

1. Zoning Board Of Adjustment Regular Meeting Agenda(PDF)

Documents:

[20200114 ZBA AGENDA - AMENDED.PDF](#)

2. 20200114 ZBA Case Packets

Documents:

[20200114 69 KESSLER FARM DR.PDF](#)
[20200114 13 ALDER DR.PDF](#)
[20200114 3 LYONS ST.PDF](#)
[20200114 39 AMHERST ST.PDF](#)
[20200114 L SILVER DRIVE - REHEARING.PDF](#)
[20200114 1 HARDY ST - REHEARING.PDF](#)

3. 20200114 ZBA Case Correspondence

Documents:

[20200114 L SILVER DRIVE - REHEARING REBUTTAL.PDF](#)
[20200114 L SILVER DRIVE CORRESPONDENCE.PDF](#)
[39 AMHERST ST CORRESPONDENCE.PDF](#)

4. 20200114 ZBA Decisions

Documents:

[20200114 ZBA DECISIONS.PDF](#)



City of Nashua
Planning Department
229 Main Street
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
Fax 589-3119
WEB www.nashuanh.gov

ZONING BOARD OF ADJUSTMENT

6:30PM, JANUARY 14, 2020

AMENDED AGENDA

1. Unit Owners Association of the Villages at Kessler Farms Condominium (Owner) Pennichuck Water Works, Inc. (Applicant) 69 Kessler Farm Drive (Sheet G Lot 592) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#278) to replace an existing water tank with a new one 11.33 feet taller, in same location. R9 Zone, Ward 2.
2. Jose Mendez & Angela Laro (Owners) Angela Laro (Applicant) 13 Alder Drive (Sheet 139 Lot 112) requesting special exception from Land Use Code Section 190-47 (B) to allow a major home occupation for an in-home day care for 12 children. R9 Zone, Ward 6.
3. Santa Tejada (Owner) 3 Lyons Street (Sheet 19 Lot 86) requesting the following variances: 1) From Land Use Code Section 190-31, to encroach 14 feet into the 20 foot required front yard setback to construct a 15'x20' detached pool house; and, 2) from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted, 76% existing - 109% proposed. RB Zone, Ward 7.
4. Albert F. Monaco (Owner) 39 Amherst Street (Sheet 63 Lot 27) requesting the following variances: 1) From Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet allowed - 40 feet requested; 2) to exceed maximum 50% of front yard paved - 66% proposed; and, 3) from Land Use Code Section 190-16, Table 16-3 for minimum open space, 35% required - 33% proposed. RB Zone, Ward 3.

OTHER BUSINESS:

1. Review of Motion for Rehearing:

"L" Silver Drive
1 Hardy St

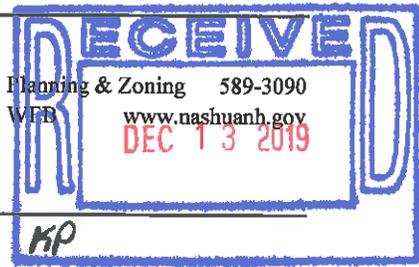
2. Review of upcoming agenda to determine proposals of regional impact.
3. Approval of Minutes for previous hearings/meetings.

"SUITABLE ACCOMMODATIONS FOR THE SENSORY IMPAIRED
WILL BE PROVIDED UPON ADEQUATE ADVANCE NOTICE."



City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
 WFB www.nashuanh.gov
DEC 13 2019



SPECIAL EXCEPTION APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. SPECIAL EXCEPTION INFORMATION

a. ADDRESS OF REQUEST **69 Kessler Farm Drive**

Zoning District **R-9** Sheet **G** Lot **592**

b. SPECIAL EXCEPTION(S) REQUESTED:

A special exception is requested for replacement of an existing water tank located on the property. The requested use is listed in the City of Nashua Zoning Ordinance Table 15-1, No. 278, as a special exception.

c. LAND USE CODE SECTION(S) REQUESTING SPECIAL EXCEPTION(S) FROM: **190-15**

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): **Pennichuck Water Works, Inc.**

Applicant's signature **Donald J. White** Date **12/5/19**

Applicant's address **25 Manchester Street, Merrimack, NH 03054**

Telephone number H: **603-913-2300** C: E-mail: **John.Boisvert@Pennichuck.com**

b. **PROPERTY OWNER (Print Name):** **Unit Owners' Association of the Villages at Kessler Farms Condominium**

*Owner's signature **Margaret Bush, President** Date **11/19/19**

Owner's address **24 Glencliff Way, Nashua, NH 03063**

Telephone number H: **877-423-5050** C: **SAME** E-mail: **drootouch@NORTHPOINSMANAGEMENT.COM**

***Agents and/or option holders must supply written authorization to submit on behalf of owner(s).**

OFFICE USE ONLY Date Received **12/13/19** Date of hearing **1/14/19** Application checked for completeness: **CF**

PLR# **2019-00260** Board Action _____

\$ **330** application fee Date Paid _____ Receipt # _____

\$ **15** signage fee Date Paid _____ Receipt # _____

\$ _____ certified mailing fee Date Paid _____ Receipt # _____

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. Please see "Procedures for Filing a Special Exception" for further information.

a. Describe the nature of your proposal. Please be specific.

A steel water tank is currently located on the property located at Map G/Lot 592. The existing tank was built in 1987 and is in disrepair and requires replacement with a new cement tank. The new tank will have a useful life of eighty (80) years.

b. Does your proposal involve the physical construction or expansion of a structure? Yes [X] No [] If yes, describe how the size of the addition (and any existing structure) compares with the physical size of surrounding properties.

The proposal involves the removal of the existing structure and the construction of a replacement structure. The dimensions of the new structure will be the same as the existing structure with respect to sidewall height (55 feet above ground) and diameter (120 feet). The new structure will be 66.83 feet in height which is 11.33 feet higher. This is due to the design feature of the new structure which has a pitched dome.

c. Do you anticipate the need for additional on-site parking space as a result of your proposal? Yes [] No [X] If yes, approximately how many square feet of paved or designated parking space will be provide for both existing and proposed usage?

[Empty box for parking space details]

d. What effects would the requested use have upon surrounding traffic congestion and pedestrian safety?

As this requested use is for replacement of an existing structure, there will be no change to traffic congestion or pedestrian safety.

e. What measures will be taken (if any) to insure that your proposal will not impair the integrity or be out of character with the zoning district or immediate neighborhood?

As this requested use is for replacement of an existing structure, there will be no change to the integrity or character of the zoning district or immediate neighborhood.

4. SPECIAL EXCEPTION – ADDITIONAL QUESTIONS

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

a. Total number of employees [120] Number of employees per shift [120. None permanently at this site.]

b. Hours and days of operation [24 hours per day 365 days per year.]

c. Number of daily and weekly visits to the premises by customers, clients, vendors, and solicitors [0*]

*During construction there will be one visit per day to the premises for inspection.

d. Number of daily and weekly commercial deliveries to the premises 0

e. Number of parking spaces available There are greater than 5 around the perimeter of the water tank.

f. Describe your general business operations:

Pennichuck Water Works, Inc. is engaged in the collection, storage, treatment, distribution, and sale of potable water in Southern and Central New Hampshire.

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access, and circulation:

There are no changes from existing conditions other than a new tank of a different material of construction (concrete) and added roof/dome height.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Donald L Ware

Signature of Applicant

12/11/19

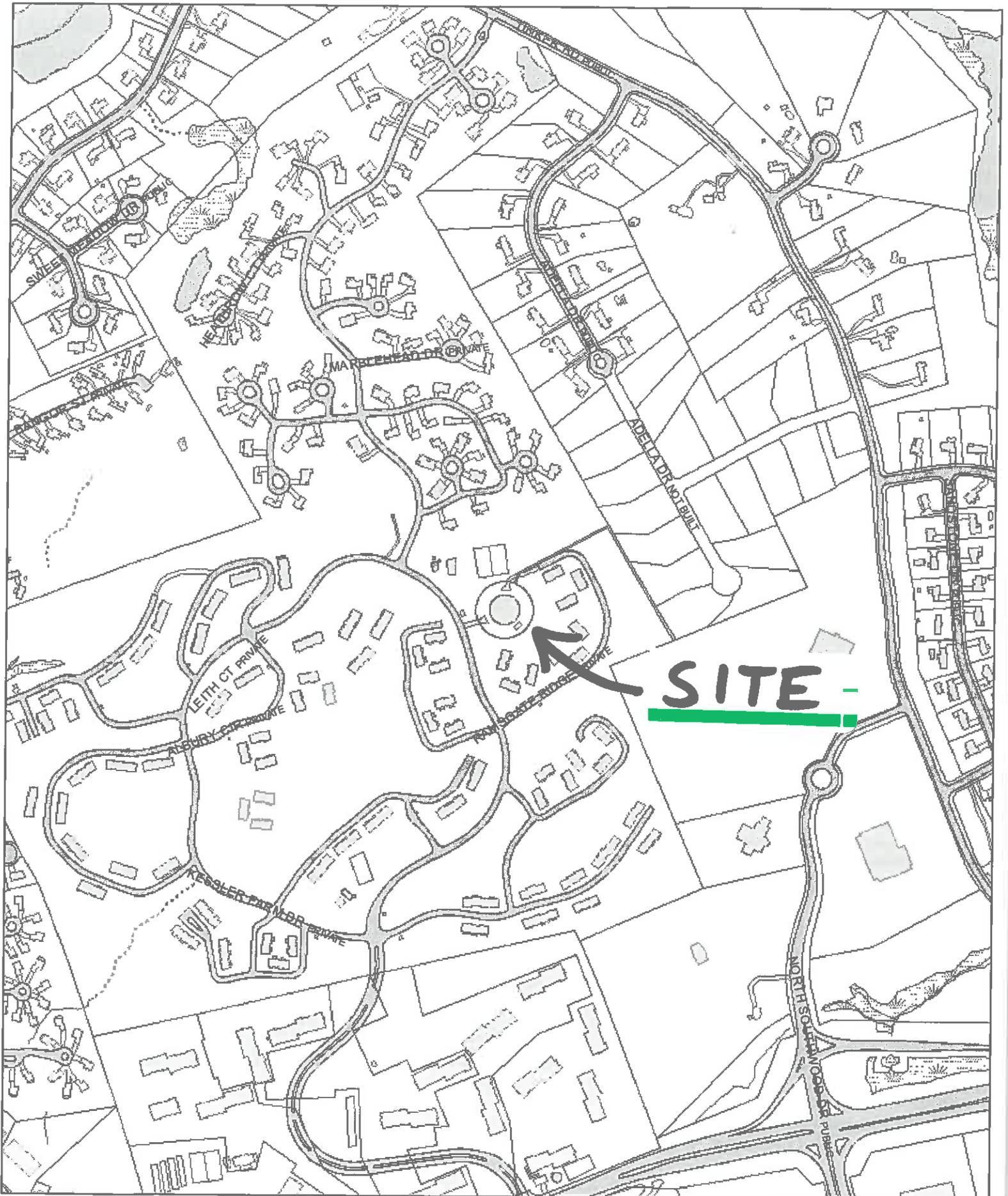
Date

DONALD L WARE

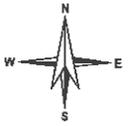
Print Name

12/11/19

Date

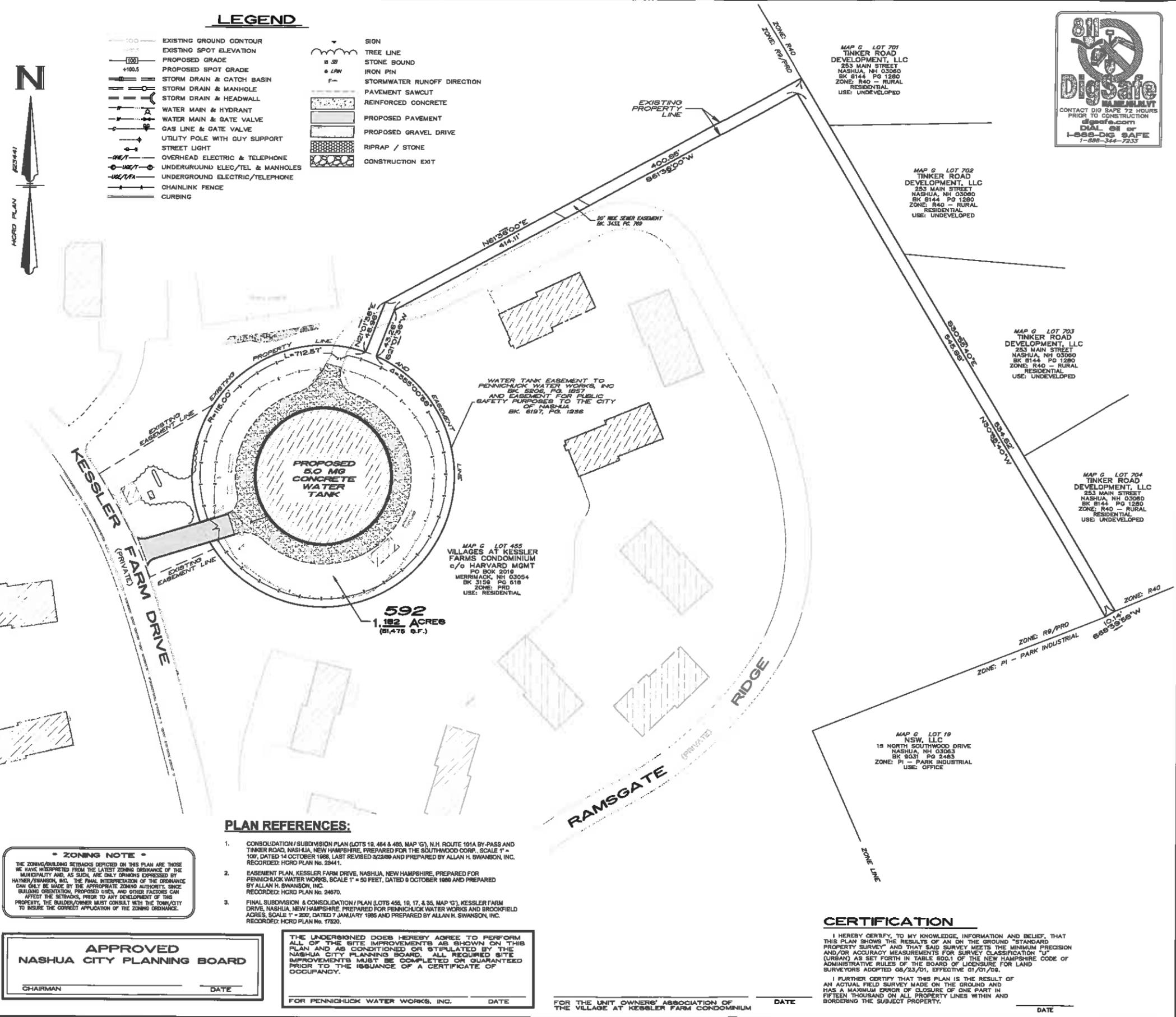


69 Kessler Farms Dr



LEGEND

- - - - - EXISTING GROUND CONTOUR
- EXISTING SPOT ELEVATION
- +100.5— PROPOSED GRADE
- +100.5— PROPOSED SPOT GRADE
- +—+—+ STORM DRAIN & CATCH BASIN
- +—+—+ STORM DRAIN & MANHOLE
- +—+—+ STORM DRAIN & HEADWALL
- +—+—+ WATER MAIN & HYDRANT
- +—+—+ WATER MAIN & GATE VALVE
- +—+—+ GAS LINE & GATE VALVE
- +—+—+ UTILITY POLE WITH GUY SUPPORT
- +—+—+ STREET LIGHT
- +—+—+ OVERHEAD ELECTRIC & TELEPHONE
- +—+—+ UNDERGROUND ELEC./TEL. & MANHOLES
- +—+—+ UNDERGROUND ELECTRIC/TELEPHONE
- +—+—+ CHAINLINK FENCE
- +—+—+ CURBING
- +—+—+ SIGN
- +—+—+ TREE LINE
- +—+—+ STONE BOUND
- +—+—+ IRON PIN
- +—+—+ PAVEMENT SAWCUT
- +—+—+ REINFORCED CONCRETE
- +—+—+ PROPOSED PAVEMENT
- +—+—+ PROPOSED GRAVEL DRIVE
- +—+—+ RIPRAP / STONE
- +—+—+ CONSTRUCTION EXIT



- NOTES:**
- LOT AREA: 1.182 ACRES (81,475 SF)
 - PRESENT ZONING: R-4: URBAN RESIDENCE. REQUIRED: 8,000 SF. PROPOSED: 51,475 SF. LOT AREA, LOT FRONTAGE, LOT WIDTH, MINIMUM YARD SETBACKS, FRONT YARD, SIDE YARD, REAR YARD, MAX. BUILDING HEIGHT, MAX STORES, MIN. OPEN SPACE (%).
 - ON NOVEMBER 21, 2019 THE NASHUA ZONING BOARD OF ADJUSTMENT APPROVED A SPECIAL EXCEPTION TO ALLOW A WATER TANK IN A R9 ZONE.
 - LOT NUMBERS REFER TO THE CITY OF NASHUA ASSESSORS MAP 'X'.
 - SITE IS SERVICED BY MUNICIPAL SEWER, WATER BY PENNICHUCK WATER WORKS AND UNDERGROUND TELEPHONE, ELECTRIC AND GAS UTILITIES.
 - PURPOSE OF PLAN: TO SHOW THE PROPOSED WATER TANK RECONSTRUCTION, ALONG WITH ACCOMPANYING SITE IMPROVEMENTS. THIS PLAN AMENDS NR.
 - ALL SIGNAGE SHALL CONFORM TO THE APPLICABLE CITY OF NASHUA REGULATIONS WITH ALL PERMITS SECURED PRIOR TO INSTALLATION.
 - SITE IMPROVEMENTS DEPICTED ON THE PLAN SHALL CONFORM WITH TITLE III OF THE AMERICANS WITH DISABILITIES ACT WITH REGARD TO DIMENSION, GRADE AND NUMBER OF PARKING SPACES.
 - ALL LANDSCAPING SHALL BE AS SHOWN ON THE PLAN AND CONFORM TO THE APPLICABLE CITY OF NASHUA ZONING REGULATIONS.
 - ALL SITE LIGHTING SHALL BE AS SHOWN ON THE PLAN, DIRECTED ONTO THE SITE AND CONFORM TO THE APPLICABLE CITY OF NASHUA ZONING REGULATIONS.
 - IT SHALL BE UNLAWFUL TO MODIFY, CHANGE, OR ALTER ANY STRUCTURE SHOWN ON THIS SITE PLAN IN ANYWAY WHATSOEVER, OR CONVERT OR ALTER ANY STRUCTURE SHOWN ON THIS SITE PLAN, OR CHANGE THE ABOVE USE INDICATED ON THE PLAN WITHOUT RECEIVING APPROVAL FROM THE CITY.
 - PUBLIC STREET RESTORATION WORK, IF ANY, SHALL BE IN ACCORDANCE WITH N.H.R.S. SECTION 266-13, LATEST EDITION, PRIOR TO A BUILDING PERMIT BEING ISSUED, BONDING FOR ALL PUBLIC STREET IMPROVEMENTS SHALL BE SUBMITTED TO AND APPROVED BY THE ENGINEERING DEPARTMENT AND CORPORATION COUNSEL.
 - THIS SITE IS LOCATED WITHIN THE CITY OF NASHUA WATER SUPPLY PROTECTION DISTRICT.
 - THE APPLICANT SHALL SUBMIT AN ELECTRONIC FILE OF THE SITE PLAN (PLAT) PRIOR TO ISSUANCE OF A BUILDING PERMIT.
 - THE PARCEL IS LOCATED IN ZONE X AND IS NOT LOCATED IN A FLOOD HAZARD AREA AS DETERMINED FROM THE FLOOD INSURANCE RATE MAP, HILLSBOROUGH COUNTY, CITY OF NASHUA, NEW HAMPSHIRE, COMMUNITY NO. 33006 & 33007, PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, MAP NUMBER: 33011C042D, DATED: SEPTEMBER 25, 2006.
 - A PRE-CONSTRUCTION MEETING WITH THE CITY OF NASHUA PLANNING/ENGINEERING/FIRE OFFICIALS SHALL TAKE PLACE PRIOR TO ANY WORK BEING PERFORMED.
 - PRIOR TO A BUILDING PERMIT BEING ISSUED, DOCUMENTS PERTAINING TO THE STORMWATER OPERATION AND MAINTENANCE PLAN SHALL BE RECORDED.
 - HOURS OF OPERATION: TANK: 7 DAYS PER WEEK/24 HOURS PER DAY.
 - MECHANICAL APPURTENANCES SHALL NOT EXCEED 90 DECIBELS BETWEEN 7 AM - 8 PM AND 45 DECIBELS AT NIGHT 8 PM - 7 AM ALONG RESIDENTIAL ZONING DISTRICTS.
 - PRESENT OWNER OF RECORD: MAP 'G', LOT 592 THE UNIT OWNERS' ASSOCIATION OF VILLAGE AT KESLER FARM CONDOMINIUM C/O NORTH POINT PROPERTY MANAGEMENT 55 LAKE STREET, 4TH FLOOR, SUITE 7 NASHUA, NH 03063 BK 2205, PG 1658

PRELIMINARY
NOT FOR CONSTRUCTION

No.	DATE	REVISION	BY

MASTER SITE PLAN
(MAP 'G' LOT 592)
KESLER FARM DRIVE WATER TANK RECONSTRUCTION
69 KESLER FARM DRIVE
NASHUA, NEW HAMPSHIRE
PREPARED FOR:
PENNICHUCK WATER WORKS, INC.
PO BOX 1947 25 MANCHESTER STREET MERRIMACK, NH 03054 (603) 813-2300
RECORD OWNER:
THE UNIT OWNERS' ASSOCIATION OF THE VILLAGE AT KESLER FARM CONDOMINIUM
C/O NORTH POINT PROPERTY MANAGEMENT, 55 LAKE STREET, 4TH FLOOR, SUITE 7 NASHUA, NH 03063



25 OCTOBER 2019

HSI Haynes/Swanson, Inc.
Civil Engineers/Lead Surveyors
131 Middlesex Turnpike
Nashua, NH 03062
(603) 883-8097
www.haynes-swanson.com

FIELD BOOK: 1189 DRAWING NAME: 2391-F041 2391 1 OF 8
DRAWING LOC.: \\2000\2391\DWG PLS Number

- PLAN REFERENCES:**
- CONSOLIDATION/SUBDIVISION PLAN (LOTS 18, 484 & 485, MAP 'G'), N.H. ROUTE 101A BY-PASS AND TINKER ROAD, NASHUA, NEW HAMPSHIRE, PREPARED FOR THE SOUTHWOOD CORP., SCALE 1" = 100', DATED 14 OCTOBER 1985, LAST REVISED 3/22/89 AND PREPARED BY ALLAN H. SWANSON, INC. RECORDED: HCRO PLAN No. 2941.
 - EASEMENT PLAN, KESLER FARM DRIVE, NASHUA, NEW HAMPSHIRE, PREPARED FOR PENNICHUCK WATER WORKS, SCALE 1" = 50 FEET, DATED 9 OCTOBER 1986 AND PREPARED BY ALLAN H. SWANSON, INC. RECORDED: HCRO PLAN No. 24670.
 - FINAL SUBDIVISION & CONSOLIDATION / PLAN (LOTS 455, 16, 17, & 35, MAP 'G'), KESLER FARM DRIVE, NASHUA, NEW HAMPSHIRE, PREPARED FOR PENNICHUCK WATER WORKS AND BROOKFIELD ACRES, SCALE 1" = 200', DATED 7 JANUARY 1985 AND PREPARED BY ALLAN H. SWANSON, INC. RECORDED: HCRO PLAN No. 17820.

*** ZONING NOTE ***
THE ZONING/BUILDING SETBACKS DEPICTED ON THIS PLAN ARE THOSE WE HAVE INTERPRETED FROM THE LATEST ZONING ORDINANCE OF THE MUNICIPALITY AND, AS SUCH, ARE ONLY OPINIONS EXPRESSED BY HAYNES/SWANSON, INC. THE FINAL INTERPRETATION OF THE ORDINANCE CAN ONLY BE MADE BY THE APPROPRIATE ZONING AUTHORITY. SINCE BUILDING ORIENTATION, PROPOSED USES, AND OTHER FACTORS CAN AFFECT THE SETBACKS, PRIOR TO ANY DEVELOPMENT OF THIS PROPERTY, THE BUILDER/OWNER MUST CONSULT WITH THE TOWN/CITY TO INSURE THE CORRECT APPLICATION OF THE ZONING ORDINANCE.

APPROVED
NASHUA CITY PLANNING BOARD

CHAIRMAN _____ DATE _____

THE UNDERSIGNED DOES HEREBY AGREE TO PERFORM ALL OF THE SITE IMPROVEMENTS AS SHOWN ON THIS PLAN AND AS CONDITIONED OR STIPULATED BY THE NASHUA CITY PLANNING BOARD. ALL REQUIRED SITE IMPROVEMENTS MUST BE COMPLETED OR GUARANTEED PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

FOR PENNICHUCK WATER WORKS, INC. DATE _____

I HEREBY CERTIFY, TO MY KNOWLEDGE, INFORMATION AND BELIEF, THAT THIS PLAN SHOWS THE RESULTS OF AN ON THE GROUND "STANDARD PROPERTY SURVEY" AND THAT SAID SURVEY MEETS THE MINIMUM PRECISION AND/OR ACCURACY MEASUREMENTS FOR SURVEY CLASSIFICATION "U" (URBAN) AS SET FORTH IN TABLE 600.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS ADOPTED 08/23/01, EFFECTIVE 01/01/08.

I FURTHER CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS A MAXIMUM ERROR OF CLOSURE OF ONE PART IN FIFTEEN THOUSAND ON ALL PROPERTY LINES WITHIN AND BORDERING THE SUBJECT PROPERTY.

FOR THE UNIT OWNERS' ASSOCIATION OF THE VILLAGE AT KESLER FARM CONDOMINIUM DATE _____

CERTIFICATION

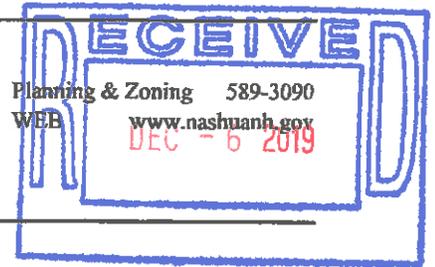
I HEREBY CERTIFY, TO MY KNOWLEDGE, INFORMATION AND BELIEF, THAT THIS PLAN SHOWS THE RESULTS OF AN ON THE GROUND "STANDARD PROPERTY SURVEY" AND THAT SAID SURVEY MEETS THE MINIMUM PRECISION AND/OR ACCURACY MEASUREMENTS FOR SURVEY CLASSIFICATION "U" (URBAN) AS SET FORTH IN TABLE 600.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS ADOPTED 08/23/01, EFFECTIVE 01/01/08.

I FURTHER CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS A MAXIMUM ERROR OF CLOSURE OF ONE PART IN FIFTEEN THOUSAND ON ALL PROPERTY LINES WITHIN AND BORDERING THE SUBJECT PROPERTY.

DATE _____



City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019



SPECIAL EXCEPTION APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. SPECIAL EXCEPTION INFORMATION

a. ADDRESS OF REQUEST 13 Alder Dr. Nashua NH 03060

Zoning District R9 Sheet 139 Lot 112

b. SPECIAL EXCEPTION(S) REQUESTED:

Run an in home daycare. with up to 12 children

c. LAND USE CODE SECTION(S) REQUESTING SPECIAL EXCEPTION(S) FROM: 190-47B

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): Angela Laro

Applicant's signature [Signature] Date 12/9/19

Applicant's address 13 Alder Dr. Nashua, NH 03060

Telephone number H: [] C: 603-530-4271 E-mail: Angela.Laro@yahoo.com

b. **PROPERTY OWNER (Print Name):** Angela Laro & Jose Franco

*Owner's signature [Signature] Date 12/9/19

Owner's address 13 Alder Dr. Nashua, NH 03060

Telephone number H: [] C: 603-530-4271 E-mail: Angela.Laro@yahoo.com

*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

OFFICE USE ONLY	Date Received <u>12/6/19</u>	Date of hearing <u>1/14/19</u>	Application checked for completeness: <u>CF</u>
PLR# <u>2019-00256</u>	Board Action _____		
\$ <u>330</u> application fee <input type="checkbox"/>	Date Paid _____	Receipt # <u>CD201906367</u>	
\$ <u>15</u> signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	

[Empty address box]

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. Please see "Procedures for Filing a Special Exception" for further information.

a. Describe the nature of your proposal. Please be specific.

In home daycare.

b. Does your proposal involve the physical construction or expansion of a structure? Yes [] No [X]

If yes, describe how the size of the addition (and any existing structure) compares with the physical size of surrounding properties.

[Empty response box]

c. Do you anticipate the need for additional on-site parking space as a result of your proposal? Yes [] No [X]

If yes, approximately how many square feet of paved or designated parking space will be provide for both existing and proposed usage?

[Empty response box]

d. What effects would the requested use have upon surrounding traffic congestion and pedestrian safety?

None

e. What measures will be taken (if any) to insure that your proposal will not impair the integrity or be out of character with the zoning district or immediate neighborhood?

If any, as required

4. SPECIAL EXCEPTION – ADDITIONAL QUESTIONS

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

a. Total number of employees [1] Number of employees per shift [1]

b. Hours and days of operation Monday - Friday @ 7:30 to 5pm

c. Number of daily and weekly visits to the premises by customers, clients, vendors, and solicitors [10-20] 20 daily 5pm-10pm 100 weekly

d. Number of daily and weekly commercial deliveries to the premises 0

e. Number of parking spaces available 15/20

f. Describe your general business operations:
Providing care for children in my home.

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access, and circulation:
None

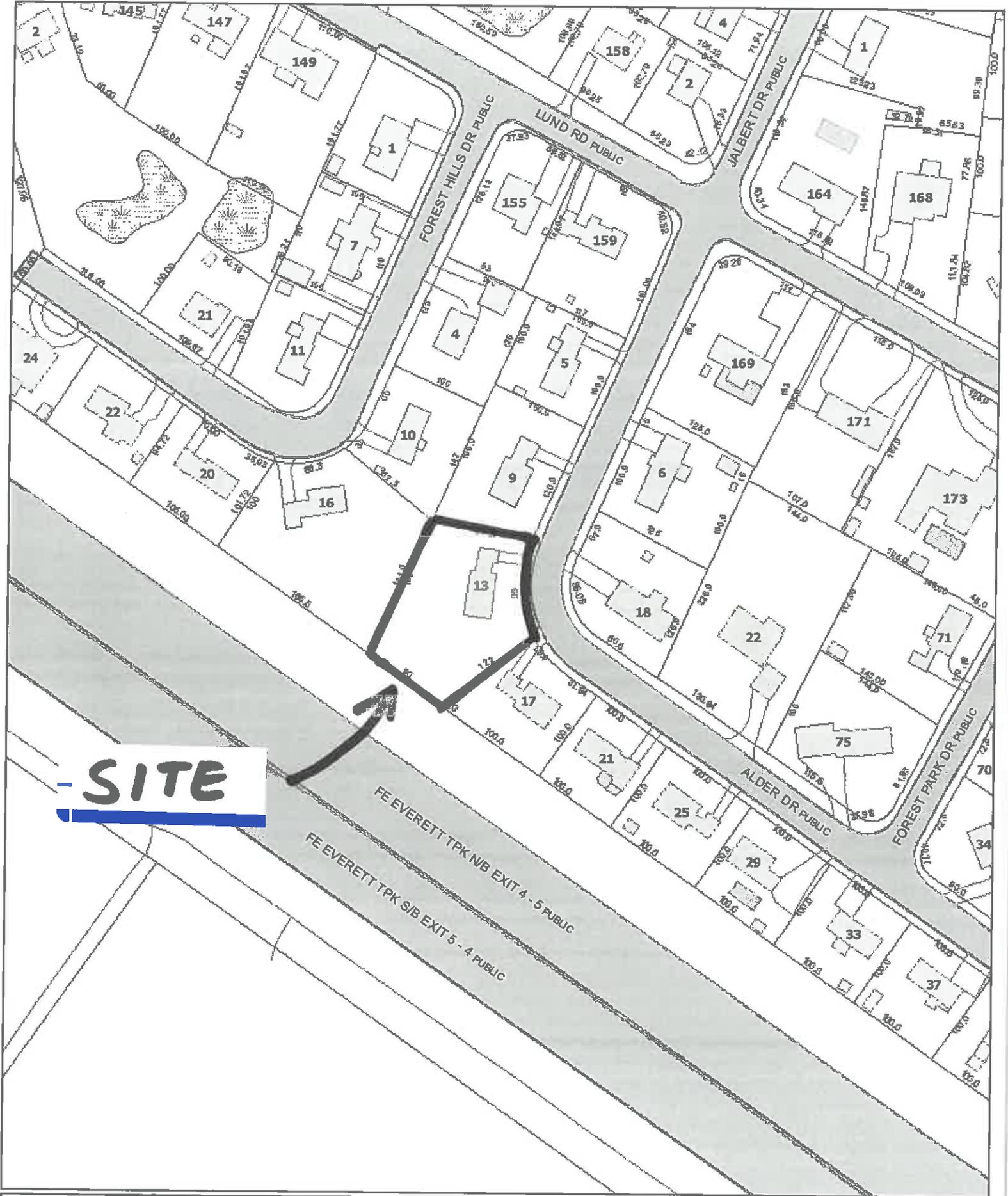
I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

[Signature]
Signature of Applicant

12/6/19
Date

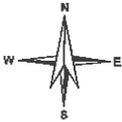
Angela Lard
Print Name

12/6/19
Date



SITE

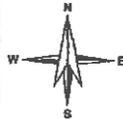
13 Alder Dr



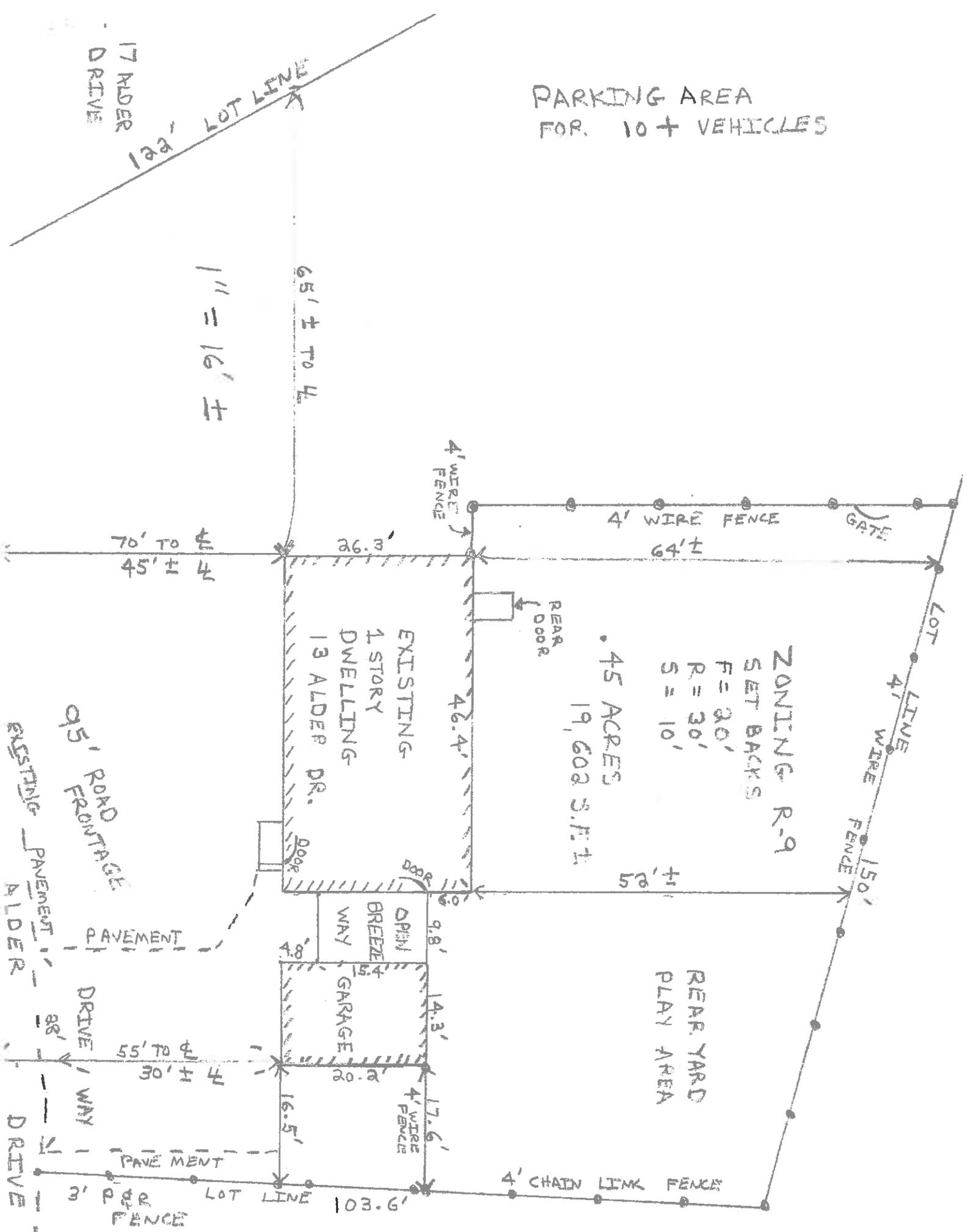


SITE

13 Alder Dr

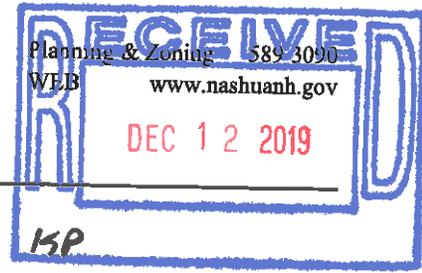


PARKING AREA
FOR 10+ VEHICLES





City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019



VARIANCE APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

7

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 3 Lyons St.
 Zoning District RB Sheet 19 Lot 86 ✓

b. VARIANCE(S) REQUESTED:
14' in to 20' Front set BACK
Necessary use area - 109% proposed

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM 190-31
190-264

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)
(Print Name): SANTA TESADA
 Applicant's signature [Signature] Date 12/12/19
 Applicant's address 3 LYONS ST.
 Telephone number H: _____ C: 781-913-1571 E-mail: Santa3117@Hotmail.com

b. **PROPERTY OWNER (Print Name): SANTA TESADA**
 *Owner's signature [Signature] Date 12/12/19
 Owner's address _____
 Telephone number H: _____ C: 781-913-1571 E-mail: Santa3117@Hotmail.com

*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

OFFICE USE ONLY	Date Received <u>12/12/19</u>	Date of hearing <u>1/14/19</u>	Application checked for completeness: <u>12</u>
PLR# <u>2019-00201</u>	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. Granting of the requested variance will not be contrary to the public interest, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

If Granted, This Variance Will Not Affect the Essential Character of the Neighborhood, Also it will not be a threat to Society.

- 2. The proposed use will observe the spirit of the ordinance, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The used is not contrary to the spirits of the ordinance, the use will mainly be to keep the pool furniture away from the Elements of the weather. And to give my Kids A EXTRA Room to play and watch TV.

- 3. Substantial justice would be done to the property-owner by granting the variance, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

The Granting of these Variance will not have no Negative Effect on the Neighborhood. And it will Help me Keeping My Furniture And other stuff out of the weather. And it Doesn't fix in My shed, And the pool furniture Are getting Damage

- 4. The proposed use will not diminish the values of surrounding properties, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

Granting the requested Variance, will not affect or Change the value of the Surrounding properties. It will be build and Finish completely inside and out For Incremental of the property Value.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

There is not any special conditions existing of the property, but I have it up or built already and will have to take it down if is not approved.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees _____ Number of employees per shift _____
- b. Hours and days of operation _____
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors _____
- d. Number of daily and weekly commercial deliveries to the premises _____
- e. Number of parking spaces available _____
- f. Describe your general business operations: _____

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation: _____

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

[Signature]
Signature of Applicant

12/12/19
Date

Print Name

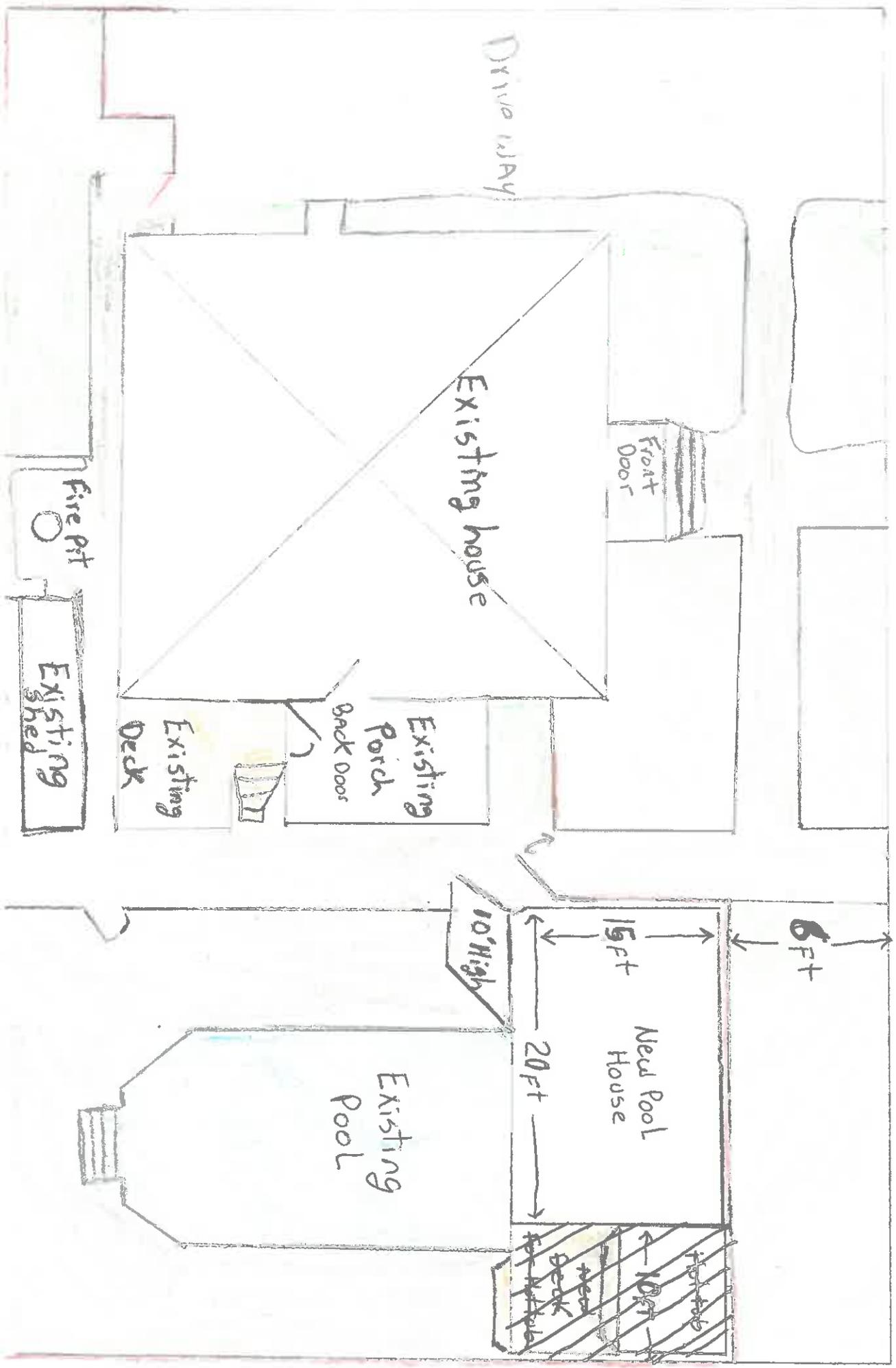
Date

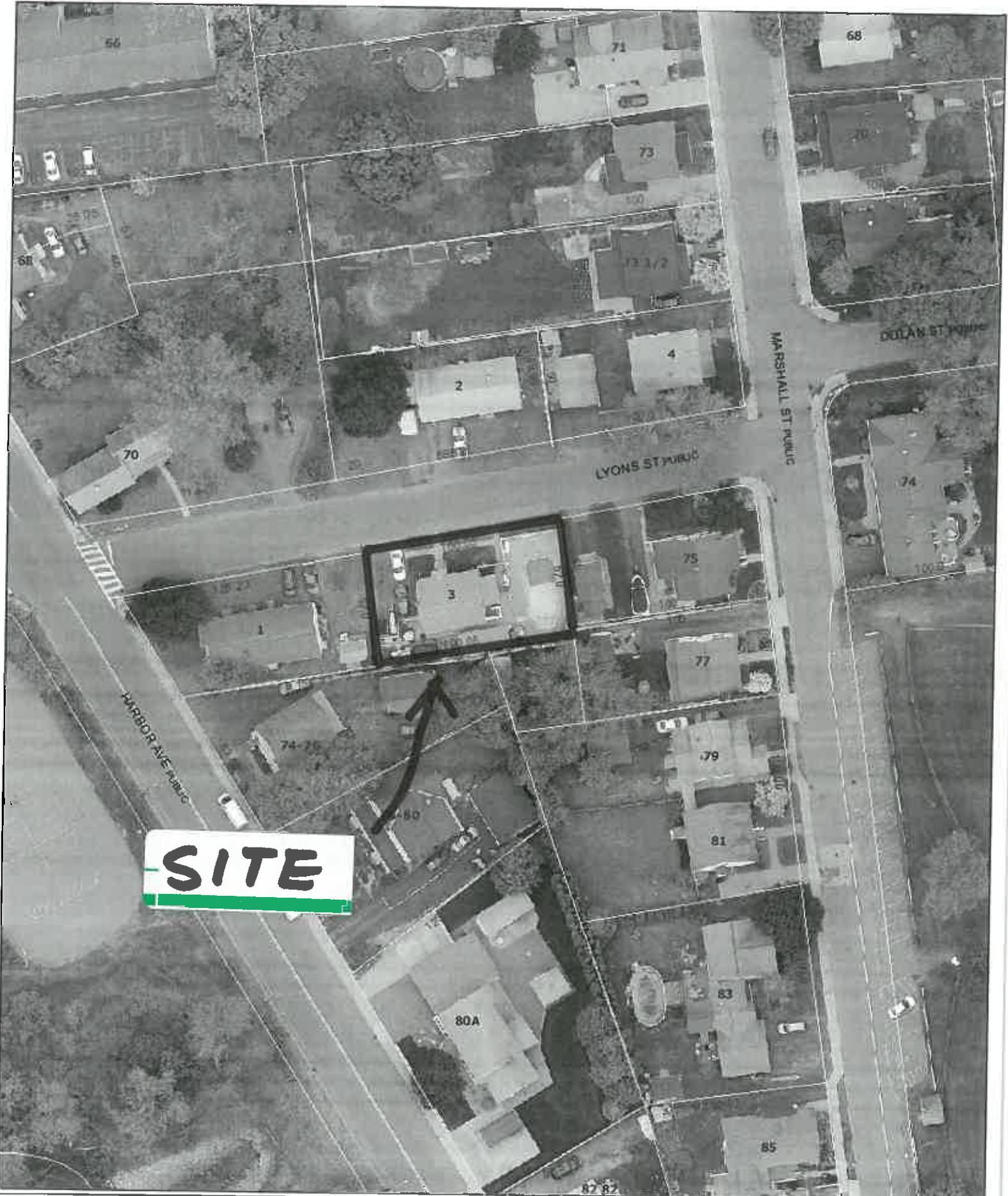
The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at _____
- Please mail it to me at _____

3 Lyons ST

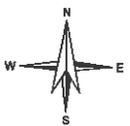
- Perimeter Fence
- Grass Area
- Paving Area
- Concrete Walkway
- Wood Deck
- Pool

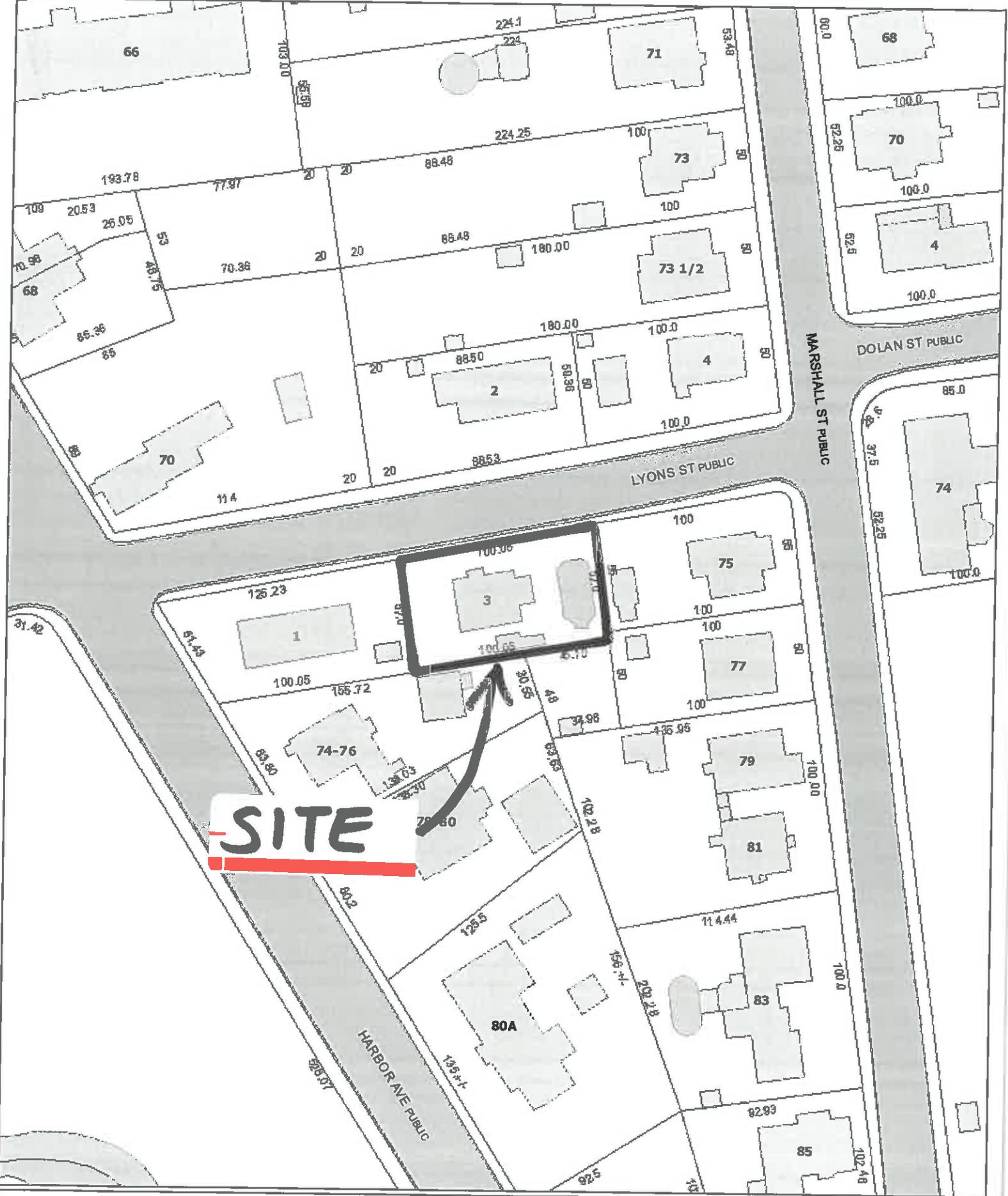




SITE

3 Lyons St





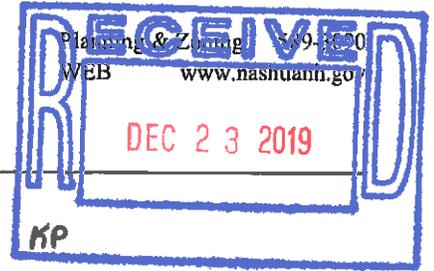
SITE

3 Lyons Street





City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019



VARIANCE APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 39 Amherst ST
 Zoning District BB Sheet 63 Lot 27

b. VARIANCE(S) REQUESTED:
* Increase Driveway Width
* Increase Percentage of Frontyard Driveway
* Decrease Percentage of Open Space

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM 190-16, Table 16-3
190-192 G

2. GENERAL INFORMATION

a. **APPLICANT/ OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): Albert Monaco
 Applicant's signature [Signature] Date 12-21-19
 Applicant's address 39 Amherst St,
 Telephone number H:6035665240 C:6035665240 E-mail: MONACOATZ@yahoo.com

b. **PROPERTY OWNER (Print Name):** Albert Monaco

*Owner's signature [Signature] Date 12-21-19
 Owner's address 39 Amherst St
 Telephone number H:6035665240 C:6035665240 E-mail: MONACOATZ@yahoo.com

*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

OFFICE USE ONLY	Date Received <u>12/23/19</u>	Date of hearing <u>1/14/20</u>	Application checked for completeness: <u>CF</u>
PLR# <u>2019-00202</u>	Board Action _____		
\$ <u>730</u> application fee <input checked="" type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ <u>15</u> signage fee <input checked="" type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest, because:** (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

see Attached

- 2. **The proposed use will observe the spirit of the ordinance, because:** (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

see Attached

- 3. **Substantial justice would be done to the property-owner by granting the variance, because:** (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

see Attached

- 4. **The proposed use will not diminish the values of surrounding properties, because:** (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

see Attached

VARIANCE APPLICATION

Address 39 Amherst St

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

see Attached

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees N/A Number of employees per shift N/A
- b. Hours and days of operation N/A
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors N/A
- d. Number of daily and weekly commercial deliveries to the premises N/A
- e. Number of parking spaces available N/A
- f. Describe your general business operations:

N/A

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:

new Residential Garage

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

[Signature]
Signature of Applicant

12-21-19
Date

ALBERT MONACO
Print Name

12-21-19
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at MONACOATZ@yahoo.com
- Please mail it to me at 39 Amherst St, Nashua NH 03064

Albert Monaco
39 Amherst St
Nashua NH
03064
1-603-566-5240
monacoa72@yahoo.com
12-21-19

Variance Application

Attached:

1. Granting this variance will not be contrary to public interest for any reason.
 - *This variance matches consistency for character of neighborhood.
 - *There are multiple driveways in the neighborhood including one abutter to requestor that exceed zoning requirements.

2. This variance observes the spirit of the ordinance because.
 - *There is no threat to public health, safety, in any way.
 - *This variance will not cause any conflict in the property use.
 - * This property is solely for residential use.

3. Granting this variance is fair and reasonable because.
 - *This variance in no way causes harm to any individual or the general public.
 - *Justice will be done not only to the property owner but the whole neighborhood aesthetically.
 - *The proposed variance will look like it belongs by matching surrounding driveways.

4. The proposed request will only increase surrounding homes neighborhood property values.
 - * This scope of work will be completed professionally and properly to a high standard.

5. Special conditions exist under the zoning ordinance causing hardship as well as a safety issue.
 - *Property lines are considerably further away do to Artillery Ln. Right of way. Causing hardship for proposed footprint to be obtainable without a variance.
 - *There are 4 vehicles coming and going from the home at different times do to residents busy off hrs work schedules. This causes residents to move multiple vehicles multiple times to access safe and reasonable parking conditions.
 - *Artillery Ln. is an extremely busy road during to and from school hours, events at the stadium, and while fields are being used for sporting and social events. There are times when residents cannot access parts of 39 Amherst st. existing driveway do to volume of parked cars on Artillery Ln.
 - *Parking on Artillery Ln. is not always an option due to the volume of other cars parked in front of residence during those busy hours.

-71.472131, 42.766920

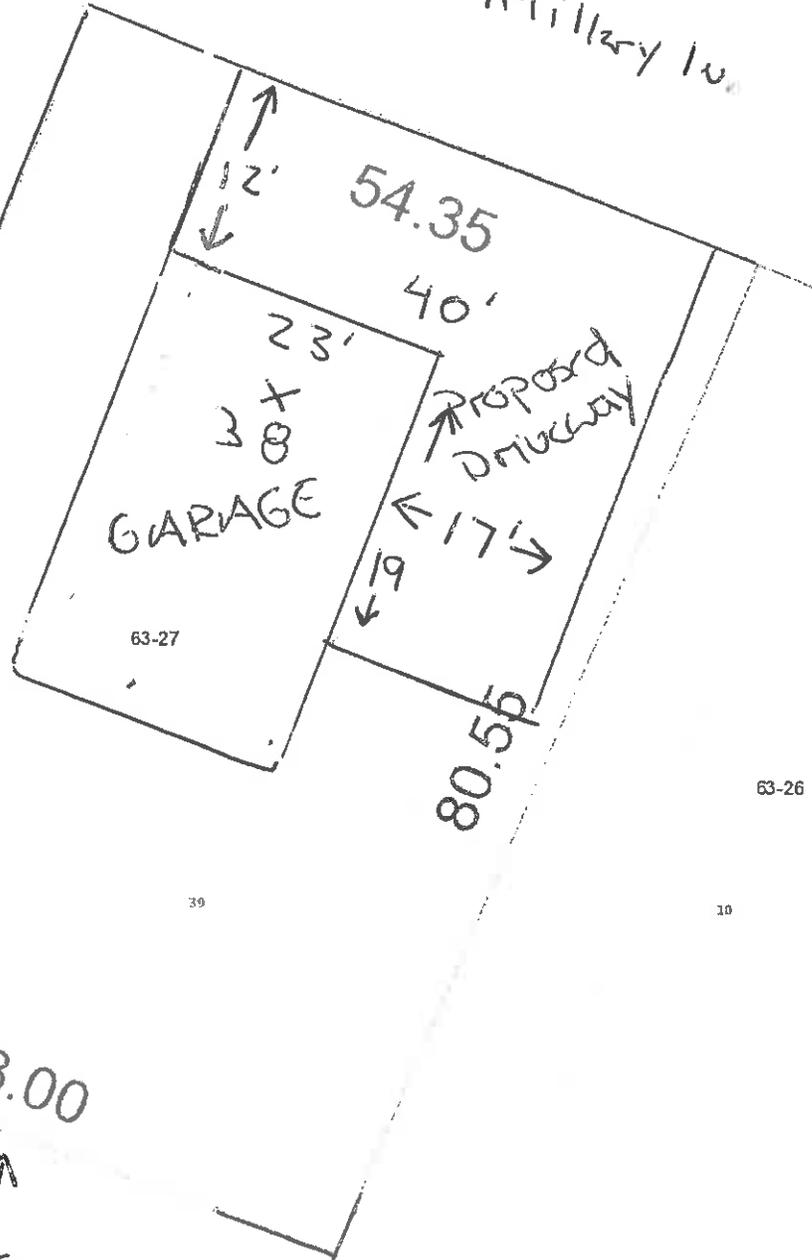


63-28 14

13

82.40

Artillery Ln



63-26

10

53.00
↑
39 Amherst ST



City of
Nashua
NH -
GIS



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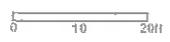
36' CURB CUT
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CUT

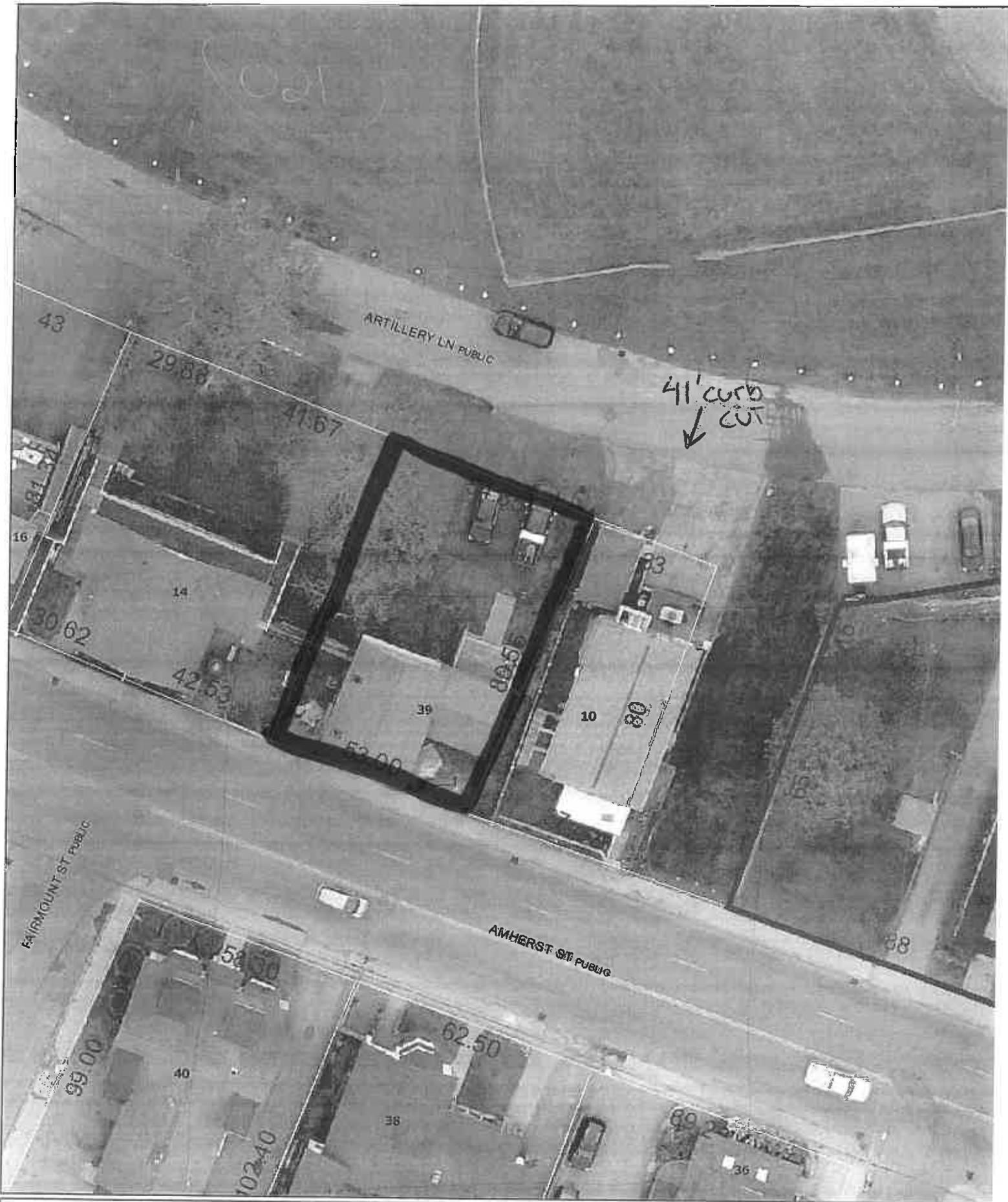


62-1



City of
Nashua
NH -
GIS





Foot

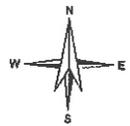
41' curb
↓
CUT

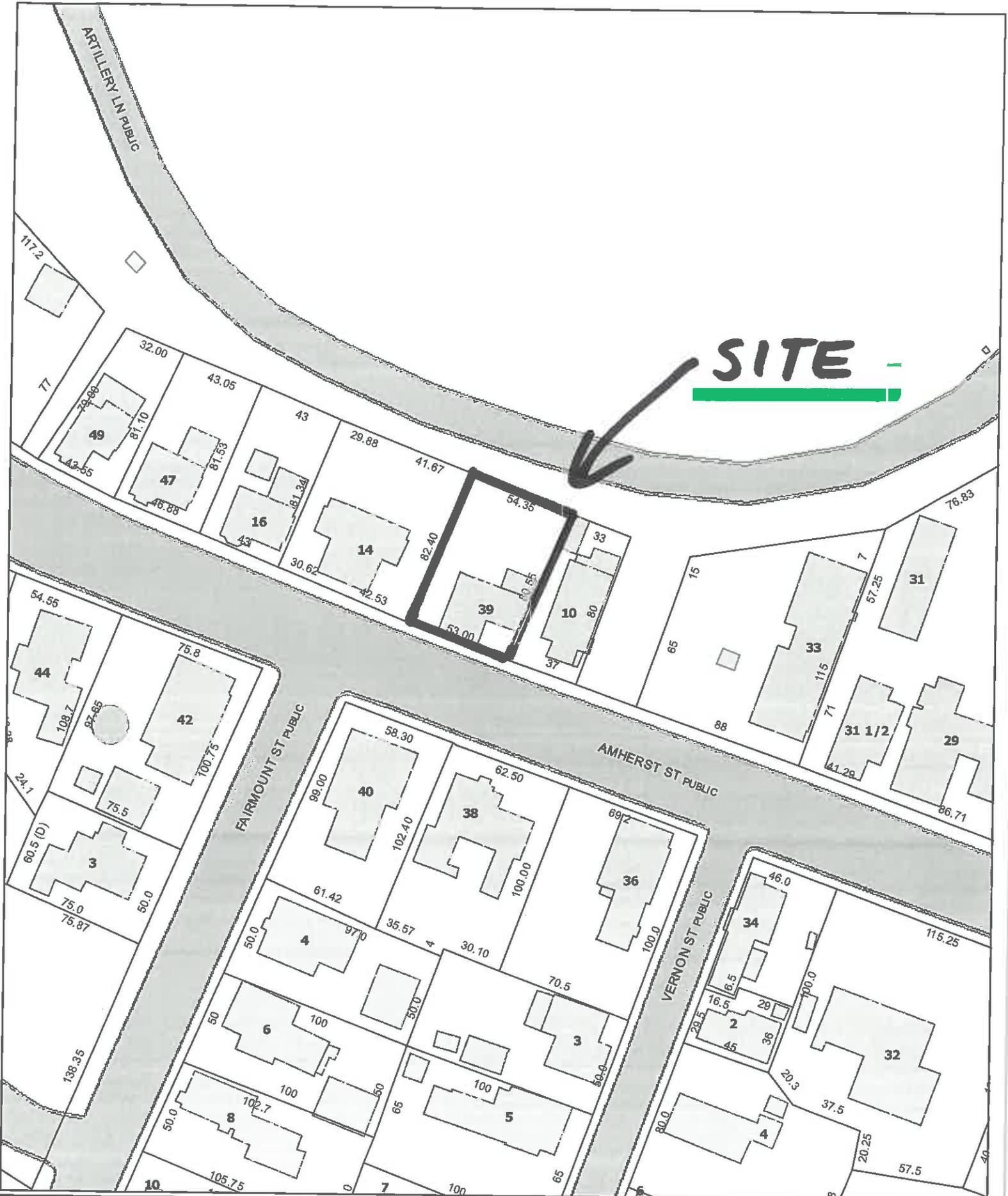
ARTILLERY LN PUBLIC

FAIRMOUNT ST PUBLIC

AMHERST ST PUBLIC

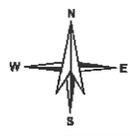
39 Amherst ST





SITE

39 Amherst St

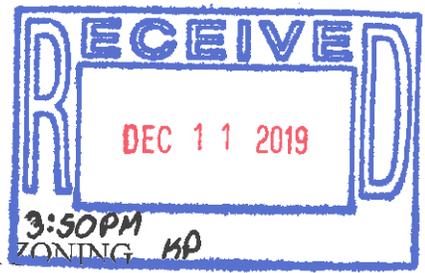




39 Amherst st

39 Amherst st





STATE OF NEW HAMPSHIRE

COUNTY OF HILLSBOROUGH, SS

NASHUA ZONING HP
BOARD OF ADJUSTMENT

MOTION FOR REHEARING
PURSUANT TO NH RSA 677:2

In Re: P.R.A. Properties, LP, care of Pheasant Run Apartments

NOW COMES P.R.A. Properties, LP, business located at c/o Princeton Properties Management, Inc., 1115 Westford Street, Lowell, MA, 01851, owner of an apartment community known as Pheasant Run Apartments, located at 9 Silver Drive, Nashua, NH, 03060, by and through counsel, Michael J. Iacopino, Esq., and Brennan, Lenehan, Iacopino & Hickey, and says as follows:

1. P.R.A. Properties, LP is the owner of the Pheasant Run Apartments, land and buildings, consisting of 341 units and approximately 600 residents, located at 9 Silver Drive, in Nashua, NH, 03060.

2. On November 12, 2019, the Board of Adjustment considered an application for a special exception for a “temporary tower facility” brought by NH #1 Rural Cellular, Inc. (US Cellular) for property located at “L” Silver Drive in Nashua, NH 03060, submitted on October 15, 2019. US Cellular’s application contained two additional variance requests.

3. On November 12, 2019, the Board of Adjustment voted to grant the application.

4. The action of the Board of Adjustment was unlawful and unreasonable, and it is respectfully requested that the Board grant a rehearing on this matter for the following reasons:

1) US Cellular has failed to comply with the required procedure for requesting a special exception and has failed to demonstrate that it meets the statutory criteria for granting a special exception:

a. US Cellular has requested a special exception permit pursuant to Nashua Land Use Code § 190-38 which relates to communications towers and antennae. US Cellular

has failed to request a waiver of certain requirements which it does not meet. Pursuant to Subsection (b), a waiver of certain location requirements is permissible in some circumstances. US Cellular has erroneously requested several variances, rather than a waiver. The Board of Adjustment has no authority to grant a variance from a special exception permit request. *See Stone v. Cray*, 89 N.H. 483 (1938) (the Zoning Board of Adjustment has no legislative authority and cannot “amend” a zoning ordinance’s list of criteria needed for a special exception). Thus, where US Cellular does not meet the requirements of the special exception and has failed to request a waiver, it was unlawful to grant the special exception application.

- b. This municipality has failed to comply with the notification requirements as required by RSA 12-K:7(I). Pursuant to Nashua Land Use Code § 190-38(B) when a waiver of Subsection C is granted, “The Administrative Officer shall provide notification as required by RSA 12-K:7(I).” RSA 12-K:7(I) states that, “Any municipality or other authority which receives an application to construct a new tower ... which will be visible from any other New Hampshire municipality within a 20-mile radius shall provide writing notification of such application and pending action to such other municipality within the 20-mile radius.” This notification “shall include sending a letter to the governing body of the municipality.” The proposed cellular tower is located within a 20-mile radius of several other New Hampshire municipalities, including Hudson and Hollis. Notably, the proposed communications tower is less than half a mile from residential homes in Hudson, New Hampshire. Where US Cellular failed to request a waiver, any required notice which was sent out was incomplete and fails to comply with the requirements of RSA 12-K:7(I) and is therefore invalid.
 - c. US Cellular has failed to demonstrate that it is necessary to waive the requirements of Subsection C of Nashua Land Use Code § 190-38. US Cellular has requested a special exception permit pursuant to Sec. 190-38. Section 190-38 has specific tower location requirements and no special exception application will be approved unless the communications tower complies with the criteria established. Section 190-38(B) permits the Zoning Board to waive the requirements of Subsection C “to the extent necessary to resolve any gap in service **where required** by the Federal Telecommunications Act of 1996.” The Telecommunications Act of 1996, 47 U.S.C § 322(c), was enacted to expand availability of telecommunications services. While US Cellular asserts this cellular tower is necessary to resolve a gap in service, it has pointed to no section of the Act which **would require** the cellular tower at issue. US Cellular’s failure to perform a reasonable alternative analysis prevents the Board of Adjustment from determining if the proposed tower is required. Thus, US Cellular does not qualify for the waiver of the requirements laid out in Subsection C.
- 2) US Cellular has failed to demonstrate an unnecessary hardship. US Cellular has requested two variances from the criteria laid out in Nashua Land Use Code § 190-38(C)(1) & (2), which state that new freestanding communications towers shall not be located closer than one mile from any existing or approved communications tower and that all

communications towers must be located the greater of 400 feet from all lot lines or the towers' height from all lot lines of abutting residential properties. Pursuant to NH RSA 674:33(I)(b)(5), the zoning board of adjustment can only grant a variance if "literal enforcement of the provisions of the ordinance would result in an unnecessary hardship."

- a. The unnecessary hardship articulated by US Cellular in its request for a variance from Section § 190-38(C)(1) relates to US Cellular's business and therefore does not provide grounds for allowing the variance. Section 190-38(C)(1) requires new towers be at least one mile from existing towers. US Cellular states that the unnecessary hardship requiring this variance is that "enforcement of this provision will result in an interruption of US Cellular's service." In order to be entitled to a variance, "the hardship complained of must arise through circumstances or **conditions uniquely affecting the property.**" See 3 A.H. Rathkopf & D.A. Rathkopf, Rathkopf's The Law of Zoning & Planning, § 58.21, pp. 58-123 to 58-124. Because the alleged hardship does not affect the property and instead relates to US Cellular's business, it cannot be grounds for allowing the variance.
- b. Even if an unnecessary hardship could be related to business, US Cellular's alleged hardship fails because it was self-created. US Cellular knew its lease was expiring two years ago. This provided plenty of time to establish suitable areas to place a new communications tower. To the extent US Cellular is now requesting a special exception and several variances in an area directly abutting residential property, such application and request should not be granted because the articulated hardship is a direct result of US Cellular's failure to take timely action in finding an appropriate location for its proposed communications tower.
- c. The unnecessary hardship articulated by US Cellular in its request for a variance from Section § 190-38(C)(2) is insufficient to provide grounds for allowing the variance. Section 190-38(C)(2) requires that communications towers must be located the greater of 400 feet from all lot lines or the towers' height from all lot lines of abutting residential properties. US Cellular asserts that an unnecessary hardship exists because a "14.7-acre parcel is required to fulfill the 400' setbacks and no such parcel of this size exists in the US Cellular service area that is the subject of this application." US Cellular simply states that there are no "conforming" properties. It has failed to meet the unnecessary hardship requirements as it fails to demonstrate that there are no feasible alternatives to the proposed site. See *e.g. Garrison v. Town of Henniker*, 154 N.H. 26, 33-34 (2006) (Green Mountain Explosives would have used 21 acres in the middle of a 1,617-acre parcel to store and blend explosives. Although the record showed that the site was large, difficult to develop because of its topography and its relatively isolated location, and ideally suited to GME's needs because it could provide a buffer zone as required by the applicable ATF regulations, the Court found that this **did not distinguish the proposed site from other rural land in the area and did not qualify it for a variance**). US Cellular testified that "some" owners of surrounding properties were not interested. A finding of unnecessary hardship is unreasonable here where US Cellular has chosen an area directly abutting a large residential

property and provided no direct evidence that other conforming sites with less impact on an abutting residential community are not available.

- d. US Cellular has failed to demonstrate an unnecessary hardship because the hardship it complains of has been exacerbated by its failure to do a reasonable alternatives analysis.
- 3) US Cellular has also failed to satisfy required criteria laid out in the Nashua Land Use Code § 190-38(C)(5) and has failed to apply for a variance. Subsection (C)(5)(a) details where communications towers shall be located and subsection (C)(5)(b) states that all proposed towers over 100 feet in height shall be designed to accommodate at least two additional users. In its application, US Cellular states that it is “in the process of evaluating” potential structures for a “permanent solution” and similarly states that this tower “by nature of its limited temporary scope, is not designed to accommodate additional users” and therefore part (b) is “Not applicable.” It is impermissible for US Cellular to respond to a required criterion as inapplicable and because this criterion is not met, the application cannot be granted. The Zoning Board of Adjustment does not have legislative authority and, therefore, cannot “amend” the zoning ordinance’s list of criteria needed for a special exception. *See Stone v. Cray*, 89 N.H. 483 (1938) (“the board’s only function in respect to exceptions is to decide if the conditions exist which make the case an ‘appropriate’ one.”). Here, US Cellular has failed to apply for a variance related to this required criterion, and it has failed to satisfy the criteria. Thus, it is unreasonable and unlawful to grant its application.
- 4) Similarly, US Cellular has failed to satisfy required criteria laid out in the Nashua Land Use Code § 190-269(C) and no variance is permitted. Section 190-269(C) states that “Applications for approval of communications tower or antenna as required by § 190-38 shall include the following supplemental information: ... C. A Letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.” In its application, US Cellular states that that this requirement is, “Not applicable. The tower, by its nature of its limited temporary scope, is not designed to accommodate additional users.” It is impermissible for US Cellular to respond to a required criterion as inapplicable and because this criterion is not met, the application cannot be granted. The Zoning Board of Adjustment does not have legislative authority and, therefore, cannot “amend” the zoning ordinance’s list of criteria needed for a special exception. *See e.g. Stone v. Cray*, 89 N.H. 483 (1938).
- 5) US Cellular has failed to demonstrate that the requested cellular tower will not impair the integrity or be out of character with the district or immediate neighborhood in which it is located, nor be detrimental to the health, morals, or welfare of the residents of the City as required pursuant to Nashua Land Use Code § 190-134(F)(1)(e). US Cellular asserts that the temporary tower is similar to the tower that currently exists in the neighborhood and that “the proposed commercial use is surrounded mostly by other commercial uses and there is an existing significant mature vegetation buffer at the closest residential use.” Granting this application would be detrimental to immediate neighborhood. The Costco

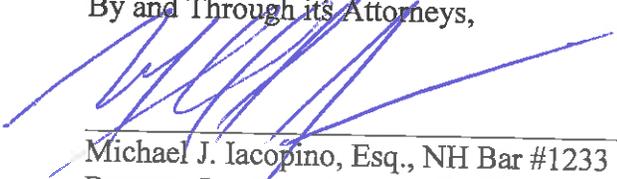
parking lot is entirely surrounded by businesses. Unlike the Costco parking lot, the proposed cellular tower location directly abuts P.R.A. Properties, LP, apartment buildings which house approximately 600 residents. The vegetation buffers existing between the apartments and the proposed communications tower are significantly lower than the height of the adjacent apartment buildings and the cell tower. The proposed tower is also in very close proximity to many other residential communities/apartment complexes located off Danforth Road, Whitegate Drive, Ternbury Square, and Hampshire Heights Drive.

- 6) Granting US Cellular's requested special exception was unreasonable and unlawful because the Board of Adjustment relies on the "temporary" nature of the requested communications tower and special exceptions, by their nature, run with the land and therefore cannot be temporary. A special exception is granted with respect to a specific piece of property, not with respect to a specific owner. *See e.g. Vlahos Realty v. Little Boar's Head Dist.*, 101 N.H. 460 (1957).
- 7) Granting US Cellular's requested variances was unreasonable and unlawful because the Board of Adjustment relied on the "temporary" nature of the requested communications tower and variances, by their nature, run with land and therefore cannot be temporary. A variance is granted with respect to a specific piece of property, not with respect to personal needs, preferences, or circumstances of a property owner. *See Carbonneau v. Exeter*, 119 N.H. 259 (1979). In this case, the Board has unreasonably relied on US Cellular's personal needs, preferences, and circumstances, and unlawfully granted variances under the guise that they are "temporary."
- 8) US Cellular has failed to demonstrate that granting its application has not diminished the values of surrounding properties. The Board unreasonably relies on the "temporary" nature of the proposed communications tower, despite the fact that variances run with the land. The proposed communications tower is located approximately 200 feet from appellant's residential property housing approximately 600 individuals as well as its parking areas and recreational areas. And, there are numerous other residential communities within a very close proximity. Appellant's apartment buildings are located on a hill looking directly towards the proposed communications tower. The obstructed view will deter renters and reduce the rental value of apartments. The 130-foot proposed structure will undoubtedly affect property values and thus it was unlawful to grant the application.
- 9) US Cellular has failed to demonstrate that granting its application will not be contrary to the public interest. The Board of Assessment's reliance on the "temporary" nature of the communications tower demonstrates that it has failed to consider the public interest and has not decided the case in an objective way. *See e.g. Vlahos Realty v. Little Boar's Head Dist.*, 101 N.H. 460 (1957). In addition, the communications tower will aesthetically affect the area where hundreds reside. Within a very close proximity to the proposed communications tower are tennis courts, parking lots, and residential apartment buildings (as well as several restaurants). Granting this application creates a danger to those individuals residing nearby as the tower is at risk of collapsing and catching on fire.

- 10) US Cellular has failed to demonstrate that granting its application has observed the spirit of the ordinance. Granting a variance from a zoning ordinance must take into consideration the character of the area involved, its peculiar suitability for particular uses and conserving the value of buildings and appropriate use of land in the municipality. *See* RSA 674:17(II). The communications tower sought to be replaced is in a location entirely surrounded by businesses. The proposed communications tower location directly abuts Princeton Properties Management, Inc. apartment buildings which house approximately 600 residents. US Cellular's request fails to take into account the character of the area and the proposed location is not suitable for the particular use requested.
- 11) US Cellular has failed to demonstrate that granting its application comports with substantial justice. The Board has erroneously granted a special exception and several variances based on arguments that to do otherwise would harm US Cellular's business. The Board has valued the interests of a company and a few dropped calls over the safety and environment of hundreds of residents in the area.

Respectfully submitted,
P.R.A. Properties, LP, care of Pheasant Run
Apartments, Appellant,
By and Through its Attorneys,

Dated: December 11, 2019



Michael J. Iacopino, Esq., NH Bar #1233
Brennan Lenehan Iacopino & Hickey
85 Brook Street
Manchester, NH 03104
Ph.: (603) 668-8300
Fax: (603) 668-1029
miacopino@brennanlenehan.com

Mr. Lionel said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Lionel said that this will not impact the property values of surrounding parcels.

Mr. Lionel said that the request is not contrary to the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.



8. SAVCAM, LLC (Owner) NH #1 Rural Cellular, Inc. (Applicant) "L" Silver Drive (Sheet A Lot 993) requesting the following: 1) Special exception from Land Use Code Section 190-15, Table 15-1 (#276) to construct a 130-foot tall monopole communications tower with an associated service truck containing radio equipment; and the following variances: 1) from Land Use Code Section 190-38 (C) (1) to allow a setback of 23'-8" to nearest property line - 400 feet required; and 2) from Land Use Code Section 190-38 (C) (2) to allow a tower within one mile of an existing tower. GB Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Steve Lionel, Vice Chair

Bob Gashlin, KJK Wireless, representing US Cellular. Mr. Gashlin said that they have a site in southern Nashua, on a tower in the Costco parking lot, space is leased on this tower from Crown Castle, and Crown Castle is losing its rights to operate that tower, and it will be dismantled sometime in December or January. He said that they are therefore forced to find another site to maintain their operations per their FCC license.

Mr. Gashlin said that they are only looking for a temporary tower, as they don't have time to find a permanent site, which is a difficult and lengthy process, and that may take a year to do, as there are leases, engineering work, plans, zoning.

Mr. Gashlin said that their existing site at Costco is an important site, as the service area is extensive, and there may be 100,000 vehicles that meander that area per day. He said that it is very important that they keep operating.

Mr. Gashlin said that the proposed site is "L" Silver Drive, it's a parking lot about 80'x140' in size, and it's currently used for overflow parking for Honey Baked Ham and the Lui Lui Restaurant. He pointed out the site location with abutting land uses. He said that for the foliage, there are many trees about 55-60 feet in height, so there is a pretty significant buffer.

Mr. Gashlin said that they are planning on leasing a 50'x50' area, and within it, there will be a 30'x30' construction fence, and within that will be the 130 foot tall tower, and the radio equipment will all be encompassed within a truck parked there. He said that they will only drop the equipment there, and there will be no digging or impact to the parking lot. He said that all of the equipment will be in the truck. He said that there will be no cutting or grading on the lot, and after the equipment is gone, it will look as it does now. He said that they would like it to be here for 12-18 months.

Mr. Gashlin said that they have submitted a radio frequency report. He said on page 8, it states that by installing the proposed tower, at an antenna height of 125 feet will replace coverage capacity needed in the targeted coverage areas, including Route 3, DW Highway, the mall and surrounding roads and neighborhoods. He said that without the installation, US Cellular will be unable to maintain their existing 4G LTE wireless communication service in this area. He said that they did submit a balloon study in the package, it was 130 feet high, and pictures showed in five different locations where the tower could be seen. He said that the picture with the two balloons shows one at 150 feet tall, to stabilize it.

Mr. Gashlin said that he doesn't believe the variances are required, and said that they should be waivers. He said that the Costco tower would be removed, so that one variance would go away. He said that the ordinance specifies that the tower must be 400 feet from all lot lines, or the tower's height, whichever is greater. He said that they believe they can get a waiver for this, as this setback would require an 11.5 acre site.

Mrs. MacKay asked how many subscribers would this affect, if

there was no tower, and asked if they could use other carrier's towers.

Mr. Gashlin said that carriers don't really work with one another, each one has a specific license from the FCC for service area. He said that whatever Verizon, Sprint or any of the other carriers do, it's all totally separate. He pointed out the coverage drawings indicating the current coverage, as compared to what it would look like without any coverage. He said that if this is not approved, it would go from one of the most important locations to zero coverage for this area.

Mr. Lionel asked if the Costco tower is shared by AT&T and Verizon, and if so, asked what their future plans are.

Mr. Gashlin said that he does not know what they are doing, they may have some alternate locations, and they have different FCC licenses, different operating compensities, and they have different frequencies, and they have a whole different coverage perspective.

Mr. Boucher asked if they have any alternative plans.

Mr. Kenneth Kozyra, KJK Wireless. Mr. Kozyra said that they are investigating three or four potential solutions, nothing has been decided yet. He said it can be a 12-18 month process for leasing, permitting, and constructing a tower. He said that this temporary tower is what they do in emergency situations in other parts of the country, as a system like the one proposed can be up and running quickly. He said that they want to be as close to the Costco site as they can. He said that they do not have a license to operate in Massachusetts, so that is not an option, as US Cellular only has licenses in New Hampshire, Maine and Vermont, no tower can physically locate in Massachusetts.

Mrs. MacKay asked if the time frame for approval can be conditioned.

Mr. Kozyra said that the Board can condition the approval, and if the time frame isn't feasible, they'd have to come back to the Board.

Mr. Boucher asked when their company found out about the lease expiring.

Mr. Kozyra said that they were told two years ago that they were negotiating to extend it, and in October of this year, they received a letter saying that Costco didn't want to extend it, and it expires on December 15th.

Mr. Boucher asked how much noise will be made.

Mr. Kozyra said that the utility truck is air conditioned, just like any equipment shelter is, and it's no louder than a standard air conditioner at home. He said that the unit is facing towards McDonalds. He said that there is a generator on the truck, but there is no reason to deploy it unless the power goes out.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Attorney Mike Loikopino, Manchester NH. He said that he is on behalf of PRM Properties, which owns the Pheasant Run Apartments, 341 units, abutting the property, with about 600 residents living there. He asked if the applicant has filed a City-wide tower location plan, which is required by the Ordinance. He said that they object to the applicant filing for a waiver, as they received notice about only the special exception and the two variances.

Mr. Falk said that the applicant is here only for the special exception for the use, and the two variances as advertised, and the Zoning Board is not here for any waivers.

Atty. Loikopino said that this application just does not make it. He said that it does not serve the public interest, the public interest is twofold, the most is for public safety because these towers do fail, they do get fires, which is why the special exception requires a 400 foot setback. He said that the proposed setback is substantially less at 28 feet, and they have failed to demonstrate that substantial justice has been served by this. He said that they have done a viewshed analysis done from everywhere but from where the 600 City residents live, there is none from there. He said that they never even asked his client if they could go. He said that residents would be looking directly at this tower. He said that the parking lot

and a tennis court is right in the fall zone, where if the tower would fall, it is dangerous as people play there, and cars and other valuable property are stored in the parking lot. He said that there is no hardship here, there is no such thing as a temporary hardship, it should be about the land, and it seems as if this is a business problem, not a problem about whether this lot has a hardship, and all of this creates a reason to deny.

Attorney Jeff Brown, General Counsel for Princeton Properties. Atty. Brown said that Princeton owns and manages about 7,500 multi-family units throughout New England. He said that there are significant elevation changes that occur as you go up Silver Drive. He said that the tower would be at the base of the hill, it then ascends quite steeply up into the apartment area, and continues to ascend more steeply to the top of the hill. He said that the applicant mentioned there are 60 foot trees, with plenty of buffer, however, they estimate that the trees are 30-40 feet tall. He said that the residents in the upper buildings look down on those trees, and look down on Daniel Webster Highway, so the foliage mentioned is really a non-factor here. He said that the tower will be in the direct sight-line to all the residents up Silver Drive, and will have a significant impact to these people. He said that this will also detract from the ability to attract and retain renters, temporary tower or not. He said that the tennis court is heavily used, and will be negatively impacted. He said that remarkably, there is not a single picture taken from the balloon test from the perspective of his clients, and what you see from the Daniel Webster Highway is not indicative to what the residents would see in the residential three-story buildings. He said that they didn't even receive notice of this until last Friday.

Mr. Falk said that they noticed all the towns within the requisite 20-mile radius as required by the RSA's, as well as all the abutters within the required time limit. He said that after their notices go out, they have no control of the mail.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Gashlin said he, along with Mr. Kozyra would like to speak.

MOTION by Mr. Boucher to accept both of the applicants to speak.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Kozyra said that the attorney mentioned the City-wide tower plan, and in the packet there is a drawing of all the facilities that US Cellular has within the City. He said that the opposition brought up the 400 foot setback, and they believe it is arbitrary and capricious, and doesn't serve any purpose. He said he doesn't believe any of the towers in the City meet that setback, and it wasn't in place back in 2011 when a tower was permitted at 129 Ridge Road. He said he's not sure where the 400 foot setback came from, and what purpose it serves. He said that when they do viewshed analysis, they do not go on private property, it is their policy. He said that in regards to the fall zone, they don't fall like a tree, they typically fail at a mid-point area, and the proposed monopole is made up of three pieces of steel set on top of one another, and they overlap, if anything fails, it would fail at one of those three points. He said that the diameter at the top of the tower is 18 inches of steel, approximately 4-5 feet including the antenna, so this one won't look like a typical tower, it is significantly smaller, and they've done everything possible to minimize its size.

Mr. Boucher asked if there is anything that is compelling the Board to support this tower.

Mr. Kozyra said absolutely, as the FCC has mandated in the Telecommunications Act that the Board may zone for towers, and must allow them to fill the substantial coverage gaps as best as possible to meet the ordinance. He said if the Costco tower goes away, there will be a substantial gap over several miles in the busiest part of the City, affecting thousands of people.

Mr. Boucher said that there are a lot of other large parking lots nearby, and asked if other locations were considered.

Mr. Kozyra said that they checked every single parcel in this area of the City, some of the owners were not interested. He said that the proposed lot has substantial tree growth around it to buffer it.

Mr. Boucher asked what the impacts would be to the coverage if this is not supported.

Mr. Kozyra showed a map of the existing coverage, and another one if the tower was not there. He pointed out that the green

coverage area goes to all white or yellow, meaning virtually no coverage or very limited calls, or dropped calls. He said it would result in huge gaps of coverage.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Atty. Loikopino said that the applicant mentioned the Federal Telecommunications Act, and Nashua has dealt with that, by allowing towers as a special exception in every zoning district. He said that he is urging the Board to deny the request, or to table it to provide a viewshed analysis from the apartment complex.

Atty. Brown said that the 400 foot setback is in the ordinance, it has to do with public safety, it is not arbitrary. He said that if the tower were to fall, it is very close to their parking area and the tennis court, and the front part of a building. He said that the 400 foot setback is critical to them from a safety standpoint.

Mr. Lionel said that the applicant did not have a plan to come up with temporary service for their customers. He said that it is clear that the tower can be seen in this area of the City. He said if this were a permanent site, this would be different, and it will be no more than 18 months. He said it is a lesser impact than a permanent tower would be, and understands the objections to the tower. He said that the FCC laws provide carriers to allow coverage in areas where there are substantial gaps. He said he is inclined to vote in favor of this.

Mrs. MacKay agreed, she said it's an emergent situation. She said that they had no time with respect to the other tower being gone. She said that 18 inches in diameter at the top is pretty small. She said it is temporary, and it can be conditioned in the motion, and overall this is for the greater good.

Mr. Boucher said he understands the construction of the tower. He said he is concerned for the apartments.

Mr. Lionel said that they're licensed on an 850 MHz band, and different cellular companies are all licensed on different bands. He said that what would likely happen is that their customers in that area would find dropped calls, maybe one bar of coverage. He said that if this were a permanent tower location, he would say no, it's not the right place.

Mr. Boucher asked if there were any hazards in a motion made that would cause a problem in the future.

Mr. Falk said that the applicant mentioned an 18 month limit. He said that the Board could make a stipulation that the tower be de-constructed after 18 months, or they could always come back for additional time. He said that the site plan for Lui Lui's Restaurant would have to be amended as well, as they would be reducing their required parking by 8 or 10 spaces.

Mr. Boucher said that he wouldn't make a motion, but wants the time frame stipulation made in the motion, and at the end of 18 months, does not want to see anything there. He said that he is concerned for safety.

Mrs. MacKay said that the scope is limited, it's not something we normally do.

Mr. Lionel said that this may happen again, as AT&T and Verizon also use this tower, but maybe they have different coverages.

Mr. Boucher said that he has concerns, and is sympathetic to the abutters, and understands what the applicant is looking for.

MOTION by Mr. Lionel to approve the request on behalf of the applicant as advertised. He said that it is listed in the Table of Uses, Section 190-15, Table 15-1, #276.

Mr. Lionel said that the use will not create undue traffic congestion or unduly impair pedestrian safety, as there will be no pedestrians around it, and there is sufficient fencing.

Mr. Lionel said that per testimony, it will not overload public water, drainage, or sewer or other municipal systems, in fact, it won't be connected to any of those systems.

Mr. Lionel said he didn't believe that there are any special regulations.

Mr. Lionel said that given that this is a temporary siting, the Board believe that it will not permanently impair the integrity or be out of character with the neighborhood, or be permanently detrimental to the health, safety of residents. He said it will have a temporary visual disturbance, but the need for the temporary tower overrides that.

Mr. Lionel said that for a special condition, at the end of 18 months, that all of the equipment placed there will be removed and the site will be restored to what it looks like today.

SECONDED by Mrs. MacKay.

Mr. Falk said that for future dates, there is a 30-day appeal period starting tomorrow. He said this also has to go to the Planning Board.

Mr. Falk suggested 18 months after final Planning Board approval.

Mr. Boucher suggested amending the motion that it should be 18 months after final Planning Board approval.

AMENDED MOTION by Mr. Lionel that 18 months after final Planning Board approval, that all equipment shall be removed from the site, and the site restored to the appearance it has today.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

MOTION by Mr. Lionel to approve the variance application on behalf of the owner as advertised, with both variances considered together. He said that the one mile distance is to the existing Costco tower site, which is being dismantled, and this is a temporary siting which will disappear in 18 months, and finds that the Board believes the variance is needed to enable the applicant's proposed use of the property, there are really no special conditions of the property other than this is only available spot in the southern part of the City that would work, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance.

Mr. Lionel said that the Board feels that it is within the spirit and intent of the ordinance in favor of providing cellular coverage to residents of Nashua.

Mr. Lionel said that this will not permanently adversely affect the property values of surrounding parcels.

Mr. Lionel said that the request is not contrary to the public interest, and substantial justice is served.

Mr. Lionel said that the special condition is the same 18 month condition that was made on the special exception, in that 18 months after final Planning Board approval, this area variance disappears.

Mr. Falk said as long as this is the stipulation that was agreed upon, and the applicant brought it up, normally variances run with the land, but the applicant proposed the time limit.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

9. Robert A. McIntosh, Jr. (Owner) 15 New Street (Sheet 28 Lot 15) requesting variance from Land Use Code Section 190-264 to exceed maximum accessory use area, 40% permitted, 75% existing - 80% proposed, to construct a 4'x20' addition to detached garage. RB Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Steve Lionel, Vice Chair

Robert McIntosh, 15 New Street, Nashua, NH. Mr. McIntosh said that the purpose of the extra four feet addition is to park a limousine from the Davis funeral home inside. He said that the business operations staff changed, and there is no place to park the limo, and want it inside the garage.

Mr. Boucher said that the lot is pretty large.

Mr. McIntosh agreed, and it's the last house on the street.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

ASSESS:Record ID	ASSESS:Address	ASSESS:MSTown er1	ASSESS:MSTown er2	ASSESS:CS Z	ASSESS:HNu m	ASSESS:Stre et	ASSESS:Site et	ASSESS:L ot	ASSESS:PropA cct
1	1,008,529,964.00 259 DANIEL WEBSTER HIGHWAY	SAVCAM LLC		NASHUA NH 03060	L	SILVER DR	0000A	00993	50126
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3	1,008,519,932.00 259 DANIEL WEBSTER HIGHWAY	SAVCAM LLC		NASHUA NH 03060	257	DANIEL WEBSTER HWY	0000A	00459	20020
4	1,008,506,656.00 9 SILVER DR	P R A PROPERTIES, LP		NASHUA NH 03060-0306	1-9	SILVER DR	0000A	00022	9548
5	1,008,519,933.00 24 APPLETREE GRN	MELLO, ALLEN J TRUSTEE OF	AVALON REALTY TRUST	NASHUA NH 03062-2252	7	HAROLD DR	0000A	00716	38403
6	1,008,510,209.00 308 E MAIN ST	RUBIN NASHUA LLC		NORTON MA 02766-7130	243	DANIEL WEBSTER HWY	0000A	00128	17364
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8	1,008,512,872.00 PO BOX 182571	MCDONALDS-CORP MCDONALDS PLAZA	% PAUL MONTOUR	COLUMBUS OH 43218	255	DANIEL WEBSTER HWY	0000A	00021	22160

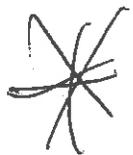
US Cellular c/o KTB Wireless 127 Ridge Rd Nashua NH 03062

Towns to notify for cell towers

TOWNS	STREET ADDRESS	
Amherst	PO Box 960	Amherst, NH 03031
Atkinson	21 Academy Ave	Atkinson, NH 03811
Auburn	47 Chester Rd	Auburn, NH 03032
Bedford	24 N. Amherst Rd	Bedford, NH 03110
Bow	10 Grandview Rd	Bow, NH 03304
Brookline	PO Box 360	Brookline, NH 03033
Candia	74 High St	Candia, NH 03034
Chester	84 Chester St	Chester, NH 03036
Derry	14 Manning St	Derry, NH 03030
Dunbarton	1011 School St	Dunbarton, NH 03046
Goffstown	16 Main St	Goffstown, NH 03045
Hampstead	11 Main St	Hampstead, NH 03841
Henniker	18 Depot Hill Road	Henniker, NH 03242
Hollis	7 Monument Sq	Hollis, NH 03049
Hooksett	35 Main St	Hooksett, NH 03106
Hudson	12 School St	Hudson, NH 03051
Litchfield	2 Liberty Way	Litchfield, NH 03052
Londonderry	268 B Mammoth Rd	Londonderry, NH 03053
Lyndeborough	9 Citizens Hall Rd	Lyndeborough NH 03038
Manchester	One City Hall Plaza	Manchester, NH 03101
Mason	16 Darling Hill Road	Mason, NH 03048
Merrimack	6 Baboosic Lake Rd	Merrimack, NH 03054
Milford	1 Union Sq	Milford, NH 03055
Mont Vernon	PO Box 444	Mont Vernon, NH 03057
Nashua	PO Box 2019	Nashua, NH 03061
New Boston	7 Meeting House Hill Rd	New Boston, NH 03070
Pelham	24 Village Grn	Pelham, NH 03076
Raymond	4 Epping St	Raymond, NH 03077
Salem	35 Geremonty Dr	Salem, NH 03079
Sandown	320 Main St	Sandown, NH 03873
Weare	PO Box 190	Weare, NH 03281
Wilton	PO Box 83	Wilton, NH 03086
Windham	PO Box 120	Windham, NH 03087

Dunstable, MA 511 Main St Dunstable, MA 01827

Tyngsborough, MA 25 Bryant Ln Tyngsborough, MA 01879



ALL these towns/cities
were notified by certified letter

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN: Re: Case # 7

You are hereby notified that a public hearing of the Zoning Board of Adjustment will be held on Tuesday, 11-12-2019 at the Nashua City Hall Auditorium, 3rd floor, 229 Main Street at 6:30PM, at which time the following petition(s) will be considered.

SAVCAM, LLC (Owner) NH #1 Rural Cellular, Inc. (Applicant) "L" Silver Drive (Sheet A Lot 993) requesting the following: 1) Special exception from Land Use Code Section 190-15, Table 15-1 (#276) to construct a 130-foot tall monopole communications tower with an associated service truck containing radio equipment; and the following variances: 1) from Land Use Code Section 190-38 (C)(1) to allow a setback of 23'-8" to nearest property line - 400 feet required; and 2) from Land Use Code Section 190-38 (C)(2) to allow a tower within one mile of an existing tower. GB Zone, Ward 7.

Any comments or concerns of abutting property owners and residents may be addressed at the Public Hearing, or by submitting correspondence to this office which will be read into the testimony obtained at the meeting. If you have any questions regarding this notification, please contact the Office of Zoning at (603) 589-3090.

ACCOMODATIONS FOR THE SENSORY IMPAIRED - "Suitable accomodations for the sensory impaired will be provided upon adequate advanced notice."



City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
 WEB www.nashuanh.gov

SPECIAL EXCEPTION APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. SPECIAL EXCEPTION INFORMATION

a. ADDRESS OF REQUEST L Silver Drive

Zoning District GB Sheet A Lot 993

b. SPECIAL EXCEPTION(S) REQUESTED:

US Cellular requests a special exception permit to install a temporary tower facility pursuant to Sec. 190-38 / 190-269 "Communications towers and antennae."

c. LAND USE CODE SECTION(S) REQUESTING SPECIAL EXCEPTION(S) FROM: 190-38, 190-269

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): NH #1 Rural Cellular, Inc. (US Cellular)

Applicant's signature [Signature] Date 10/15/2019

Applicant's address c/o KJK Wireless, 127 Ridge Rd., Nashua, NH 03062

Telephone number H: 603-888-8974 C: 207-899-8544 E-mail: Ken@kjkwireless.com

b. **PROPERTY OWNER (Print Name):** SAVCAM, LLC.

*Owner's signature Eric Roberts: [Signature] Date 10-15-19

Owner's address 259 DW Highway, Nashua, NH 03062

Telephone number H: N/A C: 603-491-5266 E-mail: ejrui@comcast.net

*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

OFFICE USE ONLY Date Received 10/15/19 Date of hearing 11/2/19 Application checked for completeness: cf

PLR# 2019-00214 Board Action _____

\$ _____ application fee \$745.00
 \$ _____ signage fee #271
 \$ _____ certified mailing fee

Date Paid _____ Receipt # _____
 Date Paid _____ Receipt # _____
 Date Paid _____ Receipt # _____

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. Please see "Procedures for Filing a Special Exception" for further information.

a. Describe the nature of your proposal. Please be specific.

US Cellular proposes to install a temporary tower facility (through 2020) in an existing parking lot. The facility will include a 130' tower, a service truck containing radio equipment to be parked on site and security fencing.

b. Does your proposal involve the physical construction or expansion of a structure? Yes No
If yes, describe how the size of the addition (and any existing structure) compares with the physical size of surrounding properties.

The 130' temporary tower will be similar in height to the existing 160' tower located 2800'+- to the south at the Costco parking lot.

c. Do you anticipate the need for additional on-site parking space as a result of your proposal? Yes No
If yes, approximately how many square feet of paved or designated parking space will be provide for both existing and proposed usage?

Existing parking will be adequte for the unmanned facility. One truck containing radio equipment will be parked on site while the facility is in operation.

d. What effects would the requested use have upon surrounding traffic congestion and pedestrian safety?

Existing traffic patterns will not significantly change. After initial installation, US Cellular may access the site once per month on average for routine maintenance.

e. What measures will be taken (if any) to insure that your proposal will not impair the integrity or be out of character with the zoning district or immediate neighborhood?

The tower will be similar to the tower that currently exists in this neighborhood / district (Costco), the proposed commercial use is surrounded mostly by other commercial uses and there is an existing significant mature vegetation buffer at the closest residential use.

4. SPECIAL EXCEPTION – ADDITIONAL QUESTIONS

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

a. Total number of employees N/A Number of employees per shift N/A

b. Hours and days of operation Unmanned temporary tower facility will operate 24/7

c. Number of daily and weekly visits to the premises by customers, clients, vendors, and solicitors See 3(d)

SPECIAL EXCEPTION APPLICATION

Address

Page 3

d. Number of daily and weekly commercial deliveries to the premises

e. Number of parking spaces available

f. Describe your general business operations:

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access, and circulation:

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Signature of Applicant

Date

Print Name

Date



City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
 WEB www.nashuanh.gov

VARIANCE APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST

Zoning District Sheet Lot

b. VARIANCE(S) REQUESTED:

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name):

Applicant's signature Date

Applicant's address

Telephone number H: C: E-mail:

b. **PROPERTY OWNER (Print Name):**

*Owner's signature Date

Owner's address

Telephone number H: C: E-mail:

*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

OFFICE USE ONLY	Date Received _____	Date of hearing _____	Application checked for completeness: <u>CP</u>
PLR# _____	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest, because:** (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

This variance is required for US Cellular to provide wireless service to the southern area of Nashua pursuant to its license issued by the FCC. The FCC licensing system has been developed to support public interest. For example, the FCC's "Strategic Goal #1" for such licensing is to "develop a regulatory environment to encourage the private sector to build, maintain, and upgrade next-generation networks so that the benefits of advanced communications services are available to all Americans."

- 2. **The proposed use will observe the spirit of the ordinance, because:** (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

US Cellular's special exception application fulfills all other criteria in Nashua's Tower Ordinance including GB District setbacks, assimilation with similar neighboring commercial uses and buffering standards (e.g. mature vegetation / trees located on the property line to the closest residential area provides adequate buffering). Also, to the extent the purpose of the 400' setback is in consideration of a "fall zone", there are no existing structures w/in 130' of the proposed 130' tower.

- 3. **Substantial justice would be done to the property-owner by granting the variance, because:** (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

As discussed in #1 above, US Cellular requires this variance in order to provide wireless service to this area pursuant to its license issued by the FCC.

- 4. **The proposed use will not diminish the values of surrounding properties, because:** (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

There is no evidence this application will result in diminishing values of surrounding properties especially considering US Cellular only requests approval for a temporary permit.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

A 14.7-acre parcel is required to fulfill the 400' setbacks and no such parcel of this size exists in the US Cellular service area that is the subject of this application.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees N/A Number of employees per shift 0
- b. Hours and days of operation 24/7
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors 1 per month (avg)
- d. Number of daily and weekly commercial deliveries to the premises None
- e. Number of parking spaces available 11

f. Describe your general business operations:

US Cellular provides wireless service to the Nashua per a license issued by the FCC.

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:

None: The proposal is for a temporary tower facility that will sit on top of an existing parking lot.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

[Signature]

Signature of Applicant

10/15/2019

Date

Ken Kozyra, For US Cellular

Print Name

Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

I will pick it up at City Hall

Please email it to me at Ken@kjkwireless.com; Bob@kjkwireless.com

Please mail it to me at



City of Nashua
Planning Department
 229 Main Street
 Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
 WEB www.nashuanh.gov

VARIANCE APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST

Zoning District Sheet Lot

b. VARIANCE(S) REQUESTED:

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name):

Applicant's signature Date

Applicant's address

Telephone number H: C: E-mail:

b. **PROPERTY OWNER (Print Name):**

*Owner's signature Date

Owner's address

Telephone number H: C: E-mail:

*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

OFFICE USE ONLY Date Received _____ Date of hearing _____ Application checked for completeness:

PLR# _____ Board Action _____

\$ _____ application fee Date Paid _____ Receipt # _____

\$ _____ signage fee Date Paid _____ Receipt # _____

\$ _____ certified mailing fee Date Paid _____ Receipt # _____

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest, because:** (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

See attached sheet.

- 2. **The proposed use will observe the spirit of the ordinance, because:** (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

US Cellular's special exception application fulfills all other criteria in Nashua's Tower Ordinance including GB District setbacks, assimilation with similar neighboring commercial uses and buffering standards (e.g. mature vegetation / trees located on the property line to the closest residential area provides adequate buffering).

- 3. **Substantial justice would be done to the property-owner by granting the variance, because:** (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

As mentioned in #1 above, US Cellular requires this variance in order to provide wireless service to this area pursuant to its license issued by the FCC.

- 4. **The proposed use will not diminish the values of surrounding properties, because:** (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

There is no evidence this application will result in diminishing values of surrounding properties especially considering US Cellular only requests approval for a temporary permit.

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

As discussed in #1 above, enforcement of this provision will result in an interruption of US Cellular's service.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees N/A Number of employees per shift 0
b. Hours and days of operation 24/7
c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors 1 per month (avg)
d. Number of daily and weekly commercial deliveries to the premises None
e. Number of parking spaces available 11
f. Describe your general business operations:

US Cellular provides wireless service to the Nashua per a license issued by the FCC.

- g. Describe any proposed site renovations, including, but not limited to -- landscaping, lighting, pavement, structural changes, signage, access and circulation:
None: The proposal is for a temporary tower facility that will sit on top of an existing parking lot.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Signature of Applicant: Ken Kozyra, For US Cellular
Print Name

Date: 10/15/2019
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
Please email it to me at Ken@kjkwireless.com; Bob@kjkwireless.com
Please mail it to me at

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

1. Granting of the requested variance will not be contrary to the public interest, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

ANSWER:

This variance is required for US Cellular to provide wireless service to the southern area of Nashua pursuant to its license issued by the FCC. The FCC licensing system has been developed to support public interest as contemplated herein. For example, the FCC's "Strategic Goal #1" for this licensing is to "develop a regulatory environment to encourage the private sector to build, maintain, and upgrade next-generation networks so that the benefits of advanced communications services are available to all Americans."

There is an existing tower located in the Costco parking lot 2800'+- south of the proposed site but this tower is scheduled to be dismantled in December 2019 or January 2020.

US Cellular is located on the Costco tower and requires this variance to make an uninterrupted service transition from the Costco tower to the temporary tower. In order to maintain uninterrupted service, US Cellular is required to install its temporary tower and be operational (in December 2019) while the Costco tower exists. US Cellular's service will be interrupted if it waits to install its temporary tower after the Costco tower is dismantled.

If this variance is granted, both the Costco and temporary tower will exist within 1-mile for only a short period of time (est. Dec 2019 – Jan 2020) as required to make an uninterrupted service transition.



127 Ridge Road | Nashua, NH 03062 | (603) 858-8974 Office | (603) 386-6106



Zoning Board of Adjustment
City of Nashua
229 Main St., PO Box 2019
Nashua, NH 03061

October 15, 2019

RE: NH #1 Rural Cellular, Inc. ("US Cellular") Application for Special Exception to Install a Temporary Tower Facility at L Silver Drive, Parcel A-993

Dear Zoning Board of Adjustment:

KJK Wireless represents the zoning and permitting interests of US Cellular in New England and hereby submits its application for a special exception approval to install a temporary tower facility at L Silver Drive pursuant to Nashua's Land Use Code, §190-38, §190-134 and §190-269.

US Cellular currently provides wireless service to the southern area of Nashua from an existing 160' tower facility located in the Costco parking lot on DW Highway ("Existing Site"). That facility is owned by Crown Castle International. Crown will be dismantling that site in December 2019 or January 2020 due to contractual issues with Costco so US Cellular is forced to find an alternative site to continue serving its customers who live, work and travel through the City of Nashua.

Accordingly, US Cellular requests Zoning Board of Adjustment approval to install a temporary tower facility at L Silver Drive in order to maintain service in this area pursuant to its license issued by the FCC until it secures a permanent site in 2020.

This application meets all criteria listed in the ordinance and any impact, to the extent any may exist, is mitigated due to the limited and temporary nature of the project. For example, US Cellular only seeks relief for a temporary permit (through 2020) and the installation will only require a tower that will sit on top of an existing asphalt parking lot, temporary construction fencing and a space to park a service truck that contains radio equipment. No structures, grading, excavation, additional utility poles / ground cuts, additional impervious surfaces, additional stormwater runoff, additional traffic or lighting will occur.

190-38 COMMUNICATIONS TOWERS AND ANTENNAE:

A. City-wide tower and antenna location plan. A City-wide tower and antenna location plan for all communications towers and antennas anticipated by the applicant must be submitted by the applicant prior to or at the time of the application to the Planning Board. The planning staff shall review the proposed plan to ensure its consistency with this subsection and the purpose statement recited above. Said plan shall then be forwarded to the Planning Board with a recommendation from the staff. Upon approval of the Planning Board, all antennas shall be installed consistent with said plan. Any amendment to the plan shall be reviewed by the planning staff for consistency with the original plan, including but not limited to such factors as number, type, and location of antennas, and forwarded to

the Planning Board with any future requests for exceptions based on the plan, along with the recommendation of the staff regarding the amendment to the plan.

ANSWER: See attached RF study.

B. Standards. No special exception application shall be approved by the Zoning Board of Adjustment unless the communications tower complies with the criteria established in Subsections C through L of this section. The Zoning Board of Adjustment may waive the requirements of Subsections C (location) and E (height) to the extent necessary to resolve any gap in service where required by the Federal Telecommunications Act of 1996. The Administrative Officer shall provide notification as required by RSA 12-K:7(l).

ANSWER: US Cellular agrees with this section to the extent relevant.

C. Tower locations.

(1) New freestanding communications towers shall not be located closer than one mile from any existing or approved communications tower.

ANSWER: Please refer to the attached variance request form.

(2) All communications towers must be located the greater of 400 feet from all lot lines or the towers' height from all lot lines of abutting residential properties.

ANSWER: Please refer to the attached variance request form.

(3) In all cases, communications towers must meet the minimum setback requirements of the underlying zoning district.

ANSWER: All GB District setbacks are met as shown on attached site plan page C-2.

(4) Only one communications tower is permitted on any one residentially zoned parcel.

ANSWER: Not applicable.

(5) The Planning Board shall find that a complete assessment of locations in order of priority has been undertaken and completed, and that higher priority uses are exhausted or unfeasible. All communications towers erected, constructed, located, replaced, altered, or extended within the City shall comply with the following requirements:

ANSWER: US Cellular is currently in the process of evaluating all potential structures and parcels in the area for a permanent solution and once a permanent solution is identified there is a 6 – 12-month timeframe required for leasing, permitting and construction. The temporary tower is proposed so US Cellular may maintain its Federally licensed service area while this process takes place.

(a) Communications towers and antennas shall be located using the following priority:

[1] On existing bldgs; **ANSWER: See above.**

[2] On other existing structures, including but not limited to water tanks and utility transmission poles; **ANSWER: See above.**

[3] On existing communications towers; **ANSWER: See above.**

[4] On new structures under 50 feet; **ANSWER: See above.**

[5] On new communications towers. **ANSWER: Not applicable.**

(b) Any proposed communications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is less than 100 feet in height. All users are to be charged industry standard rates on a competitively neutral and nondiscriminatory basis. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

ANSWER: Not applicable. The tower, by nature of its limited temporary scope, is not designed to accommodate additional users.

D. Design. Where reasonably practicable, all proposed or modified towers and antennas shall be designed to blend into the surrounding environment the use of color and camouflaging architectural treatments, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration. The Planning Board may require such architectural treatments or other design techniques as it deems necessary in order to meet the provisions of this subsection.

ANSWER: The monopole tower will have a narrow profile (60"+- at the base tapering to 18"+- at the top) and a natural gray galvanized steel finish that will blend with the typical gray New England sky.

E. Height. The height of towers shall be determined by measuring the vertical distance from the tower's point of contact with the ground or rooftop to the highest point of the tower including all antennas or other attachments. When towers are mounted upon other structures, the combined height of the structure and tower shall be used in determining compliance with the tower location requirements set forth in Subsection C above.

ANSWER: No response required.

F. Lighting. No communications tower or antenna shall have affixed or attached to it in any way except during time of repair or installation, any lights, reflectors, flashers, or other illuminating devices, except as required by the Federal Aviation Agency or the Federal Communications Commission. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas or United States flags may be attached to the tower.

ANSWER: No lighting is proposed.

G. Signs and advertising. The use of any portion of a tower for signs or advertising purposes is prohibited, with the exception of the provisions of Subsection J below.

ANSWER: No signs or advertising are proposed.

H. Communications tower safety. No communications tower shall have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair. Every communications tower affixed to the ground shall be protected to prohibit climbing of the tower by unauthorized persons. At a minimum, the tower base and associated equipment shall be surrounded by a fence of a design agreeable to the zone and in keeping with the character of the site, of at least six feet in height if practicable.

ANSWER: No platform, etc. is proposed. 6' tall security fencing is proposed as shown on site plan page C-4.

I. Accessory utility buildings. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground-mounted equipment shall be screened from view by minimum Type B buffer as set forth in § 190-181B(b), except where a design of nonvegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

ANSWER: No accessory building is proposed is proposed. A service truck containing radio equipment will be parked at the site as long as the temporary tower facility is operation.

J. Antennas as an accessory use. Antennas are allowed as an accessory use on signs or their associated structural supports, lighting poles or other similar structures, provided that the structure otherwise conforms to the City Code, and that the nature of the structure is not substantially altered by the addition of the antenna, and that the antenna is mounted no more than 20 feet above the existing height of the structure.

ANSWER: Not applicable.

K. Additional submittal requirements. In addition to the information required elsewhere in this chapter and regularly required by the Planning Board, and all other information deemed necessary to evaluate the request, development applications for towers shall include the supplemental information required by Article XLIII.

ANSWER: No response required.

L. Abandoned or unused towers, portions of towers, or antennas. Abandoned or unused towers, portions of towers, or antennas shall be removed as follows:

(1) All abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the Administrative Officer. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the City and the costs of removal assessed against the commercial wireless telecommunications service or the property owner.

ANSWER: US Cellular agrees with this section to the extent it is relevant. See attached redacted lease as requested.

(2) All owners of commercial wireless telecommunication towers shall obtain and maintain a bond, with limits of \$10,000 per tower to cover the cost of removal of abandoned, unused towers or portions of towers. A bond certificate shall be submitted to the City of Nashua 30 days before final approval to erect the tower. The amount of said bond shall be reviewed by the planning staff every five years to ensure the amount of the security is adequate and may be increased if necessary.

ANSWER: US Cellular agrees to provide a removal bond prior to installation.

190-269 COMMUNICATION TOWERS AND ANTENNAE:

A. A report from a qualified and licensed professional engineer which:

- (1) Describes the tower height and design including a cross section and elevation;
- (2) Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
- (3) Describes the tower's capacity, including the number and type of antennas that it can accommodate;
- (4) Includes an engineer's stamp and registration number; and
- (5) Includes other information necessary to evaluate the request.

ANSWER: See attached stamped site plan.

B. A report documenting the results of a trial balloon study with attached photographic simulations depicting the tower and surrounding area from all significant vantage points.

ANSWER: See attached trial balloon study.

C. A letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

ANSWER: Not applicable. The tower, by nature of its limited temporary scope, is not designed to accommodate additional users.

D. Before the issuance of a building permit or certificate of occupancy, the following supplemental information shall be submitted:

(1) Proof that the proposed tower complies with regulations administered by Federal Aviation Administration shall be submitted prior to the issuance of a building permit.

ANSWER: US Cellular does agree to provide FAA compliance information prior to the issuance of a building permit.

(2) A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with all applicable structural and electrical standards shall be submitted prior to the issuance of a building permit.

ANSWER: See attached site plan containing such items as stamped by licensed PE Benjamin Revette.

(3) Measurements that prove the proposed tower and antennas comply with radio frequency emission requirements under Federal Communications Commission rules shall be submitted prior to the issuance of a final certificate of occupancy.

ANSWER: See attached RF study.

(4) Periodically, or upon written request of the City, all towers and antennas shall be inspected to ensure compliance with all applicable structural and electrical standards and the radio frequency requirements of the Federal Communications Commission, above, and copies of all inspection reports shall be filed with the City.

ANSWER: US Cellular agrees to inspect the tower facility upon request from the City to the extent reasonable considering this is a temporary tower and all such standards are documented in this application.

(5) Proof of adequate liability insurance, as determined by the City, shall be submitted prior to the issuance of a final certificate of occupancy.

ANSWER: See attached certificate of insurance.

190-134 (F), SPECIAL EXCEPTIONS (APPROVAL CRITERIA):

F. Approval criteria.

(1) In applying for a special exception, the applicant need not demonstrate hardship, since the basis for the action is of general benefit to the City as a whole. In granting a special exception, the Zoning Board of Adjustment, with due regard to the nature and condition of all adjacent structures and uses, and the district within which the same is located, shall find all of the following general conditions to be fulfilled:

(a) The requested use is listed as a special exception in the Use Matrix (§ 190-15, Table 15-1) or is permitted as a special exception by another provision of this chapter;

ANSWER: The requested use is listed in 190-15, Table 15-1 (#276).

(b) The requested use will not create undue traffic congestion or unduly impair pedestrian safety;

ANSWER: Existing traffic patterns and pedestrian safety levels will not significantly change. After initial installation, US Cellular may only need to access the site once per month on average for routine maintenance.

(c) The requested use will not overload any public water, drainage or sewer system, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare;

ANSWER: The unmanned temporary tower facility will not require public water, will utilize existing drainage as shown on site plan page C-3, will not require other municipal systems, will not subject the area to health hazards as showed in the attached RF study and will not affect general welfare.

(d) Any special regulations for the use set forth in this article are fulfilled;
ANSWER: All such special regulations have been fulfilled.

(e) The requested use will not impair the integrity or be out of character with the district or immediate neighborhood in which it is located, nor be detrimental to the health, morals, or welfare of the residents of the City.

ANSWER: The temporary tower will be similar to the tower that currently exists in this neighborhood / district (2800' south at Costco), the proposed commercial use is surrounded mostly by other commercial uses and there is an existing significant mature vegetation buffer at the closest residential use.

US Cellular hereby requests to be placed on the Zoning Board of Adjustment agenda for November 12, 2019 to have this application heard.

Sincerely,


Bob Gashlin, For US Cellular

CC: Ken Kozyra, KJK Wireless
Ken Hardin, US Cellular

Enc: Application
Application fee \$745.00
Site plan
RF Study
Lease (redacted)
Balloon study
Certificate of insurance
Variance Application (w/in 1M of existing tower)
Variance Application (400' setback)

SITE NOTES

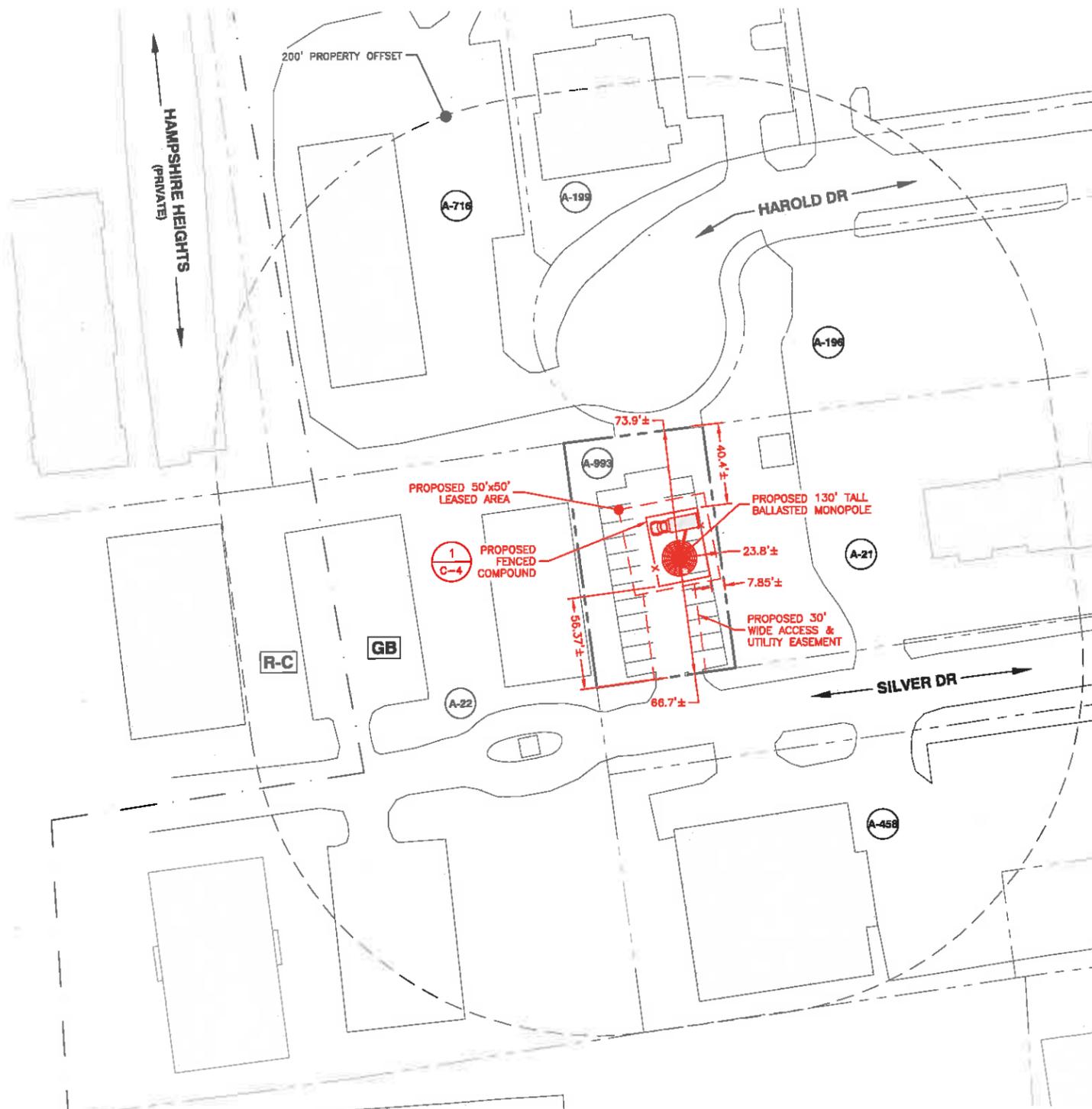
- OWNERS OF RECORD PARCEL A-993:
SAVCAM, LLC
259 DANIEL WEBSTER HIGHWAY
NASHUA, NH 03060
- THE SUBJECT PARCEL IS ZONED "GB".
BUILDING SETBACKS ARE AS FOLLOWS:
FRONT = 10'
SIDE = 7'
REAR = 10'
- SETBACKS SHOWN ON PLAN ARE FROM PROPOSED COMPOUND
FENCE & PROPOSED TOWER CENTER TO NEAREST PROPERTY LINES.
- PLAN BASED ON CITY OF NASHUA ONLINE GIS DATABASE AND HAS
NOT BEEN VERIFIED WITH A GROUND SURVEY. ALL INFORMATION
SHOWN AS APPROXIMATE.
- DEWBERRY ENGINEERS INC. PERFORMED A SITE VISIT ON 09/11/19,
TO CONFIRM EXISTING CONDITIONS OF THE LOCUS PARCEL.
- ANY UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE, BASED ON
FIELD OBSERVATIONS AND GIS INFORMATION. DEWBERRY ENGINEERS
INC. HAS NOT LOCATED ANY UNDERGROUND UTILITIES. ALWAYS CALL
DIG SAFE TO MARK OUT UNDERGROUND UTILITIES PRIOR TO ANY
EXCAVATION ACTIVITIES.
- THERE IS NO GROUND DISTURBANCE PROPOSED.
- THERE ARE NOT WETLANDS IN THE VICINITY OF THE LOCUS PARCEL.

ABUTTERS LIST

PARCEL:	A-199
ADDRESS:	5 HAROLD DR
USE:	COMMERCIAL
OWNER:	APPLETREE PROPERTIES LLC/O DARDEN PO BOX 695019 ORLANDO, FL 32869
DEED:	B6469/P36
PARCEL:	A-196
ADDRESS:	L DANIEL WEBSTER HWY
USE:	COMMERCIAL
OWNER:	MCDONALDS-CORP MCDONALDS PLAZA C/O PAUL MONTOUR PO BOX 182571 COLUMBUS, OH 43218
DEED:	B2743/P605
PARCEL:	A-21
ADDRESS:	255 DANIEL WEBSTER HIGHWAY
USE:	COMMERCIAL
OWNER:	MCDONALDS-CORP MCDONALDS PLAZA C/O PAUL MONTOUR PO BOX 182571 COLUMBUS, OH 43218
DEED:	B2223/P185
PARCEL:	A-458
ADDRESS:	259 DANIEL WEBSTER HIGHWAY
USE:	COMMERCIAL
OWNER:	SAVCAM LLC 259 DANIEL WEBSTER HIGHWAY NASHUA, NH 03060
DEED:	B9102/P1282
PARCEL:	A-22
ADDRESS:	1-9 SILVER DR.
USE:	RESIDENTIAL
OWNER:	P R A PROPERTIES, LP 9 SILVER DR. NASHUA, NH 03060
DEED:	B5579/P1974
PARCEL:	A-716
ADDRESS:	7 HAROLD DR.
USE:	COMMERCIAL
OWNER:	MELLO, ALLEN J TRUSTEE OF AVALON REALTY TRUST 24 APPLETREE GRN NASHUA, NH 03062
DEED:	B5676/P957

LEGEND

	LOCUS PROPERTY LINE
	ABUTTER PROPERTY LINE
	PROPOSED EASEMENT/LEASE AREA
	PROPOSED FENCED COMPOUND
	PROPOSED 200' PROPERTY OFFSET
	EXISTING BUILDING
	ZONING DISTRICT BOUNDARY
	ZONING DISTRICT DESIGNATION
	PARCEL IDENTIFICATION



ABUTTERS PLAN
SCALE: 1"=80' FOR 11"x17"
1"=40' FOR 22"x34"
0' 40' 80'



10 CORPORATE DRIVE
SUITE 210
BEDFORD, NH 03110

**COLT #9
(COSTCO TEMP)
SITE NO.: 444397**

CONSTRUCTION DRAWINGS

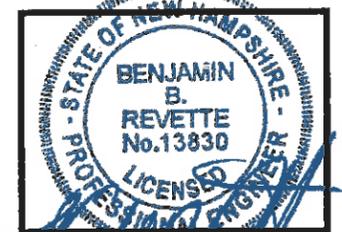
O	10/10/19	FOR SUBMITTAL
A	10/09/19	FOR REVIEW



Dewberry Engineers Inc.
99 SUMMER ST.
SUITE 700
BOSTON, MA 02110-1200
PHONE: 617.695.3400
FAX: 617.695.3310



PROJECT COORDINATION & MANAGEMENT
127 RIDGE ROAD
NASHUA, NH 03062
PHONE# (603) 888-8974
CONTACT: KEN KOZYRA



DRAWN BY: JIM

REVIEWED BY: GMT

CHECKED BY: BBR

PROJECT NUMBER: 50002714

JOB NUMBER: 50094745

SITE ADDRESS

L SILVER DRIVE
NASHUA, NH 03060

SHEET TITLE

ABUTTERS PLAN

SHEET NUMBER

**COLT #9
(COSTCO TEMP)
SITE NO.: 444397**

CONSTRUCTION DRAWINGS

O	10/10/19	FOR SUBMITTAL
A	10/09/19	FOR REVIEW

Dewberry

Dewberry Engineers Inc.
99 SUMMER ST.
SUITE 700
BOSTON, MA 02110-1200
PHONE: 617.895.3400
FAX: 617.895.3310

**KJK
WIRELESS**

PROJECT COORDINATION & MANAGEMENT

127 RIDGE ROAD
NASHUA, NH 03062
PHONE# (603) 888-8974
CONTACT: KEN KOZYRA



DRAWN BY: JIM

REVIEWED BY: GMT

CHECKED BY: BBR

PROJECT NUMBER: 50002714

JOB NUMBER: 50094745

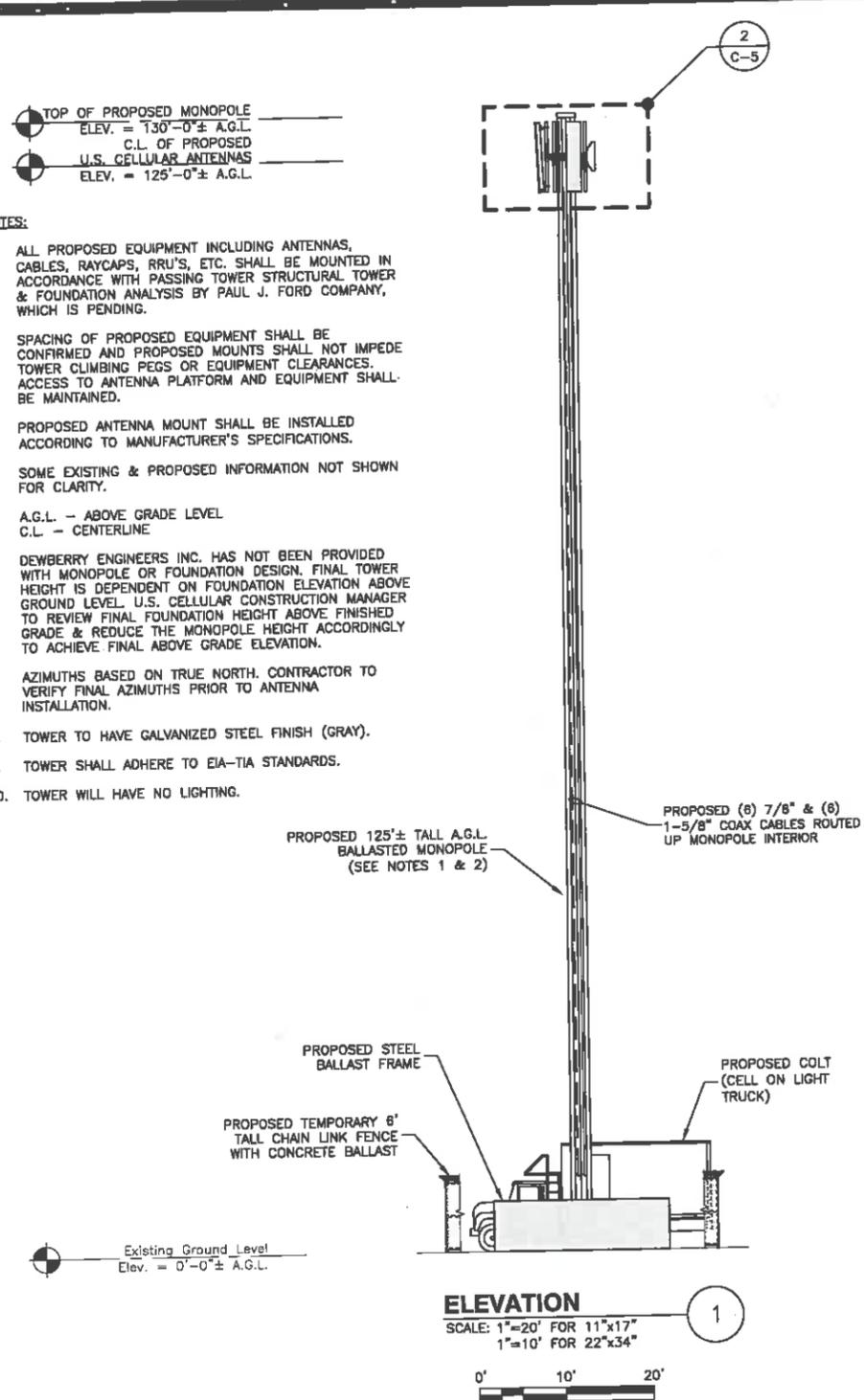
SITE ADDRESS

L SILVER DRIVE
NASHUA, NH 03060

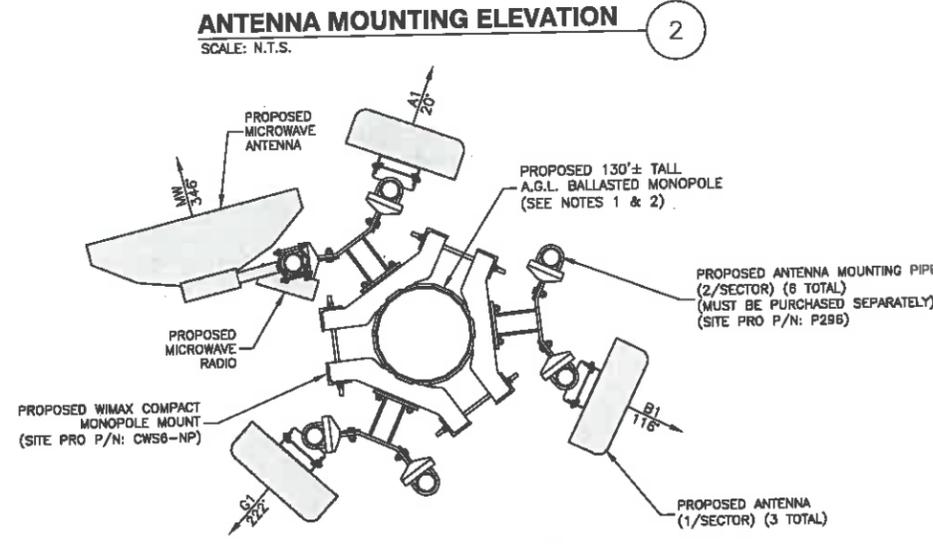
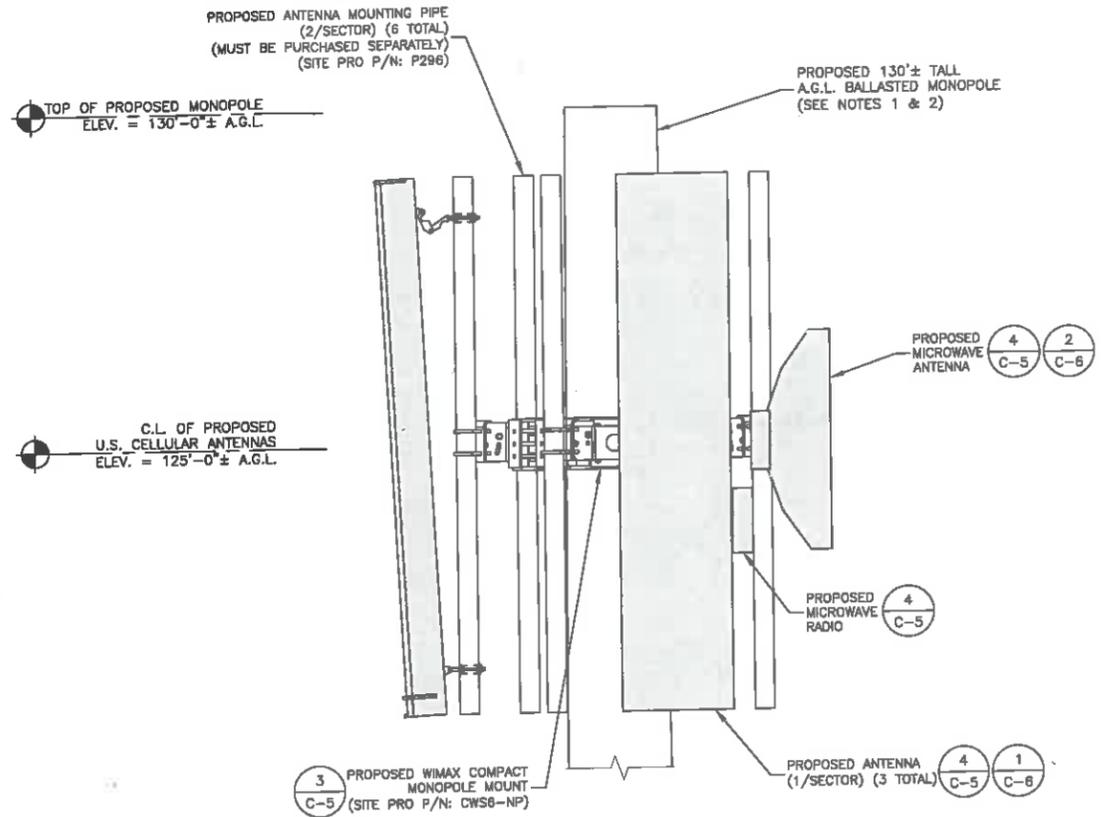
SHEET TITLE

**ELEVATION, ANTENNA
PLAN & RF SCHEDULE**

SHEET NUMBER



- NOTES:**
1. ALL PROPOSED EQUIPMENT INCLUDING ANTENNAS, CABLES, RAYCAPS, RRU'S, ETC. SHALL BE MOUNTED IN ACCORDANCE WITH PASSING TOWER STRUCTURAL TOWER & FOUNDATION ANALYSIS BY PAUL J. FORD COMPANY, WHICH IS PENDING.
 2. SPACING OF PROPOSED EQUIPMENT SHALL BE CONFIRMED AND PROPOSED MOUNTS SHALL NOT IMPEDE TOWER CLIMBING PEGS OR EQUIPMENT CLEARANCES. ACCESS TO ANTENNA PLATFORM AND EQUIPMENT SHALL BE MAINTAINED.
 3. PROPOSED ANTENNA MOUNT SHALL BE INSTALLED ACCORDING TO MANUFACTURER'S SPECIFICATIONS.
 4. SOME EXISTING & PROPOSED INFORMATION NOT SHOWN FOR CLARITY.
 5. A.G.L. - ABOVE GRADE LEVEL
C.L. - CENTERLINE
 6. DEWBERRY ENGINEERS INC. HAS NOT BEEN PROVIDED WITH MONOPOLE OR FOUNDATION DESIGN. FINAL TOWER HEIGHT IS DEPENDENT ON FOUNDATION ELEVATION ABOVE GROUND LEVEL. U.S. CELLULAR CONSTRUCTION MANAGER TO REVIEW FINAL FOUNDATION HEIGHT ABOVE FINISHED GRADE & REDUCE THE MONOPOLE HEIGHT ACCORDINGLY TO ACHIEVE FINAL ABOVE GRADE ELEVATION.
 7. AZIMUTHS BASED ON TRUE NORTH. CONTRACTOR TO VERIFY FINAL AZIMUTHS PRIOR TO ANTENNA INSTALLATION.
 8. TOWER TO HAVE GALVANIZED STEEL FINISH (GRAY).
 9. TOWER SHALL ADHERE TO EIA-TIA STANDARDS.
 10. TOWER WILL HAVE NO LIGHTING.



RF EQUIPMENT SCHEDULE										
SECTOR	ANTENNA MARK	ANTENNA	FEEDER LOCATION	AZIMUTH (TRUE NORTH)	AZIMUTH (MAGNETIC NORTH)	MECHANICAL DOWNTILT	ELECTRICAL DOWNTILT	RAD CENTER	FEEDER	SUPPORT EQUIPMENT
ALPHA	A1	DENGYO OCT8-2LX2HX-BW65	BOTTOM	20°	35°	-	TBD°	125'	(2) 1-5/8" (2) 7/8" COAX @ 180° ±	(1) BIAS T
BETA	B1	DENGYO OCT8-2LX2HX-BW65	BOTTOM	116°	131°	-	TBD°	125'	(2) 1-5/8" (2) 7/8" COAX @ 180° ±	(1) BIAS T
GAMMA	G1	DENGYO OCT8-2LX2HX-BW65	BOTTOM	222°	237°	-	TBD°	125'	(2) 1-5/8" (2) 7/8" COAX @ 180° ±	(1) BIAS T
MW	MW	RFS SC3-W100BGT1X	REAR	348°	361°	-	-	125'	(3) 3/8" COAX @ 180° ±	(1) WTM 4000 RADIO

RF EQUIPMENT SCHEDULE
SCALE: N.T.S.

- RF EQUIPMENT NOTES:**
1. INFORMATION TAKEN FROM RF CONFIGURATION BY U.S. CELLULAR. SEE SHEET C-7.
 2. ALL ANTENNAS TO BE FURNISHED WITH DOWNTILT BRACKETS. CONTRACTOR TO COORDINATE REQUIRED MECHANICAL DOWNTILT FOR EACH ANTENNA WITH RF ENGINEERS.
 3. ANTENNA CENTERLINE (RAD CENTER) HEIGHT IS ABOVE GROUND LEVEL (AGL).
 4. CONFIRM FINAL RF CONFIGURATION WITH RF ENGINEER PRIOR TO CONSTRUCTION.
 5. INSTALL & GROUND EQUIPMENT PER MANUFACTURER'S RECOMMENDATIONS & U.S. CELLULAR STANDARDS.



C Squared Systems, LLC
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Auburn, NH 03032
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RF Report

694333 Temporary Site

L Silver Drive
Nashua, NH 03060



October 14, 2019

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1. Overview

This RF Report has been prepared on behalf of U.S. Cellular in support of its application to the City of Nashua for the installation and operation of a temporary wireless facility located on L Silver Drive in Nashua, NH (“Temp. Site”) The proposed facility consists of antennas mounted on a temporary 130’ ballasted monopole, and associated equipment enclosed by a fenced area within the existing parking lot.

This report concludes that the temporary site will serve as an adequate replacement to the coverage and capacity in southern Nashua that will be lost when its existing facility at 311 Daniel Webster Highway (“Costco”) is forcibly decommissioned in the near future. These areas at risk of becoming gaps in service due to the decommissioned site include Route 3, Daniel Webster Hwy, the Pheasant Lane Mall and the surrounding roads, neighborhoods, business/retail areas in the proximity of the existing facility and the proposed temporary site.

Included in this report is: a brief summary of the site’s objectives, maps showing U.S. Cellular’ current network plan, and modeled Radio Frequency coverage of the subject site and the surrounding sites in U.S. Cellular’ network.

2. Introduction

U.S. Cellular provides digital voice and data communications services using both 3rd Generation (3G) CDMA/EVDO technology and advanced 4th Generation (4G) LTE technology in multiple frequency bands as licensed by the FCC. These networks are used by mobile devices for fast web browsing, media streaming, and other applications that require broadband connections. The mobile devices that benefit from these advanced networks are not limited to basic handheld phones, but also include devices such as smartphones, PDA’s, tablets, and laptop air-cards. With the evolving rollout of 4G LTE services and devices, U.S. Cellular customers will have even faster connections to people, information, and entertainment.

As explained within this report, U.S. Cellular has identified the need to locate a temporary replacement for its existing Costco facility to maintain coverage and capacity in southern Nashua and avoid creating a significant gap in service due to the void left behind after the existing site has been decommissioned.

To maintain a reliable and robust communications system for the individuals, businesses, public safety workers and others who use its network, U.S. Cellular deploys a network of cell sites (also called wireless communications facilities) throughout the areas in which it is licensed to provide service. These cell sites consist of antennas mounted on structures, such as buildings and towers, supported by radio and power equipment. The receivers and transmitters at each of these sites process signals within a limited geographic area known as a “cell.”

Mobile subscriber handsets and wireless devices operate by transmitting and receiving low power radio frequency signals to and from these cell sites. Handset signals that reach the cell site are transferred through land lines (or other means of backhaul transport) and routed to their destinations by sophisticated electronic equipment. For U.S. Cellular’ network to function effectively, there must be adequate overlapping coverage between the “serving cell” and adjoining cells. This not only allows a user to access the network initially, but also allows for the transfer or “hand-off” of calls and data transmissions from one cell to another, and prevents unintended disconnections or “dropped calls.”

U.S. Cellular’s antennas also must be located high enough above ground level to allow transmission (a.k.a. propagation) of the radio frequency signals above trees, buildings, and other natural or man-made structures that may obstruct or diminish the signals. Areas without adequate radio frequency coverage have substandard service,

characterized by dropped and blocked calls, slow data connections, or no wireless service at all, and are commonly referred to as coverage gaps.

The size of the area potentially served by each cell site depends on several factors including the number of antennas used, the height at which the antennas are deployed, the topography of the surrounding land, vegetative cover, and natural or man-made obstructions in the area. The actual service area at any given time also depends on the number of customers who are on the network in range of that cell site. As customers move throughout the service area, the transmission from the phone or other device is automatically transferred to the U.S. Cellular facility with the best reception, without interruption in service, provided that there is overlapping coverage between the cells.

Each cell site must be primarily designed to strike a balance between the overall geographic coverage area it will serve, and the site's capacity to support the usage within the coverage footprint. In rural areas, cell sites are generally designed to have broader coverage footprints because the potential traffic is sparser and distributed over a larger area. In more densely populated suburban and urban environments, the capacity to handle calls and data transmissions is of increasing concern, and cell sites must limit their coverage footprint to an area where the offered network traffic can be supported by the radio equipment and resources. Due to the aggressive historical and projected growth of mobile usage, particularly for mobile data (82% in 2017-2018 in the U.S.¹, 43% in 2017-2018 and 36% CAGR 2017-2022 in North America²), instances arise where the usage demand can no longer be supported by the site(s) serving an area, and new facilities must be integrated to provide capacity relief to the overloaded sites.

We have concluded that the proposed temporary wireless communication facility on L Silver Drive at an antenna centerline height of 125' AGL (above ground level) will allow U.S. Cellular to provide adequate replacement coverage and capacity to the residents, businesses, visitors, and traffic corridors within southern Nashua that would otherwise be located within gaps in service of U.S. Cellular' network after the existing "Costco" site is decommissioned.

¹ "2019 Annual Survey Highlights", June 20, 2019, CTIA.
<https://www.ctia.org/news/2019-annual-survey-highlights>

² "Cisco Visual Networking Index: Forecast and Trends, 2017-2022", November 26, 2018, Cisco Systems, Inc.
https://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white-paper-c11-741490.html#_Toc529314192

3. The Proposed Facility

As depicted in the site plans³ submitted with the application, U.S. Cellular's proposal consists principally of the following elements:

- 1) A 130' ballasted monopole within a 42' x 31' temporary chain fenced area within the existing parking lot;
- 2) Telecommunications equipment located in the proposed COLT (Cell On Light Truck), also within the fenced area;
- 3) Three (3) panel antennas (one per sector) mounted on the monopole at a centerline elevation of 125' AGL;

4. Coverage and Capacity Objectives

As mentioned above, U.S. Cellular must locate a temporary facility to replace the coverage and capacity that will be lost in the southern Nashua area upon decommissioning of its existing Costco facility. The proposed facility is intended to temporarily maintain the quality of service currently provided to this area of the City.

U.S. Cellular currently operates wireless sites similar to the proposed facility within Nashua and the surrounding cities/towns. Due in large part to the distances between the surrounding sites, the intervening topography, and volume of user traffic in the area, these facilities do not provide adequate service to portions of Nashua. Specifically, U.S. Cellular determined that much of southern Nashua will be without reliable service after the existing "Costco" site is decommissioned in the following areas and city roads⁴, including but not limited to:

- Route 3;
 - Serves ~ 93,000 vehicles per day, as measured at the Massachusetts border (2018);
- Daniel Webster Hwy/Middlesex Road;
 - Serves ~ 16,500 vehicles per day, as measured south of Pheasant Lane (2018);
- Pheasant Lane Mall;
- The surrounding roads, neighborhoods, and business/retail areas in the proximity of the proposed site.

The proposed temporary site located on L Silver Drive ("Temp. Site") is needed to fill in these targeted gaps in service that will manifest themselves after the decommissioning of the existing "Costco" site, in order to maintain network quality and reliability that U.S. Cellular subscribers are accustomed to while traveling along these roads and the surrounding area.

³ Construction Drawings prepared by Dewberry Engineers Inc., dated 10/09/2019 (Rev. A).

⁴ Traffic counts are sourced from the New Hampshire Department of Transportation, Transportation Data Management System.

5. Pertinent Site Data

Table 1 below details the site-specific information for the existing (on-air) and proposed U.S. Cellular sites used to perform the coverage analysis and generate the coverage plots provided herein.

Site Name	Address	City, State	Location		Structure Type	Antenna Height (ft AGL)	Status
			Latitude	Longitude			
Pelham	18 Atwood Road	Pelham, NH	42.7306	-71.3139	Lattice	118	On-Air
Bush Hill	166 Bush Hill Road	Hudson, NH	42.7475	-71.3778	Lattice	99	On-Air
Pine Hill	40 Howe Lane	Hollis, NH	42.7554	-71.5309	Lattice	120	On-Air
Costco	311 Daniel Webster Highway	Nashua, NH	42.7004	-71.4433	Monopole	145	To Be Decommissioned
Downtown	One Chestnut Street	Nashua, NH	42.7595	-71.4706	Roof Top	91/102	On-Air
Nashua	39 Orchard Ave	Nashua, NH	42.7412	-71.4537	Lattice	154	On-Air
Nashua III	237 Main Dunstable Road	Nashua, NH	42.7434	-71.4945	Monopole	162	On-Air
Nashua North	20 Daniel Webster Highway	Nashua, NH	42.7948	-71.4726	Monopole	130	On-Air
Nashua Exit 8	1617 Southwood Drive	Nashua, NH	42.7867	-71.5021	Monopole	96	On-Air
Nashua Rts	830 West Hollis Street	Nashua, NH	42.7281	-71.5106	Monopole	134	On-Air
Nashua Comm. College	505 Amherst Street	Nashua, NH	42.7977	-71.5234	Monopole	86	On-Air
Temp. Site	L Silver Drive	Nashua, NH	42.7084	-71.4429	Monopole	125	Proposed

Table 1: U.S. Cellular Site Information Used in Coverage Analysis⁵

⁵ Some sites listed in this table are outside the attached plot views but are included for completeness of information.

6. Coverage Analysis and Propagation Plots

The signal propagation plots provided in this report show coverage for the 850 MHz frequency range and were produced using deciBel Planner™, a Windows-based RF propagation computer modeling program and network planning tool. The software considers the topographical features of an area, land cover, antenna models, antenna heights, RF transmitting power and receiver thresholds to predict coverage and other related RF parameters used in site design and network expansion.

The coverage plots included as attachments are based on RSRP signal strengths of -89.86 dBm (dark green), -95.29 dBm (light green), -105.29 dBm (yellow), and -107.90 dBm (red).

Attachments A – H are discussed below:

Attachment A titled “*Temp. Site – Neighbor Sites & Radial Distances*” provides an overview of U.S. Cellular’s network of sites in the area, with distances shown from the proposed temporary site to the surrounding U.S. Cellular sites in the surrounding area, including all existing LTE facilities in the City.

Attachment B titled “*Temp. Site – Area Terrain Map*” details the topographical features around the proposed “Temp. Site” site. These terrain features play a key role in dictating both the unique coverage areas served from a given location, and the coverage gaps within the network. This map is included to provide a visual representation of the terrain variations that must be considered when determining the appropriate location and design of a proposed wireless facility. The blue and green shades correspond to lower elevations, whereas the orange, red, and grey shades indicate higher elevations.

Attachment C titled “*Temp. Site – Existing 850 MHz LTE Coverage*” shows the coverage provided around southern Nashua from the existing “On-Air” sites listed in Table 1 including the “Costco” facility that will decommissioned shortly. The dark green shaded areas represent the minimum level of coverage for this area necessary to provide acceptable and reliable indoor LTE service. The less robust areas of service from a coverage standpoint include the other shaded areas in light green, yellow, red, and white, in order of decreasing service reliability. As shown in this plot, the surrounding sites in conjunction with the existing “Costco” facility provide adequate coverage along Route 3, Daniel Webster Highway, Spit Brook Road, Pheasant Lane Mall and the surrounding roads, neighborhoods, business/retail areas in the southern Nashua.

Attachment D titled “*Temp. Site – 850 MHz LTE Coverage without Existing Costco Site*” shows the coverage provided to areas of Nashua from the surrounding “On-Air” sites without the existing “Costco” facility. As shown in this plot, decommissioning the existing site without a replacement would open coverage gaps to southern Nashua along key roadways and other areas of the City such as:

- ~ 1.6 mi of Route 3 and Daniel Webster Highway/Middlesex Road;
- ~ 0.9 mi of Route 3A;
- ~ 0.5 mi of Circumferential Highway;
- Pheasant Lane Mall;
- ~ 5,300 additional residents⁶ without adequate coverage within the surrounding area;

⁶ Population counts referenced here and elsewhere within this report are based upon 2010 U.S. Census residential data. Please note that this does not include any visitors in the area.

- ~ 10,500 additional employees⁷ without the adequate coverage within the surrounding area;
- The surrounding roads, neighborhoods, business/retail areas in the proximity of the decommissioned “Costco” facility.

Attachment E titled “*Temp. Site – 850 MHz LTE Coverage with Proposed Temporary Site*” shows the composite coverage with the proposed “Temp. Site” facility. As shown in this map, the proposed temporary site will replace much of the coverage and capacity provided by the existing “Costco” site and largely preserves the level of the service its customer base is accustomed to in southern Nashua and the surrounding areas such as:

- ~ 0.9 mi of Route 3;
- ~ 1.7 mi of Daniel Webster Highway/Middlesex Road;
- ~ 0.4 mi of Route 3A;
- ~ 0.5 mi of Circumferential Highway;
- Pheasant Lane Mall;
- ~ 3,500 additional residents within the surrounding area;
- ~ 9,100 additional employees within the proximity of the proposed facility;
- The surrounding roads, neighborhoods, business/retail areas in the proximity of the proposed site.

Attachment F titled “*Temp. Site – Existing 850 MHz LTE Sector Footprints*” depicts the areas primarily served by the sectors (a.k.a. signal “footprints”) of the “On-Air” U.S. Cellular sites in the area, which are shown by a unique color for each particular site or sector of interest. For clarity, all other sectors of less interest with respect to the proposed site are shown in grey. U.S. Cellular manages the footprint of each site or sector so that it can support the demand within the area it is primarily serving. As shown in this map, the decommissioned “Costco” facility is centrally located in a bustling area of City with heavier network demand, making it particularly suited to distribute the traffic load and provide a dominant server to this area of southern Nashua. Therefore, it is critical for U.S. Cellular to develop a temporary facility in a location suitable to maintain the coverage and capacity provided by this existing facility. Please note that the outer parts of each sector footprint may include areas that presently have signal strength below the targeted value required for reliable service to U.S. Cellular’ customers. The fact that low-level signal may reach these areas does not mean that these areas experience adequate coverage. These unreliable areas of low signal level can impose a significant capacity burden on the sites primarily serving the area.

⁷ Employee population counts referenced here and elsewhere within this report are based upon the 2015 U.S. Census Bureau LEHD database.

Attachment G titled “*Temp. Site - 850 MHz LTE Sector Footprints without Existing Costco Site*” depicts the areas primarily served by the sectors of the surrounding “On-Air” U.S. Cellular sites after the decommissioning of the existing “Costco” site. In addition to opening up coverage gaps to the area, the decommissioning of the existing “Costco” site will leave this area of southern Nashua lacking a dominant server. The network traffic will be distributed across the surrounding sectors and result in substantially increasing the burden experienced by those surrounding sites trying to fill the void left behind after the decommissioning. Table 2 below details the additional load placed on these surrounding sectors based on the sector footprints shown in Attachments F and G.

Sector	Current			Without "Costco"			Additional Load Summary		
	Residential Pops	Business Pops	Area (mi ²)	Residential Pops	Business Pops	Area (mi ²)	Total Residential Pops Added	Total Business Pops Added	Area Added (mi ² /%)
Bush Hill Gamma	4597	2282	4.12	9190	7829	5.67	4593 (99.9%)	3547 (243.1%)	1.55 (37.6%)
Nashua Beta	2407	2744	1.96	4449	5499	4.58	2042 (84.8%)	2755 (100.4%)	2.62 (133.7%)
Pine Hill Beta	4074	577	1.33	4312	886	1.48	238 (5.8%)	309 (53.6%)	0.15 (11.3%)
Bush Hill Beta	10353	2273	9.41	10944	2355	10.2	591 (5.7%)	82 (3.6%)	0.79 (8.4%)

Table 2: Additional Load Summary

Attachment H titled “*Temp. Site - 850 MHz LTE Sector Footprints with Proposed Temporary Site*” shows the composite coverage with the overall footprint of the proposed temporary facility in dark green. As shown in this map, the proposed “Temp. Site” facility is an effective solution to backfill the void left by decommissioning the existing “Costco” site and minimize the impact to the surrounding sites in the U.S. Cellular network. Table 2 below compares the loading of the surrounding sectors currently with the existing “Costco” site, and with the “Temp. Site” based on the sector footprints shown in Attachments F and H.

Sector	Current			With "Temp. Site"			Delta Summary		
	Residential Pops	Business Pops	Area (mi ²)	Residential Pops	Business Pops	Area (mi ²)	Total Residential Pop Change	Total Business Pop Change	Area Change (mi ² /%)
Bush Hill Gamma	4597	2282	4.12	4970	3253	4.46	373 (8.1%)	971 (42.6%)	0.34 (8.3%)
Nashua Beta	2407	2744	1.96	2537	3059	2.08	130 (5.4%)	315 (11.5%)	0.12 (6.1%)
Pine Hill Beta	4074	577	1.33	4262	765	1.4	188 (4.6%)	188 (32.6%)	0.07 (5.3%)
Bush Hill Beta	10353	2273	9.41	10339	2219	9.31	-14 (-0.1%)	-54 (-2.4%)	-0.1 (-1.1%)

Table 3: Delta Summary

7. Certification of Non-Interference

U.S. Cellular certifies that the proposed facility will not cause interference to any lawfully operating emergency communication system, television, telephone or radio, in the surrounding area. The FCC has licensed U.S. Cellular to transmit and receive in the A-Block of the Cellular (850 MHz) band of the RF spectrum. As a condition of the FCC license, U.S. Cellular is prohibited from interfering with other licensed devices that are being operated in a lawful manner. Furthermore, no emergency communication system, television, telephone, or radio is licensed to operate on these frequencies, and therefore interference is highly unlikely.

8. Summary

U.S. Cellular has determined that a replacement of the decommissioned “Costco” facility is needed to maintain reliable service throughout areas of southern Nashua. Installing the proposed temporary wireless communications facility on L Silver Drive at an antenna centerline height of 125 feet (AGL) will replace coverage and capacity needed in the targeted coverage areas including key roadways such as Route 3, Daniel Webster Highway, the Pheasant Lane Mall, and the surrounding roads, neighborhoods, business/retail areas in the proximity of the proposed site. Without the installation of the proposed site, U.S. Cellular will be unable to maintain their existing 4G LTE wireless communication services in this busy area of Nashua; therefore, U.S. Cellular respectfully requests that the City of Nashua act favorably upon the proposed temporary facility.

9. Statement of Certification

I certify to the best of my knowledge that the statements in this report are true and accurate.

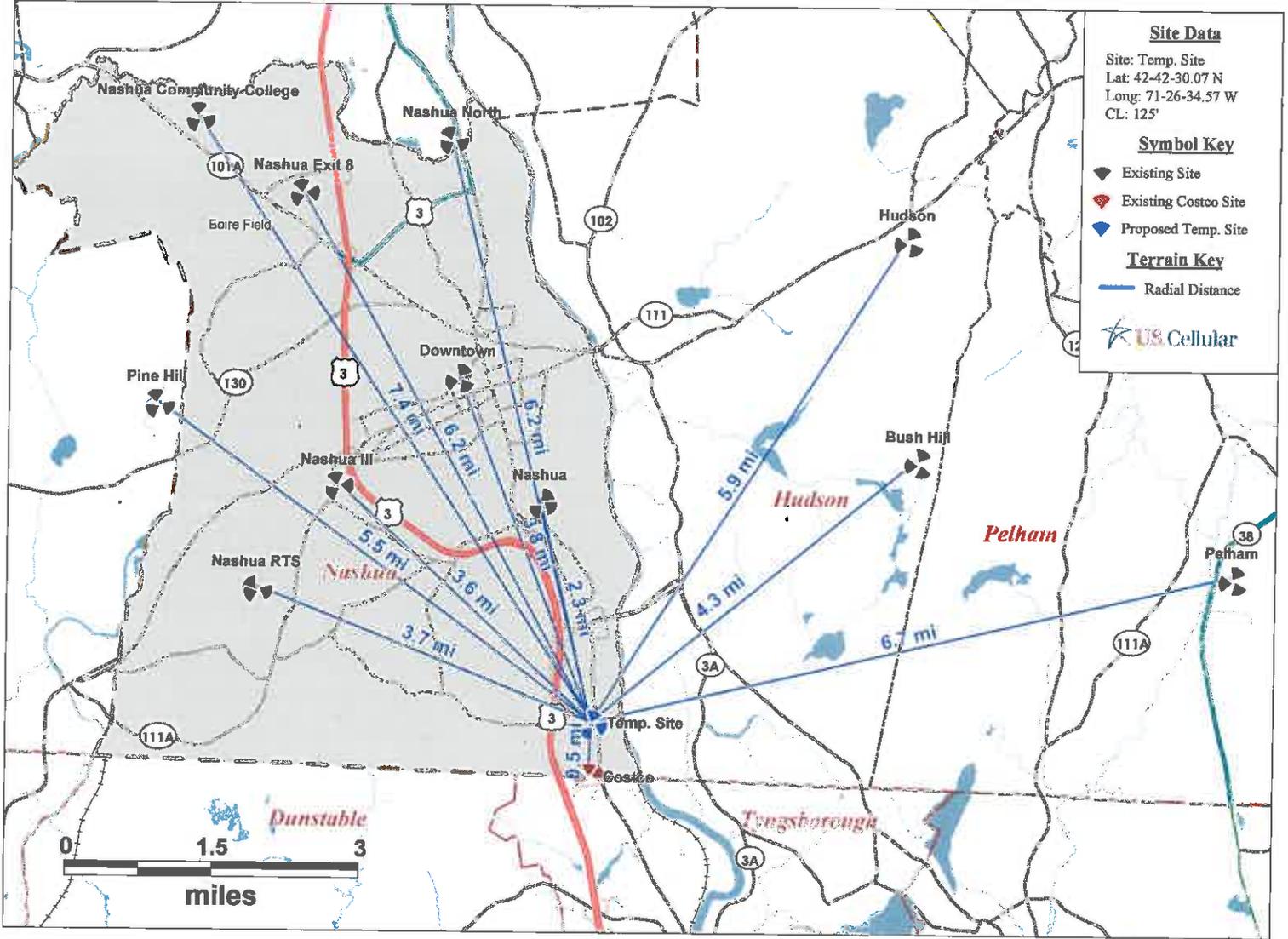


Keith Vellante
RF Engineer
C Squared Systems, LLC

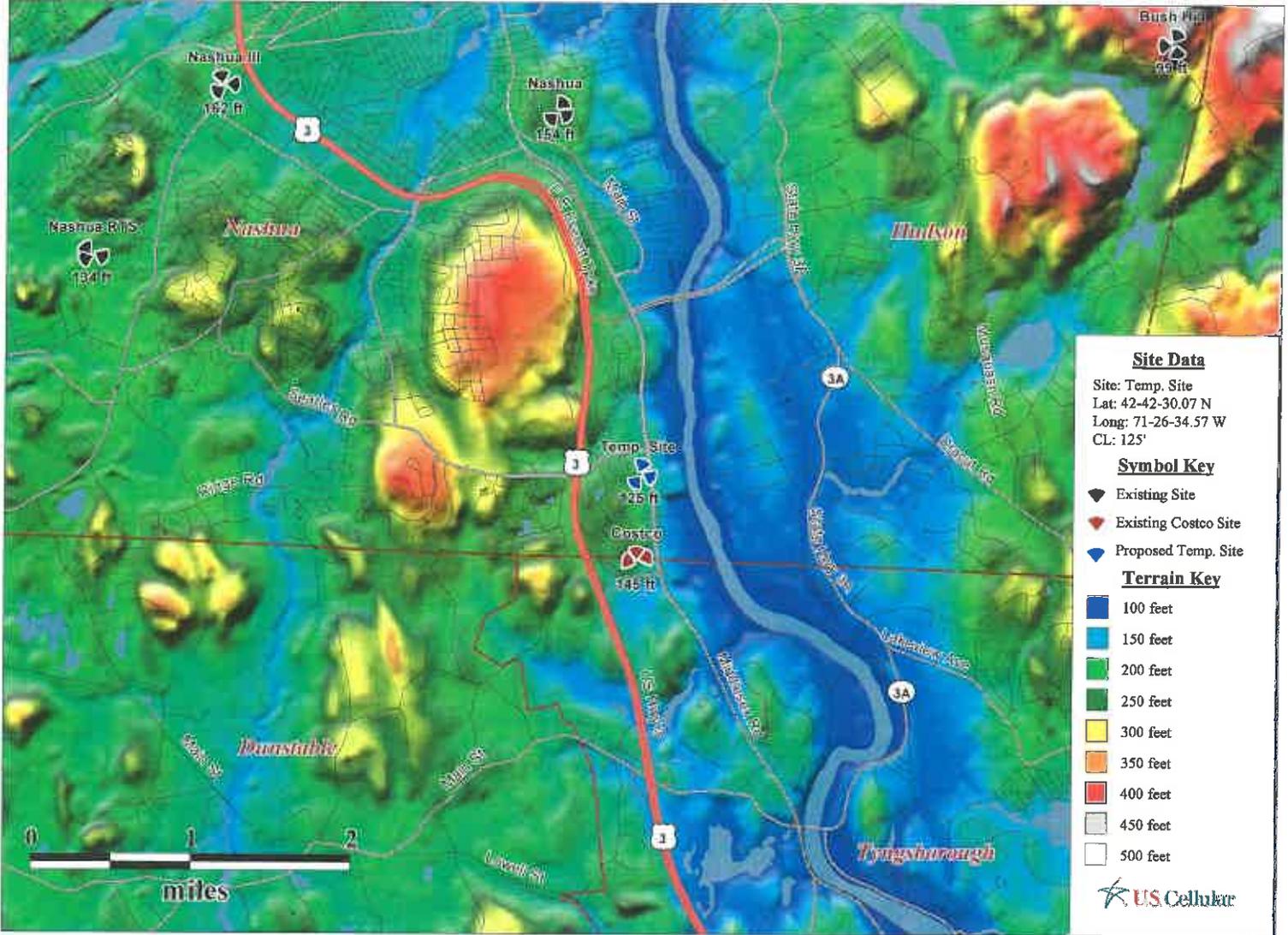
October 14, 2019
Date

10. Attachments

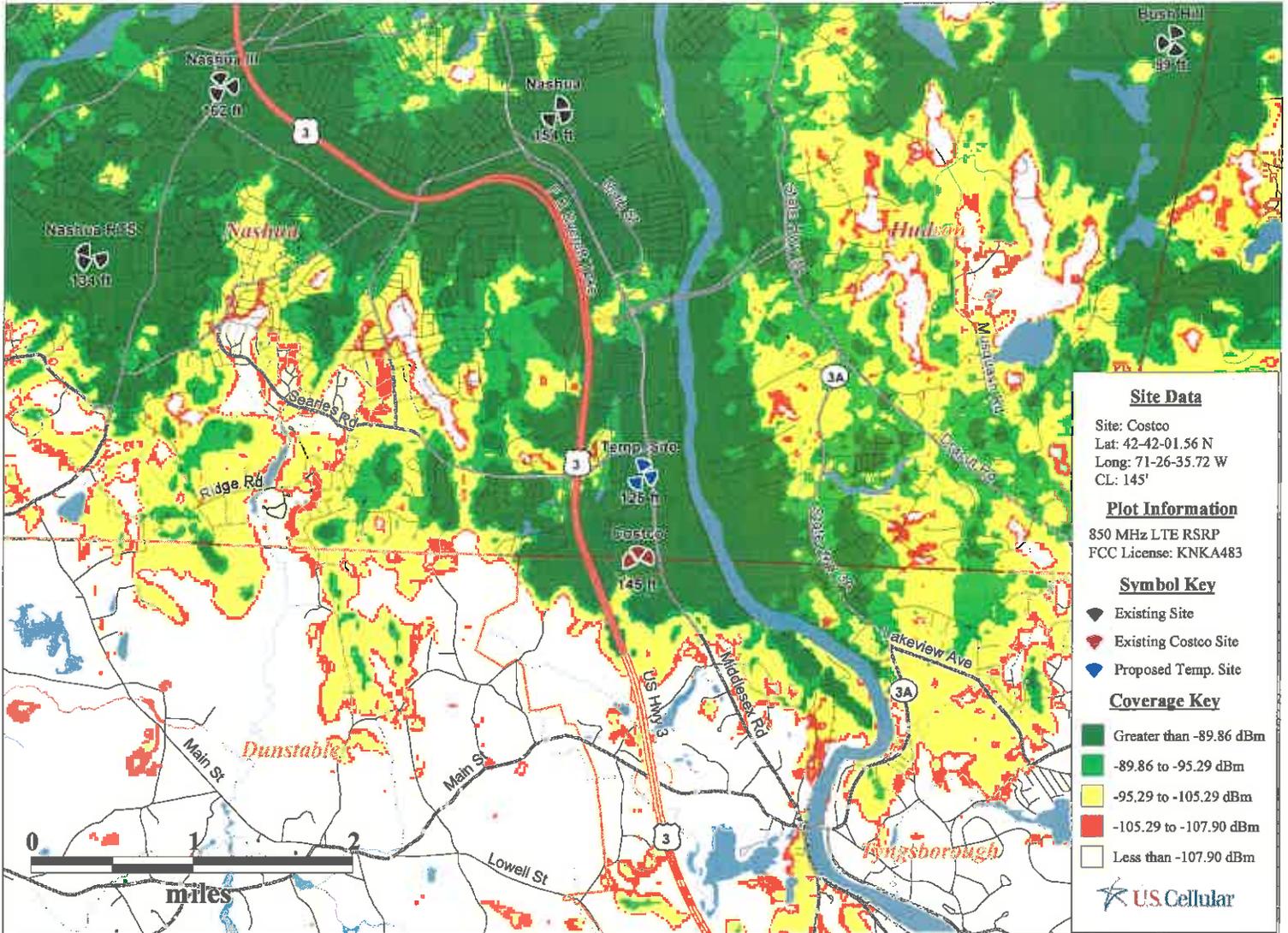
**Attachment A:
Temp. Site - Neighbor Sites & Radial Distances**



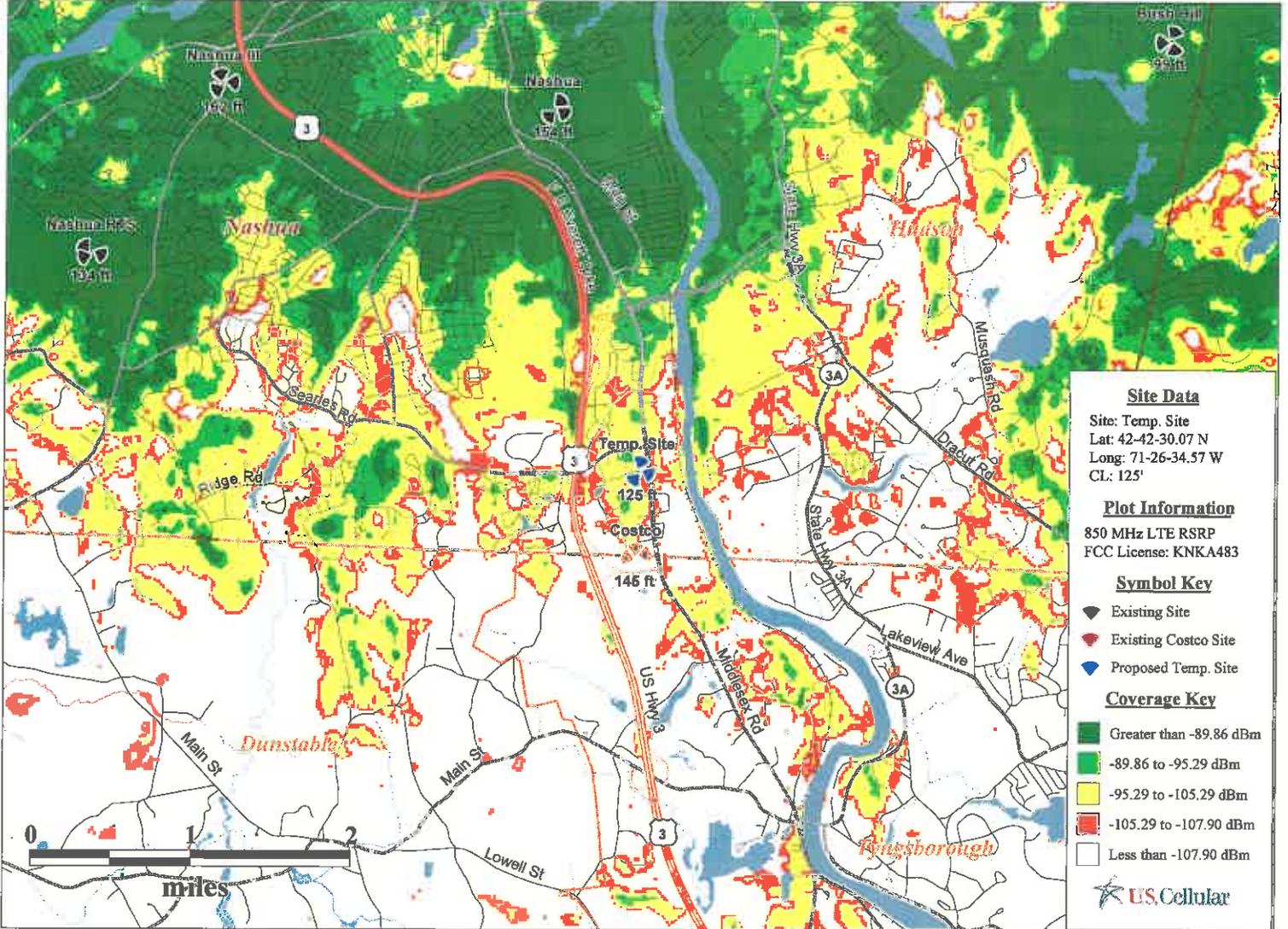
**Attachment B:
Temp. Site - Area Terrain Map**



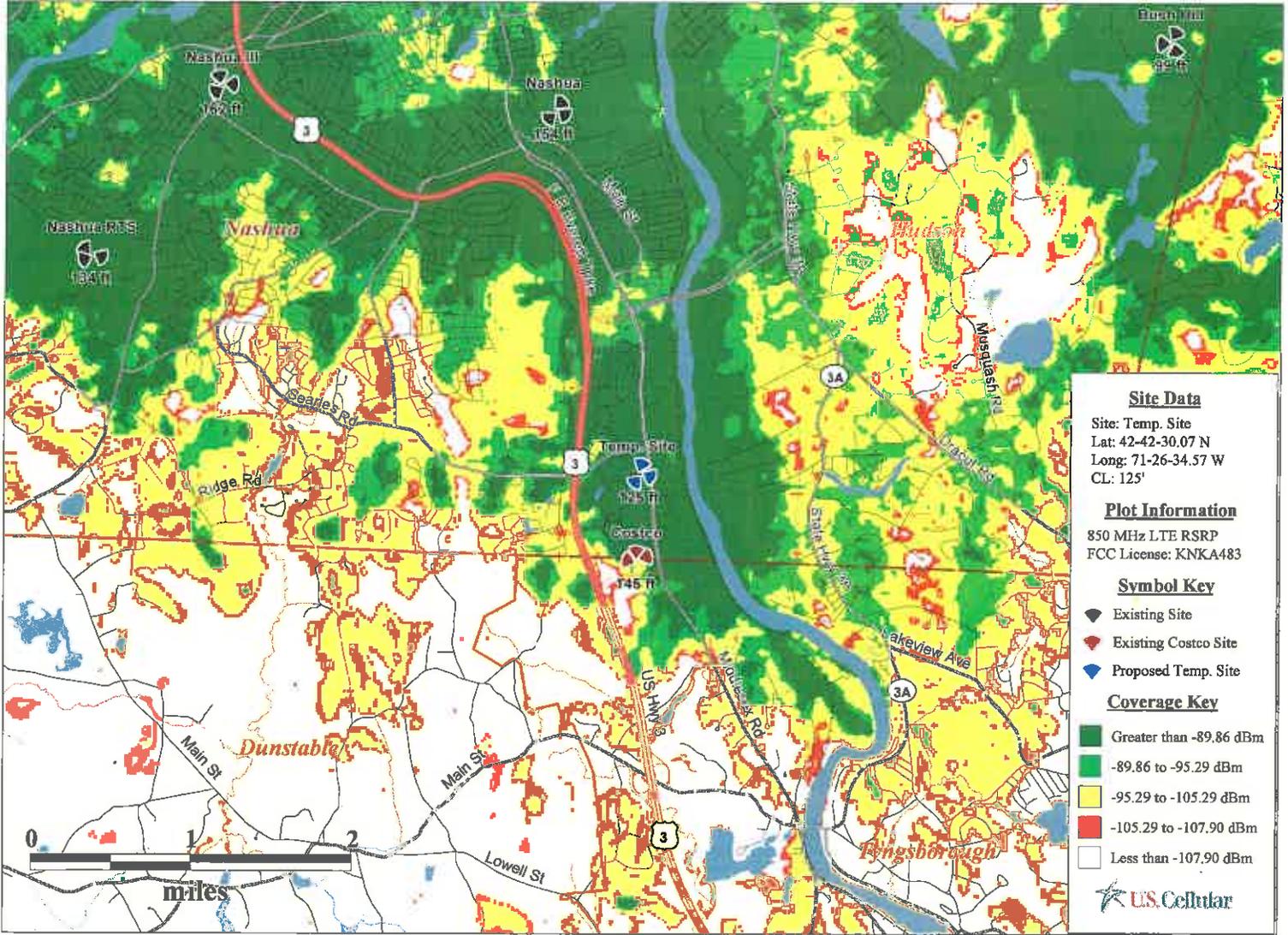
**Attachment C:
Temp. Site - Existing 850 MHz LTE Coverage**



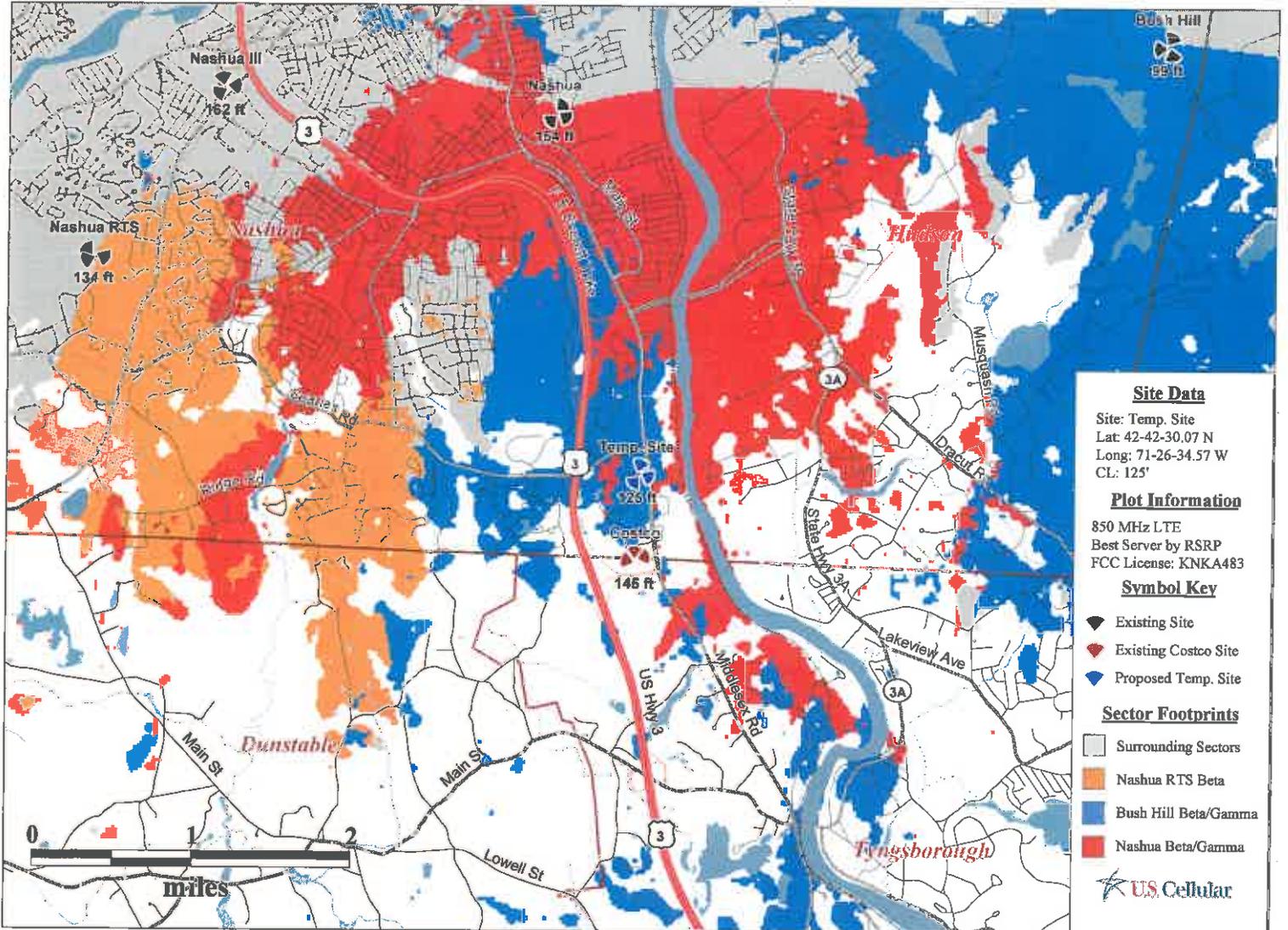
Attachment D:
Temp. Site - 850 MHz LTE Coverage without Costco Site



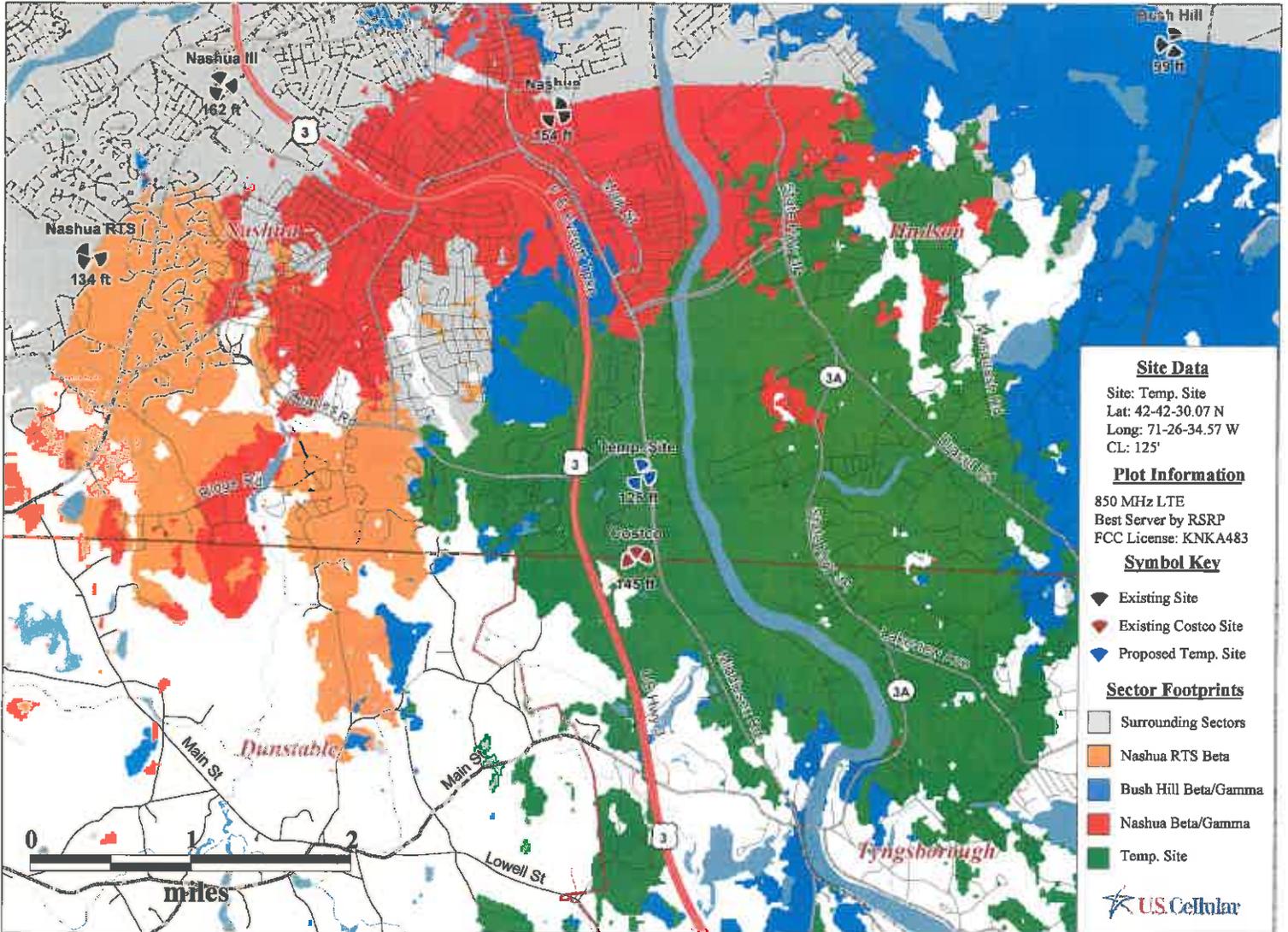
**Attachment E:
Temp. Site - 850 MHz LTE Coverage with Proposed Temporary Site**



Attachment G:
Temp. Site - 850 MHz LTE Sector Footprints without Costco Site



**Attachment H:
Temp. Site - 850 MHz LTE Sector Footprints with Proposed Temporary Site**



Camela O Coughlin



Return to: G07
Attorney Jeffrey A. Zall
PO Box 3652
Nashua, NH 03061-3652



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT, **Little Shoe Store Realty, Inc.**, a New Hampshire corporation with a principal place of business at 88 Bingham Road, Gilmanton, New Hampshire 03237, for consideration paid, grants to **SAVCAM LLC**, a New Hampshire limited liability company with a principal place of business at 259 Daniel Webster Highway, Nashua, New Hampshire 03060, with **WARRANTY COVENANTS:**

Property Address: 257 Daniel Webster Highway, Nashua, New Hampshire

Parcel One:

A certain tract of land with buildings and improvements thereon, located on the westerly side of Daniel Webster Highway South, in Nashua, Hillsborough County, New Hampshire, shown as **Lot-458, Sheet-A** on a plan of land entitled "Subdivision Plan, Lot 458 & 730/Sheet A Silver Drive & Daniel Webster Highway So. Nashua, New Hampshire For: Little Shoe Store Scale: 1"=20' April, 1983 Maynard & Paquette Inc.", recorded with the Hillsborough County Registry of Deeds as Plan No. 16226 (the "Plan"), more particularly bounded and described as follows:

Beginning at a point on the westerly side of Daniel Webster Highway South, said point being the southeasterly corner of the within described premises and the northeasterly corner of Lot 730, Sheet A as shown on the Plan; thence

(1) Along a curve to the left having a radius of 2,819.79 feet, a distance of sixty-four and 05/100 (64.05) feet along the westerly side of Daniel Webster Highway South to a point; thence

(2) Along a curve to the left having a radius of 20.00 feet, a distance of thirty-two and 12/100 (32.12) feet to a point on the southerly side of Silver Drive; thence

(3) North 81° 30' 52" West, a distance of three hundred sixty-seven and 12/100 (367.12) feet along the southerly side of Silver Drive to a point; thence

(4) South 8° 34' 50" West, a distance of one hundred forty-eight and 33/100 (148.33) feet along land now or formerly of Allen F. and Sandra R. Dickerman to a point; thence

(5) South 82° 07' 41" East, a distance of two hundred seventeen and 56/100 (217.56) feet along land now or formerly of Telemachus A. Demoulas, Trustee of Delta & Delta Realty Trust to a point; thence

(6) North 7° 52' 19" East, a distance of sixty and 00/100 (60.00) feet along the westerly side of Lot 730, Sheet A as shown on the Plan to a point; thence

(7) South 82° 07' 41" East, a distance of one hundred sixty-seven and 88/100 (167.88) feet along the northerly side of Lot 730, Sheet A to the point of beginning.

Parcel Two:

A certain tract of land with any improvements thereon, located on the northerly side of Silver Drive in Nashua, Hillsborough County, New Hampshire, shown on a plan of land entitled "Subdivision Plan of Land in Nashua, New Hampshire belonging to Ernest & Cecile Dolbec, Scale: 1"=50' May 31, 1967 by Hamilton Engineering Associates", recorded with the Hillsborough County Registry of Deeds as Plan No. 3631, bounded and described as follows:

Beginning at a point on the northerly side of Silver Drive, said point being 386.99 feet from the westerly side of Daniel Webster Highway, at the southwesterly corner of the within described premises; thence

(1) North 8° 35' 13" East, a distance of one hundred forty-one and 43/100 (141.43) along land now or formerly of E.X. & C. Dolbec to a point; thence

(2) South 80° 44' 41" East, a distance of eighty and 36/100 (80.36) feet along land now or formerly of White to a point; thence

(3) South 8° 29' 23" West, a distance of one hundred forty and 35/100 (140.35) feet along land now or formerly of G.A. & M. Gagnon to a point on the northerly side of Silver Drive; thence

(4) North 81° 30' 52" West, a distance of eighty and 67/100 (80.67) feet along the northerly side of Silver Drive to the point of beginning.

Subject to and with the benefit of:

1. Matters and notes shown on Subdivision Plan Lot 458 & 730/Sheet A Silver Drive & Daniel Webster Highway Nashua NH dated April 1983, recorded as Plan No. 16226, including 15 foot sanitary sewer easement, access and utility easements.

2. Notice of Lease of The Original Honey Baked Ham Company of the East, Inc., dated 12/31/97, recorded in Book 5429, Page 61.

3. Covenant made by Vosken Tomasian to the City of Nashua providing that sewer and water lines benefit and burden Lots 730, Sheet A and 458, Sheet A, dated June 28, 1983, recorded in Book 3064, Page 115.

4. Covenant made by Vosken Tomasian to the City of Nashua providing that storm drainage benefits and burdens Lots 730 Sheet A and 458 Sheet A, dated May 26, 1983, recorded in Book 3064, Page 116.

5. Covenant made by Vosken Tomasian to the City of Nashua providing that access to Lot 730 Sheet A shall be through and across Lot 458 Sheet A, dated May 26, 1983, recorded in Book 3064, Page 117.

6. Covenant made by Vosken Tomasian to the City of Nashua providing that 82 parking spaces shall be shared between Lots 730 Sheet A and 458 Sheet A as shown on Site Plan dated April 1983 on file with the Planning Board of the City of Nashua, dated June 28, 1983, recorded in Book 3064, Page 118.

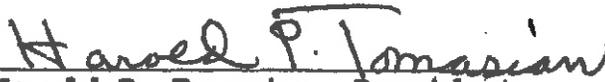
7. Slope, Maintenance or Façade Easement to the City of Nashua in Notice of Condemnation by the City of Nashua, dated June 13, 1991, recorded in Book 5262, Page 729.

Meaning and intending to describe and convey a portion of the premises conveyed to the Grantor herein by Warranty Deed of Harry R. Davis dated August 22, 1967 and recorded in the Hillsborough County Registry of Deeds at Book 1941, Page 445.

This is NOT homestead property.

IN WITNESS WHEREOF, Harold P. Tomasian, President, Little Shoe Store Realty, Inc. has hereunto set his signature this 22nd day of August, 2018.

LITTLE SHOE STORE REALTY, INC.


Harold P. Tomasian, President

LICENSE AGREEMENT

SUMMARY

Site #: 694333
Commencement Date:
Licensor: SAVCAM, LLC.
Site Address: L Silver Drive, Nashua, NH 03060
Contact Name: Eric Roberts
Phone Number: 603-491-5266
SS# or Federal Tax ID #:
Property Tax Key #: A-993

This Agreement documents a License agreement made this 11 day of September, 2019, by and between SAVCAM, LLC. ("Licensor"), and NH #1 Rural Cellular, Inc. ("Licensee") collectively referred to as the ("Parties").

- 1. Acceptable Premises. During the term of this License, Licensor agrees to cooperate with Licensee in obtaining, at Licensee's expense, all licenses and permits required for Licensee's use of the Premises (the "Governmental Approvals")
2. Commencement of License. This License shall commence on November 15, 2019 or the date that Licensee begins construction at the site, whichever first occurs ("Commencement Date").
3. Premises. The Licensed "Premises" is a portion of the Property owned by Licensor and located at L Silver Drive, Nashua, NH 03060. The Premises includes the nonexclusive right of ingress and egress, seven (7) days a week, twenty-four (24) hours a day and utilities thereto. The Premises and easement for ingress, egress and utilities are depicted in Exhibit "A".
4. Use. The Premises will be used by Licensee for a temporary "Wireless Communications Facility" and uses incidental thereto. The Wireless Communications Facility consists of an unmanned cell site on wheels (COW), antenna support structures, antennas and all necessary connecting appurtenances. Licensee is responsible for all utilities required by its use of the Premises. Licensee will promptly reimburse the Licensor for all utilities required by its use of the Premises. Licensee may make a separately metered connection to the commercial electric transformer located on the Property provided sufficient capacity above that required for Licensor's use exists.
5. License Term. The Term of this License is from November 15, 2019 through August 15, 2020. This License shall

terminate on midnight on August 15, 2019 unless extended by written agreement signed by both Parties.

- 6. License Fees.
7. Insurance. Licensee will continuously maintain in full force and effect a policy of commercial general liability insurance with limits of
8. Indemnification. Licensee agrees to indemnify and hold Licensor harmless from any and all claims arising from the installation, use, maintenance, repair or removal of the Wireless Communications Facility, now or in the future, except for claims arising from the negligence or intentional acts of Licensor, its employees, agents, independent contractors, or subcontractors.
9. Notices. All notices, requests, demands and other communications hereunder will be in writing and will be deemed given if personally delivered, mailed (certified and return receipt requested), or sent by courier to the following addresses:

If to Licensor:
SAVCAM, LLC.
c/o Eric Roberts
259 Daniel Webster Highway
Nashua, NH 03060
(603)-491-5266

If to Licensee:
NH #1 Rural Cellular, Inc.
8410 West Bryn Mawr Ave.
Chicago, IL 60631-3486
Attn.: Real Estate Lease Administration

- 10. Title and Quiet Enjoyment. Licensor warrants that: (a) it has full right, power, and authority to execute this Agreement; (b) it has good and unencumbered title to the Property free and clear of any liens or mortgages, other than an existing mortgage to Enterprise Bank & Trust Company. Licensor further warrants that Licensee will have the quiet enjoyment



of the Premises during the Term.

11. Hazardous Substances. The Parties will not introduce any substance in violation with any applicable federal, state or local law or regulation.
12. Waiver of Licensor's Lien. Licensor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Wireless Communication Facility or any portion thereof which is deemed personal property for the purpose of this License, regardless of whether or not same is deemed real or personal property under applicable laws, and Licensor gives Licensee the right to remove all or any portion of the same from time to time, in Licensee's sole discretion and without Licensor's consent.
13. Miscellaneous
 - a. The substantially prevailing Party in any litigation arising hereunder will be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.
 - b. This Agreement constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both Parties.
 - c. This Agreement is construed in accordance with the laws of the state in which the Property is located.
 - d. If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

DATED as of the date first set forth above.

LICENSOR: SAVCAM, LLC.

By: Eric J. Robert
Print Name: ERIC Robert
Its: MEMBER

LICENSEE: NII #1 Rural Cellular, Inc.

By: Jeffrey W. Baenke
Print Name: Jeffrey W. Baenke
Its: Vice President

Form approved at
USCell by mjt



A & D Klumb Environmental, LLC

October 15, 2019

Mr. Robert Gashlin
KJK Wireless
127 Ridge Road
Nashua, NH 03062

RE: Silver Drive 694399 Viewshed Survey

Dear Mr. Gashlin,

A & D Klumb Environmental, LLC performed a balloon float and viewshed survey for the proposed US Cellular 694399 Silver Drive temporary tower, to be located off of Silver Drive in Nashua, NH on October 8, 2019. A four and a half-foot diameter, red, helium filled, balloon was raised to the height of 130-foot elevation at the balloon top, at the approximate location of the tower. An additional balloon was floated at 150-feet to aid in stability. The winds were calm during the viewshed survey. All public roads within a ½-mile radius of the proposed tower site were walked or driven to determine the visibility of the proposed tower and photographs were taken of the balloon to show proposed tower visibility.

The review area included portions of Daniel Webster Highway, Spit Brook Road, Brook Village Road, Silver Drive, Danforth Road, Pheasant Lane, Royal Ridge, as well as Fairway Drive and Par Lane in Hudson. These locations are shown on the included viewshed survey map. Several roads within the review area were observed to be private, owned by corporations or apartments/homeowner groups. Private roads were not reviewed for visibility.

The included viewshed survey map is a USGS Topographical map showing the tower site as a red X with a ½-mile radius circle showing the area reviewed. Areas along the public roads where the lower balloon was visible are shown on the map marked in yellow. When the lower balloon was not visible the roads reviewed are marked in green. Photo locations are numbered and shown with a camera icon. All photographs included with this report were taken on October 8, 2019 with a "normal" lens; 35mm equivalent of 50mm, at a height of 5-feet above ground level, unless otherwise indicated.

Tower simulations are shown on photographs where the balloon was visible. The tower simulations are a representation of a 130-foot tall monopole tower with one close mount antenna array and one microwave dish.

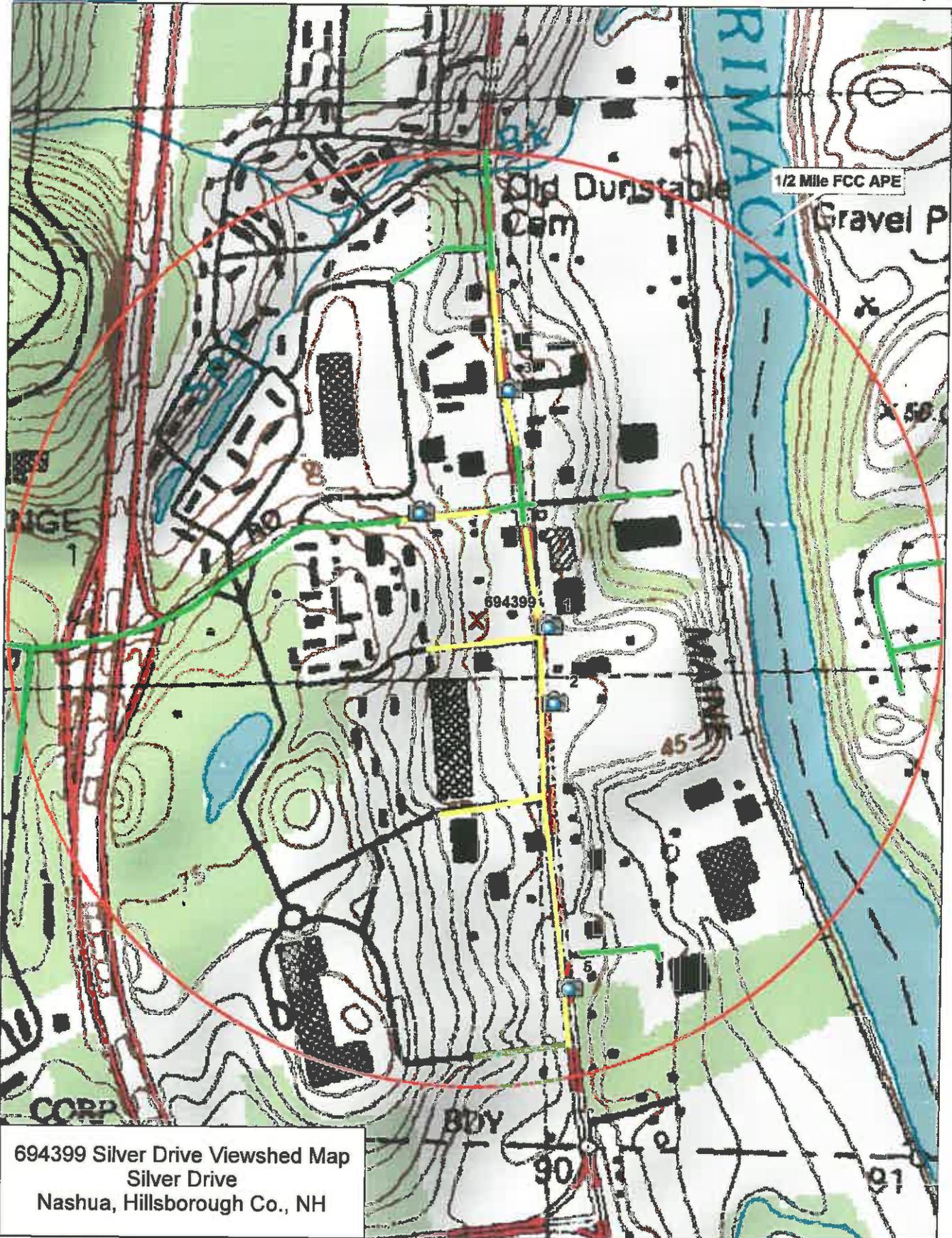
Please contact me if you have any questions regarding this viewshed survey.

Sincerely,

Audra L. Klumb
President

34 Centennial Drive
Webster, NH 03303

603-746-5065
adke@klumbenv.com



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 www.delorme.com

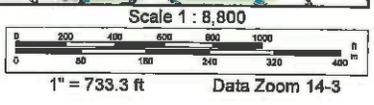
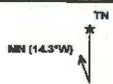




Photo 1. View of the balloons looking west from Daniel Webster Highway.

Photograph taken on 10/8/2019 at a camera elevation of 5-feet.

A&D Klumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@klumbenv.com



Photo 1 showing a 130-foot tall tower simulation.

A&D Klumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@klumbenv.com



Photo 2. View of the balloons looking northwest from Daniel Webster Highway.

Photograph taken on 10/8/2019 at a camera elevation of 5-feet.

A&DKumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@kumbenv.com



Photo 2 showing a 130-foot tall tower simulation.

A&DKlumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@klumbenv.com



Photo 3. View of the balloons looking southwest from Daniel Webster Highway.

Photograph taken on 10/8/2019 at a camera elevation of 5-feet.

A&DKumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-3065
adke@kumbenv.com



Photo 3 showing a 130-foot tall tower simulation.

A&DKlumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5063
adke@klumbenv.com



Photo 4. View of the balloons looking south from Spit Brook Road.

Photograph taken on 10/8/2019 at a camera elevation of 5-feet.

A&DKlumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-3065
adke@klumbenv.com



Photo 4 showing a 130-foot tall tower simulation.

A&DKlumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@klumbenv.com



Photo 5. View of the balloons looking northwest from Daniel Webster Highway.

Photograph taken on 10/8/2019 at a camera elevation of 5-feet.

A&D Klumb Environmental, LLC
34 Centennial Drive, Webster, NJ 08303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@klumbenv.com



Photo 5 showing a 130-foot tall tower simulation.

A&DKlumb Environmental, LLC
34 Centennial Drive, Webster, NH 03303



This photograph is part of a viewshed survey report and should not be reviewed separately.

603-746-5065
adke@klumbenv.com



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/11/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 540 W. MADISON CHICAGO, IL 60661 Attn: Chicago.CertRequest@Marsh.com; Fax: 212-948-0770	CONTACT NAME: PHONE (A/C. No., Ext): E-MAIL ADDRESS	FAX (A/C. No.):
	INSURER(S) AFFORDING COVERAGE	
CELL	INSURER A : Sentry Insurance A Mutual Company	NAIC # 24988
INSURED TELEPHONE AND DATA SYSTEMS, INC. UNITED STATES CELLULAR CORPORATION 30 N. LASALLE ST., STE. 4000 CHICAGO, IL 60602	INSURER B : Sentry Casualty Company	28460
	INSURER C : N/A	N/A
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CHI-007867893-45 **REVISION NUMBER:** 17

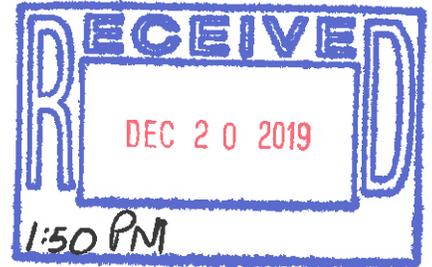
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			90-02578-11	01/01/2019	01/01/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPI/OP AGG \$ 4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			90-02578-04	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			90-02578-01 (DED) (AOS)	01/01/2019	01/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
B				90-02578-02 (MA,NY,WI,ND,OH,WA,WY)	01/01/2019	01/01/2020	E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER TELEPHONE AND DATA SYSTEMS, INC. UNITED STATES CELLULAR CORPORATION 30 N LASALLE ST., STE 4000 CHICAGO, IL 60602	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
--	---

Zoning Board of Adjustment
229 Main Street
Nashua, NH 03060
Attn.: Carter Falk
December 20, 2019



RE: Appeal of Planning Board Decision on Site Plan for 1 Hardy Street; Linatsas Family Trust (Owner); Ali Bird (Applicant).

I. Standard and Reasons for Appeal

Abutters, Clayton and Georgette Alexander of 1 Amherst Ter, are filing this appeal regarding the approval by the Planning Board on November 21, 2019 of the site plan for 1 Hardy Street, Linatsas Family Trust (Owner), Ali Bird (Applicant). Pursuant to RSA 676:5, III, "If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section." Since this decision is based in part the construction, interpretation, or application of zoning ordinances, it must first be appealed to the Zoning Board of Adjustment ("ZBA") prior to an appeal to superior court.

The approved site plan does not comply with the zoning ordinances. The fenced in outdoor dog area is an accessory use and an accessory structure. The ordinances require that the area: must be located on the same lot as the principal business (190-264); must have a 20 foot setback from adjoining property lines (190-16); and comply with screening and buffer requirements (190-181).

From the beginning of this case, the Planning Department and the ZBA have struggled over how to classify this outdoor dog area under the ordinances. The classification has never been adequately clarified for purposes of the site plan. At first, the area was considered an outdoor display area under 190-52A. Then the ZBA decided the case never should have been heard in the first place. The ZBA left it up to the Planning Board to determine the applicability of 190-52 to the site plan. The Planning Board decided that 190-52 does not apply because ZBA decided that the use as a dog day care is permitted in the Use Matrix. However, the Planning Board did not address other requirements for the site plan that ensure that the permitted use is constructed in such a way that it fits into the area in which it is being constructed.

190-52C, D and F have lot, setback, and screening and buffer restrictions specifically applicable to a site plan for outdoor display areas. A variance under 190-52A was granted, and now apparently has been vacated. Although the ZBA and Planning Board now deem this ordinance no longer applicable, these requirements are not uniquely limited to outdoor display areas under 190-52. They merely repeat similar requirements found in other ordinances,

specifically in the definitions of terms in 190-264, Definitions; 190-31, Accessory Uses and Structures; 190-16, Dimensional Regulations; and 190-181, Screening and Buffers.

II. The Outdoor Dog Area Cannot Be Located on the Residential Lot

The property at 1 Hardy Street is divided into two lots which comprise 1 and 3 Hardy Street. The residential home, driveway, and a small one car garage are located on one lot. The two car garage converted into a commercial building for office space is located on the second lot. The lot dividing line runs between the small garage and driveway, and the office building and front parking area. Historically, one lot has always been used residentially, and the other lot commercially. The house will continue to be used residentially. The Planning Board staff report states, "The existing house on the lot would be used as a residential unit."

The ZBA and Planning Board decided based on an inaccurate site plan map. It fails to show the deeded property lines on Amherst Ter, and fails to show the 1 Hardy Street two lot lines and their respective residential and commercial uses. At the October 17 Planning Board hearing, the Applicant's engineers were asked to do due diligence and return with the correct information. They did not do so. Since 190-52F was not considered applicable, the Planning Board did not factor the two lots or the setback into their decision, although the issue was raised at the hearings.

The site plan map is identical to the GIS map, describing the property as Sheet 62, Lot 152. According to the 1 Hardy Street deed, the property consists of two separate lots, numbered 40 and 41 on Plan 128. The deed is the controlling legal description of the property, not the zoning map or the GIS map, as the GIS disclaimer makes clear. The zoning ordinance in 190-264 defines "lot" as: "An area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan filed with the Administrative Officer by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control." The two lots are parts of a parcel of land in common ownership considered as a unit for the purpose of transferring legal title from one person to another by the deed. In addition to the deed, the two lots are also distinguishable by their historically separate residential and commercial uses. They are also distinguishable by the previous variances from 1983 and 1987 which only permitted commercial use as a chiropractic office in that building and specifically prohibited use of the residence for business. The Applicant will continue these separate uses.

The outdoor dog area is an accessory use incidental and subordinate to the principal use and structure of the commercial building for dog day care and boarding. By definition, as an accessory use, the area must be located on the same lot as the principal structure: 190-264 states: "Use, Accessory: A use incidental and subordinate to the principal use of a structure or lot, or a use not the principal use, which is located on the same lot as the principal structure."

The proposed fenced in outdoor dog area spans and encloses almost half of both lots. The vast majority of the area is the rear yard on the residential lot. The commercial lot has is no rear yard behind its building, only a narrow pathway approximately 6 ft. wide. There is a small area perhaps 20 x 20 feet between one side of the building and the one car garage. The front of

the building is the paved parking area. The outdoor dog area can only use this considerably smaller area of the property around the commercial building.

Even if 1 Hardy Street is considered as one zoning or GIS lot instead of the two deeded lots, there are still two different uses. If there is more than one use on one lot, then all zoning requirements must be met for both residential and commercial uses. No ordinance or previous variance permits the residence and its lot to be used commercially.

III. The Outdoor Dog Area Requires a Setback from the Property Lines

Since the outdoor dog area is an accessory use, the fenced in part is necessarily an accessory structure under the ordinances. The precedent for this case, Chewie's Playland on 217 West Hollis, required a variance under 190-52A for an identical fenced in outdoor dog area. Chewie's fenced in area functions as an accessory use and accessory structure attached to the principal building. The area use and structure at 1 Hardy Street are substantially similar.

The 1 Hardy Street site plan merely utilizes the existing residential fencing and fills in a few gaps. However, this is not being used as a typical residential screening fence. It is a commercially used dog run for bathroom and exercise purposes being utilized throughout the day and night. The urban chicken ordinance discusses similar animal runs. 190-31.1C(8) states: "The coop and any run must be located in side or rear yards and cannot be located within 20 feet of a property line." The chicken run is distinct from any residential fence and cannot occupy the entire yard. A similar setback for a commercial dog run is perfectly reasonable.

190-264 defines "Structure, accessory: A detached structure, the use of which is customarily incidental and subordinate to that of the principal use, principal building or principal structure, and which is located on the same lot as that occupied by the principal use, principal building or principal structure." The outdoor dog area is clearly an accessory structure incidental and subordinate to the principal use and building. Again, an accessory structure must be located on the principal business lot.

As an accessory use and structure, the outdoor dog area must comply with the requirements of 190-31, Accessory Uses and Structures. The definition of "structure" in 190-264 includes both a building and a fence: "Structure: A combination of materials for occupancy or use, such as a building, ... fence, sign or the like. [Comment: Compare "building."]" 190-31 applies to accessory structures like fences and accessory buildings since they are equivalent terms and uses. The difference is an accessory building is a structure with a roof.

The fenced in outdoor dog area will be attached to all three buildings on the property, enclosing the residence, one car garage, and commercial building, and used only in conjunction with the commercial building. 190-31A(1) states that in commercial districts, a detached accessory building shall comply with specific dimensional standards. A "detached" structure requires a minimum side or rear setback of 6 feet. For an "attached" structure, 190-31A(2) states: "An accessory building attached to the principal building shall be considered an integral part thereof and shall be subject to front, side and rear yard requirements applicable to the

principal building.” The fence is being attached to the commercial building as an attached accessory structure which is “an integral part” of the principal building.

The setback requirements for an LB District are set forth in 190-16E, Setbacks (Dimensional Matrix, Columns G through K). The Dimensional Matrix, Table 16-3, Column K requires a Minimum Rear Setback of 20 feet. Again, this is similar to 190-52C which requires an outdoor display area to be setback 20 feet from an adjoining property line.

190-16H states: “Rear setbacks shall be measured from the rear property line.” The rear property line of 1 Hardy Street adjoins a two foot tract on the southwesterly side of Amherst Ter that is deeded to all the propertyholders on that street. All the properties on Hardy Street have no rear entrance or exit onto Amherst Ter. The rear yard does not abut the street and is not in the City right-of-way, so the setback cannot be measured from there. The rear fence is only setback approximately one foot from the rear property line.

Whether considered a detached or attached accessory structure, there is a minimum rear setback requirement of 6 or 20 feet. In addition, there are similar minimum side setback requirements of 6 or 20 feet in 190-31 and 190-16, Table 16-3, Column K. These rear and side setback requirements further restrict where the outdoor dog area may be located.

IV. The Outdoor Dog Area Does Not Meet Screening and Buffer Requirements

The homes on Amherst Ter are in a residential R-A district and share a boundary with a nonresidential LB district. Site plan approval criteria in 190-146D(17) states: “Landscaping shall conform to the requirements of Article XXVII.” This Article includes 190-181, Screening and Buffers. 1 Hardy Street must meet these requirements. The purpose section states: “These requirements are intended to preserve, protect, and restore the quality of life and property values for residential neighborhoods that share a boundary with a nonresidential district.... All buffers shall be provided on the premises within the nonresidential district immediately adjacent to a residential district boundary.”

190-181A, Applicability, states: “(1) Screening and buffers are required for: (a) Any lot in any industrial or commercial district that abuts a residential district; or (b) Any use allowed in any industrial or commercial district that abuts a residential district. (2) Structures, pavement, utility construction, signage and similar hardscape improvements shall not be permitted to encroach on any buffer unless specifically permitted by the Planning Board.” The screening and buffer requirements apply to any lot and any use. The structure cannot encroach on the buffer.

190-181B(1), Required buffers, states: “The buffer is intended to be landscaped and improved in order to provide effective visual screening on a year-round basis for uses in residential districts at a boundary with a nonresidential district. Buffers shall employ existing vegetation, or nursery stock, or both, as well as fences, walls, earth berms, or grade changes, in accordance with these standards. These standards are intended to create a dense or opaque screen for the first six feet above the ground elevation of the residential district immediately

adjacent to the district boundary, and a semiopaque screen from the sixth to 30th foot above that ground elevation.” There is no landscaping or fencing on the site plan that provides a semiopaque screen from 6 to 30 feet above the ground. 1 and 3 Amherst Ter and 7 Hardy Street can all view unscreened the outdoor dog area from their second story house windows.

According to Table 181-1, the required buffer yard for an LB district adjoining R-A is Buffer Type B. Table 181-2 states that Buffer Type B requires minimum plant materials spanning a minimum width of 15 feet, 2 large trees, 2 medium/small trees, 20 shrubs, and an optional fence or wall. There are some plant materials along the rear fence facing Amherst Ter. However, the site plan map fails to show them at all. The existing plant materials are only 2 small trees, 3 evergreen shrubs, and 3 grass shrubs along the residential portion of the rear fence, with nothing along the commercial portion. The landscaping does not meet the minimum buffer yard requirements.

190-181B(4), Fences and walls, states: “The required fence or wall shall be solid or opaque, at least six feet in height, and shall be installed parallel to, and for the entire length of the district boundary. Where a buffer containing a fence has been established on one side of a residential district boundary, a fence may not be used to fulfill this requirement on the side of the district boundary which is directly opposite such a fence or wall.” The rear fence runs parallel to the entire length of the rear side of the district boundary. The site plan is to fill gaps in the rear fence and add a front fence connecting the house, the small garage, and the commercial building. This front fence may not be used to fulfill this requirement because it is on the side of the district boundary directly opposite the rear fence.

190-181D, Buffer Use Restrictions, states: “Buildings, impervious surfaces, and parking, as well as the storage and display of vehicles, goods, and materials, are prohibited within the buffers required pursuant to this section.” Similar to 190-52, this is a reference to outdoor storage and display of goods. While 190-52 may not be applicable, the outdoor dog area is for commercial use. The purpose of 190-80 is to screen and buffer commercial uses, structures, and goods from adjoining residential districts. Any commercial outdoor area is meant to be separate from the buffer. Here the fenced in outdoor dog area not only encroaches on the required buffer, it is identical to the buffer. The buffer and the use and structure cannot be the same.

190-181F, Implementation of the Buffer Requirements, states: “Where lots abutting a residential district boundary have been previously developed, the standards and requirements of this section shall be implemented at such time as a change in use classification occurs...”. The use classification has been changed from a chiropractic office to a dog day care and boarding business. Any previous buffer requirements for 1 Hardy Street no longer apply. The new site plan must now meet all the requirements of 190-181.

IV. Conclusion

The site plan approved by the Planning Board does not comply with the terms of the zoning ordinances. As such, the decision is illegal and unreasonable. The fenced in outdoor dog

area is an accessory use and an accessory structure. It must be located on the same lot as the principal business use and building. It must meet the setback requirements. It must meet the screening and buffer requirements. Just because the outdoor dog area is considered to be an accessory use to a primary permitted use does not mean that these other requirements do not still apply to the site plan. The use of the property as a dog day care is a separate and distinct issue apart from the construction and location of the outdoor dog area according to the site plan.

The ZBA left it up to the Planning Board to regulate and restrict the outdoor dog area. The site plan fails to do so. We request that the ZBA determine that the site plan must comply with the lot, setback, and screening and buffer requirements of the ordinances.

Respectfully submitted by Clayton and Georgette Alexander, 1 Amherst Ter.



Return to:
David & Steven Linatsas, Trustees
Linatsas Family Trust
10 Edgewood Avenue
Nashua, NH 03064

Quitclaim Deed

I, **David Linatsas**, married, of 10 Edgewood Avenue, Nashua, County of Hillsborough, State of New Hampshire for consideration paid

Grant to

David Linatsas and Steven Linatsas, Trustees of the Linatsas Family Trust, having a mailing address of 10 Edgewood Avenue, Nashua, County of Hillsborough, State of New Hampshire

With Quitclaim Covenants:

A certain tract of land situated in Nashua, County of Hillsborough, State of New Hampshire, bounded and described as follows:

Beginning at a stone bound at the intersection of Amherst and Hardy Streets, thence running southwesterly on said Hardy Street about one hundred and thirty (130) feet to the northeasterly line of lot numbered forty-two (42) on a plan new number one hundred and twenty-eight (128) on file in the Hillsborough County Registry of Deeds at said Nashua, thence turning and running northeasterly by the said northeasterly line of said lot numbered forty-two (42) about eighty-five (85) feet to land now or formerly of Shea, thence turning and running northeasterly by said land of Shea about one hundred and thirty (130) feet to said Amherst Street, thence turning and running southeasterly by said Amherst Street about eighty-five (85) feet to the place of beginning. Containing about eleven thousand and twenty (11,020) square feet with buildings thereon being lots numbered forty (40) and forty-one (41) on said plan.

Meaning and intending to describe and convey the same premises conveyed to David Linatsas by deed of Elizabeth J. Linatsas pursuant to a Decree of Divorce in the Hillsborough County Superior Court - South, Docket No. 18-M-0615 and recorded in the Hillsborough County Registry of Deeds March 7, 2012 at Book 8403, Page 2717. See also: Deed from James Linatsas and Evanthea Linatsas dated October 3, 2002 and recorded in Book 6724, Page 1427. Hillsborough County Registry of Deeds.

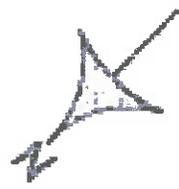
This is not homestead property. No independent title examination has been done.

Prior Document
View Book/Page
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Document Book Document Page
Plan Number

Images Available
Books 0449 - 9206
Plan Numbers: 00001 - 40287







Corinne O. Conley

After recording, return to:
Georgette Alexander
1 Amherst Terrace
Nashua, NH 03064

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that, we, David Fisher, a married person, and Georgette Alexander (f/k/a Georgette Fisher), a married person, for consideration paid; grant to Georgette Alexander with a mailing address of 1 Amherst Terrace, Nashua, New Hampshire, with QUITCLAIM COVENANTS, the following described premises:

Two certain tracts of land at One Amherst Terrace, with the buildings thereon, situated in Nashua, Hillsborough County, New Hampshire, bounded and described as follows:

Tract I:

Beginning at the junction of Amherst Street and Amherst Terrace on the westerly side of Amherst Terrace and the southerly side of Amherst Street; thence

Westerly by said Amherst Street, eighty-six and 78/100 (86.78) feet, more or less, to a stone bound; thence turning and running

Southerly fifty-eight and 85/100 (58.85) feet, more or less, to a stone bound; thence

Easterly by said land now or formerly of French, eighty-seven and 25/100 (87.25) feet, more or less, to a stone bound at the place of beginning.

Tract II:

Beginning at a stone bound on the southerly side of Amherst Street; thence

Westerly two (2) feet, more or less, to said Amherst Terrace; thence

Southerly by said Amherst Terrace, sixty-five and 15/100 (65.15) feet, more or less, to a point opposite the third bound in the above described lot of land; thence

Easterly two (2) feet, more or less; thence

Northerly sixty-five and 15/100 (65.15) feet, more or less, to a stone bound at the place of beginning.

Meaning and intending to describe and convey the same premises conveyed to the within Grantor by deed of Randy Karl Rethemeyer and Jodi Beth Kerper dated July 24, 2002, recorded with said Registry of Deeds at Book 6674, Page 910.

This is a non-contractual transfer and is exempt from transfer tax pursuant to divorce decree filed with the Hillsborough County Superior Court - South, Docket 05-M-0238.

By the acceptance of this deed the grantee assumes and agrees to pay the outstanding first mortgage to Wells Fargo, and/or its assignees, and any and all other liens and encumbrances except for the homeequity line of credit to Triangle Federal Credit Union, which David Fisher agrees to pay.

This is not the homestead property of David Fisher or his spouse.

WITNESS my hand this 7 day of June, 2011. 2016 of

[Signature]
Witness

[Signature]
Georgette Alexander

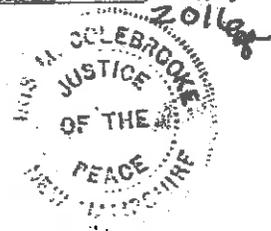
I, Clayton Alexander, husband of Georgette Alexander, hereby release my homestead for the purposes of this transaction.

[Signature]
Witness

[Signature]
Clayton Alexander

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 7th day of June, 2011, by Georgette Alexander and Clayton Alexander.



[Signature]
Notary Public/Justice of the Peace
My commission expires: 05/04/2021

WITNESS my hand this 2nd day of December, 2011.

Witness 


David Fisher

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 2nd day of December, 2011, by David Fisher.


Notary Public/Justice of the Peace
My commission expires: 4/10/13

**FIDUCIARY DEED
WITH CONSENT**

We, Connie Grimes and Roger Payer, Nashua, Hillsborough County, State of New Hampshire, Co-Executors of the Will of Edith Payer Avard, and Roland Payer, heir of said Edith Payer Avard by the power conferred by the Hillsborough County Probate Court and every other power, for consideration paid, grant to DAVID W. SHERMAN, UNMARRIED 1 AMHERST TERRACE NASHUA, N.H. 03060 Hillsborough County, State of New Hampshire, as joint tenants, with right of survivorship, the following described premises:

The land at One Amherst Terrace, Nashua, County of Hillsborough, State of New Hampshire, bounded and described as follows:

Beginning at the junction of Amherst Street, and Amherst Terrace on the westerly side of Amherst Terrace and the southerly side of Amherst Street;

thence; Westerly by said Amherst Street eighty-six and 78/100 (86.78) feet, more or less, to a stone bound;

thence; turning and running southerly fifty-eight and 85/100 (58.85) feet, more or less to a stone bound at land of French; now or formerly

thence easterly by said land of French eight-seven and 25/100 (87.25) feet more or less, to a stone bound at the place of beginning.

Tract II

Beginning at a stone bound on the southerly side of Amherst Street;

thence; Westerly two (2) feet, more or less to said Amherst Terrace;

thence; Southerly by said Amherst Terrace sixty-five and 15/100 (65.15) feet more or less, to a point opposite the third bound in the above described lot of land; thence

thence; easterly two (2) feet, more or less, and

thence; northerly sixty-five and 15/100 (66.15) feet, more or less, to a stone bound at the place of beginning.

Meaning and intending to described a strip two feet wide on the said Amherst Terrace and directly opposite the line of Amherst Terrace of the above described property.

Meaning and intending to convey and hereby conveying the same premises conveyed by Estate of Donald J. Henderson, Administrator Catherine Crosby to Charles A. Payer and Edith C. Payer dated January 13, 1950 and recorded in the Hillsborough County Registry of Deeds in Book 1254, Page 110.

IN WITNESS WHEREOF, We have hereunto set my hand, this 9th day of October 1992.

[Signature]
Witness

[Signature]
Connie P. Grimes

[Signature]
Witness

[Signature]
Roger Payer

Witness

[Signature]
Roland Payer

CONSENT

We, the undersigned, legatees of Edith Payer Avard hereby consent to the within conveyance.

[Signature]
Witness

[Signature]
Roger Payer

[Signature]
Witness

[Signature]
Connie Grimes

Witness

[Signature]
Roland Payer

STATE OF NEW HAMPSHIRE
HILLSBOROUGH SS

On this, the 9th day of October, 1992, before me, the undersigned officer, personally appeared Connie Grimes and Roger Payer Co-Executors of the Will of Edith Payer Avard, and as legatees of Edith Payer Avard, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they have executed the same for the purpose therein contained.

Before me,

[Signature]
NOTARY PUBLIC
DIANE J. BARRETT, P.
My Commission Expires August 16, 1994

State of Florida
County of Orange

On this, the 2nd day of October, 1992, before me, the undersigned officer, personally appeared Roland Payer and acknowledged the foregoing to be his free act and deed.

Notary Public
Thomas Joseph McElroy
STATE OF FLORIDA
My Comm Exp 7/4/94
BONDED

Before me,

[Signature]
Justice of the Peace

8K5377 PG0316

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 24, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 24, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Carter Falk, Deputy Planning Manager/Zoning

Mr. Boucher explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Boucher explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Boucher also explained procedures involving the timing light, as well as the projector in front of the stage for plans to show the audience.

1. **David & Steven Linatsas, Trustee of the Linatsas Family Trust (Owner) Ali Bird (Applicant) 1 Hardy Street (Sheet 62 Lot 152) requesting use variance from Land Use Code Section 190-52 (A) for a fenced in area for outdoor use for a dog day care. LB Zone, Ward 4.**

TABLED FROM 9-10-19 MEETING

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

MOTION by Mr. Boucher to re-open the Public Hearing for this case, as it was tabled from the September 10, 2019 meeting, to specifically get information from the applicant on what the Board specifically asked for from the last meeting. He said that all the testimony from the previous meeting is incorporated

into the record. He said that there will be an opportunity for those speaking in favor or in opposition, with rebuttal specifically limited to what has been brought up this evening.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

Chris Guida, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Guida said that it's his understanding that one of the key issues was that the Board was looking for some sort of waste management plan, specifically the management of dog waste. He said that he understands that the Board received a copy of the WyshiWash product, that is an antibacterial cleaning product that you spray right on the area, although is not sure of the manufacturer's recommendations, but it will be applied per the instructions.

Mr. Guida said that the waste will be picked up immediately from the dog area, put in a closed container, double-bagged. He said that for hygienic reasons as well as proper management, it will be done right after the dogs go. He said that he is well aware of canine behavior.

Mr. Lionel asked about the dog urine, and it kills the grass quickly.

Mr. Guida said that they will dilute the area and spray it down, and the bacteria in the soil will help break it down.

Mr. Boucher asked about the future of the grassed outdoor area.

Mr. Guida said if the business is doing well, and there's a financial capability to install some sort of an AstroTurf, it would be done, perhaps within a couple years.

Mr. Boucher asked if the artificial turf be for the whole area.

Mr. Guida said it would be anywhere where the animals are isolated in would have the turf.

SPEAKING IN FAVOR:

Mr. Boucher said that for public testimony, it will be limited to what the applicant just spoke about. He said that all the other previous testimony is on the record.

Dave Mackie, 6 Indiana Drive, Nashua, NH. Mr. Mackie said he lives right across the street from where Ms. Bird is using the lot as a dog day care. He said that as soon as they moved in, the flowers and landscaping were updated and kept nice. He said that he hasn't had any issues with dogs or odors, and it's been a pleasure having her as a neighbor.

Richard Hookey, 8 Indiana Drive, Nashua, NH. Mr. Hookey said that he's never seen a dog loose, and has never heard the dogs barking. He said that odors haven't been an issue, and hasn't had any problems with her being there at all.

Mr. Boucher said that several letters of support were submitted, from Gina Bielawski, Debra Gleeson, Shawn St. Lee, Nicole LeBlanc, Sue Dolens, and Billy Brown, Lydia Foley. He said that all the letters are in the record.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Judy Hogan, 71 Wason Avenue, Nashua, NH. Mrs. Hogan said that they strongly oppose the business at this location. She said that the same applicant was denied the same application back in May 2019 at 154 Amherst Street. She said that the Board should apply the same concerns to this application at this location as well, and deny this request. She said that in the last denial, the Board found that there are plenty of other businesses that could be supported at this site, and that the overall level of activity would be too much for that neighborhood. She said that the Board also found that the location of a dog day care could devalue and disturb the businesses as well as the homeowners nearby, also, that the use was contrary to the public interest, and substantial justice was served not to support it. She said that the Board should apply these same concerns to this site and deny the application. She said that the neighborhood should not be subjected to the noise, odors and destructive activity. She said that they also advertise dog boarding, and 24/7 activity.

Mrs. Hogan said that they visited four other dog day care facilities, and all were on industrial sites, with no neighborhoods to disrupt, and they are perfect locations for dog day cares. She said that this neighborhood needs to be kept

safe for everyone.

Clayton Alexander, 1 Amherst Terrace, Nashua, NH. [his testimony very difficult to make out from recording]. Mr. Alexander said that he has issues with waste disposal, runoff issues, disturbance and increased traffic coming to and from that location. He said that Ms. Bird submitted an almost identical waste management plan and got rejected and it included artificial turf. He said that they don't comply with Section 190-52 of the Ordinance, and believes that they need more variances to apply for, and they should have a 20-foot setback from adjoining property lines. He said that the backyard area will be very hard to keep clean, as it is not a hard concrete surface. He said that there is not a hardship here; this is not the right location. He said that there is already fair and reasonable use as commercial property.

Dan Hogan, 71 Wason Avenue, Nashua, NH. [his testimony was illegible from the recording].

Mr. Boucher said that the Zoning Board does not draw the zoning lines for the City; the Board is here to decide cases. He said that this property is the Local Business zone; it's not a residential zone. He said that the zoning line runs down the center of Amherst Terrace, and on the south side, it's zoned LB, and the north side is residential. He said that it has been this way for decades. He said that the only body that can change the zoning districts is the Board of Aldermen.

Mr. Lionel said that this is a permitted use, the only reason why the applicant is here is for the outdoor display or use, and City staff has determined that a variance is required for that issue. He said that a dog day care is a permitted use in this zone.

Mr. Hogan spoke but his testimony was illegible.

Alison Hogan, 7 Hardy Street, Nashua, NH. Ms. Hogan said that the property got changed over to business in 1983 when Dr. Linatsas got approval for the chiropractor use. She said that their long term plan does not address sufficient way to control the odor, as just hosing down the area will create a mess, the grass will deteriorate over time, and the runoff will go off site, and it will be an issue, which is against the public interest. She said that there is a concern that the odor will

cause an issue with property values, and said that she submitted information from a licensed real estate agent that did an assessment of the property, and the result was that it would affect the property values, it would result in a loss. She said that the applicant does not address property values, and does not address unnecessary hardship or public interest and the spirit of the ordinance, all of the statements are conclusory in nature, it is a logical fallacy. She said that the business will create noise and odors. She said that the application does not address the odor issue, and the burden of proof is on the applicant, it is not upon the abutters or residents. She said that they did not do their due diligence. She said that she is concerned for the health and safety of the dogs, and that there is an ordinance that if there is any noise between 10:00 p.m. and 6:00 a.m., the animal control officer can issue citations. *[her testimony was difficult to understand as well]*.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Branon said that he heard a couple issues that were outside of what we are talking about tonight. He said that this is a permitted use, and to have a permitted use without bathroom facilities, is like a hotel room without a bathroom. He said that as far as odor goes, the staff will pick up the material, bagging it, and there is no odor when it's double-bagged and disposed of weekly. He said that the urine does not have an odor when it's sprayed down. He said that in winter conditions, it's actually easier to pick things up because the ground is frozen.

Mr. Branon said that the only time there is an odor issue is when you step in it, and get in your car in an enclosed space. He said he has dogs that go in his back yard, and there is no odor out there.

Mr. Branon said that he feels that a lot of people are confusing noise from a dog day care with a kennel, or breeder. He said that usually a barking dog is a single dog in someone's back yard. He said that people go to a dog day care so that they don't have their dog barking all day long, which is a benefit. He said that dogs communicate 95% of the time non-verbally, they wag their tails, and communicate through body language, not barking. He said that they bark when they're hungry or need something, and the facility strives to meet those issues, and pay attention to the animals, and keep them engaged. He said

that dogs just do not bark 24/7. He said that if there is such a dog barking like that, there is recourse, an abutter can call up and file a claim with the Police Department.

Mr. Branon said that sometimes, if you ask different real estate agents, you might get different answers. He said that he believes that there's some sort of a misunderstanding, and doesn't believe that noise will be an issue with this type of facility.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Alexander said it's just the nature of the business, there will be noise issues and waste issues. He said that this just isn't the right location for this type of business. He said that the application is inadequate, they don't adequately address the problems. He said that the ordinance is just not adequate to regulate the outdoor area. He said that there isn't enough materials to review how they'll address the dogs outside will be regulated. He said that they should apply for several variances. He said that his office is right across the street, and will hamper his ability to do his job and conduct his business. He said that this just is not the right location. He said that the outdoor area for the dogs is just not the right area for this business.

Mr. Boucher said that there was credible testimony from both sides. He said that this is a difficult request, because it's a permitted use, and is questioning whether the plan is feasible the way it's laid out.

Mr. Lionel said that the only reason that they're here is for the outdoor area for the dogs, as staff has determined that it is outdoor display, which is not permitted except by variance. He said that the dog day care is permitted in this zone, it's clear in the ordinance. He said he keeps coming to the thought that this is a permitted use, and a lot of the objections seemed to be on the theoretical side. He said that his neighbors have two dogs, and they don't bark, they're outside a lot, and they're well trained. He said that he has another neighbor across the street that has a dog that barks all the time in their fenced back yard. He said that a properly cared for dog isn't going to be barking a lot. He said that they have a waste management plan that seems appropriate. He said that the Board recently approved a dog day care on West Hollis Street which was

also in the LB zone. He said that the applicant's last request was a use variance, as it was not a permitted use in that zone. He said in listening to the testimony and reviewing the case, he is in support.

Mrs. MacKay said that it is a permitted use, however, this is like a chair with three legs, it is in an area that abuts a residential zone, but this site is not zoned residentially. She said that she sympathizes with and understands the neighbors' concerns, she said that she listened to the neighbors who live next door to the applicants existing dog day care location, and they don't have the complaints, in fact, they'd love to keep them there as a neighbor. She said she has two dogs, and the only time they bark is if someone comes to the door, and generally, they don't bark. She said that she is in favor of the application.

Mr. Kanakis said that he is in favor as well, it is an allowed use within the zone, and a lot of the objections the Board heard were based upon the use, which is permitted. He said that the use fits within the zoning, and there is recourse for the noise.

Mr. Boucher said that this will be going to the Planning Board, and asked if there is anything that the Board should be aware of before it passes onto the Planning Board.

Mr. Falk said that the improvements on the site are already there, the driveway, buildings, and most all the fencing, the landscaping and utilities. It will be predominantly an as-built plan, and the applicant will have to identify the outdoor area for the dogs. The site data table will have to list all the dimensional criteria for the property, and identify the outdoor area on the plan. He said that the Zoning Board and Planning Board are two different Boards, with different roles and responsibilities as defined in the State of New Hampshire RSA's. He said that the Zoning Board looks at the use of the land, while the Planning Board looks at how the site functions. He said at this point, the Planning Board will be reviewing an as-built plan for the most part.

Mr. Boucher said that he's been on the fence, and Mr. Lionel's statements made sense, and is in support.

MOTION by Mr. Boucher to approve the request on behalf of the applicant as advertised. He said that the Board believes that

the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

2. Joseph & Bernice Thomas (Owners) 5 Benton Drive (Sheet 56 Lot 49) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach 3.9 feet into the 10 foot required right side yard setback to construct an attached 12'x22' garage addition. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Joseph Thomas, 5 Benton Drive, Nashua, NH. Mr. Thomas said that their application is for a one-car addition, with an encroachment into the side yard setback, so it will be a two-car garage. He said that the encroachment would be 3.9 feet into the side. He said that they had the property surveyed by Meridian Land Surveyors, so there is an existing plan and a proposed plan. He said that they also submitted a plan that shows aesthetically what it would look like with the expansion.

Mr. Thomas said that the requested variance will not be contrary to the neighborhood, and will not be out of character. He said that Benton Drive is a quiet street, with only four houses, and they all have two-car garages.

Board members all expressed support for the application, saying it is very straightforward.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance, he said that it's the last house on the street, it's a large lot, and an extra four feet on the garage is very minimal.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that there is no indication that it would negatively impact surrounding property values.

Mr. Boucher said that the request is not contrary to the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

MISCELLANEOUS:

REHEARING REQUESTS:

BCM Environmental & Land Law, PLLC, for 1 Hardy Street, Nashua, NH.

Mr. Boucher said that before the Board gets into the rehearing requests, he'd like to discuss them. He asked whether or not the initial application should have even been to the Board, or if it even should have been heard. He said that it was the Planning Department's interpretation of the outdoor storage, and was it germane to this application, and the question is whether or not it should have even come to the Zoning Board. He asked if that rings a bell with anyone.

Mr. Lionel said that when the Board first heard this, he was really scratching his head about what we were being asked to

consider. He said the ordinance doesn't say dog day care, it says animal services. He said that by applying this retail display section to the dog day care is just truly weird. He said he was uncomfortable with the whole thing. He said that he is not sure that the Board did the right thing, and is sure that the Board did not do the right thing.

Mrs. MacKay agreed, she said it's not storage, and asked if the Board has the ability to challenge that decision. She said that she hopes that we do, and perhaps the right call was not made, and doesn't think that the Board should have heard it. She said she didn't think it should come here, it's a permitted use, absolute permitted use.

Mr. Lionel said that what we're being asked is do we want to have another go at this. He asked if it would be the same part of the ordinance that we would vote on.

Mr. Boucher said that the Planning Department does a fantastic job, however, sometimes the Board sees things differently. He asked what options the Board has at this point.

Mr. Falk said that the case was advertised for the outdoor storage, which was the closest code section we have for the outdoor area. He said that if the Board believes that by using that section was not proper or erroneous or not the best fit, because it is a permitted use in the Land Use Code for the zoning district. He said that permitted uses generally go straight to the Planning Board with a site plan. He said that he is not an attorney, but if the Board thinks that if that decision wasn't proper, that they don't even need to come to this Board, and can go straight to the Planning Board. He said that the Board has two rehearing requests, and if they are approved, they would be back to this Board, but the question is what would they be coming back for, something that is not proper?

Mr. Lionel said that there are other points in their requests, though.

Mr. Falk said that the Board can still go over them, though. He said that they are here for the outdoor storage, and if the Board determines if that wasn't the proper procedure, then it's a moot point.

Mr. Lionel said that they would fail item #1.

Mr. Falk said that the Board can still go over the four points, and answer them. He said that for example, the first point, if there was a procedural error, the Board could agree that there was a procedural error because this should not have come before the Board in the first place. He said that as far as the illegal decision, if the Board completely addressed the points of law for the variance or special exception, the Board could say that it is possibly not legal because they shouldn't have been here in the first place. He said that for the third point, the one about new information, both the requestors of the rehearings have questioned the outdoor storage, and it's explained in much more detail, and even the applicant questioned it. He said that for the fourth point, if there is anything that would or could cause the Board to make a different decision, the Board could say that it wasn't proper for them to be there in the first place.

Mr. Lionel asked that for a rehearing, is there a mechanism that the Board could say that this ordinance applies, and what would happen.

Mr. Boucher stated that if the Board goes through the points of the rehearing, and agrees that it shouldn't have come before the Zoning Board, and describe why, and asked if the rehearing request can still be denied, and should it come back to the Board.

Mr. Lionel said that the Board should just deny the request and they can go to the Planning Board.

Mr. Falk said that if the requests were approved, they wouldn't be able to come back here for about 30 days, and they've already been in the process for a while, and asked what they would come back for. He said that the rehearing requestors probably want this to come back to the Zoning Board but the bottom line is that if the Board thinks that it was not proper for them to come here in the first place, then they shouldn't be coming back here.

Mrs. MacKay said that the Board can deny the rehearing, it's a permitted use and it should go straight to the Planning Board.

Mr. Lionel said that for the outcome that we want to see, which is that this needs to go to the Planning Board and that the Zoning Board should not have taken this up, that we would deny the rehearing request, and the applicant still needs to go to the Planning Board, and the abutters have the opportunity to supply all this information that may be pertinent to that meeting. He said if the Board grants the rehearing request, they are back to square one with that retail display ordinance, that really doesn't fit, and doesn't see the point of doing that.

Mrs. MacKay agreed, she said that the Board should deny based on the fact that it's a permitted use, and belongs at the Planning Board.

Mr. Lionel said if there was an ordinance that was in our purview, that really mattered, then he would grant the rehearing request, because a lot of information that was not available at the time of the previous meeting has been supplied, allegations, but would certainly want the opportunity to examine them again, but given that the only thing we were asked to rule on is something that none of us think is applicable, then the proper response is to deny the requests, and have them go to the Planning Board, and the abutters can present their case to the Planning Board.

Mr. Boucher said that the Board has the right to change our decisions, and change our view.

Mr. Falk said that the Land Use Code is not easy to read, it is very complex.

Mrs. MacKay said that we are all human, and we recognize that, and we're rectifying it.

Mr. Boucher said that they will go over the rehearing request now from BCM Environmental Land Law.

Mr. Boucher asked if there was any procedural error, including improper notice, denying someone the right to be heard, etc. He said at this point, he believes that the Board shouldn't have heard this case under the code for the outside storage.

Mr. Lionel said that he doesn't think that there was any procedural error, in that we followed the rules, we did what we

were supposed to do, and doesn't believe that there was any reason to think that there was any improper notice, or that anyone was denied the right to be heard. He said his answer for item 1 is no.

Mr. Boucher said that the procedural error was that he didn't think that we should have had that in front of us.

Mr. Lionel asked if it is required for all of us to say no to all four of these points to not grant the rehearing request, or can we just write our reasons and make a motion to grant or deny the request.

Mr. Boucher said we go around to see where everyone is at, and then a motion is made, and that's what the final vote is, up or down.

Mr. Lionel said that the Board shouldn't have heard this.

Mrs. MacKay said that we should not have heard this.

Mr. Boucher agreed.

Mr. Boucher asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the special exception and/or variance. He said that if he believes that it shouldn't have been heard, then it's not a legal decision, and we're just coming back correcting that. He said the Board made a decision that doesn't hold any water, he said in his view it's not illegal or binding, but doesn't believe we should have heard it.

Mrs. MacKay said it's like the fruit of the poisonous tree doctrine, anything that was wrong at the inception, and any ensuing decision is based upon that first wrong issue, where we see it, we shouldn't have heard the case, and made decisions based upon what was in front of us then, now, we're saying it wasn't an illegal decision, but not correct.

Mr. Boucher said he feels that he made a decision that wasn't proper.

Mr. Lionel said that the Board followed the rules, and didn't think that the decision the Board made was made illegally, and that the fruit of the poisonous tree doesn't really reflect

here. He said that we feel that we did our jobs correctly, and followed the law.

Mr. Boucher said that it wasn't an illegal decision at the time we made it.

Mr. Lionel said that the Board followed the law.

Mr. Boucher asked if the request for rehearing contain any new information not presented or available to the Board at the original Public Hearing.

Mr. Lionel said absolutely it does.

Mr. Boucher said he believes so.

Mrs. MacKay agreed.

Mr. Boucher asked if there is anything that would/could cause the Board to make a different decision.

Mr. Lionel said yes, ignoring the fact that the Board shouldn't have heard it in the first place, but if it had been for a reason that was in our purview, given the new information that has been presented, if substantiated, would probably have made a different decision.

Mrs. MacKay agreed.

Mr. Boucher said he's on the fence with this, but it's not going to change his decision.

MOTION by Mr. Boucher on behalf of BCM Environmental & Land Law regarding 1 Hardy Street as advertised to deny the rehearing request based upon the discussions that the Board has had on this so far.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Boucher said that there is another rehearing for the same owner, from Clayton and Georgette Alexander, for the case at 1 Hardy Street.

Mr. Boucher said that we can refer from the same discussion.

Mr. Falk said that they brought up some different points, but the end result will be the same.

Mr. Lionel said that his answers to the first one would apply to the second one.

Mr. Boucher said that his answers would also apply.

Mrs. MacKay said so would hers.

MOTION by Mr. Boucher to deny the rehearing request relative to the case at 1 Hardy Street, again, for all the discussions that the Board had, and for the same reasoning's why we denied the previous rehearing request for the same property.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 3-0.

MINUTES:

10-22-19:

MOTION by Mr. Boucher to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the 11-26-19 Agenda.

MEETING DATES FOR 2020:

MOTION by Mr. Boucher to approve the 2020 meeting and deadline dates.

SECONDED by Mr. Lionel

MOTION CARRIED UNANIMOUSLY 3-0.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 9:44 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

None

OLD BUSINESS - SITE PLANS

1. Linatsas Family Trust (Owner) Ali Bird (Applicant) - Proposed dog day care and boarding facility. Property is located at 1 Hardy Street. Sheet 62 - Lot 152. Zoned "LB" Local Business. Ward 4. **[TABLED FROM THE OCTOBER 17, 2019 MEETING]**

MOTION by Mr. Varley to remove Case #1 from the table

SECONDED by Ald. Melizzi-Golja

MOTION CARRIED 7-0

MOTION by Mr. Varley to reopen the public hearing

SECONDED by Mr. Bollinger

MOTION CARRIED 7-0

Chad Branon, Project Engineer, Fieldstone Land Consultants, 206 Elm St, Milford NH

Mr. Branon introduced himself to the Board as representative for the owner.

Mr. Branon said their previous appearance before the Board on October 17th concluded with some questions pertaining to zoning interpretations and abutting ownership of land, specifically a 2-ft strip of land on the south side of Amherst Terrace.

Mr. Branon addressed the Zoning Board of Adjustment (ZBA) interpretation. The ZBA reviewed two rehearing requests for the case on November 12th, at which time the Board decided that Section §190-52, pertaining to outdoor storage, should not apply to a dog daycare use. As such, he believes that all of the items that this Board was concerned about pertaining to setbacks and impervious surfaces are no longer applicable to this

application, because it is no longer considered an outdoor storage area.

Mr. Branon said their surveyors performed some research on the abutting roadway. The city surveyor, Mark Jennings, recovered a plan from 1928 that depicted the 2-ft wide strip to the rear of 1 Hardy St. He said this plan is only located at the City Engineering Dept. office, is not stamped, and has not been recorded. They were not able to find any documentation related to the City's adoption of Amherst Terrace. They could not find anything to contest the abutter's claim, but they also didn't find substantial evidence supporting it.

Mr. Branon said that with the Engineering Dept. they performed a registry chain of title and Right of Way plan search on the lot in question, 1 Amherst Terrace. There was evidence of the 2-ft strip being referenced in deeds back to the creation of the property. He said typically when cities or towns accept roadways they don't allow for strips of land to occur, and are often amalgamated into the right of way. When the ZBA ruled that this was not a display area, they stopped their research efforts. If they find evidence that supported this 2-ft swath, it would turn the subject property's front 10-ft setback into a 7-ft side setback. They left the plan showing a front setback to err on the side of caution, but the setback only pertained to its classification as a display area. Since that no longer applies to the dog daycare use, there is no setback.

Mr. Branon said they are requesting a waiver from NRO § 190-279 (EE), which requires an existing conditions plan within 1,000-ft of the site. They have no objections to Staff comments.

Mr. LeClair asked if the 2-ft strip along Amherst Terrace was part of the neighbor's lot, is there anything in the current plan that is on the strip of land.

Mr. Branon said no. The fence is onsite. Everything is represented on the plan correctly as it pertains to their property. There is no evidence to support the swath other than a notation on the deed, and there's no evidence to discount it. They city doesn't acknowledge it as a separate parcel on any of their maps. There are no violation issues from the potential 2-ft swath of land adjacent to their property.

Mr. LeClair said it's currently represented on the plan as roadway.

NCPB

November 21, 2019

Page 5

Mr. Branon said this is consistent with the city maps. Even utility maps don't show a 2-ft swath of land. Normally you would find this information when the city accepts the road. Whether that swath exists or not doesn't change the proposal.

Mr. LeClair asked Mr. Branon to outline the location of the land strip.

Mr. Branon described the location and extent on the plan.

Mr. Pedersen asked Staff if there was a need for setbacks for this particular business from the backyard neighbor.

Ms. McGhee said no. Based on the rehearing request that went before the ZBA, the Zoning Board felt that NRO \$190-52 did not apply, so there would be no setback required. There are no setbacks for fences, so they would be in compliance.

Mr. Pedersen asked if they were in agreement with the applicant and the ZBA on the setbacks.

Ms. McGhee said correct.

Mr. Pedersen asked the applicant to describe the final plan for fencing.

Mr. Branon said they are proposing the same wooden stockade fence, 6-ft high. He indicated the locations of new fencing to be installed. He presented photos of the design.

Mr. Pedersen asked who the current owner is, and if it's for sale, who will own it when the business starts.

Mr. Branon said the current owner is David & Steven Linatsas. If the plan is approved, the owner will be Ali Bird. She plans on residing in the house.

Mr. Pedersen asked if it was currently not owned by the applicant.

Mr. Branon said correct.

Mr. Pedersen asked about the plan for picking up and dropping off dogs for daycare. Would the clients have guidance on how to avoid creating traffic jams?

Mr. Branon said absolutely. He described the parking requirements and onsite parking. He said the applicant has no issues at her current location, and this location will have more space. The site meets all design guidelines. He presented photos of the site.

Mr. Pedersen asked if the proposed drop-off is on the Hardy St side of the property.

Mr. Branon said yes.

SPEAKING IN OPPOSITION OR CONCERN

Clayton Alexander, 1 Amherst Terrace, Nashua NH

Mr. Alexander disagreed with Mr. Branon's statement that the 2-ft strip is inconclusive, and stated it is on the deed. He said the right of way doesn't affect the property line. He said there was a dispute with the previous owner over parking and exiting on their 2-ft swath. He said the GIS map online has a disclaimer that it is not a legally binding description, and that the 2-ft strip is not shown because they consider it too small to tax. According to the deeds, everyone on Amherst St owns that 2-ft strip.

Mr. Alexander said their rehearing request was denied by the ZBA. He thinks the Board's decision was illegal and unreasonable, and is appealing it to the Superior Court. He said he asked repeatedly from the Planning Dept. for clarification on the applicability of NRO §190-52 to the site plan, and hasn't received any. He said he's reasonably relied on the city's representation so far, but isn't sure if they're correct or complete. He objects to this and said this violates his due process rights. He asserted municipal estoppel as well.

Mr. Alexander said the ZBA did not actually rule that NRO §190-52 was not applicable, and that they left it up to the Planning Board to decide. He quoted Deputy Zoning Manager Carter Falk's clarification to the ZBA regarding NRO §190-52. He said the ZBA has not formally vacated the decision, and simply denied the request. He said the ZBA hasn't granted any additional relief from applying NRO §190-52 to the site plan. He said any ZBA decision only relates to property use, and has nothing to do with the site plan. He cited NRO §190-146 and how he thinks NRO §190-52 applies.

Mr. Alexander requested that the Board regulate and stipulate this use to the fullest extent of their authority, regarding the requirements of NRO §190-52, waste management, noise control, and number of dogs. He cited the restrictions outlined in the Urban Chicken Ordinance, NRO §190-31.1, and said it's unreasonable not to have similar regulations for dogs.

Mr. Alexander raised concerns that the subject property is on two lots, and reiterated the application of NRO §190-52. He said one lot is only being used residentially. He said even if an outdoor area in general is permitted under the Use Matrix, there is nothing permitting the use of the residential lot for the area location. He said the original variances granted in 1983 and 1987 state two adjoining plots of land, and were granted in respect to one non-residential lot. He said nothing permits this outdoor area for commercial use to be located on the residential lot. He thinks it's legally and physically impossible to construct this area as proposed.

Mr. Alexander said the applicant plans to follow the industry standard of 75-ft per dog, and believes the area is too small for this. He requested the Board stipulate hours of operation.

Mr. Alexander reiterated his concerns from the previous meeting.

Mr. LeClair asked Mr. Alexander to not repeat what has already been said.

Mr. Alexander presented a Material Safety Data Sheet for Wyshiwash.

Mr. Pedersen asked if in his understanding, the dogs will not be in the house, only in the one-story structure.

Mr. Alexander said they've been told the house is only going to be used residentially, and the boarding is going to take place in the converted garage.

SPEAKING IN FAVOR

Colleen Bird, 5 Indiana Dr, Nashua NH

Ms. Bird introduced herself as the mother of the applicant. She works part time for the business.

Ms. Bird said the applicant has been running her business in a residential neighborhood for almost a year, and never had any complaints. She described their management of the dogs. They have been trying to move to an approved zone for dog daycare for a year. She described their business model.

Ms. Bird described their waste management technique. She said waste is picked up immediately, and there is no smell. She described the challenges they have been facing due to weather and delays. She went into detail on the growing need for dog daycares. She requested the Board not stipulate short hours of operation, and described the dog drop-off process.

Ms. Bird said she collected signatures from local businesses in the vicinity of Hardy Street who believe the area would benefit from a dog daycare. She cited the amount of dog daycares in the city, and said they are at capacity.

SPEAKING IN FAVOR - REBUTTAL

Chad Branon, Project Engineer, Fieldstone Land Consultants, 206 Elm St, Milford NH

Mr. Branon said there is the presentation that there will be lots of barking dogs, but the evidence speaks for itself. Neighbors of the existing business have complimented the applicant on how she operates, and there is no evidence of complaints.

Mr. Branon quoted the abutter's rehearing request, and said it stated that NRO §190-52 is inapplicable to a dog daycare. He said that is exactly what the Zoning Board determined on November 12th. He quoted the ZBA decision letter, and said NRO §190-52 does not apply because dogs are not a good, ware, or merchandise. He said this is an essential part of a permitted use in the zone. He asked how you could have a dog daycare and not let the dogs outside.

Mr. Branon disagreed that there would be a lot of noise. He said dogs bark when alone, and part of Ms. Bird's business model is to have someone there with the dogs. He said this would not be a kennel situation. He said the notion that this would be a noisy site is a mischaracterization. He said that the streets bordering their property create a significant distance between the business and other uses. He said the current owner told them that building was insulated to a high level in 1958 because they

ran machines inside the building. The plate glass window faces Hardy St, not towards the abutter who raised concerns.

Mr. Branon addressed the deed and 2-ft strip. He said they do a lot of work with right-of-ways, and private right-of-way neighborhood petitions for the city to take over the private street. The abutting deeds mention a 2-ft strip, but that was when the property originated as a private road. Oftentimes those descriptions in a deed will get carried forward, and errors can be carried forward for more than 60-70 years. The 2-ft strip in the deed means nothing, because there was a change in ownership of the road in between the two properties. When the city took the road over, there is a chance that the city absorbed that land into the right of way. That's typically what a city or town would do. Unfortunately the city couldn't provide that data to them. He said it's not important because it doesn't have an impact on what they are proposing.

Mr. Branon said they don't rely on tax maps and the online GIS information. Neither of those maps show a tax map parcel. But none of the utility maps show a parcel either. He reiterated that the 2-ft strip is not relevant to the application because there are no setback issues. He said they have applied all land use codes pertinent to the case.

Mr. Branon addressed Wyshiwash. He said it's biodegradable and environmentally friendly. He said it's the same chemical that Chewie's Playland presented when they got appeared before the Board, which was approved. He referred to potential stipulations, and said there have never been any limitations put on similar uses. They have openly shared their business plan for the site.

Mr. Branon said the city shows this as one tax map parcel. He thinks they meet all the regulations as it pertains to the setbacks and that it is shown correctly on the plan.

Mr. Bollinger asked for clarification on Stipulation #6 regarding work in the right of way, and asked if they agreed with it given that there is potentially no official record of the right of way being delineated.

Mr. Branon said they aren't proposing work offsite.

SPEAKING IN OPPOSITION OR CONCERN - REBUTTAL

Clayton Alexander, 1 Amherst Terrace, Nashua NH

Mr. Alexander believes that Ms. Bird's comments were irrelevant to the application.

Mr. Alexander said there are a lot of legal issues here. He cited the Land Based Use Code definition of animal pet services. He said the city required a variance specifically for the outdoor area, and that the assumption there is the outdoor space is not permitted. He said they agree that a variance was necessary. They argued in their rehearing request that the code section wasn't applicable because it has to do with retail goods and merchandise, but there is no available remedy to seek a variance for an outdoor dog area. He referred to the chicken ordinance, and said there is no regulation on dog daycares at all. He believes that if it's not explicitly permitted in the code, it should be prohibited. He said there is nothing specifically permitted these outdoor areas.

Mr. Alexander said there are plenty of businesses under the use of animal pet services that don't require an outdoor pet area. He thinks it is inconsistent to apply NRO §190-52 to Chewie's Playland and not this application. He explained in detail his opinion of what an outdoor area in an LB zone should be. He said he thinks only shielded and buffered dumpsters should be allowed, and said it's reasonable to ask the same kind of regulation here. He said it's unreasonable that chickens are more regulated than dogs. He said there is no clear legal Branonnce, and it should not be allowed.

Mr. Alexander said he doesn't expect the Board to be the arbiter of deeds.

Mr. LeClair said they are not.

Mr. Alexander gave a synopsis on the history of their ownership of the 2-ft strip of land. He doesn't believe the burden falls on him to prove that it's his deed.

Mr. LeClair said they understand the 2-ft strip confusion.

Mr. Alexander said something has to be done to regulate this.

Mr. LeClair asked Staff if their understanding is that the dog daycare is a permitted use.

Ms. McGhee said correct, it is a permitted use in the LB zone. She said if they decide to approve the proposal, stipulation #5 can be deleted. They received a letter of satisfaction from the Fire Marshall. Stipulation #4 can be updated to reflect new comments, from a letter dated October 10th.

Mr. LeClair closed the public hearing and moved into the public meeting.

Mr. LeClair summarized the hearing discussion. He addressed the 2-ft strip, and said in his understanding it is in the roadway.

Mr. Varley said in his view they received appropriate clarification. The use proposed here is clearly permitted in the Land Use Code Matrix. They asked for zoning clarification, and procedural issues notwithstanding, he thinks the ZBA responded clearly that they believe they made a mistake in taking the case in the first place, that a variance is not required, and that it is a permitted use. He thinks that is entirely consistent with NRO §190-52, which as both the applicant and abutter spoke, acknowledged really doesn't apply to this use.

Mr. Varley said to the point of the 2-ft land strip, absent the application of some kind of setback requirement it becomes irrelevant. It's really a private property dispute matter, beyond the scope of what the Planning Board considers. He said neither of these issues are particularly relevant, and they should consider the site plan on the merits as a permitted use including the outdoor use. In his view there is no indication in the Use Matrix or otherwise that would suggest a restriction on outdoor use.

Mr. Pedersen agreed with Mr. Varley. He said the abutter, Mr. Alexander, stated he would take this to Superior Court. He asked if they should let his future actions affect their decision.

Mr. LeClair said he doesn't think that is material with this Board. The abutter obviously has the right to do what they want.

Mr. Varley agreed with Mr. LeClair. It's within the abutter's right to appeal the ZBA's decision, but he doesn't think that is a basis for determining what course of action this Board takes. They have to take the action they feel is appropriate under the ordinance. The affected party always has a right to appeal.

Mr. Pedersen led a brief discussion of Note #18, regarding work within the right of way.

Ms. McGhee clarified that if the applicant is doing work within the right of way, staff will meet with them beforehand for internal review.

Ms. Harper said anyone could move in and have ten dogs, and put whatever they want in the backyard. This particular business has a great business plan, and she would rather have this next door than someone who has ten dogs sitting outside barking all day, not being monitored.

Mr. Varley agreed with Ms. Harper. He said most people consider chickens not to be pet animals, but farm animals, and chickens were not a permitted use until the recent ordinance change. He thinks there is a distinction. Here they have pet services, clearly a permitted use, as the abutter himself acknowledged. That includes boarding of pets. He said the applicant seems to have taken appropriate precautions, seems to be doing this thoughtfully, and has experience. He said they will be subject to all of the ordinances that apply, including noise ordinances, and if there is a problem he thinks that is the appropriate manner for addressing it.

Mr. LeClair addressed the waiver request regarding existing conditions, and said it was pretty standard.

MOTION by Mr. Varley to approve Old Business - Site Plan #1. It conforms to § 190-146(D) with the following stipulations or waivers:

1. The request for a waiver of § 279 (EE), which requires an existing conditions plan showing physical features on site and on adjacent parcels plan, is granted, finding that the waiver will not be contrary to the spirit and intent of the regulations.
2. Prior to the Chair signing the plan, minor drafting corrections will be made to the plan.
3. Prior to the Chair signing the plan, all conditions from the Planning Board approval letter will be added to the cover page of the final mylar and paper copies submitted to the City.

4. Prior to the chair signing the plan, all comments from Joe Mendola, Street Construction Engineer dated October 10, 2019 shall be addressed to the satisfaction of the Engineering Department.
5. Any work within the right-of-way shall require a financial guarantee.

SECONDED by Mr. Weber

MOTION CARRIED 7-0

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISIONS

None

NEW BUSINESS - SITE PLANS

2. Weston Associates (Owner) - Application and acceptance of proposed site plan amendment to NR1103 to demolish existing structures onsite and create two new retail plaza buildings. Property is located at 546 Amherst Street. Sheet H - Lot 178. Zoned "GB" General Business and "PI" Park Industrial. Ward 2. **[POSTPONED TO THE DECEMBER 5, 2019 MEETING]**
3. John J. Flatley Company (Owner) - Application and acceptance of proposed site plan to construct a 255,272 square foot Research & Development facility. Property is located at 100-300 Innovative Way. Sheet A - Lot 798. Zoned "PI" Park Industrial and "RC" Urban Residence. Ward 8. **[POSTPONED TO THE MAY 21, 2020 MEETING]**

OTHER BUSINESS

1. Review of tentative agenda to determine proposals of regional impact.

MOTION by Mr. Bollinger that there are no items of regional impact.

SECONDED by Mr. Varley

MOTION CARRIED 7-0

LAW OFFICE OF STEVEN E. GRILL
PO Box 1416
Center Harbor, NH 03226
603.493.5050
sgrill@stevegrill.com

January 3, 2020

Via USPS Express Mail

Linda McGhee
Deputy Planning Manager
Planning Department, City of Nashua
229 Main Street
Nashua, New Hampshire 03061-2019

Re: Application of NH #1 Rural Cellular, Inc. doing business as U.S. Cellular
SAVCAM, LLC, Owner
L Silver Drive (Sheet A, Lot 993)
Decision Date: November 12, 2019
Request for Rehearing Filed on December 11, 2019

Dear Ms. McGhee:

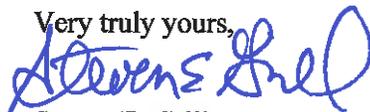
This office is counsel to NH #1 Rural Cellular, Inc. doing business as U.S. Cellular "U.S. Cellular").

I am writing with respect to the above-captioned application. A "Motion for Rehearing" was filed on December 11, 2019 by P.R.A. Properties, LP, of Lowell, Massachusetts. It is our understanding that the Request will be considered at the Zoning Board of Adjustment's next meeting on January 14, 2020. Enclosed herewith please find U.S. Cellular's Response to the Motion for Rehearing. We respectfully request that the Response be forwarded to the Board for its consideration.

A copy of the Response has this day been served upon Michael J. Iacopino, Esquire, counsel for the Movant P.R.A. Properties, LP, via email.

Please do not hesitate to let me know if you have any questions or concerns regarding this matter.

Very truly yours,



Steven E. Grill

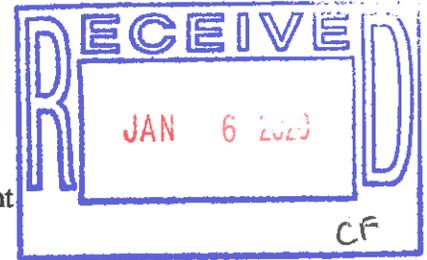
cc: Michael J. Iacopino, Esquire, w/encl.

SEG/Enclosure



ZONING BOARD OF ADJUSTMENT
CITY OF NASHUA, NEW HAMPSHIRE

In re: NH #1 Rural Cellular, Inc. d/b/a US Cellular, Applicant
L Silver Drive
Nashua, New Hampshire



**APPLICANT'S RESPONSE TO MOTION FOR REHEARING
FILED BY P.R.A. PROPERTIES, L.P., ON DECEMBER 11, 2019**

NH #1 Rural Cellular, Inc., d/b/a US Cellular (hereinafter "US Cellular" or the "Applicant") respectfully responds to the "Motion for Rehearing" filed by P.R.A. Properties, L.P., on December 11, 2019, as follows:

1. Following a public hearing held on November 12, 2019, the Nashua Zoning Board of Adjustment (the "ZBA") voted unanimously to authorize US Cellular to place a temporary 130-foot tall cell tower and associated equipment in a parking lot located at L Silver Drive, for a period not to exceed eighteen (18) months. *See* Written Decision dated November 18, 2019 (finding that the proposed temporary tower met the criteria for variances from the "location" limitations found in Subsection 190-38.C (1) and (2) of the Nashua Land Use Code, and for a special exception).

2. P.R.A. Properties, L.P. d/b/a Princeton Properties ("Princeton") was the only party which appeared in opposition to the proposed temporary tower. Princeton has now filed a "Motion for a Rehearing" (the "Motion"), in which it alleges that the approval of the temporary tower was "unlawful and unreasonable" and urges the Zoning Board of Adjustment to grant a rehearing.

3. Princeton's arguments in support of its request for a rehearing are, at best, hyper-technical and legalistic, and they all suffer from the same fatal flaw: they ignore both federal and state law, under which the ZBA was required to grant the relief requested by US Cellular because, in the absence of such relief, US Cellular would have a significant gap in its wireless network in the vicinity of the subject site. As the ZBA was well aware, absent the relief sought by US Cellular, this coverage gap would occur because at some point during the next few weeks, an existing tower located at 311 Daniel Webster Highway (the "COSTCO tower") will be dismantled. Although a diligent search for a location for a new permanent tower to replace the COSTCO tower is underway, the search and subsequent permitting, regulatory research and filings, and construction will take a minimum of several months, and possibly as long as eighteen (18) months. The ZBA thus acted both lawfully and reasonably when it approved US Cellular's request for a temporary tower. Accordingly, the request for a rehearing should be denied.

APPLICABLE LAW

4. Section 704 of the Telecommunications Act of 1996, codified at 42 U.S.C. 337(c)(7) (the “TCA”) imposes procedural and substantive limits on the power of municipalities to regulate the placement and construction of wireless telecommunications facilities, including antenna towers and associated equipment. As the New Hampshire Supreme Court explained more than ten years ago:

the TCA [acts] as an “umbrella” under which a ZBA must evaluate an application to construct a telecommunications tower, as the TCA will preempt local law under certain circumstances. *See* 47 U.S.C.A. § 332(c)(7). As the First Circuit Court of Appeals has noted, although the TCA does not explicitly authorize a zoning board to consider whether a decision amounts to an effective prohibition of the provision of wireless service, “[s]ince board actions will be invalidated by a federal court if they violate the effective prohibition provision, many boards wisely do consider the point.” [citation omitted]

Daniels v. Town of Londonderry, 157 N.H. 519 (2008). The *Daniels* analysis is consistent with the analysis used by federal courts in TCA cases. *See, e.g., Indus. Communs. & Elecs, Inc. v. Town of Alton*, 2012 U.S. Dist. LEXIS 135158 (D.N.H. 2012) (where evidence established that zoning regulations made it impossible to provide adequate coverage without a variance, ZBA's decision to deny a variance had the effect of prohibiting the provision of wireless services in violation of federal law). Whether or not there is an “effective prohibition” which makes it necessary for a local board to land use zoning relief is a determination which local boards should make on a case-by-case basis, since many different factors might be relevant. *See Omnipoint v. City of Cranston*, 586 F.3d 38 (1st Cir. 2009).

5. In short, in tower permitting cases, local zoning criteria may be completely preempted, *see Brehmer v. Planning Bd. of Wellfleet*, 238 F.3d 117, 121-22 (1st Cir. 2001), and local boards thus act lawfully and reasonably when they apply zoning criteria flexibly, with the needs of federally-licensed wireless providers in mind. This is what the ZBA did in this case, and there is no need for a rehearing or for further proceedings of any kind.

PRINCETON’S ARGUMENTS ARE WITHOUT MERIT

6. Princeton makes numerous arguments in support of its claim that the ZBA acted unlawfully and unreasonably. None of these arguments have merit.

Waivers versus Variances

7. The first argument is that US Cellular should have requested waivers instead of variances because the Nashua Land Use Code (the “Code”) grants the ZBA authority express authority to waive the requirements of Subsection C (location) of Section 190-38 of the Code. *See* Motion, ¶ 4.1, citing Section

190-38.B, which provides that the ZBA “may waive the requirements of Subsections C (location) and E (height) to the extent necessary to resolve any gap in service where required by the [TCA].”

8. Princeton’s theory seems to be that the existence of the waiver power somehow eliminates the power to grant variances. Princeton does not contend that the ZBA lacked the power to grant relief from the location restrictions found in Subsection C, but only that US Cellular should have labelled this relief with a different word, substituting the word “waivers” for the word “variances.” Even if this were so, it hardly justifies reopening the case, because US Cellular indisputably met the requirements for the relief requested; that is, it established to the satisfaction of the ZBA that, without relief from the two location requirements at issue, it will have a significant gap in coverage until a permanent replacement for the COSTCO tower can be found. *See* Written Decision at 2. *See also* Minutes of November 12, 2019 hearing at 13-22.

9. Princeton relies on an eighty-year old case, *Stone v. Cray*, 89 N.H. 483 (1938), but it is difficult to understand how this case helps them here. In *Stone*, the New Hampshire Supreme Court was faced with a challenge to a zoning ordinance enacted by the Town of Lancaster, which landowners alleged failed to contain adequate provisions for granting special exceptions. The Supreme Court held that the ordinance adequately provided for special exceptions. To be sure, the Court discussed the differences between variances and special exceptions, but nothing in the case suggests that a ZBA’s authority to grant variances cannot be exercised where, as in Nashua, an ordinance also includes the authority to grant discretionary waivers.

10. Princeton also seems to be arguing that because the request for variances should have been a request for waivers, the notification of the November 12 ZBA hearing which was provided to neighboring municipalities pursuant to RSA 12-K:7(I) was “incomplete.” *See* Motion, ¶ 4.1.b. RSA 12-K:7(I), however, only requires notification of an “application to construct a new tower,” and does not prescribe any specific form of notice. Plainly, the various municipalities who received the notification in this case were aware that US Cellular had applied for permission to construct a tower on Silver Drive. Such notification satisfied the statute. Significantly, none of the municipalities who were notified voiced any opposition to the proposed temporary tower.

11. Princeton’s final point in support of its “waivers versus variances” argument is that the standard for a waiver was not met because US Cellular did not present a “reasonable alternative analysis,” and thus did not establish that the effective prohibition clause of the TCA required the relief which US Cellular sought. *See* Motion at ¶ 4.1.c. As already noted, however, the effective prohibition clause requires a case-by-case analysis. There is no absolute requirement under federal law that alternatives be explored in every case. Here, the key fact was the unexpected loss of the lease for the COSTCO tower, resulting in an emergency for US Cellular. The ZBA acted well within its authority when it found that a temporary tower

was required in order to prevent an imminent significant gap in US Cellular's wireless coverage. To be sure, in many cases a reasonably thorough review of alternative locations may be required, but here the time necessary to comply with such a requirement would have created the very evil which the TCA is designed: a loss in wireless coverage. Thus, the ZBA's finding of a need for a temporary facility at the proposed location was both lawful and reasonable.

Hardship

12. Princeton's second argument is that US Cellular failed to establish the existence of a "hardship" and thus was not entitled to a variance. *See* Motion at ¶ 4.2. Although Princeton devotes more than an entire page of single-spaced type to this argument, its entire discussion rests on the mistaken premise that the "hardship" criterion in this case is the same as it is in cases which do not involve wireless telecommunications facilities. *Id.* In fact, however, since this is a case involving wireless facilities, the ZBA correctly focused upon the need to avoid a significant gap in coverage; under these circumstances it is not bound to apply the hardship criteria in the same manner as it would in other types of cases. *See* discussion at paragraphs 4 and 5, above, regarding the TCA and the *Daniels, Manchester* and *Alton* cases. *See also Nextel Com. of Mid-Atlantic v. Town of Wayland*, 231 F. Supp. 2d 396, 406-7 (D. Mass. 2002) (holding that "the need for closing a significant gap in coverage, in order to avoid an effective prohibition of wireless service, constitutes another unique circumstance when a zoning variance is required" even if no "hardship" would be found if the rules applicable to other types of cases were to be followed).

Co-location

13. Princeton's third argument is that US Cellular needed two additional variances from the co-location requirements found in Subsection 190-38(C)(5) of the Code, but it failed to seek them. *See* Motion, ¶¶ 3, 4. Interestingly, although the ZBA has the power to waive these co-location requirements, see Code §190-38(B), Princeton argues that variances should have been requested, which of course is inconsistent with its argument that variances from the other provisions of the same Subsection were not properly requested. In either event, Princeton is mistaken; this application involved a temporary facility, and the ZBA correctly determined that the co-location requirements simply did not apply. This was simply a matter of interpreting the provisions of the Code, which of course is entirely within the ZBA's authority. Moreover, even if variances (or waivers) had been necessary, they would have been granted for the same reason that the other relief requested by US Cellular was granted: without this temporary tower, US Cellular would have a significant gap in its wireless coverage. The ZBA acted both lawfully and reasonably when it determined that the co-location requirements in the Land Use Code simply did not apply in this case because of the temporary nature of the facility and the other unique circumstances involved.

Princeton's Remaining Arguments

14. Princeton's final arguments are a hodgepodge of meritless factual and legal theories that are easily disposed of. *See* Motion, ¶¶ 5-11.

15. In Paragraphs 5 and 6 of the Motion, Princeton contends that the ZBA erred when it found that the temporary tower meets the special exception criteria set forth in § 190-134(F)(1)(e) of the Code. The minutes of the ZBA's November 12 hearing, however, clearly reflect that the ZBA considered these criteria. For example, the ZBA noted that the use itself – even if were to be permanent – is permitted under the Code at the subject location. It also found that any temporary visual impacts were outweighed by the need for the facility. The ZBA acted lawfully and reasonably when it found that the special exception criteria had been met, and Princeton is simply attempting to rehash arguments that were fully considered at the initial hearing. This is not a proper purpose for a rehearing.

16. In paragraph 8 of its Motion, Princeton argues that US Cellular failed to establish that the value of surrounding properties will not be diminished by the temporary tower, but the ZBA already found to the contrary. Once again, Princeton is simply attempting to rehash arguments that were fully considered at the initial hearing, and this is not a proper purpose for a rehearing.

17. In paragraph 9, Princeton argues that US Cellular failed to establish that allowing the temporary tower would not be contrary to the public interest. It cannot seriously be disputed, however, that a loss of cell phone service causes significant and obvious harm to the public, including adverse impacts on police, fire and other first responders; adverse impacts on businesses; and, substantial inconvenience to people who live, work and travel through the affected area. The ZBA already considered this issue and ruled on it based on the evidence at the hearing. Princeton is once again simply attempting to rehash arguments that were fully considered at the initial hearing. This is not a proper purpose for a rehearing.

18. In paragraph 10, Princeton argues that the ZBA improperly found that the variances are consistent with the spirit of the ordinance, but fails to mention that cell towers are a use permitted by special exception in this part of the City. Once again, Princeton is simply attempting to rehash arguments that were fully considered at the initial hearing, and this is not a proper purpose for a rehearing.

19. Finally, in paragraph 10 Princeton makes bald claims that the tower presents a fire hazard and that there is a danger it will fall over and cause harm. There was no evidence to support these inflammatory accusations at the initial hearing, and Princeton does not claim that it has newly-discovered evidence on these points which might somehow justify a new hearing.

CONCLUSION

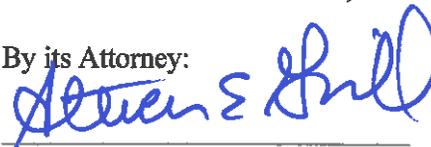
20. Princeton has not provided any valid factual or legal basis to justify its Motion for a Rehearing. Its belief that a temporary tower might harm its own economic interests is simply not enough to overcome the evidence of an imminent and very significant gap in wireless coverage which remains undisputed. This evidence required the ZBA to view US Cellular's application in a favorable light and to apply all relevant criteria flexibly. No purpose would be served by a rehearing, and Princeton's request for the same should be denied.

Dated: January 3, 2020

Respectfully submitted,

NH #1 RURAL CELLULAR, INC.

By its Attorney:



Steven E. Grill, Esq. (NH Bar #7896)

Law Office of Steven E. Grill
P.O. Box 1416
Center Harbor, NH 03226
603.493.5050
sgrill@stevegrill.com

CERTIFICATE OF SERVICE

On the 3rd day of January 2020, I served a copy of the foregoing Response upon Michael J. Iacopino, Esquire, counsel for the Movant P.R.A. Properties, LP, via email.

Dated: January 3, 2020



Steven E. Grill, Esquire



PRINCETON PROPERTIES

Jeffrey M. Brown, Esquire
Vice President / Corporate Counsel

January 13, 2020

Via hand delivery

Linda McGhee
Deputy Planning Manager
Planning Department/City of Nashua
229 Main Street
Nashua, NH 03061

Re: Application of NH # Rural Cellular, Inc.
L Silver Drive

Dear Ms. McGhee:

I am the General Counsel to Princeton Properties Management, Inc. and its related entities (collectively "Princeton"). Princeton is the owner and manager of the Pheasant Run Apartments at 9 Silver Drive, Nashua, NH. I am aware that Princeton has filed a Motion for Rehearing through their New Hampshire counsel, Michael J. Iacopino, that will be heard by the Zoning Board of Adjustment on January 14, 2020.

As the Board considers this matter, I thought that it would be relevant that they are made aware of recent developments regarding their cell tower. Notwithstanding the filing of Princeton's Motion for Rehearing on December 11, 2019, in late December, US Cellular began erecting their cell tower. In their presentation to the Board in November, they represented that trees and other vegetation would screen the cell tower from impacting the view of our many residents and preventing any negative effect on our rental operations. To make the Board aware of the absurdity of this representation, I enclose a series of pictures taken from one of our apartments.

From these pictures, it appears obvious that:

1. The trees and vegetation do not provide any screening of the cell tower (which continues to be assembled);
2. The views of the cell tower dominate the sky line and impact the visual aesthetics of our apartment community.

I hope this information will be helpful in the Board's consideration of our Motion for Rehearing.

Cordially,



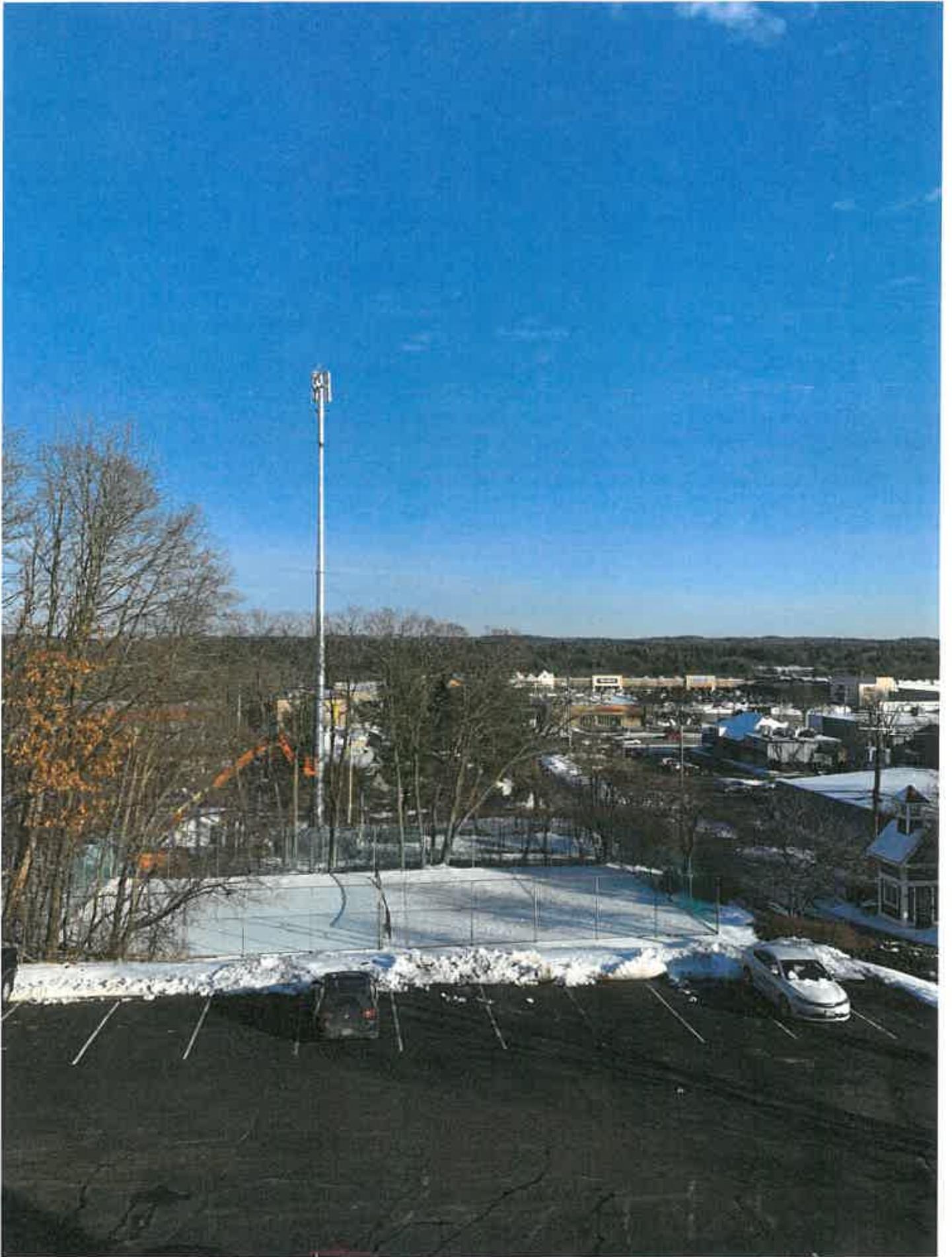
Jeffrey M. Brown

JMB/cm

Enclosure

cc: Michael J. Iacopino, Esq.
Steve Grill, Esq.
Heather Libby





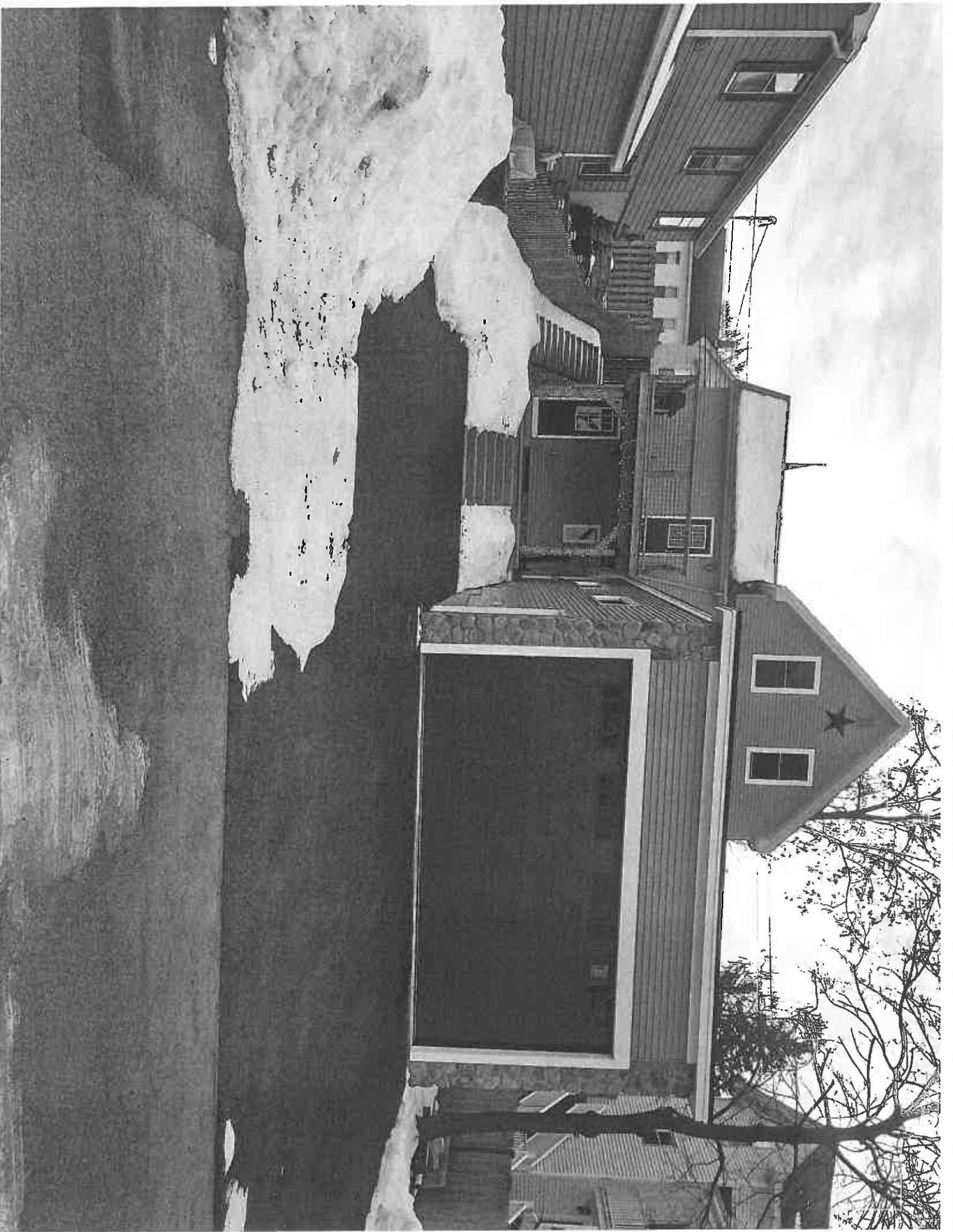


Poirier, Kate

From: Michael Brown [REDACTED]
Sent: Tuesday, January 07, 2020 12:00 PM
To: Poirier, Kate
Subject: Monaco hearing
Attachments: IMG_20200106_160524362_HDR.jpg; IMG_20191014_180427712.jpg

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

To whom it may concern the 24 foot driveway opening is perfectly fine for his garage that he has it is a residential neighborhood. As you can see in the picture there's plenty of room to park a vehicle in front of the garage. I think the 40-foot opening is very unnecessary. Thank you. Mr.Brown





ZBA MEETING ATTENDANCE

MEETING OF: January 14, 2020

Robert Shaw ✓
Jack Currier ✓
J.P. Boucher ✓
Mariellen MacKay ✓

Jay Minkarah ✓
Steve Lionel ✓
Efstathia Booras _____
Nick Kanakis _____

APPROVAL OF MINUTES

Minutes of 11.26.19

MOTION BY: JP Boucher

SECONDED BY: S. Lionel

Corrections:

J. Minkarah - S. Lionel - J. Currier

JP Boucher - m. MacKay

APPROVED

DENIED

TABLED

Minutes of 12.10.19

MOTION BY: JP Boucher

SECONDED BY: J. Currier

Corrections:

J. Minkarah - S. Lionel - J. Currier

JP Boucher - m. MacKay

APPROVED

DENIED

TABLED

STAFF ATTENDANCE

Carter Falk ✓

Marcia Wilkins _____

REGIONAL IMPACT

Yes _____ N/A NO AGenda

No _____

Motion to Adjourn - J. Currier
Second - S. Lionel
Time - 8:39 pm

JP Boucher motion
Rob Jack 2nd
Chair - M. MacKay
VChair - S. Lionel
check - J. Currier
5-0

ZONING BOARD OF ADJUSTMENT

MEETING OF: 1/14/2020

PAGE 1 of 6

ADDRESS OF ZBA REQUEST: 69 Hessler Farm Dr CLERK OF ZBA: Mariellen MacKay

APPLICANT: Pennichuck Water Works Inc

OWNER: Unit Owners Association of the Villages at Hessler Farm

VOTING: R. Shaw, S. Lionel, T. Currier, J P Bouchey, M. MacKay

VARIANCE: REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

VARIANCE: REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

USE VARIANCE: EXCEPTION #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

SPECIAL EXCEPTION REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: demanded Use Code Sect 190-15 Table 15-1 (#27K)

To replace an existing water tank w/a new one. 11.3.3' tall, in same location
Board feels all criteria has been met. No safety concerns. Concrete less maintenance

SPECIAL EXCEPTION REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: Board is unanimous in its approval. Special

conditions have been met.

PETITION FOR REHEARING/APPEAL FO ZONING ADMIN	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

ZONING BOARD OF ADJUSTMENT

MEETING OF: 1/14/2020

PAGE 2 of 6

ADDRESS OF ZBA REQUEST: 13 Alder Dr

CLERK OF ZBA: Mariellen MacKay

APPLICANT: Jose Mendez & Angela Lano

OWNER: (name)

VOTING: J. MinKarah, R. Shaw, S. Lionel, M. MacKay

JP Boucher & J. Curpin recused themselves

VARIANCE: REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial:

VARIANCE: REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial:

USE VARIANCE: EXCEPTION #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial:

SPECIAL EXCEPTION REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	Approve	R Shaw	m MacKay	Y	Ø	

Reason for granting / denial: claim land use (code Sect. 190-47(B)) to allow a major home occupation for an in-home day care for 12 children. Board feels all criteria have been met a special condition also have been agreed too

SPECIAL EXCEPTION REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial: Board is unanimous in its approval. NO outsidisplay prior to 9³⁰am - NO neighbor trucks parked in the yard

PETITION FOR REHEARING/APPEAL FO ZONING ADMIN	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial:

ZONING BOARD OF ADJUSTMENT

MEETING OF: 1/17/2020

PAGE 3 of 6

ADDRESS OF ZBA REQUEST: 3 Lyons St CLERK OF ZBA: Mariem Mackay

APPLICANT: Santa Tijada

OWNER: (name)

VOTING: S. Lionel, R. Shaw, J. Corriey, J.P. Boudry, M. Mackay

VARIANCE: REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	<u>Deny</u>	<u>S Lionel</u>	<u>R Shaw</u>	<u>5</u>	<u>0</u>	

Reason for granting/denial: from Land Use Code Sect 190-31, to encroach 14' into the 20' required front yard setback to construct a 15' x 20' detached pool house. Board feels that there is no hardship on the land. The

VARIANCE: REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: from Land Use Code Sect. 190-264 to exceed maximum accessory use area 40% permitted, 76% existing - 109% proposed. Structure is too large for the property & neighborhood - Unanimous denial. If the

USE VARIANCE: EXCEPTION #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	<u>✓</u>					

Reason for granting/denial: applicant re-designs it could be brought back as a completely diff event application.

SPECIAL EXCEPTION REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: _____

SPECIAL EXCEPTION REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: _____

PETITION FOR REHEARING/APPEAL FO ZONING ADMIN	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: _____

ZONING BOARD OF ADJUSTMENT

MEETING OF: 1/14/2020

PAGE 4 of 6

ADDRESS OF ZBA REQUEST: 39 Amherst St

CLERK OF ZBA: Mariellen Mackay

APPLICANT: Albert Monaco

OWNER: (None)

VOTING: J. Minkarah, S. Lionel, J. Currier, J.P. Bouchy, M. Mackay

#1

VARIANCE: REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	approve	J Currier	M Mackay	5	0	

Reason for granting/denial: from land use code Sect. 190-192(C) to exceed maximum driveway width, 24' allowed - 40' requested. - Special conditions support this request. No opinion - tickets happen

#2

VARIANCE: REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	1	11				

Reason for granting/denial: To exceed maximum 50% of front yard paved - 66% proposed - in keeping w/ the neighborhood. All criteria have been met

#3

USE VARIANCE: EXCEPTION #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	11	11				

Reason for granting/denial: from land use code Sect 190-16 Table 16-3 for minimum open space, 35% required - 33% proposed. Board is unanimous in its approval

SPECIAL EXCEPTION REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: _____

SPECIAL EXCEPTION REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: _____

PETITION FOR REHEARING/APPEAL FO ZONING ADMIN	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting/denial: _____

ZONING BOARD OF ADJUSTMENT

MEETING OF: 1/14/2020

PAGE 5 of 6

ADDRESS OF ZBA REQUEST: "L" Silver Dr CLERK OF ZBA: Marcella Mackay

~~Owner~~: Owner / Applicant: Sarcom LLC, 4G Cellular & 4G Wireless

~~Appealing Party~~: Princeton Properties Management, Pleasant Run Apts

VOTING: _____

VARIANCE: REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

VARIANCE: REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

USE VARIANCE: EXCEPTION #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

SPECIAL EXCEPTION REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

SPECIAL EXCEPTION REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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Reason for granting / denial: _____

PETITION FOR REHEARING/APPEAL FO ZONING ADMIN	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
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11.12.19 Public Hearing
 Reason for granting / denial: All criteria was discussed thoroughly and full board was in agreement that no substantive changes & for information was brought forward. The Board answered all 4 points individually & unanimously

ZONING BOARD OF ADJUSTMENT

MEETING OF: 1/14/2020

PAGE 6 of 6

ADDRESS OF ZBA REQUEST: 1 Handy St CLERK OF ZBA: Mariellen MacKay

~~██████████~~ Owner/Applicant: Ali Bird, Linatras Family Trust

~~██████████~~ Appealing Party: Clayton & Kyeongho Alexander, 1 Amherst Terrace

VOTING: _____

VARIANCE: REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial: _____

VARIANCE: REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial: _____

USE VARIANCE: EXCEPTION #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial: _____

SPECIAL EXCEPTION REQUEST #1	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial: _____

SPECIAL EXCEPTION REQUEST #2	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:

Reason for granting / denial: _____

PETITION FOR REHEARING/APPEAL FO ZONING ADMIN	MOTION	1 ST	2 ND	IN FAVOR	OPPOSED	WHO OPPOSED:
	<u>Deny</u>	<u>J</u> <u>min Kauh</u>	<u>S</u> <u>Lionel</u>	<u>5</u>	<u>0</u>	

Reason for granting / denial: 9-10-19 30 day appeal window expired 10-24-19

all five members believe it is untimely. No City Law to allow the ZBA to hear a Planning Board Decision