

TOWN OF MILFORD

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



Administrative Review

Date: September 25, 2022
To: Jason Plourde, Chair - Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Case #2022-23 371 Elm Street, LLC. for the property located at Tax Map 16, Lot 1, 371 Elm Street - Variance Application to Exceed the Allowable Density**

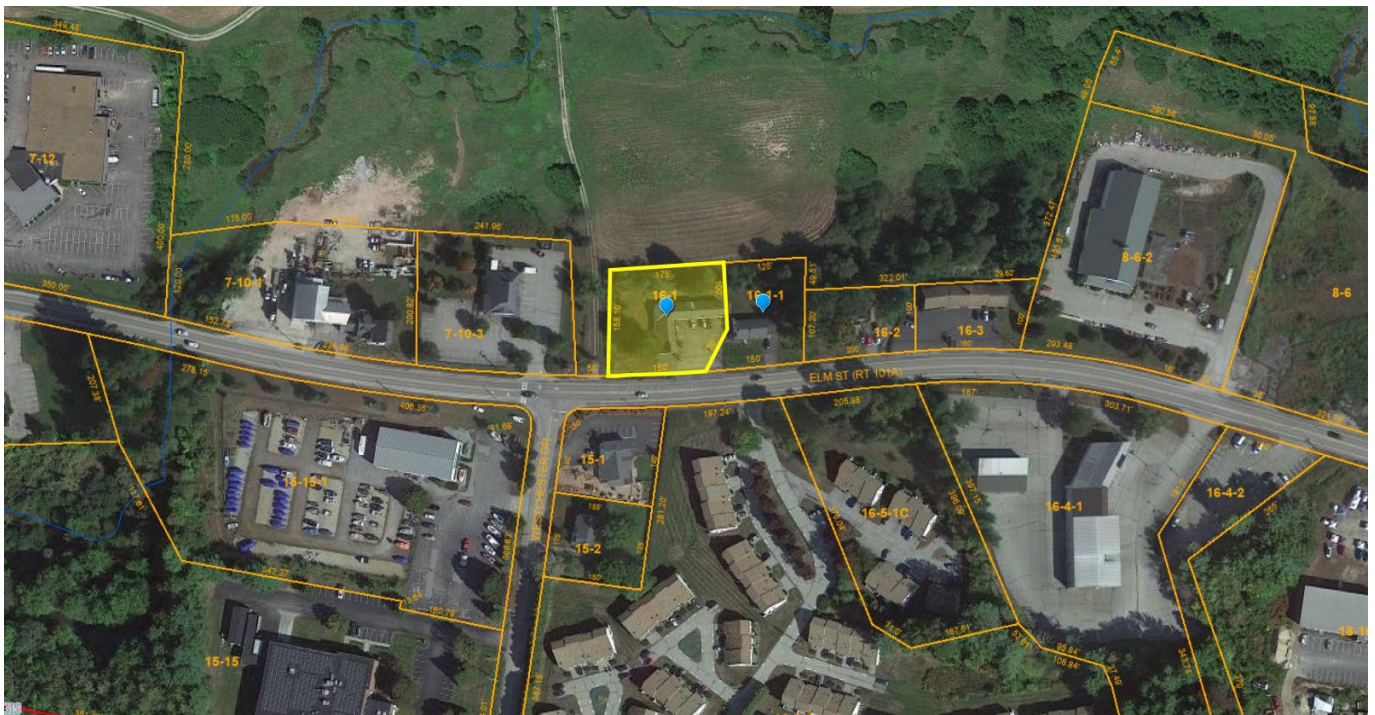
The applicant is before the Board of Adjustment seeking a Variance from the Milford Zoning Ordinance, Article V, Sections 5.03.4 to permit a total density of 12 units within an existing residential/commercial building on the subject property located in the Integrated Commercial Industrial District.. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
 - a. The subject property is approximately .64 acre (27,878 sq. ft.) and contains an existing pre-existing, non-conforming, 12-unit motel, associated parking (12 spaces), and utilities.
 - b. The property contains approximately 150 feet of linear frontage Elm Street with one large curb cut on Elm Street.
 - c. The property is serviced by municipal water and sewer.
 - d. The subject property falls within Integrated Commercial Industrial Zoning District and is situated among a mix of residential, commercial, agricultural, and industrial uses. To the north, the subject property abuts an active agricultural use (crops fields). To the east, lies a single-family residence, Hayward's Trading Post, Agway, and additional agricultural fields. To the south across Elm Street, the property lies in proximity to Westchester Heights condominiums, Elite Hydraulics, Amherst Label Company, and United Ag and Turf.
2. Originally constructed in 1930, the motel use has been in existence for many decades in various stages/types of occupancy. Occupants have used the motel for longer term living situations. Unfortunately, there has been an observed gradual deterioration to the building and property over time. In 2021, the owner purchased the property with the goal of improving the conditions of the property. Over the past year, the owner has focused on the renovating the existing 12 units for a motel use. In addition, the property owner replaced the roof and is currently completing various building improvements in compliance with building and safety codes. Minimal improvements are being proposed to the exterior of the residential building at this time.
3. The applicant is seeking relief from the density requirements stated in Section 5.03.4 to allow 12 apartments (studio) within the Motel building structure on the .64 acre property. The applicant would convert the existing 12 Motel units to 12 apartments (studio apartments). Minimal exterior construction to the building will occur. The applicant is seeking to maintain the existing 12 off-street parking spaces the 12 apartment units.
4. Pursuant to Section 5.03.4.A, the request to convert the 12 existing Motel units to 12 apartments would exceed the 5 unit per acre allowed for multi-family. Using the permissible density of 5 units per acre, the allowable density for the property is 3.2 units for the property. The intent of the Integrated Commercial-Industrial District is to provide an area for sales and service activities, both wholesale and retail, as well as industrial activities. This

District is intended to be the area in which vehicular oriented business can occur. The proposed density requires a Variance for relief from the referenced section of the Zoning Ordinance.

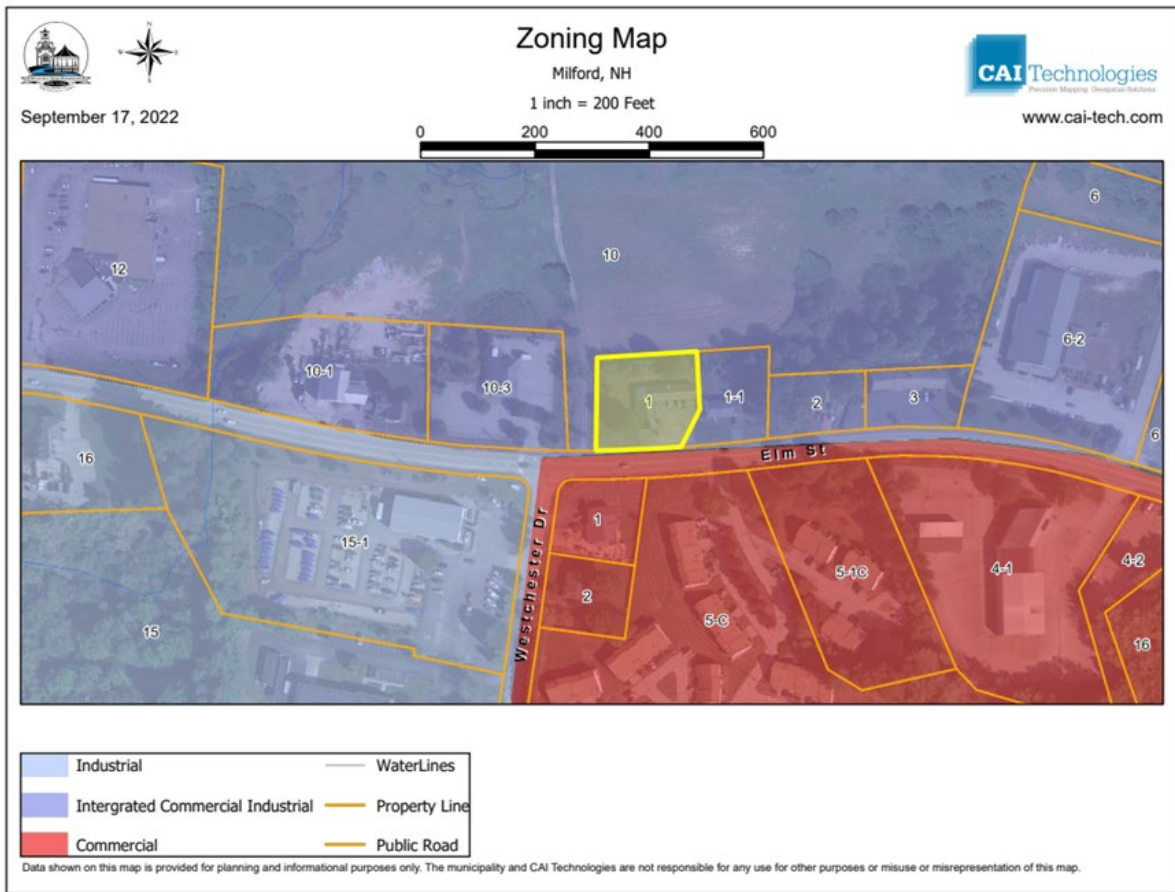
5. On September 22, 2022, the Board of Adjustment granted a Variance from the Milford Zoning Ordinance, Article V, Sections 5.08.1 allowing the conversion of the pre-existing, non-conforming motel use to a multi-family use (apartments) on the subject property located in the Integrated Commercial Industrial District (see Case #2022-22). The Board placed a condition on the decision whereby any units over 10 would be required to comply with the NH Workforce housing regulations for a period of 5 years. The applicant has also filed a site plan application with the Planning Board for approval of the multi-family use and related parking.
6. As part of the Board deliberation, the applicant should be prepared to discuss the following:
 - a. Explanation/summary of the properties historical use and current housing conditions within Milford.
 - b. Alternatives considered for the property.
 - c. General overview of the layout and design of the building and related parking.

Aerial Photograph(s) of Subject Property:





Zoning Map:



Street View(s) of Subject Property:



View of Property Looking NW on Elm Street



View of Property Looking North on Elm Street



View of Property Looking NE on Elm Street



View of Property Looking East on Elm Street





ZBA Application – Variance
MILFORD ZONING BOARD OF ADJUSTMENT

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

PROPERTY INFORMATION
Street Address: 371 Elm St, Milford NH
Tax Map / Parcel #: 16-1
<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>5.03.4</u> Describe the variance you are requesting under the above section of the Ordinance. We are requesting a use variance to allow for 12 residential (studio) units, which is above the typical requirement of 5 units per acre. These 12 units have been in existence since 1930 and have been used as a long-term stay motel with long term tenants for many years. All 12 units are in existence today.

General Criteria Section 10.01

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

1. Granting the Variance would not be contrary to the public interest because:
 The 12 units are in existence and being used today in a similar manner. This number of units also fall in line with the area, as we counted roughly 60 condo units in the development directly across the street.
2. If the Variance were granted, the spirit of the ordinance would be observed because:
 The Spirit of the west elm gateway district which seems to promote mixed use projects in a "residential scale". The ordinance also states: "Non-residential development that is indifferent to Milford's history and economic needs constitutes a significant threat to the character and future of the community". The Neighborhood is almost exclusively residential and we would provide much needed housing in the area.
3. Granting the Variance would do substantial justice because:
 The current structure has always been 12 units since 1930 and we are only asking to continue the use with better tenants that pass background checks, and provide basic sanitary improvements to the tenant to keep the area outside and inside the structure safer, cleaner and less of a burden on public services.
4. Granting the Variance would not diminish the value of surrounding properties because:
 Almost all surrounding property is residential, also there is a daycare and ice cream stand. Having better tenants that pass a background checks, as well as the necessary renovations to convert the use will only improve quality of life and property values for the surrounding properties.
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 :

This building with the current 12 units pre-cedes the current zoning which does not allow a Motel use in the ICI today. To make the necessary improvements during the conversion, we would need to keep all 12 units and convert them all to background checked, tenants on leases. A lesser number of units would entail demolition of existing units, which is not feasible. The current Motel use also prohibits getting any "renovatiuon funding" from a bank. The multiplier used for motels vs Multifamily diminishes that value of the building substantially, eliminating any loans we could get to make any "substantial" improvements.

ANDThe commercial zoning of this area doesn't work well either as there is no abutting industrial properties, it is surrounded by residential.

ii. The proposed use is a reasonable one because:

Because the 12 units exist today as a less desireable non-conforming use than the same 12 units in a multifamily use. The surrounding property is not commercial but residential. The only commercial properties abutting are the ice cream stand and the daycare, both would benefit for long term steady tennants that pass background checks. The chance of use would also open up bank funding to be able to renovate the structure, parking lot and surrounding grounds to become a substantial improvement to the area.

(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:

As the current owner, we are taking on the full consequences of past issues from previous owners, we very much intend to renovate the existing building, yet without bank funding, we can only accomplish the bare minimum to satisfy the enforcement orders. there is no real way to remove units from an existing structure and we would need the number of units to obtain funding to further renovate the property.

(C) Not withstanding 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:

although these units are not officially wheelchair accessible, the property is single level living and allow for the accomodation and easy access for elderly and people who have a hard time with stairs to access. We found after relocating all guests, that there is a huge shortage of smaller affordable housing units in the area and most guests dont have many places to go. If granted the use as a multifamily, we will offer an outlet to these types of citizens, as long as they pass background checks.

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

The oridinance was written to support development that is sensitive to Milford's history and economic needs, and does not pose a significant threat to the character and future of the community. Our new use would greatly improve the health safety and livelihood for the surreounding properties, as well as the tennants who will live here, and will also reduce the burden of health and safety calls to the city resources.

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.

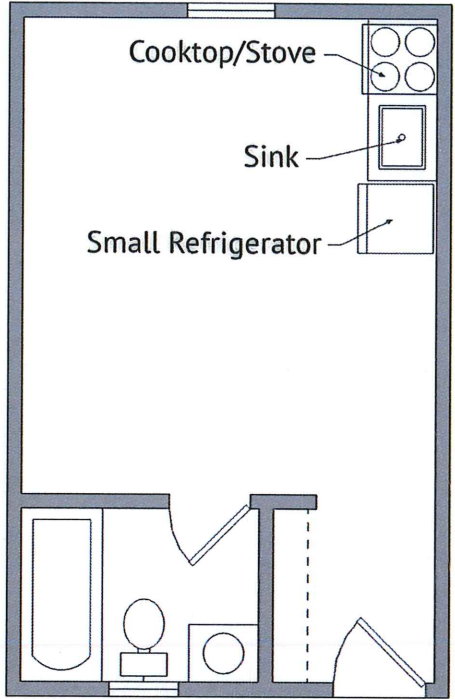
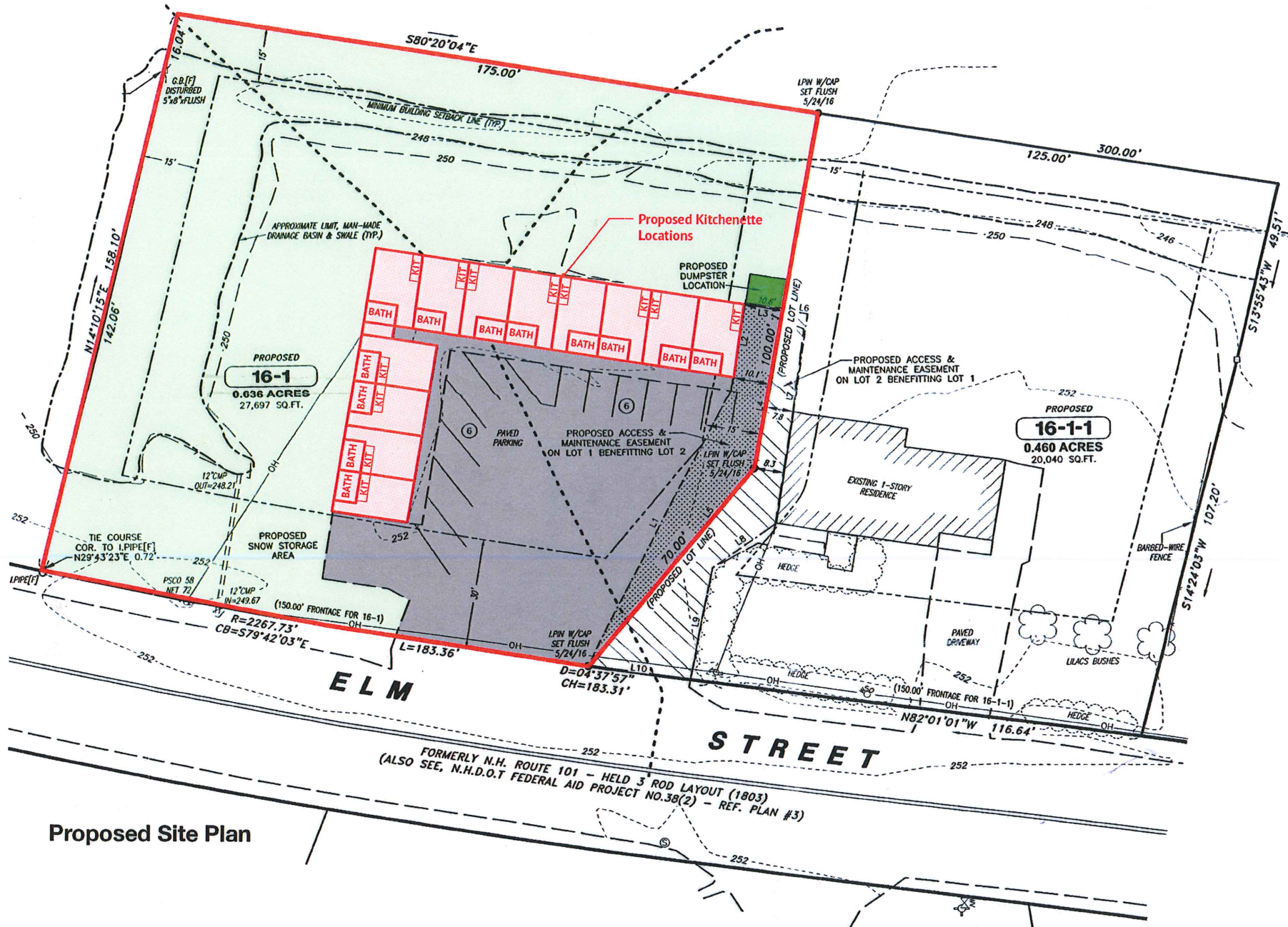
- e. Denial of the Variance would result in an unnecessary hardship.

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.

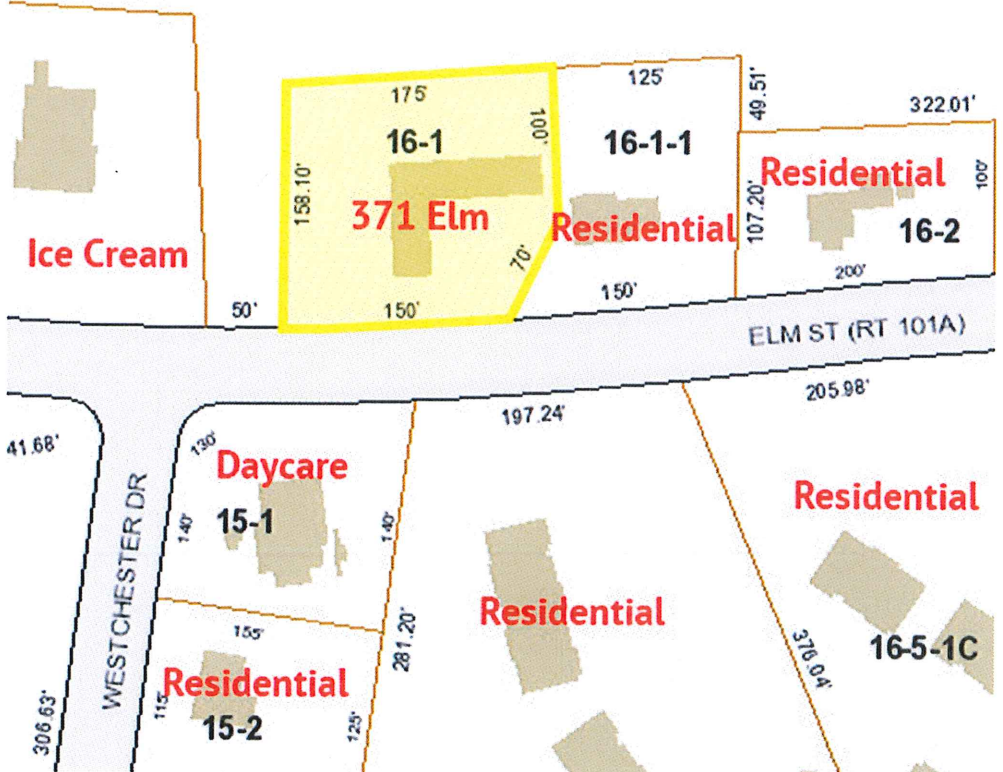
In lieu of a claim of unnecessary hardship, the Variance may be granted when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that any Variance sought shall be in harmony with the general purpose 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.

371 Elm Street, Milford Nh

Change Of Use Plan - 8/22/2022



Typical Floor Plan



Neighborhood Context

Proposed Site Plan

Explanation of submission requirements
371 Elm Street, Milford, NH
Change of Use Application
8-26-22

Explanation of any requirements not included in package:

- (R) We will be removing all signage from the building
- (S) We are not proposing and change to exterior lighting
- (U) We are not proposing any exterior landscape changes
- (Y) We do not know of any applicable impact fees
- (Z) We are not making any lot coverage or open space changes
- (DD) We do not have any approved waivers

Other Information (as necessary)

- (1) We do not have >5000sf of land disturbance
- (2) We are not altering the terrain
- (3) We do not have any new deeds, easements or right of ways from prior approval
- (4) We do not currently know of any other state/federal approvals