



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. 2-24-21

DATE FILED 4/17/24

CJ
ZONING BOARD CLERK

Applicant:

Darcy Murphy, Trustee Jolly Family Revocable Trust

E-mail: damurphy@rivier.edu

Phone: 781-308-1616

Applicant Address: 354 Boston Road Chelmsford, MA 01824

Property Owner (if different): Jolly Family Revocable Trust

Property Owner Address: 283 Old Dover Road Rochester, NH 03867

Variance Address: same

Map Lot and Block No: Map No. 256 Lot 69

Description of Property: 25acre residential/agricultural, with 1180 ft. of frontage and over 900 ft. from road to back property line

Proposed use or existing use affected: Proposed use: detached ADU over 800 sqft. to be occupied by elderly homeowners

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 23.3

and asks that said terms be waived to permit a detached accessible dwelling unit over 800 sq ft.

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:

Darcy Jolly Murphy

Date:

4/12/24





City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

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

Granting the variance is in the public interest because it enables elderly lifelong residents to age in place safely and with dignity. The proposed ADU will meet their specific needs, such as handicap accessibility, wider hallways, and space for in-home PT services, without impacting the public negatively. Given the special conditions of the property, including its size, setback, and lack of visibility from the road, there will be no adverse effects on the surrounding community or public interests.

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

Granting the variance aligns with the spirit of the ordinance by promoting the welfare of residents, especially elderly individuals who wish to remain in their long-term home. The ordinance aims to ensure suitable living conditions while preventing overcrowding or nuisances for neighbors. In this case, the variance allows for a necessary accommodation without compromising the intent of the ordinance.

3) Granting the variance would do substantial justice because:

Granting the variance would achieve substantial justice by providing life-changing benefits to the applicants, allowing them to live out their remaining years safely and harmoniously. The ADU will not harm the public or neighboring properties; instead, it will support the well-being of elderly residents, which is in the interest of substantial justice.

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

Granting the variance will not diminish the values of surrounding properties since the proposed ADU will be situated on a large 25-acre lot with significant setback and no visibility from the road. The addition of the ADU will not introduce overcrowding or increase traffic since the same residents will occupy the property, maintaining the existing character of the area.

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:

Denying the variance would impose unnecessary hardship on the elderly residents, forcing them out of their long-time home and into unfamiliar living arrangements, which would be detrimental to their well-being. The property's unique conditions, including its size and setback, make it impractical to conform strictly to the 800-square-foot limit while meeting the necessary accessibility and safety standards for the residents.

Enforcing the 800-square-foot limit without considering the specific needs of elderly residents on a large property with ample setback does not serve a fair and substantial public purpose. The ordinance's intent is to prevent overcrowding and maintain neighborhood harmony, which can be achieved without rigidly adhering to the square footage limit in this exceptional circumstance.



City of Rochester, New Hampshire

Zoning Board of Adjustment

And:

ii. The proposed use is a reasonable one because:

The proposed use of a slightly larger ADU to accommodate elderly residents with specific accessibility needs is entirely reasonable. It allows them to age in place safely, which is a reasonable expectation for long-term residents who have contributed to the community for decades. The ADU's placement and design ensure that it blends seamlessly with the property while addressing the residents' urgent needs without causing any negative impact on the neighborhood or public interests.

- 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.

Applicant: The Jolly Family Revocable Trust of 2022 (the “Applicant”)
Property: Map No. 256, Lot 69
Relief: Variance from Rochester Zoning Ordinance 275-23 (Standards for Specific Accessory Uses) Section A, 1, d.

Property History and Background

The property at issue is located at 283 Old Dover Road, Tax Map No. 256, Lot 69 (the “Property”). The Property consists of 25 acres and has 1180 feet of frontage. The Property has been owned and occupied by its current residents, Christine and Leander Jolly, aged 83 and 88, since 1968.

VARIANCE CRITERIA

1. Granting the Variance would not be contrary to the public interest because:

It is important to note that the test is in the negative. That is to say that it does not require the applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT contrary to the public interest.

Given the nature of a Variance, any Variance would be to some degree contrary to the public interest and the spirit of the ordinance. Perrault v. Town of New Hampton, 171 N.H. 183, 186 (2018). As such, a Variance must do more than conflict with the terms of the applicable zoning ordinance, Id., and, therefore, a Variance cannot be denied for the very reasons it is sought in the first instance. Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007). In order to be contrary to the public interest and violate the spirit of the ordinance, a Variance must unduly and to a marked degree conflict with the basic objectives of the applicable zoning ordinance. Perrault, 171 N.H. at 186 (emphasis added). To determine whether a Variance unduly conflicts with the basic objectives of the applicable zoning ordinance, a Board may consider whether the Variance will alter the essential character of the area or threaten the public health, safety or welfare. Id. (emphasis added).

Here, the Applicant is seeking relief to add a detached Accessory Dwelling Unit (ADU) greater than the 800 square feet.

By granting the Variance, there would be no harm to the public’s interest and permitting the larger ADU will allow for full accessibility features. Granting the variance is in the public interest because it enables elderly lifelong residents to age in place safely and with dignity. The proposed ADU will meet their specific needs, such as handicap accessibility, wider hallways,

and space for in-home PT services, without impacting the public negatively. Given the special conditions of the property, including its size, setback, and lack of visibility from the road, there will be no adverse effects on the surrounding community or public interests.

2. The spirit of the ordinance is observed because:

As a matter of law, the analysis for both prongs one and two of the variance criteria are the same. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011). For the same reasons that the grant of the variance is not contrary to the public interest, it also does not violate the spirit of the ordinance.

Furthermore, granting the variance aligns with the spirit of the ordinance by promoting the welfare of residents, especially elderly citizens, who wish to remain in their long-term home. The ordinance aims to ensure suitable living conditions while preventing overcrowding or nuisances for neighbors. In this case, the variance allows for a necessary accommodation without compromising the intent of the ordinance.

3. Substantial justice is done because:

The loss to the Applicant, in the event that a variance is denied, outweighs any gain to the general public. Accordingly, for reasons stated below, substantial justice would be done by granting the requested Variance.

Granting the variance for a larger ADU will ensure the safety and well-being of the lifelong elderly residents on the property. The additional space allows for wider hallways and doorways, essential for safe navigation using mobility aids like wheelchairs or walkers. Accessible bathrooms with features such as grab bars, roll-in showers, and wheelchair-accessible sinks become feasible, addressing the residents' daily living needs and promoting independence. Moreover, the larger footprint accommodates in-home health services like physical therapy, ensuring that the homeowners can receive necessary care within their living space. This emphasis on safety, accessibility, and tailored support for the elderly residents represents substantial justice, aligning with the community's values of compassion and inclusivity towards aging individuals who wish to age in place with dignity.

The public will experience no negative effects if this Variance is granted; and the public will gain nothing from a denial.

4. The values of surrounding properties will not be diminished because:

The proposed detached ADU will have minimal visibility from the road, further ensuring that the value of surrounding properties remains unaffected. Its strategic placement on the spacious 25-acre property, coupled with thoughtful landscaping and design considerations, will ensure that the ADU is essentially unseen from the road. The fact that the proposal has received support from neighbors and abutters indicates a general consensus that the ADU will not diminish property values.

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

Denying the variance would impose unnecessary hardship on the elderly residents, forcing them out of their long-time home and into unfamiliar living arrangements, which can be detrimental to their well-being. The property's unique conditions, including its size and setback, make it impractical to conform strictly to the 800-square-foot limit while meeting the necessary accessibility and safety standards for the residents.

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:

Enforcing the 800-square-foot limit without considering the specific needs of elderly residents on a large property with ample setback does not serve a fair and substantial public purpose. The ordinance's intent is to prevent overcrowding and maintain neighborhood harmony, which can be achieved without rigidly adhering to the square footage limit in this exceptional circumstance.

The proposed use is a reasonable one because:

The proposed use of a slightly larger ADU to accommodate elderly residents with specific accessibility needs is entirely reasonable. It allows them to age in place safely, which is a reasonable expectation for long-term residents who have contributed to the community for decades. The ADU's placement and design ensure that it blends seamlessly with the property while addressing the residents' urgent needs without causing any negative impact on the neighborhood or public interests.

Therefore, a denial would strip the Applicant from being able to make a reasonable use of their property and, consequently, deny the Applicant an opportunity to age safely in place.

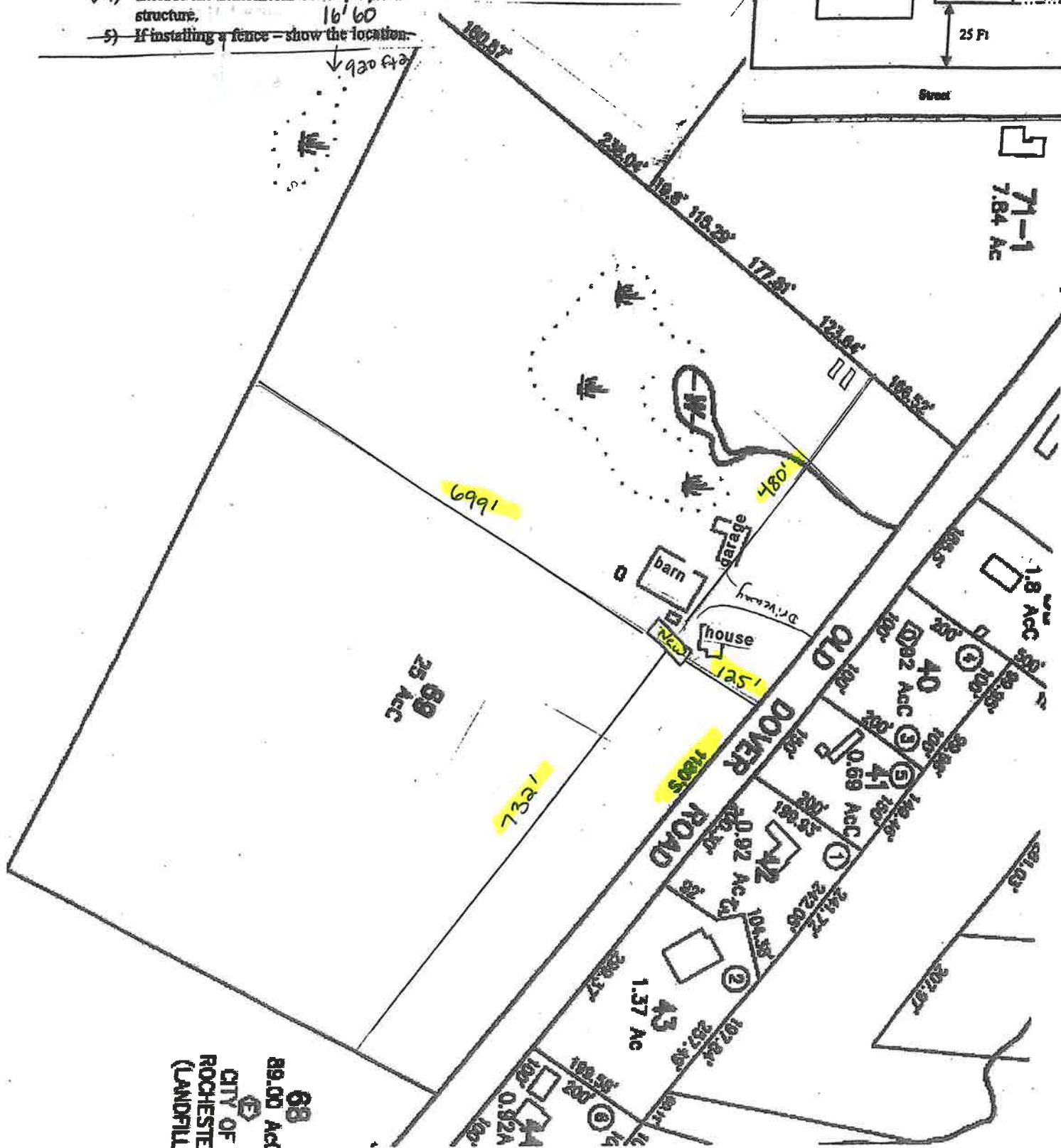
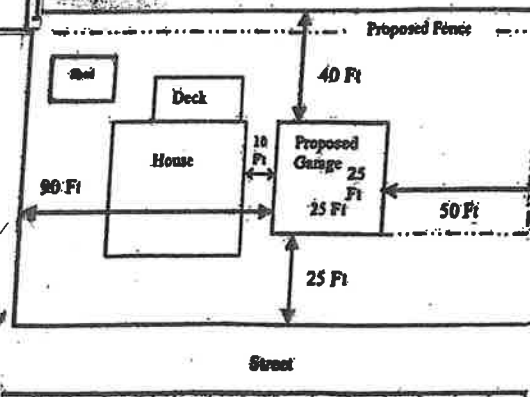
Instructions:

- ✓ 1) Show the Property lines and road(s).
- ✓ 2) Show the proposed Structure and all existing structures.
- ✓ 3) Show the Measurements from the proposed structure to all lot lines, measure straight through existing structures if needed.
- ✓ 4) Include the dimensions of the proposed structure, 16' 60
- ~~5) If installing a fence - show the location.~~

Sketch Plan

Jolly Farm
283 Old Dover Road
Proposed ADU

Sample Plan:



68
89.00 Ac
CITY OF
ROCHESTER
(LANDFILL

Street view of property.
Proposed APU will be behind
main house, unseen from the
road. Distance from house to back
property line, over 750 Ft.



Old Dover

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

A. The following standards shall apply to these specific accessory uses, activities, structures, and situations wherever they are allowed:

(1) Accessory apartment. An accessory apartment is permitted subject to compliance with all of the following standards and procedures:[Amended 4-4-2017]

(a) It is permitted where and as specified in the Tables of Uses (by right or by special exception). However, if the accessory dwelling is detached from the single-family dwelling, it must be approved by a special exception;

(b) It is accessory to a single-family dwelling only and if detached from the single-family dwelling it is similar in architectural style;

(c) It must be two bedrooms or less;

(d) It may not exceed 800 square feet;

(e) It may be either part of the single-family dwelling or in a separate building, such as above a garage; if it is part of the single-family dwelling, an interior door shall be provided between the principal dwelling unit and the accessory dwelling unit;[Amended 3-5-2019]

(f) There may be only one per lot;

(g) The owner of the property must occupy one of the dwelling units and the owner must demonstrate that one of the dwelling units is his/her principal place of residence;

(h) At least one parking space must be provided for the unit;



283 Old Dover Road

City of Rochester, NH

1 inch = 220 Feet



www.cai-tech.com

April 17, 2024



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.

Property Location283 OLD DOVER RD
Vision ID10051

Parcel ID0256/ 0069/ 0000/ /

Card #1 of 3
Sec #1 of 1

Account #10051
Bldg #1

Land Use 0160
Print Date 11/20/2023 5:44:01 PM

CURRENT OWNER

JOLLY FAMILY REVOCABLE TRUST)
JOLLY LEANDER N & CHRISTINE C
283 OLD DOVER RD

ROCHESTER NH 03867

UTILITIES

0 CITY WATER R
0 PROPANE
0 SEPTIC
0 WELL
0 PAVED
0 MEDIUM

TOPO

0 LEVEL
NEIGHBORHOOD
1070
EXEMPTIONS

ZONING

A AGRICULTURAL
NHBD NAME
RURAL SOUTHWEST
Description


LEGAL DESCRIPTION

UTIL/ST / TRAF

YearCodeDescription

VISION

ROCHESTER, NH



SALES INFORMATION- GRANTEE

BOOK/PAGE

SALE DATE

SALE PRICE

SALE CODE

5071 490

10-07-2022

2,667

38

852 159

12-17-1968

0

99

756 497

12-14-1962

0

99

PREVIOUS ASSESSMENTS (HISTORY)

Prior Assesse

Year

Descr

Prior Assesse

Year

98,300

2021

BLDG

98,300

2022

122,100

2021

LAND

122,100

2022

156,400

2021

OB

156,400

2022

9,350

2021

LAND

9,350

2022

APPAISED VALUE SUMMARY

Total

386,150

382,806

BUILDING PERMIT RECORD

Issue Date

Permit id

Description

Price

Insp Date

% C

Stat

Notes

02-10-2006

159

ELECTRIC

400

04-10-2006

100

C

11-18-2003

1303

BARN

1,500

10-20-2003

100

C

10-22-2002

662

BARN

1,800

10-20-2003

100

C

VISIT / CHANGE HISTORY

Date

Id

Purpose/Result

Notes

10-13-2022

HM

DEED CHANGE

07-31-2013

NM

EXT ONLY

07-30-2013

NM

MEAS+INSPCTD

07-12-2010

GN

DEED CHANGE

04-10-2006

TH

EXT ONLY

10-20-2003

TM

MEAS+INSPCTD

10-20-2003

TM

MEAS+INSPCTD

LAND LINE VALUATION SECTION

B

LUC

Description

LandU

Land Type

Loc Adj

UnitPric

Size Adj

Cond

Nbhd

Nb Adj

Inf1

Inf1 Adj

Inf2

Inf2 Adj

Inf3

Inf3 Adj

Adj UnitPrice

Appraised Value

Assessed Value

Notes

1

1010

SINGLE FA

2,000

PRIMARY

P

1,000

60,000.0

1.000000

1.00

1070

1,000

60,000

120,000

120,000

1

1010

SINGLE FA

1,000

EXCESS A

E

1,000

2,500.0

0.850000

1.00

1070

1,000

2,125

2,100

2,100

1

6110

CU FARM

4,000

FRONT A

FA

1,000

3,500.0

1.000000

1.00

1070

1,000

3,500

14,000

1,092

1

6110

CU FARM

18,000

EXCESS A

E

1,000

2,500.0

0.850000

1.00

1070

1,000

2,125

38,300

4,914

Total Card Land Units

25.00

AC

Total Land Value

174,400

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

Property Location
Vision ID 10051

Parcel ID 0256/ 0069/ 0000/ /

Card # 2 of 3
Sec # 1 of 1

Account # 10051
Bldg # 1

Land Use 0160
Print Date 11/2/2023 5:44:01 PM

CURRENT OWNER

JOLLY FAMILY REVOCABLE TRUST)
JOLLY LEANDER N & CHRISTINE C
283 OLD DOVER RD
ROCHESTER NH 03867

UTILITIES

0 CITY WATER R
0 PROPANE
0 SEPTIC
UTL/ ST / TRAF
0 WELL
0 PAVED
0 MEDIUM

TOPO

0 LEVEL
NEIGHBORHOOD
1070
Code
Description

ZONING

A AGRICULTURAL
NHBD NAME
RURAL SOUTHWEST
EXEMPTIONS

LEGAL DESCRIPTION

CURRENT ASSESSMENT

Description

LUC Co

Prior Assessed

Current Assesse

BLDG

101

98,300

98,300

LAND

101

122,100

122,100

OB

101

156,400

156,400

LAND


611

9,350

6,006

VISION

ROCHESTER, NH



SALES INFORMATION- GRANTEE

BOOK/PAGE

SALE DATE

SALE PRICE

SALE CODE

Year

Descr1

Prior Assesse

Year

Descr1

Prior Assesse

Year

2020

BLDG

98,300

2021

BLDG

98,300

2022

BLDG

98,300

LAND

131,450

LAND

122,100

LAND

122,100

OB

152,400

OB

156,400

OB

156,400

LAND

0

LAND

9,350

LAND

9,350

Total

Total

382,150

Total

386,150

Total

382,806

BUILDING NOTES

APPRaised VALUE SUMMARY

Issue Date

Permit Id

Description

Price

Insp Date

% C

Stat

Notes

Appraised Building Value (Card)

Appraised Extra Feature Value (Bldg)

Appraised Outbuilding Value (Bldg)

Appraised Land Value (Bldg)

Total Appraised Parcel Value

Valuation Method

98,300

0

156,400

174,400

429,100

C

APPRaised VALUE SUMMARY

Total Appraised Parcel Value

429,100

VISIT / CHANGE HISTORY

Date

Id

Purpost/Result

Notes

429,100

LAND LINE VALUATION SECTION

B

LUC

Description

LandU

Land Type

Loc Adj

UnitPric

Size Adj

Cond

Nbhd

Nb Adj

Inf1

Inf1 Adj

Inf2

Inf2 Adj

Inf3

Inf3 Adj

Adj UnitPrice

Appraised Value

Assessed Value

Notes

Parcel Total Land Area

AC

AC

Total Card Land Units

AC

AC

Total Land Value

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										
Style			Solar												
Grade			Central Vac												
Stories			Nbhd Modifier												
Units			MH Make												
Frame			MH Serial #												
Foundation			Color;Mdl #;D												
Exterior Wall 1			CONDO DATA												
Roof Structure			Condo Main		Complex #										
Roof Cover															
View			Adjust Type	Code	Building #										
Interior Wall 1			Condo Floor		Section #										
Interior Floor 1			Condo Location		% Owner										
Basement Flo			COST / MARKET VALUATION												
Bsmt Garage			Building Value New												
Bsmt Garage			Year Built												
Finished Bsmt			Depreciation Code												
FBLA			Remodel Rating												
Rec Room			Year Remodeled												
Electric			Depreciation %												
Insulation			Functional Obsol												
Interior/Exterio			Economic Obsol												
% Heated			Trend Factor												
Heat Fuel			Special Adj												
Heat Type			Condition %												
AC Percent			Percent Good												
Bedrooms			RCNLD												
Full Bath(s)			Dep % Ovr												
3/4 Bath(s)			Dep Ovr Comment												
Half Bath(s)			Misc Imp Ovr												
Extra Fixture(s)			Misc Imp Ovr Comment												
Kitchen(s)			Cost to Cure Ovr												
Extra Kitchen(Cost to Cure Ovr Comment												
Total Rooms			OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)												
Fireplace(s)			Code	Description	L/B	Qty	Dim 1	Dim 2	Grade	Condition	Yr Blt	% Gd	Unit Price	Grade Adj.	Appr. Value
WS Elues			45	LEAN TO	L	1	20	52	D	FR	1940	45	4.51	0.87	1,800
			46	FLAT BARN	L	1	3552	1	E	FR	1940	45	24.45	0.75	29,300
BUILDING SUB-AREA SUMMARY SECTION															
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undepreciated Value									
Ttl Gross Liv / Lease Area															

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)								
Element	Cd	Description	Element	Cd	Description							
Style			Solar									
Grade			Central Vac									
Stories			Nbhd Modifier									
Units			MH Make									
Frame			MH Serial #									
Foundation			Color,Mdl #;D									
Exterior Wall 1												
Roof Structure												
Roof Cover												
View												
Interior Wall 1												
Interior Floor 1												
Basement Flo												
Bsmt Garage												
Bsmt Garage												
Finished Bsmt												
FBLA												
Rec Room												
Electric												
Insulation												
Interior/Exterio												
% Heated												
Heat Fuel												
Heat Type												
AC Percent												
Bedrooms												
Full Bath(s)												
3/4 Bath(s)												
Half Bath(s)												
Extra Fixture(s)												
Kitchen(s)												
Extra Kitchen(
Total Rooms												
Fireplace(s)												
W.S.Flues												
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
01	SHED FRAME	L	1	14	24	E	AV	2010	80	28.15	0.75	5,700
01	SHED FRAME	L	1	16	25	E	FR	2010	75	28.15	0.75	6,300
45	LEAN TO	L	1	10	58	D	AV	2010	80	4.51	0.87	1,800
45	LEAN TO	L	1	16	28	E	PR	2010	70	4.51	0.75	1,100
45	LEAN TO	L	1	11	20	E	AV	2010	80	4.51	0.75	600
64	SILO	L	1	942	1	C	AV	2010	55	2.20	1.00	1,100
52	P BARN WD1	L	1	22	38	E	AV	2007	70	20.40	0.75	9,000
45	LEAN TO	L	1	12	18	E	AV	2007	70	4.51	0.75	500
01	SHED FRAME	L	1	8	10	D	AV	2006	70	28.15	0.87	1,400
50	POLE BARN	L	1	24	30	D	AV	2004	70	20.40	0.87	8,900
45	LEAN TO	L	1	10	24	D	AV	2003	70	4.51	0.87	700
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area		Floor Area		Eff Area		Unit Cost		Undepreciated Value		

No Sketch