

ZONING BOARD OF ADJUSTMENT APPLICATION



Office Use Only	Case #:	<u>269-2-RC-240a</u>	Date Received:	<u>2/27/2024</u>
	Amount Paid:	<u>\$510.00</u> <u>Receipt # 25974</u>	Time Received:	_____

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Robert Diberto Phone # 603-781-4321

Address of Applicant: 334 Durham Road, Madbury, NH 03823

E-Mail Address: stonegreyhouse@gmail.com

PROPERTY OWNER (if different from applicant): _____

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: Route 4

Brief Directions: 200'+- east of the Barrington/Nottingham town line on the south side of Route 4

Zoning District: RC Assessor's Map # 269 Lot(s) # 2

TYPE OF APPEAL: (Please check one)

- Variance from Section 4.1.3(5) of the Zoning Ordinance
- Special Exception per Section _____ of the Zoning Ordinance
- Appeal of Administrative Decision regarding Section _____ of the Zoning Ordinance
- Equitable Waiver per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY (NARRATIVE): (If needed, please submit on additional paper attached to the application.)

Three lot subdivision, with the two back lots obtaining their driveway access from a roadway and easement located in Nottingham. These will be residential use lots.

APPLICATION CHECKLIST (Please check off)

- A. **Application signed** by Applicant and Property Owner (if different from Applicant) x
Note: In order for the application to be accepted by Land Use Department staff and placed on the ZBA agenda YOU MUST COMPLETE (1) ALL SECTIONS ON PAGE 1 as well as (2) ALL QUESTIONS FOR THE SPECIFIC APPEAL YOU ARE SEEKING.

- B. **Seven (7) Copies of Completed Zoning Board of Adjustment Application** x
Note: Only include those pages of the application that are relevant to your request. Please do not include the abutters list with the 9 copies (include only as part of original signed application (Part A above)).

- C. **Context or Locus Map** (Show Surrounding Zoning Districts) x

- D. **Tax Map** (Copy can be attained by the Assessing Office) x

- E. **Existing Conditions** Site Plan or Recorded Subdivision Plan to include well and septic location (may be found at Strafford County Registry of Deeds). x

- F. **Seven (7) Copies of a plot plan** drawn in accordance with a boundary line to scale not less than 1" = 40'. They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks. x
Site Plan - *Drawn and Stamped by Registered Land Surveyor*
 - a. 24" X 36" – 2 Copies
 - b. 11' X 17" – 6 Copies
 - c. 8 1/2 " X 11" – 1 Copy
 - d. PDF copy emailed to Town Planner @ planning@barrington.nh.gov

- G. **Seven (7) copies of colored photos:** Existing Conditions Photo Exhibit x
Up to four photos may be shown per 8 1/2" X 11" page size.
 - a. Photos are to be taken looking toward the site and adjacent to the site.
 - b. Photos should show adjacent improvements and existing on-site conditions.
 - c. Number the photographs according to view.

- H. **List of abutters** 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.) Including addresses and map and lot number of parcels that adjoin or is directly across the street or stream from the land under consideration by the local land use board of the subject property. x

- I. **Mailing Labels** in triplicate with abutters names and addresses for notices. x

J. **TOTAL FEE** paid by cash or check made payable to "Town of Barrington"

1.	Application fee of:		
	\$150.00 VARIANCE		\$ <u>150.00</u>
	\$150.00 SPECIAL EXCEPTION		\$ _____
	\$150.00 APPEAL FROM ADMINISTRATIVE DECISION		\$ _____
	\$150.00 EQUITABLE WAIVER		\$ _____
2.	Certified letters fee: # of abutters <u>9</u>	X \$10.00 =	\$ <u>90.00</u>
3.	Applicant & Owner mailing fee: <u>2</u>	X \$10.00 =	\$ <u>20.00</u>
4.	Foster's newspaper public notice		\$ <u>250.00</u>

TOTAL FEE \$ 510.00

SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.



Signature of Applicant*

*Both Signatures Required



Signature of Owner*

**Please note: if the applicant is representing the owner, a notarized authorization letter must be submitted at the time of the application. **

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Barrington Zoning Board, Land Use Department and other pertinent Town Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post- approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:  _____ Date: 2-26-24

Signature of Land Use Staff: _____ Date: _____

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

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.

A. Variance Requested

A variance is requested from Section(s) 4.1.3(5) of the Zoning Ordinance to permit:

SEE ATTACHED NARRATIVE

B. The Five Variance Criteria (as set forth in NH RSA 674:33, I(b))

Please demonstrate compliance with the following:

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

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

3. Granting of the variance would do substantial justice.

4. Granting the variance will not result in diminution of surrounding property values.

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

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

(i) The following special conditions of the property distinguish it from other properties in the area:

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

and

(iii) The proposed use is a reasonable one because:

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:



BERRY SURVEYING & ENGINEERING

335 Second Crown Point Road
Barrington, NH 03825
Phone: (603) 332-2863
Fax: (603) 335-4623
www.BerrySurveying.Com

To: Ms. Vanessa Price, Town Planner
Town of Barrington, 4 Signature Drive, P.O. Box 660
Barrington, NH 03825

Subject: Robert L. Diberto
NH Route 4, Tax Map 269, Lot 2, Barrington, NH

To Whom it May Concern,

Please note that I, Robert L. Diberto grant permission to Berry Surveying & Engineering to apply for any and all local, state, and federal permits as may be needed to develop Tax Map 269, Lot 2 Barrington, NH. This extends to any Project Manager Level employee or above. Though not an exhaustive list, it is anticipated that local variances, special exceptions, 9.6 applications, conditional use applications, state and federal permits may be needed and authorization is given for signature on application forms.

Robert Diberto
334 Durham Road
Madbury, NH 03823

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

On this the 23 day of February before me, the undersigned office, personally appeared, Robert L. Diberto known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

- Notary Public / Justice of the Peace
My Commission Expires: 5-18-27

Kenneth A Berry
JUSTICE OF THE PEACE
State of New Hampshire
My Commission Expires 5/18/2027



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Barrington, NH 03825

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February 12, 2024

Abutters List

Owner of Record

Tax Map 269, Lot 2

Robert L DiBerto
334 Durham Rd
Madbury, NH 03823
Book 4490, Page 869

Barrington Abutters

Tax Map 269, Lot 3

Wilhelm Woods Realty LLC
281 Main St
Durham, NH 03824
Book 3923, Page 487

Tax Map 269, Lot 1-3

Camp McCampo 2023 Rev Tst
Maddie L & Amy M Campo
319 Old Concord Tpk
Barrington, NH 03825
Book 5132, Page 385

Tax Map 269, Lot 8

James & Carina Haley
366 Old Concord Tpk
Barrington, NH 03825

Tax Map 269, Lot 11-1

Heather Cooper
336 Old Concord Tpk
Barrington, NH 03825
Book 3303, Page 683

23-133 DiBerto, Robert
Route 4, Barrington, NH

Page 2 of 3

Tax Map 269, Lot 11-2

Daniel E Ayer
PO Box 1679
Dover, NH 03821
Book 3180, Page 481

Nottingham Abutters

Tax Map 6, Lot 14

James & Carina Haley
366 Old Concord Tpk
Barrington, NH 03825

Tax Map 7, Lot 1-A

Wilhem Woods Realty LLC
Geoffrey N Clark DVM
165 Industrial Park Dr Unit 1
Dover, NH 03820
Book 5213, Page 722

Tax Map 7, Lots 1N-4, 1N-5, 1N-6, 1N-7

Robert L DiBerto
334 Durham Rd
Madbury, NH 03823

Tax Map 7, 2N-2

Greta K & Devin J McNeil
4 Sutton St
Nottingham, NH 03290
Book 6409, Page 2344

Municipalities

Town of Nottingham
ATTN: Town Clerk
139 Stage Rd
Nottingham, NH 03290



BERRY SURVEYING & ENGINEERING

335 Second Crown Pt. Rd., Barrington, NH 03825
(603) 332-2863 / (603) 335-4623 FAX
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23-133 DiBerto, Robert
Route 4, Barrington, NH

Page 3 of 3

Professionals

John P Hayes, III, CSS
7 Limestone Way
N Hampton, NH 03862

Kenneth A. Berry PE LLS
Christopher R. Berry, Project Manager
Berry Surveying & Engineering
335 Second Crown Point Road
Barrington, NH 03825



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crberry@metrocast.net

February 23, 2024

Town of Barrington Zoning Board
4 Signature Drive
Barrington, NH 03825
Re: Minor Back Lot Subdivision (Variance)
Robert L. Diberto
U.S. Route 4/Old Turnpike Road
Barrington N.H.

Dear Chairwoman and members of the Zoning Board,

On behalf of Robert Diberto, Berry Surveying & Engineering (BS&E) submits for Zoning Board review of a Variance to allow driveway access over land which is not the legal frontage as part of a subdivision of Tax Map 269, Lot 2 and which is not part of the neck of the back lots.

Background and General Narrative:

Robert Diberto owns the parcel known as Tax Map 269, Lot 2 which has frontage on Route 4. The rear of this property is the Nottingham Town Line. The parcel has been surveyed by Berry Surveying & Engineering in October of 2018 and a wetlands analysis was conducted by John P. Hayes III, CWS in spring of 2021. There is a large wetland system bi-secting the lot. The site slopes from Route 4 to the rear of the lot. This lot is mostly wooded with a tree line around an existing trail off Route 4 North-West of Warren Road. This lot is currently vacant land. We have supplied a 4-sheet plan set along with this proposal.

Proposal:

Overall, the applicant is proposing to subdivide the existing land into three lots using the back lot ordinance. Two lots will utilize the back lot ordinance and be for residential use and the remaining land will meet the standards of the Regional Commercial zone and be used for commercial use. This subdivision application is in process with the Planning Board. As a part of the process, we are requesting a Special Exception from this board for the two back lots to not have their access off their legal frontage. This variance request is to Section 4.1.3(5) which requires driveways for back lots to be centered in the neck of the back lot as much as possible. These back lots are proposed to take their driveway access from Lipizzan Drive through the rear of the lots and through Nottingham. This driveway access will allow for development of productive upland areas without the need for wetlands impacts.

Five Variance Criteria

- 1.) Granting the variance will not be contrary to the public interest.

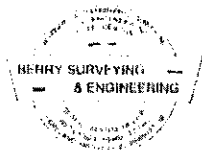
Granting this variance will not be contrary to the public interest. The public interest is in providing safe access to productive upland areas and in protecting the wetland systems of the town. The proposal includes providing access from an approved subdivision in the Town of Nottingham and avoids wetland impacts. The fact that the driveway is not within the neck of the back lots does not substantially change the locality in a marked way. In fact, due to the internal nature of the project and subdivision in Nottingham there is no change to current public infrastructure and will not be seen by the general public.

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

Granting the variance would be consistent with the spirit of the Ordinance. The spirit of the ordinance is to ensure that the driveway placement is safe and constructable while not encroaching on abutting lands. In this case, the neck of the back lots are bisected by a wetland which is 450'+- at the narrowest point. This wetland is a mix of poorly drained and very poorly drained soils and construction of a driveway across this expanse would be very detrimental to the wetland system. We have chosen an area for a shared driveway for the two back lots which requires no wetland disturbance and therefore the request is consistent with the spirit of the Ordinance.

- 3.) Granting the variance would do substantial justice.

Granting the variance would do substantial justice. In this case, substantial justice would be providing access to productive uplands on the lot without the need for a large wetland disturbance for construction of a driveway. There is no loss to or undermining of the ordinance itself that is outweighed by the applicant's ability to reach productive developable uplands.



- 4.) Granting the variance will not result in diminution of surrounding property values.

Granting the variance will be will not result in the diminution of surrounding property values. The streetscape from Route 4 will remain unchanged in this area and the lots in Nottingham which would be affected by the easement are under common ownership with this applicant and have yet to be built out. Therefore, there will be no abutting property values which would be adversely affected. The proposed residential use is permitted on the land and is congruent with surrounding land uses in the area, and therefore does not create any diminution of property value.

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

- i) The following special conditions of the property distinguish it from other properties in the area:

The special conditions of the property lie in both the large wetland ecosystem found on the lot and the marooned upland area found between this wetland and the town line. This upland area is unable to be accessed without a substantial impact to the wetland system or without access provided in the way that this request delineates. The parcel is special in that it has the ability to access this upland from land that is currently under common

And

- ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

The intention of the Ordinance is to ensure driveways are created in such a manner as to be safe and constructable while not encroaching over the boundary lines with grading, snow storage, utilities, and any other construction activities or driveway appurtenances. In this case, a driveway could not be constructed within the neck that would not involve significant wetland impacts which would outweigh the benefit of the driveway being located within the neck.



And

iii) The proposed use is a reasonable one because:

The proposed use is a reasonable one because it allows for driveway access to productive upland areas utilizing an approved subdivision roadway in the Town of Nottingham rather than either requiring a large wetland disturbance or having the upland areas remain inaccessible. We feel that we have chosen not only the more reasonable use, but also the most responsible use.

OR

5b) If the criteria in subparagraph 5A above are not established, explain how, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

There are special conditions of this property that require a variance, and is therefore necessary to enable a reasonable use of the property. Without this variance, the applicant would be forced to either undertake a large permanent wetland disturbance or to have productive upland areas remain inaccessible. This hardship is unnecessary if the variance is granted.

We hope that the board looks favorably upon the request, and BS&E looks forward to working with the board on this application.

Respectfully Submitted,
BERRY SURVEYING & ENGINEERING


Christopher B. Berry
Principal, President



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4.1.2.....Lot Frontage

The side of a parcel used to satisfy the frontage requirement specified in the Table of Dimensional Standards, or other alternative standards, must be the side of the parcel used to provide vehicular access to the property. The Zoning Board of Adjustment may permit, by grant of a Special Exception, that a different side of the property be used for access because site constraints make using the otherwise required frontage inconsistent with protecting the safety, health and welfare of the public.

4.1.3.....Back Lots

For residential subdivisions, up to two (2) back lots may be allowed, notwithstanding the frontage requirements specified in the Table of dimensional Standards.

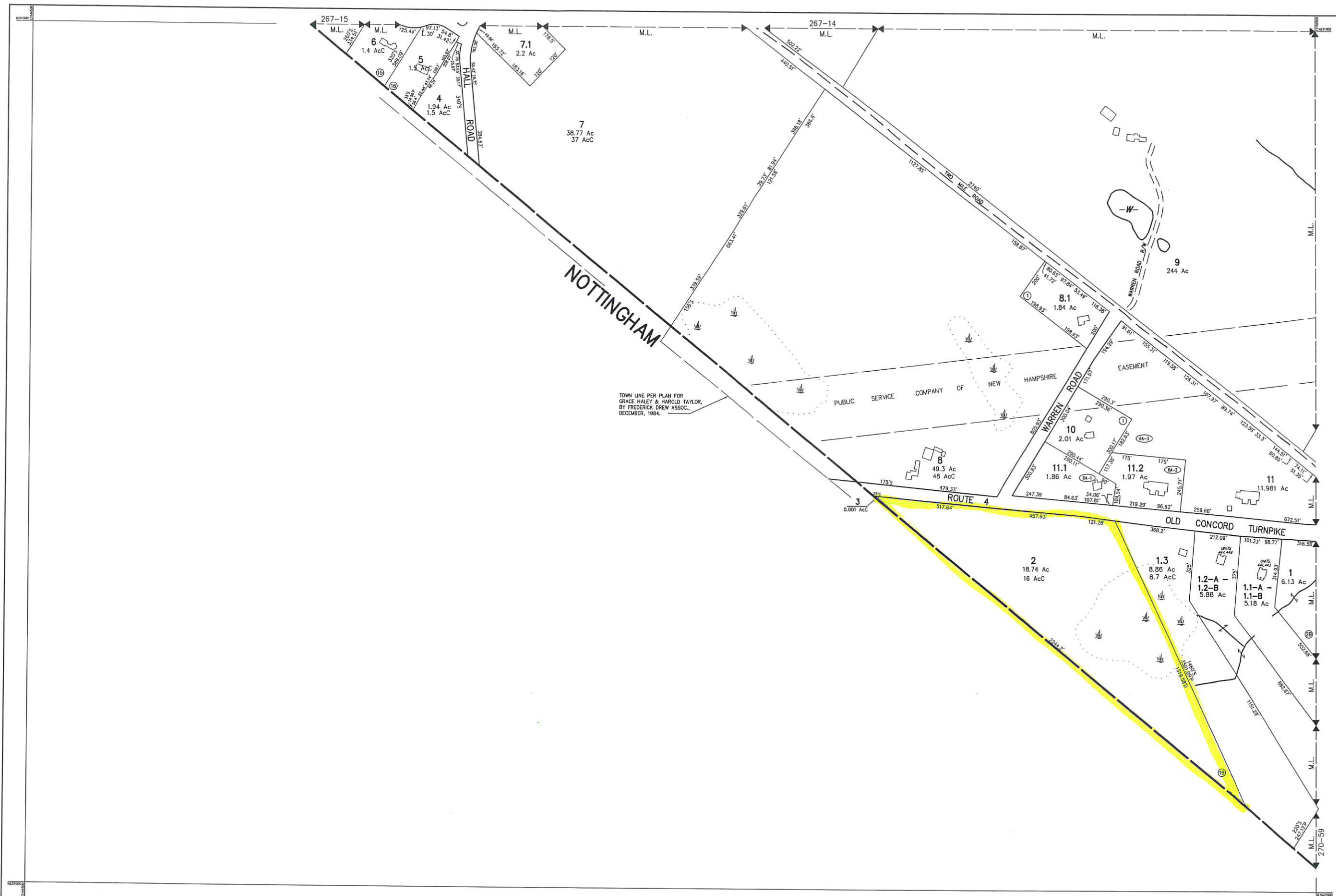
- 4.1.3(1).....The parcel must have at least fifty (50) feet of frontage on an existing Class V or better road.
- 4.1.3(2).....If there are two (2) back lots, the ownership of the neck and frontage shall be owned equally by both back lots.
- 4.1.3(3).....The area of the neck cannot be used in any way to calculate the minimum lot size.
- 4.1.3(4).....Back lots are not allowed off of cul-de- sacs.
- 4.1.3(5).....Driveways must be centered in this neck as much as possible and the neck kept clear and maintained for safety.
- 4.1.3(6).....A permanent road agreement will be executed, shown on the plan and recorded in the deed of each lot.

4.2Minimum Lot Size

The minimum dimensional standards for lots prescribed in Table 2, the Table of Dimensional Standards, shall be determined in accordance with the provisions of this Section. These dimensional standards may be reduced for either a Conservation Subdivision, approved by the Planning Board pursuant to Article 6 or a Planned Unit Development (PUD) approved by the Planning Board pursuant to Article 16.

4.2.1.....Standards for the GR and NR District

- 4.2.1(1).....In the GR and NR districts the minimum lot size for Dwelling, Single-Family is 80,000 sq.ft. which must include at least 60,000 sq. ft. free of Hydric A soils, open water, bogs, marshes, rivers, streams, or exposed ledge. Additionally, the 60,000 sq. ft. must contain at least 35,000 sq. ft. of contiguous upland soils.
- 4.2.1(2).....For each additional one (1) bedroom dwelling unit under a common roof, which does not qualify as an Accessory Dwelling Unit under this Ordinance, the minimum standards cited in Paragraph 1) above shall be increased in the following proportions. Minimum lot size shall be increased by 40,000 sq. ft., the area free of Hydric A soils, open water, bogs, marshes, rivers, streams, or exposed ledge shall be increased by 30,000 sq. ft. and the area of upland soils shall be increased by 15,000 sq. ft. Any dwelling unit created under this provision may contain a total of no more than two additional habitable rooms (such as a kitchen and living room), in addition to a bedroom. No additional habitable rooms may be created in said dwelling units at any time in the future.



THIS MAP IS FOR ASSESSMENT AND PLANNING PURPOSES ONLY. IT IS NOT TO BE USED FOR DESCRIPTION, CONVEYANCE, OR DETERMINATION OF LEGAL TITLE.

THE HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM, NAD 83.

PHOTOGRAPHY DATE: APRIL 25, 2003 COMPLETION DATE: NOVEMBER 2003

CAI Technologies
 Precise Mapping. Geospatial Solutions.

11 PLEASANT STREET, LITTLETON, NH 03561
 603.322.4540 • WWW.CAI-TECH.COM

LEGEND

AREA SURVEYED	Ac	EXEMPT PROPERTY	Ⓢ
AREA CALCULATED	AcC	SUBDIVISION LOT NO.	Ⓣ
RECORDED DIMENSION	100'	BUILDING	▭
SCALED DIMENSION	100'S	RIGHT OF WAY/ACCESS	▬
MATCH LINE	← M.L. →	COMMON OWNERSHIP	▬
WATER	—W—	WETLANDS	⊞

SCALE 1" = 200'

FEET 0 100 200 400 600

METERS 0 50 100 150

REVISED TO : APRIL 1, 2023

PROPERTY MAPS

BARRINGTON

NEW HAMPSHIRE

INDEX DIAGRAM

MAP NO. **269**

268 267 266
 270
 273