

TOWN OF MILFORD

Office of Community Development

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



Administrative Review

Date: May 11, 2020
To: Jason Plourde, Chair, Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Case #2020-09: Controlled Forestry Investments, LLC., 61 North River Road, Milford Tax Map 8, Lot 50 – Variance Application**

The applicant is before the Board of Adjustment seeking a VARIANCE from the Milford Zoning Ordinance, Article V, Section 5.04 to allow an Auto Repair Facility use totaling approximately 2,500 square feet in an existing building in the Residential 'R' district. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
 - a. The subject property is approximately .99 acres with more than 197 linear feet of frontage on North River Road.
 - b. Access to the property is by way of two existing driveway curb cuts on North River Road.
 - c. The majority of the property is developed and is the site of the logging and firewood production company, Gentle Giant Forest Products, LLC.
 - d. The current building footprint is approximately 2,180 square feet, consists of 3 garage bays, slab foundation, bathroom, and small office. The area around the structure is primarily a pave surface. The property is serviced by municipal sewer and private well.
 - e. Single family residences are located to the southeast and east of the subject property. The Town transfer station located south of the subject property across the street. To the north and west exist pre-existing commercial and industrial uses.
2. The proposal calls for converting the existing building and use the property as an auto repair facility. The building would be expanded by 384 square feet to allow for the creation of a customer waiting area, small office, and bathroom. In addition, the applicant is seeking to continue selling firewood as a secondary use on the property.
3. Pursuant to Sections 5.04, motor vehicle repair facilities are not permitted in the Residential 'R' Zoning District. Any uses of land and/or structures not specifically included in the "R" District as acceptable, acceptable by Special Exception or acceptable by Conditional Use Permit shall be considered as not permitted or allowed through the issuance of a Variance.
4. The applicant will need to clarify the extent of the motor vehicle repair facility, hours of operation, number of employees, projected number of customer vehicles.
5. The applicant will need further detail the size, approximate area/location of the secondary fire wood sale use and explain if there will be continuation of the existing production and storage of the product on the property.

Aerial Photos of Subject Property:



Street Photos of Subject Property:





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

TOWN OF MILFORD
 RECEIVED

APR 23 2020

Date Received: 4-23-2020
 Case Number: 2020-089
 Application Number: 2020 0668
 Hearing Date: 5-21-20
 Decision Date: _____
 Decision: _____

PROPERTY INFORMATION

Street Address: **61 N. River Rd**

Tax Map / Parcel #: **8/50**

Lot Size: **0.99**

PROPERTY CURRENTLY USED AS

Commercial forestry processing and also wood sales

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

PROPERTY OWNER

Name: **Controlled Forestry Investments LLC**

Address: **649 Abbot Hill Rd**

City/State/Zip: **Wilton, NH 03086**

Phone: ()

Email:

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: **Paul C. English, Esq. for 61 N. River LLC (applicant)**

Address: **57 Bay St.**

City/State/Zip: **Manchester, NH 03104**

Email: **paul@paulenglishlaw.com**

Phone: () **6035188777**

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.

Paul C. English

4-18-20

Property Owner's signature

Date:

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
Abutters Fee: \$4 x <u>5</u>	<u>20</u>
Amount received:	<u>\$95</u>
Date Received:	

Check Cash

CK # 001100

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 - Variance
MILFORD ZONING BOARD OF ADJUSTMENT

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

PROPERTY INFORMATION
Street Address: 61 N. River Rd
Tax Map / Parcel #: 8/50
<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>5.03.1 5.04.1</u>
Describe the variance you are requesting under the above section of the Ordinance. <u>See Addendum Attached</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>See Addendum Attached</u>
2. If the Variance were granted, the spirit of the ordinance would be observed because: <u>See Addendum Attached</u>
3. Granting the Variance would do substantial justice because: <u>See Addendum Attached</u>
4. Granting the Variance would not diminish the value of surrounding properties because: <u>See Addendum Attached</u>
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 :
See Addendum Attached
AND
ii. The proposed use is a reasonable one because:
See Addendum Attached
(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.
See Addendum Attached
(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:
Not Applicable
1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:
See Addendum Attached
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.



ZBA Application – Variance

MILFORD ZONING BOARD OF ADJUSTMENT

Please read the following information that is designed to help you understand the unique nature of a Variance petition.

Town of Milford Zoning Ordinance can be found at:

[http://planning.milfordnh.info/DOCUMENTS/ZONING%20ORDINANCE%20MASTER%20\(2011\).pdf](http://planning.milfordnh.info/DOCUMENTS/ZONING%20ORDINANCE%20MASTER%20(2011).pdf)

NH RSAs, Chapters 672-677 can be found at:

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LXIV.htm>

VARIANCE: A variance is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance. If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often, this determination is a denial of a building permit. A copy of the determination must be attached to your application.

For a variance to be legally granted, you must show that your proposed use meets all five (5) of the following conditions:

- a. Granting the Variance would not be contrary to the public interest.

A variance would be considered contrary to the public interest if it unduly and to a marked degree violated the basic zoning objectives of the Zoning Ordinance. Will the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

- b. Granting the Variance would observe the spirit of the ordinance.

This requires that the effect of the variance be evaluated in light of the goals of the zoning ordinance.

- c. Substantial justice would be done by granting the Variance.

Substantial justice is done when any loss to the individual is not outweighed by a gain to the general public.

- d. Granting the Variance would not diminish the value of surrounding property.

The applicant, to convince the Zoning Board must explain that granting the variance will not decrease the value of surrounding property.

- e. Denial of the Variance would result in an unnecessary hardship.

The first requirement is that there are special conditions or characteristics applying to the property (such as, but not limited to, exceptional narrowness, shallowness, or shape of the property, or exceptional topographical conditions), that distinguish it from other properties in the area. Because of these special conditions, 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 finally, the proposed use must be a reasonable one. You must explain what makes the property unique and why a "hardship" would be created if the terms of the ordinance were strictly applied.

In lieu of a claim of unnecessary hardship, the Variance may be granted 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 any Variance sought shall be in harmony with the general purpose and intent of the zoning ordinance and the Variance shall survive only so long as the particular person or persons have a continuing need to use the premises. To meet this criterion, explain the accommodations that are necessary and identify the person or persons and provide evidence of their disability.

Property: 61 N. River Rd
Applicant: 61 N. River LLC
Proposed Use: Auto Repair Shop & sale of firewood

VARIANCE APPLICATION
ADDENDUM

Description of Variance Requested:

The current building situated at 61 North River Road was constructed and used as an auto repair shop but it sits in a residential zone. The current building footprint is approximately 2,180 square feet, consisting of 3 garage bays facing the street, a slab foundation, and a small bathroom and small office space (both in the rear of the building). The area around the structure is primarily a paved surface.

The prior owners have used the property as an auto repair facility up until 2015. Due to the abandonment of the non-conforming use, a variance is needed to revert to this use.

The applicant seeks to following relief:

- A. Grant a variance to allow the use of the property as an auto repair shop;
- B. Allow for the minor enlargement of the structure (on the right side where there currently is pavement), by approximately 384 square feet so that the applicant can build a customer waiting area, small office and bathroom. If approved, the applicant would seek the necessary building and planning department approvals for the construction of the same;
- C. Allow the continued use secondary use of the property for the sale of firewood (similar to a road side farm stand which is permitted in a residential zone).

VARIANCE CRITERIA

1. The variance would not be contrary to the public interest because:

The proposed use of an auto repair shop and minimal expansion of this use by approx. 384 sq. ft. (and the continued use for sale of firewood – similar to a roadside farm stand which is allowed in the zone) would not be contrary to the public interest because a.) these businesses have already occupied or have been occupying this location, b.) while zoned residential the abutting properties are either currently commercial or being used for commercial use at least in part, and c.) the area being across from the Town Landfill (Solid waste department) and abutting other warehouses and commercial businesses makes the use of the property better served as commercial space as compared to residential use. In short, this property was never built to be used as a residence.

Property: 61 N. River Rd
Applicant: 61 N. River LLC
Proposed Use: Auto Repair Shop & sale of firewood

2. The spirit of the ordinance is observed because:

The zoning ordinance was created with the purpose of creating zones or areas of certain uses to keep them similar, but the Ordinance cannot account for certain properties having other uses in a zone that pre-exist its enactment.

With the case of the property at 61 N. River Road, it is constructed not as a residence, but as a commercial property with three (3) garage bays facing the street. It abuts warehouses to the left and rear, a home based business (a plumbing contractor) to the right and the town dump is situated across the street. While it is acknowledged that there are residential properties in the area further up and down the street, this portion of the road was not designed and constructed for residential use. The structures were all believed to be built before any enactment of the zoning ordinance, and all the abutting properties have some element of commercial uses.

So while the zoning ordinance was designed to gather "like kind" properties and uses in particular zones, the Ordinance cannot undo what has been previously done (or built).

Furthermore, the spirit of the ordinance is observed because the proposed use is consistent with the other permitted uses in the area, specifically warehouses, garages, the plumbing contractor business next door and the town's waste disposal site across the street.

3. Substantial justice would be done because:

Acceptance of the proposed use would not negatively affect the area nor contravene the intent of the Zoning Ordinance especially where the same business previously occupied the space not less than five (5) years ago. The building was designed for automotive repair having the entire front of the building comprised of garage bays and has been previously been used for just this. But for the temporary abandonment of the use as an auto repair shop, this variance would not even been necessary.

4. The values of the surrounding properties would not be diminished because:

The proposed use is not dissimilar to the current uses by the abutting properties.

Furthermore it can be said with almost near certainty that surrounding properties values would not be diminished because a prior business of the same kind was used at this location.

Furthermore, as the applicant wishes to enlarge the structure by adding a waiting room (approx. 384 sq. ft.) it will create a new fascia making it more attractive to persons passing down the street.

Property: 61 N. River Rd
Applicant: 61 N. River LLC
Proposed Use: Auto Repair Shop & sale of firewood

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship if:

(A) Owing to the following special conditions of the property that distinguish it from other properties in the area:

- i. No fair and substantial relationship exists between the purposes of the ordinance provisions and the specific application of that provision to the property:

-When the implied purpose of the Ordinance is clearly to limit commercial uses in residential zones, the Ordinance is not a "one size fits all" definition of what belongs or should belong based on pre-existing neighborhoods and structures.

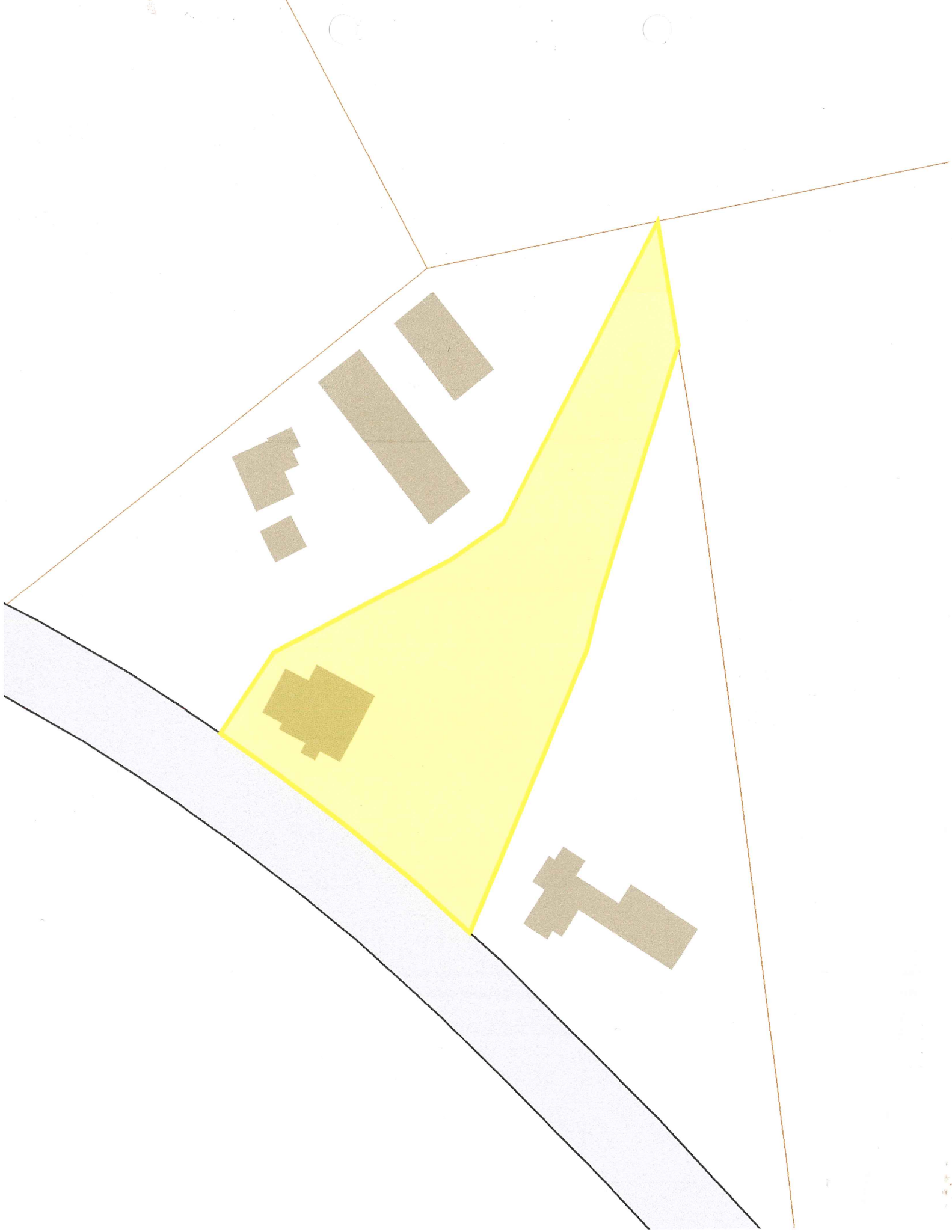
-Based upon the construction of this building as an automotive repair shop, its pre-existing use as an automobile repair shop, and its location to other commercial uses in this residential zone, there is no fair and substantial relationship between this property and how it relates to the enacted Zoning Ordinance.

- ii. The proposed use is a reasonable one:

-When the proposed use is not dissimilar to the uses in surrounding properties (and the area in general) and when the proposed use will not add any substantial traffic or any other burdens (or negative affects) any more than any other permitted use in the zone.

B) If the criteria provided for above in paragraphs (A)(i.) & (ii.) above, this property could not be used in strict compliance with the Zoning Ordinance because:

- i. The property is commercially constructed. Any use of it in a residential nature would require substantial reconstruction of the building if not total demolition of the building to create a residence from what currently exists. This creates an unnecessary hardship on any owner due to the extremely large financial burden in completely rebuilding the structure. Furthermore, even if it could be rebuilt as a residential structure it would remain a residence surrounded by commercial businesses and structures and facing the town's disposal site. A residential use of this site would arguably be the least beneficial use of the property, not even taking into account of the financial burden it would create upon the owner.





Call Service

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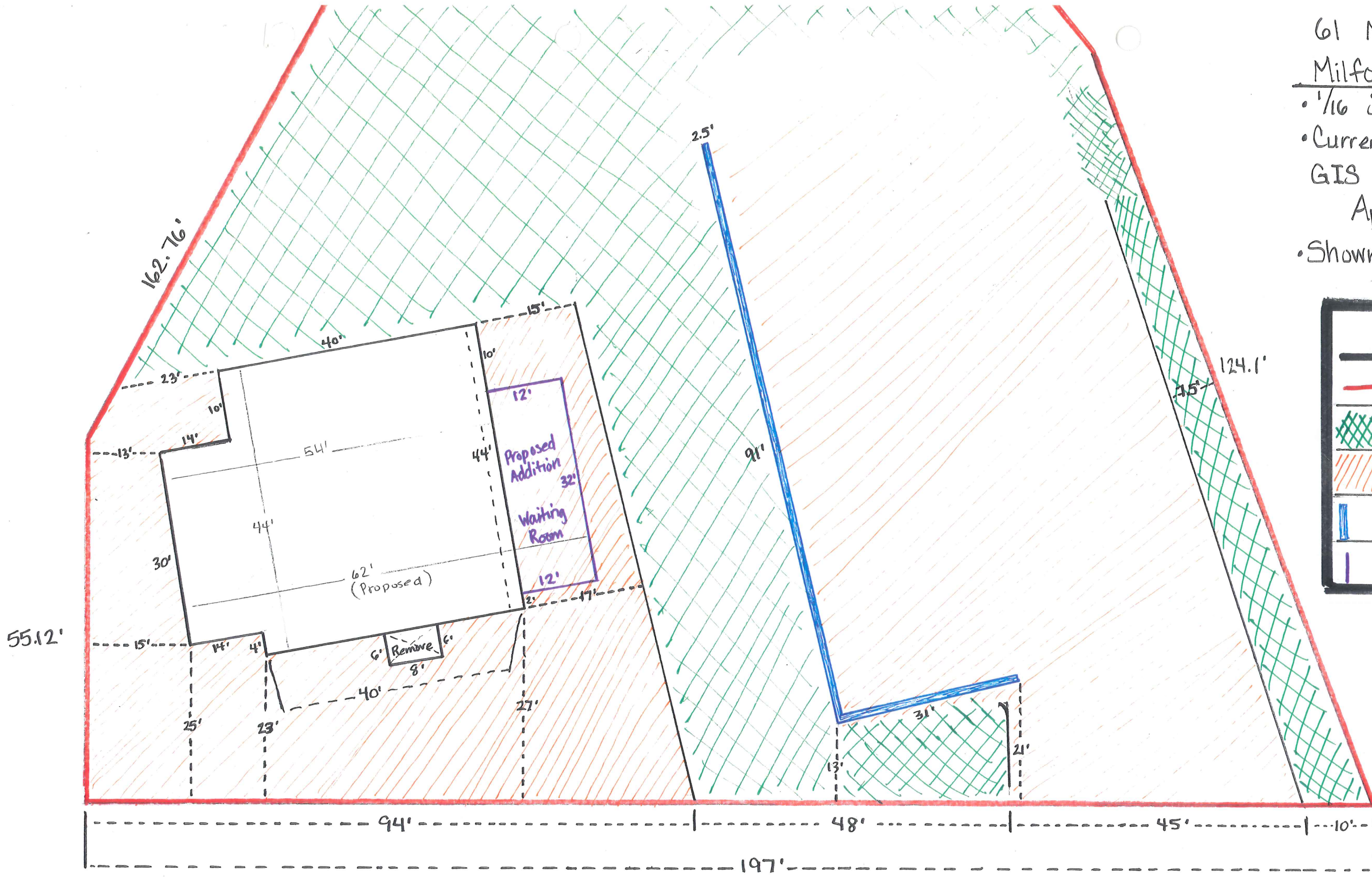
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\$80

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61 N. River Rd.
Milford, NH 03055

- 1/16 Scale
- Current lot layout based on GIS map from town website April 19, 2020
- Shown with proposed addition



LEGEND	
	Property lines
	Grass / Gravel
	Paving
	Block wall
	Proposed addition

Owner's Signature *[Signature]* 4-20-20