

# **City of Rochester, New Hampshire**

## Zoning Board of Adjustment

### **Variance Application**

TO:	<b>BOAR</b>	D OF	ADJU	JSTMEN <sup>T</sup>	Ī
	CITY	OF R	OCHI	FSTFR	

DO NOT WRITE IN THIS SPACE

CASE NO. 2-23-15

DATE FILED 5 5 23

ZONING BOARD CLERK

	2011110 BOANS CLLIN
Applicant: Packy's Investment Properties LLC	
E-mail : packyc@rsarealty.comP	none: 603-765-9101
Applicant Address: P. O. Box 77 Farmington NH 03835-0077	
Property Owner (if different): Same	
Property Owner Address: Same	
Variance Address: 17 Sterling Drive	
Map Lot and Block No: Map 208 Lot 18	
Description of Property: Commercial Land improved with mini-warehou	uses and solar trackers
Proposed use or existing use affected: Installing Solar trackers in uplan	ds instead of in wetlands
The undersigned hereby requests a variance to the terms of the Roches	ster Zoning Ordinance, Ch. 275, Section 12
and asks that said terms be waived to permit construction of solar trac	ckers withing the buffer setback zone.
The undersigned alleges that the following circumstances exist which p the strict terms of the Zoning Ordinance and thus constitute grounds for presenting my case the testimon should be confined to the 5 critical signed:	for a variance. I understand that while



# City of Rochester, New Hampshire

## Zoning Board of Adjustment

#### **Variance Criteria**

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r e i:	Granting the variance would not be contrary to the public interest because: As the project will be providing much needed solar energy to provide clean air and more locally distributed and produced power to fight increases in energy costs. Federal State and local governments all support reduction in greenhouse gas emissions. The public strying to lessen impacts on wetlands and construction around wetlands, this variance would allow proposed construction to be moved form in the wetlands to uplands on the edge of the wetlands. It is in the public interest to lessen the impact to the wetlands this variance will accomplish less impact.
t t f a c T	If the variance were granted, the spirit of the ordinance would be observed because: The 50-foot buffer is allowed to be altered and has been approved through a prior conditional use permit to be changed from forested area to a nigher value use of low brush and grasslands. The ordinance is designed to keep structures and direct run off into the wetlands limited, The variance sought is for 28.29 square feet of concrete in the form of 4 post at 7.06 square feet. Less than 10 feet of impervious surface in four spread out locations in the buffer area. The solar panels move and have gaps to prevent water chanlling and increased flow because of the structure. The ordinance contemplated a structure that would create some kind of measurable water flow near or directly into the wetlands. This variance and assessor structure will create no additional water flow or no additional concentration of water flow Having even this small amount of disturbance in the upland is better than having small impacts in the wetlands. This will also eliminate all temporary disturbance to the wetlands. Which is consistent with the spirit and intent of the ordinance. NO new traffic or any other impacts to the subject property or other properties in the area.
t	Granting the variance would do substantial justice because: The variance will lessen the direct impact to the surrounding wetlands. The hardship of construction in the wetland on the owner is not weighted by any benefit to the public. Forcing the owner to build in a wetlands would be contrary to common sense and substantial justice. Substantial justice would be served by limiting the hardship of doing construction in a wetland. The hardship created by the ordinance is not necessary
	If the variance were granted, the values of the surrounding properties would not be diminished because: The current project has currently and is approved for the proposed construction of solar tracker it makes no material difference on the surrounding properties on the exact location of those trackers. The current property already has solar trackers and mini storage. Adding more trackers in the uplands rather than in the wetlands would not diminish values of the surrounding properties.
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#### 5.) Unnecessary Hardship:

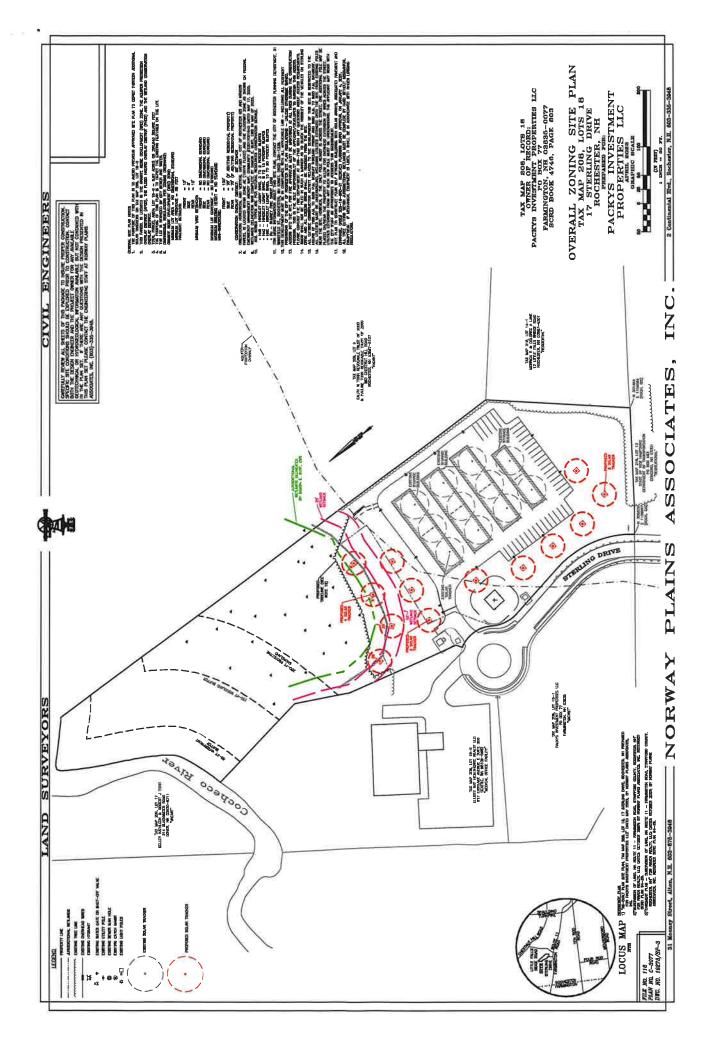
a. Owning to special *conditions of the property that distinguish it from other properties in the area*, denial of the variance would result in an unnecessary hardship because:



# **City of Rochester, New Hampshire**

# Zoning Board of Adjustment

CTT CHARTER 1888
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: The hardship on the owner is not out weighted by any benefit to the public. The general purpose of the ordinance is to lessen impacts to wetlands, this granting of the variance will lead to less impacts on the wetlands. The wetland set back area is 15% of the buildable area on the property.
And:
ii. The proposed use is a reasonable one because: It will lessen impacts on the wetlands, the variance will grant reasonable use of the land to the property owner with no harm to the public interest or the intent of the ordinance. It is much better to build in the uplands butter to the wetlands instead of building in the wetlands itself.
b. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owning 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. The property is more than 50% wetlands the set back from the wetland cross the complete cross section of the property and removes a significant portion of the buildable up land from reasonable use. This set back is over 15% of the buildable area on the property. The hardship created by the no build greenbelt across the entire east west middle of the lot creates unnecessary hardship. This buffer through the center of the buildable area of the lot is not a reasonable restriction to keep on the property given the unique manner in which this buffer affects this particular property. The hardship created by this buffer in this location is not out weighted by any public benefit.



## **Article 12 Conservation Overlay District**

#### 275-12.1 Objectives and characteristics.

Wetlands, ponds, and streams are significant natural resources of the City because of their size or functional values, such as flood storage, wildlife habitat, and the enhancement of water quality and/or quantity. The preservation of these water resources promotes the general public health, safety, welfare and convenience in our community. In particular the regulations of the Conservation Overlay District (CO District) are intended to:

- <u>A.</u> Maintain and enhance the quality and quantity of surface waters and groundwater by preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen.
- <u>B.</u> Minimize expense to the City and the public in providing and maintaining essential services and utilities, such as wastewater collection and treatment, drainage facilities, and public water supply, which may arise because of the inappropriate use of land within the CO District.
- <u>C.</u> Minimize impacts to existing land uses and lots (see § <u>275-12.5</u>, Exemptions; preexisting residential structures, uses and lots).
- <u>D.</u> Prevent the destruction of, or significant changes to, those wetland areas, related water bodies and adjoining land which provide flood protection; protect persons and property against the hazards of flood inundation by assuring the continuation of the natural flow patterns of streams and other watercourses; and provide for nutrient attenuation and augmentation of stream flow during dry periods.
- **E.** Encourage those uses that can be appropriately and safely located within the CO District.
- <u>F.</u> Protect native wildlife habitat and natural vegetation upon which a variety of upland and aquatic species are dependent for purposes of breeding or sustenance.

§ 275-12.2 Overlay district defined.

The overlay district shall include rivers, lakes, ponds, perennial streams, vernal pools, all jurisdictional wetlands and the surrounding upland areas of each of these resources.

§ 275-12.3Buffer defined.

In all cases the more restrictive buffer shall be used.

Buffer	Location
75 feet	Cocheco River, Salmon Falls River and Isinglass River from the ordinary high-water mark of the river
50 feet	Named streams and surface water from the ordinary high-water mark listed in Table I below [1]
50 feet	Edge of jurisdictional wetland consisting of very poorly drained soils <sup>1</sup>
50 feet	Edge of jurisdictional wetland consisting of poorly drained soils <sup>1</sup>
50 feet	Vernal pools <sup>2</sup>

#### Notes:

- 1. The precise location of a wetland boundary in any particular case must be determined by on-site inspection wetland scientist.
- 2. Vernal pools that shall be identified by a New Hampshire certified wetland scientist and may be subject t Commission.

[1]

Editor's Note: Table I is included at the end of this article.

§ 275-12.4**Delineation process.** 

#### [Amended 3-5-2019]

The edge of wet of these wetlands shall be determined by the delineation process set forth in the Corps of Engineers Wetlands Delineation Manual, 1987, and the most recent version of the Regional Supplement to the Corp of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. When there is a dispute in the boundary, the landowner may appeal the decision to the Planning Board with written recommendations by the Conservation Commission.

§ 275-12.5 Exemptions; preexisting residential structures, uses and lots.

The following are exempt:

- A. All wetlands less than 1/2 acre in size, except vernal pools.
- <u>B.</u> Wetland conditions resulting from the following: constructed drainage structures, including but not limited to swales, ditches, and basins; actively maintained agricultural/irrigation ponds; and septage lagoons.
- <u>C.</u> Notwithstanding other provisions of this article, the construction of additions and extensions to one- and two-family dwellings and accessory residential uses shall be permitted within the CO District provided that:
- (1) The dwelling or residential use lawfully existed prior to the original adoption of the Conservation Overlay District on October 7, 2003;
- (2) The proposed construction conforms to all other applicable ordinances and regulations of the City of Rochester; and
- (3) The dwelling or use continues in its present use.
- <u>D.</u> Lots of record, except that any lot requiring subdivision (i.e., that creates two or more lots) or minor site/site plan review must meet the requirements of this article.
- **E.** Preexisting subdivisions and site plans. Exemptions:
- (1) Subdivisions, site plans and planned unit developments approved by the Planning Board and existing at the time of passage of this article shall be exempt from this article, as governed by the provisions of RSA 674:39.
- (2) Completed applications approved by the Planning Board are exempt from this article herein.
- (3) Condominium conversions where there are no improvements proposed to the site are exempt from this article.
- **F.** This article becomes applicable in the following situations:
- (1) Nonresidential site plans for additions, expansions, or changes in use.
- (2) Site plans for new commercial, industrial, or multifamily development.
- (3) New subdivisions.
- § 275-12.6**Definitions.**

As used in this article, the following terms shall have the meanings indicated:

#### <u>BUFFER</u>

The protected upland areas adjacent to wetlands and surface waters in the Conservation Overlay District other than the wetlands themselves.

#### **ORDINARY HIGH-WATER MARK**

The line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the

surrounding areas. Where the ordinary high-water mark is not easily discernible, the ordinary high-water mark may be determined by the Department of Environment Services. Source: Comprehensive Shoreland Protection Act, page 7 from the State of New Hampshire web page, 1998.

#### **OVERLAY DISTRICT**

A zoning district superimposed on one or more established underlying zoning districts to impose supplemental restrictions on uses in these districts.

#### **POORLY DRAINED SOIL**

As defined by high-intensity soil maps for New Hampshire sponsored by the Society of Soil Scientists of Northern New England Special Publication No. 1, September 2002.

[Amended 3-5-2019]

#### **VERNAL POOLS**

<u>A.</u> Temporary bodies of water that flood each year for a few months during the spring and summer. Vernal or "spring" pools fill up with melting snow and early rains, then usually dry up by mid to late summer. Some relatively deep pools may remain flooded for a few years but become completely dry in seasons with very low rainfall. Autumnal pools fill during the fall with rising groundwater.

**B.** Because vernal pools are not permanently flooded, they do not support fish populations and thus provide safe breeding sites for several amphibian and invertebrate species, including wood frogs, spotted salamanders, and fairy shrimp. These species have evolved life cycles that depend on temporary pools.

<u>C.</u> Vernal pools vary in size, ranging from several square feet to several acres. They can be found in a variety of sites, such as isolated depressions in the woods, kettle holes, and gravel pits. Many are within larger wetlands, such as oxbows in river floodplains and pools in forested swamps or scrubshrub wetlands. Their common characteristics are the absence of fish, temporary flooding regime, and the presence of vernal pool species. Suitable pools must have enough leaf litter and other debris to provide food sources and cover for the species that breed in them. Source: ASNH Conservation Fact Sheet: Vernal Pools.

#### **VERY POORLY DRAINED SOIL**

As defined by high-intensity soil maps for New Hampshire sponsored by the Society of Soil Scientists of Northern New England Special Publication No. 1, September 2002.

[Amended 3-5-2019]

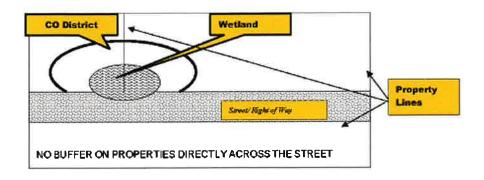
#### WETLAND

As defined by the National Food Security Act Manual (Soil Conservation Service, 1994) and the Corps of Engineers Wetlands Delineation Manual (1987) and the most recent version of the Regional Supplement to the Corp of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for a life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

[Amended 3-5-2019]

§ 275-12.7Buffer application.

Buffers are applied irrespective of lot lines and municipal boundaries, except (as shown in the below diagram) that when a wetland is bounded by City Class V or a state or federal highway, existing at the time of passage of this article, buffers are not applied to properties directly across the right-of-way.



#### § 275-12.8**Uses allowed.**

- <u>A.</u> The CO District is an overlay district. Where the provisions of this article conflict with those of the underlying zoning district, the more restrictive standards shall apply.
- **B.** The following uses are allowed in this district:
- (1) Wildlife habitat development and management.
- (2) Conservation areas and nature trails, provided that the Planning Board, in consultation with the Conservation Commission, reviews and approves plans of such areas and trails prior to their development.
- (3) Recreation, including open-air recreational uses consistent with the purpose and intent of this article, such as cross-country skiing, ice skating, hiking, and photography.
- (4) Education, including natural and environmental science walks, wildlife and botanical studies and similar activities.
- (5) Seasonally permitted hunting and fishing, as regulated by New Hampshire Fish and Game Department.
- (6) Forestry, including both logging operations and tree farming subject to RSA 227-J:9. Logging and any associated road building and/or skid trail construction shall be conducted in accordance with the then-current Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire published by the UNH Cooperative Extension and New Hampshire Department of Resources and Economic Development and the New Hampshire Division of Forests and Lands, on file with this article with the City Clerk.
- (7) Production, cultivation, growing, and harvesting of any fruit, vegetable, floricultural or horticultural crops, conducted in accordance with Best Management Wetlands Practices for Agriculture, July 1993, amended September 1998 (on file with this article with the City Clerk), but not within 25 feet of the edge of the adjacent wetland.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

- (8) The land surface within 25 feet of the edge of the wetland shall not be altered. Herbicides and heavy equipment are prohibited within 25 feet of the edge of the wetland. New lawns may be established beyond 25 feet from the edge of the wetland provided the wetland has been delineated/flagged by a certified soil scientist. Fertilization shall be limited to lime and wood ash.
- (9) Removal of hazardous trees.
- (10) Removal of invasive vegetation (see Notes on Native Trees and Shrubs and Their Use in Landscaping, by the Rochester Conservation Commission, on file with this article with the City Clerk).
- (11) Minor accessory structures of 200 square feet or less (in which there is no storage of petroleum products, hazardous chemicals or materials). Such accessory structures shall not be constructed with

any of the following materials: asphalt shingles or pressure-treated or chemically treated/preserved wood.

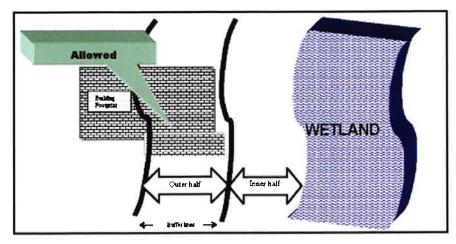
C. Any uses not listed in this section are prohibited in the CO District.

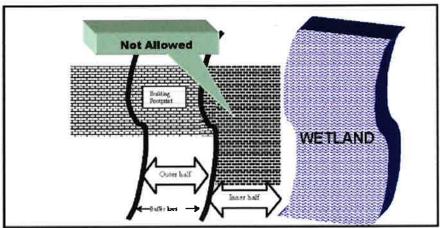
#### § 275-12.9 Conditional use approvals.

Conditional use approval may be granted by the Planning Board (RSA 674:21, II) after proper public notice and public hearing.

- A. The following uses are allowed with a conditional use approval:
- (1) Roads and other accessways; drainageways; pipelines, power lines and other transmission lines; docks, boat launches, and piers; domestic water wells (and associated ancillary pipes and equipment); and replacement septic tanks and leach fields where evidence is submitted that no alternative location is available on the property, provided that all of the following conditions are found to exist:
- (a) The proposed construction is essential to the productive use of land not within the CO District.
- **(b)** Design and construction methods will be such as to minimize impact upon the wetlands and will include restoration of the site consistent with the permitted use.
- (c) There is no feasible alternative route on land controlled by the applicant that does not cross the CO District nor has less detrimental impact on the wetlands. Nothing in this section shall limit the applicant from exploring alternatives with abutting property owners.
- (d) Economic advantage is not the sole reason for the proposed location of the construction.
- B. Buffer reductions.
- (1) Lots which are subject to the requirements of this CO District as defined in §§ 275-12.2 and 275-
- **12.3** above may be allowed a buffer reduction of no more than 1/2 of any required buffer subject to all applicable provisions of this chapter, in the following situations:
- (a) Expansion of existing structures may be permitted for lots located in the Industrial, DC, OC, and HC Districts.
- (b) Construction of a new structure may be permitted for lots located in the Industrial, DC, OC, and HC Districts.
- (2) All the following conditions shall be met to allow buffer reductions:
- (a) The structure for which the exception is sought cannot feasibly, after consideration of all reasonable alternatives, be constructed on a portion or portions of the lot which lie outside the CO District, or the application of the CO District eliminates greater than 50% of the buildable area located on the parcel or, in the judgment of the Planning Board, the proposed site layout would result in a significantly higher quality design.
- (b) The proposed structure and use must be consistent with the purpose and intent of this article and provisions must be made to ensure that drainage from the structure will not adversely impact any wetlands.
- (c) There shall be no impervious areas for parking within the reduced buffer for which the conditional use approval is sought.
- (d) The maximum building coverage is limited to 50% of the outer half of the buffer zone, as shown in the diagram below.
- (e) Best management practices must be demonstrated to the satisfaction of the Planning Board.

#### **Buffer Reduction Examples**





- (3) Buffer reduction may also be obtained explicitly by issuance of a NHDES dredge and fill permit, per § 275-12.10, Dredge and fill permits.
- C. Administration of conditional use approvals.
- (1) The application shall be referred to the Conservation Commission for review and comment prior to the Planning Board making any final decision. In acting on the application, the Board shall consider any report received from the Commission. The Board shall then vote either to approve the application as presented, approve it with conditions, or deny it.
- (2) Prior to the granting of any conditional use approval under Subsections  $\underline{\mathbf{A}}$  and  $\underline{\mathbf{B}}$  of this section, the applicant may be required to submit a performance security in a form acceptable to the Planning Board, depending on the scale of the proposed use and potential threat to the wetlands. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Planning and Development Department to ensure that the construction will be carried out in accordance with the approved design. The security shall be submitted to and approved by the Planning and Development Department prior to the issuance of any permit authorizing construction.
- (3) The Planning Board may require the applicant to submit a wetlands impact assessment when necessary to evaluate an application made under this article. The cost of this assessment shall be borne by the applicant.
- (4) As outlined in RSA 676:4, I(g), the applicant may also be assessed reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications, reviews by the City's legal counsel, and any third party wetlands consultant as may be required by the Planning Board.

#### § 275-12.10Dredge and fill permits.

<u>A.</u> Prior to filing an application for a New Hampshire Department of Environmental Services (NHDES) dredge and fill permit, the applicant is strongly encouraged to meet with the Conservation Commission to ensure that the proposed dredge and fill is consistent with the intent of this article.

**B.** An approved NHDES dredge and fill permit, once acted upon, will change the CO District boundary, which will be applied from the new edge of wetland.

#### § 275-12.11 Mitigation.

CO District mitigation shall be provided in the same watershed, if required by the Planning Board, at its discretion, with consideration of recommendations by the Conservation Commission.

§ 275-12.12Prohibited uses and activities.

- **A.** Expansion of motor vehicle recycling and junkyards is prohibited.
- **B.** There shall be no storage of petroleum products, hazardous chemicals or materials.
- <u>C.</u> Accessory structures shall not be constructed with any of the following materials: asphalt shingles or pressure-treated or chemically treated/preserved wood.
- **D.** There shall be no parking or storage of unregistered vehicles.

#### § 275-12.13Board of Adjustment.

Any variance or appeal to the Zoning Board of Adjustment shall be in accordance with RSA 676:5 and Article 4 of this chapter. Prior to holding a public hearing on an appeal or variance, the Zoning Board shall forward a copy of the plan and application to the Conservation Commission for review and comment. The Conservation Commission shall, after reviewing the plan and application, forward any appropriate recommendations to the Zoning Board of Adjustment for its consideration.

#### § 275-12.14Very poorly drained soils.

No name pond south of Champlin Pond

Any wetland or part of any wetland consisting of very poorly drained soils shall not count toward the minimum lot area or density requirements of any property in any zoning district.

# Table I Named Streams and Surface Water Table Axe Handle Brook (Rickers and Howard Brooks) Heath Brook Hurd Brook Willow Brook AKA Wardley Brook Clark Brook Baxter Lake Rochester Reservoir Hanson Pond AKA Squamanagonic Pond Little Long Pond Champlin Pond

#### Table I Named Streams and Surface Water Table

Note: The above streams have been identified in the Water Resource Management and Protection Plan, prepared by Planning Commission, dated February 1991 and on file in the office of the Planning Board, as listed in Table I.





## 17 Sterling Drive

City of Rochester, NH 1 inch = 188 Feet



www.cai-tech.com

May 9, 2023 0 188 376 564



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.

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