



Planning & Zoning  
Community Development  
Conservation Commission  
Historic District Commission  
Arts & Culture Commission

PLANNING & DEVELOPMENT DEPARTMENT  
City Hall - Second Floor  
31 Wakefield Street  
Rochester, New Hampshire 03867-1917  
(603) 335-1338 - Fax (603) 335-7585  
Web Site: [www.rochesternh.net](http://www.rochesternh.net)

MAR 20 2013

### APPLICATION FOR A VARIANCE

TO: BOARD OF ADJUSTMENT  
CITY OF ROCHESTER

Phone No 603-743-6300

DO NOT WRITE IN THIS SPACE

CASE NO. \_\_\_\_\_

DATE FILED \_\_\_\_\_

ZONING BOARD CLERK

Name of applicant: Route 202, LLC

Address: 210 Commerce Way, Suite 300, Portsmouth, NH 03801

Owner of property concerned: Same

(If the same as applicant, write "same")

Address: Same

(If the same as applicant, write "same")

Location: Labrador Drive

Map No. 130

Lot Nos. 43 and 43.1

Zone R-1

Description of property: Approximately 16.5 acres of land

Proposed use or existing use affected: The applicant proposes to construct buildings on Parcel 43 to contain approximately 22,000 square feet of retail space with parking and to construct an office/retail building with approximately 12,000 square feet of space and parking on Parcel 43-1. The retail space may include a restaurant.

The undersigned hereby requests a variance to the terms of Article 42, Section 13 and asks that said terms be waived to permit construction and use of buildings with retail and/or office or restaurant uses which are not otherwise allowed in this zone.

If applicable in this case, the undersigned also requests a waiver from the requirement to provide a certified plot plan, (see attached request sheet) Yes \_\_\_\_\_ No ☒ XX

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance.

Signed

(Applicant)

*James H. Schmitt, Jr.*  
for Route 202, LLC

Continue on Page 2

## CRITERIA FOR VARIANCE

Case # \_\_\_\_\_

Date: March 18, 2013

A Variance is requested by Route 202, LLC  
from Section 42.13 Subsection \_\_\_\_\_

of the Zoning Ordinance to permit: the construction and use of buildings for retail and office and restaurant use at Labrador Drive, Map 130 Lots 43 and 43-1 Zone R-1

Facts supporting this request:

1) The proposed use would not diminish surrounding property values because:

This property is located at Exit 13 of the Spaulding Turnpike and is directly across Washington Street from the major commercial development known as Rochester Crossing. The properties on the other side of the Spaulding Turnpike at Exit 13 also contain commercial developments, and are proposed for further commercial development. The current proposals for rezoning in this area provide for rezoning the land on both sides of Washington Street between the Turnpike and Chesley Road as commercial. Labrador Drive is located at a signalized intersection, which also provides the access to Rochester Crossing, which is the largest commercial development in the City. This proposed development of Lots 43 and 43-1 is relatively modest compared to the very large development located at Rochester Crossing. This neighborhood already bears the impact of the commercial development at the other three corners of Exit 13, and particularly the development at Rochester Crossing which is located at a higher elevation than the subject property. The impact of the proposed retail and/or office or restaurant use on Lots 43 and 43-1 will be substantially less than the existing commercial uses in this neighborhood, particularly since the City is proposing rezoning which will lead to further commercial development along Washington Street and Fillmore Boulevard. Any impact from commercial development on property values has already been felt due to the extensive development which already exists.

2) Granting the variance is not contrary to the public interest because: The public interest is affected if the proposed use would constitute a fundamental change in the neighborhood or if there would be a substantial impact on health or safety. This neighborhood already has existing substantial commercial development which significantly exceeds what is proposed in this application, and further commercial development is expected due to the proposed rezoning of Washington Street to commercial zoning. Access to Labrador Drive is at a major commercial intersection which has traffic signals. This signalized intersection provides for public health and safety. The applicant was required by the City of Rochester administration to install water and sewer lines which service the adjacent residences, and therefore the public utilities at this site are sufficient for the proposed use. Given the commercial development which has already occurred, or which is being proposed at the other three corners of Exit 13, and given the likely commercial development which will follow the rezoning of this area, this proposed use will not be contrary to the public interest.

3.) Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property: This property is located at a signalized intersection opposite the largest commercial project in the City. The property is adjacent to areas which are proposed to be rezoned to commercial zoning. The City of Rochester administration required the applicant to install or extend water and sewer lines past its property to provide service to the residences along Florence Drive and Pine Lane Extension. The mall known as Rochester Crossing contains over 300,000 square feet of retail space, and is located at a higher elevation than the subject property. As such, that large mall establishes the character of this neighborhood and makes it impossible to develop the subject property for residential purposes. Given the existing commercial character of this neighborhood and the strong likelihood of further commercial development following re-zoning, this property cannot reasonably be developed residentially.

4.) Granting the variance would do substantial justice because: Substantial justice is done if the benefit to the applicant exceeds any detriment to the general public. By granting approval for very large commercial development directly across the road from the subject property, by rezoning property across the road and along Washington Street for commercial development, by requiring the applicant to extend water and sewer lines past its property to service other properties, and by discouraging the State of New Hampshire from developing the subject property into a Park and Ride facility because City Administrators believed that this property was best suited for commercial development, the City of Rochester itself has created the situation where commercial development of the subject property is the only reasonable alternative for this property. The existence and location of the mall at Rochester Crossing, when combined with the anticipated further commercial development of Washington Street westerly of the Spaulding Turnpike, has rendered the applicant's property unsuited for residential development. If this variance is denied, then the applicant will have no practical use of its property. There will be no detriment to the general public if the variance is granted because the proposed use of the property is consistent with the majority of the uses which exist or are proposed for the other three corners of Exit 13.

5.) The use is not contrary to the spirit of the ordinance because: The spirit of the ordinance is to allow uses which are compatible with the general neighborhood. The majority of the uses at Exit 13 of the Spaulding Turnpike along Washington Street are commercial uses. The existing mall known as Rochester Crossing is the largest commercial development in the City. The applicant's property has access at the same signalized intersection which provides access to Rochester Crossing. The roadways, water, sewer and other utilities are ample for the proposed use. The existing uses next to the applicant's property make this property unsuitable for residential development.

---

Name

Rarte 202, LLC

Date: \_\_\_\_\_

by James H. Schuette

## VARIANCE NARRATIVE

The applicant, Route 202, LLC, owns two parcels identified as Tax Map 130, Lot 43-1 (10.7 Acres) and Map 130, Lot 43 (5.9 Acres) located at Labrador Drive/Pine Lane Extension and Route 202, at Exit 13 from the Spaulding Turnpike.

This property is located directly opposite to the signalized entrance to the large mall known as Rochester Crossing on Route 202. That mall has Lowe's and Kohl's as anchors, along with more than 15 smaller stores, restaurants, and offices. The site contains 300,000 square feet of retail space, and is the largest shopping center in the City. That property is presently zoned commercial, and the proposed zoning for that land is Highway Commercial. Indeed, the proposed zoning for nearly all of this part of the City is Highway Commercial, extending from Brock Street to Chesley Road, including the adjacent land located to the West of the applicants' land and extending southerly. That proposed zoning for this area reflects the fundamental understanding that Exit 13 is a major commercial intersection with various sized retail spaces.

The proposed zoning map shows that the Highway Commercial areas at Exit 13 are all bounded by residential neighborhoods, including such neighborhoods as Janet Street, Brock Street, Woodlawn Road, Chesley Hill Road, and Florence Drive.

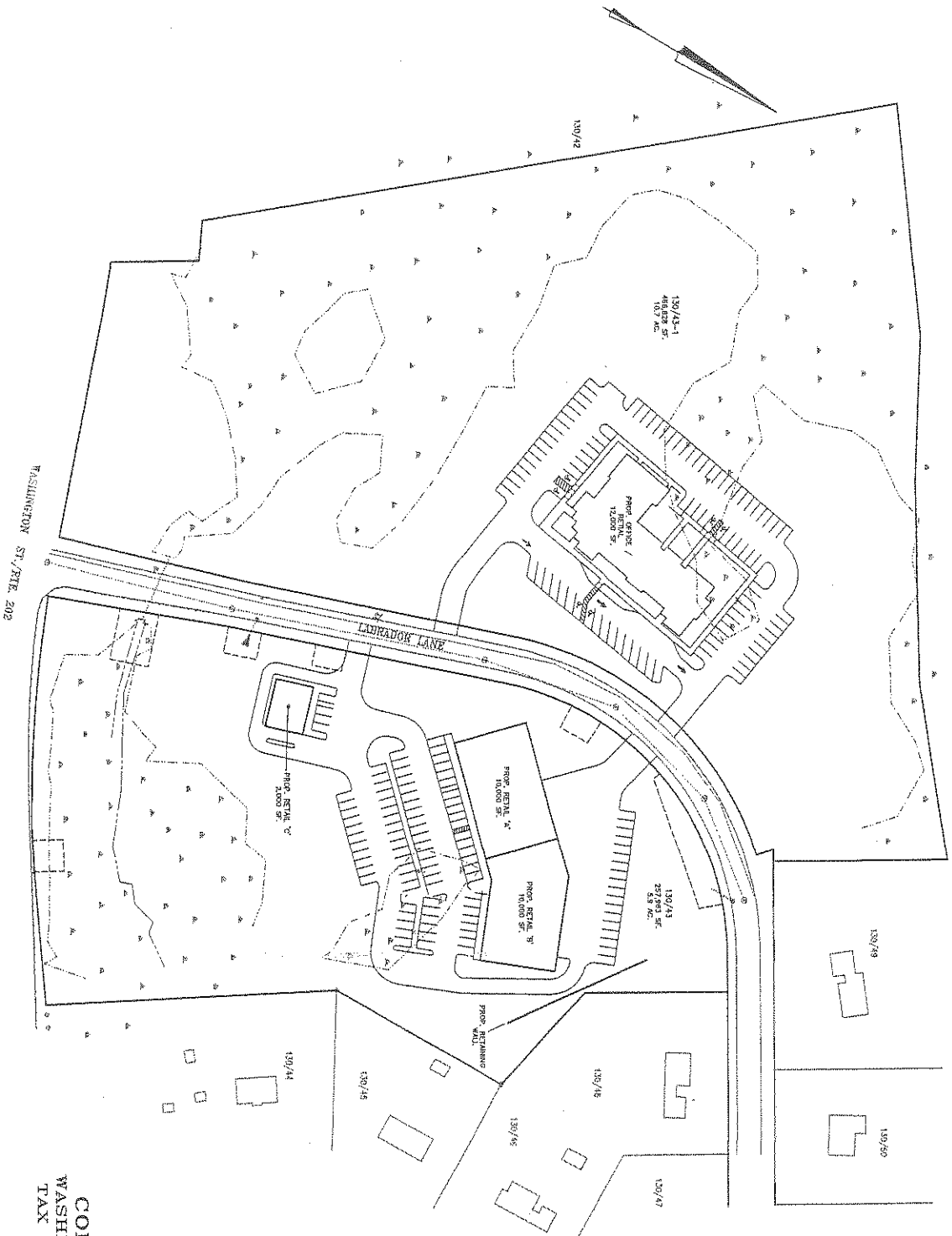
The history of this land is that when Exit 13 was re-built, the State closed the direct access from Route 202 to Florence Drive, and connected Florence Drive by Pine Lane Extension to Labrador Drive. That had the effect of re-routing the Florence Drive traffic through the middle of the applicant's property. In 2007, the applicant began the installation of 500 feet of water main and sewer main along Labrador Drive to provide service to its land. At that time, City of Rochester officials required the applicant to extend the water main further up Labrador and to connect to the water and sewer lines that had been installed by the City. The City informed the applicant that the City would oppose any development of this property unless the applicant paid for the extension of the water line and connecting both lines for the benefit of the City and the residents of Florence Drive. This was an unexpected and considerable additional cost which did not benefit the applicant, but did benefit its abutters and the City itself.

In 2009, the applicant was negotiating with the State of New Hampshire for a Park and Ride facility on this land. The City had a very strong interest in having a Park and Ride facility at Exit 13. However the City intervened in those negotiations to move the parking facility away from this land to a location further west at Highfield Commons. The reason stated by the City's representative was that the City wanted this property to be developed for commercial use. The reasons cited were that this property was located close to the Turnpike, it was located across Route 202 from the City's largest shopping center (Rochester Crossing), and access was located at the traffic signal. The applicant lost the opportunity to sell its land to the State for the Park and Ride facility because the City required that the land be developed for commercial use.

Given the existing high volume of traffic along Route 202 and into Rochester Crossing, and given the fact that the applicant's land is fully visible to the existing commercial development at Rochester Crossing, this land is not suitable for residential development. The

land which abuts this property on the West, and all of the land located across Route 202 will be zoned Highway Commercial. If this request for variance is not granted, then this property will be an island within what is already one of the more intensive commercial areas in the City.

The unique character of the applicant's property is that it is the only undeveloped property which is located at a signalized intersection opposite a major commercial development. Due to its proximity to the project known as Rochester Crossing, due to its topography, due to its being fully visible to the mall property (unlike some of the nearby residences), and due to the City's past actions which interfered with the development of this property because the City wanted the property to be developed commercially so as to be consistent with the development with the other three corners of Exit 13 for the Spaulding Turnpike, the only reasonable use of this property is for office and retail and use.



NORWAY PLAINS ASSOCIATES, INC.

FILE NO. 100  
PLAN NO. 100  
DATE 03/20/2013  
BY J. M. SBR

31 Mainway Street, Albion, N.H. 030-975-3840

CONCEPTUAL SITE PLAN  
WASHINGTON ST./LABRADOR LANE  
TAX MAP 130, LOTS 43 & 43-1  
ROCHESTER, NH  
PREPARED FOR  
ROUTE 202, LLC  
MARCH 2013

2 Commercial Blvd., Rochester, N.H. 603-335-3840



## *City of Rochester, New Hampshire*

### PUBLIC WORKS DEPARTMENT

45 Old Dover Road • Rochester, NH 03867

(603) 332-4096 Fax (603) 335-4352

August 7, 2007

Ms. Jean M. Kane, Member  
Route 202, LLC  
210 Commerce Way, Suite 100  
Portsmouth, NH 03801

RE: Property Development – Pine Lane Extension – Requirement to install looped water main

Dear Ms. Kane:

This letter is to notify you that the City of Rochester is going to require that you connect the existing water main that currently ends at the end of the existing Pine Lane with the water main that you are installing under the new Pine Lane Extension.

The City of Rochester is cognizant of the fact that you have already coordinated the installation of approximately 500 feet of 8-inch water main and a similar amount of 8-inch sewer main with VHB Engineers, the Flatley Company, the New Hampshire Department of Transportation, and Severino Trucking, Inc. so that you can maximize the development potential of the land that fronts the new Pine Lane Extension.

The city insists on having its water system looped in areas where it is feasible to do so. Having two dead end water mains under Pine Lane is not good practice and reduces the flexibility the city will have in ensuring continued water delivery to all residents of Pine Lane as well as to any subsequent development on the property you own on Pine Lane.

Therefore, the City of Rochester Department of Public Works will insist that you extend, at your cost, the 8-inch water main that you are now installing in the Pine Lane Extension, so it connects with the existing water main that now terminates at the end of Pine Lane.

This connection can occur now, by using Severino Trucking, Inc., while they are currently engaged in building Pine Lane Extension, or wait until this is made as a condition of approval of the first site plan, or subdivision that may be brought before the Rochester Planning Board at some future date. This Department will strenuously recommend to the Rochester Planning Board and, in fact, will not sign off on any site plan or subdivision for either Map 130, Lot 43-1 or Map 130, Lot 43, unless the connection of the two existing water mains is made a condition of any approval.

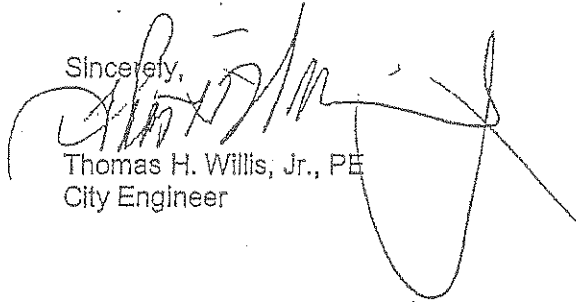
The completion of the water main, deferred to the future, will also involve a requirement to do a curb-to-curb asphalt overlay of the entire portion of Pine Lane (Extension) impacted by the installation of the connecting water main.

Therefore, it may be more cost-effective in the long run to have Severino Trucking install and connect the two water mains together at this time so that the costs associated with doing it in the future can be avoided.

Ms. Jean M. Kane, Member  
Route 202, LLC  
August 7, 2007  
Page 2

Please call me at (603) 332-4096, or via e-mail at [tom.willis@rochesternh.net](mailto:tom.willis@rochesternh.net) if you need clarification, or if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'THOMAS H. WILLIS, JR.', is written over the word 'Sincerely,' and extends to the right across the name and title.

Thomas H. Willis, Jr., PE  
City Engineer

CC: John Scruton, City Manager  
Melodie Esterberg, PE, Commissioner of Public Works  
Kenn Ortmann, Director of Planning and Community Development  
Karen Pollard, Economic Development Director  
Dick Cane, Flatley Company  
Tom Severino, Severino Trucking, Inc.  
Robert Landry, NHDOT





## *City of Rochester, New Hampshire*

Economic Development Department

Mailing Address: 31 Wakefield Street • Rochester, NH 03867

Office Location: 150 Wakefield Street • Rochester, NH 03867

Mr. Joseph Kane  
The Kane Company  
135 Commerce Way  
Suite 100  
Portsmouth, NH 03801

July 21, 2009

Dear Mr. Kane:

I am pleased to inform you that the City of Rochester is working diligently to bring a Park and Ride facility to the area near Exit 13 of the Spaulding Turnpike. We agree with the New Hampshire Department of Transportation that this central location for ride sharing and future regional bus service will be a tremendous asset to the City. It also could have a positive impact to development of your properties on Washington Street/Route 202.

The City recently held a meeting with representatives from the New Hampshire Department of Transportation and the Strafford Regional Planning Commission to discuss issues related to siting a Park and Ride in the area. We reviewed numerous parcels for the project and came to the conclusion that the highest and best use for your land on Washington Street is commercial development. The Kane properties have significant advantages that increase their development potential, and they are:

1. Proximity to the Spaulding Turnpike with an avg. 31,000 cars per day
2. Connection to Rochester' largest shopping center, Rochester Crossing and proximity to other commercial development
3. An existing traffic signal and available capacity for traffic on Washington Street

The City has been working on a Comprehensive Rezoning and the City Council hopes to take action in updating the City's Zoning Ordinance in the near future. The proposal is posted on the City's website [www.rochesternh.net](http://www.rochesternh.net) and does indicate a rezoning to Commercial use is desirable. We anticipate an automobile oriented commercial district will have the best fit for the area overall, and we encourage you to communicate with the Director of Planning & Development Kenn Ortmann on uses and development you hope to attract in anticipation of the rezoning.

The Economic Development office also extends our assistance in attracting quality businesses to the site. I look forward to working with The Kane Company to bring exciting new goods and services to the community.

Sincerely,

Karen Pollard  
CecD, EDP  
Economic Development Manager



INDEX DIAGRAM		MAP NO. 130
PROPERTY MAPS		ROCHESTER
NEW HAMPSHIRE		
LEGEND		SCALE 1" = 100'
PRODUCED IN 1992 BY CARTOGRAPHIC ASSOC. INC. PROFESSIONAL CONSULTANTS		REVISION TO: APRIL 1, 2012
THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT TO BE USED FOR LEGAL DESCRIPTION OR CONVEYANCE. THE BOUNDARY SYSTEM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM.		
COMPLETION DATE: APRIL 30, 1992		

## Unofficial Property Record Card - Rochester, NH

## General Property Data

Parcel ID	0130-0043-0000	Account Number	32046
Prior Parcel ID	-	Property Location	19 LABRADOR DR
Property Owner	ROUTE 202 L L C % JEAN M KANE	Property Use	DEV RES LAND
Mailing Address	117 BOW ST	Most Recent Sale Date	0/26/1995
City	PORTSMOUTH	Legal Reference	1815-518
Mailing State	NH	Grantor	THE KANE COMPANY
Zip	03801	Sale Price	26,500
Parcel/Zoning	R1	Land Area	5.900 acres

## Current Property Assessment

Card 1 Value	Building Value 0	Yard Items Value 0	Land Value 82,200	Total Value 82,200
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## Building Description

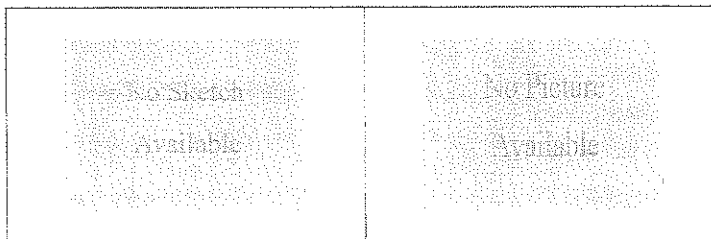
Building Style	N/A	Foundation Type	N/A	Flooring Type	N/A
# of Living Units	N/A	Frame Type	N/A	Basement Floor	N/A
Year Built	N/A	Roof Structure	N/A	Heating Type	N/A
Building Grade	N/A	Roof Cover	N/A	Heating Fuel	N/A
Building Condition	N/A	Siding	N/A	Air Conditioning	0%
Finished Area (SF)	N/A	Interior Walls	N/A	# of Bsmt Garages	0
Number Rooms	0	# of Bedrooms	0	# of Full Baths	0
# of 3/4 Baths	0	# of 1/2 Baths	0	# of Other Fixtures	0

## Legal Description

## Narrative Description of Property

This property contains 5.900 acres of land mainly classified as DEV RES LAND with a(n) N/A style building, built about N/A, having N/A exterior and N/A roof cover, with N/A unit(s), 0 room(s), 0 bedroom(s), 0 bath(s), 0 half bath(s).

## Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

## Unofficial Property Record Card - Rochester, NH

## General Property Data

Parcel ID 0130-0643-0001	Account Number 32045
Prior Parcel ID --	
Property Owner ROUTE 202 L L C % JEAN M KANE	Property Location 26 LABRADOR DR
	Property Use DEV RES LAND
Mailing Address 117 BOW ST	Most Recent Sale Date 02/01/1995
	Legal Reference 1815-515
City PORTSMOUTH	Grantor THE KANE COMPANY
Mailing State NH Zip 03801	Sale Price 28,500
Parcel/Zoning R1	Land Area 10.700 acres

## Current Property Assessment

Card 1 Value	Building Value 0	Yard Items Value 0	Land Value 98,400	Total Value 98,400
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## Building Description

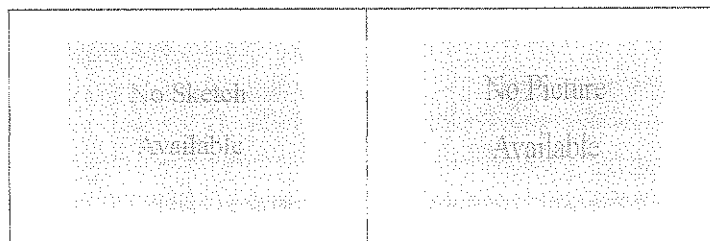
Building Style	Foundation Type	Flooring Type N/A
# of Living Units 0	Frame Type	Basement Floor N/A
Year Built N/A	Roof Structure	Heating Type N/A
Building Grade	Roof Cover	Heating Fuel N/A
Building Condition N/A	Siding	Air Conditioning 0%
Finished Area (SF) N/A	Interior Walls N/A	# of Bsm't Garages 0
Number Rooms 0	# of Bedrooms 0	# of Full Baths 0
# of 3/4 Baths 0	# of 1/2 Baths 0	# of Other Fixtures 0

## Legal Description

## Narrative Description of Property

This property contains 10.700 acres of land mainly classified as DEV RES LAND with a(n) style building, built about N/A, having exterior and roof cover, with 0 unit(s), 0 room(s), 0 bedroom(s), 0 bath(s), 0 half bath(s).

## Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

# ABUTTER LIST

City of Rochester, NH

Please Print or Type

Applicant: Route 202, LLC

Phone : 603-743-6300 or 603-430-4000

Project Address: Labrador Lane, Rochester, NH

List the names and addresses of all parties below. For abutting lot owners, list each owner whose lot adjoins or is directly across the street or a body of water from the subject property. This form may not be completed more than five (5) days prior to the application deadline.

## LEGAL OWNER OF SUBJECT LOT

Map	Lot	Zone	Owner Name	Mailing Address
130	43-1	R-1	Route 202, LLC	210 Commerce Way Suite 300 Portsmouth, NH 03801

## ABUTTING LOT OWNERS

Map	Lot	Owner Name	Owner Mailing Address (NOT property location)
		See attached list	

PROFESSIONALS AND EASEMENT HOLDERS. Engineers, Surveyors, Soil Scientists, and Architects whose seal appears or will appear on the plans (other than any agent submitting this application); holders of conservation, preservation, or agricultural easements; and upstream dam owners/NHDES.

Name of Professional or Easement Holder	Mailing Address
James H. Schulte, Esquire	660 Central Avenue, Suite 101, Dover, NH 03820

I, the undersigned, acknowledge that it is the responsibility of the applicant or his/her agent to fill out this form. I understand that any error or omission could affect the validity of any approval. The names and address listed on this form were obtained from the City of Rochester Assessing Office computer – Assess Pro (located in the Revenue Bldg at 19 Wakefield Street)

on this date: 3/17/13, This is page 1 of 1 pages.

Applicant or Agent: James H. Schulte

Planning Staff Verification: \_\_\_\_\_ Date: \_\_\_\_\_

130-49	Daniel and Pamela Gelinas 40 Labrador Drive Rochester, NH 03867
130-48	Kent and Jan Melchior 43 Labrador Drive Rochester, NH 03867
130-46	Carolyn A. Bergeron, Trustee Carolyn A. Bergeron Rev. Trust 6 Florence Drive Rochester, NH 03867
130-45	Alphonse and Cheryl L. Plante 4 Florence Drive Rochester, NH 03867
130-44	Walter H. Barstow, Jr. Brenda J. Barstow 2 Florence Drive Rochester, NH 03867
130-42	Public Service Company of NH P.O. Box 3430 Manchester, NH 03105
130-38	OCW Retail Rochester, LLC c/o Wilder Company 800 Boylston Street, Suite 1300 Prudential Tower Boston, MA 02199
237-7	Jonathan W. Clement Holly A. Clement 30 Bickford Road Rochester, NH 03867
237-8-1	183 Washington Street, LLC c/o Chesapeake Development, LLC 501 Daniel Webster Highway Merrimack, NH 03054