

To: Zoning Board of Adjustment

From: Carter W. Falk, AICP, Deputy Planning Manager/Zoning

Date: March 28, 2019

Subj: **USE VARIANCE: Richard A. & Patricia A. Jennings (Owners) Echo Development, LLC (Applicant) 324 Lake Street (Sheet 104 Lot 6) requesting the following: 1) Use Variance from Land Use Code Section 190-15, Table 15-1 (#15) to allow a six-unit multi-family building; and, 2) variance from Land Use Code Section 190-16, Table 16-3, for minimum lot area, 43,560 sq.ft required, 28,039 sq.ft existing. RA Zone, Ward 6.**

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#### **PROPOSAL:**

The applicant, Echo Development, LLC, is requesting a use variance to allow a six-unit multi-family building, also, is requesting a variance for the minimum lot area, where 43,560 sq.ft is required, and 28,039 sq.ft is existing. The property is located in the A-Urban Residence (RA) zone. The property is 28,039 square feet in area (0.64 acres).

#### **SITE ANALYSIS:**

The subject site is located on the south side of Lake Street, between Kingston Drive and Ferson Street (see attached maps). To the north, across Lake Street, are single-family homes. To the east are single family homes. To the south, across Swan Street, are single family homes, and to the west are single-family homes. All abutting properties are also zoned RA.

According to the City of Nashua, Land Use Code, Section 190-15, Table 15-1 (#15), "*multi-family dwelling, 3 or more units (including but not limited to garden apartments, quadruplexes, triplexes, rowhouses, or townhouse)*" is not a permitted use in the RA Zone. The proposed use is permitted in the C-Urban Residence (RC), Downtown-1/Mixed Use (D-1/MU) and Downtown-3/Mixed Use (D-3/MU) zones. Further, the proposed use is allowed as a Conditional Use, subject to Planning Board review and approval, in the B-Urban Residence (RB) zone.

The property has frontage on both Lake Street and Ferson Street, with the main access driveway off of Lake Street. The property is somewhat large in comparison to the abutting lots. The applicant is proposing a six-unit multi-family building located generally in the center of the lot (see attached plan). The existing single-family house on the lot would be removed. Proposed access to the parking area would be from the access driveway off of Ferson Street, and the proposed parking lot would be in the southern portion of the lot.

The minimum parking requirement is 1.5 parking spaces per unit, therefore, nine parking spaces are required. The plan indicates that ten parking spaces are proposed, including two handicap spaces, therefore, satisfying parking requirements.

An area variance is also being requested for the minimum land area. In the RA zone, a minimum of 7,260 square feet of land is required per unit, therefore, an acre (43,560 sq.ft) of land is required, and 28,039 sq.ft is existing.

The City's Future Land Use Plan identifies the subject property as "Medium Density Residential". In order for the ZBA to grant the variance request, the applicant must satisfy all the relevant points of law, as listed below:

**Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship:** The applicant must establish that, owing to special conditions of the property that distinguish it from other properties in the area, that (1) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and (2) that the proposed use is reasonable.

**The applicant states that the property is distinct from most of the other properties in the area, as it is approximately 83 feet wide, and approximately 316 feet deep, with a 20'x80' strip of land connecting it to Ferson Street. The applicant states that most lots in the area are 60-80 feet wide, and 80-100 feet deep, and to restrict this property to one single family residence or a duplex would not be fair and reasonable, and the full use of the land for multifamily would be a reasonable use of the property, and would not alter the essential character of the neighborhood.**

**The proposed use will observe the spirit of the ordinance:** 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 applicant states that the proposed use will observe the spirit and intent of the ordinance because the residential character of the neighborhood will be maintained, and the density will be similar to the overall density of the area. The applicant states that the purpose of the ordinance is to maintain the residential character of the neighborhood, consisting of single family and duplexes on lots of approximately 7,500 square feet.**

**The proposed use will not diminish the values of surrounding properties:** 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.

**The applicant indicates that consolidating the units into a single six unit townhouse will allow more use in the remainder of the lot for open space, parking, and buffers, and will not cause a diminution in value of surrounding properties.**

**Granting of the requested variance will not be contrary to the public interest: 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”.**

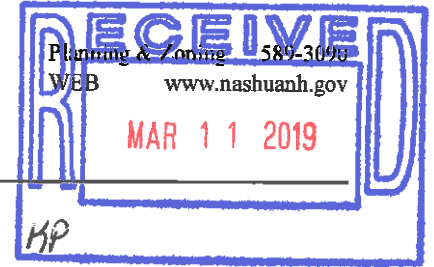
**The applicant states that the request will not be contrary to the public interest, as the lot is large enough to be developed into three duplex lots with frontage variances, density variances, and special exceptions. The applicant states that due to the size of the lot and its exceptions for duplexes would be reasonable. The applicant states that a single building consisting of six townhouse units would be a better design for this property, and would not alter the essential character of the district and the neighborhood because it would maintain a residential use with a resulting density that is typical for the area.**

**Substantial justice would be done to the property owner by granting the variance: the benefits to the applicant must not be outweighed by harm to the general public or to other individuals.**

**The applicant states that substantial justice would be done because the property owner would be able to make full use of the size of the lot without causing any harm to either the general public or to individuals in the neighborhood.**



**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

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).**

<b>OFFICE USE ONLY</b>	Date Received <u>3/11/19</u>	Date of hearing <u>4/9/19</u>	Application checked for completeness: <u>CF</u>
PLR# <u>2019-00045</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.")

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.")

See attached sheet

- 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 sheet

- 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 sheet

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 sheet

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 0 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:

Empty text box for general business operations.

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

Empty text box for site renovations.

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

3/11/19 Date

Michael F. Lefavor, Manager Print Name

3/11/19 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
Please mail it to me at

## Variance Application Addendum

Address: 324 Lake Street  
Applicant: Echo Development, LLC

1. Granting the variance would not be contrary to the public interest because the lot is large enough to be developed into three (3) duplex lots with frontage variances, density variances and special exceptions. Due to the size of the lot and its relationship to other lots in the area, variances for frontage and density and special exceptions for duplexes would be reasonable. A single building consisting of six (6) townhouse units would be a better design for this property. It would not alter the essential character of the zoning district and the neighborhood because it would maintain a residential use with a resulting density that is typical for the neighborhood. Public health, safety and welfare would not be threatened and no public rights would be injured.

2. The spirit of the ordinance will still be observed. The residential character of the neighborhood will be maintained and the density will be similar to the overall density of the area. The purpose of the ordinance is to maintain the residential character of the neighborhood consisting of single family and duplexes on lots of approximately 7,500 square feet. Allowing this variance would not unduly or in a marked degree conflict with the ordinance such that it would violate the ordinance's basic zoning objective.

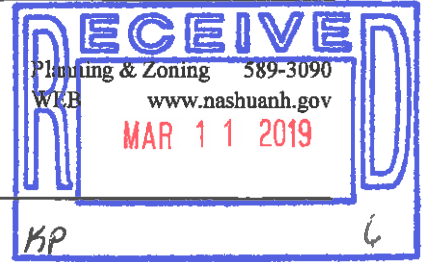
3. Substantial justice would be done because the property owner would be able to make full use of its 28,000 square foot lot without causing any harm to either the general public or to individuals in the neighborhood.

4. Consolidating the units into a single six (6) unit townhouse will allow more use of the remainder of the lot for green space, parking and buffers. This will not cause a diminution in value of surrounding properties.

5. The property is distinct from most of the other properties in the neighborhood. Its width of approximately 83 feet and depth of approximately 316 feet and its 20 foot by 80 foot strip of land connecting to Ferson Street distinguish it from most other properties in the neighborhood that are generally 60 to 80 feet wide and 80 to 100 feet deep. Restricting this property to one single family residence or to one duplex would not be fair and reasonable. Making full use of the 28,000 square feet of the property as a multifamily would be the most reasonable use of the property and would not alter the essential character of the neighborhood.



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**1. VARIANCE INFORMATION**

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 Zoning District  Sheet  Lot

b. **VARIANCE(S) REQUESTED:**

Variance to allow a 6-unit building on a lot consisting of 28,039 square feet, where 43,560 square feet are required

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

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Granting the variance would not be contrary to the public interest because the property is in a neighborhood with multiple duplex lots with an average density of approximately 3,500 square feet per unit. The proposed density for the Applicant's property would be approximately 4,670 square feet per unit. The essential character of the neighborhood would not be altered, public health, safety and welfare would not be threatened and no public rights would be injured.

- 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 spirit of the ordinance would still be observed. Although the density per unit would be greater than allowed by the Ordinance, the resulting density would be similar to other multiple unit properties in the neighborhood.

- 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.)

Substantial justice would be done because the property owner would be able to make full use of its 28,000 square foot lot with a resulting density similar to other multiple unit properties without causing harm to the general public or to individuals in the neighborhood.

- 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 will be no diminution of values of surrounding properties since the Applicant's property will be greatly improved from its current state.

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.

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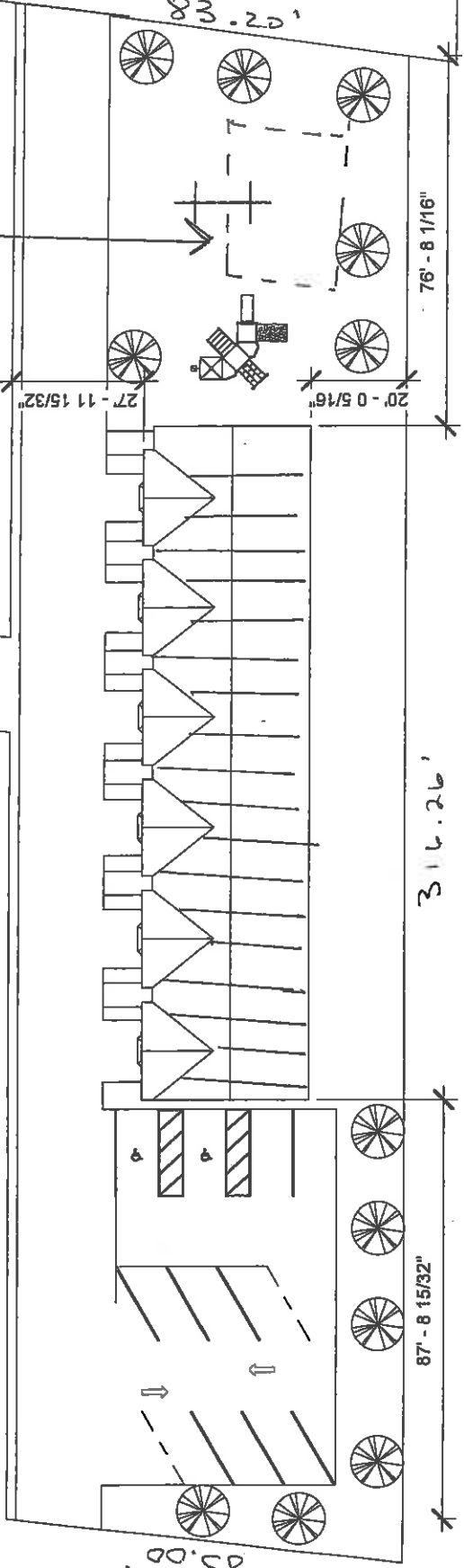
Ferson Street

Lake Street

316.26'

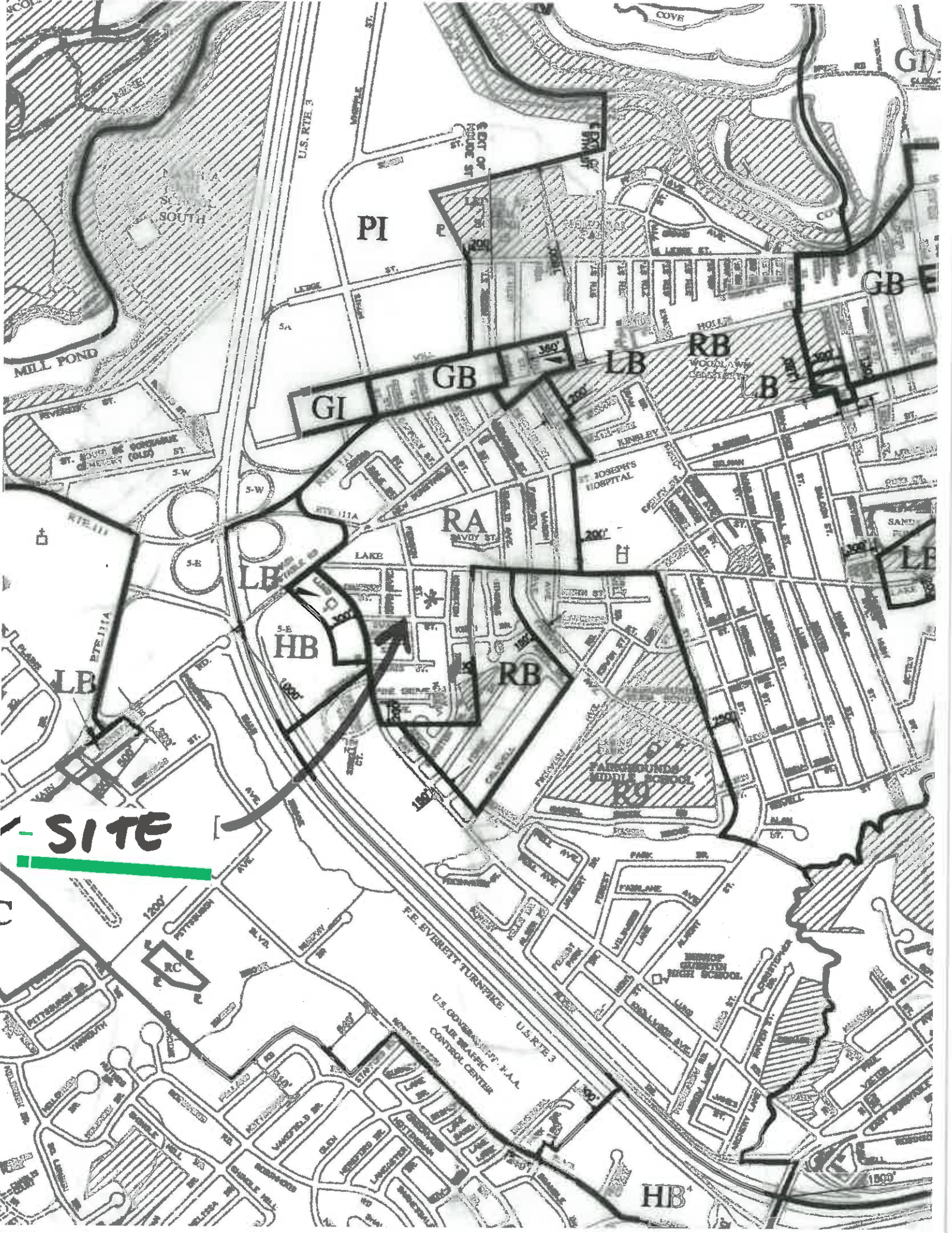
83.20'

Existing house  
to be removed



① Site  
1" = 30'-0"

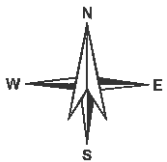




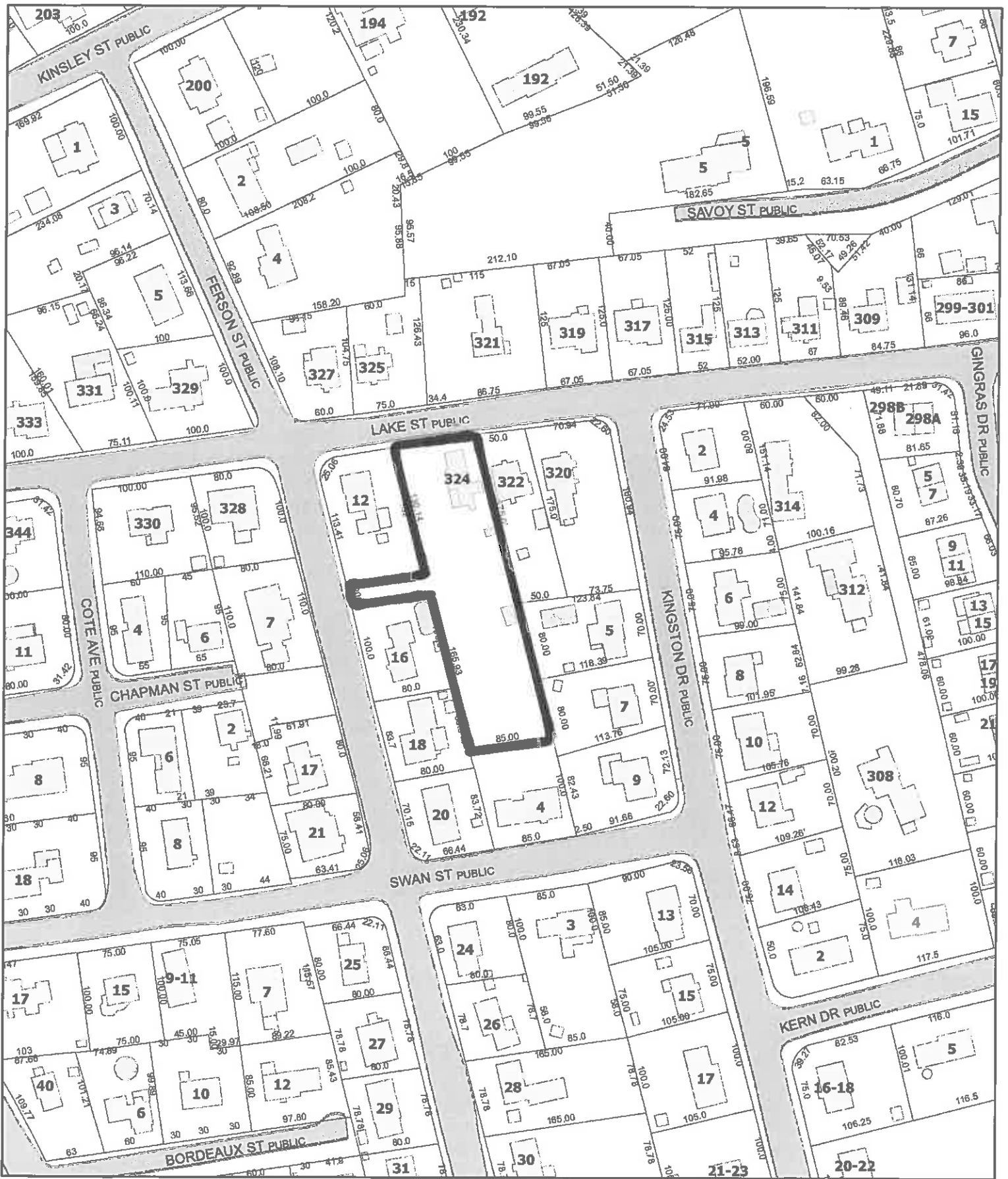
**SITE**



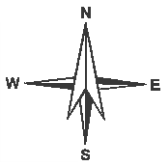
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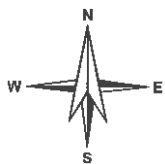


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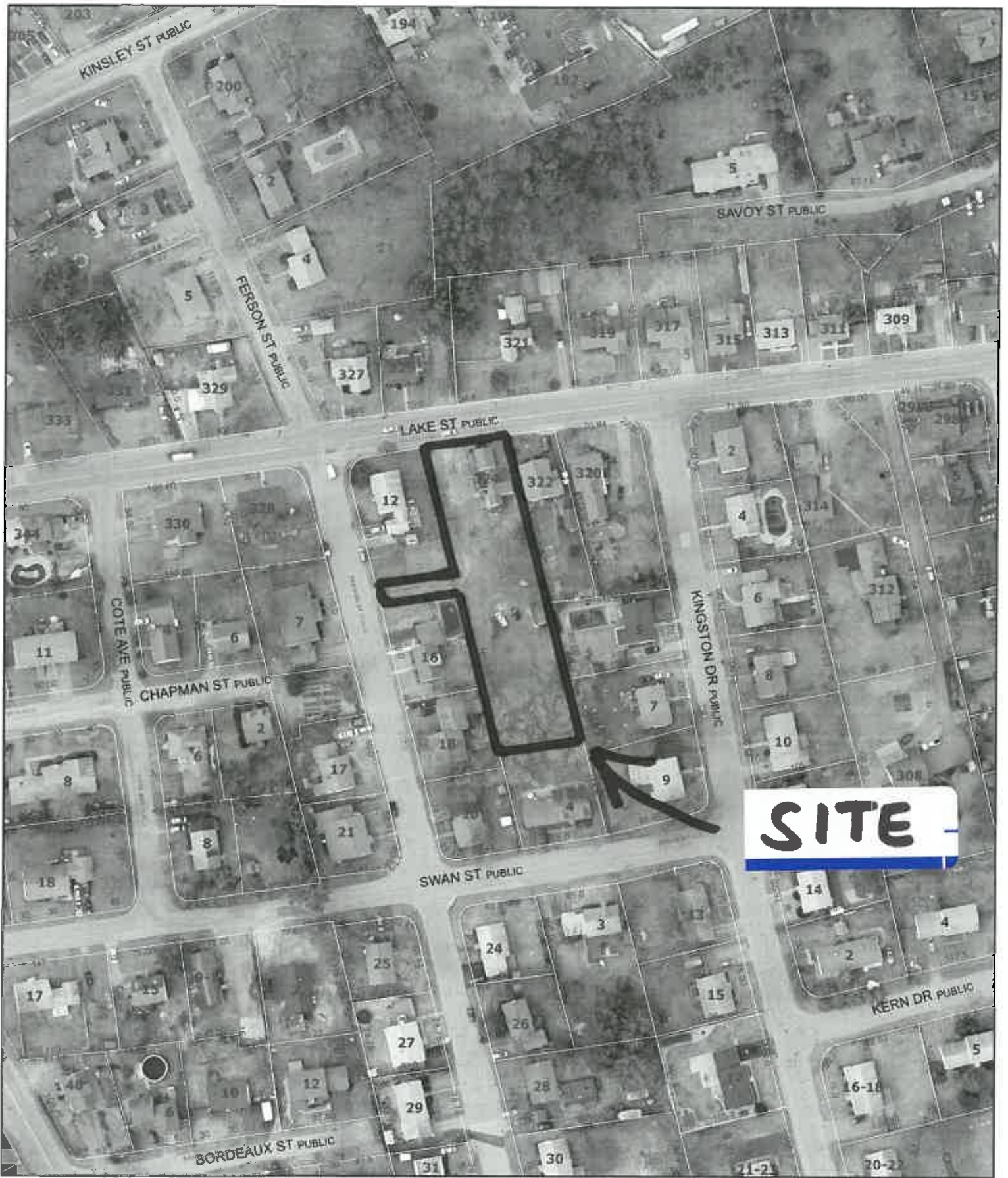




### 324 Lake Street







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