



City of Rochester, New Hampshire

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

Variance Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2018-12

DATE FILED 10/24/18

Julia Libby
ZONING BOARD CLERK

Applicant: 717 Columbus Avenue, LLC

E-mail: jcronin@cbzlaw.com (counsel) Phone: 603-624-4333 (counsel)

Applicant Address: 112 Gates Street, Portsmouth, NH 03801

Property Owner: 717 Columbus Avenue, LLC

Property Owner Address: 112 Gates Street, Portsmouth, NH 03801

Variance Address: 717 Columbus Avenue

Map Lot and Block No: Map 131, Lot 7

Description of Property: Vacant Land

Proposed use or existing use affected: gas station, convenience store and restaurant with drive-through

The undersigned hereby requests a variance to the terms of Article _____, Section ^{42:5(E)} _____ and asks that said terms be waived to permit the proposed use stated above in the Neighborhood Mixed Use Zone.

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.

Signed: Mary Beth Herbert

Date: October 13, 2018

Variance Criteria

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

Please see attached narrative.

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

Please see attached narrative.

3) Granting the variance would do substantial justice because:

Please see attached narrative.

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

Please see attached narrative.

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:

Please see attached narrative.

And:

ii. The proposed use is a reasonable one because:

Please see attached narrative.

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.

Please see attached narrative.

Attachment to Variance Application 42:20 and 42:21
717 Columbus Avenue, LLC ("Applicant")
Map 131, Lot 7 ("Property")
717 Columbus Avenue, Rochester, New Hampshire

BACKGROUND

This subject property ("Site") is a vacant lot, approximately 76,666 square feet, located in the Neighborhood Mixed Use zone ("NMU"). 717 Columbus Avenue, LLC ("Owner") is the current record owner and of the Property. The Applicant seeks to obtain permit and approvals to improve the Property with a convenience store, small restaurant, and fuel dispensary. The Applicant engaged the services of Frank Monteiro, a Professional Engineer to undertake an initial feasibility analysis for the propose use. The results were positive and it appears the Property is ideally suited for the proposed use other than its zoning classification. In the past, the proposed use was allowed without the need for a variance.

The objective of the NMU zone is largely to serve adjacent residential neighborhoods. Uses allowed as a matter of right include convenience stores, cafes, restaurants and retail uses up to 5,000 square feet. Other than the fuel dispensaries, the convenience store and restaurant appear to be allowed as permitted uses. The drive through lane for the restaurant will require a conditional use permit as per the development standards applicable to the NMU. Gas stations, as defined by the ordinance, are allowed only in three zones. The zones in which gas stations are allowed include the Downtown Commercial zone ("DC"), Highway Commercial zone ("HC"), and the Granite Ridge Development zone ("GR").

Although the NMU is generally classified as residential zone, the Property fronting on Columbus Avenue is not suitable for residential development. Columbus Avenue is a busy street with high traffic counts. Neighboring uses include Advanced Auto Repair and a Restaurant. Although there is an abutting apartment property at the rear, most of the uses along Columbus Avenue are commercial in nature. The general reference to gas stations and the related definition contemplates gas stations in general. The method of sale and delivery of fuel for the driving public has changed markedly in the past several decades. In years gone by, a mechanic usually operated a service station with a small number of gas pumps and a few service bays. The operator sold fuel, but was primarily in business as a mechanic. In those times, an attendant would fill up the gas, check the oil and tire pressure, and wash windows. The next phase was dominated by self-service fuel stations that included a small payment kiosk and several pumps. The current trend is to pair fuel dispensers with convenience stores and restaurants that cater to the needs of the residents in the community and passersby. The full service convenience development as proposed here is a staple in New Hampshire and throughout the United States.

RELIEF REQUESTED

The Applicant met with the Planning Staff to discuss the Project and the required approvals. A variance to permit the proposed use is required due to the inclusion of the fuel dispensers.

1. Section 42:5(E) – To permit proposed mixed used a convenience facility, including fuel dispensers in the Neighborhood Mixed Use Zone.

VARANCE CRITERIA

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

According to the Supreme Court, the public interest and spirit and intent prongs of the variance test are essentially the same and should be considered together. Farrar v. City of Keene, 158 N.H. 684 (2009). The commercial uses proposed are consistent with the essential character of the neighborhood and there will be no harm to the public interest. The convenience store and restaurant fit the express goals of the Ordinance. The fuel dispensers are a convenience to neighbors and the public in general. It is rare to find a convenience store today that does not provide fuel to meet the demand of its customers. The location is proper for the retail sale of fuel as it is located on a busy street with significant traffic. Although not expressed, fuel dispensers could be considered an accessory use for a modern convenience store. Moreover, the public interest will be enhanced as the Property will provide greater convenience and utility for the public in general, and customers in particular.

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

When the uses proposed are consistent with the essential character of the neighborhood, there will be no harm to the public interest. Here, the project is consistent with the zoning objectives and is in harmony the goals of providing services to the neighborhood. Moreover, the public interest will be enhanced as the Site will provide greater convenience and utility for the public in general, and customers in particular. The spirit and intent of the ordinance is to protect the health, safety, and welfare of the community. A review of the Zoning Ordinance is in order to determine whether the proposed variances, if granted, are consistent with the spirit and intent of the ordinance. Chester Rod and Gun Club v. Town of Chester, 152 N.H. 577 (2005). The ordinance contemplates retail; restaurant and service uses in this area and the proposed use will not cause harm or injury to the public interest. To be contrary to the spirit and intent of the ordinance or injurious to the public rights of others, the variances must unduly, and in a marked degree, conflict with the ordinance's basic zoning objectives. *Id.* at 581, citing, Coderre v. Zoning Board of Review of City of Pawtucket, 105 R.I. 266 (1969). In New Hampshire, an applicant may satisfy this prong, and the related public interest prong, by

showing the variances, if granted, will not alter the essential character of the neighborhood. *Id.*; see also, Harrington v. Town of Warner, 152 N.H. 74 (2005); and, K. Young, Anderson's American Law of Zoning, Section 20.43. A variance will also not be contrary to the spirit of the ordinance if it does not threaten the public health, safety, or welfare.

Here, the relief requested will in no way harm or impact the essential character of the neighborhood. The area will be essentially the same before and after the proposed improvements. The Property, however, will be improved and the curb appeal and functional utility of the Property will be enhanced consistent with the public interest.

3. Granting the variance would do substantial justice because:

The substantial justice prong is subjective and requires a showing that the harm to the Applicant if the variance is denied is greater to the harm to the public if the variance is granted. The Applicant contends there will be no harm to the public if the variance is granted. The variance, if granted, will allow this mixed use to proceed and provide services to the neighbors and the community. If the variance is denied, the Applicant will not move forward to improve the property and the opportunity to improve the tax base with a new, efficient and properly designed service facility will be lost.

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

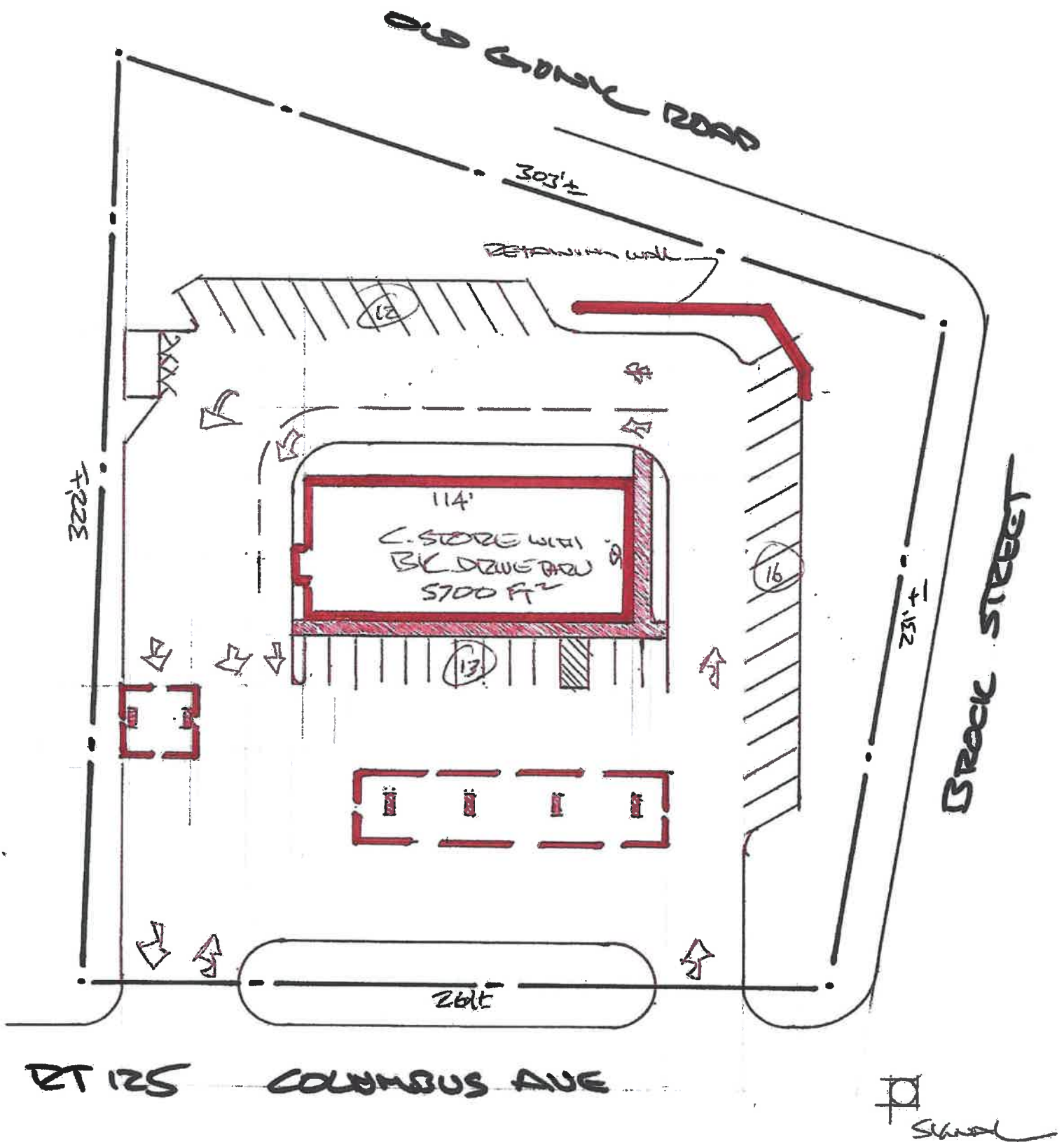
The neighborhood is commercial in nature and the Property is located in the area of diversified commercial uses. The Property maintains frontage on Columbus Avenue, a busy street with commercial uses. The daily traffic counts are substantial and consistent with meaningful and successful commercial uses. The variance requested, if granted, will have no impact on the surrounding properties and will not diminish their value. See, Daniels v. Town of Londonderry, 157 N.H. 519 (2008). The proposed variances will provide for improvement of the Property to meet the service needs of the community. The proposed use will not have the stigma attached to historical gas stations. The tanks and safety systems are state of the art and will be installed under close supervision and best practices. Similarly, there will be no outside storage of cars in disrepair waiting repair. The facility will dispense fuel only and vehicle service will not be available.

5. Literal Enforcement of the ordinance will result in an unnecessary hardship.

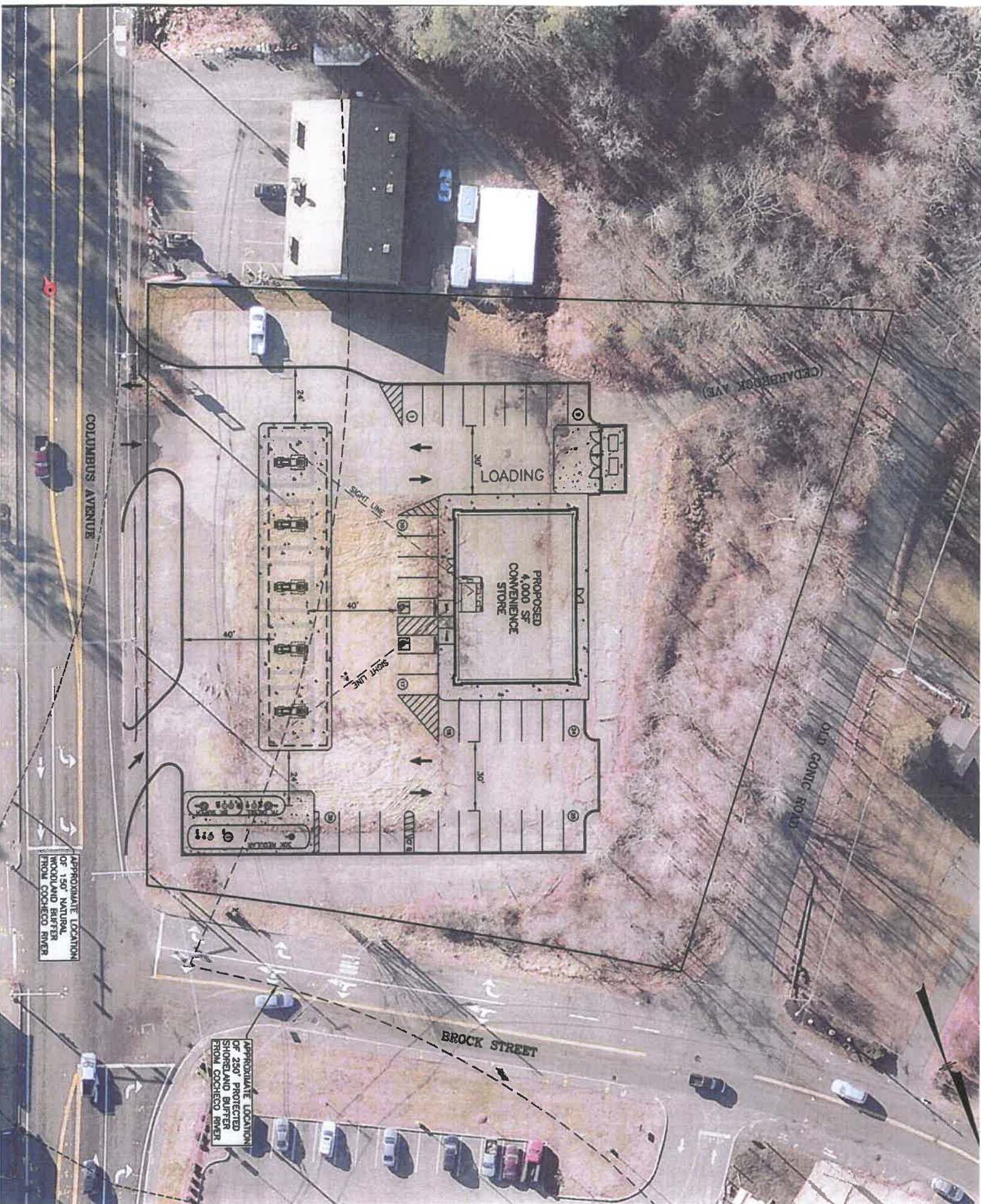
A. Owing to special conditions of the property, there is no fair and substantial relationship between the general purposes of the relevant ordinances and their application to the Property. The Property has special conditions such as a corner lot location and its existence among other commercial properties. The terms of the ordinance that lump gas stations into one class and do not distinguish for fuels dispensaries incident to a convenience store suggest the drafter did not include such a

use as a prohibition in their consideration. The proposed facility fits the goals of the zone for providing services to the neighboring residences. Traffic for residences in the area flow to the intersection. A convenience store with mixed uses is typical for the current state of our society and such a use is not expressly defined in the ordinance.

- B. The proposed use is reasonable. The use proposed is reasonable as it is consistent with similar successful facilities throughout the region. The project engineer is very experienced completing the design and approval of over one hundred similar facilities.



ROCHESTER NH ②



CEDAR BROOK AVE

OLD GONG ROAD

BROCK STREET

COLUMBUS AVENUE

APPROXIMATE LOCATION
OF 150' NATURAL
WOODLAND BUFFER
FROM COACHEO RIVER

APPROXIMATE LOCATION
OF 250' PROTECTED
SHORELAND BUFFER
FROM COACHEO RIVER

LOADING

PROPOSED
4,000 SF
CONVENIENCE
STORE

SOFT LINE

SOFT LINE

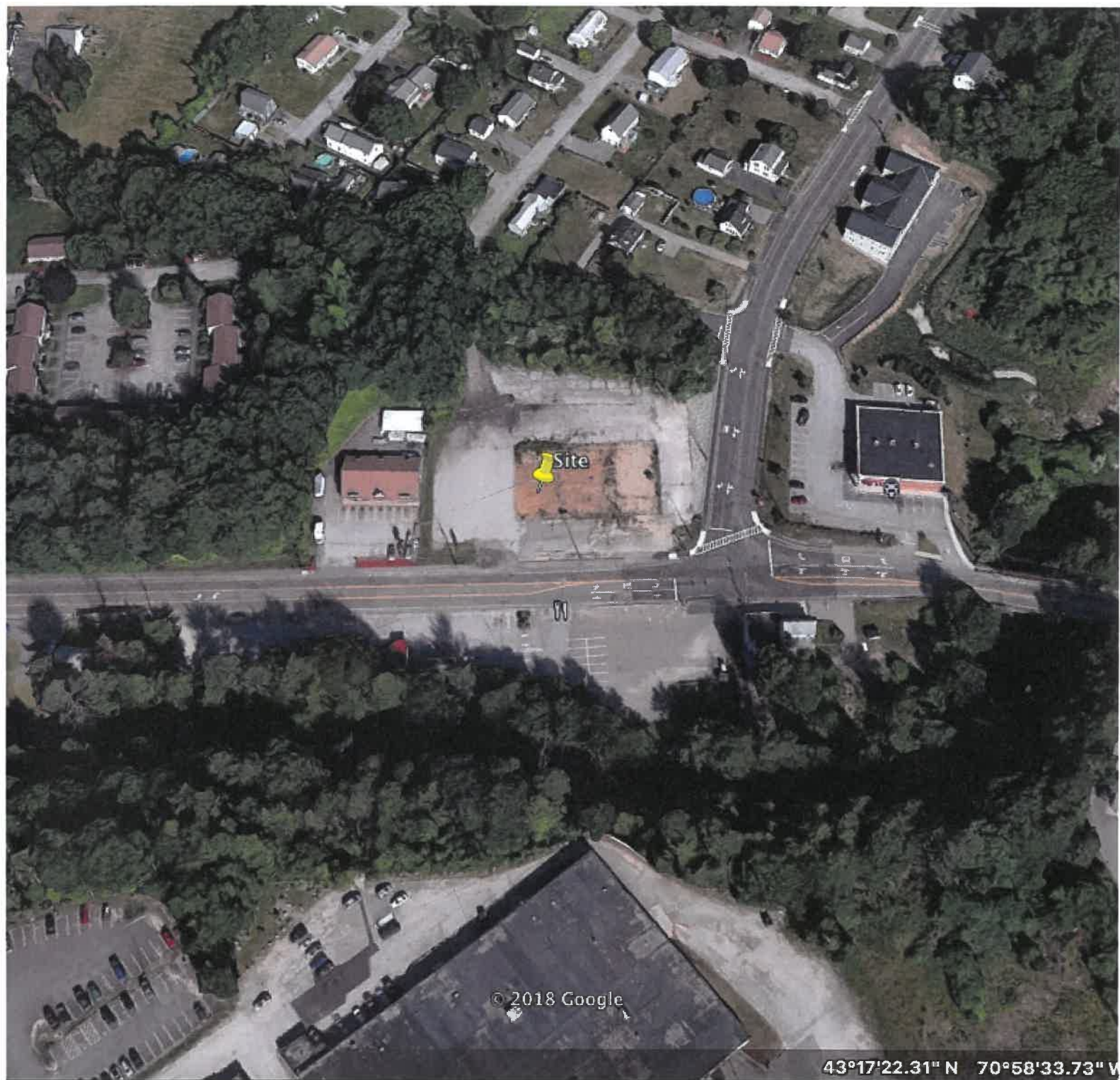


TABLE 18-C FOOD-LODGING-PUBLIC RECREATION USES 8/7/2014

FOOD-LODGING-PUBLIC RECREATION USES	Residential Districts					Commercial Districts				Industrial Districts			Special		Criteria/Conditions Section Reference
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS			
Café	-	-	P	C	P	P	P	P	-	-	-	P	-	P	Section 42.21
Campground	-	-	-	E	-	-	-	-	-	E	-	-	-	-	Section 42.22
Caterer	-	-	P	-	P	P	-	P	P	P	-	-	-	-	
Club	-	-	C	-	P	P	-	P	-	-	-	-	-	-	Section 42.21
Community Center	-	-	P	-	P	P	P	P	-	-	-	-	-	-	
Conference Center	-	-	C	-	P	P	P	P	-	-	P	P	-	P	Section 42.21
Country Club	-	-	-	C	-	-	P	E	-	C	-	-	-	-	Section 42.21
Foodstand	-	-	E	-	E	E	P	E	E	E	E	E	-	E	Section 42.22
Function hall	-	-	-	-	P	P	P	P	-	-	-	-	-	-	
Golf Course	-	-	-	P	-	-	P	-	-	P	-	-	-	-	Section 42.22
Health Club	-	-	C	C	P	P	P	P	-	-	-	-	-	-	Section 42.21
Lodging, Bed and Breakfast	-	C	P	-	P	P	-	P	-	-	-	-	-	-	Section 42.21
Lodging, Hotel	-	-	C	-	P	C	P	P	-	-	-	-	-	-	Section 42.21
Lodging, Motel	-	-	-	-	-	-	P	P	-	-	-	-	-	-	Section 42.21
Nightclub	-	-	-	-	E	-	P	P	-	-	-	-	-	-	Section 42.21
Recreation, Indoor	-	-	C	-	C	C	P	P	-	C	-	-	-	-	Section 42.21
Recreation, Outdoor	-	-	-	C	-	C	P	P	-	C	-	-	-	-	Section 42.21
Recreation, Park	P	P	P	P	P	P	-	P	-	C	-	-	-	-	Section 42.21
Restaurant	-	-	P	-	P	C	P	P	-	-	-	P	-	P	Section 42.21
Restaurant, Drive-through	-	-	-	-	P	-	P	P	-	-	-	-	-	-	
Tavern	-	-	C	-	P	-	P	P	-	-	-	-	-	-	Section 42.21
Theater/Cinema (5,000 s.f. or less)	-	-	P	-	P	P	P	P	-	-	-	-	-	-	Section 42.21
Theater/Cinema (over 5,000 s.f.)	-	-	-	-	C	-	P	P	-	-	-	-	-	-	Section 42.21

*LEGEND. P = Permitted Use, C = Conditional Use, E = Use Allowed by Special Exception

TABLE 18-B SALES-SERVICE-OFFICE-INSTITUTIONAL USES 8/7/2014

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

SALES-SERVICE-OFFICE-INSTITUTIONAL USES	Residential Districts				Commercial Districts				Industrial Districts				Special		Criteria/Conditions
	R1	R2	MMU	AG	DC	OC	GR	HC	GI	RI	HS	AS			
Adult Day Care Center	-	-	E	E	P	P	-	P	E	-	P	-	-	-	Section 42.22
Adult Day Care Home	-	E	E	E	P	P	-	P	-	-	P	-	-	-	Section 42.22
Adult Oriented Establishment	-	-	-	-	-	-	-	-	-	C	-	-	-	-	Section 42.22
Agricultural Building, Reuse of Existing	C	C	-	C	-	P	-	-	-	-	-	-	-	-	Section 42.22
Antique Shop	-	C	P	-	P	P	P	P	-	-	-	-	-	-	Section 42.21
Artist Studio	-	C	P	-	P	P	-	P	-	-	-	-	-	-	Section 42.21
Bank	-	-	C	-	P	P	P	P	-	-	-	-	-	-	Section 42.21
Convenience Store	-	C	P	-	P	E	P	P	-	-	-	-	-	-	Section 42.21
Day Care - 1 (Day Care Residence)	P	P	P	P	P	P	-	P	-	-	P	-	-	-	Section 42.21
Day Care - 2 (Day Care - Family)	-	E	P	E	P	P	-	P	-	-	P	-	-	-	Sections 42.20 & 42.21
Day Care - 3 (Day Care Center)	-	-	E	E	P	P	-	P	E	-	-	-	-	-	Section 42.22
Florist	-	-	P	-	P	-	P	P	-	-	-	-	-	-	-
Funeral Home	-	-	C	-	P	P	-	P	-	-	-	-	-	-	-
Gas Station	-	-	-	-	P	-	P	P	-	-	-	-	-	-	Sections 42.20 & 42.21
Grocery Store	-	-	-	-	P	-	P	P	-	-	-	-	-	-	-
Hospital	-	-	-	-	P	P	-	P	-	-	P	-	-	-	-
House of Worship	-	C	C	C	P	C	-	P	-	-	P	-	-	-	Section 42.21
Housing Unit Sales	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Laundry Establishment - 1	-	C	P	-	P	-	-	P	-	-	-	-	-	-	Section 42.21
Laundry Establishment - 2	-	-	P	-	P	-	-	P	-	-	-	-	-	-	-
Library	-	C	P	C	P	P	-	P	-	-	-	-	-	-	Section 42.21
Marina	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-
Museum	-	C	P	C	P	P	P	P	-	-	-	-	-	-	Section 42.21
Office	-	-	P	-	P	P	P	P	P	P	-	-	-	-	-
Office, Medical	-	-	C	-	P	P	P	P	C	-	P	P	-	-	Section 42.21
Office, Professional	-	-	P	-	P	P	P	P	P	-	-	-	-	-	-
Personal Service Establishment	-	-	P	-	P	P	P	P	-	-	-	-	-	-	-
Retail Sales (under 5,000 square feet)	-	-	P	-	P	E	P	P	-	-	-	-	-	-	-
Retail Sales (5,000 - 30,000 square feet)	-	-	-	-	P	-	P	P	-	-	-	-	-	-	-
Retail Sales (over 30,000 square feet)	-	-	-	-	P	-	P	P	-	-	-	-	-	-	-
Retail Service	-	-	-	-	P	-	P	P	-	-	-	-	-	-	-
School, K-12	-	-	C	C	P	P	P	P	-	-	-	-	-	-	Section 42.21
School, Other	C	C	C	C	C	P	-	C	-	-	-	-	-	-	Section 42.21
Second Hand Shop	-	C	C	C	P	P	-	P	C	-	-	-	-	-	Section 42.21
Service Establishment	-	C	P	-	P	P	-	P	-	-	-	-	-	-	Section 42.21
Shelter	-	-	C	-	C	-	P	C	P	-	-	-	-	-	Section 42.21
Small Wind Energy Systems	-	-	-	-	E	E	-	P	E	E	E	-	-	-	-
Vehicle Sales, New	P	P	P	P	P	P	P	P	P	P	P	P	-	-	Section 42.20
Vehicle Sales, Used	-	-	C	-	-	-	P	P	-	-	-	-	-	-	Sections 42.20 & 42.21
Vehicle Service	-	-	-	-	P	-	P	P	-	-	-	-	-	-	Section 42.20
Yard Sale, Commercial	-	-	-	-	-	-	-	C	-	-	-	-	-	-	Sections 42.20 & 42.22

*LEGEND. P = Permitted Use, C = Conditional Use, E = Use Allowed by Special Exception

0131 0007 0000
MAP BLOCK LOT

1 of 1
CARD

TOTAL ASSESSED: 178,700
14561

Rochester

PROPERTY LOCATION

No	Alt No	Direction/Street/City
717		COLUMBUS AVE, ROCHESTER

OWNERSHIP

Owner 1: 717 COLUMBUS AVENUE LLC

Owner 2:

Owner 3:

Street 1: 112 GATES ST

Street 2:

Town/City: PORTSMOUTH

State/Prov: NH

Postal: 03801-4608

Own Occ: N

Type:

PREVIOUS OWNER

Owner 1: MCMANUS LAWRENCE P JR REVOC -

Owner 2: TRUST % TRUSTEES -

Street 1: 112 GATES ST

Town/City: PORTSMOUTH

State/Prov: NH

Postal: 03801-4608

NARRATIVE DESCRIPTION

This Parcel contains 1.76 AC of land mainly classified as COM DEV LAND

OTHER ASSESSMENTS

Code	Description/No	Amount	Com. Int

PROPERTY FACTORS

Item	Code	Descp	%	Item	Code	Descp
Z	NMU	NEIGH MIX	100	U	4	NONE
o				t	4	NONE
n				i	5	GAS
Census:				Exmpt		
Flood Haz:				Topo	1	LEVEL
D	RO	ROCHESTER		Street	1	PAVED
s				Traffic	5	HEAVY
t						

LAND SECTION (First 7 lines only)

Use Code	LUC	No of Units	Price/Unit	Depth / Price/Units
390 COM DEV LA		1		
325 RETAIL/SVC		0.76		

IN PROCESS APPRAISAL SUMMARY

Use Code	Building Value	Yard Items	Land Size	Land Value	Total Value
325			0.760	88,700	88,700
390			1.000	90,000	90,000

Total Card			1.760	178,700	178,700
Total Parcel			1.760	178,700	178,700

Source: Market Adj Cost

Total Value per SQ unit /Card: N/A

Parcel: N/A

Land Unit Type: AC

Entered Lot Size

Total Land: 1.76

Land Unit Type: AC

Parcel ID 0131-0007-0000

Notes

Date

9/19/2018

9/7/2017

9/8/2016

10/1/2015

9/29/2014

9/4/2013

9/20/2012

9/27/2011

dmooore

456

PAT ACCT.

Notes

Assoc PCL Value

V Tst Verif

No No 5

No No 4

No No 4

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717 Columbus Avenue



04/29/2017



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Rochester, NH

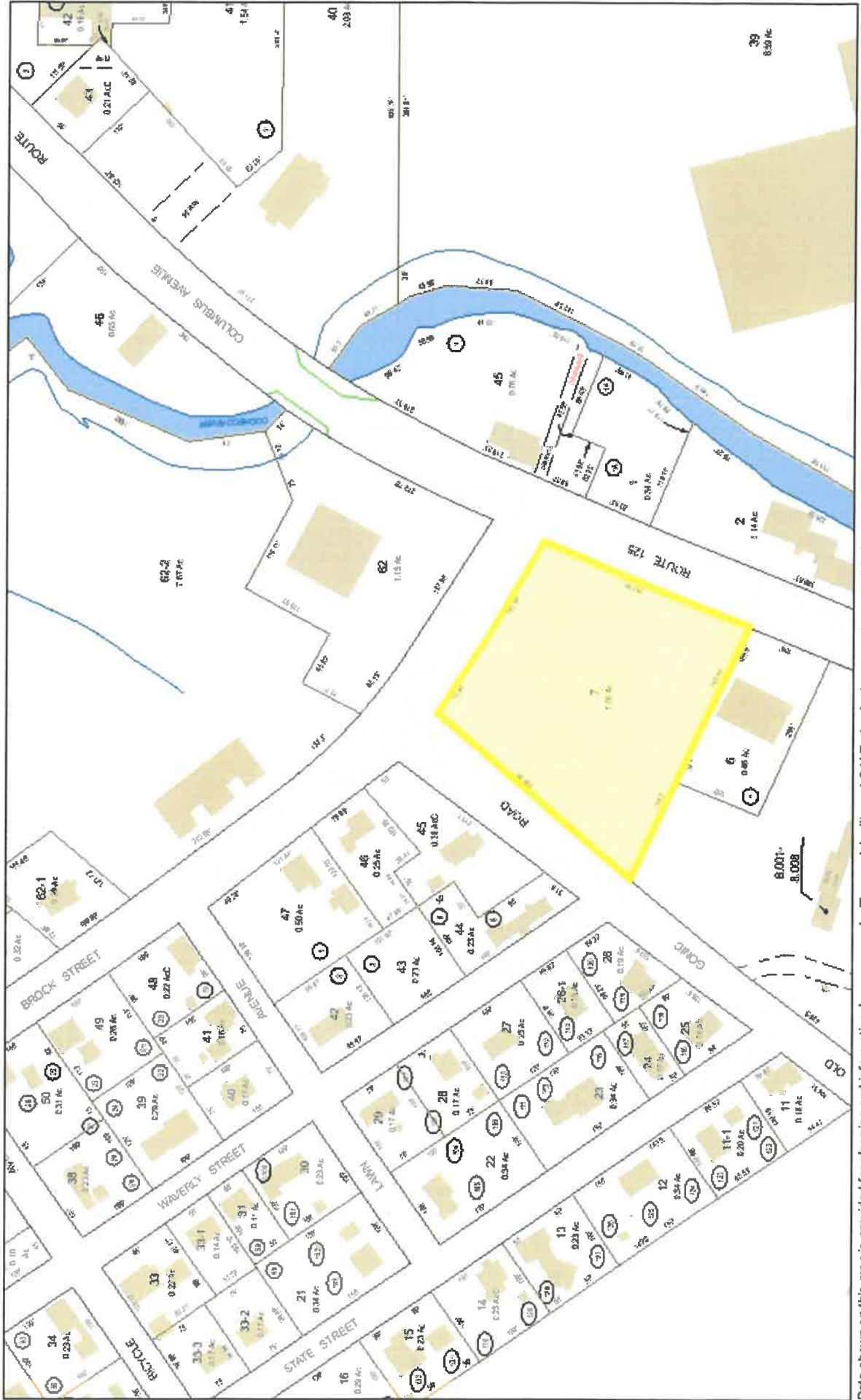
October 25, 2018

1 inch = 160 Feet



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Abutters List
Variance Application
717 Columbus Avenue, Rochester, NH

ABUTTERS:

Map/Lot 0131-0001-0000
Haley & Richard Partners
724 Columbus Avenue
Rochester, NH 03867

Map/Lot 0131-0002-0000
Haley & Richard Partners
724 Columbus Avenue
Rochester, NH 03867

Map/Lot 0131-0006-0000
George & Diane Frisbee
Quick Cash
725 Columbus Avenue
Rochester, NH 03867-3926

Map/Lot 0131-0008-0000
Amanda York, President
Cedarbrook Village Condominium Association
14A Cedarbrook Village
Rochester, NH 03867

and

Lisa Kimball, Secretary & Treasurer
Cedarbrook Village Condominium Association
14A Cedarbrook Village
Rochester, NH 03867

Map/Lot 0131-0026-0000
Gayden Lambert & Jennifer Martin
PO Box 646
Barrington, NH 03825

Map/Lot 0131-0044-0000
James W. Thibodeau
22 Waverly Street
Rochester, NH 03867-4430

Map/Lot 0131-0045-0000
Marilyn Cilley
3 Old Gonic Road
Rochester, NH 03867-4416

Map/Lot 0131-0062-0000
Brookvillage West Partnership
56 Kearney Road
Needham, MA 02494-2507

Map/Lot 0131-0062-0002
Marsh View Housing, LP
77 Olde Farm Lane
Rochester, NH 03867

Map/Lot 0132-0045-0000
710 Columbus Avenue, LLC
112 Gates Street
Portsmouth, NH 03802-1240

SUBJECT LOT:

Map/Lot 0131-0007-0000
717 Columbus Avenue, LLC
112 Gates Street
Portsmouth, NH 03801-4608

COUNSEL:

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