



# 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. 2-24-22

DATE FILED 4/17/24

C9  
ZONING BOARD CLERK

Applicant:

Packy's Investment Properties LLC

E-mail: packyc@rsarealty.com

Phone: 603-765-9101

Applicant Address: P.O. Box 77 Farmington NH 03835

Property Owner (if different): Same

Property Owner Address: Same

Variance Address: 18 Sterling Drive, Rochester NH

Map Lot and Block No: Map 208 Lot 18 -1

Description of Property: The property is vacant land

Proposed use or existing use affected: The applicant intends to build a mini-warehouse and commercial solar mixed use.

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 275:8.5

and asks that said terms be waived to permit To construct a mini-warehouse facility with co-located commercial solar

on a lot that the July 2022 amendments to dimensional regulations of Section 275:8.5(B)(10) with zero setbacks.

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]

Date: 4/17/2024





# 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

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

see attached

3) Granting the variance would do substantial justice because:

see attached

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

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 attached

And:

- ii. The proposed use is a reasonable one because:

see attached

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.



**Packy's Investment Properties, LLC  
Tax Map 208, Lot 18-1  
18 Sterling Drive  
Rochester, New Hampshire**

**BOARD OF ADJUSTMENT APPLICATION**

**INTRODUCTION**

Packy's Investment Properties, LLC (the "Applicant") owns the property located at 18 Sterling Drive, Rochester, New Hampshire (the "Owner"). The lot is depicted on the Rochester tax maps as Map 208, Lot 18-1 (the "Property"). The property is located in the Granite Ridge District.

The property is comprised of 2.08 +/- acres, and is currently vacant land. As seen on the plans, the lot has very rough perimeter dimensions of: approximately 355' along Sterling Drive, approximately 261 along the northeasterly boundary line with Fresenius, approximately 331' along Lot 17 to the west, and approximately 357 along the southerly boundary that runs along the DOT "rails to trail" property. The property is across the street from Lot 18-0 (17 Sterling Drive) also owned by your Applicant, which is constructed with four (4) mini-storage structures with accessor solar tracker arrays. The Applicant intends to construct three (4) mini-storage structures on the Property and 15 Dual Axis solar trackers as shown on the Zoning Site Sketch prepared by Norway Plains Associates, Inc.

The property is located on Sterling Drive which contains three (3) commercial parcels. The third parcel is currently utilized as the Fresenius dialysis center. Sterling Drive presents itself as a mini-commercial park, with no visibility to the neighboring NH Route 11. In addition, the frontage for all three lots is unique as it is premised upon a cul-de-sac, thus creating a curved, rather than straight, area from where the frontage is measured. The entrance to Sterling Drive is adjacent to the existing Walmart shopping Plaza. Sterling Drive is located downslope from Walmart and NH Route 11, and is buffered by a tree line which is to remain post-construction of the mini-storage structures intended to be constructed (see attached pictures of existing conditions).

This property received a variance in November, 2021, which variance was granted under the Zoning Ordinance prior to significant amendments to the Ordinance in July, 2022. For example, as reflected in the City's current Table of Dimensions, the set back for uses on this property was Zero feet (0'). With the changes to the Ordinance in July 2022 setbacks on this property are, according to Section 275.8.5(B)(10): 300' frontage, 50' side and 100' rear. Such changes to the setbacks, to the Applicant, appear to be in direct conflict with the stated purpose of the GR District to "...maximize the developable area of parcels..." in Section 275.8.1(B)(3).

Those 2022 changes to the Ordinance may have made sense for the contemplated revision to the GR District to allow mixed residential/commercial development on the large properties on the south of Route 111, but it made this particular lot completely undevelopable, as shown on the Zoning Sight Sketch. Using the rule of reason, we presume that such changes that dramatically altered the setback requirements on small lots of record in the GR District were an oversight in

drafting, as we would not presume that the City consciously made pre-existing lots in the GR District incapable of development without variances. Hopefully the City will address this contradictory language in the near future.

With Section 275:8.5(B)(10) of the Rochester Zoning Ordinance requiring the front setback for non-residential/mixed use properties to be 300 feet from external right of way, here Sterling Drive, this lot can not be developed without a variance. The Section also requires a setback from a rear property of 100 feet and the side lot lines of 50 feet. As depicted on the Site Sketch, given the size and the odd-shape configuration of the Property, in order to construct typical storage structures in a manner to not have a negative affect upon the public health, welfare or safety, the 300-foot front set back and 100-foot rear setbacks and 50 foot side setback restrictions cannot be met, resulting in an unnecessary hardship, particularly given the location in a zone intended for high-intensity commercial development, and here away from the general public or streetscape of NH Route 11<sup>1</sup>. As such, for the reasons set forth herein, the Applicant respectfully requests variances from these restrictions.

The proposed use of this property is a mixed use of mini-warehouses that is permitted by right in this zone with Solar Commercial of between 100kW and 1MW of solar power generation which is permitted by Conditional Use Permit. None of these uses can occur without a variance due to the unique characteristics of the property given the 2022 changes to setbacks in the GR District. Accordingly, your Applicant requests that this Zoning Board of Adjustment grant a variance from the terms of Section 275:8.5(B)(10)

### **FACTS SUPPORTING THIS REQUEST**

#### **1. The variances will not be contrary to the public interest.**

To be contrary to the public interest or injurious to public rights of others, the variances must unduly, and in a marked degree, conflict with the ordinance such that they violate the ordinance's basic zoning objectives. To determine whether a variance would violate the basic zoning objectives, it is appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten the public health, safety or welfare. It is respectfully submitted that the essential character of the locality will not be changed or altered by the granting of the variances, and will not be contrary to the public interest. Specifically, the use will be consistent with an previously approved mini-warehouse (variance of Nov., 2021) with a use permitted by conditional use permit (solar). Given that the Property is well off of NH Route 11 and behind developed commercial properties along Route 11 (the Shoe Depot, Car Wash and Meinecke), there will be limited visibility to the travelling public along NH Route 11.

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<sup>1</sup> The property is located in the Granite Ridge District that, per the Ordinance prior to July 2022 and as reflected in the currently published Dimensional Tables, the setbacks was Zero feet (0") from all boundaries. Your Applicant maintains that setbacks should be those applicable for Granite Ridge District as shown on the currently published Dimensional Standards for Commercial Uses at Table 19B. Nonresidential/mixed use buildings are a specific use allowed in the zone with specific setbacks. Should the ordinance be interpreted to determine that the standards of Table 19B apply it would negate the need for a variance on this project.

**2. The variances will not be contrary to the spirit of the ordinance.**

The Applicant respectfully submits that if the variances are granted, the spirit of the ordinance would be observed as the use in question is suitable, considering the location, identically developed property across Sterling Drive, and buffering and lack of visibility to the general public. With the presumption that the 300', 100' and 50' setbacks have no relationship to safety concerns, but more as to location and visibility of the structures themselves away from the general public and a Nonresidential/mixed use building use, in this instance, the need for such a large setback is clearly unwarranted given the unique location and characteristics of the Property and the proposed use. A proposal that is allowed by right in the zone (mini-warehouse) and by conditional use permit (solar) both conform to the spirit and intent of the ordinance, and as to a property in the GR Zone conforms to the stated purpose in said zone to "maximize the developable area of parcels.." in Section 275.8.1(B)(3).

Within its general purpose and intent clause, the Rochester Zoning Ordinance indicates that its intent is to protect health and safety by encouraging an orderly pattern of development and encourage the most appropriate use of land, while respecting the rights of property and business owners. The Applicant respectfully submits that the general purposes and intent of the Zoning Ordinance will be maintained to the extent that the variances requested herein are granted.

**3. Substantial justice is done.**

The guiding rule in determining whether the requirement for substantial justice is satisfied is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. In considering this test, boards typically look at whether a proposed development is consistent with the area's present use. The grant of the variances would result in substantial justice as such would allow the Property to be utilized in a similar to the approved use on the adjacent lot. The lack of being a use consistent with nonresidential/mixed use buildings, vis-à-vis the 300'/100'/50' setback requirement are unnecessary given the location of the lot, which has no visibility to NH Route 11 or to the general travel through Rochester or the characteristics of a nonresidential mixed use building development. In addition, the level of use by the general public for access to the mini-storage units will be minimal and very intermittent. Thus, denial of the variances would result in a loss to the Applicant that is not outweighed by any gain to the general public. Thus, granting of the requested relief would result in substantial justice.

**4. Value of surrounding properties will not be diminished.**

It is respectfully submitted that all of the surrounding properties have a value associated with them which is premised upon the existence of the existing buildings and uses located upon the properties. In this instance, it is believed, and therefore averred, that the location of the proposed storage structures, still meeting standard set-back criteria, and considering the existing uses of the surrounding property, particularly with a lack of visibility for the residence, will not result in a diminution of surrounding property values. The current properties are located in a commercial zone and this mindware house and solar use would not be any more determination to surrounding property values than any other permitted use. The use is allowed by right in the zone

with Planning Board approvals.

**5. Explain how the literal enforcement of the provisions of the ordinance would result in an unnecessary hardship owing to special conditions of the property that distinguish it from other properties in this area because:**

- (i) no fair or substantial relationship exists between the general purposes of the of the ordinance provision and the specific application of that provision to the property:**

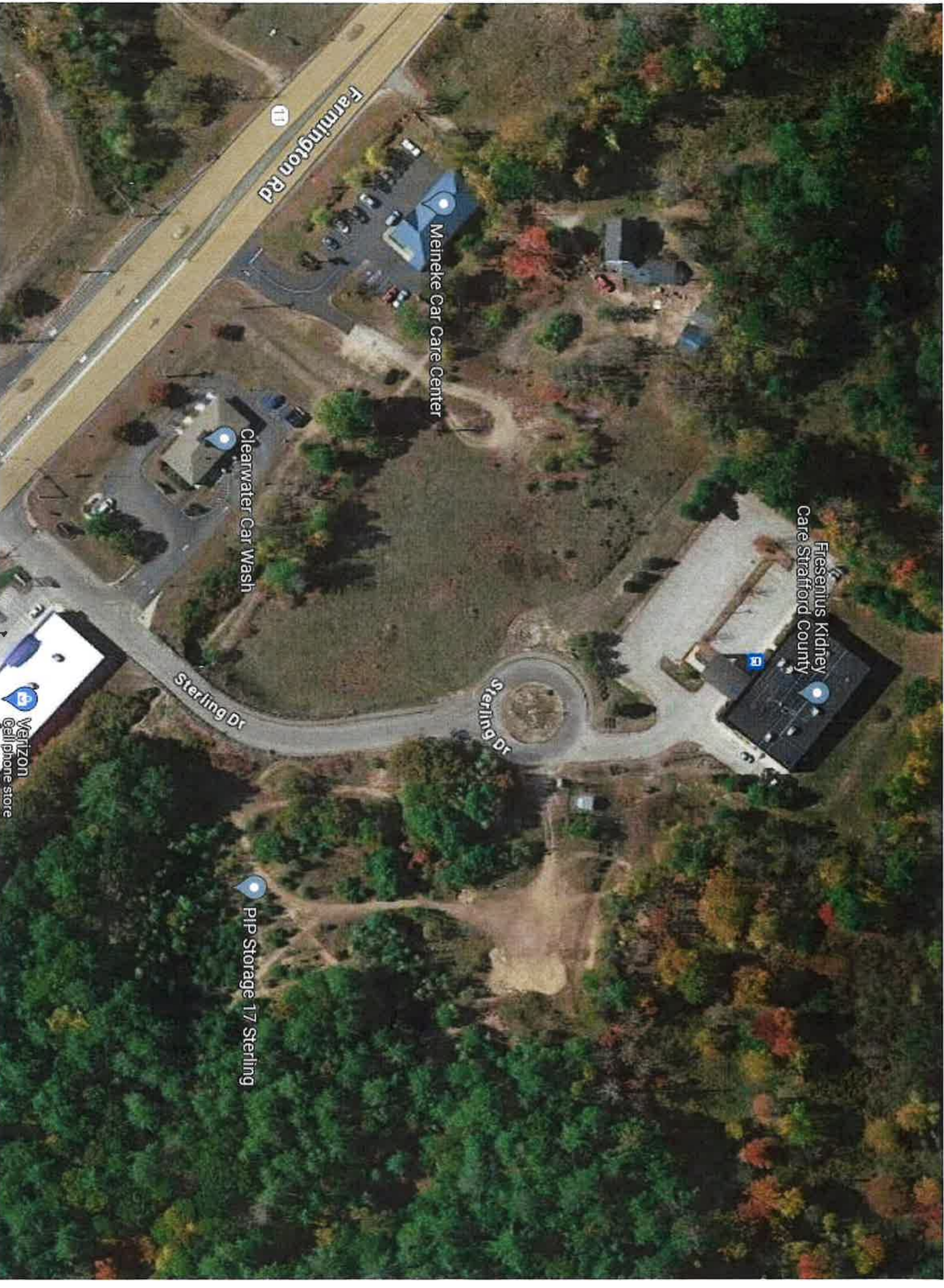
The general purposes of the ordinance are to promote health and safety by encouraging an orderly pattern of development and encourage the most appropriate use of land, while respecting the rights of property and business owners. For the reasons set forth herein, the Applicant respectfully submits that the restrictions that cannot be met are not necessary to be met in order to protect the purpose of the ordinance. Thus, there is no conflict between the general public purpose of the ordinance, and enforcing the restrictions for which the Applicant seeks the variances.

The Property contains unique characteristics as it is smaller than other lots on Sterling Drive (see portion of tax map attached hereto) and more importantly the very large properties on the southerly side of NH Route 11 that were really the focus of the July, 2022 amendments to the Ordinance that imposed such restrictive setback requirements that were formally literally Zero fee (0'). Assuming the purpose of the 300'/100'/50' setback requirements for nonresidential/mixed use building relates to locating such uses away from major streetscapes within Rochester and visibility to residential uses, imposing the restrictions, as they relate to the Property, is unnecessary given the down-slope nature of the parcel, the existing buffering between the Property and NH Route 11 and the residence, and given the surrounding existing and approved uses on the other two adjacent lots. Given the affect the new development will have with respect to resulting in no negative affect as to the health safety and general welfare of the inhabitants of the City, as outlined herein, and given the existing and proposed use of the property, it is respectfully submitted that the granting of this variance would not result in a conflict with the general purpose set forth within the Zoning Ordinance, but would rather promote the general purpose of the ordinance.

- (ii) the proposed use is a reasonable one:**

The Applicant proposes to use the property in a manner that is similar to approved use on an adjacent lot. The use is reasonable given the size of the lot, the buffering from other uses, as indicated herein, and given that the Property is located with frontage on a cul-de-sac within a relatively small commercial park, with little visibility to the major streetscapes within Rochester or the identified residential use.





Farmington Rd

Meineke Car Care Center

Clearwater Car Wash

Firesenius Kidney  
Care Stratford County

Sterling Dr

Sterling's Dr

PIP Storage 17 Sterling

Verizon  
cell phone store



# CIVIL ENGINEERS



PROPERTY LINE  
EXISTING  
PROPOSED BUILDING  
PROPOSED FENCE  
PROPOSED STRIPPER AND MANUFACTURING AREA  
SEE SHEETS 104710  
104711

[illegible]

**REFERENCE PLAN**  
1) SUBDIVISION OF LAND, NH ROUTE 11 - FARMINGTON ROAD, STRAFFORD COUNTY, ROCHESTER, NH FOR RAVEN REALTY, LLC; DATED: OCTOBER 2007; BY NORMAN PLAINS ASSOCIATES, INC. RECORDED SCRD PLAN 84-28.  
2) EASEMENT PLAN - SUBDIVISION OF LAND, NH ROUTE 11 - FARMINGTON ROAD, STRAFFORD COUNTY, ROCHESTER, NH FOR RAVEN REALTY, LLC; DATED: OCTOBER 2007; BY NORMAN PLAINS ASSOCIATES, INC. RECORDED SCRD PLAN 84-28.

ZONING SITE SKETCH  
TAX MAP 208, LOTS 18-1  
18 STERLING DRIVE  
ROCHESTER, NH  
PREPARED FOR:  
PACKYS INVESTMENT  
PROPERTIES LLC  
MARCH 2024



SK-1

31 Mooney Street, Alton, N.H. 603-875-3918

**NORWAY PLAINS ASSOCIATES, INC.**

2 Continental Blvd., Rochester, N.H. 603-335-3949

FILE NO. 116  
PLAN NO. C-3077  
DWG. NO. 19273/SP-1

275-8.5 **Architectural and design standards.** [Added 7-5-2022]

**B.** Nonresidential site layout. Planning for mixed-use development on a site encompasses items such as its relationship to surrounding uses, building orientation on the site, pedestrian and vehicular circulation, and efficiency of parking areas, screening of loading and utility areas, and the design of landscaping, signage, and lighting.

**(10)** Dimensional requirements:

**(a)** Nonresidential/mixed-use buildings:

**[1]** Minimum structure setback from external lot line:

**[a]** Side: 50 feet.

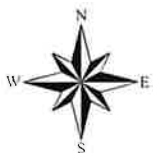
**[b]** Rear: 100 feet.

**[2]** Minimum structure setback from external ROW: 300 feet.

**[3]** Maximum nonresidential building height: 75 feet.

**[4]** Structures over 55 feet shall be placed as close to the center of the lot as practical.





# 18 Sterling Drive

City of Rochester, NH

1 inch = 100 Feet



[www.cai-tech.com](http://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.



Land Use 3900  
Print Date 11/3/2023 3:17:32 PM

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





Owner1	Owner2	BillingAddress	City State Zip
LOPEZ JOSE J		127 FARMINGTON RD	ROCHESTER, NH 03867
GRAYKELL REALTY LLC		427 WINNACUNNET RD	HAMPTON, NH 03842-3808
PACKYS INVESTMENT PROPERTIES	LLC	PO BOX 77	FARMINGTON, NH 03835
STATE OF NEW HAMPSHIRE	DEPT OF TRANSPORTATION	1 HAZEN DR	CONCORD, NH 00000
PACKYS INVESTMENT PROPERTIES	LLC	P O BOX 77	FARMINGTON, NH 03835-0077
ROCHESTER MEDICAL PROPERTIES )	MCMANN PROPERTY MGMT II &	4622 PENNSYLVANIA AVE STE 700	KANSAS CITY, MO 64112