

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. _____

DATE FILED _____

ZONING BOARD CLERK

Applicant:

Waterstone Rochester, LLC

E-mail: c/o Francis X. Bruton, III, Esq., fx@brutonlaw.com Phone: (603)749-4529

Applicant Address: 117 Kendrick Street, Suite 325, Needham, MA 02494

Property Owner (if different): Same

Property Owner Address: Same

Variance Address: 120 Marketplace Blvd., Rochester, NH

Map Lot and Block No: Map 216, Lot 11

Description of Property: The existing Market Basket with associated parking within the Ridge Marketplace

Proposed use or existing use affected: The existing retail use will remain the same.

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 275-8.3

and asks that said terms be waived to permit the subdivision of a portion of the parcel containing the existing Market Basket,

with associated parking, with a zero side setback for pavement, where the common line will be an existing wall.

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: _____ Date: 4/21/21

Waterstone Rochester, LLC, By: Francis Bruton, Esq., its duly authorized Attorney





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.

Not applicable.



City of Rochester, New Hampshire

Zoning Board of Adjustment

Request of waiver of requirement to have a Certified Plot Plan for Case # _____

I request a waiver of the requirement to have a certified plot plan for the following reasons:

- There are no objections from any abutter, and:
- Based on the information provided, the distance into the setback will not create any problems to the abutting property because: _____
The properties will be sharing a common wall that is already constructed, as the property line, and no physical change will occur.

- The property is described in its deed as being bounded, on the side for which relief is requested, by a natural feature like a: (stone wall/ row of large trees/roadway, etc.)

In this instance, the property line shares a common wall.

- The request for relief from the setback required is modest enough that the probability of a surveying error large enough to make a material difference is remote. Yes ☒ No ☐
- Information provided is based upon other surveyed parcels in the immediate vicinity and is consistent with the tax map information, so the probability of a surveying error large enough to make a material difference is remote. Yes ☒ No ☐
- The request for relief from the setback required is in a direction where any impact on the abutter is small or nonexistent and, should a large surveying error be found in the future, there is adequate land area to correct the problem through a lot-line adjustment. Yes ☒ No ☐
- Any other applicable information: _____
The relief requested is for a side yard setback for pavement where a zero setback is being proposed along an existing common wall, and, as such, it is respectfully submitted that a survey is unnecessary in this instance

Check with the Planning & Development Department to see if it is necessary to fill out this form

WATERSTONE ROCHESTER, LLC

Variance Application

120 Marketplace Boulevard

Rochester, New Hampshire

INTRODUCTION

The property subject to this application is located at 120 Marketplace Boulevard and is depicted on the City's Tax Maps at Map 216, Lot 11. The property is known as "The Ridge Marketplace." The property is a large marketplace, providing retail space, office space, restaurants, and service uses, with 24 existing retail units, ranging in size from 1,200 sq. ft. to the Market Basket unit, which is the largest unit at 76,100 sq. ft. The entire size of the parcel is 85.90 acres and is located in the Granite Ridge Development, or "GRD" zoning district. The parcel is unique with respect to its size and location when compared to all of the abutting parcels that surround the parcel and also unique as it is a self-contained shopping complex like no other within the City (See copy of a portion of the City tax map). The property contains a series of private access driveways and parking areas to support the existing commercial uses within the entire complex. The parcel is also unique in that it abuts a public road, Marketplace Boulevard, providing the parcel significant excess frontage, where only 50 feet is required. Marketplace Boulevard itself is unique as it was designed, with extensive consultation with the City, as a public road, just offset from NH Route 11.

Waterstone Rochester, LLC ("Waterstone"), seeks to subdivide a portion of the parcel (as depicted on the attached variance plan) at the request of Market Basket, resulting in a freestanding parcel of land, comprised of 7.4 acres, containing the existing Market Basket building and its associated parking. After subdivision, the existing parcel will go from 85.90 acres to 78.50 acres. As part of the GRD zoning criteria, Section 275-8.3 of the Rochester Zoning Ordinance requires a minimum side yard pavement setback of 5 feet from the property line, intending to create a landscaped setback area. This provision is in place in order to provide for a "minimum ten-foot-wide area for landscaping around the perimeter of the site (five feet plus five feet for adjoining lots along the side lot lines)." In this instance, the property line will be located within the common wall of the Market Basket unit and The Paper Store unit, resulting in a zero setback to the property line. To the extent the variance is granted, the subdivision will have to be approved by the Rochester Planning Board.

Unlike most petitions typically before this Board, the buildings in this instance are constructed. As such, it would be an entire waste to require a ten-foot landscaping pathway between the two buildings and such a break within the façade of the existing structures would be detrimental to the intending design of the development. The subdivision, in this instance, relates to a division in ownership that will maintain the *status quo* as to the aesthetic quality and aspect of the existing buildings. Certainly, if the purpose is to create a landscaping feature, the requirement is unnecessary in order to maintain the purpose of the restriction given the existing extensive landscaping on the property as a whole. As such, Waterstone respectfully submits that the lack of such a landscaping buffer is unnecessary, and that granting the variance requested herein is reasonable, as further set forth herein.

WATERSTONE'S REQUEST FOR VARIANCES
FACTS SUPPORTING THIS REQUEST

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

Waterstone respectfully submits that the proposed use represents a reasonable use of the property in question. The proposed use is not only reasonable, given the surrounding circumstances, development and existing robust landscaping within the entire property, but is consistent with the existing uses within the property. Introducing a landscaping setback area is unnecessary and will create an alleyway effect that will likely result in an underutilized area that will be susceptible the collection of debris more than representing a functional landscaped buffer between the properties. In this instance, any such requirement would interfere with the well-considered design of the existing development. The proposed use will not be contrary to the public interest as the use will not alter the essential character of the neighborhood or threaten the health, safety and welfare of the public. Quite the opposite, the grant of the variance will allow Waterstone to maintain the existing commercial character of the neighborhood, as opposed to altering it and have no effect on the public. Quite simply, this variance represents a request to do nothing but keep the property configured as it is today.

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

Waterstone respectfully submits that if the variance was granted, the spirit of the ordinance would be observed because the use in question would permit a use which is suitable for the property considering the existing uses of the property, the existing landscaping, and given the surrounding uses of properties. The grant of the variance would maintain the most appropriate use of the land. To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance, such that it violates the ordinance's basic zoning objective. In this instance, the landscaping buffer referenced in the restriction is unnecessary given the existing approved design and landscaping throughout the development.

3. Granting the variance would do substantial justice because:

The granting of the variance would result in substantial justice because it would allow Waterstone's property to be utilized in a similar fashion in which it is already used, and one that would be similar to those uses located within the area. This test requires a balancing of the benefit to Waterstone versus the burden to public. In this instance, there would be no burden to the public whatsoever in terms of allowing Waterstone to proceed with the intended subdivision without the installation of a landscaping buffer. Conversely, the burden to Waterstone would be significant, as to provide for such a buffer would adversely diminish the design of the development and would certainly result in waste for no purpose. Accordingly, the benefit to Waterstone would exceed the burden to the public, thus, resulting in substantial justice being done.

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

It is respectfully submitted that all of the surrounding property values have a value associated with them which is premised upon the existence of the existing buildings located on Waterstone's property. In this instance, the subdivision will maintain the *status quo* as to the aesthetic quality and aspect of the existing buildings. The grant of the variance will maintain the consistent commercial use with respect to the property. There are no negative aspects with respect to Waterstone's proposal, and there are certainly no activities proposed by Waterstone that would have any negative affect upon the value of the surrounding properties.

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 unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The general purpose of the ordinance is to promote orderly development and to protect the health, safety, and general welfare of the public. One of the purposes of the GRD zone is to maximize the developable areas on the parcels within the district. In this instance, Waterstone seeks to maintain the *status quo* with respect to the existing uses located on the property. The property is large enough, and much larger than those within the general surrounding area, to sustain the use of the property as it currently exists, without requiring additional landscaping and/or disrupting the symmetry of design that currently exists on the property. It is respectfully submitted that it would be a detriment, in this context, to require that the subdivided parcels maintain a five-foot landscaping buffer on each resulting parcel. Requiring such a use would be inappropriate given the existing and surrounding uses. By allowing the variance, Waterstone would be able to maintain the orderly development of the project. In New Hampshire, when considering a variance, the ZBA is permitted to consider existing buildings on a parcel and how they relate to the request being made (See *Harborside v. Parade*, 162 NH 508 (2001)). In light of the above, and in this limited context, Waterstone respectfully submits that requiring an additional landscaping buffer is unnecessary in light of the general public purposes of the zoning ordinance and the specific purpose of the GRD district. As such, there is no relationship between the general public purpose of the ordinance and the specific application of the zoning requirement to this parcel, given the unique characteristics of the property, which includes its size and its existing uses which are all commercial, and its existing landscaping features.

ii. The proposed use is a reasonable one:

Waterstone submits that the proposed use is reasonable as it provides for Waterstone to subdivide the property in a manner that is consistent with the existing commercial uses. Imposing the restriction as to an additional landscape buffer would serve no purpose in this specific case.

**ABUTTERS LIST
FOR
WATERSTONE ROCHESTER, LLC
120 Marketplace Blvd., Rochester, NH
(MAP 216, LOT 11)
April 20, 2021**

OWNER OF RECORD/APPLICANT:

TAX MAP 216, LOT 11
Waterstone Rochester, LLC
c/o Waterstone Retail Development
117 Kendrick St, Ste 325
Needham, MA 02494-2724

ABUTTERS:

TAX MAP 208, LOT 1
Adamian Construction & Dev Corp
10 Old Farm Rd
Woburn, MA 01801-3963

TAX MAP 208, LOT 1-1
Infinity Rochester Prop LP
c/o WS Asset Management
33 Boylston St, Ste 3000
Chestnut Hill, MA 02467

TAX MAP 208, LOT 1-A
Northern Telephone Oper LLC
c/o Fairpoint Comm Inc.
770 Elm Street
Manchester, NH 03101

TAX MAP 216, LOT 10
Public Service Co of NH
d/b/a Eversource Energy
PO Box 270
Hartford, CT 06141-0270

TAX MAP 216, LOT 11-1
Waterstone Rochester, LLC
c/o Waterstone Retail Development
117 Kendrick St, Ste 325
Needham, MA 02494-2724

TAX MAP 216, LOT 11-2

City of Rochester
31 Wakefield Street
Rochester, NH 03867-1916

TAX MAP 217, LOT 54

Robert T. Williams, Trustee
Robert T. Williams 1998 Family Trust
84 Condor St
East Boston, MA 02128-1368

TAX MAP 217, LOT 55

Dan & Ruth Caron
135 Ten Rod Road
Rochester, NH 03867-4246

TAX MAP 217, LOT 55

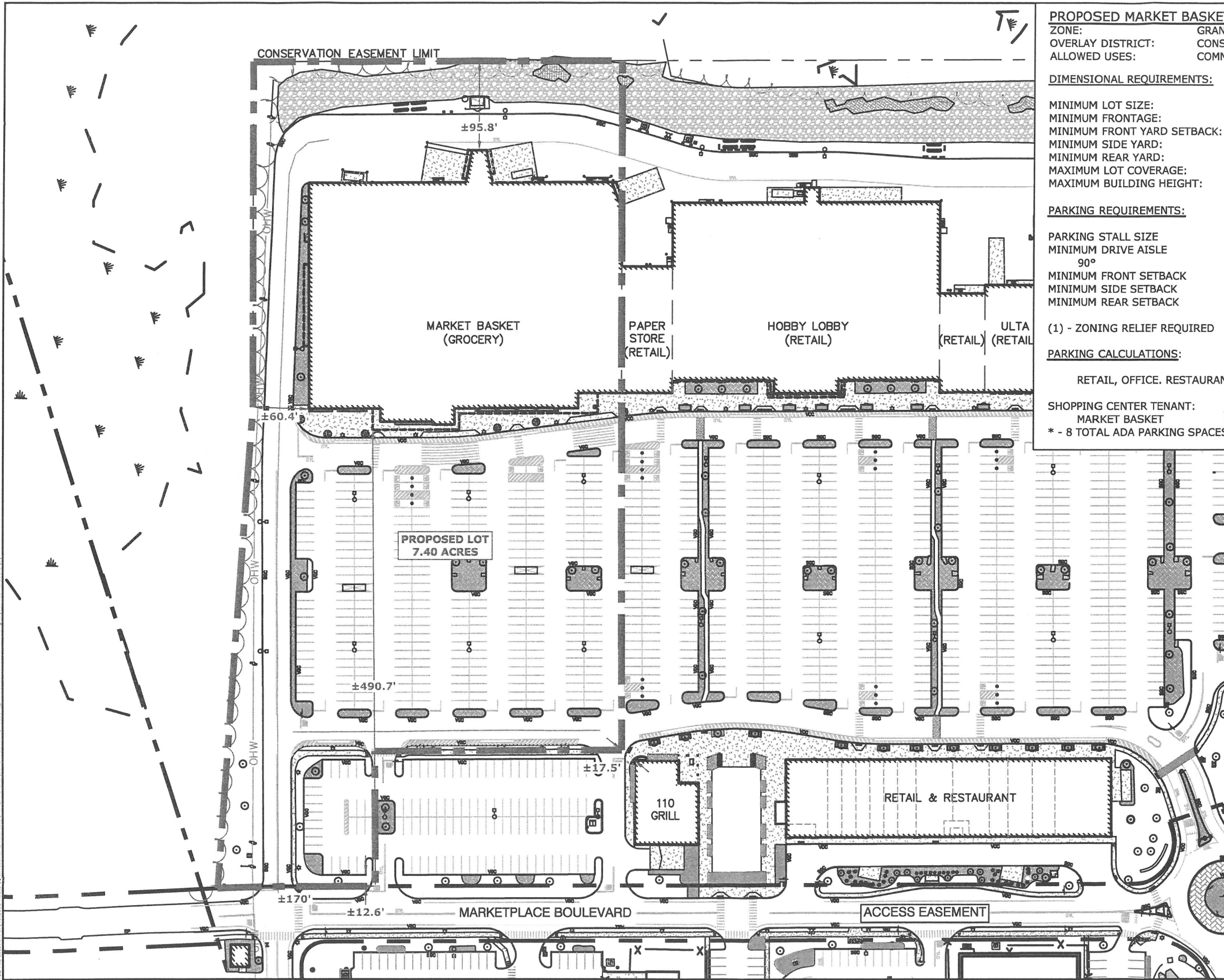
Andrew Mank & Scott D. Laffey
125 Ten Rod Road
Rochester, NH 03867-4246

PROFESSIONALS/INTERESTED PARTIES:

Craig Langton, PE
Tighe & Bond
177 Corporate Drive
Portsmouth, NH 03801

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

Last Save Date: April 20, 2021 8:55 AM By: CML
Plot Date: Tuesday, April 20, 2021 Plotted By: Craig M. Langton
T&B File Location: J:\K10195 Route 11 Investments Rochester, NH\DWG-CAD\CONSTRUCTION\K-0195-3_Market Basket Subdivision.dwg Layout Tab - C-101.1 (3)



PROPOSED MARKET BASKET SITE DATA:

ZONE: GRANITE RIDGE DEVELOPMENT ZONE (GRD)
OVERLAY DISTRICT: CONSERVATION OVERLY DISTRICT
ALLOWED USES: COMMERCIAL DEVELOPMENT

DIMENSIONAL REQUIREMENTS:

	REQUIRED	PROVIDED
MINIMUM LOT SIZE:	N/A	7.4 ACRES
MINIMUM FRONTAGE:	50.0 FT	170 FT
MINIMUM FRONT YARD SETBACK:	N/A	490.7 FT
MINIMUM SIDE YARD:	N/A	0 FT
MINIMUM REAR YARD:	N/A	95.8 FT
MAXIMUM LOT COVERAGE:	N/A	±78.3 %
MAXIMUM BUILDING HEIGHT:	N/A	≤35.0 FT

PARKING REQUIREMENTS:

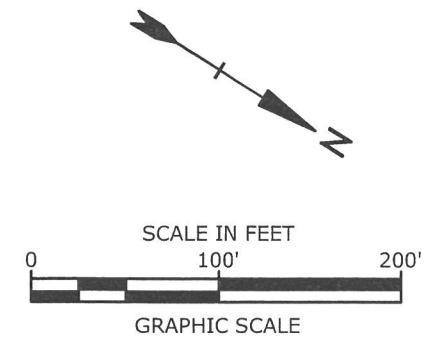
	REQUIRED	PROVIDED
PARKING STALL SIZE	9' X 18'	9' X 18'
MINIMUM DRIVE AISLE		
90°	22 FT	24 FT
MINIMUM FRONT SETBACK	10 FT	12.6 FT
MINIMUM SIDE SETBACK	5 FT	0 FT ⁽¹⁾
MINIMUM REAR SETBACK	10 FT	57.1 FT

(1) - ZONING RELIEF REQUIRED

PARKING CALCULATIONS:

RETAIL, OFFICE, RESTAURANT, OR SERVICE USE: 3 SPACES / 1,000 GFA

SHOPPING CENTER TENANT:	AREA (SF)	MIN REQ.'D	PROVIDED
MARKET BASKET	±76,100 SF	229 SPACES	281 SPACES*
* - 8 TOTAL ADA PARKING SPACES PROVIDED			



THE RIDGE MARKETPLACE
ROCHESTER, NEW HAMPSHIRE

DRAFT
VARIANCE SKETCH

FIGURE: 01
DATE: 4/20/2021
DRAWN BY: CML
CHECKED: PMC
APPROVED: BLM

Tighe&Bond