

# TOWN OF MILFORD

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



## Administrative Review

**Date:** July 7, 2021  
**To:** Jason Plourde, Chair, Zoning Board of Adjustment  
**From:** Lincoln Daley, Community Development Director  
**Subject:** **Case #2021-16: Gretchen Davidson for the property located at Milford Tax Map 48, Lot 43, 64 Federal Hill Road - Variance Application**

The applicant is before the Board of Adjustment seeking a VARIANCE from the Milford Zoning Ordinance, Article V, Section 5.02.4. to subdivide the subject lot and create a separate 1.3 acre lot with 60 feet of linear frontage on Federal Hill Road where 150 feet is required for a parcel in the Residential 'A' district not serviced by municipal water and wastewater. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
  - a. The subject property is approximately 2.5 acres in area and contains a 5 bedroom, single-family house located on front part of the property just beyond the 30 foot front dimensional setback. The property is primarily undeveloped and is serviced by a private well and septic.
  - b. The property contains more than 273 linear feet of frontage and accessed by two curb cuts on Federal Hill Road
  - c. The subject property is situated in an established residential area and commercial area. To the west the subject property is Zoned Residential 'R' and consists of single-family homes on properties varying in size (one acre and larger). To the north and west, consists of the Mile Away Restaurant (Map 48, Lot 42) and Hampshire Hills Club (Map 48, Lot 41). To the south, the properties are Zoned Residential 'A' and include single-family residences (including the Reserve).
2. The applicant is seeking to subdivide 1.3 acres from the parent lot, Map 48, Lot 43 (totaling 2.5 acres) to create Tax Map 48, Lot 43-1. The proposed lot would have 60 feet of frontage on Federal Hill Road and be accessed from the existing paved driveway. With the exception of frontage for the proposed new lot (Tax Map 48, Lot 43-1), both lots would meet the minimum dimensional requirements for a parcel in the Residential "A" Zoning District (40,000 square feet and 150 feet of frontage) not serviced by municipal water and wastewater.
3. As stated in the Town's Development Regulations, the proposed subdivision will require the submittal of a subdivision application to and review/approval by the Planning Board.
4. Milford Zoning Ordinance, Article V, Section 5.02.4.B states that the minimum lot size and frontage for single-family residence and all other acceptable uses in the Residence "A" District not serviced by both municipal sewerage and water systems shall be a minimum of forty thousand (40,000) square feet in area with one hundred fifty feet (150') of frontage on a Class V or better road. In this instance, the relief sought to allow the 60 feet of frontage would require a Variance in compliance with the Town Zoning Ordinance.

**Aerial Photos of Subject Property:**



**Street View Photos of Subject Property:**



View Looking Northeast of the 2<sup>nd</sup> Curb Cut



View Looking Northeast of the 2<sup>nd</sup> Curb Cut



View Looking South On Federal Hill Road



View Looking North On Federal Hill Road

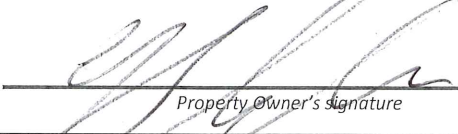
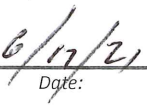




**ZBA Application**  
**MILFORD ZONING BOARD OF ADJUSTMENT**  
**GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS**

TOWN OF MILFORD  
 RECEIVED  
 JUN 17 2021  
 PB ZBA Office

Date Received: \_\_\_\_\_  
 Case Number: \_\_\_\_\_  
 Application Number: \_\_\_\_\_  
 Hearing Date: \_\_\_\_\_  
 Decision Date: \_\_\_\_\_  
 Decision: \_\_\_\_\_

PROPERTY INFORMATION	
Street Address: 64 Federal Hill Road	
Tax Map / Parcel #: 48-43	Lot Size: 2.5 Acres
PROPERTY CURRENTLY USED AS	
Residential	
<i>If the application involves multiple lots with different owners, attach additional copies of this page.</i>	
PROPERTY OWNER	
Name: Doris A. Fay, Trustee - The Fay Family Trust	
Address: 64 Federal Hill Road	
City/State/Zip: Milford, NH 03055	
Phone: ( )	
Email:	
<i>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.</i>	
APPLICANT/REPRESENTATIVE	
<input checked="" type="checkbox"/> SAME AS OWNER	
Name: Gretchen Davidson	
Address: 64 Federal Hill Road	
City/State/Zip: Milford, NH 03055	
Email: GRETCHEN1017@YAHOO.COM	
Phone: ( )	Cell: ( ) 603-305-4400
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.	
 _____ 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: \$4.11 x 7	\$28.77
Amount received:	
Date Received:	

Check \_\_\_\_\_ Cash \_\_\_\_\_

*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**

TOWN OF MILFORD  
 RECEIVED  
 JUN 17 2021

PB \_\_\_\_\_ ZBA \_\_\_\_\_ Office \_\_\_\_\_  
 Date Received: \_\_\_\_\_  
 Case Number: \_\_\_\_\_  
 Application #: \_\_\_\_\_  
 Date Complete: \_\_\_\_\_  
 Hearing Date: \_\_\_\_\_  
 Decision Date: \_\_\_\_\_  
 Decision: \_\_\_\_\_

PROPERTY INFORMATION
Street Address: 64 Federal Hill Road
Tax Map / Parcel #: 48/43
<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>5.02.4</u> Describe the variance you are requesting under the above section of the Ordinance. We are requesting a variance from the frontage requirement in the Residence A for a proposed two lot subdivision. The required frontage is 150 feet. We are proposing a new lot with 60 feet of frontage

**General Criteria Section 10.01**

***Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.1***

- 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**

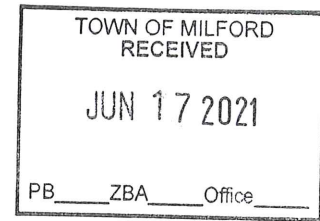
TOWN OF MILFORD  
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 PB \_\_\_\_\_ ZBA \_\_\_\_\_ Office \_\_\_\_\_

<p>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:</p>
<p>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 :</p>
<p>(SEE ATTACHED)</p>
<p>AND</p>
<p>ii. The proposed use is a reasonable one because:</p>
<p>(SEE ATTACHED)</p>
<p>(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:</p>
<p>(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 <b>physical disability</b> to reside in or regularly use the premises, provided that:</p>
<p>1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:</p>
<p>In addition, Variances may have extra criteria that must be met. This includes, but is not limited to:  <b>6.03.5 Floodplain Management:</b> 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.</p>
<p><b>ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition.</b>          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.</p>





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



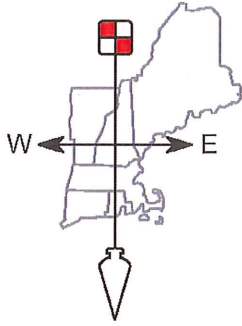
Please read the following information that is designed to help you understand the unique nature of a Variance petition.

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.



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Land Planning ♦ Septic Designs

LAND CONSULTANTS, PLLC

206 Elm Street, Milford, NH 03055 - Phone: 603-672-5456 - Fax: 603-413-5456  
www.FieldstoneLandConsultants.com

## VARIANCE CRITERIA

(VARIANCE FROM ARTICLE V SECTION 5.02.4)

(LOT FRONTAGE REQUIREMENT)

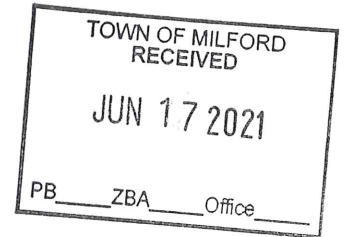
Tax Map Parcel 48-43

64 Federal Hill Road, Milford, NH

May 30, 2021

Prepared For:

Doris A. Fay



A Variance is requested under Section 5.02.4 of the Milford Zoning Ordinance to permit a two-lot subdivision of Tax Map Parcel 48-43. Section 5.02.4 of the Zoning Ordinance refers to lot sizes and frontages in the Residence "A" District. More specifically Section 5.02.4 requires that all single-family lots, not serviced by both municipal sewer and water systems, shall have a minimum lot size of 40,000 Sq. Ft. with a minimum of 150 feet of frontage on a Class V or better road. This section also requires that lots serviced by both municipal sewer and water systems with single-family dwellings have a minimum lot size of 15,000 Sq. Ft. with a minimum of 100 feet of frontage on a Class V or better road.

Currently the subject property consists of approximately 2.5 acres of land with 273 feet of frontage along Federal Hill Road. The property is currently accessed by two paved driveways which services the property and home. The owner would like to subdivide the property into two lots. This subdivision would permit Ms. Fay the opportunity to build a new home and continue her residency in Milford. The subdivision would create two lots exceeding 40,000 square feet. The proposed new lot would utilize an existing curb cut along Federal Hill Road for access to the new lot. The remaining lot would have 213 linear feet of technical frontage along Federal Hill Road. This variance request is for the new lot to have 60 feet of frontage, where 150 feet is required.

The numbered items below correlate to the questions asked in the application for a Variance.

1. Granting the variance would not be contrary to the public interest because:  
Granting this variance would allow the owner a reasonable and productive use of an oversized lot of record. The zoning for the property is Residence "A" which has a lot size requirement of 40,000 square feet. The proposed new lot would exceed 50,000 square feet and utilize an existing paved curb cut to Federal Hill Road. Additionally, the proposed driveway is positioned in a manner, in which, safe sight distance will be maintained along Federal Hill Road. For these reasons we believe this proposal will not alter the essential character of the neighborhood or threaten the health, safety

Doris A. Fay

Variance Criteria - (Variance from Section 5.04.4, Lot Frontage Requirement)

Tax Map 48 Parcel 43

or general welfare of the public. Therefore, granting this variance would not be contrary to the public interest.

2. If the Variance were granted, the spirit of the ordinance would be observed because:  
Granting this variance would allow for a productive use of an oversized lot and existing paved driveway. The zoning district for the property is Residence "A", which has a frontage requirement of 150 feet, 30 feet setback from the right-of-way and 15 feet setback from side and rear property lines. The proposed new lot will meet all of these requirements with the exception of the proposed frontage of 60 feet. The project will also increase the Town tax base, allow a reasonable use of the property and will have no measurable negative impacts to the public. This proposal will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. For all of these reasons we believe that granting the variance would observe the spirit of the ordinance.
3. Granting the variance would do substantial justice because:  
Granting this variance would allow the land owner reasonable use of the property especially since no other variances are being requested for the proposed new lot. The existing house and lot improvements, as well as, the proposed new lot will be consistent with other parcels in the area. This variance would do substantial justice because it would allow for the productive use of the property with the existing driveway as it currently stands. We believe that a denial of this variance request would be an injustice to the applicant as there would be no apparent gain to the general public.
4. Granting the Variance would not diminish the value of surrounding properties because:  
This project proposes a new single-family residential lot with reduced frontage of 60 feet. The remaining house and lot improvements shall meet current zoning requirements. The use is consistent with the zoning and will have no negative impacts on the surrounding properties. The proposed new lot will meet all other dimensional requirements, with only a frontage variance request. Therefore, we do not believe that this proposal would have any negative impact on the surrounding properties. Our experience has been that new construction, similar to what is proposed, will typically have a positive impact on surrounding properties.
5. Unnecessary Hardship:  
The Zoning Board of Adjustment Exhibit attached identifies the unique features of the property. The existing home and lot improvements are located along the westerly property line. The property is oversized in comparison with the required 40,000 square

Doris A. Fay

Variance Criteria - (Variance from Section 5.04.4, Lot Frontage Requirement)

Tax Map 48 Parcel 43

feet in the Residence "A" zoning district. The existing paved driveway at the northly property line will complement the proposed new lot. Additionally, this subdivision would permit Ms. Fay the opportunity to build a new home and continue her residency in Milford. All other infrastructure is in place and adequate. This proposal is consistent with the surroundings and will therefore not alter the essential character of the neighborhood. To require literal enforcement of the ordinance will not provide any gain to the public or the neighbors and would restrict the applicant's ability to develop the property in harmony with its surroundings resulting in unnecessary hardship.

A. Literal enforcement of the ordinance would result in unnecessary hardship to the owner because the following special conditions of the property distinguish it from other properties in the area:

The Zoning Board of Adjustment Exhibit Plan attached identifies the unique features of the property. The existing home and lot improvements are located along the westerly property line along Federal Hill Road. The existing driveway to the north will complement the proposed new lots access. The property consists of 2.5 acres with 273 feet of frontage. All other infrastructure is in place and adequate. This proposal is consistent with the surroundings and will therefore not alter the essential character of the neighborhood. To require literal enforcement of the ordinance will not provide any gain to the public or the neighbors and would restrict the applicant's ability to develop the property in harmony with its surroundings resulting in unnecessary hardship.

- i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Article V, Section 5.02.4 of the Milford Zoning Ordinance requires that a lot have 150 feet of frontage. We believe that the intent of this ordinance is to provide adequate separation and buffering between land owners and uses. The property to the north of the project is zoned commercial with a restaurant and the property to south is a single-family residence. The existing stonewall and tree line along the northerly sideline will not be disturbed and the existing tree line to the south also not be impacted. The location of the proposed house will be positioned to take advantage of the existing topography. The proposed new lot will have no negative impact on the general public. Based on the above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

- ii. The proposed use is a reasonable one because:

This project consists of a proposed two lot subdivision with one lot having reduced frontage. The existing house and driveway on-site are situated in a manner in which the

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Doris A. Fay

Variance Criteria - (Variance from Section 5.04.4, Lot Frontage Requirement)

Tax Map 48 Parcel 43

proposed new lot takes advantage of an existing paved driveway with no impact to the adjoining abutter. The proposed new house will be situated further away from the front and side property lines while increasing the separation to Federal Hill Road. Since this proposal will provide the above and will result in no negative impacts to the public, we believe that the proposed variance is reasonable.

The existing home and lot improvements are located along the westerly side property line. The existing topography and other driveway location will complement the proposed new lot allowing Ms. Fay to continue to reside in Milford. In order to accomplish this on the subject parcel, the proposed new lot would have reduced frontage along Federal Hill Road. We believe this is evident in reviewing the layout as depicted on the Zoning Board of Adjustment Exhibit Plan. Based on these reasons we believe a variance is necessary to enable a reasonable use of the property.

This information was prepared by:  
**Fieldstone Land Consultants, PLLC**



Christopher A. Guida  
Project Manager, LLS

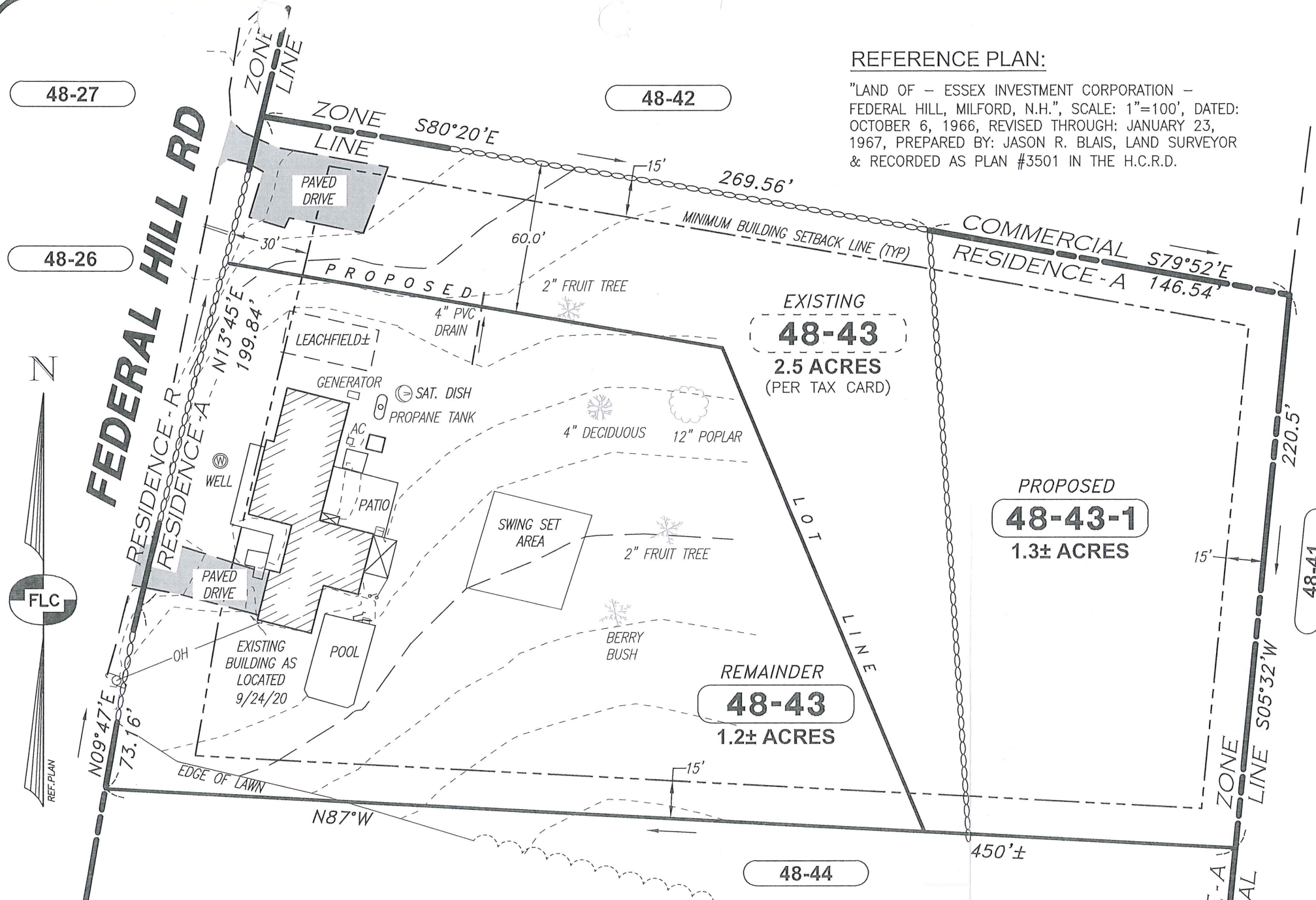


**REFERENCE PLAN:**

"LAND OF - ESSEX INVESTMENT CORPORATION - FEDERAL HILL, MILFORD, N.H.", SCALE: 1"=100', DATED: OCTOBER 6, 1966, REVISED THROUGH: JANUARY 23, 1967, PREPARED BY: JASON R. BLAIS, LAND SURVEYOR & RECORDED AS PLAN #3501 IN THE H.C.R.D.

**NOTES:**

1. THE OWNER OF RECORD FOR TAX MAP 48 PARCEL 43 IS DORIS A. FAY, TRUSTEE OF THE FAY FAMILY TRUST - 64 FEDERAL HILL ROAD, MILFORD, NH 03055. DEED REFERENCE TO PARCEL IS BK.9280 PG.2665 DATED 3/27/2020 IN THE H.C.R.D.
2. THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING IMPROVEMENTS ON LOT 48-43.
3. ZONING FOR THE ENTIRE PARCEL IS RESIDENCE-A DISTRICT. MINIMUM LOT SIZE IS 40,000 SQ.FT. BUILDING SETBACKS ARE 30' FRONT, 15' REAR, AND 15' SIDE. MINIMUM FRONTAGE ON A CLASS V ROAD IS 150 FEET.
4. THE EXISTING IMPROVEMENTS, MONUMENTS AND LINES OF OCCUPATION SHOWN ARE THE RESULT OF AN ON SITE FIELD SURVEY PERFORMED BY THIS OFFICE ON SEPTEMBER 24, 2020.
5. APPROXIMATE PERIMETER INFORMATION SHOWN WAS COMPILED ENTIRELY FROM THE REFERENCE DEED & PLAN AND IS NOT THE RESULT OF A PRECISE BOUNDARY SURVEY BY THIS OFFICE.
6. THIS OFFICE MAKES NO GUARANTEE OF THE TITLE TO THE LOT LINES SHOWN HEREON.
7. NO JURISDICTIONAL WETLANDS WERE FOUND DURING AN ON-SITE INSPECTION BY THIS OFFICE.



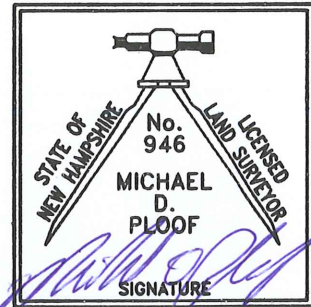
**EXISTING**  
**48-43**  
**2.5 ACRES**  
(PER TAX CARD)

**PROPOSED**  
**48-43-1**  
**1.3± ACRES**

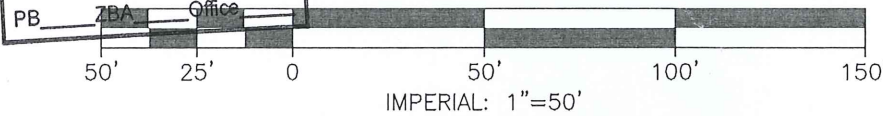
**REMAINDER**  
**48-43**  
**1.2± ACRES**

**CERTIFICATION:**

"I HEREBY CERTIFY THAT THE EXISTING IMPROVEMENTS SHOWN ARE THE RESULT OF A FIELD SURVEY PERFORMED BY THIS OFFICE ON SEPTEMBER 24, 2020."



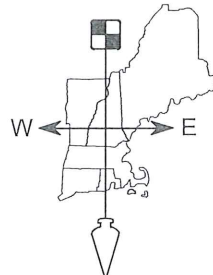
GRAPHIC SCALES



**LEGEND:**

- RIGHT-OF-WAY LINE
- BOUNDARY LINE
- ABUTTING LOT LINE
- BUILDING SETBACK LINE
- EDGE OF PAVED ROAD
- EDGE OF TREE LINE
- WELL

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www.FieldstoneLandConsultants.com

**ZONING BOARD OF ADJUSTMENTS EXHIBIT**  
**PREPARED FOR:**

**DORIS A. FAY**  
**TAX MAP PARCEL 48-43**  
**(64 FEDERAL HILL ROAD)**  
**MILFORD, NEW HAMPSHIRE**

SCALE: 1" = 50'

JUNE 17, 2021

REV.	DATE	DESCRIPTION	C/O	DR	CK