

TOWN OF MILFORD

Office of Community Development

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



Administrative Review

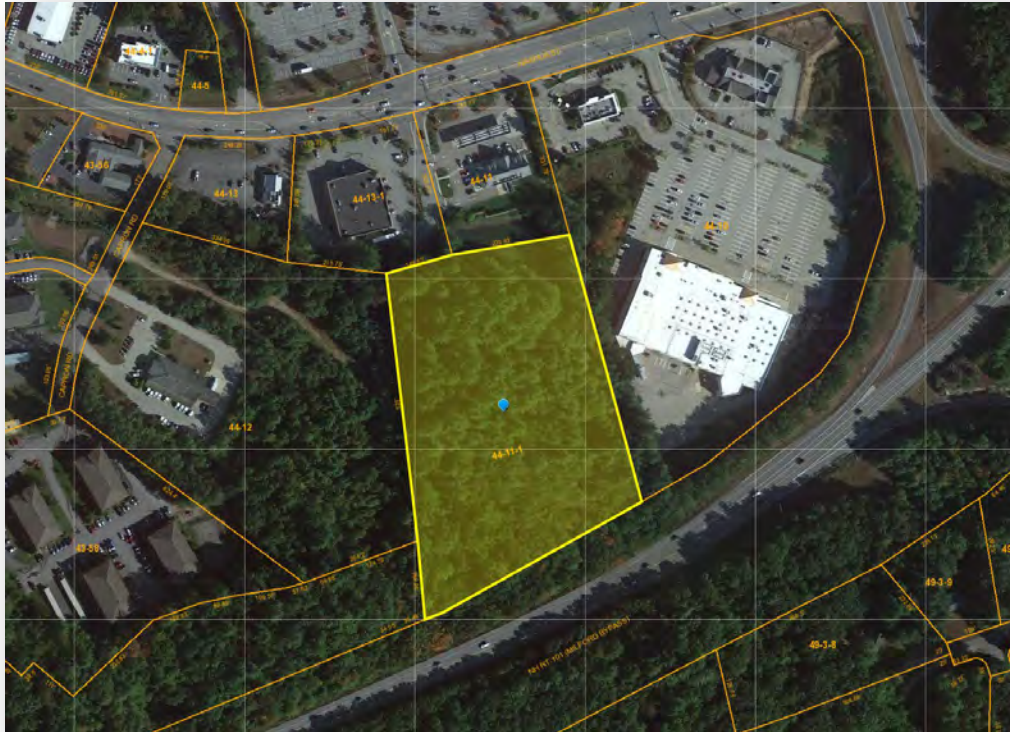
Date: July 29, 2020
To: Jason Plourde, Chair, Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Case #2020-19:** MVC Eye Care / Kevin Chauvette for the property located at Milford Tax Map 44, Lot 11-1 – Variance Application

The applicants are before the Board of Adjustment seeking a VARIANCE Milford Zoning Ordinance, Article V, Section 5.08.4.A to permit the construction of a commercial building and related site improvements on a lot of record with less than the minimum required frontage (150') on a principle route of access on a Class V road or better in the Integrated Commercial-Industrial ('ICI') District. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
 - a. The subject property is approximately 6.85 acres and is undeveloped.
 - b. No current utilities on the subject property. Property would be serviced by municipal water and sewer.
 - c. The property contains no linear frontage on a Class V roadway or better. Access to the property would be through an existing access/egress easement along Map 13 Lot 1, 571 Nashua Street.
2. The applicant is seeking to build a proposed 5,654 sq. ft. building and 40 space commercial development on a portion of the 6.85 acre parcel that contains no legal frontage on a Class V roadway or better.
3. Access to the property is by way of dedicated access easement across Tax Map 44, Lot 13-1 recorded at the HCRD Book 7831 Page 1567). The proposal calls for extending the 25' wide driveway/roadway from Nashua Street/NH Route 101A servicing Walgreens Pharmacy and Cumberland Farms into the subject property.
4. The premises conforms to all site and dimension requirements of the Zoning Ordinance with the exception that the subject property does not contain the required 150 linear feet of frontage on a Class V or better required under Section 5.08.4.A. The proposed commercial use on a minimum area of 20,000 square feet is permitted in Integrated Commercial-Industrial Zone ('ICI'). However, due to the lack of sufficient frontage defined as: "That continuous portion of a lot bordering on a road(s) from which access can be taken, that meets the minimum requirements of the underlying zoning district.", a Variance would be required.
5. This is a reapplication of a previous Variance requests 2012-29 (granted 12/6/12) providing relief from Article V, Section 5.08.4.A to allow the creation of a lot with no frontage on a Class V road or better in the 'ICI' district. Said Variance expired as no work was performed on site within a year after the approval was granted (the 1 year expiration date was recently modified to 2 years). Minutes and decision from both cases have been included.

6. Recommend that the applicant further explain the extent and terms of the recorded easement.
7. In addition, should the Board of Adjustment grant the Variance Request, the applicant will be required to follow two additional steps in compliance with NH RSA 674:41 prior to the property owner being able to obtain a building permit.
 - a. Review and comment by the Planning Board provided to the local governing body (Board of Selectmen) on the matter of issuance of building permit for the subject lot, and,
 - b. The Board of Selectmen votes to authorize the issuance of a building permit.

Aerial Photo(s) of Subject Property:



Tax Map of Subject Property:





ZBA Application – Variance
MILFORD ZONING BOARD OF ADJUSTMENT

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

PROPERTY INFORMATION
Street Address: Nashua Street
Tax Map / Parcel #: 44-11-1
<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>5.08.4:A</u> Describe the variance you are requesting under the above section of the Ordinance. <u>Existing Lot with no frontage on a Class V or better road.</u> <u>A Variance was unanimously approved December 6, 2012 -ZBA Case #2012-29.</u> <u>The approved variance granted expired one year following per Article X, Section 10.060.</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:
 Lot 44-11-1 is an existing tax lot, approved by the Planning Board March 26, 2013 #SD2013-04 HCRD Plan #37742. Access to the parcel is through a deeded easement on lot 44-13-1 recorded at the HCRD Bk 7831 Page 5246 (1A) as shown on the approved subdivision plan - HCRD Plan #37742.
2. If the Variance were granted, the spirit of the ordinance would be observed because:
 The initial intent to access the build-able upland on existing lot 44-11-1 would be through the recorded easement from Nashua Street and maintains harmony with the existing commercial uses abutting the parcel.
3. Granting the Variance would do substantial justice because:
 The objective in 2013 and today is to develop the site with a shared driveway to Nashua Street.
4. Granting the Variance would not diminish the value of surrounding properties because:
 The use proposed is allowed in the ICI District. The setbacks from abutting parcels will be maintained. Development on abutting lots are similar in scale and use and development will not diminish their value.
5. Unnecessary Hardship:
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.



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 :
Deeded access, that makes the lot viable, was provided by an easement through the abutting lot 44-13-1. This parcel is unique due to its size, the 523'+ frontage along NH Route 101 (limited access right of way) and the large upland areas that are naturally subdivided by wetlands shown on the lot.
AND
ii. The proposed use is a reasonable one because:
It is similar to the existing uses along Nashua Street. The lot would be the new home of MVC Eyecare of Milford, currently located on the abutting lot 44-10. Access to the existing lot is not permitted from NH Route 101 (limited access right of way). Access is through the deeded easement listed at a signalized intersection.
(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.



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.



The Dubay Group, Inc.
 126 Harvey Rd. Bldg B101
 Lowell, MA 01850
 603.458.6462

Engineers
 Planners
 Surveyors
 TheDubayGroup.com



REVISIONS:		
REV.	DATE	COMMENT

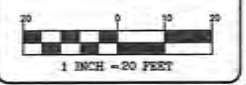
DRAWN BY: WA
 CHECKED BY: KRD
 DATE: JUNE 17, 2020
 SCALE: 1"=20'
 PROJECT: Conceptual Plan June 22 2020
 DEED REF: -

PROJECT
MVC EYE CARE
 MAP 44 LOT 11-1
 NASHUA STREET
 MILFORD, NH

FOR
MVC Eye Care
 2075 SOUTH WILLOW STREET
 MANCHESTER, NH 03103

SHEET TITLE:
CONCEPTUAL SITE PLAN
JUNE 22, 2020

H:\PROJECTS\444-MVC 101A - MVC\04\CURRENT\444-Conceptual Plan June 22 2020.dwg

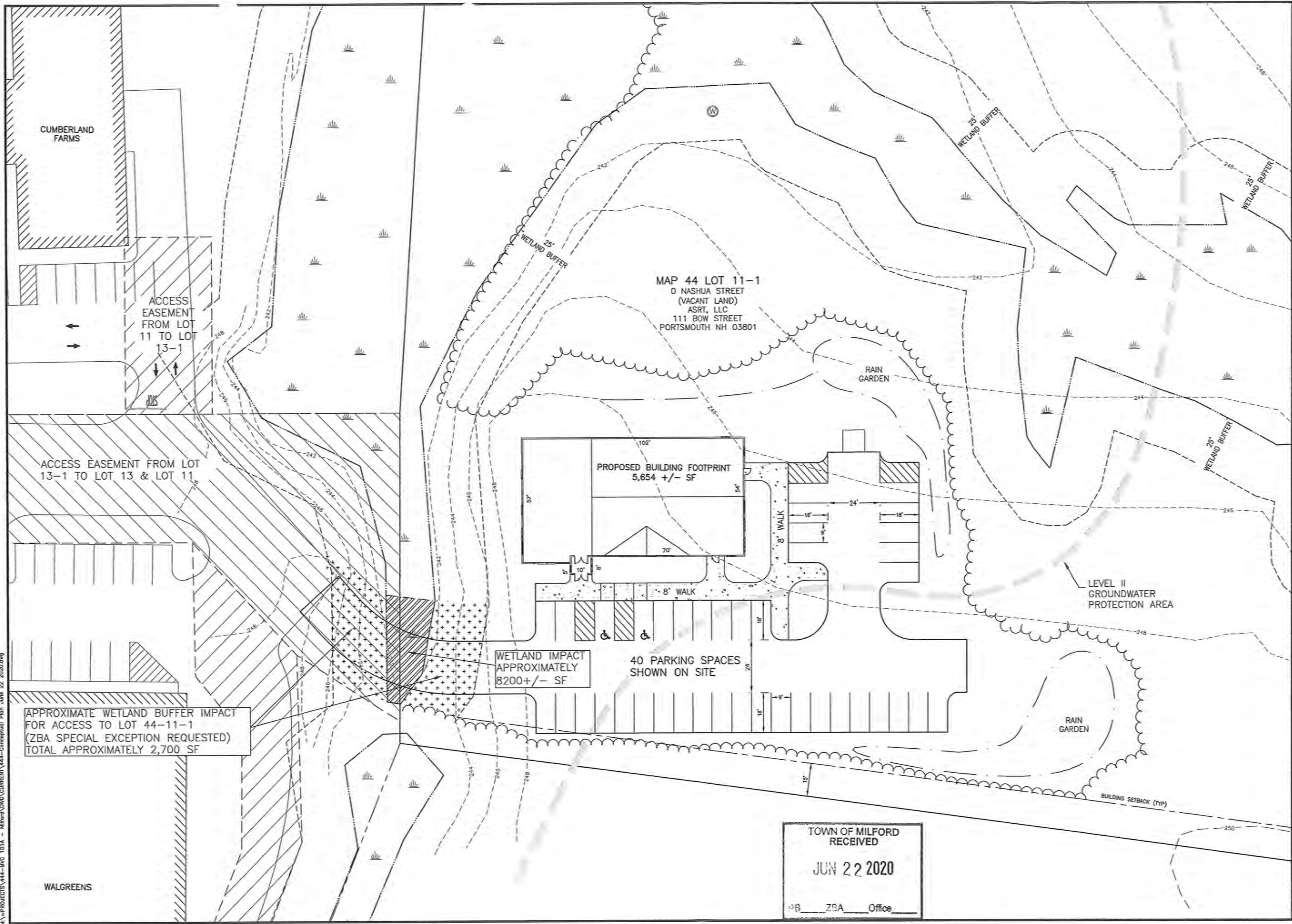


REVISIONS:			
REV.	DATE	COMMENT	BY

DRAWN BY: WA
 CHECKED BY: KRO
 DATE: JUNE 17, 2020
 SCALE: 1"=20'
 Conceptual Plan June 22 2020
 DEED REF: -

PROJECT:
MVC EYE CARE
 MAP 44 LOT 11-1
 NASHUA STREET
 MILFORD, NH
 FOR
MVC Eye Care
 2075 SOUTH WILLOW STREET
 MANCHESTER, NH 03103

SHEET TITLE:
CONCEPTUAL SITE PLAN
 JUNE 22, 2020



MAP 44 LOT 11-1
 0 NASHUA STREET
 (VACANT LAND)
 ASRT, LLC
 111 BOW STREET
 PORTSMOUTH NH 03801

PROPOSED BUILDING FOOTPRINT
 5,654 +/- SF

WETLAND IMPACT
 APPROXIMATELY
 8,200 +/- SF

40 PARKING SPACES
 SHOWN ON SITE

ACCESS EASEMENT FROM LOT
 13-1 TO LOT 13 & LOT 11

ACCESS EASEMENT FROM LOT
 11 TO LOT 13-1

APPROXIMATE WETLAND BUFFER IMPACT
 FOR ACCESS TO LOT 44-11-1
 (ZBA SPECIAL EXCEPTION REQUESTED)
 TOTAL APPROXIMATELY 2,700 SF

TOWN OF MILFORD
 RECEIVED
 JUN 22 2020
 ZBA Office

N:\PROJECTS\444-HRC 101A - Milford\DWG\CURRENT\444-Conceptual Plan June 22 2020.dwg

WALGREENS

CUMBERLAND FARMS