



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. 2-24-23

DATE FILED 4/17/24

CS

ZONING BOARD CLERK

Applicant:

SWD Property Management, LLC

E-mail: jarnold@orr-reno.com

Phone: 603-223-9172

Applicant Address: 73 Pickering Road, Suite 203, Rochester, NH 03839

Property Owner (if different): _____

Property Owner Address: _____

Variance Address: 25 Old Dover Road

Map Lot and Block No: 132-39

Description of Property: 8.59 ac +/-

Proposed use or existing use affected: existing building; proposed subdivision

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 19.1(A)(1)

and asks that said terms be waived to permit subdivision to create one lot having approximately 38.5% lot coverage and

one lot having approximately 67.5% lot coverage.

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: _____

Date: April 16, 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. 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

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.

N/A

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 (the Dumont family). The Property is approximately 8.5 acres and has an existing 70,500 sf. commercial building with associated parking on it. Last spring, the Property was rezoned from General Industrial to Residential-2.

Last summer, the Dumonts proposed building a Dollar General Store on the vacant portion of the Property. This Board granted a variance to allow the retail use in the R-2 Zoning District. Since that time, engineering and design efforts have been ongoing. Under the development proposal, approximately 2.3 acres would be subdivided off of the Property to create a separate lot for the Dollar General store (the “Dollar General Lot”). The remaining 6.3 acre lot would contain the existing building and parking areas, and remain unchanged (the “Dumont Lot”).

When the Property was zoned General Industrial, it was allowed 75% lot coverage. With the rezoning to R-2, maximum permissible lot coverage dropped to only 35%. Today, existing lot coverage is approximately 50%. Under the development proposal, the Dollar General Lot would have approximately 38.5% lot coverage, and the remaining Dumont Lot would have approximately 67.5% lot coverage. Overall, the combined lots will have approximately 60% lot coverage.

Accordingly, the Dumonts seek a variance from Section 275-19.1(A)(1) (Table 19-A), to allow approximately 67.5% lot coverage on the proposed Dumont Lot, and approximately 38.5% on the proposed Dollar General Lot, where a maximum of 35% on each lot is otherwise allowed.

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. The abutting property to the North is in the Neighborhood Mixed Use district, which allows 90% lot coverage. The properties to the South (39 and 41 Old Dover Road) are existing commercial/industrial developments with similar or greater lot coverage than proposed here. Thus, the proposed lot coverage will be consistent with the surrounding properties. Nor would the lot coverage threaten public health, safety or welfare. If the Property were still zoned General Industrial, the proposed lot coverage would be well under the maximum allowed. The fact that it has been rezoned to R-2 does not give rise to any new or different threats, particularly given that the existing uses are not changing.

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 spirit of the ordinance is to limit lot coverage based on the types of uses. Commercial and industrial uses are generally expected to have greater lot coverage than residential uses. For example, the Zoning Ordinance allows 75%-90% lot coverage in the commercial and industrial districts, and anywhere from 35%-60% in the residential districts. Normally, the actual use of a property is consistent with the underlying zoning district (i.e., residential uses are in residential districts, and commercial uses are in commercial districts). If the Property were being used for residential use, the spirit of the ordinance would favor the reduced lot coverage. But here, the existing use is a grandfathered commercial/industrial use, and the proposed Dollar General is a retail use that has been allowed by variance. Given that these uses are permitted, the spirit of the ordinance would favor increased lot coverage typically allowed for such uses.

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. By granting the variance for the retail use, this Board recognized that there would be a public benefit to allowing the Dollar General store to be built here. The existing undeveloped area where the store would go does not provide any meaningful public benefit in its current condition. It is sandwiched between a retail bank with drive-thru to the North, and the existing industrial/commercial development to the South. The modest increase in overall lot coverage from 50% to 60% for the overall Property will have no impact on the public all.

In contrast, the benefit of the variance to the Dumonts is substantial. Without the variance, the Property cannot be further developed and the Dollar General store cannot proceed.

4. The value of surrounding properties is not diminished.

Granting this variance will not diminish surrounding property values. As set forth above, the proposed lot coverage is consistent with the surrounding properties, and within the limits intended for commercial and industrial uses. The construction of the Dollar General store is likely to have a positive impact on surrounding property values by developing a vacant, underutilized tract of land.

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

The Property is unique in several respects:

- It is adjacent to the Neighborhood Mixed Use District to the North, where 90% lot coverage is allowed;
- Until last year, it was zoned General Industrial, where 75% lot coverage is allowed;
- Although zoned R-2, the existing development on the Property is not residential, and is primarily commercial and industrial; and
- It's the largest lot in this pocket of the R-2 District, and has a relatively small area of undeveloped, but prime commercial land.

The general public purpose of the lot coverage limitation is to ensure adequate open space. Lot coverage limits are generally lower in residential districts to control population density, to provide recreational areas, to improve aesthetics, and to improve infiltration of groundwater. While it makes sense to require more open space in single-family neighborhoods, it does not make sense to strictly enforce residential lot coverage restrictions against properties that have commercial or industrial uses on them, and which are not part of any residential neighborhood.

In this case, the resulting lot coverage is well-below the maximums typically allowed for commercial and industrial uses in the City's other zoning districts. Given the existing and allowed uses on the Property and in the area, there is no purpose served by keeping this open space, and as this Board recognized last summer, the proposed development will provide a benefit to the City and the public. The increase in lot coverage is relatively minor, and the new construction will include a fully-engineered stormwater system to properly handle drainage and runoff.

For these reasons, there is no substantial relationship between the general public purposes of the ordinance and its specific application to the Property, and the proposed lot coverage is reasonable.

ZONING

275 Attachment 6

City of Rochester

Table 19-A Dimensional Standards - Residential Districts
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

	Lots			Setbacks				Other			Standards, Notes and References		
	Minimum Lot Area (square feet)	Minimum Frontage (feet)	Minimum Lot Area/ Dwelling Unit (square feet)	Minimum Front (feet)	Maximum Front (feet)	Minimum Side (feet)	Minimum Rear (feet)	Maximum Building Footprint	Maximum Lot Coverage	Maximum Number of Stories	Minimum Building Height (feet)	Maximum Building Height (feet)	A "—" means there is no dimensional standard for this item
Residential Districts													
Residential-1 (R1)													
Single-family	10,000	100	—	10	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
All other uses	10,000	100	—	10	—	10	20	30%	35%	—	—	35	
Residential-2 (R2)													
Single-family	6,000	60	—	10	—	8	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Two-family	9,000	80	—	10	—	8	20	30%	45%	—	—	35	See Article 19, Dimensional Standards
Three- and four-family	12,000 and 15,000	80	—	15	—	10	25	30%	60%	—	—	35	See Article 19, Dimensional Standards
Five- or more family	30,000	100	5,000 or 7,500	15	—	10	25	30%	60%	—	—	35	See Article 19, Dimensional Standards
All other uses	9,000	80	—	10	—	8	20	30%	35%	—	—	35	
Neighborhood Mixed Use (NMU)													
All uses	6,000	60	—	—	25	5'	20	—	90%	3	20	20	See Article 19, Dimensional Standards
Agricultural (AG)													
Single-family, conventional subdivision, municipal water and sewer	20,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, municipal water or sewer	30,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, neither municipal water nor sewer	45,000	150	—	20	—	10	20	30%	35%	—	—	35	See Article 19, Dimensional Standards
Two-family	150%	150	—	20	—	10	20	30%	40%	—	—	—	See Article 19, Dimensional Standards
Single-family dwelling - conservation subdivision	6,000	60	—	20	—	10	20	—	35%	—	—	35	See Article 33, Conservation Subdivisions
All other uses	45,000	150	5,000 or 7,500	20	—	10	20	—	40%	—	—	35	

NOTES:
Note 1: For lots that adjoin a residential district, the side setback on the side adjoining the residential district shall be the larger of the required side setback in the subject commercial zone or the adjoining residential zone.
Note 2: For lots without both water and sewer, 10,000 square feet of lot area is required per additional dwelling unit beyond one.



25 Old Dover Road

City of Rochester, NH

1 inch = 160 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.

CURRENT OWNER			UTILITIES		TOPO		ZONING		CURRENT ASSESSMENT			VISION																													
SWD PROPERTY MANAGEMENT LLC P O BOX 716 EXETER NH 03833-0716			0	CITY WATER C	0	LEVEL	IN INDUSTRIAL		Description BLDG LAND OB	LUC Co	Prior Assessed	Current Assesse	ROCHESTER, NH 																												
			0	CITY SEWER		NEIGHBORHOOD	NHBD NAME			400	1,452,200	1,452,200																													
			0	NONE		3008	COMMERCIAL GONIC			400	405,900	405,900																													
			UTL/ST / TRAF		EXEMPTIONS		400	115,700		115,700																															
			0	CITY WTR PBO	Year	Code	Description																																		
0		PAVED																																							
0		MEDIUM																																							
LEGAL DESCRIPTION																																									
RECORD OF OWNERSHIP																																									
BK-VOL/PAGE			SALE DATE		SALE PRICE		SALE CODE		PREVIOUS ASSESSMENTS (HISTORY)																																
2885 37			10-22-2003		1,250,001		02		Year	Descr	Prior Assesse	Year	Prior Assesse																												
1732 747			03-02-1994		1,000,000		51		2020	BLDG	1,446,600	2021	1,452,200																												
1533 310			11-28-1990		0		99			LAND	405,900		405,900																												
1307 604			04-28-1987		0		99			OB	88,300		115,700																												
1286 453			01-12-1987		0		99																																		
Total			Total		Total		Total		Total																																
1,940,800			1,940,800		1,940,800		1,940,800		1,973,800																																
APPRAISED VALUE SUMMARY																																									
Appraised Building Value (Card)																																									
Appraised Extra Feature Value (Bldg)																																									
Appraised Outbuilding Value (Bldg)																																									
Appraised Land Value (Bldg)																																									
Total Appraised Parcel Value																																									
Valuation Method																																									
1,973,800																																									
C																																									
BUILDING PERMIT RECORD																																									
Issue Date		Permit Id		Description		Price		Insp Date		% C		Stat		Notes																											
10-30-2020		M-20-572		BOILER		3,985		02-18-2021		100		C		replace gas unit wall hung unit using existing hookups																											
04-17-2020		B-20-140		SIGN		4,700		02-18-2021		100		C		2 wall signs for Sherwin Williams;																											
02-25-2019		M-19-49		HEATING SYS		13,978		04-29-2019		100		CE		rooftop unit;																											
01-04-2019		E-19-6		ELECTRIC		5,000		04-29-2019		100		CE		Wire 2 medical rooms, 2 office spaces, 2 meeting rooms																											
01-04-2019		B-18-940		INT RENOV		65,000		04-29-2019		100		CE		office retrofit;																											
01-29-2016		12833		PLUMBING		2,000		04-15-2016		100		C		ADD SINK;																											
01-29-2016		12827		ELECTRIC		4,100		04-15-2016		100		C		NVC;																											
01-12-2016		12658		INT RENOV		38,869		04-15-2016		100		C		TENANT FITUP;																											
02-04-2015		9802		MANUAL		500		03-24-2015		100		C		GAS PIPING;																											
08-12-2011		11-859		PLUMBING		5,000		12-15-2011		100		C																													
02-10-2011		1828		WATER HEATE		2,000		03-16-2012		100		C																													
07-02-2010		10-573		A/C		5,000		12-29-2010		100		C																													
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		UnitPrice		Appraised Value		Assessed Value		Notes	
1		4000		MANUFACT		4.000		PRIMARY		P		1,000		90,000		1.00000		1.00		3008		1,000												90,000		360,000		360,000			
1		4000		MANUFACT		4.590		EXCESS A		E		1,000		10,000		1.00000		1.00		3008		1,000												10,000		45,900		45,900			

**ABUTTERS LIST (DIRECT)
AS OF
APRIL 8, 2024
FOR
25 OLD DOVER ROAD, ROCHESTER, NH
JBE PROJECT No. 23050**

APPLICANT AND OWNER OF RECORD:

TAX MAP 132/ LOT 39
SWD PROPERTY MANAGEMENT LLC
ATTN: BRIAN DUMONT
73 PICKERING ROAD, SUITE 203
ROCHESTER, NH 03839
BK 2885/PG 37 (10/22/03)

ABUTTERS:

131/1 & 2
HALEY & RICHARD PARTNERS
724 COLUMBUS AVE
ROCHESTER, NH 03867
3043/379 (08/02/04)

131/3
KEVIN SIPULA
736 COLUMBUS AVE
ROCHESTER, NH 03867
5019/499 (03/25/22)

132/26
KENNETH POULIN
20 OLD DOVER RD
ROCHESTER, NH 03867
1873/270 (06/26/96)

132/27
RUTH WALLINGFORD
22 OLD DOVER RD
ROCHESTER, NH 03867
842/293 (05/14/68)

132/28
MICHAEL ELDRIDGE
24 OLD DOVER RD
ROCHESTER, NH 03867
4882/532 (03/17/21)

132/29
MICHAEL & MARCIA MAHAN
14 BRIALLIA CIRCLE
NEWMARKET, NH 03857
4839/673 (11/30/20)

132/30
DENNIS & CHERYL THOMPSON
28 OLD DOVER RD
ROCHESTER, NH 03867
3232/906 (08/01/05)

132/31
OAKRIDGE CONDO ASSOC.
C/O EVERGREEN MANAGEMENT
17 COMMERCE DR.
BEDFORD, NH 03110
1362/448 (12/12/87)

132/36
CITY OF ROCHESTER
31 WAKEFIELD ST
ROCHESTER, NH 03867
1379/483 (05/15/87)

132/37 & 38
41 OLD DOVER ROAD LLC
41 OLD DOVER RD
ROCHESTER, NH 03867
4007/189 (04/04/12) – LOT 37
4175/998 (10/15/13) – LOT 38

132/40
NORTHEAST CREDIT UNION
% ACCOUNTING DEPT
PO BOX 1240
PORTSMOUTH, NH 03802
2913/282 (12/10/03)

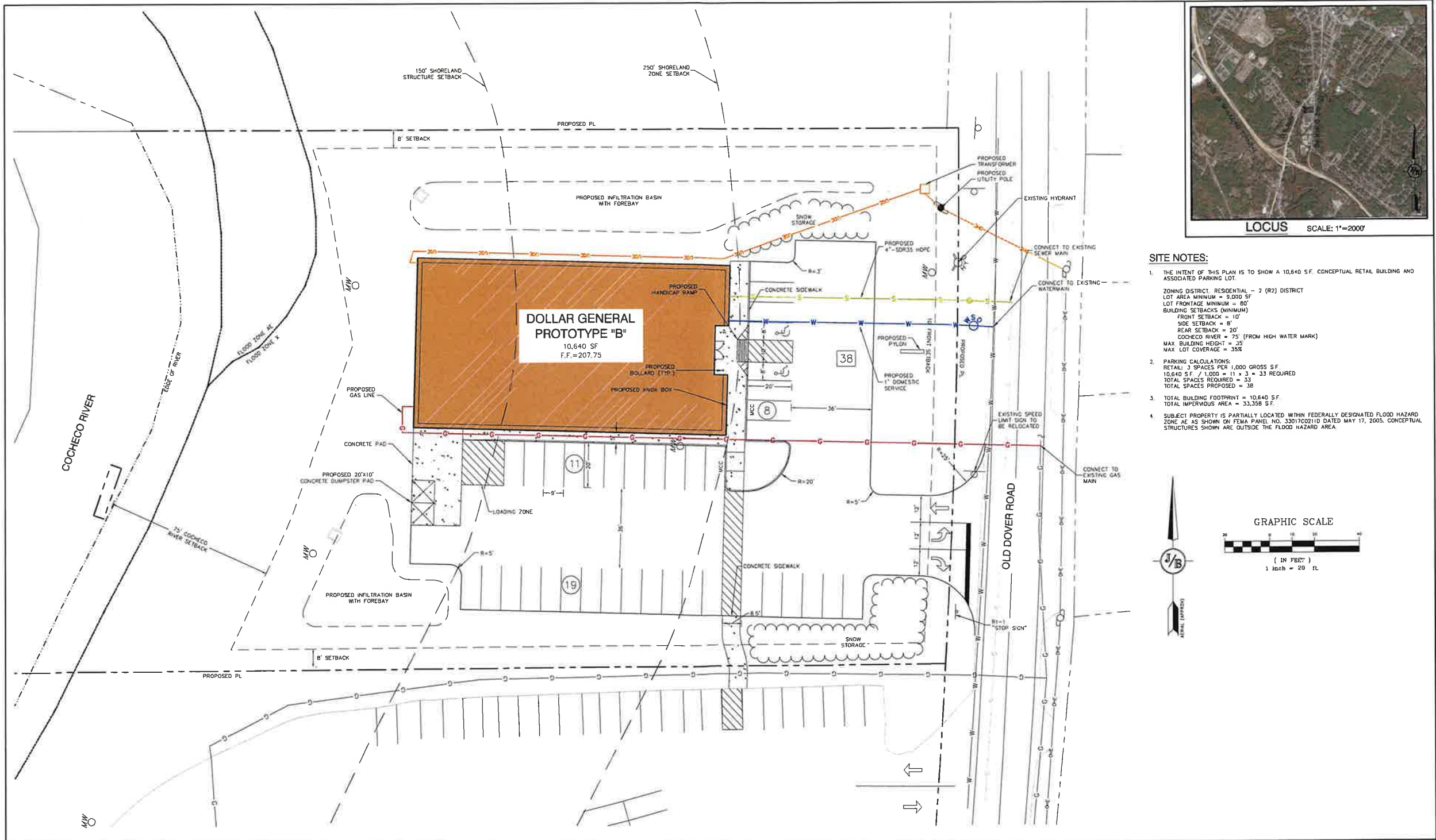
132/45
710 COLUMBUS AVENUE LLC
112 GATES ST
PORTSMOUTH, NH 03801
4484/94 (06/10/17)

ENGINEERS/SURVEYORS:

JONES & BEACH ENGINEERS, INC.
ATTN: WAYNE MORRILL
PO BOX 219
STRATHAM, NH 03885

ATTORNEY FOR APPLICANT

JOHN L. ARNOLD, ESQ.
ORR & RENO, P.A.
45 SOUTH MAIN STREET
CONCORD, NH 03301



Design: EMP, Draft: GAP, Date: 4/16/24
Checked: WGM, Scale: AS NOTED, Project No.: 23050
Drawing Name: 23050-PLAN.dwg
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.



REV.	DATE	REVISION	BY
3	4/16/24	ISSUED FOR DESIGN REVIEW	EMP
2	2/01/23	ISSUED FOR DESIGN REVIEW	EMP
1	5/15/23	REVISED ZONING INFORMATION	GDR
0	3/24/23	ISSUED FOR REVIEW	GDR

Designed and Produced in NH
J/B Jones & Beach Engineers, Inc.
85 Portsmouth Ave., Civil Engineering Services 603-772-4746
P.O. Box 219, Strafford, NH 03865 FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name: **SITE AND UTILITY PLAN**
Project: **RETAIL CONCEPT**
25 OLD DOVER RD, ROCHESTER, NH
Owner of Record: **SWD PROPERTY MANAGEMENT LLC**
PO BOX 716, EXETER, NH 03833-0716

DRAWING No.
C2
SHEET 1 OF 3
JBE PROJECT NO. 23050