



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-22-28

DATE FILED 8/17/22

C91
ZONING BOARD CLERK

Applicant:

Macproperties Leonard Street LLC

E-mail:

smclean454@hotmail.com

Phone:

603-767-6644

Applicant Address:

24 Leonard Street, Rochester NH

Property Owner:

Macproperties Leonard Street LLC

Property Owner Address:

24 Leonard Street, Rochester, NH

Variance Address:

24-26 Leonard Street, Rochester

Map Lot and Block No:

0120/0025

Description of Property:

Wood frame residential house with two legal units

Proposed use or existing use affected:

The allowance of third unit which is already there.

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section _____
Table 19-A Denominational Standards which require minimum 12,000 sq ft for 3 units where Applicant's Lot is 10,454 sq. ft.
and asks that said terms be waived to permit _____ the legal existence of the third unit.

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. I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.

Signed:

Macproperties Leonard Street LLC by its Attorney John P. McGee Jr, Esq.

Date:

8/18/22



City of Rochester, New Hampshire

Zoning Board of Adjustment

Shawn McLean

24-26 Leonard Street, Rochester, NH

Variance Criteria

- 1) Granting the variance would not be contrary to the public interest because:
See Memorandum in Support of Application.

- 2) If the variance were granted, the spirit of the ordinance would be observed because:
See Memorandum in Support of Application.

- 3) Granting the variance would do substantial justice because:
See Memorandum in Support of Application.

- 4) If the variance were granted, the values of the surrounding properties would not be diminished because:
See Memorandum in Support of Application.

- 5.) Unnecessary Hardship:

a. Owing to special **conditions of the property that distinguish it from other properties in the area**, denial of the variance would result in an 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 Memorandum in Support of Application.

And:

ii. The proposed use is a reasonable one because:

See Memorandum in Support of Application.

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 the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

See Memorandum in Support of Application.

**IN RE: Macproperties Leonard Street LLC
24-26 Leonard Street, Rochester, New Hampshire**

MEMORANDUM IN SUPPORT OF APPLICATION

I. THE PROPERTY:

Applicant Macproperties Leonard Street LLC is the owner of property located at 24-26 Leonard Street, Rochester, NH which is shown in the Assessor's Plans as Map 120, Lot 25. The Lot is located in a R2 Zone.

The lot in question has 140' +/- of frontage, of 76' +/- of sideline x 140' +/- of rear line x 75' +/- of sideline. The total area is 10,454 square feet +/-.

II. VARIANCES REQUESTED:

Shawn McLean acquired the premises at 24-26 Leonard Street in the summer of 2020. The premises were advertised as a triplex and the applicant acquired them with that understanding. In fact, the premises were set up as a triplex, looked like a triplex and had three separate living units at the time of acquisition.

When the Applicant was moving in he discovered from a Rochester Building Official that the premises were only allowed to have two units, not three. That revelation was rather shocking. At the present time, the applicant would seek a variance so that the premises could be utilized as a three-unit building.

Shawn McLean conveyed the premises to the current Applicant, Macproperties Leonard Street LLC, a company which he wholly owns and which is in his complete control.

The variance will not require any alteration of the outside of the building, nor will the footprint of the building be enlarged. As stated, the building is already adapted and suitable for three units. The third unit, which is in the downstairs, has not been used since the Applicant acquired the property in 2020. If, in fact, the applicant is not granted the variance, he will have to physically redo the interior of the building at significant cost to make it into a duplex

III. FIVE VARIANCE CRITERIA:

It the Applicant's position that his application meets the Five Criteria necessary for the Board to grant the requested variance. These criteria are as follows:

A) Granting the variance will not be contrary to the Public Interest.

The test for whether or not granting a variance would be contrary to the public interest is the test which the New Hampshire Supreme Court set forth in the case of Chester Rod & Gun Club v. Town of Chester 152 NH 577 (2005). In the Chester Rod & Gun case, the Supreme Court stated "to be contrary to public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinance's basic Zoning Objectives. " The Supreme Court went on to say "one way to ascertain whether the granting of the variance would violate basic Zoning Objectives is to examine whether it would alter the essential character of the locality." The Supreme Court then set forth a second test stating "another approach to determine whether granting the variance would violate basic Zoning Objectives is to examine whether granting variance would threaten the public health, safety or welfare."

Here, to allow the third residential unit will not alter the essential character of the locality. Leonard Street is an older residential neighborhood consisting of different types of homes. Mr. McLean, or more particularly the Applicant Macproperties Leonard Street LLC, has room for at least six parking spaces. Accordingly, the variance would not create a more crowded situation in terms of parking on Leonard Street and public health, safety and welfare will not be threatened.

B) Granting the single requested variance would not be contrary to the spirit Of the Ordinance.

The Supreme Court in Chester Rod & Gun Club stated that "the requirement that granting the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the Ordinance." The Supreme Court in the case of Malachy Glen Associates, Inc. v. the Town of Chichester, 155 NH 102 (2007) cited the Chester Rod & Gun Club case and, again stated that the two-part test set forth in Chester Rod & Gun Club was the same two-part test to be applied to whether or not granting a variance would be consistent with the spirit of the Ordinance. Thus, granting the requested variances would certainly not alter the essential character or the locality nor would it threaten the public health, safety or welfare.

C) Substantial justice will be done by granting the requested variance.

The test as to whether or not substantial justice would be done is a balancing test to be performed by Board Members. The Board must balance the hardship upon the owner/applicant if the variance is denied against the benefit to the general public in denying the requested variances. There is no benefit to the general public in denying the requested variance. The proposed project will not change characteristics of the neighborhood, public health, safety and welfare would not be threatened, and there will be no increase in the need for municipal services. There would be no significant increase in traffic, storm water run-off, or any other factor such as smoke, noise, odor, dust, etc. As noted above, parking would not flow onto Leonard Street in that the Applicant has six parking spaces on his premises. It will be a benefit to the public good to have me additional rental unit given housing shortages.

D) Granting the requested variance will not diminish values of surrounding properties.

Allowing the Applicant to use the third unit, which actually exists, in order to rent it to a member of the public will not diminish values of surrounding properties. The impact of having another tenant will be insignificant in terms of affecting value. As stated, again, there was ample on site parking, and in all likelihood, abutters will not even realize that a third unit has been placed on the market for rent. It will also avoid economic waste in converting the existing third unit into a duplex at a cost in excess of \$33,000.

E) Due to the special conditions of the premises the applicant claims that unnecessary hardship exists.

First, the variance sought is not large scale. The Applicant's Lot is 10,454 ft.² where a minimum of 12,000 square feet is necessary to have three units under the ordinance. So, the lot itself is not greatly undersized. But more importantly in terms of hardship is the physical layout of the building which currently has three units physically existing, (although the applicant has not used the third unit since his acquisition.) The Applicant understands that when the third unit was created that it was done under permits issued by the City, and there was no understanding that a problem was being created by the construction of the third unit, and the Applicant believes the City building authorities were aware.

Given the existence of the physical third unit, there is a hardship, in that in order to physically contract the building to a duplex it would take over \$33,000 to update the insides to eliminate the third unit. That would be a hardship which in and of itself, creates a significant problem for the land and building as well as the owner.

Additionally, the relatively minor square footage differential creates a hardship, in that the Applicant's premises just missed the square footage requirements.

III. CONCLUSION:

In conclusion, it is the Applicant's belief and position that the Five Criteria necessary for the Board to grant the requested variance for an additional third unit are met by his application. Thus, it is respectfully requested that the Board grant the variance as presented and advertised.

8/18/02
date

Respectfully submitted,
Macproperties Leonard
Street LLC
Through its Attorneys
Flynn & McGee, P.A.

By:

John P. McGee Jr., Esq.
Bar # 1682
5 Greenleaf Woods, Suite 102
Portsmouth, NH 03801
603-436-5360
office@flynnandmcgee.com

The Stanhope Group, LLC

File No. 210645



Subject Photo Page

Borrower	Shawn M McLean				
Property Address	24 Leonard St				
City	Rochester	County	Strafford	State	NH
Lender/Client	NEWREZ LLC (WHOLESALE)			Zip Code	03867



Subject Front

24 Leonard St
 Sales Price 335,000
 G.B.A. 3,118
 Age/Yr.Blt. 74



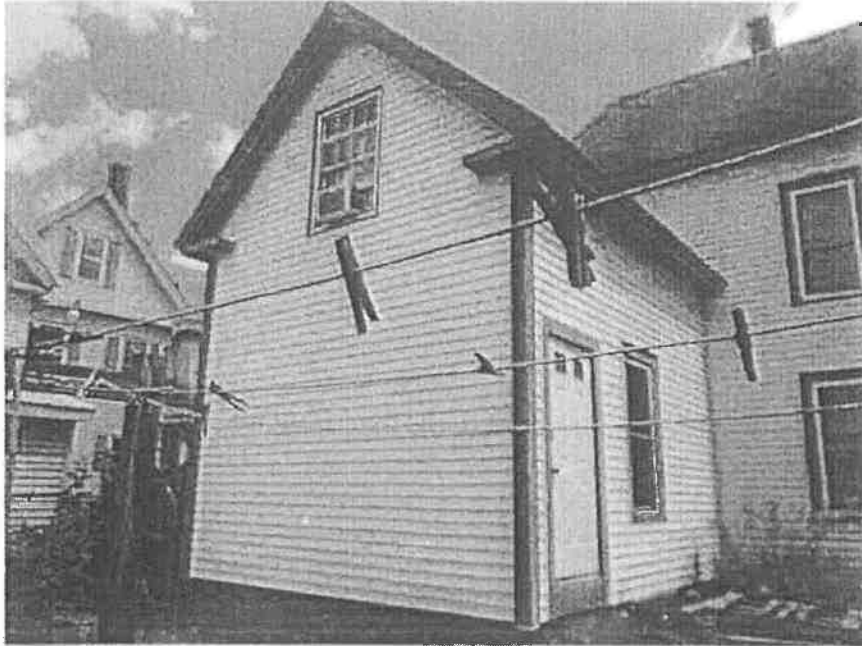
Subject Rear



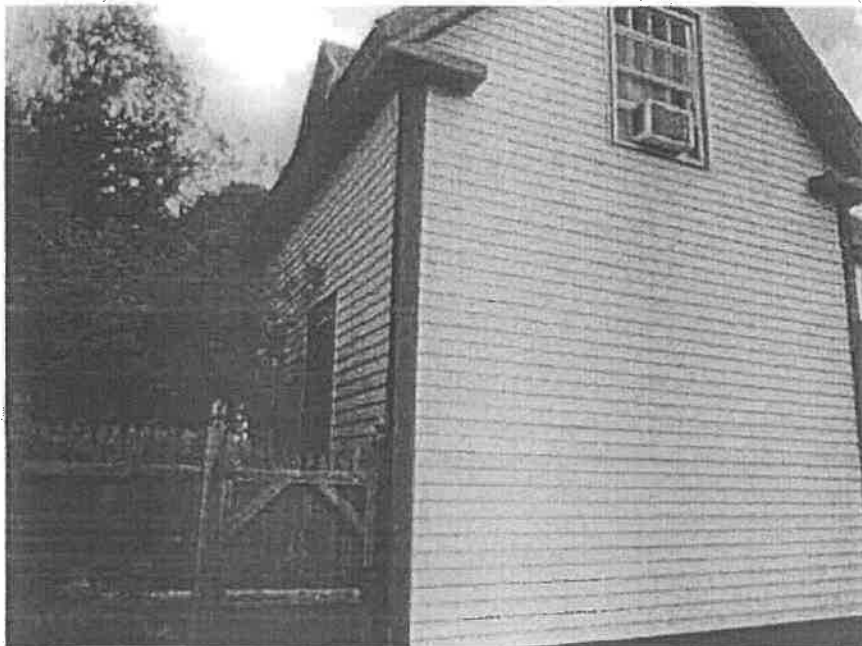
Subject Street

Photograph Addendum

Borrower	Shawn M McLean				
Property Address	24 Leonard St				
City	Rochester	County	Strafford	State	NH
Lender/Client	NH-WIREZ LLC (W/ IOLLSALE)				
				Zip Code	03867



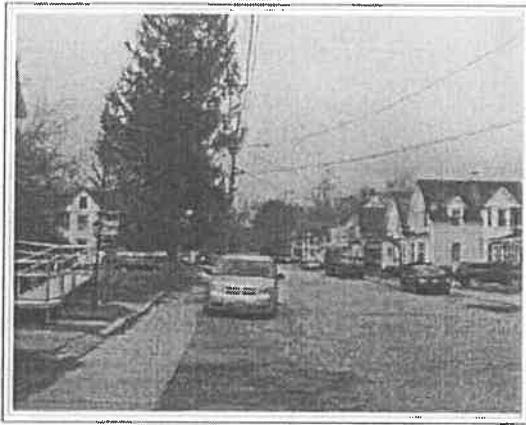
Additional rear photo



Additional rear photo

SUBJECT PROPERTY

Deflower: NA	File No.: 210445
Property Address: 24-26 Leonard Street	Case No.:
City: Rochester	State: NH
Lender: John P. McGee, Jr. Esq	Zip: 03867



Street view



Street view



Side view



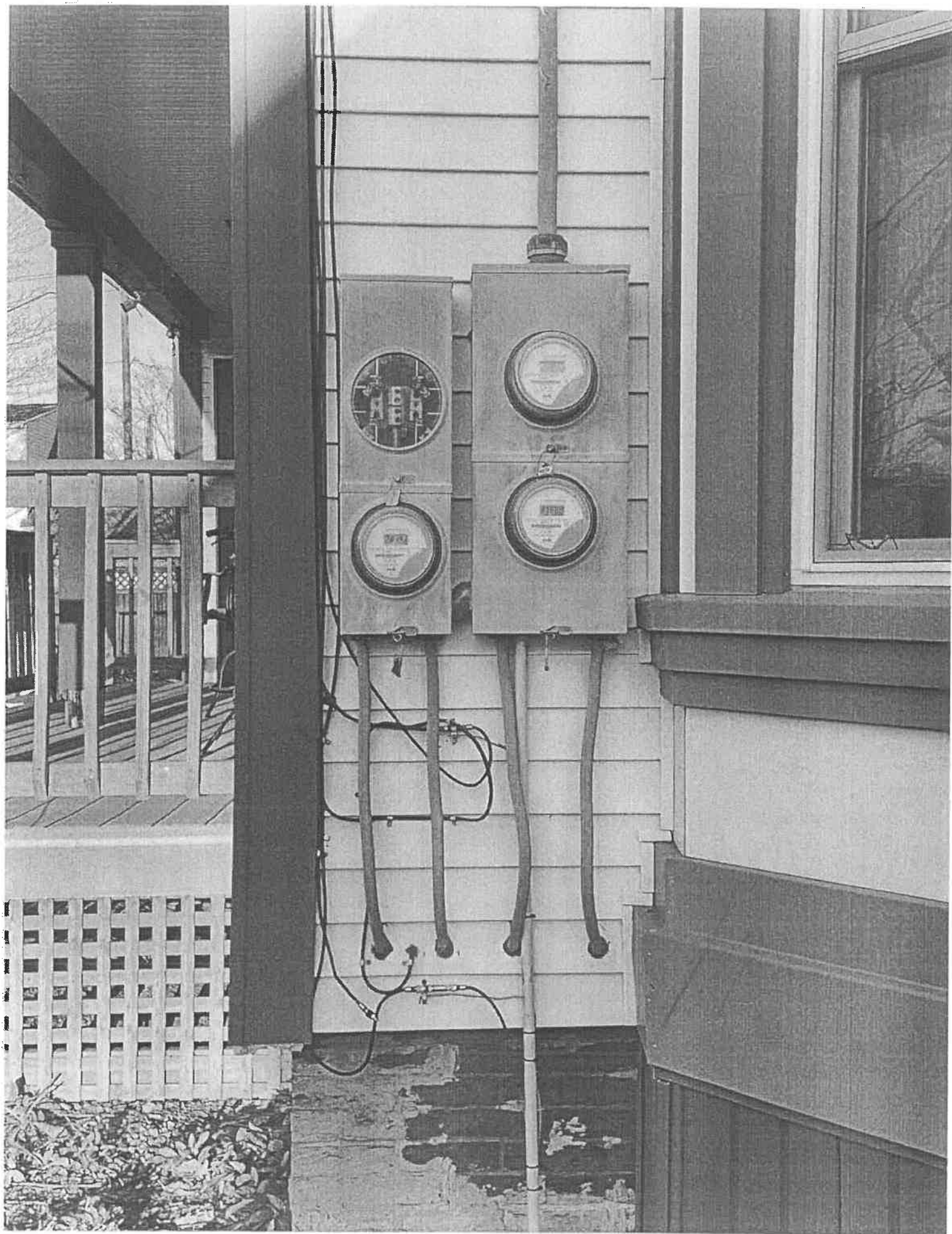
Side view



Side view

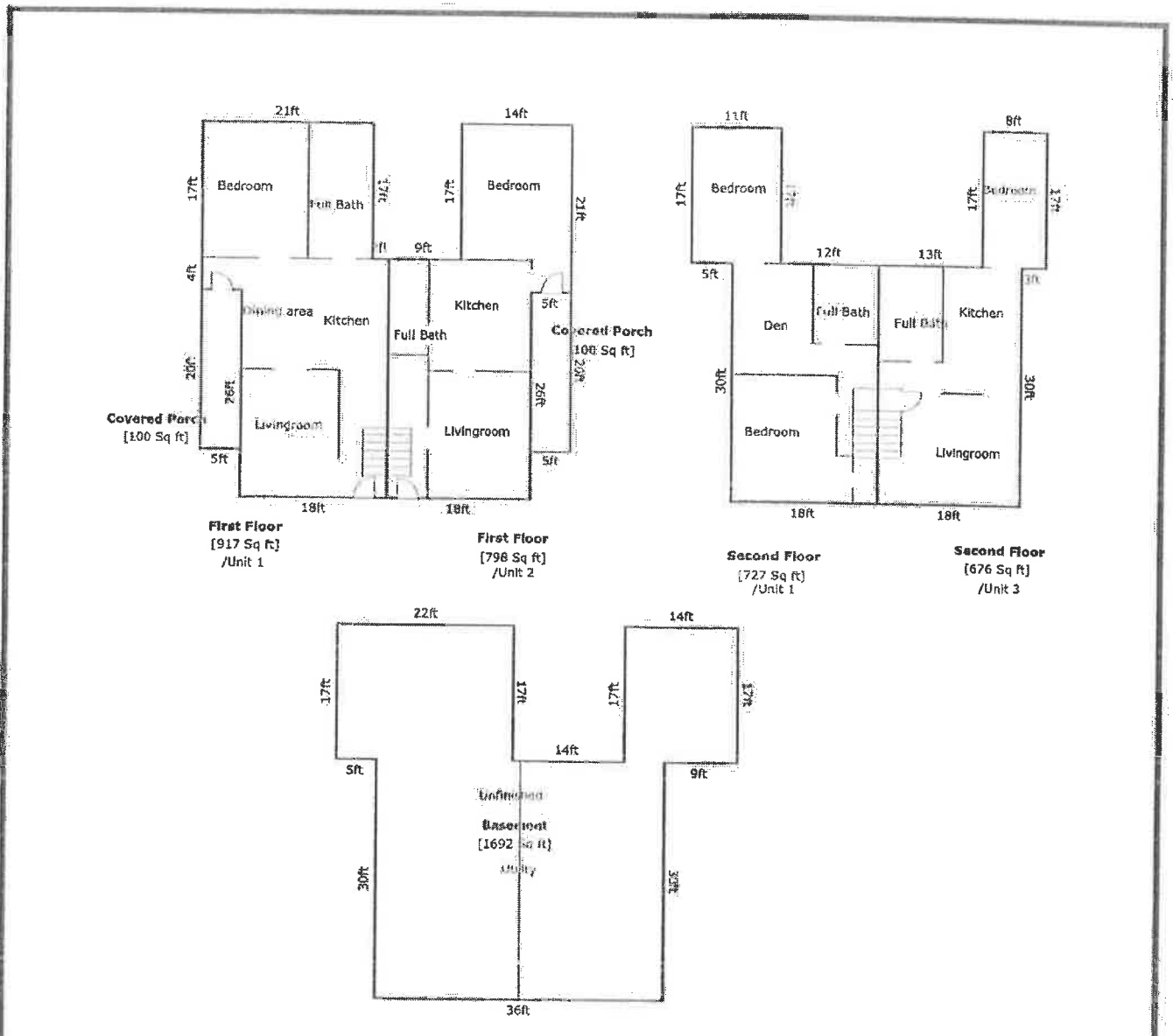


Rear view



Building Sketch

Borrower	Shawn M McLean				
Property Address	24 Leonard St				
City	Rochester	County	Strafford	State	NH
Lender/Client	NEWREZ LLC (WHOLESALE)		Zip Code	03867	



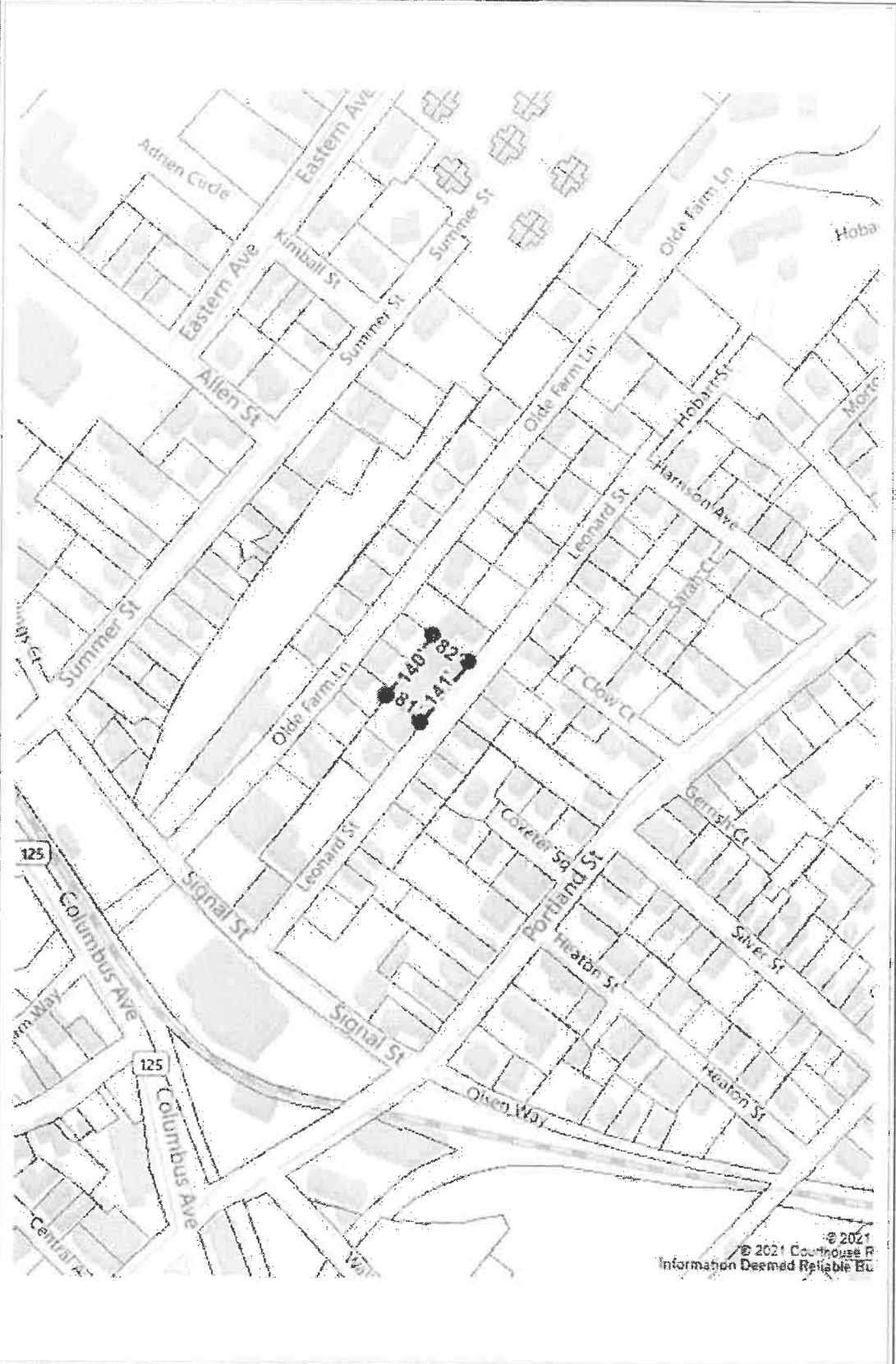
TOTAL Sketch by a le mode, Inc.

Area Calculations Summary

Living Area		Calculation Details	
First Floor	798 Sq ft	14 x 17 =	238
		4 x 5 =	20
		18 x 30 =	540
First Floor	917 Sq ft	21 x 17 =	357
		4 x 5 =	20
		30 x 18 =	540
Second Floor	676 Sq ft	8 x 17 =	136
		18 x 30 =	540

PLATMAP

Borough: NA	File No: 210445
Property Address: 24-26 Leonard Street	Case No:
City: Rochester	State: NH
Lender: John P. Mojee, Jr., Esq	Zip: 03867



Doc # 210023110 11/16/2021 09:34:54 AM
Book 4978 Page 900 Page 1 of 2
CATHERINE A. BERUBE
Register of Deeds, Strafford County
LCHIP STA189395 25.00

QUITCLAIM DEED

To all whom these Presents shall come or may concern, that Shawn McLean, unmarried,, of 24 Leonard Street, Rochester, New Hampshire, 03867

for consideration paid, grant to MacProperties Leonard Street, LLC a duly formed and existing Limited Liability Company formed under the laws of the State of New Hampshire, of 24 Leonard Street, Rochester, New Hampshire, 03867 03867

with QUITCLAIM COVENANTS:

A certain tract or parcel of land with the buildings thereon, situate on the northwesterly side of Leonard Street in Rochester, Strafford County, New Hampshire, bounded and described as follows:

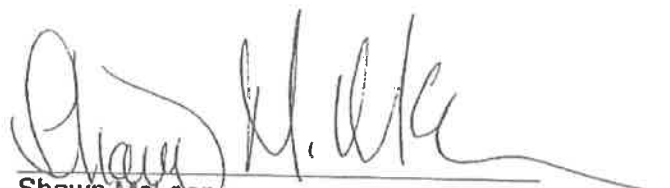
Beginning on said Street at a point seventy (70) feet southwesterly from the southerly corner of land now or formerly of Emma F. Bickford; thence running northwesterly parallel to the southwesterly side of land of said Bickford for a distance of seventy-five (75) feet to land now or formerly of George Nutter; thence turning and running in a southwesterly direction by land of said Nutter for a distance of one hundred forty (140) feet to an iron hub driven in the ground; thence turning and running in a southeasterly direction on a line parallel with the first mentioned course for a distance of seventy-six (76) feet to said Leonard Street; thence turning and running in a northeasterly direction by said Leonard Street for a distance of one hundred forty (140) feet to the point begun at.

Meaning and intending to describe and convey the same premises conveyed to Grantor by deed of Mary A. Gregoire by deed dated July 24, 2020 and recorded in the Strafford County Registry of Deeds in Book 4786, Page 985.

This is a non-contractual transfer to an entity solely owned by the grantor and exempt

from NH real estate transfer tax RSA §78-B:2 XXII.

Signed and execute on December 11, 2020.


Shawn McLean

STATE OF NEW HAMPSHIRE
Strafford County

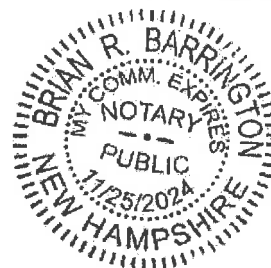
On this 11th day of December, 2020 , before me, Brian R. Barrington , the undersigned officer, personally appeared, Shawn McLean , known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.


Notary Public

Name:

My Commission Expires:



ZONING

275 Attachment 6

City of Rochester

Table 19-A Dimensional Standards - Residential Districts
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

Residential Districts	Lots			Setbacks				Other				Standards, Notes and References	
	Minimum Lot Area (square feet)	Minimum Frontage (feet)	Minimum Lot Area/Dwelling Unit (square feet)	Minimum Front (feet)	Maximum Front (feet)	Minimum Side (feet)	Minimum Rear (feet)	Maximum Building Footprint	Maximum Lot Coverage	Maximum Number of Stories	Minimum Building Height (feet)	Maximum Building Height (feet)	A "—" means there is no dimensional standard for this item
Residential-1 (R1)													
Single-family	10,000	100	—	10	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
All other uses	10,000	100	—	10	—	10	20	30%	35%	—	—	35	—
Residential-2 (R2)													
Single-family	6,000	60	—	10	—	8	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Two-family	9,000	80	—	10	—	8	20	30%	45%	—	—	35	See Article 19, Dimensional Standards
Three- and four-family	12,000 and 15,000	80	—	15	—	10	25	30%	60%	—	—	35	See Article 19, Dimensional Standards
Five- or more family	30,000	100	5,000 or 7,500	15	—	10	25	30%	60%	—	—	35	See Article 19, Dimensional Standards
All other uses	9,000	80	—	10	—	8	20	30%	35%	—	—	35	—
Neighborhood Mixed Use (NMIU)													
All uses	6,000	60	— ²	—	25	5 ¹	20	—	90%	3	20	20	See Article 19, Dimensional Standards
Agricultural (AG)													
Single-family, conventional subdivision, municipal water and sewer	20,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, municipal water or sewer	30,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, neither municipal water nor sewer	45,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Two-family	150% of single	150	—	20	—	10	20	30%	40%	—	—	—	See Article 19, Dimensional Standards
Single-family dwelling - conservation subdivision	6,000	60	—	20	—	10	20	30%	35%	—	—	35	See Article 33, Conservation Subdivisions
All other uses	45,000	150	5,000 or 7,500	20	—	10	20	—	40%	—	—	35	—

NOTES:

Note 1: For lots that adjoin a residential district, the side setback on the side adjoining the residential district shall be the larger of the required side setback in the subject commercial zone or the adjoining residential zone.
Note 2: For lots without both water and sewer, 10,000 square feet of lot area is required per additional dwelling unit beyond one.



Rochester, NH



CAI Technologies
 Human-Machine Teamwork Solutions

August 17, 2022



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

Land Use 1020
Print Date 11/5/2021 2:28:23 PM

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

A photograph of a two-story yellow house with a brown roof. The house features several dormer windows with dark shutters. A red door is visible on the ground floor, and a small porch area is present. The house is situated on a street with trees and a car in the background.

OB - OUTBUILDING & YARD ITEMS(L)/XF - BUILDING EXTRA FEATURES(B)												
Code	Description	L/B	Qty	Dim 1	Dim 2	Grade	Condition	Yr Blt	% Gd	Unit Price	Grade Adj.	Appr. Value
12	WOOD DECK	L	1	8	20	C	AV	2004	70	22.55	1.00	2,500
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undepreciated Value						
BMT	BASEMENT	0	1,692	423	20.74	35,087						
FFL	1ST FLOOR	1,774	1,774	1,774	82.95	147,151						
HST	HALF STORY	659	1,318	659	41.47	54,663						
OPF	OPEN PORCH	0	250	0	47.66	11,915						
SFL	2ND FLOOR	1,080	1,080	1,080	82.95	89,585						
TQS	3/4 STORY	191	255	191	62.13	15,843						
UNFIN	UNFINISHED AREA ADJ	-540	-540	-540	0	-44,792						
WDK	WOOD DECK	0	120	0	25.18	3,022						
Ttl Gross Liv / Lease Area		3,164	5,949	3,587		312,474						

**LAW OFFICES OF
FLYNN & MCGEE, P.A.
office@flynnandmcgee.com
5 GREENLEAF WOODS, SUITE 102
PORTSMOUTH, N.H. 03801
Phone: 603-436-5360
FAX 603-436-7833**

JOHN P. MCGEE, JR.

THOMAS E. FLYNN
(1922-1989)

August 18, 2022

Crystal Galloway
Zoning Clerk
Rochester Planning Department
31 Wakefield Street
Rochester, NH 03867

**RE: APPLICATION OF MACPROPERTIES LEONARD STREET, LLC
FOR VARIANCE AT 24-26 LEONARD ST.**

Dear Ms. Galloway:

Please find enclosed the following Application documents in connection with Macproperties Leonard Street, LLC applying for variance at 24-26 Leonard Street:

- 1) One plat Application form which I have signed as Macproperties Leonard Street, LLC's Attorney
- 2) Completed Criteria for A Variance Sheet – you will note that as to each item I have made reference to the Memorandum I am submitting with the application.
- 3) A narrative touching on the Five Criteria – again I make reference to the Memorandum I am enclosing.
- 4) Macproperties Leonard St., LLC is the Applicant, and I am its Attorney authorized to act on its behalf. I can provide written confirmation to the extent necessary.
- 5) Sketch – I have not included a sketch because the variance does not involve any change in the exterior of the building, nor does it enlarge the footprint of the building in any manner.
- 6) I have attached twelve photographs of the building's exterior which include a photograph of the exterior electrical connection connections which were on the building when Shawn McLean purchased it in July 2020. Mr. McLean transferred the premises which he had

acquired by deed of Mary Gregoire to the current Applicant which he completely controls and all.

I have also attached an interior building sketch prepared by the appraiser when Mr. McLean purchased the property. You will note that it shows three units.

I have also attached a plat of the Leonard Street neighborhood which includes a dimensional rendering of 24-26 Leonard Street showing it to be a lot of 140'x 82' x 141'x 81', feet.

Lastly, I also attach a copy of Mr. McLean's deed to his wholly controlled limited liability company Macproperties Leonard Street, LLC, dated December 11, 2020, recorded in the Strafford County Registry of Deeds at Book 4978, Page 900.

7) Abutters list. Attached is an Abutters List obtained from you as Zoning Clerk. I have included Shawn McLean as an individual and as an Abutter even though technically he has conveyed the premises to Macproperties Leonard Street, LLC. There are 10 parties on the Abutters List, and I have attached my firm's check made payable to the City of Rochester for \$45.70, it being my understanding that the cost of each mailing is \$4.57.

8) Wetlands. No wetlands are involved.

9) Application fee. Please find enclosed my firm's check made payable to City of Rochester in the amount of \$175, which I understand is the current application fee.

10) I am emailing you this complete application package and I am having 10 paper copies hand-delivered to your office this day.

Should anything further be needed please do not hesitate to contact me.

Sincerely,

John P. McGee Jr, Esq.

JPM/kc
cc: Shawn McLean

Owner1	Owner2	BillingAddress	City State Zip
16 18 LEONARD STREET REALTY	LLC	158 NORTHWOOD RD	STRAFFORD, NH 03884
PETERSON KENNETH M		23 LEONARD ST	ROCHESTER, NH 03867-2324
HATFIELD SARAH A &	BAKER JACOB T	25 LEONARD ST	ROCHESTER, NH 03867-2324
LEMIEUX D R TRUST OF 2012	% LEMIEUX DAVID R TRUSTEE	P O BOX 1163	ROCHESTER, NH 03866-1163
AVERY MARK G & HOLLY M		19 OLDE FARM LN	ROCHESTER, NH 03867-2311
ROBERTS ROBERTA A		17 OLDE FARM LN	ROCHESTER, NH 03867-2311
LEMIEUX BARBARA A		30 LEONARD ST	ROCHESTER, NH 03867-2323
MILLS ELIZABETH		30 TOWLE FARM RD UNIT 9	HAMPTON, NH 03842
MACPROPERTIES LEONARD STREET	LLC	24-26 LEONARD ST	ROCHESTER, NH 03867
Shawn McLean		24 Leonard Street	Rochester, NH 03867