyor has completed its work at the subject property and has determined that the lot size is 364,125sq. ft., not 355,014sq. ft. as stated in the September 22, 2021 letter and accompanying variance application.

§275-19.2.E of the Zoning Ordinance permits one dwelling unit per 7,500sq. ft. of lot area for the subject lot within the Highway Commercial Zone. Using the updated lot area of 364,125 sq. ft divided by 7,500sq. ft., a total of 48.55 dwelling units are permitted (rounded down to 48 units), rather than the 47 units that were permitted using the former lot area to calculate the number of permitted dwelling units.

SSG still seeks relief from §275-19.2.E of the Zoning Ordinance to construct 52 units. However, SSG is now seeking relief to build 52 units where 48 are permitted, an increase of only 4 units in excess of what is permitted. This is less relief than was requested in the letter and application dated September 22, 2021, which requested an additional 5 units (to construct 52 units where 47 were permitted). The narrative in the letter and application dated September 22, 2021 still explains the reasons that the variance should be granted from the Zoning Ordinance; it is only the numbers which have changed, reducing the amount of relief sought.

As outlined in this letter and the application and accompanying letter dated September 22, 2021, this requested variance from the Zoning Ordinance meets all the requirements to be granted.

Sincerely,

Abigail Sykas Karoutas

cc:

Groen Construction

Brad Jones, Jones and Beach

Stephen Humphrey, EGA Architects



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Boc,
Tillinghast
& Bolduc, P.A.
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September 22, 2021

#### HAND DELIVERED

City of Rochester Zoning Board of Adjustment Attn: Larry Spector, Chairman 33 Wakefield Street Rochester, NH 03867

Re:

Variance Application for 29 Wadleigh Road, Rochester, N.H.

Tax Map 137, Lot 35.1

#### Dear Board Members:

This firm represents SSG, LLC ("SSG") with regard to its application for three (3) variances from the City of Rochester's Zoning Ordinance. Please allow this letter to serve as an explanation of how this application meets the elements necessary to be granted the three (3) requested variances.

In broad terms, SSG proposes to build a high-quality, 52-unit residential apartment building on the property it owns located at 29 Wadleigh Road/Tax Map 137 Lot 35.1 (the "Lot"). See Exhibit A, the proposed site plan. In order to do so, SSG requests relief from the following sections of the Zoning Ordinance:

- §275-20.2.K.3, which requires in relevant part that multifamily/apartment residential uses within commercial districts be only secondary uses, and that first floor of a structure contain only commercial uses
- §275-19.2.E, which requires 7,500sq. ft. to be used as the minimum number of square feet of lot space per dwelling unit, given the location of the lot outside the density rings as shown on the zoning map
- Table 19-B Dimensional Standards Commercial Districts, which permits a maximum building height of three (3) stories

#### Background Information/Description of Subject Lot:

The Lot consists of approximately 8.15 acres, and is roughly triangle shaped. It is located within Rochester's Highway Commercial Zoning District.

The Lot is bordered on the West by the Spaulding Turnpike, on the North and East by the Axe Handle Brook, and on the South by Wadleigh Road and Tax Map 137 Lot 35, being the location of the Anchorage Inn on Rt. 125. See Exhibit B, Tax Map 137 and 131, with the Lot outlined in yellow. Although the tax map does not show it, the deed description for the Lot includes the small strip of land approximately as shown on the attached tax map outlined in dotted orange (being the discontinued Old Gonic Road), so the current end of Wadleigh Road directly abuts the property, providing access to the Lot. The City's Tax Map shows a distance of over 650 feet from Rt. 125 to the closest (Southern) edge of the Lot.

Currently, the Lot is unimproved, except for a cell tower which is shown as a small square on the tax map. Along the West/Spaulding Turnpike side of the property, there is a 50' wooded buffer on the Spaulding property which cannot be disturbed, insulating the Lot from the Spaulding Turnpike.

The existing and natural topography of the Lot is also worthy of note: it slopes upward from the Southern Rt. 125/Anchorage Inn side to approximately a point even with the location of the cell tower, and then slopes downward toward the North and Axe Handle Brook. This means that there is virtually no line of sight directly from Rt. 125 into the parcel as the "view" is blocked by the road elevation immediately off Rt. 125 and the 650 foot distance from Rt. 125. Also, these natural contours of the property provide both opportunities and challenges for the proposed construction. See Exhibit C, excerpt from proposed site plan showing the naturally existing topography. There are also a number of significant ridges of ledge which run throughout the Lot, which must be dealt with during any development of the site.

SSG proposes building a high-quality, 52-unit apartment building, providing much needed housing for this quickly growing area of Strafford County. Three variances are needed to permit this construction: to allow for no commercial/retail use on the property; to allow for 52 units where only 47 are permitted, and to allow for a partial 4<sup>th</sup> story on the "back" of the building where only 3 stories are permitted. See Exhibit D, renderings of proposed structure.

#### **Zoning Ordinance Provisions:**

As noted previously, there are three (3) variances sought, requesting relief from the following provisions of the zoning ordinance:

#### • §275-20.2.K.3:

(3) Commercial districts. Within any commercial districts, multifamily is allowed only as a secondary use.

- (a) It must be situated on the second floor or on higher floors of a commercial building or in a separate building behind the commercial building; and
- (b) At no time may the area of the multifamily dwellings exceed 80% of the square footage of the on-site commercial space.

#### • §275-19.2.E:

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.
- Table 19-B Dimensional Standards Commercial Districts (permitting a maximum of 3 stories) (excerpt from complete table, color added for clarity)

Table 19-B Dimensional Standards - Commercial Districts [Amended 3-5-2019; 5-7-2019]

	1	.o(s						
Minimum Lot Aren (square feet)	Minimum Frankige (feet)	Minimum Lat Area/ Dwelling Unit (square feet)	Maximum Lat Coverage	Mintenan Front (feet)	Maximum Frant (feet)	Minimum Side (feet)	Minimum Rear (feet)	Maximum Number of Stories
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			•					
10,000	80	3,0002	75%	10		10'		3.
				and the same				
20.000	100	5.086°7,500°	840	20		10	24	E-100 Hardward Arted
	Area (square feet) 4,000 10,000	Minimum Lot Minimum Area (square feet) (feet)  4,000 40	Minimum Lot Area   Franksge (feet)   Lot Area   Dwelling Unit (square feet)   4,000   40   500     10,000   80   3,000 <sup>2</sup>	Minimum Lot Area (Seet) Minimum Lot Area (Seet) (Seet) Minimum Lot Coverage (Seet) (	Minimum Lot   Minimum   Lot Area/   Dwelling Unit (feet)	Minimum Lot Minimum Lot Area/ Dwelling Unit (square Sect) Lot Coverage (feet) Maximum (feet) (feet) 4,000 40 500 5 10	Minimum Lot Area (Seet) Dwelling Unit (square feet) Lot Coverage (feet)	Minimum Lot   Minimum   Lot Area/   Dwelling Unit (square feet)   Lot Coverage   Maximum   Prost (feet)   Maximum   Side   Rear (feet)

#### Variance Criteria:

While there are three (3) variances sought from different parts of the Zoning Ordinance, the facts supporting the reasons the variances should be granted are the same or similar as to each of them, and so this letter will address them all together as much as possible.

To be eligible for a variance, the proposed use must meet all five (5) of the conditions in RSA 674:33 (and §275-4.1.B of the Zoning Ordinance):

- (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 surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an 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.

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

When considering the first two criteria of the variance standard, the courts have suggested that the criteria are interdependent and should be construed together. See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 580 (2005). Guided by the New Hampshire Supreme Court's decision in Chester, the Board should consider whether the requested variance would "unduly and to a marked degree" conflict with the basic premises of the Zoning Ordinance, by altering the essential character of the locality, or by threatening the public health, safety, or welfare. Id. at 581. In this case, none of the three (3) requested variances conflict with the purposes of the Zoning Ordinance, and do not alter the character of the locality, or threaten the public health, safety or welfare.

The Zoning Ordinance states the Highway Commercial District is "oriented toward larger parcels, larger buildings, high value development, and retail sales." §275-6.5.A.1. The Highway Commercial zoning district has several objectives stated in the Zoning Ordinance, including the following:

- B. Objectives.
- (1) The HC Districts are geared toward high-volume automobile traffic and, accordingly, less stringent design standards are appropriate.
- (2) Provide landowners and developers with flexible yet clearly defined requirements.
- (4) Maximize the developable areas on the parcels within the district through creation of flexible dimensional requirements.

§175-6.5.B (1, 2, 4)

These Objectives emphasize the City's intention to allow high volume traffic, and to maximize a landowner's ability to develop parcels within the district through flexible rules intended to take advantage of larger parcels while staying within the City's planning rubric. The proposed use for the subject Lot doesn't contemplate retail sales because there is little likelihood that a retail use would be successful on the Lot due to its lack of visibility and isolation from Rt. 125.

The City's commercial zoning districts permit the construction of apartment buildings within the commercial zones, so long as the residential use is not the primary use of the property and the commercial use is the primary use of the property; often this comes in the form of siting commercial uses on the first floor of a mixed-use building. See §275-20.2(K)(3) of the Zoning Ordinance. In this case, and although this building is located within the Highway Commercial zone, allowing the residential use to be the primary and only use on the property does not conflict with the purposes of the zoning district, as this particular lot is poorly suited for a commercial use.

Per the City's Tax Map, the Southern edge of the Lot is over 650 feet, and the closest edge of the buildable area on the Lot is over 900 feet, away from Rt. 125, and the natural topography of the Lot is lower on the Rt. 125 side and slopes higher toward the center of the Lot. These factors combined render the Lot and any structure on it virtually invisible from Rt. 125. Because the Lot is triangular and bordered on its two longest sides by the Spaulding Turnpike and Axe Handle Brook, there is over 900 feet from the closest point of the building area to Rt. 125, and there are not any other lines of sight or access where the building or its occupants can be visible to customers and passing traffic, this site is not conducive to mixed use development requiring commercial space. Commercial developments thrive on being visible to their customers, and any uses on this lot would be difficult or impossible to see from Rt. 125 or any other angle. Therefore, the Lot is not a good location for commercial development.

One of the other stated purposes of the Zoning Ordinance is "to promote an orderly pattern of development and encourage the most appropriate use of land throughout the City." See §275-1.3(B) of the Zoning Ordinance. Granting a variance from §275-20.2(K)(3) of the Zoning

Ordinance to permit the exclusively residential use of this Lot located within the Highway Commercial District would serve this purpose of the Zoning Ordinance by recognizing that this lot, although within the Highway Commercial district, is not suitable for commercial/residential mixed use. Moreover, the construction of a 52-unit apartment building would not change the character of the locality, given the isolation of the lot and because the development would be difficult to see from Rt. 125 or the Spaulding, and the area already includes good roads and other infrastructure, so that the addition of the residents of the proposed apartments would have only a limited impact on the surrounding area.

Finally, building this development without a commercial use on the first floor or without a commercial use being the primary use on the Lot does not threaten the public health, safety or welfare, as whether or not a commercial use is part of the development does not implicate public health, safety or welfare. The Lot is located within the Highway Commercial district which includes roads designed to deal with a high volume of vehicle traffic, and the infrastructure and parking to be constructed on the lot is intended to support the density proposed for the Lot.

Similarly, granting a variance from §275-19.2.E of the Zoning Ordinance to allow for the construction of 52 apartment units when only 47 units are permitted based on the calculation of one dwelling unit per 7,500sq. ft. of lot area would also not be contrary to the public interest. As noted above, this lot is 8.15 acres, which equal to 355,014 sq. ft. This figure, divided by 7,500 sq. ft., results in 47.34 units being permitted (which should be rounded down to 47 units).

Constructing 52 units where only 47 units are permitted does not conflict with the purposes of the Zoning Ordinance, change the character of the locality, or threaten the public health, safety and welfare for a few reasons. First, the difference in the number of units requested from those permitted is only 5 units, which will not have a substantial impact on the density of the proposed development, and therefore will not have any substantial impact on the character of the locality or threaten public health, safety or welfare.

Also, as this project is being constructed from the ground up, there is ample opportunity to ensure that there is adequate parking, sufficient access to the property, and utilities serving the property to allow for the minor increase in the "load" the property will need to handle with the extra units. Further, the Zoning Ordinance's stated objectives for the Highway Commercial District emphasize the need for flexibility to maximize the development potential of each lot, and permitting the extra units is in line with this stated objective.

Consequently, allowing for 52 units where only 47 are permitted does not "unduly and to a marked degree" conflict with the basic premise of the Zoning Ordinance.

Finally, the request for the variance from the Table 19-B Dimensional Requirements – Commercial Zone to allow four (4) stories where only three (3) are permitted is also not contrary to the public interest. See Exhibit D, renderings of the building, and Exhibit E, a cross section of the lot and proposed building showing existing lot elevations. The natural contours of the lot

include an approximate 10-foot drop in grading from the "front" of the building to the "back" of the building (from 232 feet above sea level to 222 feet above sea level) which results in the building having four (4) stories in the "back" of the building facing Axe Handle Brook. The ground floor apartments in the "back" of the building will consist of walk-out "garden style" apartments. However, the higher grading of the "front" of the building (facing the Spaulding Turnpike) results in the building having only three (3) stories in the front.

One of the purposes of the Zoning Ordinance in regulating the height of structures within the Highway Commercial zone is presumably to limit density as well as the "intrusion" of the structure in the zone, so that the buildings aren't overly tall in the context of their surroundings. Notably, due to the natural topography of the lot, the top of the building will be only 23 feet higher than the Spaulding Turnpike. See Exhibit E cross sections (showing height of the Spaulding as approximately 244 feet above sea level, and the building height being 35 feet on top of an existing grade sitting at 232 feet above sea level (a total of 267 feet above sea level)). With the 50 foot no-cut tree buffer bordering the Spaulding Turnpike, it is unlikely that drivers on the Spaulding will be able to see the building, except perhaps during the times of the year when there are no leaves on the trees.

Utilizing the natural contours of the lot as much as possible in constructing the building reduces the amount of leveling of the lot that must occur either by bringing in fill or disturbing the existing area of the lot. While it is impossible to avoid a substantial amount of earth disturbance with a project of this size, utilizing a design that fits rather than fights the Lot's natural contours is better for the environment and therefore the public. Consequently, allowing the building to be a four (4) story building when only three (3) stories are permitted enhances the public welfare by doing as much as possible to reduce the project's impact on the environment. Moreover, it furthers the purpose of the Zoning Ordinance in that the ordinance "encourage[s] the most appropriate use of land throughout the City", and utilizing the existing contours of the land and avoiding significant re-grading or leveling of the lot to the greatest extent possible is an appropriate use of the land. See §275-1.3(B) of the Zoning Ordinance.

Additionally, as noted above, some of the stated objectives of the Highway Commercial Zone are to allow for flexibility in dimensional requirements in order to maximize developable areas of the lots within the zone. Allowing for a 4<sup>th</sup> story that fits within the grading of the lot in order to minimize the lot disruption during construction would fit directly within this objective.

Therefore, the proposed variance to allow four (4) stories where only three (3) stories are permitted furthers the public welfare and therefore does not "unduly and to a marked degree" conflict with the basic premise of the Zoning Ordinance.

<sup>&</sup>lt;sup>1</sup> A "story" is defined as any level of a building where 1/3 (33%) of the floor to ceiling space is at or above grade. See §275-19.2.C of the Zoning Ordinance. For this project, the Garden Level is 41% floor to ceiling at or above grade.

#### 2. The spirit of the ordinance is observed:

Along the lines of the first criteria, the second criteria asks the Board to determine whether the requested variance complies with the spirit of the ordinance. As noted above the requested variances do not conflict with the basic premise of the Zoning Ordinance, and in fact further several of its stated purposes and objectives. Therefore, for the reasons stated above, the spirit of the ordinance would be observed if the three (3) variances are granted.

#### 3. Substantial justice is done:

This criteria requires the Board to consider the facts of each case before it to determine whether justice would be served by granting the variances requested. One way to consider whether "justice" would be done is to determine whether there is any gain to the public that is greater than the loss suffered by the landowner if the variances are not granted. See Farrar v. City of Keene, 158 N.H. 684, 692 (2009). To apply this legal standard, the ZBA should imagine a scale and weigh on one side of the scale the loss suffered by the landowner if the variances are not granted, against (on the other side of the scale) the benefit to the public that would be gained by strict adherence to the provisions of the Zoning Ordinance.

In this case, if the three (3) requested variances are not granted, the applicant will lose the opportunity to build a reasonably sized apartment building, situated thoughtfully on an awkward "back" lot with difficult topography, making a reasonable and appropriate use of its property.

However, the public stands to gain nothing if the variances are not granted and strict conformity to the Zoning Ordinance is required. And, the community would also lose the opportunity to add the requested 52 units of housing to its strained housing inventory as Strafford County continues to experience greater than average population growth.

There is no benefit to the public in requiring commercial use on a property that is not suited to a commercial use due to its isolation. It is unlikely that a commercial use would decide that it made sense to occupy the building since it is not visible from the road and the building will be over 900 feet from Rt. 125, rendering it a highly inconvenient location for a commercial use.

Also, allowing an additional 5 dwelling units to increase the number of units to 52 units where only 47 are permitted based on density calculations is a minimal increase in density that ensures that space within the building is not wasted, and the lot can be used flexibly to accommodate the additional units due to the natural topography of the Lot. Since the project is being built from the ground up, there is no benefit to limiting a reasonable and minimal increase in density on this isolated lot.

Similarly, there is no advantage to the public if the building is limited to 3 stories; in fact, the public would arguably be harmed more if the extra work were done to level the lot so that

only 3 stories were constructed, as more of the land area would need to be more significantly disturbed to accomplish this and the grades on the brook side of the building would have to be significantly raised.

As there is no benefit to the public to strictly enforcing the Zoning Ordinance, and the proposed development is reasonable, the scale must tip in favor of the applicant and the three (3) variances should be granted.

#### 4. The values of surrounding properties are not diminished:

No reasonable argument could be made that the value of surrounding properties would be diminished by constructing the proposed apartment building. The property is bordered on its West and longest side by the Spaulding Turnpike (and a 50' no cut tree buffer running along the Spaulding on the Spaulding side of the property line), which separates the Lot from residential properties on the other side of the Spaulding. The Axe Handle Brook and tree growth separates the project from the mostly undeveloped property bordering the Lot on the North and East. The Anchorage Inn lies between the Lot and Rt. 125, and the two uses are compatible. The Lot is isolated from all other surrounding properties. If anything, the construction of a high-quality, attractive apartment building which cannot readily be seen from most of the surrounding properties will have no impact at all or would have a positive impact on the value of surrounding properties.

5. <u>Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because special conditions of the property distinguish it from others in the area, and no fair and substantial relationship exists between the general public purposes of the Zoning Ordinance requirements from which the variances are sought and their specific application to this property:</u>

Special conditions of the Lot distinguish it from other properties in the area:

Many of the special conditions of the Lot which distinguish it from other properties in the area have been described previously in this letter. Several of them are again highlighted here.

This 8.15 acre lot is uniquely situated in that it is bordered on the West by the Spaulding Turnpike and its accompanying 50 foot no cut tree buffer, on the North and East by the Axe Handle Brook, and on the South by the Anchorage Inn and Wadleigh Road. It is isolated from surrounding properties by these boundaries and location behind the Anchorage Inn. The closest point of the proposed building is over 900 feet away from the nearest main road, being Rt. 125. The natural topography of the Lot is unique and presents some significant challenges to development, given the variations in natural topography, as more work and disturbance to the environment would be required to level the lot rather than utilize the natural topography in harmony with the planned structure.

The Lot is zoned in the Highway Commercial Zone but is not suited for commercial uses because the closest point of the buildable area on the Lot is more than 900 feet away from and not visible from Rt. 125 and the Lot does not have other means of visibility or access. Surrounding uses are generally residential in nature (except for the Anchorage Inn). Given that the property is not well suited to commercial uses due to its isolation also makes it ideal for a higher density residential use, as the residents of the apartment will have a relatively quiet location to enjoy the surrounding trees and Axe Handle Brook.

No fair and substantial relationship exists between the general public purposes of the Zoning Ordinance and its application to the property:

Each section of the Zoning Ordinance from which a variance is sought by this Application has its own public purpose, although some of those purposes overlap.

A public purpose of requiring a primary commercial use in conjunction with a secondary residential use within commercial zones is to concentrate commercial uses, make them visible, and to make them convenient and easy to access for potential customers in line with an orderly development scheme for the municipality. However, given the isolation of the lot, its distance from Rt. 125, and lack of visibility there is no fair and substantial relationship between the public purpose of the ordinance and its application to this property. Enforcing the requirement for a commercial use as the primary use on the lot (and as the first floor of a structure containing apartments) would not be beneficial to the commercial use or enhance the public's ease of access to the commercial use.

Similarly, the general public purpose of the ordinance requiring permitting only 47 units where 52 are requested is also not furthered by strict enforcement of the ordinance. A public purpose of the ordinance limiting the number of dwelling units by a calculation based on the square footage of the lot could be to limit density and to ensure adequate parking for residents of the lot and adequate service to the lot by utilities and municipal services. In this case, the difference of five (5) additional units is only a minimal increase over the permitted number of units, and in part, also allows the proposed building to work with the topography of the lot.

As noted previously, there are a number of substantial ridges of ledge on the Lot which protrude from the ground in the proposed parking and building areas of the Lot. Whether a commercial or residential (or mixed use) development is constructed on this Lot, a certain amount of blasting is unavoidable to be able to construct any structure on the Lot. While care has been taken in siting the project to minimize the blasting and grade adjustments necessary to build an economically viable structure, in order to do as much as possible to avoid environmental impact, the ledge is a hardship that will result in the expenditure of additional funds in order to build on the Lot. In light of this difficulty, it is reasonable for the landowner to seek to monetize the Lot in a reasonable way by requesting a modest increase in the number of permitted dwelling units.

Additionally, as this project is not being retrofitted but is being constructed from the ground up, there is every opportunity to ensure that the Lot's parking, infrastructure, and utilities are suitable for the load of the requested 52 apartments. For all of the forgoing reasons, there is no fair and substantial relationship between the strict requirements of the Zoning Ordinance as applied to this property.

Finally, the public purpose of the Zoning Ordinance permitting a maximum of 3 stories is to limit the size of structures, which also limits density and the "intrusion" of the structure into the lot and its effect on surrounding properties. However, in this case, the requested fourth (4<sup>th</sup>) story is only on the "back" side of the building and is nicely accommodated by the natural topography on the property, so the overall height of the structure is not increased. See Exhibit E (elevation cross sections). And, because there is less intensive grade adjustment needed, the impact on the environment is lessened, furthering a different public purpose. Consequently, there is no fair and substantial relationship between the general public purpose of the ordinance permitting a maximum of three (3) stories to this specific piece of property.

The proposed 52-unit apartment building will be an attractive structure bringing a carefully sited and well thought out building to Rochester, adding much needed housing to this quickly growing area of Strafford County. The proposed use is a reasonable one, and all of the requested variances meet the criteria for them to be granted.

Sincerely,

Abigail Sykas Karoutas

Enclosures

cc: C

Groen Construction Brad Jones, Jones and Beach Stephen Humphrey, EGA Architects

#### 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 are 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 are 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 anin the radius of a density ring shall be tree 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.
- 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 1/2 or greater. It shall be rounded down to the

### ZONING

275 Attachment 7

City of Rochester

Table 19-B Dimensional Standards - Commercial Districts [Amended 3-5-2019; 5-7-2019]

		T	Lots			Setb	Setbacks			Standards	ards		Standards Notes and References
Commercial Zoning Districts	Minimum Lot Minimum Area Frontage (square feet) (feet)		Minimum Lot Area/ Dwelling Unit Maximum (square feet) Lot Coverage	Maximum Lot Coverage	Minimum Front (feet)	Maximum Front (feet)	Minimum Side (feet)	Minimum Rear (feet)	Maximum Number of	Minimum Number of	Maximum Height	Minimum Height	A "—" means there is no dimensional standard
Downtown Commercial (DC)						ì		,		000000	(teal)	(Legal)	TOTAL TITLE RETITE
All uses	4,000	40	200	1	5	01	7	15	5	2	ı	30	Soe 8 275-10 2E Donoity rings
Office Commercial (OC)												2	oce 3 a.c co.c., consity tings
All uses	10,000	80	5,000²	75%	10	ı	101	25	6	1	ı		See Article 19 Dimensional Standards
Highway Commercial (HC)													Car in the control of
All uses	20,000	100	5,000/7,500²	85%	20	1	101	25	3	I	1	1	See Article 19, Dimensional Standards, and § 275-
Granite Ridge (GR)													17:21, Density tings
All uses	1	20	I		ı	ì	1	1	1	1		I	

NOTES:

Note 1: For lots that adjoin a residential district, the side schook on the side adjoining the residential district shall be the larger of the required side setback in the subject commercial zone or the adjoining residential zone.

Note 2: For lots without both water and sewer, 10,000 square feet of its area is required per additional dwelling unit beyond one.

Note 2: For lots without both water and sewer, 10,000 square feet of its area is required per additional dwelling unit beyond one.

Note 3: For multifamily dwellings/developments within the DC Zone, the minimum lot area per dwelling unit shall be 500 square feet.

Note 4: See Setbacks for DC Zone § 275-6.3C(2).

#### 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

porches, decks, an Jeps. All must be approved by the Director Building, Zoning, and Licensing Services.

- J. Manufactured housing unit, not part of an existing mobile home park. See Chapter 135 of the City Code for existing mobile home parks.
  [Amended 9-6-2016]
  - (1) Manufactured homes are allowed only:
    - (a) On individual lots in the AG District;
    - (b) Within manufactured housing subdivisions located in the AG District; and
    - (c) Within established mobile home parks on approved pads/lots.
  - (2) Additions to manufactured homes. There shall be no additions constructed onto manufactured homes with the exception of garages, skirting, carports, cabanas, awnings, canopies, porches, decks, and steps. All must be approved by the Director of Building, Zoning, and Licensing Services.
- K. Multifamily dwellings/development. The following requirements shall apply to multifamily dwellings/developments of three or more dwelling units: [Amended 5-7-2019]
  - (1) Buffers from roads. Except for parcels within the Downtown Commercial (DC) Zone District, a fifty-foot buffer shall be established from all neighboring roads, including roads from which access is taken. The Planning Board shall determine treatment of the buffer area, whether it is to be left undisturbed, to have supplemental plantings installed, to be designated part of the overall open space plan for the development, and/or to be part of an individual lot but protected from construction. No roofed structures may be erected in the buffer area. This buffer shall not be required for parcels in the DC Zone District.
  - (2) Access. Any new multifamily development must take access from an existing collector or arterial road rather than an existing local road. The Planning Board may waive this requirement by conditional use upon a finding that it is preferable to take access from a local rather than a collector road and that taking access from the local road will have no significant adverse impact upon residents or property owners located on the local road.
  - (3) Commercial districts. Within any commercial districts, multifamily is allowed only as a secondary use.
    - (a) It must be situated on the second floor or on higher floors of a commercial building or in a separate building behind the commercial building; and
    - (b) At no time may the area of the multifamily dwellings exceed 80% of the square footage of the on-site commercial space.
  - (4) Downtown Commercial District. Within the Downtown Commercial (DC) District, multifamily is allowed with the following restrictions:
    [Amended 1-7-2020]
    - (a) For parcels fronting on the streets noted below, ground floor space of 30 feet multiplied by the building frontage, or 700 square feet, whichever is greater, shall be reserved for nonresidential uses as permitted in the DC District, unless otherwise required to comply with the State Building Code and/or Fire Code. Any area excluded due to the Building Code and/or Fire Code shall not count toward the minimum. This applies to the entire portion of the building fronting on the street. The remaining area of the first floor may contain residential units as a conditional use.
      - [1] Union Street.
      - [2] North Main Street south of the North Main Street Bridge.
      - [3] South Main Street.
      - [4] Wakefield Street south of Columbus Avenue.
      - [5] Hanson Street.
      - [6] Museum Way.
      - [7] Columbus Avenue (from Summer Street to South Main Street).

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October 5, 2021

### 29 Wadleigh Road

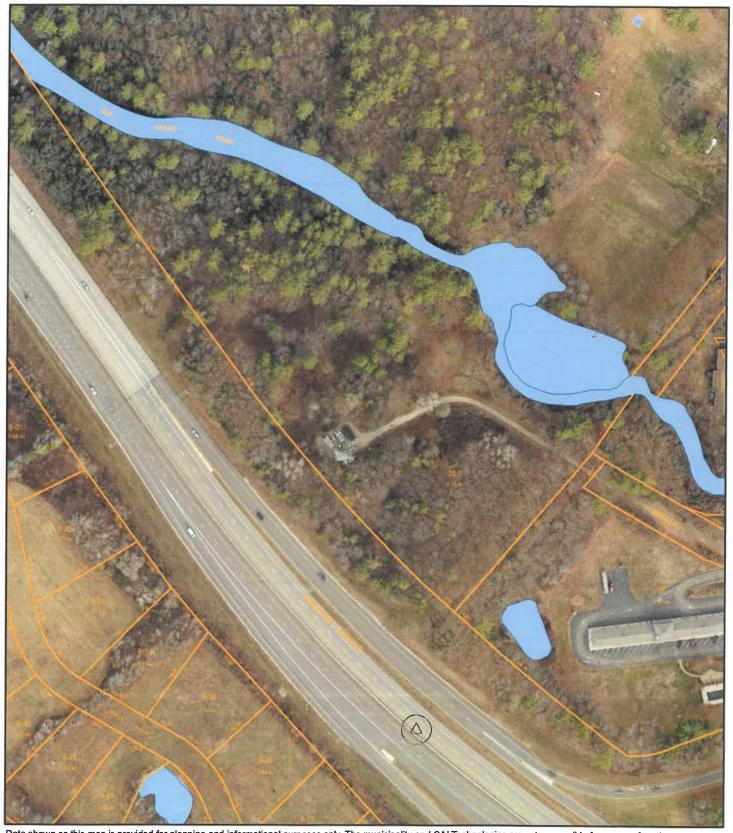
Rochester, NH

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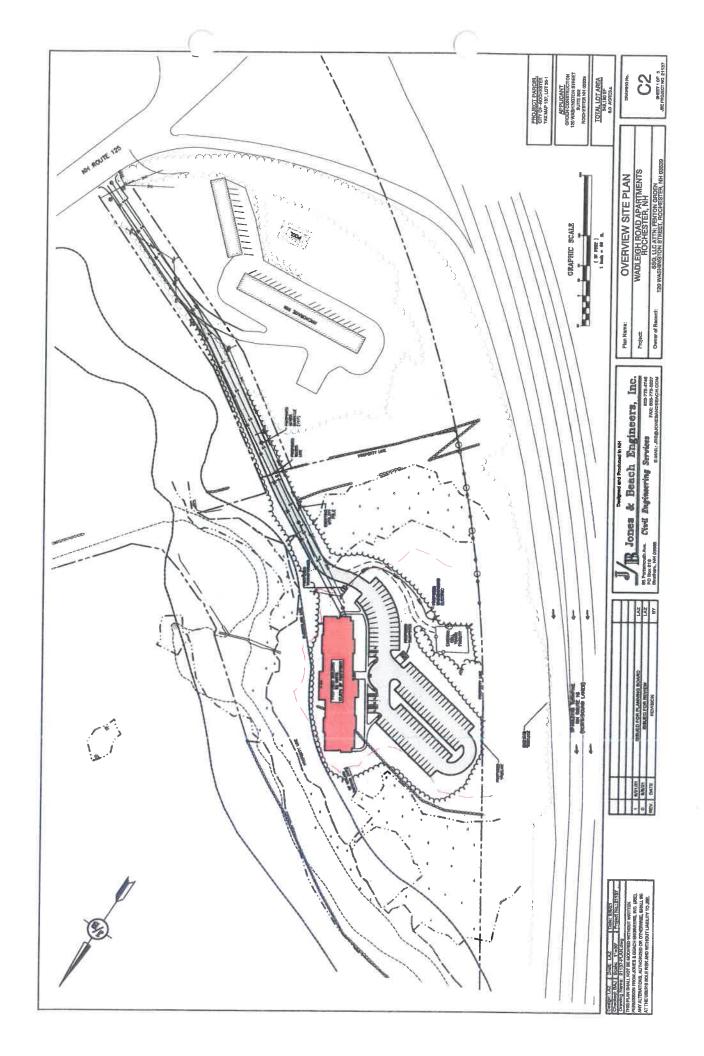
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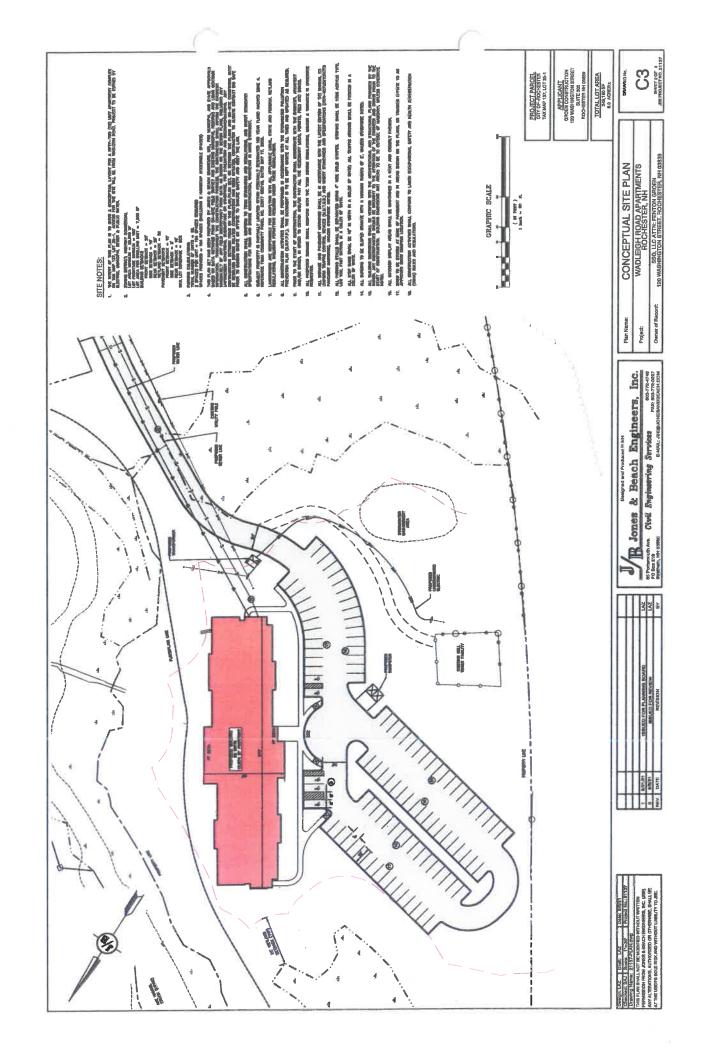


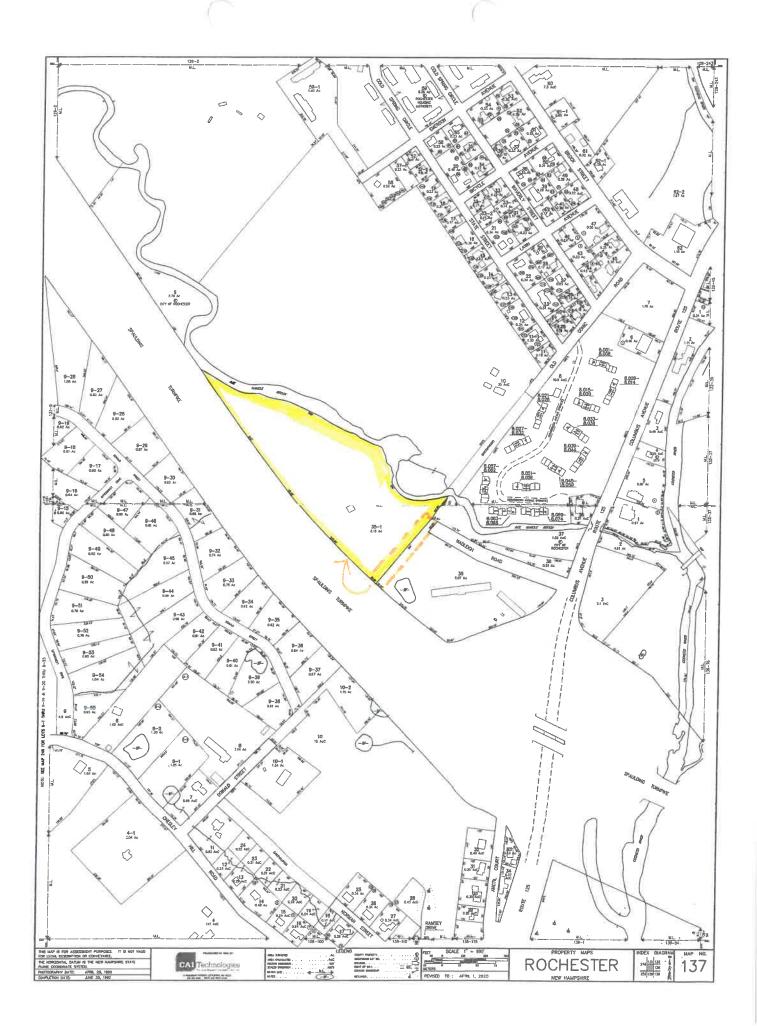
www.cai-tech.com

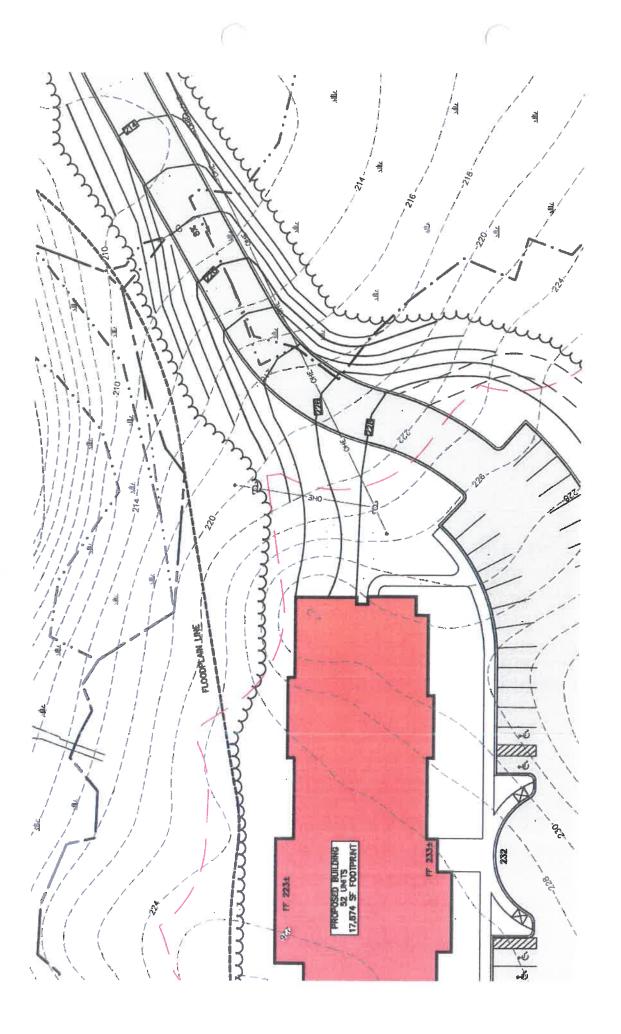


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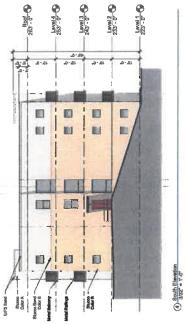




## Wadleigh Road Apts Wadleigh Rd. Rochester, NH







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# Wadleigh Road Apts

Wadleigh Rd. Rochester, NH



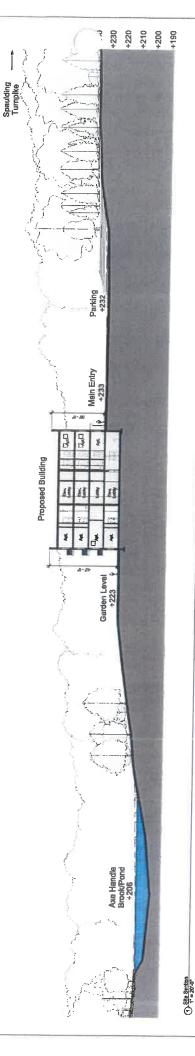


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3 State Elevation







KEY PLAN

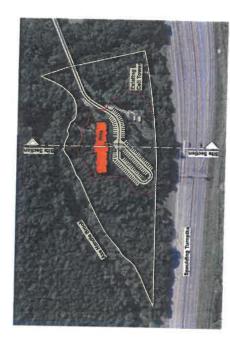
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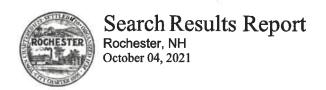
KEY PLAN

# Wadleigh Road Apts Wadleigh Rd. Rochester, NH









Parcel Number: 0131-0008-0000 Mailing Address: CEDARBROOK VILLAGE CONDO ASSOC **CAMA Number:** 0131-0008-0000 Property Address: 0 CEDARBROOK AVE 14A CEDARBROOK VILL ROCHESTER, NH 03867 Parcel Number: 0131-0010-0000 LACOUTURE LEO P REVOC TRUST & Mailing Address: **CAMA Number:** 0131-0010-0000 LACOUTURE WILLIAM B Property Address: 19 OLD GONIC RD 19 OLD GONIC RD **ROCHESTER, NH 03867-4418** Parcel Number: 0137-0009-0028 Mailing Address: CITY OF ROCHESTER **CAMA Number:** 0137-0009-0028 31 WAKEFIELD ST Property Address: 99 DONALD ST **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0029 Mailing Address: CITY OF ROCHESTER 31 WAKEFIELD ST CAMA Number: 0137-0009-0029 Property Address: 93 DONALD ST **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0030 Mailing Address: CITY OF ROCHESTER CAMA Number: 0137-0009-0030 31 WAKEFIELD ST Property Address: 83 DONALD ST **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0031 Mailing Address: CITY OF ROCHESTER CAMA Number: 0137-0009-0031 31 WAKEFIELD ST Property Address: 75 DONALD ST **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0032 Mailing Address: CITY OF ROCHESTER CAMA Number: 0137-0009-0032 31 WAKEFIELD ST Property Address: **ROCHESTER, NH 03867-1916** 69 DONALD ST Parcel Number: 0137-0009-0033 CITY OF ROCHESTER Mailing Address: CAMA Number: 0137-0009-0033 31 WAKEFIELD ST Property Address: 63 DONALD ST **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0034 Mailing Address: CITY OF ROCHESTER **CAMA Number:** 0137-0009-0034 31 WAKEFIELD ST 55 DONALD ST Property Address: **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0035 Mailing Address: CITY OF ROCHESTER 0137-0009-0035 **CAMA Number:** 31 WAKEFIELD ST Property Address: 47 DONALD ST **ROCHESTER, NH 03867-1916** Parcel Number: 0137-0009-0036 CITY OF ROCHESTER Mailing Address: CAMA Number: 0137-0009-0036 31 WAKEFIELD ST Property Address: 41 DONALD ST **ROCHESTER, NH 03867-1916** 





Parcel Number: **CAMA Number:** 

0137-0035-0000

0137-0035-0000

Property Address: 14 WADLEIGH RD

Parcel Number:

0137-0035-0001

**CAMA Number:** 

0137-0035-0001 Property Address: 29 WADLEIGH RD

Parcel Number: **CAMA Number:**  0137-0035-0000

Property Address: 0 WADLEIGH RD

0137-0035-A000

Parcel Number: **CAMA Number:** 

0137-0037-0000 0137-0037-0000 Property Address: 763 COLUMBUS AVE

479 GONIC RD

**ROCHESTER, NH 03839-5683** 

Mailing Address: SSG LLC

Mailing Address: JRS LLC

120 WASHINGTON ST STE 302

**ROCHESTER, NH 03839-5536** 

Mailing Address: SPRINT PROP TAX DEPT

P O BOX 8430

KANSAS CITY, MO 64114-8430

Mailing Address:

CITY OF ROCHESTER 31 WAKEFIELD ST ROCHESTER, NH 00000