



FOUNDED DECEMBER 15, 1727

CHARTED JANUARY 1, 1991

NEWMARKET ZONING BOARD OF ADJUSTMENT
MONDAY, AUGUST 23, 2021
TOWN COUNCIL CHAMBERS
7:00 PM

AGENDA

- 1. Pledge of Allegiance**
- 2. Review and Approval of Minutes**
 - a.** 06/14/21
- 3. Regular Business**
 - a.** Michael Mangan - Public hearing for an application for Variances from Section 32-87 Setbacks and Section 32-89 Dimensions Table, requested by Michael Mangan, to permit the building of a 27' x 18' structure, for personal use, with storage for tenants/owners on the lower level and a multi-purpose space for tenants/owners to do arts/crafts or play music, for example, that has a 16' setback on/from the Washington Street property line, where 25' is required. The property is located at 10 Nichols Avenue, Tax Map U2, Lot 237, R3 Zone.
- 4. New/Old Business**
- 5. Adjourn**



Town Hall
186 Main Street
Newmarket, NH 03857

Tel: (603) 659-3617
Fax: (603) 659-8508

Founded December 15, 1727
Chartered January 1, 1991

TOWN OF NEWMARKET, NEW HAMPSHIRE

ATTACHMENTS:

Description	Upload Date	Type
06/14/21	8/2/2021	Backup Material

**DRAFT
NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

JUNE 14, 2021

MINUTES

Present: Bob Daigle (Chair), Wayne Rosa (Vice Chair), Diane Hardy (Zoning Administrator), James Drago, Steve Minutelli, Al Zink

1. Pledge of Allegiance

2. Review and Approval of Minutes

a. 04/26/21

Action

Motion: Al Zink made a motion to approve the minutes of 04/26/21
Second: James Drago
Vote: All in favor

Steven Minutelli abstained.

b. 05/03/21

Action

Motion: Al Zink made a motion to approve the minutes of 05/03/21
Second: James Drago
Vote: All in favor

3. Regular Business

- a. *Steven & Melinda Breecker - Public hearing for an application for Special Exception reference Section 32-5(2)(a)) & (b) for horizontal and vertical expansion of an***

existing legal non-conforming single-family structure and to permit the construction of an addition to the dwelling that would extend into the Shoreland Protection Overlay District and encroach upon the 125 foot primary structure shoreland setback, The property is located at 19 Moody Point Drive, Tax Map R2, Lot 43-1, R1 Zone.

Attorney Justin Richardson represented the applicant. He stated the property is a nonconforming use. The house was built between 1962 and 1968. He showed a plan of the lot. Post construction the lot will be about 17% impervious. There is encroachment now about 60' back from the river. The addition will have about a 94' setback. The deck will be removed. There is a stone beyond that will be maintained. The project has received the NH Department of Environmental Services (NH DES) Shoreline permit. They received the required wetlands permit. In September 2020, the Conservation Commission voted to recommend approval of the wetlands permit to NH DES. There is reference in the Town files to an approved septic system plan. What he has since learned is that parts of the septic system that were on the approved plan were built, other parts were not. A NH DES Operational permit was never issued. They are proposing to remedy that situation and have retained Susan Faretra. They believe the leach field is original.

The septic system (Construction approval) is approved as a 3 bedroom system. With the addition, they will end up with a total of two bedrooms, as one will become an artist's studio/library.

Regarding the Criteria for a Special Exception as set forth in Section 32-5 (2) (a) and (b),

1. The project will meet the first criteria, as the addition would be no closer to the side lot line. The house is set back 60' from the river, the addition is set back 90'.

2. This project is out of the floodplain. It is up on a high and dry ridge.

Diane Hardy explained new flood maps had been adopted on January 29, 2021 and she wanted to make sure all references were to the new maps. Attorney Richardson stated the plans were done in September prior to the January adoption, but the structure is so much higher than the river. The river elevation at the floodplain is 6' and the house elevation is 32'.

3. The addition is in the only place it can be, with the way the lot is.

4. Mr. Richardson stated Susan Faretra would answer this one regarding the adequacy of water and sewer service.

Mr. Richardson then read a proposed condition that he had drafted. They had found out the septic system was not lawfully installed when they upgraded the house. He showed the septic system on the plan. He indicated there was not much room for its replacement.

The building addition is going to have to be completed before the updated septic system is installed. He read as follows: The Owner shall obtain DES approval to operate for a minimum three bedroom septic within one year of the building Inspector's issuance of a Certificate of Occupancy for the proposed expansion. The Building Inspector may issue one extension for good cause for up to one year. Ideally the two construction activities will be phased together. This will be done within a year. All building setbacks area met.

5. The expansion shall not render the lot proportionally less adequate. The addition meets all other dimensional requirements under the Zoning Ordinance.

6. The expansion does not hurt the general health, safety or welfare of everyone. The closest house is 100 feet away.

7. It will not have an adverse impact on neighboring property. It is set back far away from the closest building and meets all setbacks.

8. It will not exceed the maximum height requirements of 35 feet.

Susan Faretra, Septic Designer, stated the replacement system will go in the same general area as the existing one. It will meet all State and Town setbacks.

Bob Daigle opened the public hearing.

Bob Daigle stated there were three letters of support in the file from abutters Damiani, Prostkoff and Capron.

He asked if the structure was going to be any closer to the lot lines. Attorney Richardson stated yes. He showed the existing conditions plan and the proposed addition. But, it does meet the town's building setbacks. Bob Daigle asked how that complied with the criterion stating it be no closer to the lot line than the original structure. Attorney Richardson stated they are talking about a nonconformity where the new structure is no closer to the shoreland (reference line) than it was originally. Any expansion would be closer to a lot line. There was discussion of this criterion regarding whether this applied to lot lines or the shoreland setback. Diane Hardy stated the nonconformity of this building is with the shoreland setback. You cannot be within 125' of the tidal buffer. The existing structure is not nonconforming because it doesn't meet side building setbacks, it is because it does not meet the shoreland protection overlay district setback requirements. They do not need a variance. Attorney Richardson stated in 32-5(A)(1) it states

“no closer to the lot line”. When it is stated like that it refers to the “nonconformity”. Any expansion is going to be closer to one of the lot lines.

He stated the existing system is working fine and has been regularly pumped.

Bob Daigle closed the public hearing.

James Drago asked about the septic location. Diane Hardy stated Newmarket relies on the State (NH DES) for all aspects of septic systems. Wayne Rosa stated in the early 1990s, the State had operational approvals. But, the Towns and State did not enforce them, so they just gave you an okay to backfill. In the early 2000, Towns started to require approvals from NHDES for the Operation of the system before occupancy could occur.

He stated the condition proposed should read like it’s a new house. Get the NH DES “Construction” approval before the building permit. Then finish the septic system within a year. Attorney Richardson agreed. And, then secure NH DES Operational approval before the Certificate of Occupancy can be issued by the Town.

Bob Daigle stated the submittal as presented would be the Findings of Fact.

Action

Motion: James Drago made a motion to grant the Special Exception with the following conditions:

- 1. Approval for Construction of septic system shall be obtained before getting a building permit;**
- 2. Owner shall obtain DES Approvals to construct and operate for a minimum of a three bedroom septic system within one year of the Building Official’s issuance of a Certificate of Occupancy for the proposed building addition expansion.**
- 3. The expansion shall be within all applicable building setbacks.**
- 4. The Building Official may issue one extension of up to one year for good cause shown, such as site work/ construction requirements, contractor unavailability or similar circumstances.**

(It was noted by the Zoning Administrator that the Site Plans needs to properly reference the official Flood Insurance Rate Map (FIRM), which were effective on January 29, 2021.)

Second: Wayne Rosa

Vote: All in favor

4. New/Old Business

None.

5. Adjourn

Action

Motion: Al Zink made a motion to adjourn at 7:58 pm

Second: James Drago

Vote: All in favor



Town Hall
186 Main Street
Newmarket, NH 03857

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Fax: (603) 659-8508

Founded December 15, 1727
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TOWN OF NEWMARKET, NEW HAMPSHIRE

ATTACHMENTS:

Description	Upload Date	Type
Legal Notice, Application, 5 Criteria, Plans	8/2/2021	Backup Material

FOUNDED DECEMBER 15, 1727

CHARTERED JANUARY 1, 1991



TOWN OF NEWMARKET, NEW HAMPSHIRE
OFFICE *of the* ZONING BOARD OF ADJUSTMENT

LEGAL NOTICE

NEWMARKET ZONING BOARD OF ADJUSTMENT

**MONDAY, AUGUST 23, 2021
7:00 P.M.**

TOWN COUNCIL CHAMBERS

There will be a public hearing for an application for Variances from Section 32-87 Setbacks and Section 32-89 Dimensions Table, requested by Michael Mangan, to permit the building of a 27' x 18' structure, for personal use, with storage for tenants/owners on the lower level and a multi-purpose space for tenants/owners to do arts/crafts or play music, for example, that has a 16' setback on/from the Washington Street property line, where 25' is required. The property is located at 10 Nichols Avenue, Tax Map U2, Lot 237, R3 Zone.

THIS NOTICE WAS POSTED

8/23/21

TOWN HALL ☒ REC DEPT ☒

POST OFFICE ☒ LIBRARY ☒

WEBSITE ☒ NEWSPAPER ☒

SIGNED *S. J. Mangan*



\$205.00
\$08

APPLICATION – ZONING BOARD OF ADJUSTMENT
TOWN OF NEWMARKET, NH

Applicant: Michael Mangano

Mailing Address: 5 Creighton St. Newmarket, NH

Email Address: MAMANGAN@COMCAST.NET

Property owner: Michael & Blaine Mangano Revoc TRT

Mailing Address: _____

Home Phone: _____ Cell Phone: 603-767-2794

Email address: MAMANGAN@COMCAST.NET

Location of property: 10 Nichols Ave Map U2 Lot 237 Zone R3

Description of property: Multifamily on .26 Acres

Proposed use or existing use affected: new building with 16'

setback from Washington St. Approximate size
of building is 27' x 18' (see plan attached).


The following pages contain forms for Appeal from Administrative Decision, Special Exception, Variance, & Equitable Waiver. Please fill out appropriate request sheet. All applications will need completed abutters list.

SECTION 3 VARIANCE

A variance is requested from Section 32-87 and 32-89 of the Newmarket Zoning Ordinance to permit: Building of a structure that has a 16' setback on/from Washington St. property line instead of a 25' setback.

See attached pages for variance criteria

Please sign below for all applications:

Applicant 
Signature

Applicant Michael Mangan
Please Print

Owner 
Signature

Owner Michael Mangan
Please Print

Date 1/29/21

ABUTTERS LIST

1. List the tax map, lot number, name(s) and mailing address of the **property owner(s), applicant (if different from property owners) and all abutters and any others requiring notification**, as shown in Town records, not more than five days prior to submittal per RSA 676:4, I(b). This may be done on a separate sheet. Please indicate the date of preparation and sign your name on each sheet.
2. As applicable, list the name, mailing address, daytime phone number, and email address of the Applicant's Authorized Representative and any surveyor, engineer, architect or soil scientist whose stamp and signature appear in the application materials. Use a separate piece of paper if needed.
3. **Fill out two adhesive mailing labels for EVERY entry on the list. Labels must not exceed 1" tall by 2.75" long in order to fit on the certified mail tags.**
4. **The determination of abutters is the responsibility of the applicant.** This list will not be reviewed for compliance with statutory requirements. Use abutters information available at Town Hall Assessing Office. Do not use information from any other source to determine abutters (online, website, memory, etc.)

Map Lot Owner Mailing Address

07 237 Michael Mawgan 5 Creighton St. Newmarket, NH 03857
PROPERTY OWNER-MUST BE INCLUDED PER STATE LAW

APPLICANT, IF DIFFERENT FROM PROPERTY OWNER

AUTHORIZED AGENT, IF APPLICABLE-PER STATE LAW

All abutters (use separate sheet, if necessary):

See Attached

Date of preparation: 2/24/21

I hereby certify that all information presented on this form is, to the best of my knowledge, correct.

Signature of preparer

Surveyor

Norway Plains c/o Randolph R. Tetrault LLS 729
2 Continental Blvd.
Rochester, NH 03866
603-335-3948
rtetreault@norwayplains.com

Plan Draft

Newmarket Plains c/o Paul LeBeau
443 Wadleigh Falls Road
Newmarket, NH 03857
603-659-0985
Paul@NewmarketPlain.com

Abutter's List – 10 Nichols Ave., Newmarket, NH

Mo v

Michael Mangano

Date 7/28/21

Map U2, Lot 222
Michael P. Filion & Jaqueline B Filion
9 Stagecoach d
Durham, NH 03824

Map U2, Lot 236
Janine Bergeron Trust 2006
21 Nichols Ave.
Newmarket, NH 03857

Map U2, Lot 239
Amanda J. Frick
5 Lincoln Ave.
Newmarket, NH 03857

Map U2, Lot 238
One Lincoln Ave. Realty, LLC
9 Carter Way
Strafford, NH 03844

Map U2, Lot 220
William H. Connery III
105 W River Dr., Apt. 30
Manchester, NH 03104

Map U2, Lot 245
Friends of Lamprey Health Care
207 South Main St.
Newmarket, NH 03857

Map U2, Lot 240
Patricia Kilroy
7 Lincoln Ave.
Newmarket, NH 03857

Map U2, Lot 219
Bruce S. Abbott/Sharon Abbott
5 New Rd.
Newmarket, NH 03857

Map U2, Lot 219-1
Craig A. Bitter
160 Fern Ave.
Rye, NH 03870

OFFICE OF THE
ZONING BOARD OF ADJUSTMENT



INCORPORATED
DECEMBER 15, 1727
CHARTER JANUARY 1, 1991

July 22, 2021

Michael and Elaine Mangan Revocable Trust
5 Creighton Street
Newmarket, NH 03857

Re: Property at 10 Nichols Ave
Newmarket, NH 03857
Tax Map U2, Lot 237, R3 Zone

Dear Mr. and Ms. Mangan,

Thank you for your e-mail of June 21, 2021 concerning the property at 10 Nichols Ave, Newmarket, NH 03857. We understand that you are interested in building a new two-story 27' x 18' accessory structure on your property to be used for storage for your tenants on the lower level and as a multi-purpose space on the second floor for arts/crafts and playing music for your personal use and that of your tenant. The second floor space will not be used as a commercial entertainment venue which will be open to the general public. As we have discussed your lot is a non-conforming lot of .27 acres upon which there is an existing four unit multi-family apartment building. As we have discussed, the existing apartment building is non-conforming as it does not meet current lot size and residential density requirements.

In your request before the Town, you will need to request a variance from the Zoning Board of Adjustment from front setback requirements, pursuant to Sec. 32-87 and Sec. 32-89 of the Newmarket Zoning Ordinance. You would like to build the structure so it has a 16 foot setback on and from the Washington Street right-of-way instead of the 25 foot setback that is required in the R-3 Zone. Because the lot is a corner lot and is non-conforming in size, you would like to be able to situate the proposed two story building without impacting the existing paved parking area that is used for tenant parking.

Therefore, your request for a building permit for this proposal must be denied. You may seek relief from these zoning restrictions from the Zoning Board of Adjustment. Please contact Susan Jordan, our Administrative Assistant, who can provide you with the Zoning Board of Adjustment application, filing requirements, and schedule you to appear before the Board. Meanwhile, if you have any questions regarding this letter, please feel free to contact me.

Sincerely,

Diane Hardy

Diane Hardy
Zoning Administrator

VARIANCE CRITERIA

The local ordinance cannot limit or increase the powers of the Board to grant variances under this authority, but this power must be exercised within bounds. In several decisions from 1952 to the present, the Supreme Court has declared that each of the following criteria must be found in order for a variance to be legally granted:

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

Granting a variance to reduce the 25' set back to 16' would not be contrary to the public interest. The proposed structure to be built is a 27' x 18' building with storage for tenants and/or owners on the lower level and a multi-purpose space on the second level. The multi-purpose space on the second level would be used, for example, for arts/crafts and playing music by tenants and/or owners. A legally non-conforming four-unit multifamily is located on the same lot. Excepting the new construction on Lincoln, the existing multifamily and many (if not all) of the buildings in that neighborhood have substantially less than 25' setbacks. Having a 16' setback would be entirely consistent with the look and feel of the neighborhood's streetscape. It would not block road signs, impede vehicular or foot traffic on Washington street, or impede fire safety vehicle access. The 16' setback will enable preservation of the existing parking area that currently allows for off street parking for all of the resident(s) in the multifamily that's located on the lot. The building will be attractive; gutters and pervious ground cover and landscaping will aid in effectively managing water shedding from the roof and overall, generally enhance the appearance of the area.

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

In granting a variance to reduce the 25' set back to 16' the spirit of the ordinance would be observed. Again, there is a legally non-conforming four-unit multifamily located on the same lot. However, the proposed locus of the proposed building would leave plenty of light and air/open space on the lot, including a large ash tree. Density is actually encouraged in the R3 district, with the Nichols Ave. neighborhood being composed almost entirely of duplexes and multifamily buildings that are quite proximate to each other and to the street. The property in question actually abuts the M-2A district which permits even greater density per acre. The adjacent M2-A zone setbacks are 10 feet side and rear, and 5 feet minimum road setback, which makes them considerably less than those applied to 10 Nichols Ave, even though it is directly across the street in the same neighborhood. A 16' setback for the proposed structure would be entirely consistent with and maintain the look and feel of the neighborhood's streetscape. It would not block road signs, impede vehicular or foot traffic on Washington street, or present fire safety vehicle access issues. Gutters, pervious ground cover and landscaping will manage water shedding from the roof. The 16' setback will allow for the preservation of the existing parking area that presently allows for off street parking for all of the resident(s) in the multifamily there. Generally, the structure and landscaping will enhance the appearance of the area.

CRITERION 3. Granting the variance would do substantial justice because: Substantial justice will be done by granting the variance. The property historically was composed of two lots. It was legally merged in 2019 to allow for better utilization of the existing space. Since it's a corner lot, enforcement of the setback code means having a 25' setback from both Nichols Avenue and Washington Street. These setbacks render the lot unusable for the purposes of building. And under the 25' setback rule, nothing can be built there that allows for the preservation of the existing parking area. No other part of the property is amenable for locating the afore-mentioned structure. I have made a substantial investment in the property and would like to make full use of the land. Granting the variance would enable me to build a structure to use for storage for tenants and/or owners (e.g., for maintenance items, etc.) and for arts/crafts and playing music and, thus, enable us to make the highest and best use of the property.

CRITERION 4. If the variance were granted, the values of the surrounding properties would not be diminished. The building and landscaping will be attractive and enhance the area and is unlikely to negatively impact surrounding property values.

CRITERION 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 unnecessary hardship because:

1. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The property is unique in that area as most, if not all, surrounding buildings in the neighborhood are not corner lots and have no open space in front and substantially less than 25' front setbacks. Having a 16' setback would be entirely consistent with the look and feel of the neighborhood's streetscape. The unnecessary hardship is that with a 25' setback from Washington St. I cannot make the highest and best use of the lot. Literal enforcement of the setback code means having a 25' setback from Nichols AND a 25' setback from Washington street rendering the lot unusable for the purposes of building.

AND

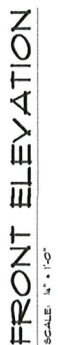
2. The proposed use is a reasonable one because:

The proposed building will allow me to make the best use of the land in a way that's consistent with the surrounding look and feel of the area. The building and landscaping will be attractive and will be an enhancement to that corner area.

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 special conditions of the property that distinguish it from other properties in the area, the property cannot be

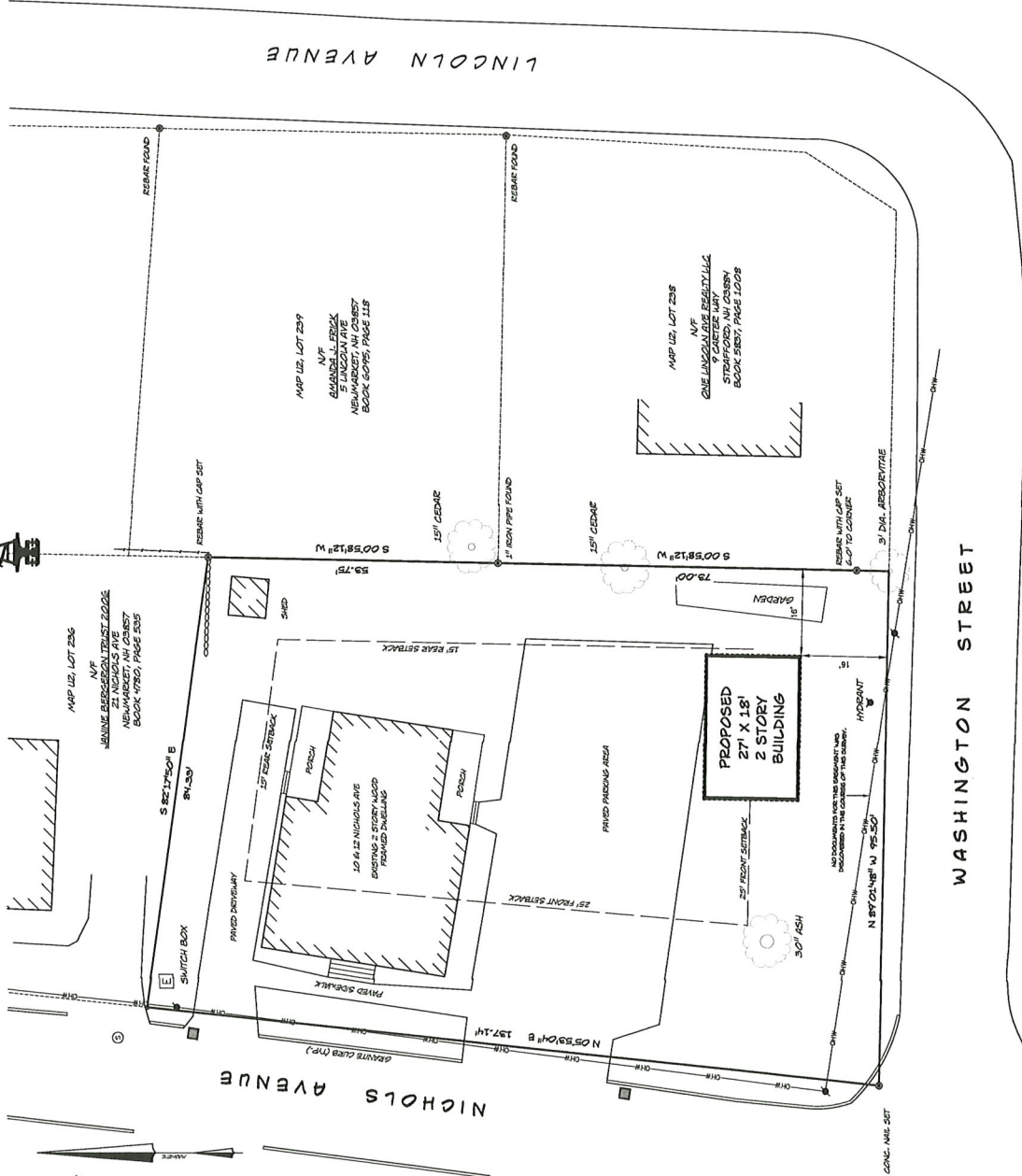
reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

I believe the criteria in A are established. However, it is true that the property cannot be reasonably used in strict conformance with the ordinance. A 25' setback would render the space unusable, especially since there's already a 25' setback from Nichols Ave.



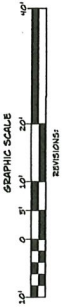
ELEVATION GRADES AND FOUNDATION DROPS SHOWN ARE CONCEPTUAL. FOUNDATION DROPS AND GRADE WILL BE DETERMINED ON SITE BY CONTRACTOR

CIVIL ENGINEERS

[illegible]

TAX MAP U-2, LOT 237
OWNER OF RECORD:
MICHAEL & ELAINE MANGAN REAL TRUST
5 CRIGHTON STREET
NEW MARKET, NH
BOOK 6136, PG 728

PLAN OF LAND
WITH PROPOSED BUILDING
10 & 12 NICHOLS AVENUE
NEWMARKET
ROCKINGHAM COUNTY
NEW HAMPSHIRE
FOR:
MICHAEL MANGAN
1st = 10' JUNE 2021



FILE NO. 212
PLAN NO. C-3147
DWG. NO. 21016 B-1

NORWAY PLAINS ASSOCIATES, INC.
31 MOONEY STREET, ALTON, NH 603-876-3948
2 CONTINENTAL BLVD., ROCHESTER, NH 603-336-3948

CIVIL ENGINEERS

- THE PURPOSE OF THE PLAN IS TO DEFINE THE EXISTING CONDITIONS OF LAND DESCRIBED IN AN ORDINANCE CONCERNING THE RESULTS OF LAND USES, BLOCK (333) PAGE 722.
- TOTAL PARCEL AREA: MAP 1-2, LOT 121 0.37 ACRES
- PARCEL IS ZONED C-3 (MINI-USE RESIDENTIAL)
- MINIMUM LOT REQUIREMENTS: LOT SIZE = 21,760 SQ. FT. OFF-ROAD FRONTAGE = 150 FT.
- MINIMUM SETBACKS: FRONT YARD = 25 FT. SIDE/REAR = 10 FT.
- MINIMUM BUILDING HEIGHT = 36 FT.
- THE SUBDIVIDED PARCELS IS SUBSERVED BY THE MUNICIPAL WATER AND SEWER SYSTEM.
- THE SUBDIVIDED PARCELS IS NOT LOCATED WITHIN THE 100 YEAR FLOOD AS SHOWN ON THE FLOOD HAZARD MAP, BLOCK (333) PAGE 722. THEREFORE, THE SUBDIVISION IS NOT SUBJECT TO THE FLOOD HAZARD MAP, BLOCK (333) PAGE 722.

REFERENCE PLANS:

1. "PLAN OF NICHOLS AVE."
2. "LOT LINE RIGHTS"
3. "SITE PLAN OF NICHOLS STREET COND"

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

[Signature]
RANDOLPH K. TEINIGALLT, W6 729
DATE MAY 6, 2021

TAX MAP U-2, LOT 237
OWNER OF RECORD:
MICHAEL & ELAINE MANGAN REV. TRUST
5 CREIGHTON STREET
NEW MARKET, NH
BOOK 6135, PG 728

PLAN OF LAND
10 & 12 NICHOLS AVENUE
NEWMARKET
ROCKINGHAM COUNTY
NEW HAMPSHIRE
FOR:
MICHAEL MANGAN

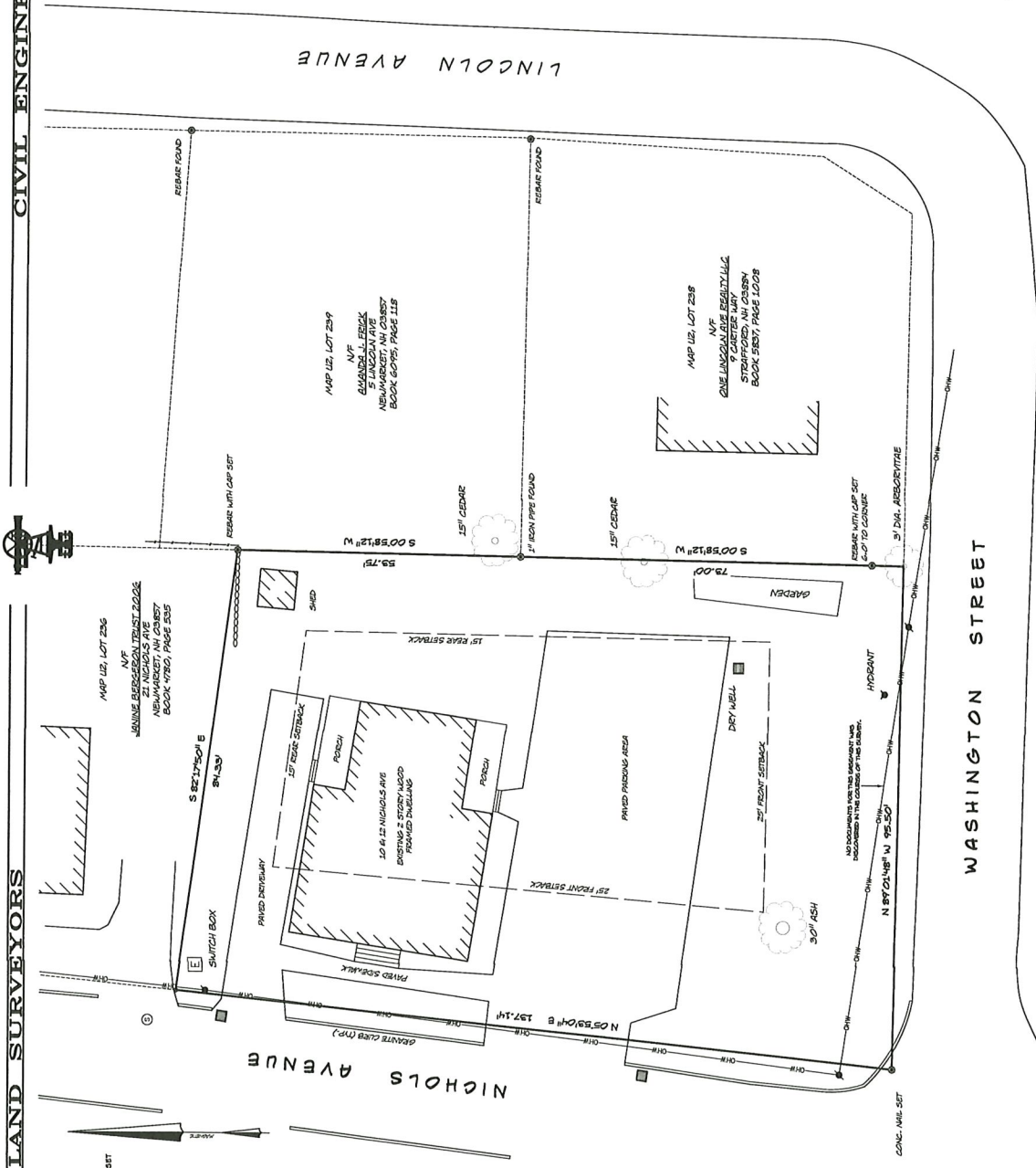
1" = 10' MARCH 2021

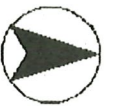


5/6/2021: REVISED TO SHOW MONUMENTS AS SET REVISIONS:

NORWAY PLAINS ASSOCIATES, INC.

31 MOONEY STREET, ALTON, NH 603-875-3948





Michael Morgan
Date 7/29/21

3.9 AC

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WASHINGTON ST

LINCOLN ST

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The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.

0 100 200 ft

Printed on 06/14/2021 at 11:01 AM

MapOnline - Newmarket, NH



- Parcels for Identify - P
- Parcels
 - Railroad
 - ROWS
 - NH Highways
 - Interstate
 - US Highway
 - ME Highway
 - State Highway
 - US Highway
 - State Highway
 - Town Boundary
 - Hillshade Donut Area
 - Streets
 - Water Bodies2
 - NH Open Water