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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

44



William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Right-of-Way
June 18, 2024

REQUESTED ACTION

Authorize the New Hampshire Department of Transportation (Department), pursuant to RSA 4:39-c and 228:31, to sell approximately 5.93 acres of state-owned land with improvements located in the Town of Conway, on the northerly side of Common Court and the westerly side of the North-South Local Road. The sale will be direct to the New Hampshire Housing Finance Authority (NHHFA) for \$1,046,100, which includes an administrative fee of \$1,100, effective upon Governor and Executive Council approval.

The Department's Bureau of Finance and Contracts has determined the parcel was originally purchased with 77% Federal Funds and 23% Highway Funds.

Funding is to be credited as follows:

04-096-096-960015-0000-UUU-402156 Administrative Fee	<u>FY 2025</u> \$1,100
04-096-096-963015-3049-405215 Sale of Parcel - Highway (23% of \$1,045,000)	<u>FY 2025</u> \$240,350
04-096-096-963515-3054-401771 Consolidated Federal Aid (77% of \$1,045,000)	<u>FY 2025</u> \$804,650

EXPLANATION

The Department received a request from the NHHFA to acquire the property identified on the Conway 11339B Project Plans as parcel 188, and in the Town's tax records as Map 235, Lot 93. The Town records indicate this parcel as being located in the Highway Commercial District (HC) and partially within the Special Highway Corridor (SHCO) District. This acquisition's main focus is to develop workforce housing in the area.

This request has been reviewed by the Department, and it was determined to be surplus to its operational needs and interests. The sale will include the following conditions:

1. The NHHFA shall be responsible for any and all local and state approvals, including but not limited to subdivision approval.
2. The NHHFA shall be responsible for discontinuing an unauthorized access point to the North-South Local Road along the Controlled Access Right-of-Way.

At the September 15, 2023, meeting of the Long-Range Capital Planning and Utilization Committee, the request (LRCP 23- 028) was approved allowing the Department to sell the 5.93 +/- acres of state-owned land directly to the NHHFA for the value of \$1,045,000 and to assess an administrative fee of \$1,100.

The Department has solicited interest from the Town of Conway pursuant to RSA 4:39-c. The Town was given a 120-day extension after the Department presented the parcels to the Select and Planning boards on October 24, 2023. The purchase by NHHFA has been coordinated with the Town.

The NHHFA submitted an application to the Town of Conway Zoning Board of Adjustment requesting a variance to construct a multifamily apartment complex. At the February 21, 2024, meeting, the application was approved unanimously with the condition that the property be deed-restricted as long-term affordable housing.

The Department respectfully requests authorization for the sale of this land.

Respectfully,



William J. Cass, P.E.
Commissioner

WJC/SEF
Attachments

PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the 20 day of June, 2024, by and between the State of New Hampshire, Department of Transportation, having a principal place of business at 7 Hazen Drive, Concord, New Hampshire 03301 (hereinafter referred to as the "Department") and the New Hampshire Housing Finance Authority, or their designee at closing (under common control), with a principal address of 32 Constitution Drive, Bedford, NH 03110 (referred to as the "NHHFA") (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

This Agreement relates to the sale of real estate located on the Northerly side of Common Court and the Westerly side of North-South Local Road (the "Property"), more particularly described as:

- The land depicted on the plan titled "BOUNDARY PLAT of the land of THE STATE OF NEW HAMPSHIRE" by Richard D. Bartlett & Associates, LLC, recorded on October 27, 2008, in the Carroll County Registry of Deeds as Book 222, Page 73. And also being a portion of the property acquired for the Conway 11339B Bypass project recorded in the Carroll County Registry of Deeds as Book 2435, Page 64, executed July 14, 2005.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Department owns certain real estate located on the northerly side of Common Court and the westerly side of the North-South Road, in Conway New Hampshire, consisting of approximately 5.93 acres of improved land, as further described herein.
- II. The Department is selling the Property, as it has been determined to be surplus to the Department's needs.
- III. NHHFA is afforded the ability to acquire the Property following NH RSA 4:39-c.
- IV. NHHFA, subject to the contingencies set forth within this Agreement, desires to acquire the Property from the Department.
- V. This Agreement is a binding contract that shall become effective upon approval of the Governor and Executive Council.
- VI. All Parties signatories to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

Initial PD 6-24

NOW, THEREFORE, the Parties hereby agree as follows:

1. DESCRIPTION OF PROPERTY AND REAL ESTATE TRANSACTION:

- 1.1 **General:** Pending the results of NHHFA's due diligence and the other conditions in this Agreement, the Department intends to sell to NHHFA, and NHHFA intends to acquire from the Department, the Property, consisting of approximately 5.93 acres of land, as shown on the Conway 11339B Bypass plan and in the Conway, tax records as Map 235, Lot 93 (Plan reference).
- 1.2 **Purchase Price:** NHHFA shall acquire the Property for ONE MILLION FORTY-FIVE THOUSAND DOLLARS (\$1,045,000) due at closing.
- 1.3 **Administrative Fee:** In addition to the purchase price contained in Subsection 1.2 of this Agreement, the NHHFA shall pay an administrative fee of ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100), also due at closing.
- 1.4 **Payment of Purchase Price:** The purchase price shall be paid in full by NHHFA, by certified check or bank check, made out to Treasure State of New Hampshire, and presented to the Department at the Closing and conveyance of the Property to NHHFA.
- 1.5 **Conditions of sale:** The subject property located northerly side of Common Court and the westerly side of North-South Local Road is being sold "AS IS, WHERE IS, and WITH ALL FAULTS" with the sale conditions approved by the Long-Range Capital Planning and Utilization Committee on September 15, 2023, and pending Governor and Executive Council approval. The following sale conditions must be satisfied before closing.
 - 1.5.1 NHHFA is responsible for removing any unauthorized access points from the North-South Road to the Property within the Controlled Access Right of Way.
 - 1.5.2 NHHFA is responsible for obtaining all local and state land use approvals.
- 1.6 **Access to Property:** The Department hereby grants authorization to NHHFA, its employees, representatives, consultants, and agents to enter the Property to complete due diligence and for all other purposes necessary to carry out the terms this Agreement. All times and dates for

Initial RD 6:39

such access shall require prior approval of by the Department, and such approval will not be unreasonably withheld.

The Department and NHHFA shall coordinate all access to the Property by third parties working on behalf of NHHFA as part of NHHFA's due diligence.

NHHFA shall indemnify, defend, and hold harmless the Department from and against all claims, actions, damages, or losses arising out of NHHFA's activities pursuant to this paragraph during its inspection and subsequent tasks related thereto which are caused solely by NHHFA's negligence. NHHFA shall require all contractors who are retained to complete due diligence or for any other purpose necessary to carry out the terms of this Agreement, and who will need to access the Property, to obtain a certificate of insurance for \$2 million aggregate, \$1 million per occurrence naming the Department as an additional insured. NHHFA shall also require any such contractors to execute NHHFA's standard indemnification form naming both NHHFA and the Department as indemnified parties. The standard indemnification form shall be as follows unless written approval of a requested change is granted by both the Department and Buyer:

"The contractor agrees to indemnify, defend and save harmless NHHFA and State of New Hampshire Department of Transportation, their officials, officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the contractor in the performance of this contract. This indemnification shall survive the expiration or early termination of this contract."

- 1.7. **Closing:** The Parties agree that the Closing shall occur within **ninety (90) days** after final approval of the sale by the Governor and Executive Council unless otherwise mutually agreed by the Parties.
- 1.8. **Title and Deed Restrictions:** In addition to the terms and conditions set forth within this Agreement, the conveyance of the Property by the Department to NHHFA shall be of good and marketable title thereto by Quitclaim Deed and insurable, upon application by NHHFA, for the benefit of NHHFA, by a title insurer licensed in the State of New Hampshire and acceptable to NHHFA pursuant to an ALTA standard

Initial RD 6-24

form title insurance policy in an amount equal to the Purchase Price, insuring that NHHFA holds marketable fee simple title to the Property subject to:

Easements, liens, restrictions, or encumbrances of record or any other matters of record in existence at the time of the Closing accepted and approved by NHHFA, and;
Provisions of building and zoning laws in effect at the time of the Closing.

- 1.9. **Deed Preparation; Recording Fees:** The Department shall convey the Property by Quitclaim Deed. The Department shall prepare all deeds (including all other applicable recording instruments, if any) at its expense.
 - 1.10. **Transfer Taxes and Recording Fees:** The Department is exempt from the Real Estate Transfer Tax, pursuant to RSA 78-B:2
 - 1.13. **Department's Disclosures:** The Department makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Property.
 - 1.14. **Casualty and Condemnation:** In the event that the Property, prior to closing, is damaged by fire, flood, collapse, or other casualties, the Department, or NHHFA, at any time after the occurrence of such damage or casualty, may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect. In the event of a casualty, the Department and NHHFA agree to hold each other harmless from any claim for any costs, damages, liabilities, or financial losses it may incur.
2. **Buyer's Contingencies:** NHHFA's obligation to Close on the acquisition of the Property shall be subject to the following contingencies, the failure to satisfy any one of which shall give NHHFA any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which NHHFA shall have no further obligation to the Department.
- 2.1. **Title: Time being of the essence,** upon execution of this Agreement by the Parties, NHHFA may perform a title examination of the Property within thirty (30) days, to be reasonably satisfied that title to the Property is marketable and insurable. If upon examination of the title it is found not marketable or insurable, after identifying to the Department in writing any apparent title defects and

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providing the Department reasonable opportunity to cure them, this agreement may be rescinded at the option of NHHFA or Department and all deposits shall be refunded to NHHFA, provided that written notice is delivered within the said time frame, **time being of the essence**. If no notice is given within said time frame, then any objections to the title are waived.

3. **Representations and Warranties of NHHFA.** NHHFA hereby represents and warrants that:
- 3.1 The execution and delivery of this Agreement and the performance of NHHFA's obligations hereunder have been duly authorized by such action as necessary. This Agreement constitutes the legal, valid, and binding agreement of NHHFA, enforceable against NHHFA in accordance with its terms subject only to the conditions set out in this Agreement.
- 3.2 Subject to the conditions set out in this Agreement, neither the execution nor delivery by NHHFA of this Agreement, the performance by NHHFA of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by NHHFA of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law, charter, ordinance or governmental regulation applicable to NHHFA, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which NHHFA is a party or by which NHHFA or any of its properties or assets are bound, or constitutes a default there under.
- 3.3 Except as set forth in this Agreement, no approval, authorization, order, or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by NHHFA, except such as have been duly obtained or made or disclosed in this Agreement.
- 3.4 There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against NHHFA, wherein an unfavorable decision, ruling, or finding would materially adversely affect the performance by NHHFA of its obligations hereunder or the performance by NHHFA of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by NHHFA in connection with the transactions contemplated hereby.
4. **Representations and Warranties of the Department.** The Department hereby represents and warrants to the best of its knowledge and belief that:

Initial RD 6-24

- 4.1 The Department has the power and authority to execute, deliver, and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery, and performance of this Agreement subject to the Department seeking and obtaining approval by the Long-Range Capital Planning and Utilization Committee and final approval by the Governor and Executive Council pursuant to RSA 4:39-c. This Agreement will, upon execution and delivery thereof by the Department and upon approval by the Governor and Executive Council, constitute valid, legal, and binding obligations of the Department enforceable against the Department in accordance with the respective terms thereof.
- 4.2 Neither the execution nor delivery by the Department of this Agreement, the performance by the Department of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Department of the terms or conditions hereof conflicts with, violates, or results in a breach of any constitution, law or governmental regulation applicable to the Department, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Department is a party or by which the Department or any of its properties or assets are bound, or constitutes a default there under.
- 4.3 Except as set forth in this Agreement, no approval, authorization, order, or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Department, except such as have been duly obtained or made.
- 4.4 There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Department, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Department of their obligations hereunder or the performance by the Department of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Department in connection with the transactions contemplated hereby.

5 GENERAL PROVISIONS

- 5.1 **Cooperation:** NHHFA and the Department agree to cooperate with each other to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further

documents as may reasonably be requested by the Department, NHHFA, or their representatives, agents, and consultants.

- 5.2 **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification, or amendment, that requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 5.3 **Binding Effect; Successors and Assignors.** The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 5.4 **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit, or expand the express provisions of this Agreement.
- 5.5 **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 5.6 **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 5.7 **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 5.8 **Consent to Jurisdiction and Venue.** The Department and NHHFA submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County Superior Court. Both Parties hereby waive their right to a jury trial.
- 5.9 **Independent Parties.** The Department and NHHFA are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or

among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.

- 5.10 **Survival of Agreement.** The agreements, covenants, indemnities, representations, and warranties contained herein shall survive the execution and delivery of this Agreement.
- 5.11 **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 5.12 **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 5.13 **Preservation of Rights.** Nothing herein or in any related Agreement shall limit or be construed to limit in any way rights or remedies NHHFA may have for the collection of real property taxes under the law unless expressly set forth herein.
- 5.14 **Time of the Essence.** The Parties agree that time is of the essence in the performance of their respective obligations under this Agreement.
- 5.15 **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 5.16 **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any Buyer or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable Buyer or other governmental

Boards, Committees, Commissions, or Departments, including but not limited to the requirement that the agreement is to be approved by the Governor and Executive Council pursuant to RSA 4:39-c prior to the Department being required and/or authorized to convey the property to NHHFA.

- 5.17 **Warranties and Representations:** The Department and NHHFA each acknowledge that they have not been influenced to enter this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 5.18 **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

LIST OF EXHIBITS

[The remainder of this page left blank intentionally]

Initial PD 6-29

BUYER:

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

By: [Signature] Date: 6/24/2024

Printed: _____
Rob Dapice, Executive Director/CEO
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

Signed or attested before me on the 24th day of June, 2024

[Signature]
Justice of the Peace/Notary Public

COLETTE L. PROVENCHER
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
May 4, 2027

(Seal)

SELLER:

STATE OF NEW HAMPSHIRE

By: [Signature] Date: 6/25/24

Printed: Stephen G. LaBonte
Administrator, Bureau of Right-of-Way
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Signed or attested before me on 25th day of June, 2024

[Signature]
Justice of the Peace/Notary Public

SLOANE E. FRENCH
JUSTICE OF THE PEACE
State of New Hampshire
My Commission Expires August 23 2028

(Seal)

Initial RD 6-24



**NEW HAMPSHIRE
HOUSING**

Rob Dapice
Executive Director/CEO
rdapice@nhfa.org

DEPT. OF TRANSPORTATION
BUREAU OF RIGHT OF WAY
FEB 10 2023
RECEIVED

February 6, 2023

Stephen G. LaBonte, Administrator
Bureau of Right of Way
JO Morton Building-Room 100
7 Hazen Drive, P.O. Box 483
Concord, NH 03302-0483

RE: Sale of State-Owned Land in Conway
95 Common Court and Puddin Pond Hill

Dear Mr. LaBonte:

Thank you for your January 18, 2023, letter concerning:

- 95 Common Court improved with 2 condo-style buildings; and
- The 6.267 +/- acres consisting of several remnant parcels of the former Puddin Pond Hill Homeowner subdivision.

New Hampshire Housing is interested in acquiring these Properties and requests a 120-day review extension from DOT to perform due diligence and obtain Board approval for the acquisition of the surplus land.

Thank you for giving us the opportunity to review the parcels.

Sincerely,

Robert B. Dapice
Executive Director/CEO

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

LRCP 23-028

FROM: Stephen G. LaBonte
Administrator



DATE: August 29, 2023

AT: Dept. of Transportation
Bureau of Right-of-Way

SUBJECT: Sale of State-Owned Land in Conway
RSA 4:39-c

Approved by the Long Range
Capital Planning & Utilization
Committee September 15, 2023

TO: Mark McConkey, Chairman
Long Range Capital Planning and Utilization Committee

REQUESTED ACTION

The New Hampshire Department of Transportation (Department), under RSA 4:39-c, requests authorization to sell 5.93 +/- acres of state-owned land with improvements located at 95 Common Court in the Town of Conway for \$1,046,100, which includes the \$1,100 administrative fee. The New Hampshire Housing Finance Authority (NHHFA) has expressed an interest in this land. The sale will likely be direct to either the Town or NHHFA, and the sale will be subject to conditions as specified in this request.

EXPLANATION

Town records indicate this property as being located in the Highway Commercial District (HC) and partially within the Special Highway Corridor (SIICO) District.

If the Town declines the sale, the NHHFA would like to acquire the property for the development of affordable housing.

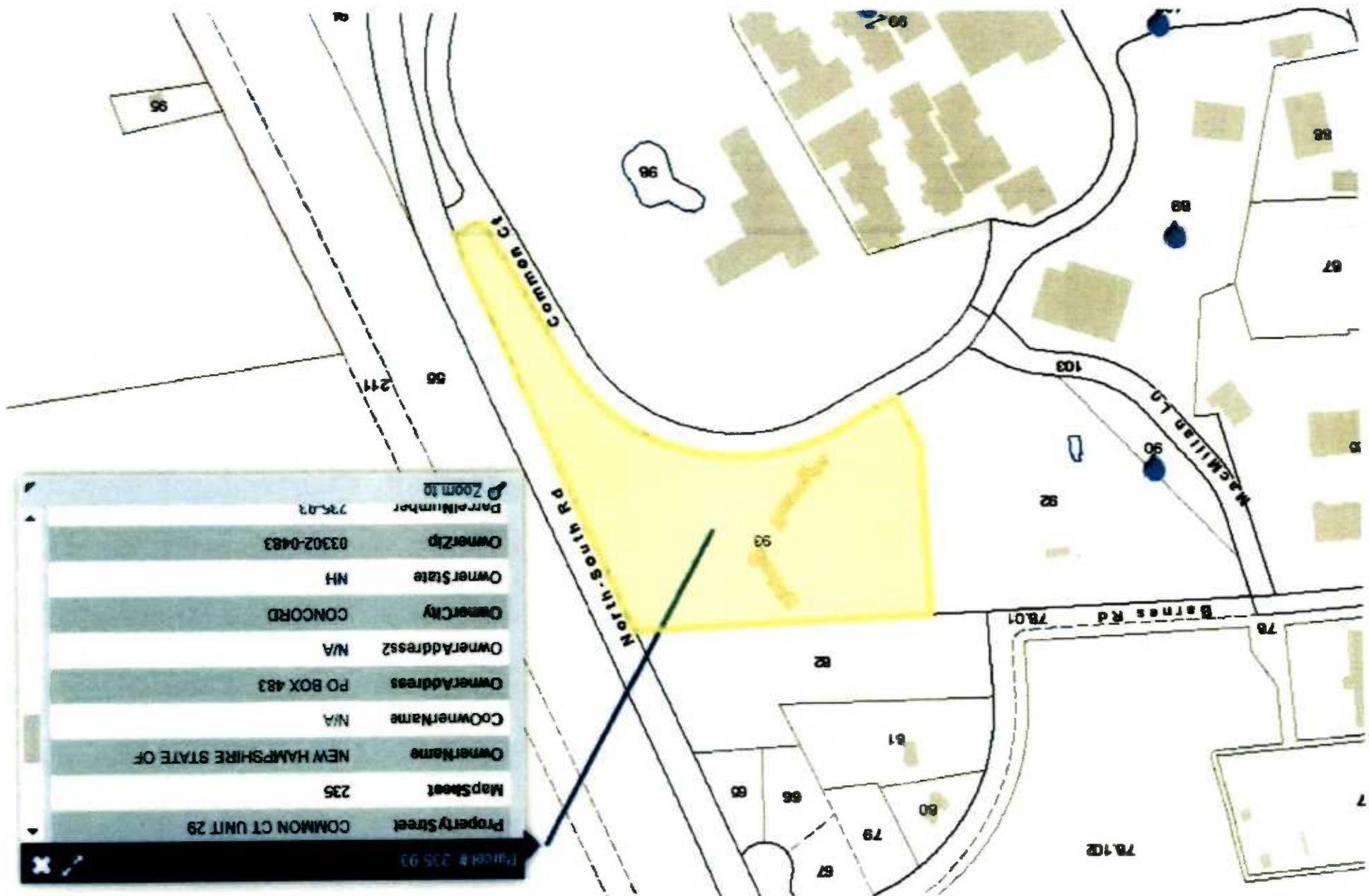
The property, consisting of 5.93 +/- acres with two (2) condo-style buildings was acquired for a combined total of \$1,393,250 and is a portion of a larger parcel acquired in 1996 for the construction of the North-South Local Road. This parcel is the remainder of a larger parcel, consisting of 6.12 +/- acres and formerly known as "The Condominiums at Settlers Green". After a departmental review, it was determined that the property is surplus to the Department's operational needs and available for disposal. This property will be conveyed with the following conditions:

- The Department's Bureau of Highway Maintenance conveyed the following conditions, "An illegal vehicle access point exists to the property from the North-South Local Road within the Controlled Access Right of Way." This access point will need to be eliminated as a condition of any property transfer.
- The Grantee will be responsible for obtaining all local and state land use approvals precedent to closing.

A Staff Appraiser from the Department evaluated the property and concluded it does have an independent highest and best use. They then prepared a market value appraisal using the sales comparison approach that adheres to the Right of Way Manual requirements and the Uniform Standards of Professional Appraisal Practice. The property's opinion of value as of July 21, 2023, was concluded to be \$1,045,000.

The Department respectfully requests authorization to sell the property as outlined within this request.

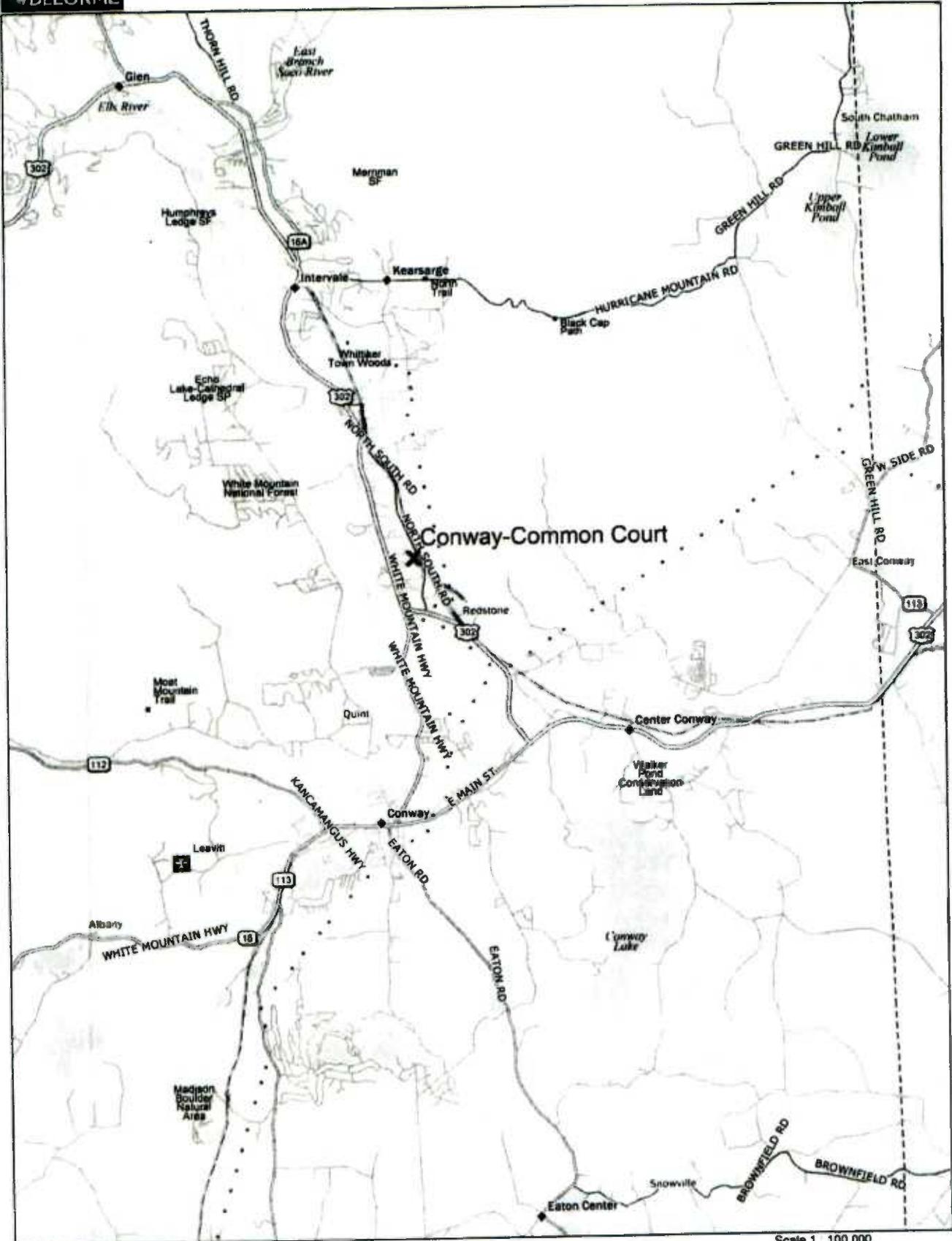
SGL/AMO/jl
Attachments



Parcel # 235 93

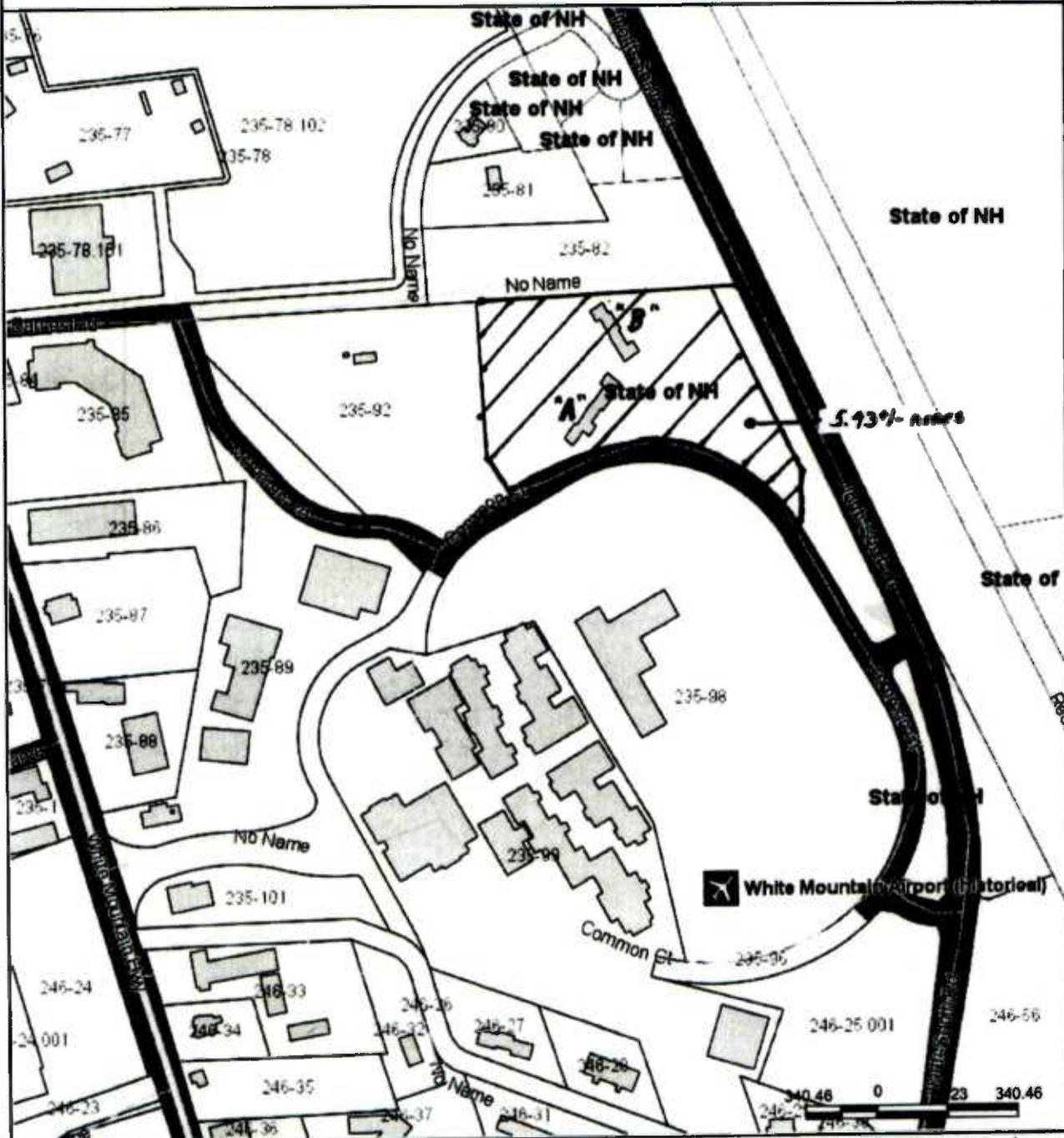
Property Street	COMMON CT UNIT 29
MapSheet	235
OwnerName	NEW HAMPSHIRE STATE OF
CoOwnerName	N/A
OwnerAddress	PO BOX 483
OwnerAddress2	N/A
OwnerCity	CONCORD
OwnerState	NH
OwnerZip	03302-0483
ParcelNumber	735.93

Zoom In

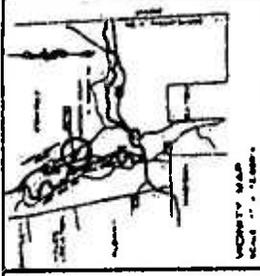


STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE
ADMINISTRATION

MOSAIC PARCEL
MAP SHARING
POOL



This map was compiled using data believed to be accurate; however, a degree of error is inherent in all maps. This map was distributed "AS-IS" without warranties of any kind, either expressed or implied, including but not limited to warranties of suitability to a particular purpose or use. No attempt has been made in either the design or production of the maps to define the limits or jurisdiction of any federal, state, or local government. Detailed on-the-ground surveys and historical analyses of sites may differ from the maps.



NOTES

1. This site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

2. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

REFERENCES

1. The site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

2. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

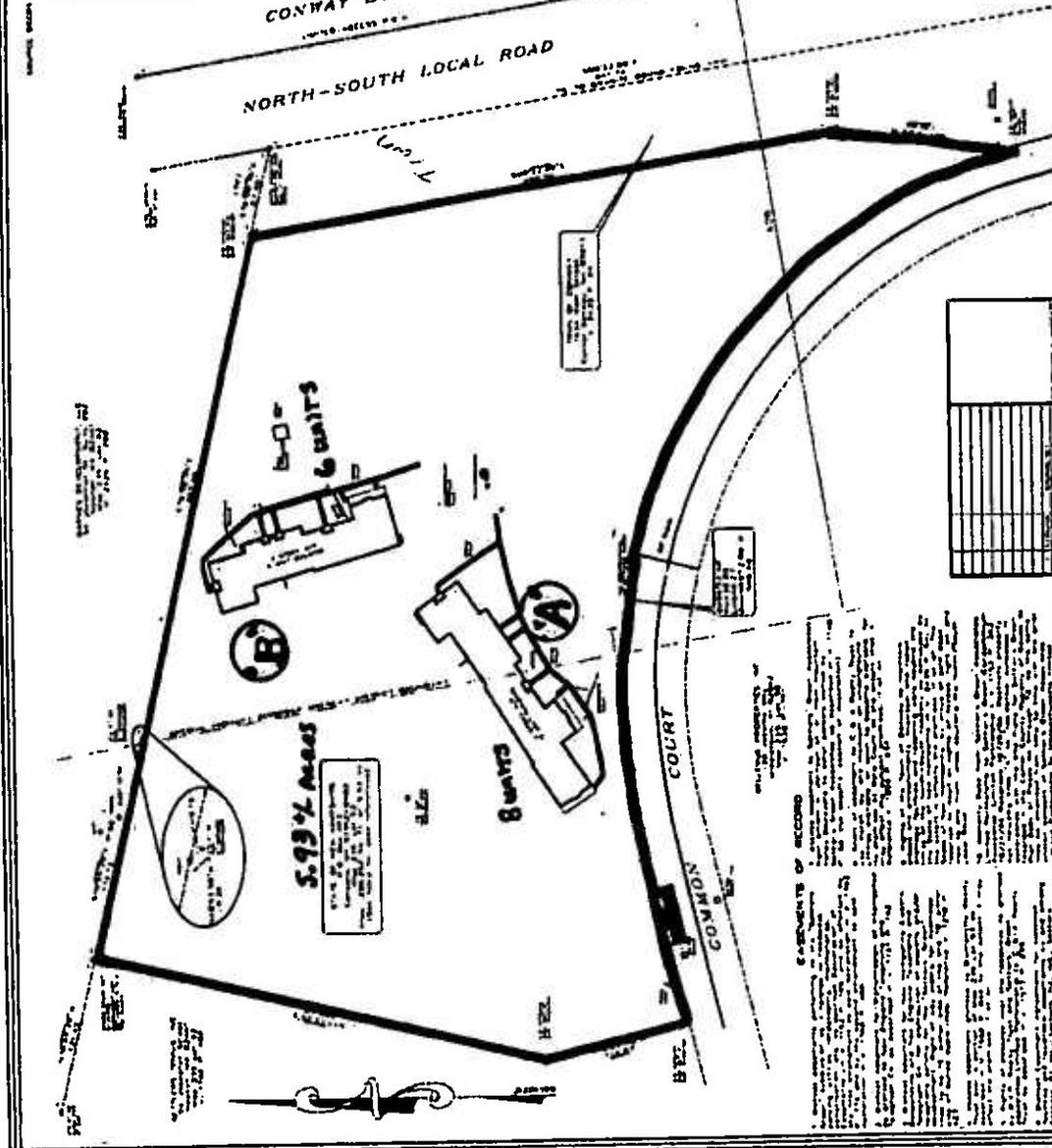
BOUNDARY SURVEY

THE STATE OF NEW YORK

RICHARD D. BARRETT & ASSOCIATES, LLP
REGISTERED PROFESSIONAL ENGINEERS
100 WALL STREET, SUITE 2000
NEW YORK, N.Y. 10038
TEL: (212) 410-1000
FAX: (212) 410-1001

TABLE 1: SUMMARY OF PROPOSED DEVELOPMENT

Item	Description	Quantity
1	6 Units	6
2	8 Units	8
3	5.93% Access	1



STATEMENTS OF RECORD

1. This site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

2. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

3. The site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

4. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

5. The site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

6. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

7. The site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

8. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

9. The site plan was prepared in accordance with the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

10. The site is located in the City of New York, State of New York, and is subject to the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.01, and the provisions of the Uniform Statewide Building Code, Chapter 10, Section 10.02.

Osborne, Angela

From: Weir, Lisa
Sent: Monday, September 18, 2023 8:05 AM
To: Osborne, Angela
Subject: FW: Letters of Interest

FYI and for your file

From: LaBonte, Stephen <Stephen.G.LaBonte@dot.nh.gov>
Sent: Friday, September 15, 2023 3:44 PM
To: Smith, Adam <Adam.M.Smith@dot.nh.gov>; Weir, Lisa <Lisa.M.Weir@dot.nh.gov>
Subject: FW: Letters of Interest

I spoke to John Eastman this afternoon, I let him know we're going to hold off Pudding Pond and 95 Common Court Parcels until after we present to the select and planning boards.

From: Smith, Adam <Adam.M.Smith@dot.nh.gov>
Sent: Friday, September 15, 2023 1:15 PM
To: LaBonte, Stephen <Stephen.G.LaBonte@dot.nh.gov>
Subject: FW: Letters of Interest

FYI-Request from the Town for an extension is below from John Eastman dated 9/8

From: Weir, Lisa <Lisa.M.Weir@dot.nh.gov>
Sent: Friday, September 8, 2023 10:47 AM
To: LaBonte, Stephen <Stephen.G.LaBonte@dot.nh.gov>
Cc: Smith, Adam <Adam.M.Smith@dot.nh.gov>
Subject: FW: Letters of Interest

Steve,

Please see the email requesting a year extension for the Town of Conway to respond to the Town's interest in the North-South Local Road property. In the past we given an extension to the Town of Windham for the Indian Rock parcel, put there was not any Fed payback with that property.

Thanks,

Lisa

From: John Eastman <jeastman@conwaynh.org>
Sent: Friday, September 8, 2023 9:39 AM
To: Weir, Lisa <Lisa.M.Weir@dot.nh.gov>
Subject: RE: Letters of Interest

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Lisa,

This may be a reach but they would request a year if possible. Some on the board as well as the planning board have an interest in North/South piece and would need voter approval to raise the \$500,000 at the next town meeting. I understand if it's not possible but I just want to be able to give them the best information when this is discussed in public at their September 26th meeting. They will be sure to ask and will make a decision based on NHDOT's timeline for sale of the property.

Thanks again for all of your work on this.

John Eastman, Town Manager
Town of Conway

From: Weir, Lisa <Lisa.M.Weir@dot.nh.gov>
Sent: Friday, September 8, 2023 9:11 AM
To: John Eastman <jeastman@conwaynh.org>
Cc: 'Ryan O'Connor' <roconnor@conwaynh.org>; 'Paul DegliAngeli' <pauld@conwaynh.org>
Subject: RE: Letters of Interest

Good morning John,

Could you tell me how long you'll need to review the potential impacts?

Lisa

From: John Eastman <jeastman@conwaynh.org>
Sent: Friday, September 8, 2023 9:08 AM
To: Weir, Lisa <Lisa.M.Weir@dot.nh.gov>
Cc: 'Ryan O'Connor' <roconnor@conwaynh.org>; 'Paul DegliAngeli' <pauld@conwaynh.org>
Subject: RE: Letters of Interest

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Lisa,

Thank you for the offer letters on the two properties. I have been asked by the board of selectmen to ask you if the (30) day deadline for an answer is firm or would the State of NH DOT be willing to give more time for the board of selectmen to review the potential impacts of this sale. We are currently finalizing our master plan and rezoning which will clarify the actions of what the town might want to do.

I appreciate you sending the letters to me and I have forwarded them to our board of selectmen and my town planner. I do plan on sharing with our planning board next week.

I will look forward to your reply.

Sincerely,

John Eastman, Town Manager
Town of Conway

From: Weir, Lisa <Lisa.M.Weir@dot.nh.gov>
Sent: Thursday, September 7, 2023 9:01 AM

To: 'John Eastman' <jeastman@conwaynh.org>

Cc: Paul DegliAngeli <pauld@conwaynh.org>; LaBonte, Stephen <Stephen.G.LaBonte@dot.nh.gov>; Smith, Adam <Adam.M.Smith@dot.nh.gov>; Osborne, Angela <Angela.M.Osborne@dot.nh.gov>

Subject: Letters of Interest

Importance: High

-John,

Attached are the letters of interest and tax maps for the sale of 95 Common Court, and the parcels adjacent to the North-South Local Road. Please respond in writing as to the Town's Interest in acquiring either property.

Let me know if you have any questions,

Lisa

Lisa Weir

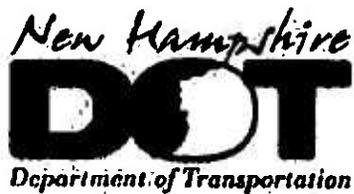
Chief of Property Management

NHDOT - Bureau of Right-of-Way

Office: 603-271-7128

Fax-603: 271-6915

[Lisa:m.weir@dot.nh.gov](mailto:Lisa.m.weir@dot.nh.gov)



Adopted: March 20, 2024 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 21, 2024

A public hearing was opened at 8:01 p.m. to consider a **VARIANCE** requested by **STATE OF NEW HAMPSHIRE/NH HOUSING FINANCE AUTHORITY** [FILE #24-05] in regards to §190-20.B.(1) of the Conway Zoning Ordinance to allow the construction of 105 residential dwelling units at 95 Common Court, North Conway (PID 235-93). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Andy Dean of Cooper Cargill Chant, Ben Frost of NH Housing Finance Authority, and Josh McAllister of HEB Engineers appeared before the Board. Mr. Dean said they are asking for an increase in density. There are two properties owned by the NHDOT; the NH Housing Finance Authority is negotiating with the DOT to purchase the properties. They are interested in developing one and retaining the other as greenspace. The density of the Puddin Hill Road property would be used for Common Court and is designed to be affordable housing.

Chair Colbath asked for Board comment.

Mr. Hebert noted the ZBA does not have the ability to transfer density requirements from one lot to another. Mr. O'Connor said the preservation of the Puddin Hill Road lot and North-South Road viewshed is part of the community benefit that would be gained by allowing this increased density. Mr. Hebert noted concern regarding potential future development of the Puddin Hill Road lot, since the Board has no authority to bind it. Mr. Frost said they would be willing to accept as a condition of approval imposing a restriction on the Puddin Hill Road property so it cannot be developed.

Mr. Frost said it is highly unlikely they will acquire the properties without the variance. Mr. Dean offered to put in a condition that a deed restriction or restrictive covenant for the Puddin Hill Road property must be approved by the Town before they can exercise the variance. Mr. O'Connor said the deed restriction would need to be in place and recorded before final approval of a site plan to build the density as requested.

Mr. Frost noted they have been in contact with the owners of the North Conway Grand Hotel and are prepared to offer as a condition that the Common Court property be used exclusively for long-term residential use, including multi-family.

Chair Colbath asked for public comment.

Eli Leino of Bernstein Shur, representing Bellevue Properties (owner of North Conway Grand Hotel), thanked the applicant for accurately capturing the discussions with their client regarding the residential use.

Benjamin Colbath, Planning Board member, explained the Planning Board has been working on this project and feels it is a win/win situation. He supports the intention to preserve the North-South Road viewshed and provide affordable housing. He hopes the ZBA supports this project.

Adopted: March 20, 2024 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 21, 2024

Janet Hudson asked where Barsamian's project would be in proximity to this project, and this was explained.

Eliza Grant, Planning Board member, echoed Mr. Colbath's comments. She said the Planning Board is working hard to help solve the housing crisis and preserve greenspace. She noted this development is over the aquifer and is within the Saco watershed. She said this is an extremely unique lot and is a good candidate for a variance, and encouraged the ZBA to approve this.

Ailie Byers, Planning Board member, said these properties were purchased by the DOT through eminent domain with the bypass. She noted a lot of work was done to develop this conceptual idea. She said this property is already partially developed, with impermeable surfaces and infrastructure, so it offers benefits that are worth considering.

Kevin MacMillan said as a contractor, he would not support this project, as there are too many unknowns. He urged the Board not to approve a variance prematurely. He cited personal experience with conditional approval that was not met or enforced. He also stated that the NH Housing Finance Authority foreclosed on his mortgage in the past. He believes the Town's laws are being undermined.

Steve Hartmann said as a former member of the Planning Board, he has never seen a project of this scale come before the Board. He said this is everything the Town has been asking for and urged the ZBA to support this project.

Chair Colbath asked for Board comment.

Mr. Cuddy said the NH Housing Finance Authority is the only organization with the ability and funding to do a project like this and ensure it offers affordable housing. He noted they are protecting the North-South Road watershed and this is a once-in-a-lifetime opportunity.

Mr. Hebert noted there has not been a formal presentation of the project. He would like to have input from Town counsel. He asked if a continuance would cause problems. Mr. Frost said he cannot speak for the DOT. Mr. O'Connor agreed they need to make sure the single property meets the criteria for the variance.

Mr. Dean reviewed the five criteria. The Board discussed the number of units needed for the project to move forward. Mr. Frost said they have not done a pro forma analysis of development on the property. He noted it is difficult to discuss this project without including the Puddin Hill Road property, as it is being viewed as a common scheme of development. Mr. Dean noted they will not be offsetting costs with market-rate units, as this is 100% affordable housing. So, the margins are much smaller.

Mr. Cuddy asked about the household income. Mr. Frost said this would be a tax credit development. The income levels would be determined by the U.S. Department of Treasury and the investors in the tax credit projects. They are typically set at an affordability focused on 60% of the area median income. Mr. O'Connor said it equates to about \$1,100/month, based on household income.

Adopted: March 20, 2024 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 21, 2024

Mr. O'Connor reviewed the draft conditions of approval.

Steven Steiner, ZBA alternate, asked how many units are in the existing structure and was told 14. He compared this development to the projects in New Jersey and cited the problems that exist in low-income housing. He is not in support of this project. Mr. Frost noted Conway Pines is representative of the type of projects they finance.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Cuddy, that 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Cuddy, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Cuddy, that based on i and ii above, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. **Motion carried unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Cuddy, that item 5.b is not necessary.** **Motion carried unanimously.**

Mr. Pierce applauded the project and stated this is how the housing crisis should be dealt with.

Mr. Chalmers made a motion, seconded by Mr. Cuddy, that, based on the forgoing findings of fact, the variance from §190-20.B.(1) of the Town of Conway Zoning Ordinance to allow the construction of 105 residential dwelling units be granted, with conditions that the property shall be deed restricted as long-term affordable housing; parcels currently shown as 235-52, 53, 54, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 79 on Conway tax maps shall be

placed in a permanent conservation easement or restrictive covenant which preserves the parcels in a vegetated state and protects the viewshed from the North-South Road. Draft easements or restrictive covenants shall be submitted and revised to the satisfaction of the Town of Conway prior to recording; and the conditions of this variance shall be met prior to any final Planning Board approval which utilizes the density approved with this decision. Motion carried unanimously.

The Board took a break.

A public hearing was opened at 9:05 p.m. to consider a **VARIANCE** requested by **SC LOOKOUT, LLC** [FILE #24-06] in regards to §190-20.F.(10)(a) of the Conway Zoning Ordinance to allow an internally lit digital menu board at 1498 White Mountain Highway, North Conway (PID 246-20.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Tim Zareb (sp), North Conway Starbucks store manager, appeared before the Board to request a variance for an existing menu board to be backlit. He noted the sign has been in this location since 2019 and was backlit originally; the lights were turned off when they discovered they were out of compliance. He reported orders take longer and the drive-thru line backs up, as the board is hard to read. They are requesting the variance to re-light the menu board.

The applicant partially addressed the five points of law.

Chair Colbath asked for Board comment. The Board asked clarifying questions about the difficulties the long drive-thru line creates.

Mr. DeVito reported he has been working to bring all menu boards in town into conformity. He noted this drive-thru situation is unique, as only two cars can queue without impacting movement around the store. It is not a digital menu board; it is solely backlit. The sign is not visible from the main street; he is addressing this situation to be consistent.

Mr. O'Connor noted they have seen similar applications in the past. He said Staff would work with the applicant to fully complete the five points and make the application stronger.

Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue until March 20, 2024. Motion carried unanimously.

A public hearing was opened at 9:15 p.m. to consider a **VARIANCE** requested by **MCNALLY REVOCABLE LIVING TRUST** [FILE #24-07] in regards to §190-28.B. & C. of the Conway Zoning Ordinance to allow the construction of a single-family residential dwelling unit within



LETTER OF TRANSMITTAL

HEB Engineers, Inc. | www.hebengineers.com

New Hampshire: Office (603) 356-6936 | PO Box 440 | 2605 White Mountain Hwy | North Conway, NH 03860

Maine: Office (207) 803-8265 | PO Box 343 | 103 Main Street | Suite 6 | Bridgton, ME 04009

Date: January 24, 2024	Project #: 2021-115
To: Conway Town Office 23 Main Street Conway, NH 03818	
Re: Tax Lot 235/93, Conway, NH	

Enclosed we are sending you the following:

<u>Copies</u>	<u>Date</u>	<u>Drawing</u>	<u>Description</u>
1	01/24/24	N/A	Zoning Board of Adjustment Application - Variance
1	01/24/24	N/A	Variance Narrative
1	07/14/05	N/A	Quitclaim Deed
1	01/23/24	N/A	HEB Check #38004 for \$190 Payable to Town of Conway
2	N/A	N/A	Abutter Labels
2	01/19/24	SK-1	Schematic Layout Sketch

These are being transmitted for your use.

This submission is for the February 21, 2024 Zoning Board of Adjustment meeting.

REMARKS: If you have any questions or need additional information, please do not hesitate to contact us.
Thank you.

HEB Engineers, Inc.

Signed: Victoria Burns for Joshua McAllister, PE

Copy to: File

P:\Jobs\2021\2021-115 NHHFA - Tax Map, Lots 93, 52-54, 61-72, Conway, NH\Permitting\Toc ZBA Application\Correspondence\LOT Toc TL 235-93 ZBA Variance App 01-24-24.Docx

**APPLICATION FOR APPEAL
ZONING BOARD OF ADJUSTMENT
TOWN OF CONWAY, NH**

Instructions: Before filing the attached forms, please read instructions carefully.

1. The applicant must provide all information required as fully as possible at time of filing. Any questions may be referred to the Zoning Officer.
2. In the event that the owner of the property is not available to sign the application for appeal, this requirement may be waived. However, a written statement from the owner will be required for presentation to the Zoning Board of Adjustment at the hearing stating the owner's approval of the action being requested, and his intent to abide by any conditions imposed by the Board of Adjustment.
3. The applicant must list the names and mailing addresses of all present owners of property, which either abuts or is directly across from the property under appeal. This information may be gained from tax records at the Town Office. Two (2) sets of completed mailing labels must be submitted with this application to be considered complete.
4. Types of Appeal:
 - A. **Administrative Decision** - a claim that the enforcement officer is in error in interpreting a particular provision of the ordinance.
 - B. **Special Exception** - the particular exception must be specifically stated in the ordinance. All conditions, as stated in the ordinance, must exist for the Zoning Board of Adjustment to grant this request.
 - C. **Variance** - the Board may relax the strict interpretation of the ordinance if each of the following five conditions exists:
 - (1) The variance will not be contrary to the public interest;
 - (2) The spirit of the ordinance is observed;
 - (3) Substantial justice is done;
 - (4) The values of surrounding properties are not diminished; and
 - (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The proposed use is a reasonable one.
 - (B) If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph 5 shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

D. Equitable Waiver of Dimensional Requirement

1. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:
 - a. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
 - b. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
 - c. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
 - d. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.
2. In lieu of the findings required by the board under subparagraphs 1(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.
3. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.
4. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

APPLICATION FOR APPEAL BOARD OF ADJUSTMENT FEE: \$100 PLUS \$40 FOR NEWSPAPER NOTICE AND \$10 FOR EACH ABUTTER NOTIFICATION MAP: _____ PARCEL: _____	Case #: _____ Fee: _____ Check#: _____
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PROPERTY OWNER INFORMATION:

NAME(S): State of New Hampshire

MAILING ADDRESS: PO Box 483

TELEPHONE #: Concord, NH 03302

EMAIL ADDRESS: _____

APPLICANT(S) INFORMATION:

NAME(S): Julie Jussif - NH Housing Finance Authority

MAILING ADDRESS: 32 Constitution Drive

TELEPHONE #: Bedford, NH 03110

EMAIL ADDRESS: jjussif@nhhfa.org

PROPERTY INFORMATION:

ZONING DISTRICT: RA

PROPERTY ADDRESS: 95 Common Court

EXISTING USE: Abandoned Condos

THE APPLICANT HEREBY REQUESTS:

- | | |
|---|--------------------------|
| | ARTICLE/SECTION # |
| <input type="checkbox"/> Appeal from Administrative Decision in relation to | _____ |
| <input type="checkbox"/> A Special Exception as provided in | _____ |
| <input checked="" type="checkbox"/> A Variance, and asks that said terms be waived as stated in | <u>190-20.B(5)(c)</u> |
| <input type="checkbox"/> An Equitable Waiver of Dimensional Requirement | _____ |

TO PERMIT THE FOLLOWING: 105 Residential Units.

The applicant alleges that the following circumstances exist which prevent the proper enjoyment of his/her land under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship:
See Variance Narrative.

Signed:  For NHDOT Signed: _____
(Owner) (Applicant)

NOTE: Please attach plan and all documents necessary to support your application to this form. All forms must be completely filled out and signed by the applicant and his/her representative before they will be accepted. An application fee of \$100, along with a fee of \$40 for newspaper notification and \$10 for each abutter notification must be submitted with the application. The applicant or his/her representative is requested to attend the public hearing held on the above request.

TO ALL APPLICANTS:

The undersigned applicant hereby certifies under oath that the following list contains all present owners by name, mailing address, and zip code, which abut or are directly across from the property in question.

TWO (2) SETS OF COMPLETED MAILING LABELS MUST BE SUBMITTED WITH THIS APPLICATION TO BE CONSIDERED COMPLETE

<u>MAP/PARCEL</u>	<u>OWNER</u>	<u>MAILING ADDRESS</u>
235/92	Barna Development, LLC	1340 Centre Street, Suite 201 Newton, MA 03459
235/92	Demoulas Super Markets, Inc.	875 East Street Tewksbury, MA 01876
235/92.01	Barna Road, LLC	1340 Centre Street, Suite 201 Newton, MA 03459
235/94	Town of Conway	PO Box 2680 Conway, NH 03818
235/98	Bellevue Properties, Inc.	28 Jacome Way Middletown, RI 02842
235/55 & 94/1	State of New Hampshire (*Applicant, extra label not included)	PO Box 483 Concord, NH 03302
Owner:	State of New Hampshire	PO Box 483 Concord, NH 03302
Applicant:	Julie Jussif NH Housing Finance Authority	32 Constitution Drive Bedford, NH 03110
Engineer:	Joshua McAllister, PE HEB Engineers, Inc.	PO Box 440 North Conway, NH 03880

Julie Jussif - NH Housing Finance Authority
(Applicant)

OATH TO BE ADMINISTERED BY NOTARY PUBLIC OR JUSTICE OF THE PEACE:

_____ personally appeared on _____
(Date)

and under oath the above applicant swore the above list of abutters to be correct and true and complete to the best of his/her knowledge and belief.

(Notary)

ALL FEES MUST ACCOMPANY APPLICATION.

Filing Fee: \$100.00 Notification Fee: \$40 Newspaper Notice and \$10.00 for each abutter notified

95 Common Court, North Conway, New Hampshire

Request for Variance Pursuant to Section 190-20.B(5)(c)

This variance request is made by the applicant to construct a multifamily apartment complex containing a total of 105 residential dwelling units pursuant to Section 190-20.B(1). The structure will consist of three or more buildings which will be serviced by municipal water and sewer upon development of the property. The units will be developed as workforce housing as defined in New Hampshire RSA 674, which will allow the Town of Conway to work towards its goal of providing workforce housing as outlined in the Town of Conway's Master Plan.

The property is located at 95 Common Court and is currently comprised of two condominium buildings. Settler's Green and the North Conway Grand Hotel are immediately adjacent to the property. Market Basket, Home Depot, and another condominium development are located nearby. The applicant owns sister property adjacent to 95 Common Court located on Pudding Hill Road.

The property is located in the Highway Commercial District as described in the Town of Conway Zoning Ordinance (the "Zoning Ordinance") which is designed to accommodate a compatible mixture of uses that complement commercial and residential uses. *As noted in the Zoning Ordinance, parcels that are serviced by both municipal water and sewer can accommodate development at higher densities.* (Emphasis added)

In considering this request for a variance, the Board may relax the strict interpretation of the Zoning Ordinance if the five (5) conditions enumerated below exist. The 2022 version of the Zoning Board of Adjustment in New Hampshire – A Handbook for Local Officials (the "Handbook") is instructive on whether an applicant satisfies the five (5) conditions relating to its request for a variance.

- (1) The variance will not be contrary to the public interest. The Handbook states that "for the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?" The requested variance will not be contrary to the public interest since it does not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public and accommodates a compatible mixture of uses to complement commercial and residential uses. Indeed, the Highway Commercial District contains other multifamily uses and apartment buildings. In fact, this Board recently approved a variance for increased density for the development of an apartment complex across Route 302 behind T.J. Maxx. In addition, the historical use of this property as a condominium complex is consistent with the proposed use as an apartment complex. Furthermore, the addition of apartment units within the Highway Commercial District will enhance the health, safety, and general welfare of the public by providing much needed workforce housing within walking distance of many commercial operations – including Settlers Green, Home Depot, and Market Basket.
- (2) The spirit of the ordinance is observed. The Handbook states that "[t]he requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance. . . . [T]o be contrary to the public interest... the variance *must unduly, and in a marked degree conflict* with the ordinance such that it violates

the ordinance's basic zoning objectives (Emphasis added). One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality. Another approach to [determine] whether granting the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety, or welfare." As noted above the requested variance is consistent with the spirit of the Zoning Ordinance which is designed to accommodate a mixture of uses and as expressly noted in the Zoning Ordinance, property that is serviced by municipal water and sewer can accommodate higher densities as requested with this application. As shown on the attached site plan and renderings, the location, access, and size of the property does not result in overburdening and achieves one of the objectives of the Zoning Ordinance and the Town of Conway's Master Plan.

- (3) Substantial justice is done. In evaluating this condition, the Handbook states that "any loss to an individual which is not outweighed by a gain to the general public is an injustice." In this instance, substantial justice will be done in granting this variance. It is clear that the Town of Conway suffers from a housing crisis where workers and families are unable to find adequate housing. Local employers are feeling the pinch as they are unable to attract workers due to the housing shortage which results in businesses operating at reduced hours. Adding these apartment units will play a significant role in increasing the housing stock in the Town of Conway and providing employees with an opportunity to live within walking distance of their place of employment. The denial of this variance request will directly result in a loss not only to the applicant but also to the general public and inhibit the Town of Conway from providing workforce housing and meeting its goals as set forth in the Town of Conway's Master Plan.
- (4) The values of surrounding properties are not diminished. The Handbook states that ZBA members may draw upon their own knowledge of the area involved in reaching a decision as to whether the proposed development will diminish the value of the surrounding properties. There is nothing to suggest that the granting of this variance will diminish the value of the surrounding properties. In fact, the development of this parcel will remove the current blighted structures with first-class apartments which will be consistent in scale and design of other neighboring properties thus enhancing the value of this property and surrounding properties.
- (5) Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship.
 - (A) The Handbook states that "an 'unnecessary hardship' means that, owing to special circumstances of the property that distinguish it from other properties in the area: 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." In considering this condition, the board should ask "is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Is the full application of the ordinance to this particular property necessary to promote a valid public purpose?"

As noted above, this property is located in the Highway Commercial District which is designed to accommodate a compatible mixture of uses that complement commercial and residential uses.

Furthermore, as noted in the Zoning Ordinance, parcels that are or will be serviced by both municipal water and sewer, as is the case with this property, can accommodate development at higher densities.

The applicant is also the owner of its sister property that is less than 300' to the north located on Pudding Hill Road. It is the intent of the applicant to cause both properties to be developed for workforce housing as a part of a common scheme of development. However, the Town of Conway is currently proposing a Parkway Protection Overlay District containing a 250' protective buffer that would eliminate any ability to develop the applicant's sister property. Because of this proposed zoning change, the applicant is requesting that the Town grant this variance application and allow the property at 95 Common Court to utilize the density that would have been permitted on the sister property, but for the imposition of the Parkway Protection Overlay District. In consideration of this request, the applicant will agree that its sister property will remain in its current undeveloped state and will agree to a deed restriction prohibiting any clearing or development of the sister property whatsoever.

The proximity of the Parkway Protection Overlay District creates a uniqueness to the applicant's overall development objectives for its properties which distinguishes it from other parcels in the Highway Commercial District. A literal enforcement of the density restrictions coupled with the Parkway Protection Overlay District would result in an unnecessary hardship and create a practical inability for the development of workforce housing and result in an economic burden on the applicant that would prevent development of the property. Given the uniqueness of this property and the purpose of the Zoning Ordinance to encourage higher density development within the Highway Commercial District, this application should be granted.

(B) Furthermore, the proposed use is a reasonable one since the construction of an apartment complex for workforce housing is a permitted use within the Highway Commercial District and is expressly encouraged. The applicant is seeking to increase its density to make development of the parcel feasible, especially in light of the burdens to be imposed upon its sister parcel which is part of a common scheme of development for the applicant. Indeed, focusing the development on one parcel versus multiple parcels allows for the preservation of greenspace while at the same time creating a more economically feasible development project and will best serve the Town given its efficient use.

