

TOWN OF MILFORD

Office of Community Development
Planning • Zoning • Building Safety • Code Enforcement • Health
Economic Development • Active Projects



Administrative Review

Date: October 31, 2019
To: Steve Bonczar, Chair, Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Derek Kuhn and Laura Maris, 351 Nashua Street, Milford, NH, Tax Map 30 Lot 49.** Variance Application from the Milford Zoning Ordinance, Article V, Section 5.07.1.H to create a two-family residence by converting the rear office section of the mixed-used building into a 2nd residential unit on a lot requiring a minimum of 20,000 square feet and 150 linear feet of frontage within the Limited Commercial-Business 'LCB' district.

The applicant is before the Board seeking a Variance from the Milford Zoning Ordinance, Article V, Section 5.07.1.H to create a two-family residence by converting an existing first floor office into a 2nd residential unit on a lot requiring a minimum of 20,000 square feet and 150 linear feet of frontage within the Commercial 'C' district. In reviewing the files for this property, I offer the following comments:

1. The property totals approximately .41 acres (17,860 sq.ft.) with 95 linear feet of frontage on Nashua Street. The property consists of 3,416 square foot commercial/office space and residential use. The property is serviced by municipal water and sewer.
2. In accordance with Section 5.07.1.H, a two-family use is permitted as an acceptable use in the Commercial Zoning District as are mixed uses. However, in accordance with Section 5.03.5 of the Zoning Ordinance, a two-family would be permitted if the lot met the minimum dimensional requirements of 20,000 square feet and 150 feet of linear frontage (service by municipal water and sewer).
3. In reviewing the property files, originally built in the 1880, the building has been historically used as a mixed-use building. This particular section of the Limited Commercial-Business Zoning District on Nashua Street is a mixture of mixed use, two-family, and multi-family uses on similarly legally non-conforming lots.
4. The creation of the lot pre-dates the adoption of the Zoning Ordinance in 1969.
5. The property has ample parking for the required 4 vehicles.



ZBA Application
MILFORD ZONING BOARD OF ADJUSTMENT
GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS

11/7
ZBA

PROPERTY INFORMATION

Street Address: 351 Nashua St

Tax Map / Parcel #: 30-49 Lot Size: .41 acres

PROPERTY CURRENTLY USED AS

Single family residential.

If the application involves multiple lots with different owners, attach additional copies of this page.

PROPERTY OWNER

Name: Derek Kuhn / Laura Maris

Address: 351 Nashua St

City/State/Zip: Milford, NH 03055

Phone: (603) 502-7018

Email: dkuhn1100@yahoo.com

The applicant is the person who is making this proposal on behalf of themselves, the owner or a third party. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, an engineer or lawyer, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.

APPLICANT/REPRESENTATIVE

SAME AS OWNER

Name: _____


Address: _____

City/State/Zip: _____

Email: _____

Phone: () Cell: ()

The undersigned property owner(s) hereby authorize(s) the filing of this application and agree to comply with all code requirements applicable to this application.

 9/19/2019

Property Owner's signature Date:

Date Received: _____

Case Number: TOWN OF MILFORD RECEIVED

Date Complete: _____

Hearing Date: OCT 03 2019

Decision Date: _____

Decision: PB ZBA Office

Zoning District (check one):

Residence A

Residence B Residence R

Commercial

Limited Commercial

Industrial

Integrated Commercial-Industrial

Integrated Commercial-Industrial-2

Overlay District (check any that apply):

West Elm Street Overlay

Nashua/Elm Street Overlay

Commerce & Community Overlay

Open Space & Conservation

Wetlands Conservation

Groundwater Protection

Floodplain Management

APPLICATION FEES

Application Fee:	\$75.00
Butters Fee: \$4 x <u>13</u>	<u>52</u>
Amount received:	<u>127.00</u>
Date Received:	

Check Cash _____

OK # 1093

THE FEES ASSOCIATED WITH THIS APPLICATION DO NOT APPLY TO ANY OTHER FEES REQUIRED FOR APPROVAL OF THIS PROJECT. PLANNING, IMPACT, BUILDING AND OTHER FEES MAY APPLY.



ZBA Application – General Information **MILFORD ZONING BOARD OF ADJUSTMENT**

Preparing an Abutters List

1. Here are some guidelines to help you prepare an abutters list.
 - a. Find the lot(s) you are interested in and their abutting lots from the tax maps in the Community Development or Assessors Offices.
 - b. Go to the Milford Assessors Office to check whether the town has a record of any of the abutting lots having been sold more recently than the records available online through the Milford GIS or Vision software.
 - c. Check whether there is any conservation, preservation, or agricultural preservation parcels that are adjacent to your lot. Make sure you get the correct mailing address for the entity that holds the title to this type of lot. It may be a home owners association, a conservation group or the Town of Milford.
2. For the purpose of notification by the Town of Milford Zoning Board of Adjustment, any property being,
 - a. Under a condominium or other collective ownership, the term “abutter” means the officers of the collective or association, as defined in RSA 356-B:3XXIII
 - b. Under a manufactured housing park form of ownership defined in RSA 205-A:1, the term “abutter” includes the manufactured housing park owner and tenants who own manufactured housing which adjoins or is directly across the street, stream, or active railroad from the land under consideration by the Zoning Board of Adjustment.
 - c. An active railroad property, the owner of which shall be notified.

In cases where the applicant is different from the owner of the land under consideration by the Zoning Board of Adjustment, the term “abutter” shall include the owner AND the applicant.

For the purpose of receiving testimony only, and not for the purpose of notification, the term “abutter” shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration by the Zoning Board of Adjustment.

Addition information

1. The Town of Milford only has lot and owner information for properties located within the Town of Milford. If the lot under consideration abuts an adjoining town you will need to go to that municipality for abutter information.

Burden of Proof

The applicant shall have the burden of proving any historical facts relevant to a case before the Zoning Board. Such relevant facts include, but are not limited to, the date on which a lot, structure, or use came into existence, violation history, open permits or applications.

The existence of a structure or use on a particular date may be established by testimony or by documentary evidence.

Supporting Documents

The following information may be required to deem your application “complete.”

1. Floor Plans
2. Plot Plans
3. Conservation Commission Report
4. Septic system analysis
5. Any additional information that supports your application



ZBA Application – General Information **MILFORD ZONING BOARD OF ADJUSTMENT**

This application must be complete and filed in the Milford Office of Community Development, along with an abutter list, and with all fees paid, on the official submittal date for the meeting at which the application is to be considered. An application shall not be deemed complete unless all materials have been submitted and necessary fees have been paid.

If you have any questions about how to complete this application, please contact the Office of Community Development. We will be happy to help you understand the Zoning Board application process and legal requirements, but we cannot give you legal advice. If you are uncertain about how the zoning laws apply to your case, we recommend that you obtain professional advice.

General Instructions

Use this form for all applications to the Milford Zoning Board of Adjustment, except:

- If the Selectmen, Planning Board, Building Inspector, or any other town board or official has made a decision to allow someone else to do something that you do not think they should be allowed to do. In that case, use the ***Third-Party Appeal of Administrative Decision*** form.
- To ask the Zoning Board to hold a new hearing to reconsider a decision that was made at a previous meeting, use the ***Request for Rehearing*** form.

Contents of an Application

Your application must include the “General Information” section and at least one application for a special exception, variance, equitable waiver, or appeal of administrative decision.

You may include more than one application section, as long as they are all for the same proposed use.

For example, you might appeal an administrative decision, and also apply for a variance that would permit the same use, in case the appeal is denied; or you might have a proposed use that would require several variances and special exceptions.

Please work with the Office of Community Development to help you determine what you are applying for or asking relief from.

Fee

The fee is \$75 for the application, plus \$4 for each abutter.

Abutter List

The abutter list must include the name and mailing address of:

- the applicant,
- the property owner or owners,
- every person who owns property which touches any lot involved in the application (even at a corner) or is directly or diagonally across a road, stream, river, or railway right-of-way from a lot involved in the application, **and**
- the holders of any conservation, preservation, or agricultural preservation restrictions on any of the lots involved in the application.

It is your responsibility to provide an accurate abutter list. A Zoning Board decision that is made without notifying all abutters may not be valid and an abutter who was not properly notified may be able to have the decision overturned.



ZBA Application - Variance
MILFORD ZONING BOARD OF ADJUSTMENT

Date Received: _____
Case Number: _____
Application #: _____
Date Complete: _____
Hearing Date: _____
Decision Date: _____
Decision: _____

PROPERTY INFORMATION
Street Address: <u>351 Nashua St</u>
Tax Map / Parcel #: <u>30-49</u>
<i>A Variance is a use which is not permitted by the Zoning Ordinance. Approval from the Zoning Board of Adjustment is required to allow any use or deviation from the Zoning Ordinance. Please work with the Zoning Administrator to make sure your application is complete and you know what will be required of you at the hearing.</i>
What section of the Zoning Ordinance are you asking to be varied? Article <u>V.</u> Section <u>5.07.1.H</u> Describe the variance you are requesting under the above section of the Ordinance. <u>Seeking to create a 2 family residence on a lot requiring a minimum of 20,000 square feet and 150 linear feet of frontage within the Limited Commercial Business District.</u>

General Criteria Section 10.01
Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I
1. Granting the Variance would not be contrary to the public interest because: <u>* All answered on attachment 1</u>
2. If the Variance were granted, the spirit of the ordinance would be observed because:
3. Granting the Variance would do substantial justice because:
4. Granting the Variance would not diminish the value of surrounding properties because:
5. Unnecessary Hardship: <i>This section is the central portion of your argument and is the critical factor that the Zoning Board of Adjustment will need to determine what is unique to your property and not generally applicable to other properties in the area or in town.</i>



ZBA Application – Variance
MILFORD ZONING BOARD OF ADJUSTMENT

A. Owing to special conditions of the property that distinguish it from other properties in the area; denial of the Variance would result in unnecessary hardship because:
i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because :
AND
ii. The proposed use is a reasonable one because:
(B) Explain how, if the criteria in paragraph (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:
(C) Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:
1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:
In addition, Variances may have extra criteria that must be met. This includes, but is not limited to: 6.03.5 Floodplain Management: The criteria for evaluation is listed in 6.03.5:B General Conditions and the applicable conditions are listed in 6.03.5:C. If your project is covered by this regulation, include your answers to the required criteria as specified in the referenced Section of the Milford Zoning Ordinance as an attachment under Section 3 C. of this application.
ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition. A. A plan of the property and all buildings, drawn to scale, is required. B. A Building Permit Application as needed (to be determined by the building official.) C. Additional explanations, justification, abutters’ statements, letters, etc.

Attachment 1: Board of Adjustment Application

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

The proposed conversion of the current limited commercial residence to a two family unit at 351 Nashua St would be consistent with the surrounding neighborhood on the Southern side of Nashua St between Powers Street and Tonella Road. In effect, seven of the 14 lots in the aforementioned area are currently multiple units per lot used as residences for two or more families on similar lot sizes and frontage that are not legally conforming to dimensional requirements adopted through the Zoning Ordinance of 1969. (See attachment 2: Nashua Street map)

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

Two family residential homes are permissible uses for Limited Commercial-Business Districts according to the Zoning Ordinance 5.07.1, H that refers to the provisions for Residence "B" districts set forth in 5.03.1 "Acceptable Uses" line B: Two-family dwellings and their accessory uses and structures. This lot, built in 1880, predates the lot size and frontage requirements adopted in the Zoning Ordinance of 1969. Up until 2018 the building was split into two parts for an in home spa and to this day still has two shells for electrical meters although only one currently has a meter installed. The proposed conversion would have no impact on the character of the building on the lot and is consistent with the existing use of parcels abutting and in the vicinity.

3) Granting the Variance would do substantial justice because:

The two family Variance would be consistent with the history of separate units on the lot itself and maintain the common use of lots on the Southern side of Nashua St between Powers Street and Tonella Road. As can be considered by the Zoning Board of Adjustment as per the Zoning Ordinance of 1969 section 10.02.1:

- The proposed use is similar to those permitted in the district (two family and multi family);
- The specific site is on the aforementioned Southern side of Nashua St with half of the lots being two family or multi family and therefore an appropriate location for the proposed use and will also be consistent with use of lots in the area therefore will not adversely affect the adjacent area
- No extra driveways will be added and no pedestrian or vehicular traffic will be modified therefore not posing any hazard to vehicles or pedestrians;
- If Variance is granted, proper facilities and appliances/hookups in the building will be added to allow for proper operation of the proposed use (see attachment 4: design plans for two family conversion)

4) Granting the Variance would not diminish the value of surrounding properties because:

The granting of Variance to allow for two family residence would not diminish the value of surrounding properties because the proposed use and subject parcel are consistent with substandard conditions including minimum lot size and frontage of the surrounding properties (see attachment 3: Lot Details Nashua St.). The exterior of the building will remain unchanged and continue to preserve the residential character and architecture. All modifications to accommodate two family use will happen inside the structure. As parking spaces must be abundant on the property to accommodate two family use, there

are two driveways on the property and there will be two parking spots designated per unit with 4 total and overflow parking on the property. (see attachment 7: 351 Nashua St Google Maps image)

5) Unnecessary Hardship:

A) Owing to special conditions of the property that distinguish it from other properties in the area: denial of the Variance would result in unnecessary hardship because:

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

The strict application of lot size and frontage requirements in the Zoning Ordinance provisions (20000SF and 150 linear feet of frontage for two family or multi family use) to this property would not be consistent with the seven of 14 other lots on the Southern side of Nashua St between Powers Street and Tonella Road that are currently being used as two or more family residences as none of them meet either the frontage or lot size provisions (see attachment 3: Lot details Nashua St.) and therefore are all nonconforming lots.

And

(ii) The proposed use is a reasonable one because:

The special conditions and location of this substandard parcel are consistent with other substandard parcels on the same road currently under the same proposed use (two family or multi family) and would not have any negative impact on this section of the Limited Commercial Zoning District. The building features would not be altered and will continue to preserve the residential character of the neighborhood and architecture of the building. All modifications to the building will be on the inside. Additionally, with more than sufficient parking on the property there will be no adverse effect on pedestrian or vehicular traffic in the area.

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 because:

Strict application of the required minimum dimensional frontage and lot size for two family use that is permitted in the Limited Commercial Zone on a lot that predates these requirements and has a history of having separated units and uses creates significant hardship. In effect, the subject parcel is located on the Southern side of Nashua Street between Powers Street and Tonella Road which is a section where 50% of the parcels are currently used as nonconforming two family and multi family lots and therefore a Variance is necessary to enable a reasonable use of the parcel as a two family residential property.

90'

201'

203.02'

61'

30-50

196.66'

95'

162'

120'

30-49

190'

74.2'

106'

BOSTON & MAINE RAILROAD

120'

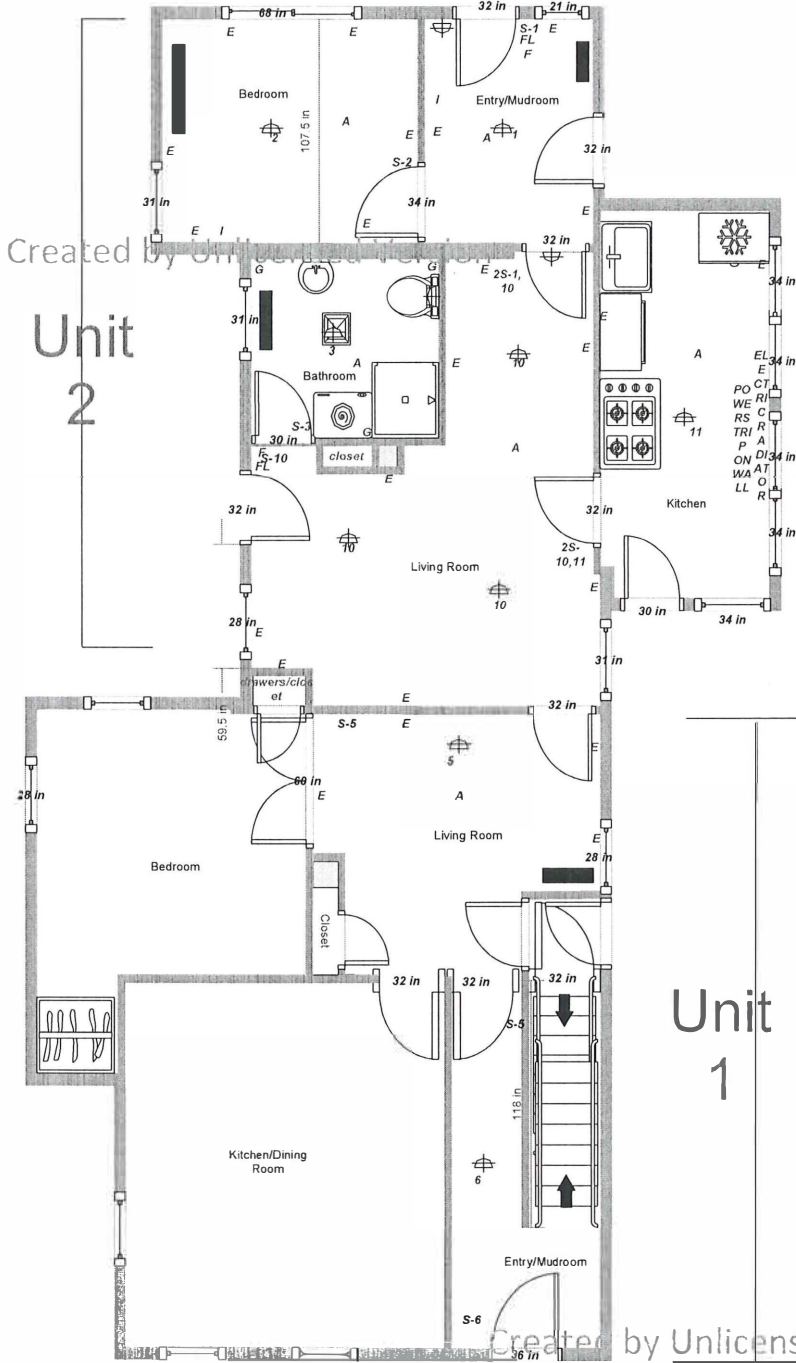
30-48

Attachment 3

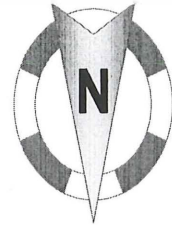
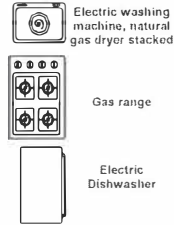
Lot details Nashua St Between Tonella Rd and Powers St on Soth side

Parcel	Address	Use	Lot size (acres)	Lot size (SF)	Frontage
030-053	335	Professional BLDG	0.34	14810.40	136'
030-052	339	Office BLDG MDL-94	0.57	24829.20	115'
030-051	343	Three Unit	0.42	18295.20	90'
030-050	347	4-8 Unit apt bldg (4 units)	0.31	13503.60	61'
030-049	351	Store/shop MDL-94	0.41	17859.60	95'
030-048	355	Store/shop MDL-94	0.55	23958.00	120'
030-047	359	Three Unit	0.33	14374.80	80'
030-046	361	Single Family	0.33	14374.80	79'
030-045	365	Office BLDG MDL-94	0.42	18295.20	100'
030-044	369	Two Unit	0.16	6969.60	39.5'
030-043	371	4-8 Unit apt bldg	0.35	15246.00	82'
030-042	375	Two Unit	0.33	14374.80	79'
030-041	377	Office BLDG MDL-94	0.33	14374.80	79'
030-040	381	4-8 Unit apt bldg	0.33	14374.80	79'

Attachment 4

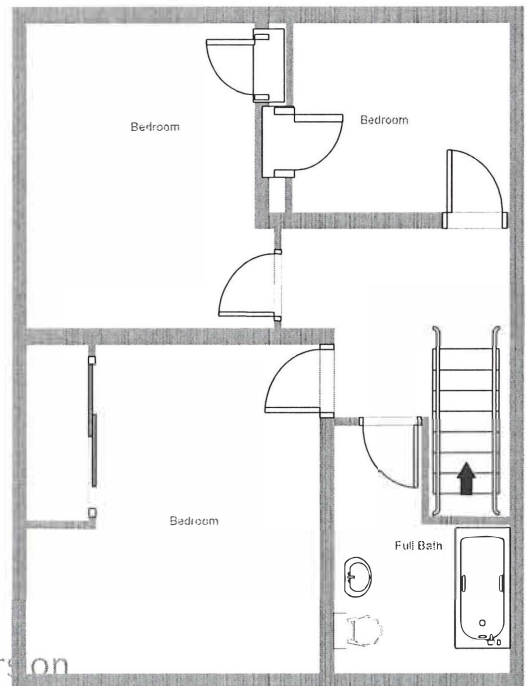


- Key
- E= 110v outlet
 - G= GCFI outlet
 - 240= 240v box
 - Black box= steam radiator
 - ring
 - F= Fire alarm handle
 - FL= Fire alarm light
 - S= switch (prefix number is number of interruptors, suffix is circuit affected)
 - I= Internet/ethernet output



Edition 1 by Derek Kuhn
on Sept 19, 2019
Scale: 1inch= 4.7 ft

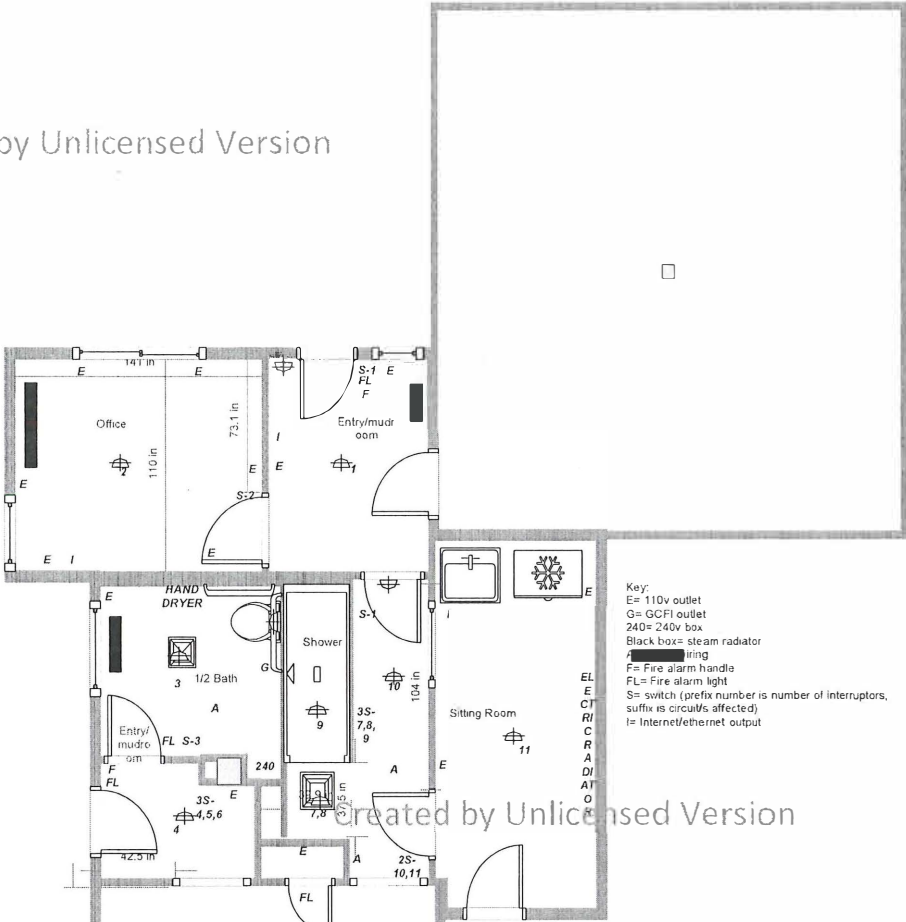
Unit 1



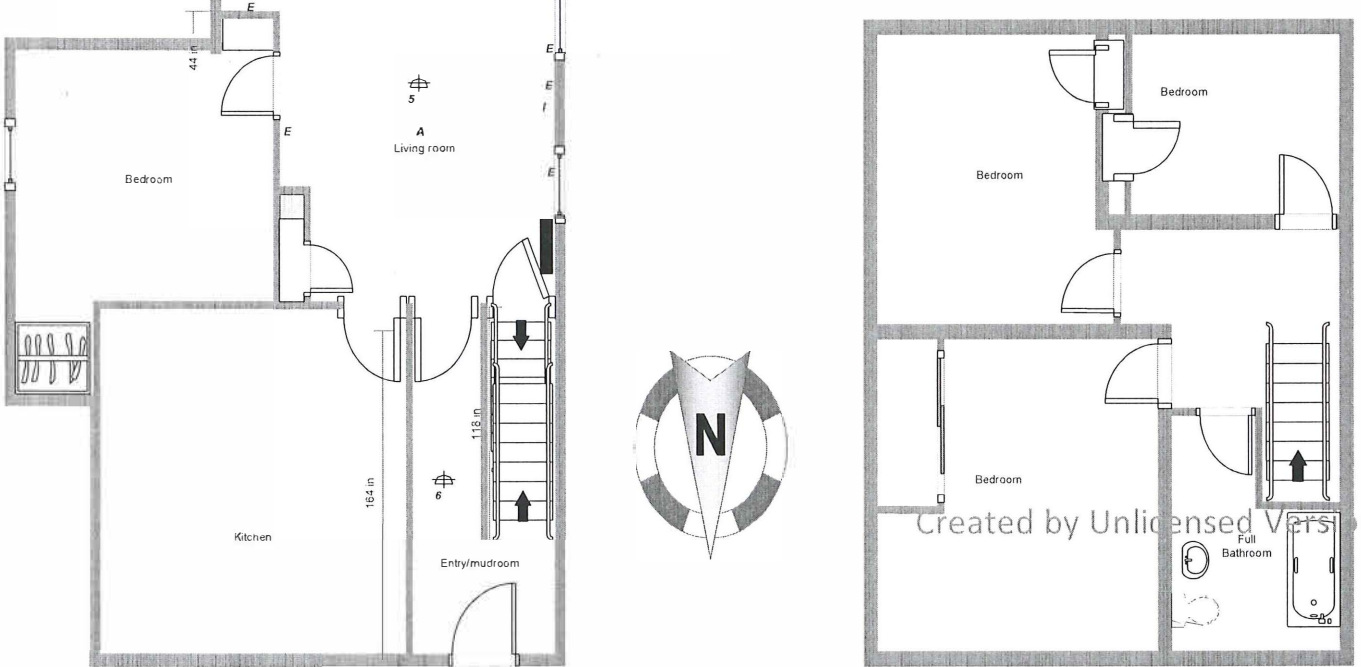
End State

Attachment 5

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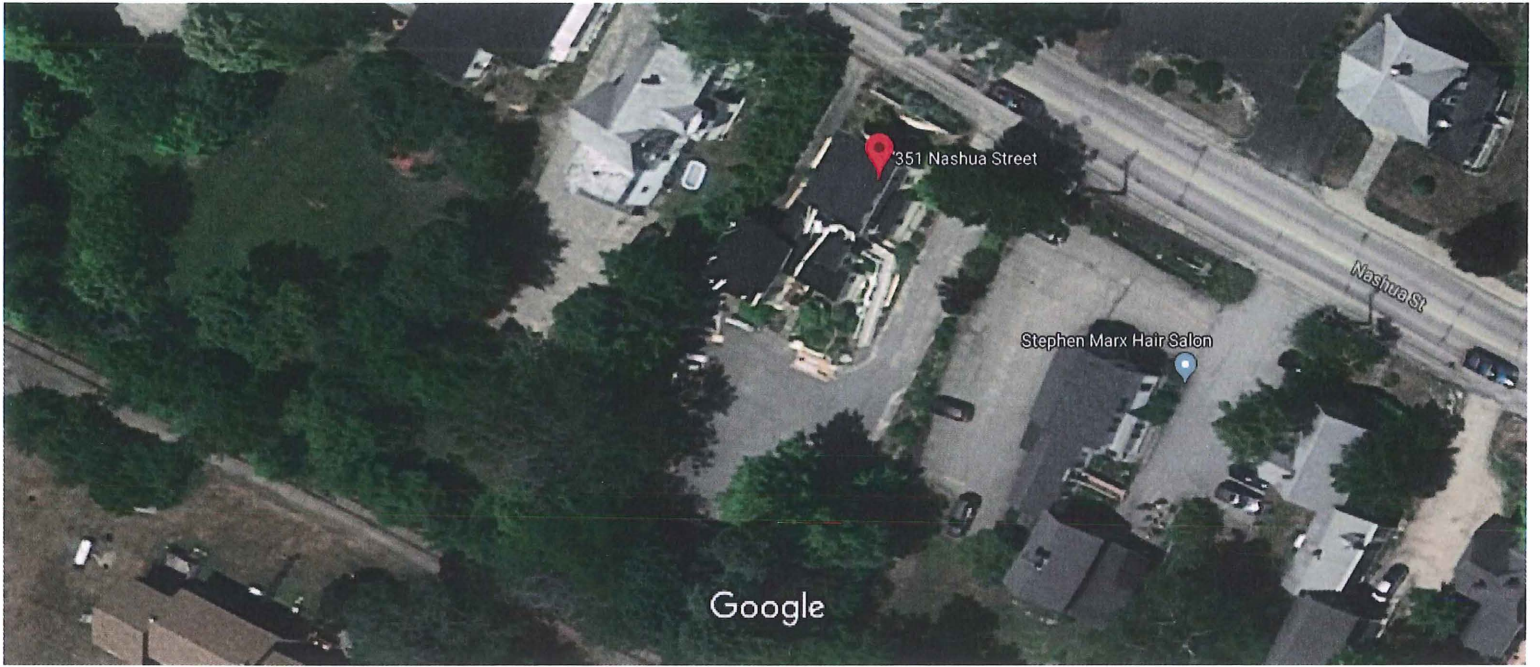


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Current State



351 Nashua St

Milford, NH 03055



Directions



Save



Nearby



Send to your phone



Share

Photos

