



# 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. 2-23-17

DATE FILED 5/16/23

C91  
ZONING BOARD CLERK

Applicant:

SWD Property Management, LLC

E-mail: larnold@orr-reno.com

Phone: 223-9172

Applicant Address: PO Box 716, Exeter, NH 03833

Property Owner (if different): \_\_\_\_\_

Property Owner Address: \_\_\_\_\_

Variance Address: 25 Old Dover Rd.

Map Lot and Block No: 132/39

Description of Property: 8.6 acres +/-

Proposed use or existing use affected: proposed 10,700sf +/- retail building

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 5.1 Table 18-B

and asks that said terms be waived to permit retail use in the R-2 Zoning District

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: [Signature]

Attorney for Applicant

Date: 5/15/23







# City of Rochester, New Hampshire

## Zoning Board of Adjustment

### Variance Criteria

1) Granting the variance would not be contrary to the public interest because:  
See attached

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2) If the variance were granted, the spirit of the ordinance would be observed because:

See attached

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3) Granting the variance would do substantial justice because:

See attached

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4.) If the variance were granted, the values of the surrounding properties would not be diminished because:

See attached

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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:

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 attached

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And:

ii. The proposed use is a reasonable one because:

See attached

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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 attached

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## NARRATIVE IN SUPPORT OF VARIANCE APPLICATION

This variance application concerns 25 Old Dover Road, Rochester, New Hampshire (the "Property"), owned by SWD Property Management, LLC, which is owned by the Dumont family. The Dumonts seek to construct an additional building on the Property containing approximately 10,700 sf, for retail use.

The Property is 8.5 acres and has an existing single-story building containing approximately 70,500 square feet. There are ten (10) rental units within the building, leased for various uses, including retail, warehouse, medical offices, manufacturing, and distribution. Earlier this year, the Property was rezoned from General Industrial to Residential-2.

Retail sales are not an allowed use in the R-2 Zoning District. The current uses of the Property (including retail) are pre-existing nonconforming uses, and are entitled to continue. However, the construction of a new 10,700 retail building requires a variance from Section 275-5.1 of the Zoning Ordinance, which the Dumonts now seek.

1. The variance will not be contrary to the public interest.

A variance is contrary to the public interest if "it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance's basic zoning objectives." Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the Board should examine whether the variance would alter the essential character of the locality, or whether granting the variance would threaten public health, safety, or welfare. Id.

Granting the variance would not alter the essential character of the locality. There are several existing retail uses on the Property, and the properties to the south contain a mix of commercial and industrial uses. The abutting property to the north is a retail bank/credit union. There are currently no residential uses within this pocket of the R-2 District. Thus, the new retail building would be consistent with the character of the area.

Nor would the retail use threaten public health, safety or welfare. General retail uses are innocuous, and the proposed tenant is a reputable national organization.

2. The spirit of the ordinance is observed.

The New Hampshire Supreme Court has determined that the requirement that a variance not be contrary to the public interest "is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance." Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 580 (2005). As such, this criterion overlaps with the public interest requirement and for the reasons set forth above, the variance would observe the spirit of the ordinance.

The Property was recently rezoned from General Industrial to R-2 Zoning. The primary motivator for this rezoning was to facilitate the development of a nearby City-owned property for affordable housing, several parcels to the South. However, the spirit of the ordinance is to allow the reasonable use and development of property, and as discussed in more detail below, the developable area at issue is not well suited for residential use. As such, granting the variance to allow retail use is consistent with the spirit of the ordinance.

3. Substantial justice is done.

Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See Malachy Glen Associates v. Town of Chichester, 155 N.H. 102, 109 (2007). Allowing this variance would cause no harm to the general public. A retail use is consistent with the historic use of the Property, and the surrounding uses on the west side of Old Dover Road. In connection with the rezoning effort, some concern was expressed about continuing to allow industrial uses adjacent to the river. However, the proposed retail use does not pose the same perceived environmental threats as many industrial uses, and is more aligned with the public interest in that regard. Granting the variance will bring new development, services and tax revenue to the City and its residents. Likewise, the benefit of the variance to the Dumonts is substantial. Without it, the vacant portion of the Property cannot be reasonably developed, as it is not well-suited for any of the permissible uses in the R-2 Zoning District (discussed in more detail below).

4. The value of surrounding properties is not diminished.

Granting this variance will not diminish surrounding property values. Until a few months ago, the Property was zoned General Industrial, and all of the uses on the west side of Old Dover Road are commercial/industrial. Although these properties have now been rezoned to R-2, the current uses are entitled to continue as pre-existing nonconforming uses. The proposed retail building will be less obtrusive and more fitting with the residential uses across the street. And the addition of approximately 10,000 sf of new retail space to a corridor already heavily developed with other industrial and commercial uses will not have any detrimental impact to the residences across the street.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The Property is unique in several respects:

- It is the largest lot in this pocket of the former General Industrial Zoning District, at over 8.5 acres.
- It has an existing single story building dating to 1960 on the site, which contains pre-existing nonconforming uses, and limits redevelopment potential.
- It is on the very edge of the zoning district, and abuts the R-1 District to the East, and the Neighborhood Mixed Use District to the North and West.
- It contains a relatively small area of undeveloped, but developable land immediately adjacent to the Neighborhood Mixed Use District, where small retail

uses are allowed by right.

- The area of proposed development is sandwiched between the existing parking lot to the south, and retail uses to the north, making it poorly suited for the permitted uses in the R-2 District

The general public purpose of the R-2 District is to “enhance older residential areas through sensitive, small scale building construction,” to “foster new development in remaining open spaces,” and to “allow a mix of residential types and limited nonresidential uses.” See Zoning Ordinance §275-5.3. Generally, the purpose of limiting retail uses in residential areas is to create cohesive neighborhoods. See id.

However, there is no fair and substantial relationship between those purposes and the prohibition of retail uses on this Property. Given the existing commercial and industrial uses on the Property, and on the properties to the south, and the retail business abutting to the north, an additional retail building on the Property will not be what undermines a cohesive residential neighborhood. To the contrary, it will help further the general purposes of fostering new development in remaining open spaces and allowing a mix of non-residential uses.

Moreover, the developable area on the Property cannot be reasonably used for the permitted uses in the R-2 District. For example, it is not a practical location for single or multi-family-residential uses because it is sandwiched between the existing parking-lot to the south, and a retail drive-through bank to the north. Senior housing and daycares are equally poorly suited for the Property, for the same reason. The size and location of the Property are also not well-suited for a wind energy system.

Although retail uses are not allowed by right, the proposed use is a reasonable use of the Property, given the surrounding existing uses, location and size of the Property.



# ZONING

## 275 Attachment 2

### City of Rochester

**Table 18-B Sales-Service-Office-Institutional Uses**  
[Amended 9-4-2018; 4-7-2020]

#### LEGEND

P = Permitted Use

C = Conditional Use

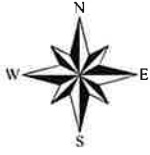
E = Use Allowed by Special Exception

Sales-Service-Office- Institutional Uses	Residential Districts				Commercial Districts				Industrial Districts			Special		Criteria/Conditions Reference
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS		
Adult day-care center	—	—	E	E	P	P	—	P	E	—	P	—	—	Article 22
Adult day-care home	—	E	E	E	P	P	—	P	—	—	P	—	—	Article 22
Adult-oriented establishment	—	—	—	—	—	—	—	—	—	C	—	—	—	Article 22
Agricultural building, reuse of existing	C	C	—	C	—	P	—	—	—	—	—	—	—	Article 22
Antique shop	—	C	P	—	P	P	P	P	—	—	—	—	—	Article 21
Artist studio	—	C	P	—	P	P	—	P	—	—	—	—	—	Article 21
Bank	—	—	C	—	P	P	P	P	—	—	—	—	—	Article 21
Convenience store	—	C	P	—	P	E	P	P	—	—	—	—	—	Article 21
Day care-1 (day-care residence)	P	P	P	P	P	P	—	P	—	—	P	—	—	—
Day care-2 (day care - family)	—	E	P	E	P	P	—	P	—	—	P	—	—	Articles 20 and 21
Day care-3 (day-care center)	—	—	E	E	P	P	—	P	E	—	E	—	—	Article 22
Florist	—	—	P	—	P	—	P	P	—	—	—	—	—	—
Funeral home	—	—	C	—	P	P	—	P	—	—	P	—	—	—
Gas station	—	—	—	—	—	—	P	P	—	—	—	—	—	Articles 20 and 21
Grocery store	—	—	—	—	P	—	P	P	—	—	—	—	—	—
Hospital	—	—	—	—	P	P	—	P	—	—	P	—	—	—
House of worship	—	C	C	C	P	C	—	P	—	—	P	—	—	Article 21
Housing unit sales	—	—	—	—	—	—	—	P	P	—	—	—	—	—
Laundry establishment-1	—	C	P	—	P	—	—	P	—	—	—	—	—	Article 21



ROCHESTER CODE

Sales-Service-Office- Institutional Uses	Residential Districts				Commercial Districts				Industrial Districts		Special		Criteria/Conditions Reference
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS	
Laundry establishment-2	—	—	P	—	P	—	—	P	—	—	—	—	Article 21
Library	—	C	P	C	P	P	—	P	—	—	—	—	Article 21
Marina	—	—	—	—	—	—	—	P	—	—	—	—	Article 21
Museum	—	C	P	C	P	P	P	P	—	—	—	—	Article 21
Office	—	—	P	—	P	P	P	P	P	P	—	—	Article 21
Office, medical	—	—	C	—	P	P	P	P	C	—	P	P	Article 21
Office, professional	—	—	P	—	P	P	P	P	P	—	—	—	
Personal service establishment	—	—	P	—	P	P	P	P	—	—	—	—	
Retail sales (under 5,000 square feet)	—	—	P	—	P	E	P	P	—	—	—	—	
Retail sales (5,000 to 30,000 square feet)	—	—	—	—	P	—	P	P	—	—	—	—	
Retail sales (over 30,000 square feet)	—	—	—	—	—	—	P	P	—	—	—	—	
Retail service	—	—	C	—	P	P	P	P	—	—	—	—	Article 21
School, K-12	C	C	C	C	C	P	—	C	—	—	—	—	Article 21
School, other	—	C	C	C	P	P	—	P	C	—	—	—	Article 21
Secondhand shop	—	C	P	—	P	P	—	P	—	—	—	—	Article 21
Service establishment	—	—	C	—	C	—	P	C	P	—	—	—	Article 21
Shelter	—	—	—	—	E	E	—	P	E	E	E	—	
Small wind energy systems	P	P	P	P	P	P	P	P	P	P	P	P	Article 20
Temporary use shelter	—	—	—	—	E	E	—	P	E	E	E	—	
Vehicle sales, new	—	—	C	—	—	—	P	P	—	—	—	—	Articles 20 and 21
Vehicles sales, used	—	—	C	—	—	—	P	P	—	—	—	—	Article 20
Vehicle service	—	—	—	—	—	—	P	P	P	—	—	—	
Yard sale, commercial	—	—	—	—	—	—	—	C	—	—	—	—	Articles 20 and 22



# 25 Old Dover Road

City of Rochester, NH

1 inch = 188 Feet



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May 16, 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.





CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)								
Element	Cd	Description	Element	Cd	Description							
Model	96	Industrial	Half Bath Ratio	A	SAME							
Style	N08	IND FLEX	Extra Fixture(s)	10								
Grade	C	Average	Extra Fix Rating	A								
Stories	1				SAME							
Units	0		MIXED USE									
Residential Unit	0		Code	Description	Percentage							
Comm Units	9.00		4000	MANUFACTURE	100							
Wall Height	14.00				0							
Exterior Wall 1	21	CONC BLOCK			0							
Exterior Wall 2	08	BRICK VNR										
2nd Ext Wall %	8		COST / MARKET VALUATION									
Roof Structure	04	FLAT	RCN		2,410,817							
Roof Cover	11	MEMBRANE										
Interior Wall 1	06	AVERAGE	Year Built		1960							
Interior Wall 2	08	AVERAGE	Depreciation Code		A							
Interior Floor 1			Remodel Rating									
Interior Floor 2			Year Remodeled		40							
Basement Floor			Depreciation %		1,000							
% Heated	100.00		Functional Obsol		60							
Heat Fuel	02	GAS	Economic Obsol		1,446,500							
Heat Type	01	FORCED W/A	Trend Factor									
2nd Heat Type	07	SPACE HTRS	Special Adj									
2nd % Heated	45.00		Condition %		60							
# Heat Systems	1.00		RCNLD									
% Heat Systems	55.00		Dep % Ovr									
AC Percent			Dep Ovr Comment									
Bedrooms	0		Misc Imp Ovr									
Full Bath(s)	A	SAME	Misc Imp Ovr Comment									
Bath Rating	0		Cost to Cure Ovr									
3/4 Bath(s)			Cost to Cure Ovr Comment									
3/4 Bath Rating												
Half Bath(s)	21											
Half Bath Ratio	A	SAME										
Extra Fixture(s)	10											
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	1	90000	C	AV	1982	50	2.57	1.00	115,700
OD	DOOR WD/MT	B	2	10	12	C	AV	1960	60	7.18	1.00	1,000
TW	TRUCK WELL	B	1	12	24	C	AV	1960	60	4.37	1.00	800
OD	DOOR WD/MT	B	9	10	10	C	AV	1960	60	7.18	1.00	3,900
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area		Floor Area		Eft Area		Unit Cost		Undeprac Value		
FFL	1ST FLOOR	70,580		70,580		70,580		34.16		2,410,815		
11 Gross Liv / Lease Area		70,580		70,580		70,580				2,410,815		





Abutter's List - 25 Old Dover Road, Rochester, NH

Property	Parcel ID	Abutter Name	Abutter Address
694 Columbus Ave	0132-0040-0000	NORTHEAST CREDIT UNION	P O BOX 1240 PORTSMOUTH, NH 03802-1240
710 Columbus Ave	0132-0045-0000	710 COLUMBUS AVENUE LLC	112 GATES ST PORTSMOUTH, NH 03801-4608
716 Columbus Ave	0131-0001-0000	PARTNERS HALEY & RICHARD	724 COLUMBUS AVE ROCHESTER, NH 03867
724 Columbus Ave	0131-0002-0000	PARTNERS HALEY & RICHARD	724 COLUMBUS AVE ROCHESTER, NH 03867
736 Columbus Ave	0131-0003-0000	KEVIN SIPULA	736 COLUMBUS AVE ROCHESTER, NH 03867
39 Old Dover Road	0132-0038-0000	41 OLD DOVER ROAD LLC	41 OLD DOVER RD ROCHESTER, NH 03867-3445
41 Old Dover Road	0132-0037-0000	41 OLD DOVER ROAD LLC	41 OLD DOVER RD ROCHESTER, NH 03867-3445
43 Old Dover Road	0132-0036-0000	CITY OF ROCHESTER	31 WAKEFIELD ST ROCHESTER, NH 03867
28 Old Dover Road	0132-0030-0000	DENNIS E. & CHERYL A. THOMPSON	28 OLD DOVER RD ROCHESTER, NH 03867-3444
26 Old Dover Road	0132-0029-0000	MICHAEL T. & MARCIA MAHAN	14 BRIALLIA CIR NEWMARKET, NH 03857
24 Old Dover Road	0132-0028-0000	MICHAEL R. ELDRIDGE	24 OLD DOVER RD ROCHESTER, NH 03867
22 Old Dover Road	0132-0027-0000	RUTH WALLINGFORD	22 OLD DOVER RD ROCHESTER, NH 03867-3444
20 Old Dover Road	0132-0026-0000	KENNETH E. POULIN	20 OLD DOVER RD ROCHESTER, NH 03867
30 Old Dover Road	0132-0031-0000	OAKRIDGE CONDO ASSOCIATION	C/O EVERGREEN MANAGEMENT, 17 COMMERCE DR., BEDFORD, NH 03110; ATTN: BEVERLY CRESSEY, JOHN SULLIVAN & STEVEN MCINTIRE
Applicant: 25 Old Dover Rd.	0132-0039-0000	SWD PROPERTY MANAGEMENT, LLC	PO BOX 716 EXETER, NH 03833
Attorney		JOHN L. ARNOLD	ORR & RENO, P.A. 45 SOUTH MAIN STREET CONCORD, NH 03301
Engineer		ATTN: WAYNE MORRILL	JONES & BEACH ENGINEERS INC. 85 PORTSMOUTH AVENUE P.O. BOX 219 STRATHAM, NH 03855