



City of Rochester, New Hampshire

Zoning Board of Adjustment

Special Exception Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-23-36

DATE FILED 7/19/23

C91
ZONING BOARD CLERK

Applicant: 68 Hemingway LLC

E-mail: mmenning@elmgrovecompanies.com

Phone: 603-381-6336

Applicant Address: 440 Hanover St. Manchester, NH 03104-5101

Property Owner: 68 Hemingway LLC

Property Owner Address: 68 Hemingway Drive, Rochester, NH 03839

Variance Address: 68 Hemingway Dr.

Map Lot and Block No: 0258-0063-0000

Description of Property (give length of lot lines): A 62 acre parcel with (4) multi-family apartment buildings. Lot lines closest to buildings are 1034' (north) 825 1' (west), and 1,986 98' (east) in length

Proposed use or existing use affected: Rooftop Accessory Commercial Solar System in R2 district

The undersigned hereby requests a special exception as provided in section 275-23.2 22(A)(2) of the Zoning Ordinance to permit the installation of a rooftop solar array at 68 Hemingway Drive.

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 Special Exception.

Signed: Matthew G. Menning

Date: Jul 13 2023 13:58 EDT



City of Rochester, New Hampshire

Zoning Board of Adjustment

275.22 Special Exception Sheet

(a) General Provisions

- (1) Certain uses, structures, or conditions are designed as Special Exceptions (E) in this ordinance. Upon application, the Board of Adjustment may, subject to the appropriate conditions and safeguards, grant a permit for these special exceptions and no others.
- (2) Special Exceptions, for which conformance to additional standards is required, may be permitted in their respective districts, subject to the satisfaction of the requirements and standards set forth in this section 275.22, in addition to all other requirements of this ordinance. All such uses are hereby declared to possess such special characteristics that each shall be considered as an individual case.
- (3) The Board of Adjustment may require that a site plan for development for a proposed special exception be submitted showing the location of all buildings, parking areas, traffic access, open spaces, landscaping, and any other pertinent information that may be necessary to determine if the proposed special exception is in harmony with the intent of this ordinance.

(b) Considerations Governing Granting Special Exceptions: In acting upon an application for a special exception, the Board of Adjustment shall take into consideration whether:

- (1) The specific site is an appropriate location for the proposed use or structure. ☒ Yes ☐ No
Reasoning: The solar will serve the onsite electricity needs of the facility. The proposed projects are roof-mounted and will not cause any ground disturbance. The roof structures have passed a structural evaluation for solar. The solar arrays are not readily visible from the road or neighboring properties due to existing trees surrounding the property.
- (2) The proposal is detrimental, injurious, obnoxious, or offensive to the neighborhood. Yes ☐ ☒ No
Reasoning: The solar will not produce noise, emissions, or significant visual impacts on the neighborhood. It will produce clean solar energy to advance the renewable goals of the property. The modules are coated with an anti-reflective surface and will not produce significant glare.
- (3) There will be undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off street parking. Yes ☐ ☒ No Reasoning: The solar will not cause any impacts to pedestrian or vehicular traffic. Installation will take 3-4 weeks during which time all pertinent safety considerations for tenants, the public, and the solar installers will be made.
- (4) Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use or structure. ☒ Yes ☐ No Reasoning: Yes, the solar arrays will be installed to code and will undergo a review with the interconnecting utility to ensure the grid infrastructure can support the addition of the proposed solar projects.
- (5) The proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan. ☒ Yes ☐ No Reasoning: The installation of the solar electric system benefits the community with the generation of clean renewable power, and reduction in fossil fuel usage. It is designed to have minimal visual impacts, meet noise requirements of the ordinance, and all applicable codes and criteria.

Please check section 275.22 of the Zoning Ordinance for any additional specific conditions that apply to your Special Exception request.

Example, building rear roof/install roof from a distance



Example, installed system (Phase 1 on the front side of the roofs)





REVISION ENERGY

Country Brook Apartments: Building 68 Solar Emergency Responder Procedure

Building #68
68 Hemingway Drive
Rochester NH 03839

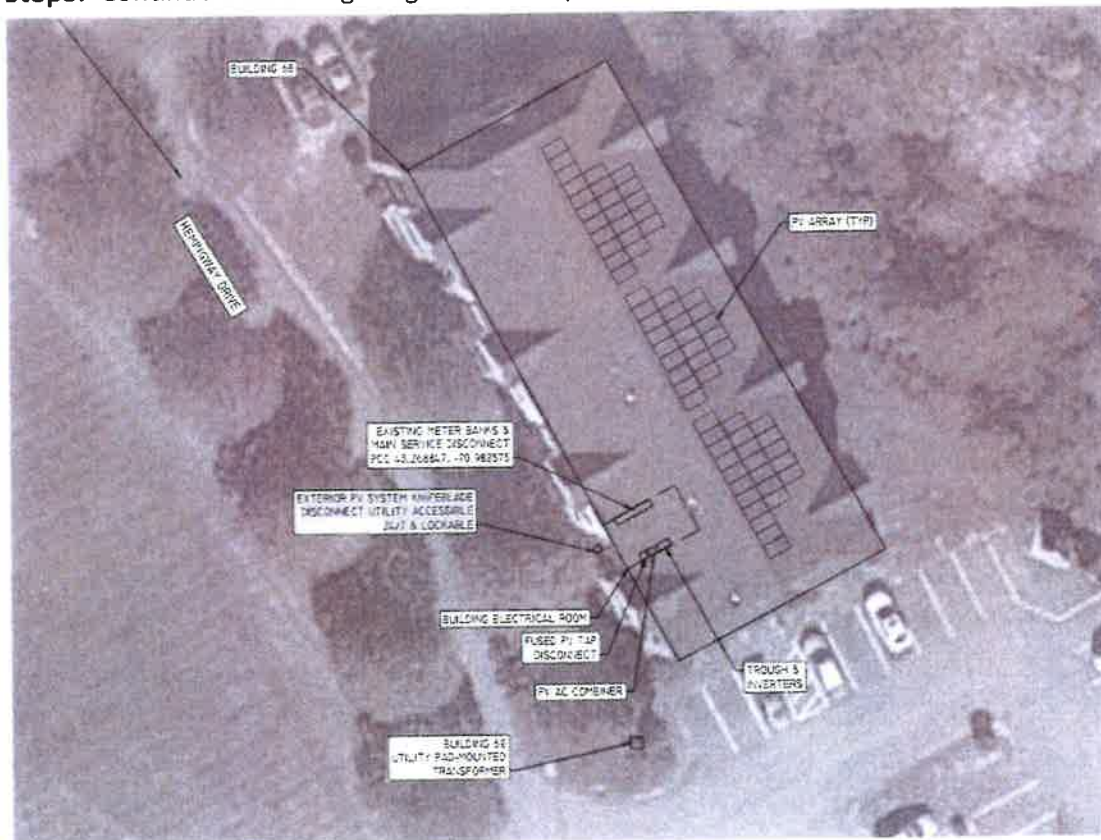
REVISION ENERGY 24/7 EMERGENCY CONTACT **(207) 747-0076**

Step 1. Locate solar disconnect switch on Western Side of building, next to building sprinkler take off port for FD uses. See site map for reference.

Step 2. Switch disconnect to off position by pulling red handle down. Follow proper lockout / tagout procedure.

-Electrical load is now removed from solar array. National Electrical Code "Rapid Shutdown" will be achieved.

Step3. Continue with firefighting or rescue operations as normal.





Building #72

Rochester NH 03839

Step 1. Locate solar disconnect switch on Western Side of building, next to building sprinkler take off port for FD uses. See site map for reference.

Step 2. Switch disconnect to off position by pulling red handle down. Follow proper lockout / tagout procedure.

-Electrical load is now removed from solar array. National Electrical Code "Rapid Shutdown" will be achieved.

Step3. Continue with firefighting or rescue operations as normal.





Building #78
68 Hemingway Drive
Rochester NH 03839

Step 1. Locate solar disconnect switch on Northern Side of building, next to building sprinkler take off port for FD uses. See site map for reference.

-Electrical load is now removed from solar array. National Electrical Code "Rapid Shutdown" will be achieved.

[illegible]



Building #94
68 Hemingway Drive
Rochester NH 03839

Step 1. Locate solar disconnect switch on Eastern Side of building, next to building sprinkler take off port for FD uses. See site map for reference.

-Electrical load is now removed from solar array. National Electrical Code "Rapid Shutdown" will be achieved.

[illegible]

SHEERIAN PINNEY

April 3, 2023

First American Title Insurance Company
6 Loudon Road
Concord, NH 03301

New Hampshire Housing Finance Authority
32 Constitution Drive
Bedford, NH 03110

RBC Country Brook, LLC,
c/o RBC Community Investments, LLC
600 Superior Avenue
Suite 2300
Cleveland, Ohio 44114

RBC Community Investments Manager II, Inc.,
c/o RBC Community Investments, LLC
600 Superior Avenue
Suite 2300
Cleveland, Ohio 44114

Nixon Peabody LLP
Exchange Place
53 State Street
Boston, Massachusetts 02109

Re: Country Brook Apartments, Rochester, New Hampshire
Ladies and Gentlemen:

You have asked for our land use opinion with respect to a housing project to be developed by Elm Grove Companies and owned or to be owned by 68 Hemingway, LLC, located at 68 Hemingway Drive, Rochester, New Hampshire, which is sometimes referred to as Country Brook Apartments. The project consists of four (4) buildings, each containing twenty-four (24) Units. The Project serviced with municipal water and sewer. The four (4) buildings were constructed in 1987. The owner intends to do minor renovations to the interior of the buildings. The Project is intended to be a condominium with each Building comprising one (1) Unit. Declarant has reserved the right to develop the "back land" as future phases.

First American Title Insurance Company
New Hampshire Housing Finance Authority
RBC Country Brook, LLC
RBC Community Investments Manager II, Inc.
Nixon Peabody LLP
April 3, 2023
Page 2

We assume the due issuance and validity of all applicable statutes, ordinances, regulations, administrative procedures and certificates. We assume that all hearings were properly noticed and validly conducted.

In order to render this opinion we reviewed, inter alia, the documents listed on Exhibit A (collectively, the "Reviewed Materials") and we have assumed the accuracy of all facts noted thereon.

We assume the due issuance and validity of all applicable statutes, ordinances, regulations, administrative procedures and certificates. We assume that all hearings were properly noticed and validly conducted.

Whenever, in this opinion, we opine, state or indicate that a particular issue is "grandfathered," we have assumed (whether we specifically state so or not): (i) that the use or structure, as the case may be, was in compliance with the prior ordinance at the time of adoption of the new ordinance or amendment to ordinance, as applicable; (ii) any structure or use has not been enlarged or altered in a way that increases its non-conformity; (iii) it has not been abandoned for a period of one (1) year or more; or (iv) it has not been previously damaged by fire or other casualty, reconstruction was not commenced within twenty-four (24) months, where the estimated cost of reconstruction exceeded two-thirds of its replacement cost prior to the casualty.

I. Zoning District

The Project is located in the Residential-2 District. Multifamily housing is a permitted use under the Current Zoning Ordinance (See Table) 18-A, Residential Uses.

II. Dimensional

We reviewed Table 19A of the Current Zoning Ordinance for the dimensional requirements currently in effect. As noted above, the Project is serviced with municipal water and sewer. What follows is an analysis, in table format, of what is required under the Current Zoning Ordinance with respect to frontage and setbacks and, according to the Review Materials, what is provided.

	Required	Provided
Minimum Lot Size	30,000	2,716,997
Lot Frontage	100'	2,195'
Minimum Lot Area per Dwelling Unit	5,000sf or 7,000sf (1)	28,300sf
Front Yard	15'	468'
Side Yard	10'	136'
Rear Yard	25'	157'
Maximum Building Foot Print	30%	1%
Maximum Building Height	35'	38.7'
Maximum Number of Stories	N/A	N/A
Maximum Lot Coverage	60%	5%

It is our opinion that the existing four (4) buildings comply with all of the requirements above with the exception of maximum building height. The Project was constructed in 1987. Article 30 of the Current Zoning Ordinance deals with nonconforming uses, lots, structures and other nonconforming site conditions. Table 2 of the Prior Zoning Ordinance (Dimensional Regulations) does not contain a requirement for maximum height (or maximum number of stories). It is our opinion that the four (4) buildings are legally nonconforming structures and may be continued under the Current Zoning Ordinance.

III. Parking

Article 26.1 of the Current Zoning Ordinance states that parking requirements are set forth in the Site Plan Regulations. The Planning Board Site Plan Regulations, Table of Parking Requirements (22), requires two (2) spaces per residential unit in the R-2 District (or 192 for original project). The Project contains two hundred twenty-two (222) parking spaces. Therefore, the Project complies with the parking requirements of the Ordinance.

IV. Planning Board Approvals

On February 6, 2023, the Rochester Planning Board granted conditional subdivision approval to create the condominium, subject to various conditions. The appeal period has run

(1) The City of Rochester has a 1-mile density ring centered on the center of the city that allows for a smaller minimum lot area per dwelling unit for those parcels within the ring. The subject parcel is outside the ring, thus the minimum lot area per dwelling unit would be 7,000 square feet.

from said approval and no appeal was taken. Site Plan approval is not required for the renovations.

V. State of New Hampshire

New Hampshire Division of Historical Resources. On November 18, 2021, the New Hampshire Division of Historical Resources found "no historic properties affected."

Very truly yours,

SHEEHAN PHINNEY BASS & GREEN P.A.

Sheehan Phinney Bass & Green P.A.

EXHIBIT A
REVIEWED MATERIALS

1. Zoning Ordinance, Zoning Map, Site Plan, Regulations and Subdivision, Regulations of the City of Rochester published online as of the date of this opinion ("Current Zoning Ordinance")
2. As-Built survey entitled "Country Brook Apartments, Assessors Map 258 Lot 63 dated March 7, 2023" prepared by Greenman-Pederson, Inc.
3. Minutes of Planning Board hearing for meeting held on February 6, 2023
4. Planning Board Notice of Decision for Condominium Conversion Approval dated February 14, 2023
5. Historic Preservation letter dated November 18, 2021
6. City of Rochester Zoning Ordinances in effect between 1986 and 1988 ("Prior Zoning Ordinance")
7. Zoning Report prepared by The Planning & Zoning Resource Company ("PZR") dated February 1, 2022
8. Email from Alex Camm dated March 22, 2023 regarding dimensional requirements

From: Matt Menning <mmenning@elmgrovecompanies.com>
Sent: Monday, March 20, 2023 9:45 AM
To: Alex Camm <acamm@gpinet.com>; David Jordan <djordan@gpinet.com>; Scott L'Italien <slitalien@gpinet.com>
Cc: Susan A. Manchester <smanchester@sheehan.com>
Subject: Country Brook Zoning Opinion Questions?

Hi Alex,

Would you be able to provide the information for the property in the blank "provided" section of the attached section II? Also pasted below for convenience.

Thanks,
Matt

	Required	Provided
Minimum Lot Size	30,000	
Lot Frontage	100'	
Minimum Lot Area per Dwelling Unit	5,000sf or 7,000sf (11)	
Front Yard	15'	
Side Yard	10'	
Rear Yard	25'	
Maximum Building Foot Print	30%	
Maximum Building Height	35'	
Maximum Number of Stories	N/A	
Maximum Lot Coverage	60%	

(11) The City of Rochester has a 1-mile density ring centered on the center of the city that allows for a smaller minimum lot area per dwelling unit for those parcels within the ring. The subject parcel is outside the ring, thus the minimum lot area per dwelling unit would be 7,000 square feet. As such, this development would be entitled to _____ units, whereas only _____ units are proposed.

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Article 23 Accessory Uses

275-23.2 **Standards for specific accessory uses.**

(22) Solar collection systems. [Added 12-6-2022^{**[1]**}]

(a) Solar collection systems in residential one and residential two zones.

[1] Free standing or ground-mounted accessory residential solar collection systems in Residential One and Residential Two zones require a minimum lot size of 20,000 square feet or a special exception.

[2] Accessory commercial solar collection systems in Residential One and Residential Two zones require a special exception.



68 Hemingway Drive

City of Rochester, NH

1 inch = 376 Feet



www.cai-tech.com

July 24, 2023



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.

CURRENT OWNER	UTILITIES	TOPO	ZONING	CURRENT ASSESSMENT			VISION
68 HEMINGWAY LLC	0 CITY WATER R	0 LEVEL	R2 RESIDENCE 2	Description	LUC Co	Prior Assessed	Current Assesse
	0 CITY SEWER	NEIGHBORHOOD	NHBD NAME	BLDG	113	4,389,200	4,389,200
	0 NONE	2076	50 UNITS OR MORE A	LAND	113	433,700	433,700
	UTL/ST / TRAF	EXEMPTIONS		OB	113	74,500	74,500
440 HANOVER ST	0 NONE	Year	Description	LAND	613	5,100	3,270
	0 PAVED			LAND	673	253	164
	0 LIGHT			LAND	6940	332	210
MANCHESTER NH 03104	LEGAL DESCRIPTION						
	EASEMENT TO CITY BK 4219 PG 393						
					Total	4,903,085	4,901,044

RECORD OF OWNERSHIP				BK-VOL/PAGE		SALE DATE		SALE PRICE		SALE CODE		PREVIOUS ASSESSMENTS (HISTORY)	
				4997	740	01-05-2022		15,800,000		02		Year	Total
				2875	836	07-31-2003		0		46		Prior Assesse	4,903,085
				1514	727	07-13-1990		0		99		Descrt	4,901,044
				1465	741	08-11-1989		0		99		Year	
				1343	384	09-24-1987		0		99		Prior Assesse	
												Total	4,903,085

BUILDING NOTES				APPAISED VALUE SUMMARY	
				Year	Total
				2020	4,886,057
				BLDG	4,389,200
				LAND	439,357
				OB	57,500
				LAND	0
				LAND	5,100
				LAND	0
				Total	4,903,057

COUNTRY BROOK APARTMENTS				Appraised Building Value (Card)		4,389,200
THIS PARCEL HAS 4 BLDGS				Appraised Extra Feature Value (Bldg)		0
WITH A TOTAL OF 96 APARTMENTS.				Appraised Outbuilding Value (Bldg)		74,500
4.13.23 DFVR				Appraised Land Value (Bldg)		476,900
				Total Appraised Parcel Value		4,940,600
				Valuation Method		C

BUILDING PERMIT RECORD										VISIT / CHANGE HISTORY	
Issue Date	Permit Id	Description	Price	Insp Date	% C	Stat	Notes			Date	Id
03-27-2023	EXPB-23-44	WINDOWS	10,250		0	O	Replace all windows and sliders in units and common s			04-13-2023	DF
03-23-2023	E-23-127	ELECTRIC	24,000		0	O	arc-fault breakers UNITS 1-24			01-25-2022	DF
03-06-2023	MJB-23-14	SOLAR	17,500		0	O	26.8 kW DC flush mounted roof-top solar array Units 1-			09-07-2016	RV
02-10-2023	E-23-61	ELECTRIC	70,002		0	O	26.8kW DC flush mount rooftop solar array units 1-24			06-26-2014	VS
10-13-2022	P-22-199	PLUMBING	500	04-13-2023	100	CE	single handle shower valves Units 1-24			05-05-2014	TM
10-05-2022	22-389-06-T	TIMBER INTNT		04-27-2023	100	C				05-11-2012	VS
08-30-2022	E-22-443	ELECTRIC	2,000	04-13-2023	100	CE	Bldg # 68 Units 1-24 outlets, switches and lights			PROP LOC.CHG	
07-14-2022	M-22-310	STG TANK	498	04-13-2023	100	CE	EXCHANGE 1 PROPANE TANK				
04-04-2022	E-22-91	ELECTRIC	500	04-13-2023	100	CE	Rpl devices & light fixtures in unit 38 bldg 72				
03-14-2022	EXPB-22-19	WINDOWS	82,000	04-13-2023	100	CE	Replace all windows - in units and common spaces				
04-07-2015	10149	ELECTRIC	125,000		100	C	WW PUMP STATION (CITY OF ROCHESTER);				
04-07-2015	10149	ELECTRIC	125,000	09-07-2016		C					

LAND LINE VALUATION SECTION										Assessed Value	
B	LUC	Description	LandU	Land Type	Loc Adj	UnitPric	Size Adj	Cond	Nbhd	Inf1	Inf2
1	1130	APT COMPL	9,000	PRIMARY	P	1,000	45,000	1.00	2076	1,000	45,000
1	1130	APT COMPL	14,540	EXCESS A	E	1,000	2,500.0	0.79032	1,000	2076	1,975.75
1	6130	CU FARM R	15,000	EXCESS A	E	1,000	2,500.0	0.79032	1,000	2076	1,975.75
1	6730	CU ALLOTH	6,000	EXCESS A	E,AVFO	1,000	2,500.0	0.79032	1,000	2076	1,975.75
1	6940	CU WET RE	17,460	WASTE A	S	1,000	100.00	1.00000	1,000	2076	100
										Adj UnitPrice	Assessed Value
										45,000	405,000
										1,975.75	28,700
										1,975.75	29,600
										1,975.75	11,900
										100	1,700
										Notes	Notes
										Permit #: 10149	EASEMENT TO
										CORRECT LOT	CORRECT LOT
										SPLIT FROM 1	SPLIT FROM 1
										ASSIGNED AD	ASSIGNED AD
										Total Land Value	
										476,900	

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

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)			
Element	Cd	Description	Element	Cd	Description		
Model	94	Commercial	Half Bath Rating				
Style	24A	APARTMENTS	Extra Fixture(s)	0			
Grade	C	Average	Extra Fix Rating				
Stories	3						
Units	24						
Residential Unit	24						
Comm Units	72.00						
Wall Height	08	BRICK VENTR VINYL					
Exterior Wall 1	04						
Exterior Wall 2	34						
2nd Ext Wall %	01						
Roof Structure	01	GABLE ASPH SHINGLE DRYWALL					
Roof Cover	01						
Interior Wall 1	01						
Interior Wall 2	08	AVERAGE					
Interior Floor 1							
Interior Floor 2							
Basement Floor							
% Heated	100.00						
Heat Fuel	03	ELECTRIC					
Heat Type	06	ELECTRC BB					
2nd Heat Type							
2nd % Heated	0.00						
# Heat Systems	24.00						
AC Percent	20.00						
Bedrooms	47						
Full Bath(s)	24						
Bath Rating	A	SAME					
3/4 Bath(s)	0						
3/4 Bath Rating							
Half Bath(s)	0						
Half Bath Rating							
Extra Fixture(s)	0						

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
PA	PAVING ASPH	L	1	58000	1	C	AV	1987	50	2.57	1.00	74,500
PK	PARK'G SPAC	L	221	1	1	C	AV	1987	100	0.00	1.00	0

BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Floor Area	Eft Area	Unit Cost	Undeprec Value
CNP	CANOPY	0	80	0	22.45	1,796
FFL	1ST FLOOR	7,344	7,344	7,344	73.31	538,402
OFP	OPEN PORCH	0	1,152	0	64.74	74,580
SFL	2ND FLOOR	7,344	7,344	7,344	73.31	538,402
TFL	3RD FLOOR	6,610	7,344	6,610	65.98	484,591
Total Gross Liv / Lease Area					21,298	1,637,772



Owner1	Owner2	BillingAddress	City State Zip
CEMETERY ASSOCIATION	% C BOYDEN THOMPSON	195 NO MAIN ST	ROCHESTER, NH 03867
REILLY LANI WICKS &	REILLY RAYMOND J	80 CHURCH ST	ROCHESTER, NH 03839-5200
STATE OF NEW HAMPSHIRE		P O BOX 483	CONCORD, NH 00000
86 CHURCH STREET LLC		120 AVIATION AVE	PORTSMOUTH, NH 03801-2898
86 CHURCH STREET LLC		120 AVIATION AVE	PORTSMOUTH, NH 03801-2898
SULLIVAN PAUL B REV LIV TRUST	% PAUL B SULLIVAN TRUSTEE	14378 W CORONADO RD	GOODYEAR, AZ 85395-7511
GERLACK PATRICIA A &	DOHERTY KATHY L	67 CHURCH ST	ROCHESTER, NH 03839-5243
LAPIERRE LAWRENCE A &	LAPIERRE CHRISTIE A	20 OAK ST	ROCHESTER, NH 03839-5631
RIVARD ROBERT R &	RIVARD ROBERT R IIII	85 WINKLEY FARM LN	ROCHESTER, NH 03867
BROOKFARM CONDO ASSOCIATION	% EVERGREEN MGMT GROUP	17 COMMERCE DR	BEDFORD, NH 03110-7059
MOFFETT GARY P		13 GEAR RD	ROCHESTER, NH 03839-5602
HOSSFELD INNER PEACE REV TRUST	HOSSFELD CRAIG P & JESSICA L	233 NORTH RD	DEERFIELD, NH 03037
OCTOBER FINANCIAL GROUP LLC		124 GOLF COURSE LN	BARRINGTON, NH 03825
MOFFETT MELISSA		17 JOSEPH DR	ROCHESTER, NH 03839
FISHER SCOTT & LISA		14 COLONIAL DR	ROCHESTER, NH 03839-4601
ASTORIA BLVD REALTY CORP		P O BOX 485	ALSTEAD, NH 03602
GIRARDIN MICHAEL PAUL	NASON KEVIN SCOTT	24 JOSEPH DR	ROCHESTER, NH 03839
OCTOBER FINANCIAL GROUP INC		P O BOX 7369	ROCHESTER, NH 03839-7369
WALLINGFORD STEFANIE L		74 CHURCH ST	ROCHESTER, NH 03839-5200
68 HEMINGWAY LLC		440 HANOVER ST	MANCHESTER, NH 03104
CONNELLY DANIEL		82 CHURCH ST	ROCHESTER, NH 03839-5200
BRICKYARD CONDO ASSOCIATION	% ROGER D & MAUREEN ERVIN	10 CECILE CT	ROCHESTER, NH 03867
RUZZI JOHN S		P O BOX 1856	ROCHESTER, NH 03866-1856