

# TOWN OF MILFORD

## Office of Community Development

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



### Administrative Review

**Date:** September 25, 2020  
**To:** Jason Plourde, Chair, Zoning Board of Adjustment  
**From:** Lincoln Daley, Community Development Director  
**Subject:** **Case #2020-22:** San-Ken Homes, Inc. for the property located at Milford Tax Map 53, Lot 31 – Variance Application. *Continued from September 17, 2020*

The applicant is before the Board of Adjustment seeking a VARIANCE Milford Zoning Ordinance, Article V, Section 5.04.4.A to permit the construction of a single-family resident and related site improvements on a lot of record with less than the minimum required frontage (200') on a principle route of access on a Class V road or better in the Residential 'R' District. This will be the second hearing for the application, which was continued from September 17, 2020 to respond to Board questions and comments. In reviewing the files for this property and based on the comments/requests from the last meeting, I offer the following comments:

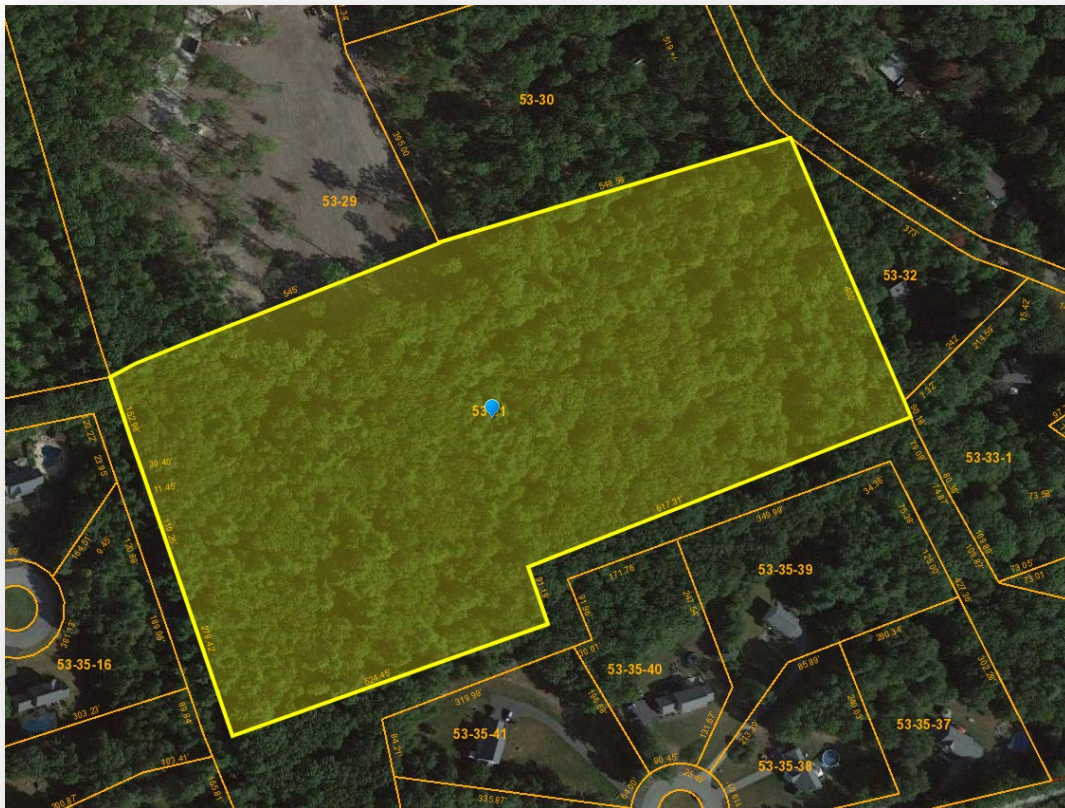
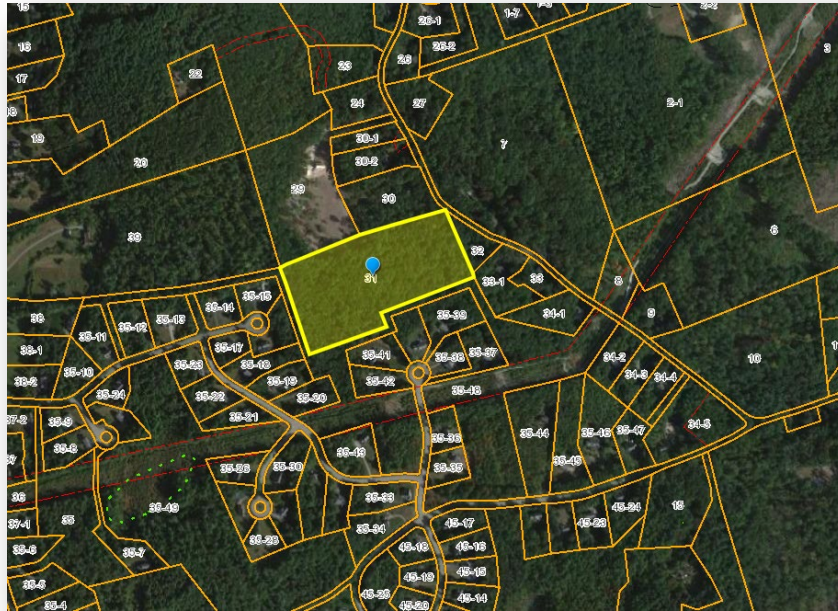
1. Existing Conditions:
  - a. The subject property is approximately 13.5 acres and is undeveloped.
  - b. No current utilities are on the subject property. Property would be serviced by a private well and septic.
  - c. The property contains less than ten feet (10') of linear frontage on Ponemah Hill Road (a Class V roadway).
  - d. The property is situated in an established residential neighborhood and abuts dedicated open space to the South.
2. The applicant is seeking to build a single-family residence and associated driveway on a portion of the 6.85 acre parcel that contains only 10 linear feet of front legal frontage on a Class V roadway or better where 200 feet of frontage is required within the Residential 'A' Zoning District.
3. 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 200 linear feet of frontage on a Class V or better required under Section 5.04.4.A. The proposed single-family use on a minimum area of two acres is permitted in Residential 'R' Zoning District. 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 is required.
4. Access to the property would be through the 10 linear feet of frontage on Ponemah Hill Road. An existing dedicated 30 foot wide access/egress easement exists along the Northern boundary line. Said easement provided access to the abutting property to the abutting property Map 53 Lot 29 (See HCRD Book 2953 Page 276 and attached Plan #14753).

However, more information is required by the applicant to determine if the said 30' easement (or portion thereof) extended across the abutting property identified as Map 53 Lot 32 or only utilized the

10 linear feet of the subject parcel. Recommend that the applicant further explain the extent and terms of the recorded easement and summary of the anticipated driveway access off of Ponemah Hill Road. The Board sought further clarification to determine if the easement is classified as a private road as shown on plan presented.

5. The proposal calls for constructing the residential driveway from Ponemah Hill Road into the subject property. Said driveway access would require a driveway permit from the Public Works Department. At the previous meeting, the Board requested that the applicant provide the following:
  - a. A conceptual driveway plan that utilizes the available 10 feet of frontage onto Ponemah Hill Road.
  - b. Said driveway plan should identify site distance in either direction entering into the subject property.
  - c. Said driveway and curb cut shall comply with the Town's driveway regulations. See link [Milford Driveway Regulations](#).
  - d. Driveway plan should be revised to reflect the revised 400' driveway length.
  - e. General description of the drainage design for the driveway onto Ponemah Hill Road. *The details of drainage would be covered under the Town's Stormwater Permit.*
6. At the previous meeting, the Board requested that the applicant revise conceptual site layout to reflect the new location of the home closer in proximity to Ponemah Hill Road. The location should attempt to minimize impact on the abutting property and driveway located at Map 53, Lot 32 (387
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:**





**ZBA Application - Variance**  
**MILFORD ZONING BOARD OF ADJUSTMENT**

Date Received: 8/20/20  
 Case Number: 2020-242  
 Application #: 20201111  
 Date Complete: \_\_\_\_\_  
 Hearing Date: 9-17-20  
 Decision Date: \_\_\_\_\_  
 Decision: \_\_\_\_\_

PROPERTY INFORMATION
Street Address: Ponemah Road
Tax Map / Parcel #: Map 53, Lot 31
<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>4.4</u>
Describe the variance you are requesting under the above section of the Ordinance. To construct a single family home on a 13.15 Acre lot with only 10 feet of Road Frontage.



**General Criteria Section 10.01**

**Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I**

- Granting the Variance would not be contrary to the public interest because:  
**See Attached**
- If the Variance were granted, the spirit of the ordinance would be observed because:  
**See Attached**
- Granting the Variance would do substantial justice because:  
**See Attached**
- Granting the Variance would not diminish the value of surrounding properties because:  
**See Attached**
- 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**

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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 Attached

AND

ii. The proposed use is a reasonable one because:

See 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 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:

N/A

1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:

N/A

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.*

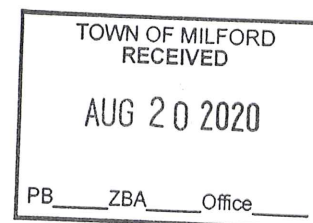
- d. Granting the Variance would not diminish the value of surrounding property.

*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.



**TOWN OF MILFORD ZONING BOARD OF ADJUSTMENT**

**APPLICATION FOR VARIANCE**

**Applicant/Owner:** San-Ken Homes, Inc for

**Property:** Tax Map 53 Lot 31

**Relief Requested:**

The above-referenced Applicant respectfully requests a variance from Article V (Zoning Districts and Regulations), Section 4 (Residence "R" District), and Subsection 4 (Lot Sizes and Frontages) of the Zoning Ordinance of the Town of Milford ("Ordinance") governing frontage requirements on a class V or better road.

More specifically, the Applicant requests a variance from the Ordinance's requirement of Two Hundred (200) feet of frontage on a Class V or better road to permit the construction a single family residence.

**RSA 674:33 (I)(b)'s Variance Criteria**

- 1. Granting the variance will not be contrary to the public interest.  
(RSA 674:33 (I)(b)(1))**

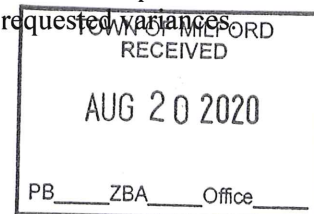
Granting the variance would not be contrary to the public interest because the use of the property for the construction of a single-family residence is a permitted use within the residential R district. There are other single-family residences in the immediate vicinity of the Property. The public interest is to permit uses of property that are permitting by the Zoning Ordinance and such is the case here. Zoning permits this type of use on an existing lot provided that the lot has a minimum lot frontage of two hundred feet (200) and that area shall be no less than 2 acres. Since the Applicants can meet and do exceed the acreage requirement for the district in which the lot is located, application is made for relief from the frontage requirement as it pertains to the property.

- 2. The spirit of the ordinance is observed.  
(RSA 674.33(I)(b)(2))**

Granting the variance would not threaten the public health, safety or welfare. Again, the variance is necessary only for the construction of a single-family residence on a lot without enough frontage. The residence will be constructed in accord with all applicable building codes and will eb served by a private water and septic. The residence will have no significant impact on traffic considerations in the neighborhood.

- 3. Granting the variance would do substantial justice.  
(RSA 674.33(I)(b)(3))**

Granting the variance would do substantial justice because the Applicants would be permitted to construct a single family dwelling as permitted under the Zoning Ordinance which, due to the unique characteristics of this property, the Applicants would be unable to do without obtaining the requested variances.



**4. The values of the surrounding properties will not be diminished.  
(RSA 674.33(I)(b)(4))**

If the variance were granted the values of surrounding properties would not be diminished since the construction of a new, single family residence can only enhance the value of surrounding properties. This variance will not negatively change the character of the neighborhood.

**5. Unnecessary Hardship  
(RSA 674:33(I)(b)(5))**

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 the provision to the property because:

The property is special and distinct from other properties in the area given its location on Ponemah Hill Road with only 10 feet of the lot itself having frontage. It is also special and distinct from other properties due to the driveway easement that is on the property for granting access to another back lot on Ponemah Hill Road.

Given that a single residential home would not be buildable on the Property with tough this variance, denying the variance would result in unnecessary hardship. In other words, this variance is warranted because the practical purpose of the Ordinance is not furthered as a result of the Property's unique conditions.

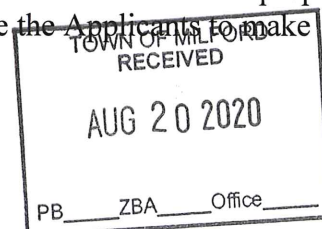
And

ii. The proposed use is reasonable because:

The proposed use is reasonable because single family residences are permitted in this Zoning District.

B. Explain how 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.

As state above, the property has special conditions that distinguish it from other properties in the area. There is an existing private road easement on the lot that has been in existence since at least 1982. The construction of a single family residence is a reasonable use of the property. If the property cannot be used for that purpose it would remain vacant, unimproved land forever which is *not* a reasonable use of the property. The requested variances are therefore necessary to enable the Applicants to make reasonable use of their property.





August 20, 2020

Town of Milford  
Zoning Board of Adjustment  
1 Union Square  
Milford, NH 03055

RE: Request for Variance – Ponemah Road, Tax Map 53, Lot 31, Milford NH

Dear Members of the Board,

Please let this letter serve as my official authorization for San-Ken Homes, Inc to submit applications for ~~Planning~~ Board review on the behalf of San-Ken Holdings, LLC (applicant) and Douglas & Robert Wheeler (owners) for the purpose of permitting the construction of a single family house on the subject parcel.

Date: August 20, 2020

Douglas Wheeler

*Douglas D. Wheeler*  08/20/2020 05:38 PM GMT

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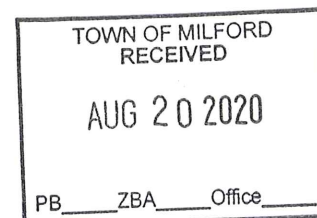
Authorized Signature

Robert Wheeler

*Robert E. Wheeler*  08/20/2020 05:37 PM GMT

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Authorized Signature





# 53-31 Ponemah Road

Milford, NH

1 inch = 150 Feet



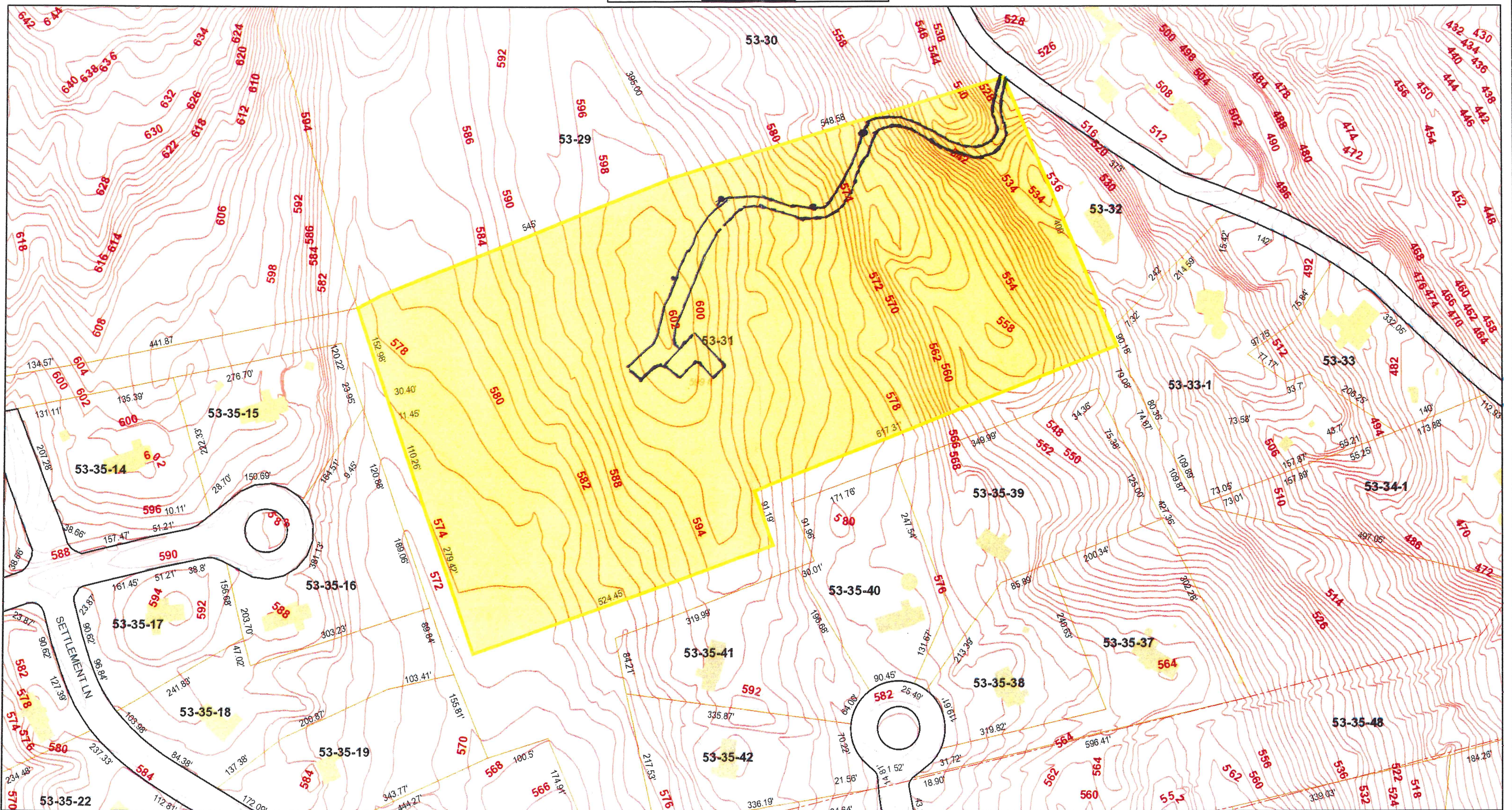
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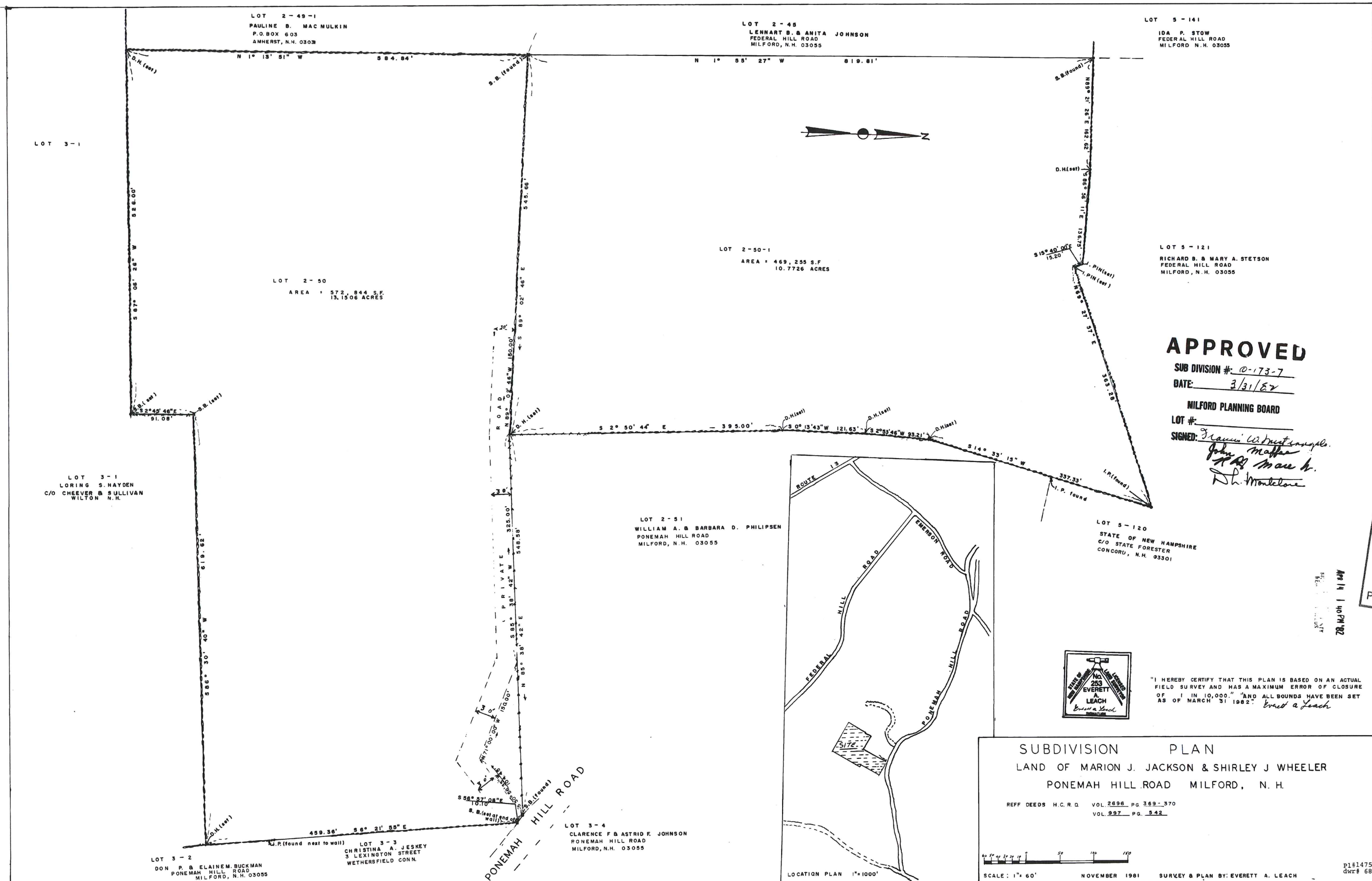
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August 19, 2020



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**APPROVED**

SUB DIVISION # 0-173-7

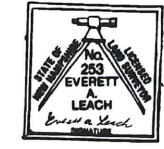
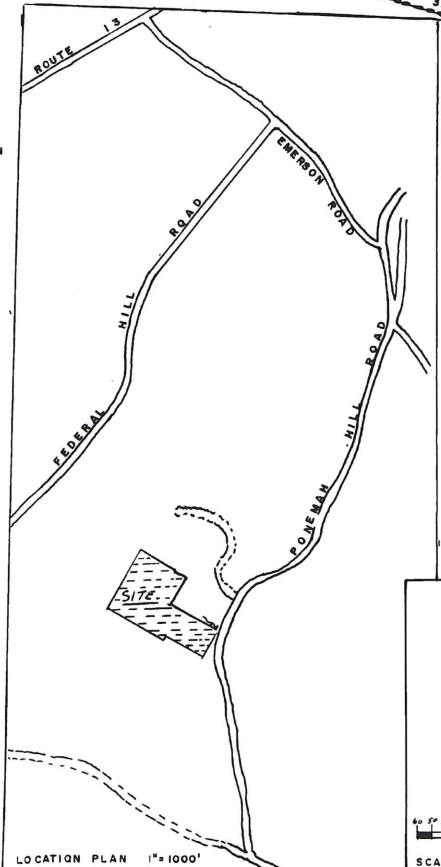
DATE: 3/31/87

MILFORD PLANNING BOARD

LOT # \_\_\_\_\_

SIGNED: *Francis W. Westcott*  
*John Mather*  
*John Mather*  
*D. Montelone*

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"I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY AND HAS A MAXIMUM ERROR OF CLOSURE OF 1 IN 10,000." AND ALL BOUNDS HAVE BEEN SET AS OF MARCH 31 1987. *Everett A. Leach*

**SUBDIVISION PLAN**  
LAND OF MARION J. JACKSON & SHIRLEY J. WHEELER  
PONEMAH HILL ROAD MILFORD, N. H.

REF DEEDS H.C.R.D. VOL. 2696 PG. 369-370  
VOL. 997 PG. 542

SCALE: 1" = 60'  
NOVEMBER 1981  
SURVEY & PLAN BY: EVERETT A. LEACH

pi#14753  
dwr# 68

*11/153 DW 28*



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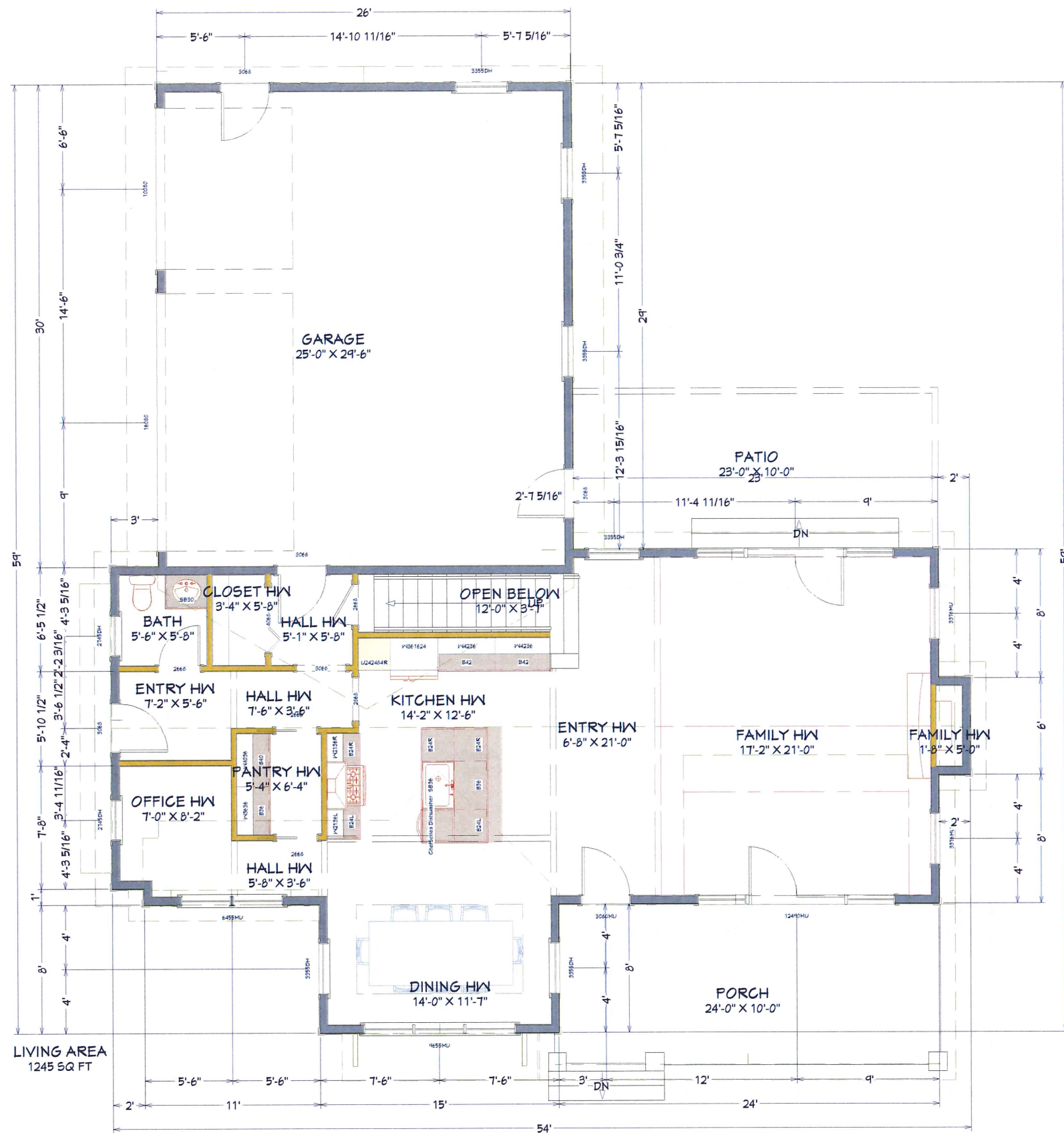
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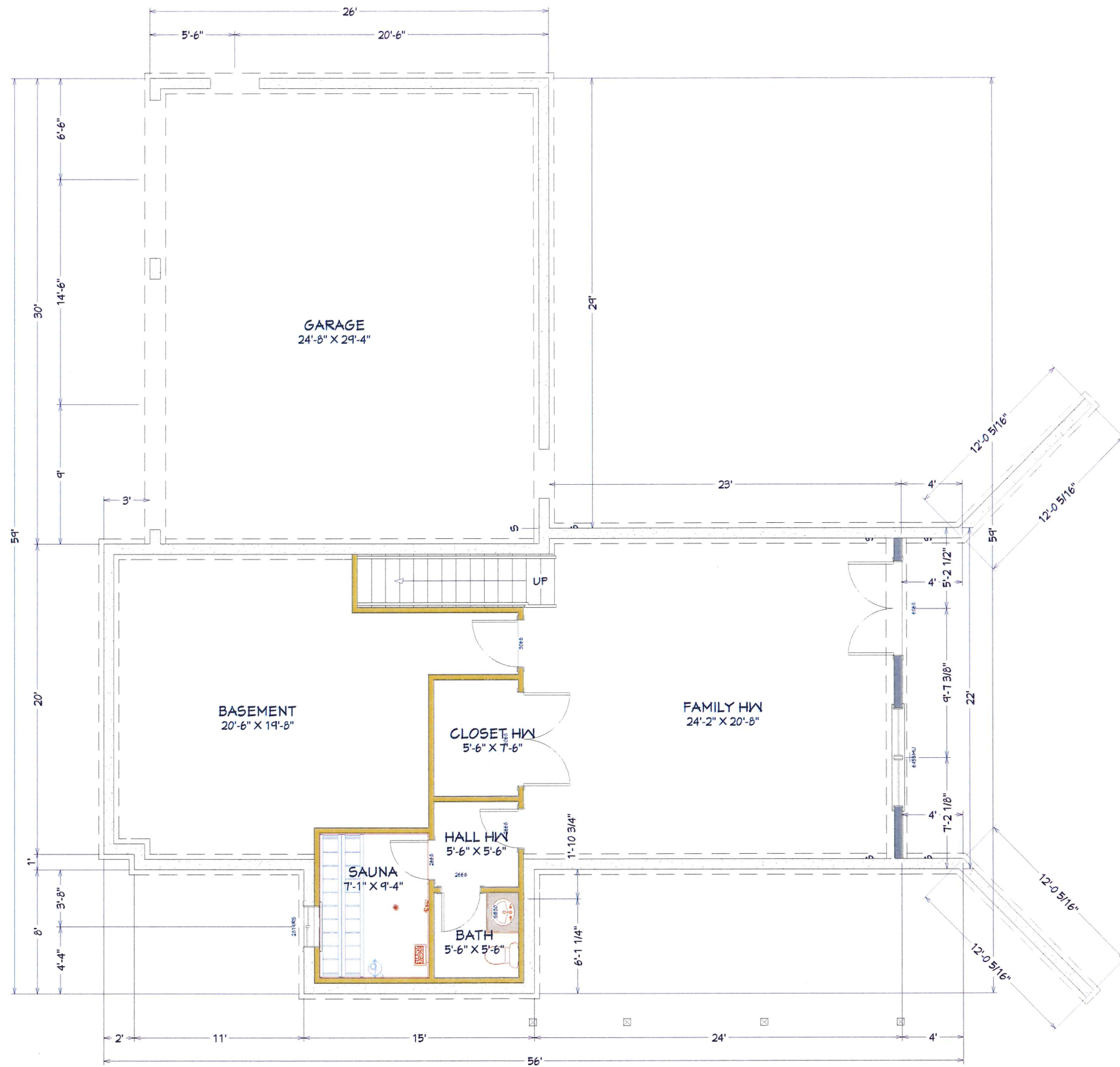
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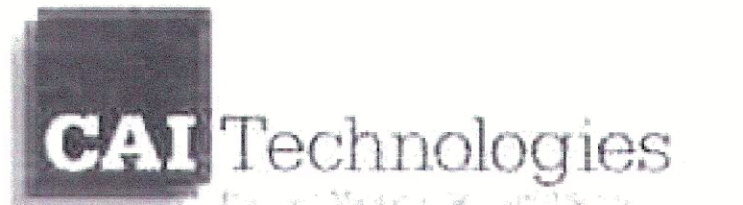




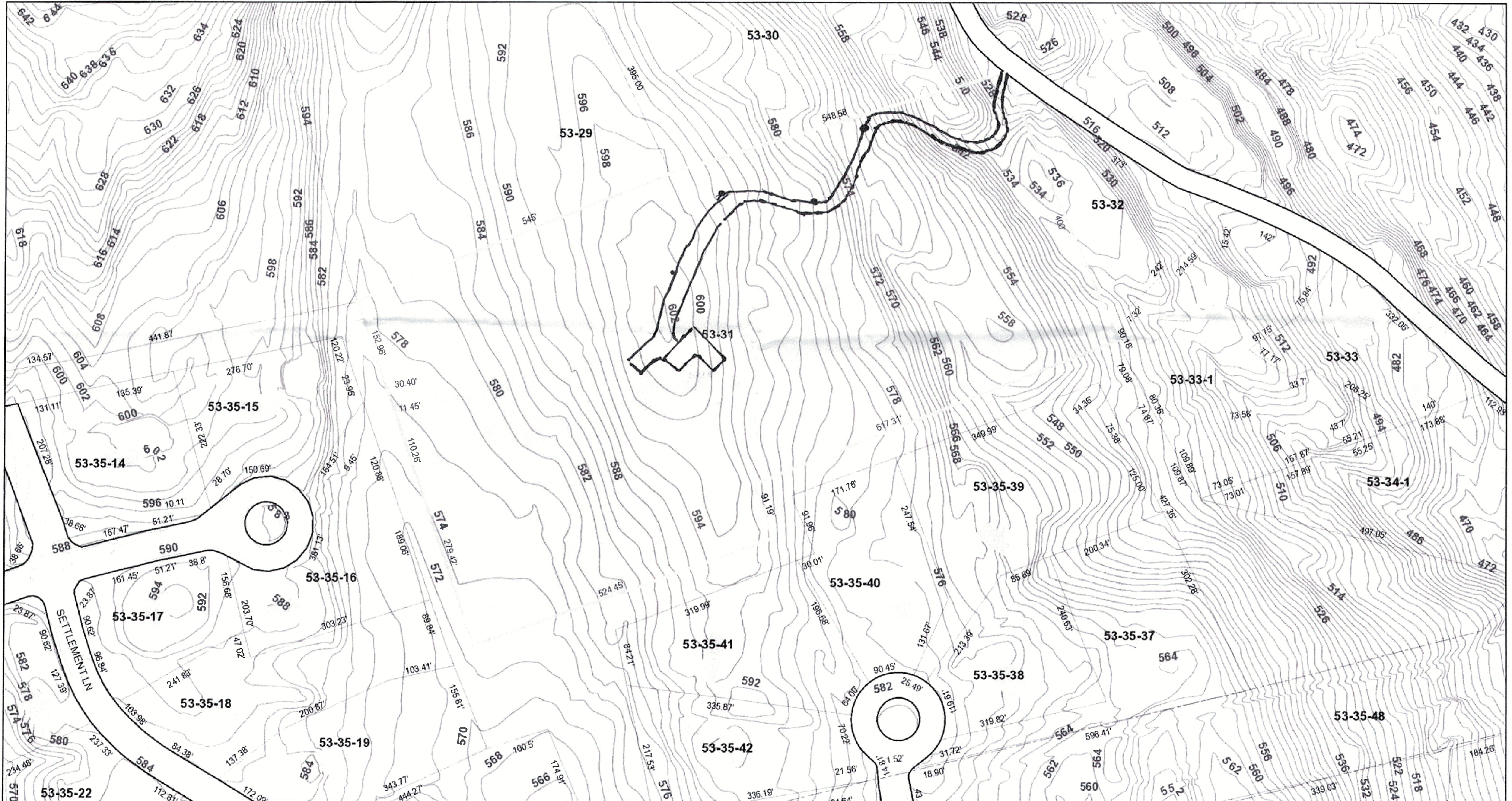
# 53-31 Ponemah Road

Milford, NH

1 inch = 150 Feet



August 19, 2020



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