



## Barrington Zoning Board of Adjustment Zoning Ordinance Variance and Special Exception Application Checklist

Please schedule a meeting with staff before submitting your application.

This checklist has been prepared to assist you in submitting a complete application to the Town of Barrington. At the Pre-Application meeting, staff will check off the items on this list that are required with your submission.

*This document constitutes a public disclosure under RSA Chapter 91 – A, Access to Governmental Records and Meetings.*

Date 11/30/2022 Case No. 239-7-TC-22-Van  
Owner Town Center Properties, LLC  
Mailing Address PO Box 727, Dover, NH 03821-0727  
Phone \_\_\_\_\_ Email \_\_\_\_\_

### PART I – GENERAL REQUIREMENTS

*All Graphics shall be to Scale and Dimensioned*

Description of Documents Required for Complete Application. No application shall be accepted without all items marked below.

Req	Rec
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- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Zoning Board of Adjustment Application Checklist ( <i>this form</i> )  |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. ZBA General Information (Article(s) and Section(s) of Ordinance)   |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Appeal and Decision  |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Fees - \$150.00 Application <input type="checkbox"/><br>\$ 75.00 Legal Notice <input type="checkbox"/><br>\$ 7.00 per US Post Office Certified Letter <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Completed Project Application Form<br><input type="checkbox"/> Variance <input type="checkbox"/> Special Exception <input type="checkbox"/> Appeal                             |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Notarized Letter of Authorization (from property owner(s) if property owner did not sign the application form)   |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Project Narrative  |

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- ☐ ☐ 8. HOA Approval (*if applicable*)
- ☐ ☐ 9. Context or Locus Map (Show Surrounding Zoning Districts)
- ☐ ☐ 10. Existing Conditions Site Plan or Recorded Subdivision Plan to include well and septic location (may be found at Strafford County Registry of Deeds).
- ☐ ☐ 11. Existing Conditions Photo Exhibit (*See instruction page for submitting photos*)  
Up to four photos may be shown per 8 1/2" X 11" page size
  - a. Show all existing structures on site
- ☐ ☐ 12. List of Certified Abutters (Include Applicant and all licensed professionals, i.e., engineer, architect, land surveyor, or soil scientist, whose seals are affixed to the plan, as well as any holder of a conservation or agricultural easement)
- ☐ ☐ 13. Mailing Labels (4 sets)

**PART II – REQUIRED PLANS AND RELATED DATA**  
*All Graphics and Plans Shall be to Scale and Dimensioned*

- ☐ ☐ 1. Site Plan - ***Drawn and Stamped by Registered Land Surveyor***
  - a. 24" X 36" – 2 Copies
  - b. 11' X 17" – 6 Copy
  - c. 8 1/2 " X 11" – 1 Copy
- ☐ ☐ 2. Elevations: Show all sides of building and indicate building heights
  - a. 24" X 36" – 2 Copies
  - b. 11' X 17" – 6 Copy
  - c. 8 1/2 " X 11" – 1 Copy
- ☐ ☐ 3. Floor Plans
  - a. 24" X 36" – 2 Copies
  - b. 11' X 17" – 6 Copy
  - c. 8 1/2 " X 11" – 1 Copy
- ☐ ☐ 4. All drawings and any revised drawings must be submitted in PDF format
- ☐ ☐ 5. OTHER: \_\_\_\_\_
- ☐ ☐ 6. Your Appointment Date and Time for Submitting the Complete Application is:

Barbara Irvine  
 Staff Signature

11-30-2022  
 Date

**Land Use Department**  
**Town of Barrington; 333 Calef Highway; Barrington, NH 03825**  
 Phone: 603.664.5798

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PART III – PROJECT DESCRIPTION/VARIANCE DETAILS

Case No. 239-7-TC-22-Van

Project Name Town Center Properties, LLC

Location Address Calef Highway/Malego Road

Map and Lot Map 239, Lot 7

Zoning District (Include Overlay District if Applicable) Commercial 1-125

**Property Details:**

☐ Single Family Residential ☐ Multifamily Residential ☐ Manufactured Housing  
☒ Commercial ☐ Mixed Use ☐ Agricultural ☒ Other

Use: \_\_\_\_\_

Number of Buildings: \_\_\_\_\_ Height: \_\_\_\_\_

Setbacks: Front \_\_\_\_\_ Back \_\_\_\_\_ Side \_\_\_\_\_ Side \_\_\_\_\_

**Description of Request**

Cite the Section of the Zoning Ordinance you are requesting a Variance or Special Exception for.

If this is an Appeal from an Administrative Enforcement Order, Planning Board Decision, or Zoning Board of Adjustment Decision, please attach pertinent documentation:

See attached.

**Project Narrative:** *(Please type and attach a separate sheet of paper)*

See attached.

**Barrington Zoning Ordinance Requirements:**

See attached.

**Request:** *(You may type and attach a separate sheet of paper)*

See attached.

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**PART IV – If this is a JUSTIFICATION FOR VARIANCE**

The Zoning Board of Adjustment may not authorize a zoning ordinance variation unless ALL of the following criteria are met. Please provide evidence that the requested Variance complies by addressing the issues below.

- ☐ 1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

See attached.

- ☐ 2. Granting the variance would be consistent with the spirit of the Ordinance.

See attached.

- ☐ 3. Granting the variance will not result in diminution of surrounding property values.

See attached.

- ☐ 4. Granting of the variance would do substantial justice.

See attached.

- ☐ 5. Granting of the variance would not be contrary to the public interest.

See attached.

**PART V – If this is a JUSTIFICATION FOR SPECIAL EXCEPTION**

Please provide evidence that the requested Special Exception complies by addressing the issues below.

- ☐ 1. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas, or other access ways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or unsightly outdoor storage of equipment, vehicles, or other materials.

- ☐ 2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.

- ☐ 3. No creation of a traffic safety hazard or substantial traffic congestion will result in the vicinity of the proposed development.

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☐ 4. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection, and schools.

☐ 5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site that would result in the loss of significant habitat or flood control protection.

In addition to the guiding principles specified above, the ZBA may condition the granting of a special exception upon more stringent standards if the Board determines that such conditions are necessary to protect the health and welfare of the town and its residents. Such conditions may include the following and should be addressed in the Narrative:

- ☐ 1. Front, side, or rear yards in excess of the minimum requirements of this Ordinance.
- ☐ 2. Screening of the premises from the street or adjacent property by walls, fences, or other devices.
- ☐ 3. Limitations on the size of buildings and other structures more stringent than minimum or maximum requirements of this Ordinance.
- ☐ 4. Limitations on the number of occupants and methods and times of operation.
- ☐ 5. Regulation of the design and location of access drives, sidewalks, and other traffic features.
- ☐ 6. Location and amount of parking and loading spaces in excess of existing standards.
- ☐ 7. Regulation of the number, size, and lighting of signs in excess of existing standards.

Daniel D. Sabriel (member) 11/28/22  
Signature of Applicant Date

Daniel D. Sabriel (member) 11/28/22  
Signature of Owner Date

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PLANNING & ZONING

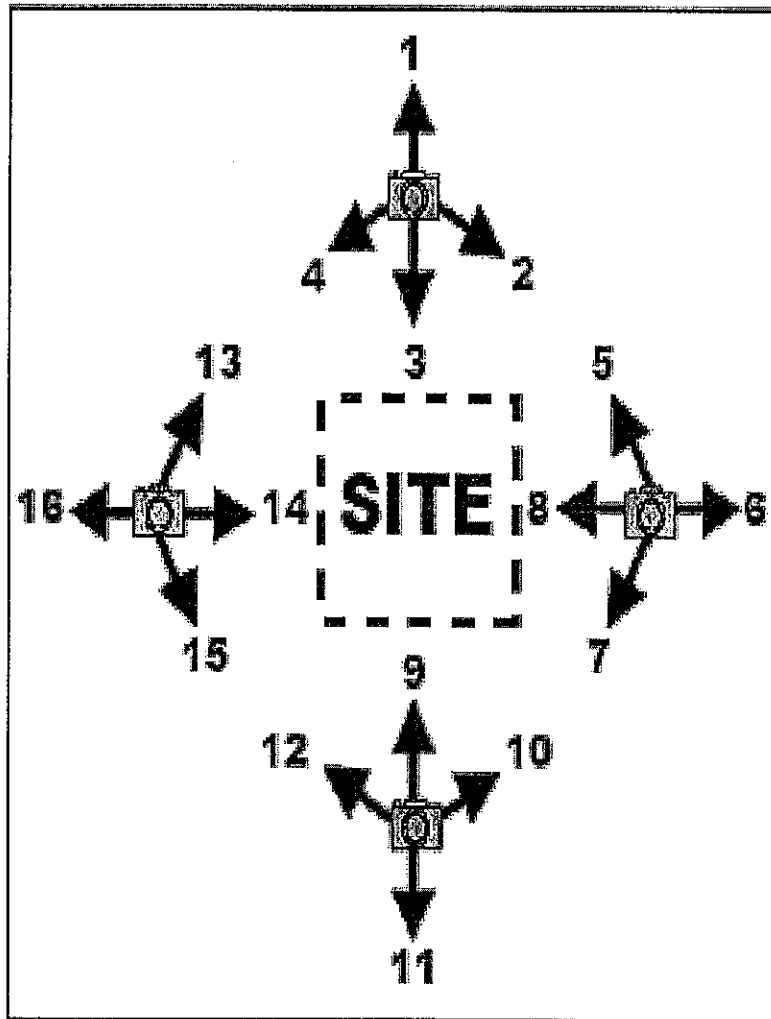
## SITE / CONTEXT PHOTOS

### Using Guidelines Below

Provide color photographs showing the site and surrounding buildings/properties in order to provide staff, boards and commissions with a visual impression of the current site conditions.

1. Photos are to be taken looking toward the site and adjacent to the site.
2. Photos should show adjacent improvements and existing on-site conditions.
3. Number the photographs according to view.

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STATEMENT OF AUTHORIZATION

The undersigned, Daniel Gabriel, Member of Town Center Properties LLC, a New Hampshire limited liability company (the "Company"), owner of property located on Calef Highway/Mallego Road, Barrington, NH, does hereby authorize Francis X. Bruton, III, Esquire, or any other attorney with the law firm of Bruton & Berube, PLLC, to prepare, sign and file any and all applications and supporting materials with the Town of Barrington land use boards and departments, including, but not limited to, the Zoning Board of Adjustment and/or Planning Board, and does further authorize Francis X. Bruton, III, and any other attorney associated with the firm of Bruton & Berube, PLLC, to represent the Company's interests before the said land use boards with regard to the proposed project by Town Center Properties LLC on the property located on Calef Highway/Mallego Road, Barrington, NH.

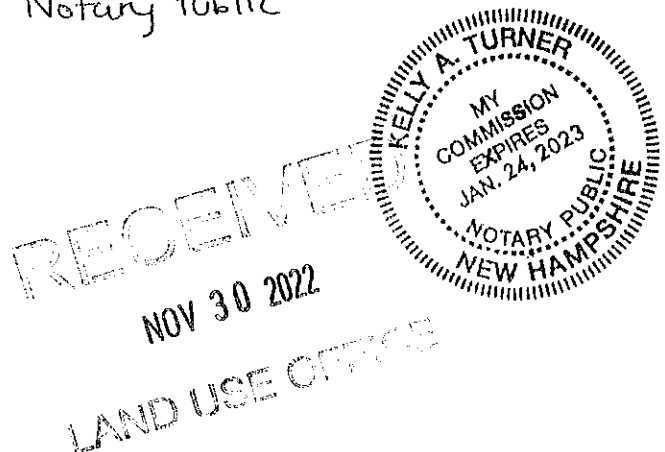
Town Center Properties LLC

By: *Daniel D Gabriel*  
Daniel Gabriel, Member

State of New Hampshire  
County of Strafford

Date: 11/28/2022

*Kelly Turner*  
Notary Public



## **Project Narrative**

The Owner/Applicant, Town Center Properties, LLC, is proposing a mixed-use project within the Town Center District utilizing the Planned Unit Development ("PUD") regulations within Section 16 of the Barrington Zoning Ordinance. The proposed development is depicted on the enclosed plan and would be constructed on the property depicted on the Town tax Maps as Map 239, Lot 7 (the "Lot"). The project represents plan concepts taken directly from the original feasibility study conducted by the Town in 2007 when developing the Town Center District (see attached Schematic Town Center Concept Plan). Specifically, Town Center Properties, LLC is proposing a planned unit development with land dedicated for public use and designed for tennis courts, pickle ball courts, youth playground, walking trails and town common band stand, all directly abutting the US Post Office. In addition, two (2) three-story buildings are proposed devoted to the elderly 55+ with services provided from independent living to all stages of nursing care. One building will be a Nursing Facility or Elderly Assisted Care Home<sup>1</sup> and one building will be Senior Housing. It is anticipated that the facilities will provide specialty geriatric care, medical assisted living, hospice, gym, exercise and nutrition programs, physical and cognitive programs, elderly day care and other service needs for elderly care.

In addition to the services above the Applicant is proposing a one-story medical office building and a one-story child day care facility to service the needs of workers within the development and suited to meet the needs of the Barrington community as well. We believe that this plan meets the spirit and intent of the original drafting of the ordinance and are seeking variances for density necessary for the feasibility of the project as a whole.

Town Center Properties, LLC has consulted with industry experts in the field and have incorporated suggestion of those knowledgeable in this area to produce a harmonious living environment as well as provide public access to recreational and civic areas for the Town.

The Applicant presented the project to the Barrington Planning Board on a preliminary conceptual basis. The majority of the Planning Board was very receptive to the project, with direct references from members seeing the correlation of the plan with the original concepts discussed when the Town Center District was conceived. The Planning Board members recognized the appropriate location of such a development and acknowledged that the public space that would be available to the Town would be a significant asset to the Town and its citizens.

The Applicant met extensively with the Town Planner and Code Enforcement and, as a result of these discussions, it was determined that variances were required in order for the development to move forward. Those variances as described as follows:

**Variance #1:** The Applicant proposes a Nursing Facility or Elderly Assisted Care Home, which are permitted uses within the Town Center District. These uses are identified within Table 1 of the Town's Zoning Ordinance as commercial uses. As the project will be developed as a

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<sup>1</sup> The Applicant recognizes that the Barrington Zoning Ordinance makes a distinction between a Nursing Facility and an Elder Assisted Care Facility, where the basic difference is that a Nursing Facility provide 24-hour nursing care, where an Elderly Assisted Care Facility may provide nursing care that does not extend to 24-hours a day. To provide flexibility, the Applicant is asking for relief as to density that relates to either use.

PUD, the amount of density is based upon utilizing 50% of the available upland for either use. The available uplands is 13.1 acres or 570,636 sq. ft. Thus, 50% of the available uplands is 285,318 sq. ft. Footnote 15 of Table 1 limits the number of bedrooms to one (1) bedroom per 10,000 available uplands, which, after rounding up per the Zoning Ordinance, equals 29 permitted bedrooms. For an Elderly Assisted Care Home, Footnote 3 limits the facility to no more than 15 beds. The proposal is for 62 bedrooms, requiring a variance for 47 bedrooms, and as such, the Applicant requests a Variance from Article 19, Table 1: Table of Uses, footnote 15 to allow for a total for 62 bedrooms where 29 are permitted.

**Variance #2:** The Applicant also proposes a building of Senior Housing, which is permitted in the Town Center District, if proposed as part of a PUD. The use is subject to Footnote 6 of Table 1, which restricts the use to no more than 8 dwelling units. In addition, pursuant to the Planned Unit Development regulations, 25% of the land, or 142,659 sq. ft., is permitted to be allocated to residential use, with density, pursuant to Section 16.3.2(2) of the Zoning Ordinance, based upon two units, for a multiunit building, per 40,000 sq. ft., or 7 permitted units. In this instance the Applicant proposes 32 units, and, as such, a variance is requested from Article 16, Section 16.3.2(2) and 16.3.2(3); and from Article 19, Table 1: Table of Uses, footnote 6 to allow for a total of 32 units where 7 units are permitted, to allow the proposed 25 additional units.

### **VARIANCE CRITERIA**

New Hampshire RSA 674:33, I (a)(2) sets forth five criteria upon which variances may be granted. The application of these criteria to the Applicant's proposal is discussed hereafter.

- 1. Special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship to the applicant as defined under applicable law.**

An unnecessary hardship exists when, owing to special conditions of the property that distinguish it from other property, no fair and substantial relationship exists between the public purposes of the ordinance provisions and the specific application of those provisions to the property and the proposed use is a reasonable one. See NH RSA 674:33, I (a) & (b).

As depicted on the enclosed tax map, the Lot is distinguished from other properties in the area given the significant size of the Lot, which is comprised of 13.1 acres. The size of this lot dwarfs other surrounding lots within the Town Center District, affording this lot a significant area to safely accommodate the project as presented. Of particular note, the project will provide all necessary parking spaces required by the Barrington Zoning Ordinance. The ability to accommodate the required number of parking spaces demonstrates that the variances associated with the density requirements as particularly suited for this Lot. In addition, the Lot is buffered from NH Routes 125 & 9, making the proposed uses the most appropriate, with limited visibility to such busy roads, the elderly residential component makes the most sense on this lot as it is needed and is consistent with the original intent expressed when the Town Center District was contemplated.

The proposed structures will not pose a conflict with the public purpose of the ordinance, but rather will create a use that is consistent with and sensitive to the Town Center District regulations, as illustrated hereinabove, while providing much need elderly housing which will be a more affordable option for those that require moderate space, and want to live within the heart of the Town Center area, all the while maintaining commercial uses within the Lot resulting in a highly desirable mixed-use project. The designs reflect a reasonable and much needed use in a manner that respects the overall goals of the zoning ordinance. Limiting the density for this development is unnecessary in this specific instance. To the contrary, the additional density requested herein is required in order for the development to provide the nursing care and common dining facilities that are intended. Common sense dictates that such facilities could not be provided where the Applicant to be limited to \_\_\_ bedrooms in the Nursing Care facility or Elderly Assisted Care Home and/or 7 units in the Senior Living facility. The Applicant respectfully submits, for all of the reasons set forth herein, the denial of the requested variances would frustrate the benefits the project stands to offer to the general public, and would result in an unnecessary hardship to the Applicant. Thus, the Applicant respectfully submits that there is no relationship between the general public purpose of the ordinance, and the specific application of the density requirement given the proposed uses submitted by the Applicant.

**2. Granting the variance would be consistent with 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 configuration of the Lot and the buffering of the property from NH Routes 125 & 9. The spirit of the zone is to foster a mixed use of residential, commercial, civic and open space. Given the significant size of the property, the Applicant is proposing a reasonable plan that can accomplish the mixed-use goal, and provide a vibrant area within the Town, all consistent with the intent of the Town Center District.

To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance, such that it violates the ordinance's basic zoning objectives. It is respectfully submitted, that given the reasons set forth above, the granting of the variances will promote the ordinance's basic zoning objectives as envisioned by the Town Center District.

**3. Granting the variances will not result in diminution of surrounding property values.**

It is respectfully submitted that all of the surrounding properties have a value associated with them that is premised upon the existence of the same type of structures to be located upon the Applicants' property. In this instance, the location of the commercial uses along or near NH Routes 125 & 9, with a mix of residential and civic uses further away from these roads will have no negative affect upon any abutter with respect to its property, as the use will be consistent with other uses in the near vicinity, and consistent with the intent of the existing zoning.

**4. Granting the variances will do substantial justice.**

The grant of the variances would do substantial justice as it would allow the Applicant's property to be utilized in a fashion contemplated by the drafters of the Town Center District regulations by allowing the location of commercial used such as the daycare and Nursing Facility or Elderly Assisted Care Home, while providing a cluster of Senior Housing on one of the largest lots within the Town Center District. This test considers whether the benefit to the Applicants outweighs the burden to the public. In this instance, given the proposed development plan, there will be no burden to the public whatsoever. To the contrary, this development will open up civic uses for the Town and provide services such as daycare and senior care. Accordingly, the benefit to the Applicant would exceed the burden to the public, thus resulting in substantial justice being done.

**5. Granting of the variance would not be contrary to the public interest.**

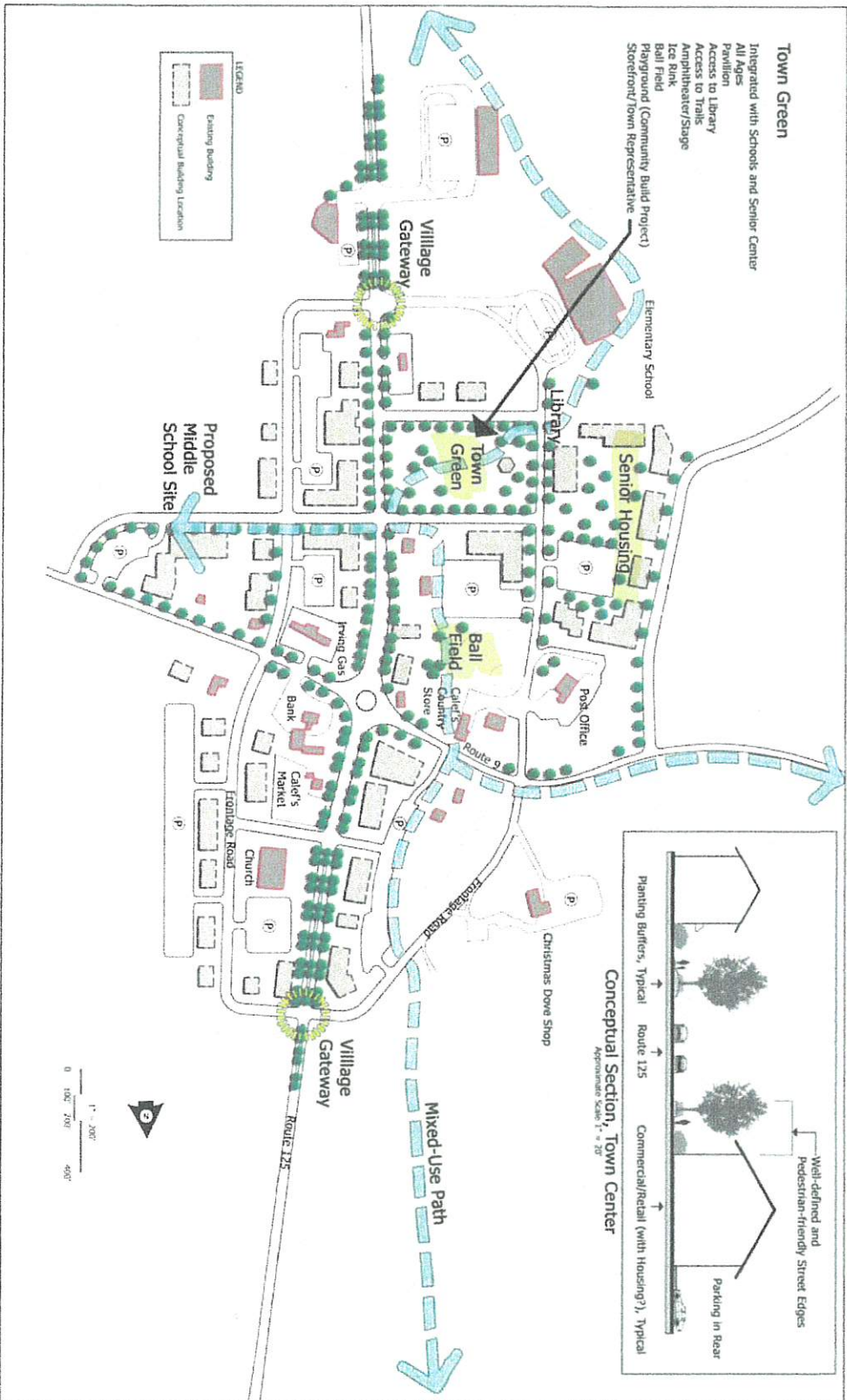
The Applicant respectfully submits that the proposed use represents a reasonable use of the Lot. By permitting the increase density, the public interest is served by permitting orderly development in an area for the specific needs that are contemplated by the Town Center District. In order to provide the services such a nursing care, dining services, etc. that will be offered, the required density requested herein needs to be obtained in order for the project to be feasible. In this instance, the Lot is unique in terms of its location from NH Routes 125 & 9 and its size. It is understood that the basic intent of the Town Center zoning is to create a mixed use of commercial and residential uses. In the first instance, the density calculation allows for only very limited units/bedrooms as described herein within 13.1 acres. This limited amount of housing cannot support the services that are intended to be offered. In order for the Applicant to design a project that works, more residential units/bedrooms are required. Given the location of the Lot, and given the surrounding commercial properties located adjacent to the Lot, all of which will provide excellent support for the elderly living within the development, the Applicant submits that limiting the density within the Lot cannot not accommodate the desired residential or civic/open space uses that are provided in the Applicant's proposal. As such, the proposed use will not be contrary to the public interest, as the use will not "alter the essential character of the locality." Granting the variance will permit the use of the lot as intended and consistent with the purposes of the Town Center District.

**CONCLUSION**

For all of the reasons set forth above Town Center Properties, LLC respectfully requests that the relief requested herein be granted.

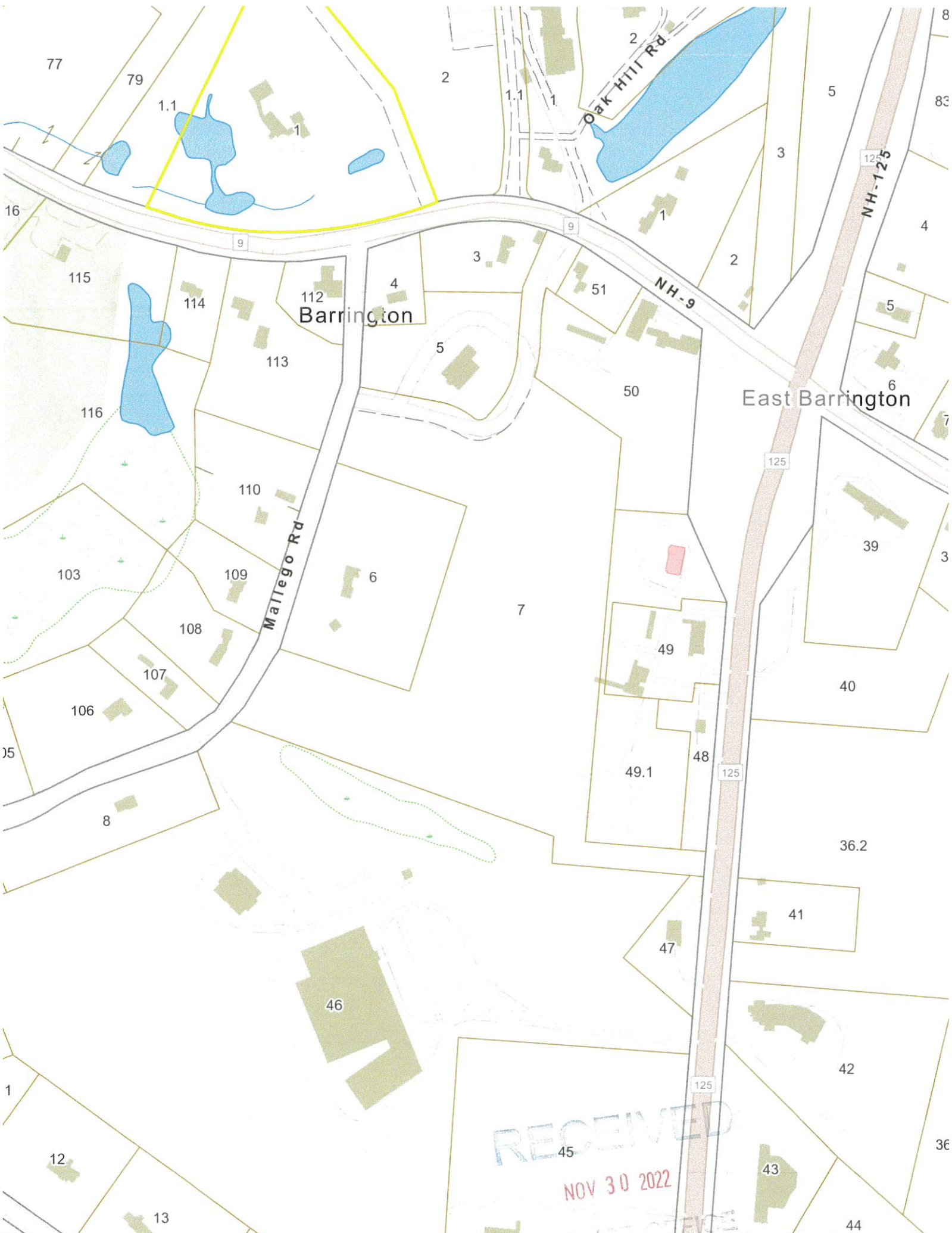


*Schematic Town Center Concept Barrington, New Hampshire*  
POTENTIAL TOWN CENTER (INTERSECTION OF ROUTE 125 AND ROUTE 9)



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LAND USE CENTER



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