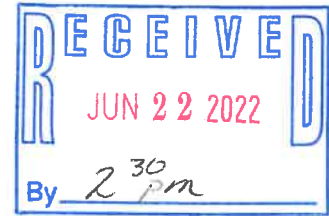




CLEVELAND, WATERS AND BASS, P.A.
ATTORNEYS AT LAW



JEFFREY C. CHRISTENSEN, ESQUIRE
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TWO CAPITAL PLAZA, P.O. BOX 1137
CONCORD, NEW HAMPSHIRE 03302-1137

June 22, 2022

HAND-DELIVERED

Arthur Parrott, Chair
City of Portsmouth, ZBA
1 Junkins Ave., 3rd Floor
Portsmouth, NH 03801

RE: In the Matter of the Variance Application of JRDEV, LLC
225 Banfield Road, Portsmouth, NH (Tax Lot: 266-1 & 254-1)

Dear Mr. Parrott:

Enclosed is a Motion for Rehearing with regard to the above. Thank you for your attention to this matter.

Sincerely,

Jeffrey C. Christensen

JCC/sm

Enclosure

cc: Pike Industries, Inc.
Peter Stith, Principal Planner

4895-8524-8806, v. 1

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NO. LU-22-91

In the Matter of the Variance Application of JRDEV, LLC
225 Banfield Road, Portsmouth, NH (Tax Lot: 266-1 & 254-1)

MOTION FOR REHEARING

Pike Industries, Inc. (“Pike” or the “Abutter”), by and through its attorneys, Cleveland, Waters, and Bass, P.A., respectfully moves, pursuant to RSA 677:2 and the City of Portsmouth Zoning Ordinance (the “Ordinance”), for a rehearing of the May 24, 2022 decision of the City of Portsmouth Zoning Board of Adjustment (the “Board”) granting the request for a variance in connection with the real property located at 225 Banfield Road (Tax Map and Lot 266-1 and 254-1; the “Ricci Property”) to construct a 60-unit apartment building (the “Residential Building”) in the Industrial Zoning District where such uses are broadly and expressly prohibited pursuant to Section 10.440.1 of the Ordinance. In support thereof, the Abutter states as follows:

BACKGROUND AND INTRODUCTION

1. The Ordinance identifies several different residential uses, all of which are expressly prohibited in the Industrial District where the Ricci Property lies. See Ordinance, §10.440.1. Nevertheless, the applicant, JRDEV, LLC, on behalf of the property owner, Ricci Construction Co., Inc. (collectively, the “Applicant”), proposes to construct sixty (60) residential dwellings on the Ricci Property in violation of those provisions. Pike owns the abutting property located at 650 Peverly Hill Road (Tax Map and Lot 254-7, the “Pike Property”) whereupon Pike operates a construction aggregate recycling and distribution yard, hot mix asphalt pavement plant, and equipment repair facility which has served the construction materials needs of the seacoast area since the 1930’s. Attached hereto as Exhibit 1 are photographs of the Pike Property

and the activities that will be adjacent to this residential development. The construction of multiple residential dwellings adjacent to the Pike Property will have significant detrimental impacts on Pike's operations and the value of the Pike Property.

2. The purpose of creating zoning districts is to provide space for uses and structures which are compatible with each other, combining compatible uses into a district, and separating each class of use into its appropriate geographic area. See 3 Arden H. Rathkopf, et al., *Rathkopf's The Law of Zoning and Planning* §10.1 (4th ed. 2017). There are various benefits to the segregation of incompatible uses, such as "promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; ... the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories" and because "the construction and repair of streets may be rendered easier and less expensive, by confining the greater part of the heavy traffic to the streets where business is carried on." Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 391 (1926).

3. In short, segregating residential and industrial uses from each other is to the benefit of both. Residents of the City can safely enjoy their homes without risk of safety concerns, while industrial businesses can operate without the burdens created by residential neighbors, such as complaints about the noise and or the safety of children wandering just outside their backyard into an industrial area. Similarly, the City is saved from trying to accommodate the needs of residential uses, such as fire safety and emergency access, in an area where risks may be heightened due to industrial uses and access may be occasionally blocked by the movement of industrial vehicles.

4. Additionally, designating territory for specific uses reserves land for necessary but perhaps less profitable uses. It is necessary for the orderly functioning of a city and the provision of supplies for there to be local, accessible uses of all sorts. Pike, for example, provides necessary construction materials to the seacoast area, without which construction and maintenance needs would become more burdensome due to the expense and delay inherent in shipping materials from elsewhere. If the City does not reserve and protect space for such industrial uses, it risks vital resources becoming crowded out by more individually profitable uses, at a loss to the public.

5. Variances are intended to be an “escape hatch” or “safety valve” designed to avoid unjust applications of general zoning regulations. See 2P. Salkin, *Anderson’s American Law of Zoning*, §13:1 (5th ed.). As such, it should be limited to cases where unusual or exceptional circumstances exist to justify deviation from otherwise applicable zoning laws. Id. Absent such circumstances, allowing a single parcel to engage in a use different from that of the rest of the zoning district for the benefit of the owner of that parcel can constitute impermissible “spot zoning”. Id., §6.12.

6. As discussed below, however, the Board’s decision to grant the Applicant’s variance is contrary to the applicable law. Accordingly, the Board should reconsider and rehear the Applicant’s request for a variance from Section 10.440 of the Ordinance. Upon doing so, for the reasons set forth below, the Board should find that the Applicant is not entitled to a variance.

DISCUSSION

7. To be granted a variance, an applicant must show that: “(1) the variance will not be contrary to the public interest; (2) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (3) the variance is consistent with the spirit of the

ordinance; (4) substantial justice is done; and (5) granting the variance will not diminish the value of surrounding properties” Nine A, LLC v. Town of Chesterfield, 157 N.H. 361, 365 (2008); RSA 674:33, I. The applicant, not the abutters nor anyone else, bears the sole burden of presenting evidence to support each and every one of the five variance criteria. Nine A, 157 N.H. at 365. If an applicant fails to meet any single criterion, the variance must be denied. Id.

I. There is no unnecessary hardship.

8. A variance may only be granted when, among other criteria, “literal enforcement of the ordinance would result in an unnecessary hardship.” RSA 674:33, I(a)(2)(E). “Unnecessary hardship” means that, “owing to the special conditions of the property that distinguish it from other properties in the area: (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; and (ii) the proposed use is a reasonable one.” Id. “Generally, a use variance requires a greater showing of hardship than an area variance because of the potential impact on the overall zoning scheme.” Harrington v. Town of Warner, 152 N.H. 74, 80 (2005). “Use variances pose a greater threat to the integrity of a zoning scheme because the fundamental premise of zoning laws is the segregation of land according to uses.” Id.

A. There is nothing unique about the Ricci Property that makes a residential use reasonable.

9. “The reasonable use factor is the critical inquiry for determining whether unnecessary hardship has been established.” Garrison v. Town of Henniker, 154 N.H. 26, 32 (2006) (internal quotations omitted). “The reasonable use factor requires a determination of whether the hardship is a result of the unique setting of the property.” Id. (internal quotations omitted). “The applicant must show that the hardship is a result of specific conditions of the property and not the area in general.” Id. (internal quotations omitted). A use is presumptively

reasonable only if it is otherwise permitted by the Ordinance. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007). If, as is the case here, the proposed use is not otherwise permitted, the variance may be denied if the Board disagrees with using the Ricci Property for residential purposes. See id.

10. The Applicant identified several allegedly unusual characteristics of the Ricci Property: the fact that it comprises two lots containing wetlands, and has frontage on Banfield Road in two different locations. These factors, however, are unrelated to the proposed development of a sixty-unit residential building. For example, although the Ricci Property has frontage on Banfield Road in two different locations, the proposed residential use would use the same frontage and the same driveway as the existing commercial or industrial uses of the Ricci Property. Nor does the construction of sixty residential dwellings protect the nearby wetlands. It is not enough that the Ricci Property be different or unique compared to other properties, but the hardship must arise out of that difference. See Garrison, 154 N.H. at 32. Here, regardless of whether these conditions are unique, they do not create a hardship.

11. The Applicant also identifies the proximity of the Community Campus and other recreational opportunities as unique conditions of the Ricci Property. Several properties in the area abut the Community Campus. Proximity to nearby recreation is true for the entire area. The Ricci Property is not meaningfully closer to recreational opportunities than the other nearby properties. The Applicant's hardship must arise as a "result of specific conditions of the property and not the area in general." Garrison, 154 N.H. at 32. They do not. Arguments, such as raised by the Applicant, that this area is generally suitable for residential use or is evolving beyond its designated industrial purpose are not applicable to an application for a variance. This Board does not have the authority to rezone the district or "spot zone" the Applicant's property. Unless the

City rezones the area, the Applicant must establish that the hardship arises directly from the specific and unique conditions of the Ricci Property itself.

12. Additionally, the Applicant identifies no reason why the proposed residential portion of the Ricci Property could not be used for any of the permitted uses in the Industrial District. It appears that the reason to instead insert a residential use into the Ricci Property is simply because it would be more profitable and as stated by Ricci, more expedient than seeking to have the area rezoned. Monetary advantage, however, is insufficient to qualify for a variance. See Rowe v. Town of N. Hampton, 131 N.H. 424, 428 (1989) (“The uniqueness of the land, not the plight of the owner, determines whether a hardship exists”). There is nothing unique about the Ricci Property that makes it more suitable to a residential use than the other nearby properties in the Industrial District. There is no hardship.

B. Residential use of the Ricci Property is contrary to the purposes of the Ordinance.

13. The general purpose of the Industrial District is to “accommodate industrial, wholesale, and storage uses”. See Ordinance, §10.410. As mentioned above, the purpose of creating zoning districts in general is to provide space for compatible uses, while protecting such spaces from incompatible uses. See 3 Arden H. Rathkopf, et al., *Rathkopf’s The Law of Zoning and Planning* §10.1 (4th ed. 2017).

14. Inserting a large-scale residential building into an industrial zone is directly contradictory to those purposes. It will likely be detrimental to both the residents and to the neighboring industrial uses. As the Supreme Court has recognized, there are several good reasons to separate residential and industrial uses. Vill. of Euclid, 272 U.S. at 391. Among these reasons are the “promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry” and “aiding the health

and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories.” Id. Children who wish to play outside the newly created sixty residential dwellings, or who are traveling by foot to the nearby Community Campus, risk inadvertently wandering into the surrounding industrial areas where children are unexpected and at risk. Similarly, residents of all ages in the new sixty dwellings would be at risk from the spread of fire or other hazards from adjacent properties.¹

15. At the same time, isolating industrial uses is beneficial to industry as well as to residents. Property owners in an industrial district benefit by being able to operate without the likelihood of children wandering into the area from next door, without residential neighbors complaining of the noise, and without the other burdens of having neighbors of incompatible uses. Inserting sixty dwellings next door to the Pike Property and its facility means there will be sixty families who will be expecting Pike to operate as if it were in a residential neighborhood. This situation will be to nobody’s benefit.

16. The Applicant identifies no reason why the Ricci Property could not be used entirely for any of the permitted uses in the Industrial District and should instead be used for residential purposes. It appears that the reason to instead seek to insert a residential use into the Property is because it would be more profitable. Allowing the Industrial District to be used for residential purposes, in direct contradiction to the Ordinance, simply because it is more profitable risks crowding industrial uses out of the area entirely. As a direct result, landowners in the Industrial District will seek to repurpose their land, reducing the supply of industrial space in

¹ The chance of these hazards spreading across Banfield Road are much lower than spreading to adjacent properties without the barrier and separation of the street. For this reason, a residential use inside the Industrial District cannot be compared to residential uses on the other side of Banfield Road. It may be reasonable to have residential uses in a residentially zoned development across the street but not in a property next door without such a clear separation.

the City. Those that do not will experience conflicts with their new residential neighbors that will require City resources and potential litigation for all parties. The proximity and commingling of residential uses will further disincentive industrial uses in the area, further driving out industrial uses and making the industrial zone less attractive and marketable for resale in this City. This is contrary to one of the reasons for creating a zoning district, to reserve space for uses, like industrial uses, which are meaningful and necessary for the City and the surrounding area, but should not be commingled with other uses. See Harrington, 152 N.H. at 81 (“because the fundamental premise of zoning laws is the segregation of land according to uses, the impact on the character of the neighborhood is central to the analysis of a use variance”).

17. There are good, valid, and legitimate reasons residential uses are prohibited from the Industrial District. There is nothing unique about the Ricci Property that makes those reasons inapplicable. There is no undue hardship justifying the Applicant’s variance.

II. The variance will diminish nearby property values.

18. A variance must not diminish the value of surrounding properties. See RSA 674:33, I(a)(D). As discussed above, commingling industrial and residential uses creates burdens on the industrial businesses, not only on the residents. These burdens, or the possibility of these burdens, will reduce the value of the remaining properties in the Industrial District. For example, if Pike were to market the Pike Property and the industrial facility thereon for sale, the proximity of sixty residential dwellings next door would be a significant impairment. Potential buyers would be concerned that, if they were to run industrial equipment at night, they would receive complaints from sixty families in the morning. They would be concerned about the increased safety costs of having to operate so close to residential uses where children may inadvertently wander onto the Pike Property. Anyone considering purchasing the Pike Property for

redevelopment would be concerned about sixty-residential abutters opposing any redevelopment that is inconsistent with what would be, in those residents' minds, a residential space. Reduction of risk and leveraging certainty are hallmarks of sound business decision strategy. This proposal will increase risk and uncertainty for any potential buyer in the future, negatively impacting Pike's ability to sell and value of the Pike Property or other nearby properties.

19. All of these concerns would lead potential purchasers to prefer industrial properties that are not commingled with residential uses and all of the complications that come with having sixty neighbors just over the boundary. As Pike indicated at the original hearing on this matter, if there had been a sixty-unit residential building next door prior to Pike's ownership of the Pike Property, that would have deterred Pike from purchasing it in the first place. See Roy v. State, 104 N.H. 513, 517 (1963) (holding that a landowner is qualified to offer evidence as to the value of their own property). Instead, Pike purchased the Pike Property relying upon the Ordinances express prohibition on residential uses in the Industrial District. As a result of this variance, the market value of the Pike Property and other nearby properties in the Industrial District will be diminished.

III. The variance is contrary to the public interest and the spirit of the ordinance.

20. An applicant is not entitled to a variance if the proposal is contrary to the public interest or inconsistent with the spirit of the ordinance. RSA 674:33, I(a)(2)(A)-(B). The requirement that the variance not be "contrary to the public interest" is "related to the requirement that the variance be consistent with the spirit of the ordinance." See Nine A, supra, 157 N.H. at 366. A variance is contrary to the public interest when it unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives. Id. There are two methods for determining whether a variance would violate an ordinance's basic

zoning objectives: (1) “whether granting the variance would alter the essential character of the neighborhood” or (2) “whether granting the variance would threaten the public health, safety or welfare”. Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011).

21. The proposal to add sixty residential dwellings to the Industrial District would alter its essential character. While the Applicant points to nearby residential uses on the other side of Banfield Road, those are in the Single Residence A Zoning District, and separated from the Industrial District. There is a material difference between having a single-family residential development nearby and having a sixty-unit residential building right next door. The single-family development here is well set back off Banfield Road and enjoys a forested buffer from the Industrial District, so even those homes that are closest to the Industrial Zone are protected. This proposal, however, places all sixty dwellings directly adjacent to a shared property line with a heavy construction aggregates facility. Residences separated by a street and trees are less likely to result in problems, such as those discussed above, than residences next door. Likewise, residences built in a residential district do not crowd out industrial uses from the Industrial District, as this variance threatens to do. This alteration of the essential character of the neighborhood will have a detrimental impact on the utility and value of the neighboring industrial properties.

22. The variance also threatens the public health, safety, and welfare. As discussed above, there are certain inherent risks associated with industrial uses, such as fire and other hazards. This is one of the reasons for isolating residential uses from industrial uses, as recognized by the Supreme Court. See Vill. of Euclid, 272 U.S. at 391. Those engaged in industrial activities are aware of and prepared for those risks. Residential tenants are, frequently, not so informed or prepared.

23. Moreover, industrial activities often involve large equipment and vehicles that could be an impediment to emergency vehicle access, especially where the residential building shares a driveway with other commercial or industrial uses. Industrial equipment or commercial vehicles are often in positions that are more difficult or slower to move out of the way of emergency vehicles than traffic associated with residential use. A large construction vehicle in the driveway could impair emergency access much more significantly than the ordinary traffic of cars going into an apartment building. This problem is compounded when such impairments impact sixty different residential dwellings.

IV. The variance is not consistent with substantial justice.

24. A variance must do substantial justice to be granted. RSA 674:33, I(a)(2)(C). The “substantial justice” element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general public is an injustice, and whether the proposed development was consistent with the area’s present use. Malachy Glen, 155 N.H. at 109. As discussed above, the proposed development of a sixty-unit residential building is not consistent with the present use of the Industrial District. Separately, there is a public interest that outweighs the loss to the Applicant by denying the development of the Apartment building.

25. As discussed above, there is a need for industrial uses in the City of Portsmouth and surrounding area. These uses are beneficial to and support all of the other uses and development in the area. There is a reason why the City deemed it necessary to dedicate space to industrial uses and specifically designate a district for the purpose of “accommodate[ing] industrial, wholesale, and storage uses”. See Ordinance, §10.410. Allowing such space to be converted to residential use will crowd out industrial uses, both by reducing the amount of land available for such use, and discouraging the use of adjacent land that is now less desirable due to

the close proximity of incompatible uses. It further signals to other potential developers that they cannot rely upon the City's Ordinance when it excludes incompatible uses. This will reduce the feasibility of industrial uses in the area, harming the public that depends on those uses. If the public cannot rely on local industrial suppliers, all personal and business activity that depends on those uses will bear the increased costs and delays of relying on industries at a distance (especially given the current dramatic increase in fuel costs and supply chain disruptions). These costs outweigh the loss to the Applicant, which is merely the inability to use the Ricci Property for a use that was known to be prohibited and for which the Applicant has alternatives. As discussed above, there is no evidence presented that alternative, non-residential uses of the Ricci Property are unavailable or impractical; the only benefit to the Applicant is monetary. The Applicant's individual financial gain does not outweigh the impact to the overall zoning scheme. See Harrington, 152 N.H. at 80.

26. The Applicant has argued that the proposal creates a public benefit by increasing the housing supply. While increasing the housing supply is generally a legitimate goal, the housing supply should be increased by development in appropriate areas, not inserted into an Industrial District that is ill-suited to residential use and will surely render adverse repercussions for all parties. The new residential development in the residential zone on the other side of Banfield Road demonstrates that there are appropriate areas for residential development in the City. The Industrial District is not one of them. Accordingly, the variance is not consistent with the principles of substantial justice. See Malachy Glen, 155 N.H. at 109.

CONCLUSION

27. The Applicant did not present sufficient evidence to show that the five elements necessary for a variance were satisfied. The Board should reconsider its decision and, upon a rehearing, deny the requested variance.

WHEREFORE, Pike Industries, Inc. respectfully requests that the Board:

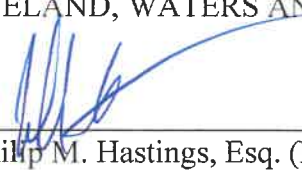
- A. Grant the foregoing motion and schedule a rehearing on the variance application;
and
- B. Upon rehearing, deny the variance.

Respectfully submitted,

PIKE INDUSTRIES, INC.

By its attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Dated: June 22, 2022

By: 
Philip M. Hastings, Esq. (NH Bar #10003)
Jeffrey C. Christensen, Esq. (NH Bar #265308)
Two Capital Plaza
P.O. Box 1137
Concord, NH 03302-1137
(603) 224-7761







John G. Cronin, Esquire Memos for Submission



Memorandum

Date: September 6, 2022

To: Portsmouth Zoning Board of Adjustment

From: John G. Cronin, Esquire

Re: Variance Application – Banfield Road, Portsmouth, New Hampshire

The Applicant submits the following ad-valorem tax analysis for consideration on the case on re-hearing. The facts relied upon for the analysis are as follows:

1. Projected vertical construction costs of \$200,000.00 per unit;
2. The Portsmouth 2021 tax rate of \$15.03 of valuation; and,
3. DRA Median Ratio for 83.8%.

The Applicant proposes 60 units of rental housing for an indicated cost of \$16,000,000. After application of the ratio of 83.8%, the indicated assessed value for ad valorem taxes is \$13,408,000.00. The resulting annual tax revenue based on a mil rate of \$15.03 total of \$201,522.24.

It should be noted that the land was not included as it already subject. The projected costs of construction are estimates and are subject to change based on market conditions up to and during the time of construction.

End.



Memorandum

Date: September 6, 2022

To: Portsmouth Zoning Board of Adjustment

From: John G. Cronin, Esquire

Re: Variance Application – Banfield Road, Portsmouth, New Hampshire

The Applicant provides notice of its willingness to accept the following conditions of approval that will encumber the property that is the subject of the pending application:

1. The Applicant agrees to include capitalized and bold language in all residential leases that requires the residents to acknowledge the proximity to an active industrial site and waive any claims that may be related to the industrial operation; and,
2. The Applicant agrees to enter into an indemnity agreement with the industrial abutter holding it harmless from any claims from the residential tenants and providing appropriate indemnification.

End.

FOUGERE PLANNING & DEVELOPMENT Inc.

Mark J. Fougere, AICP

253 Jennison Road Milford, New Hampshire 03055
phone: 603-315-1288 email: Fougereplanning@comcast.net

JRDEV, LLC – Multi-family Residential Portsmouth, NH September 7, 2022

Estimated School Age Children

Development Program: Construction of 60 garden style apartment units within a mixed use development. The unit mix program planned for the residential community will include both studio and one bedroom units at outlined in Table One.

Table One
Unit Mix Profile - Garden

Studios	20
One Beds	40
Total	60

Schools

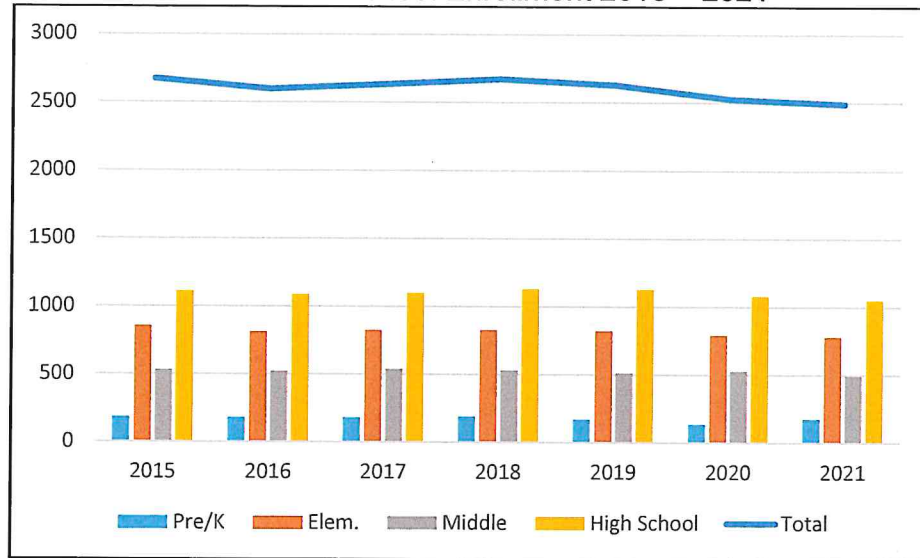
Reviewing school enrollments over the last seven years demonstrates that census peaked in 2015 as outlined in Table Two and Figure One, with the greatest declines occurring at the elementary school level.

Table Two
School Enrollment 2015 - 2021¹

Year	Pre/K	Elem.	Middle	High School	Total
2015	181	854	529	1,110	2,674
2016	179	811	521	1,087	2,598
2017	179	823	536	1,096	2,634
2018	189	824	531	1,128	2,672
2019	169	821	512	1,129	2,631
2020	134	790	525	1,078	2,527
2021	174	778	491	1,049	2,492

¹ NH Dept. of Education Enrollment data

Figure One
Portsmouth School Enrollment 2015 – 2021



School Age Children (SAC)

To estimate the number of school age children that may reside within the proposed apartment complex, we reviewed data from a statewide enrollment Report prepared by AER². It should be noted that studio and one-bedroom units generate few School Age Children (SAC). Based on the data researched for multi-family apartments, a per unit SAC ratio of 0.04 was derived³. Applying this Ratio to the proposed development generates an estimated 3 (2.4) SAC. Given the declining enrollment trends seen in the community, these students will not impact school capacity.

² Housing and School Enrollment in NH, June 2012 Prepared for NHHFA, Appendix PUMS data, Renter Occupied Units.

³ This low SAC ratio tracks with similar data found in Massachusetts, where data from over 1,000 apartments showed a studio/one-bedroom unit SAC ratio of .009 students per unit.



ISSUED FOR REVIEW
JANUARY 16, 2025

PROFESSIONAL ENGINEER FOR
ALLEN & MAJOR ASSOCIATES, INC.

REV	DATE	DESCRIPTION

APPLICANT/OWNER

RICCI CONSTRUCTION
PORTSMOUTH, NH

PROJECT

SITE DEVELOPMENT
225 BANFIELD ROAD
PORTSMOUTH, NH

PROJECT NO. 3055-01 DATE: 06/23/23

SCALE: 1" = 40' DWG: C-2024-UNIV-0101

DRAWN BY: JG CHECKED BY: MAM

PREPARED BY:

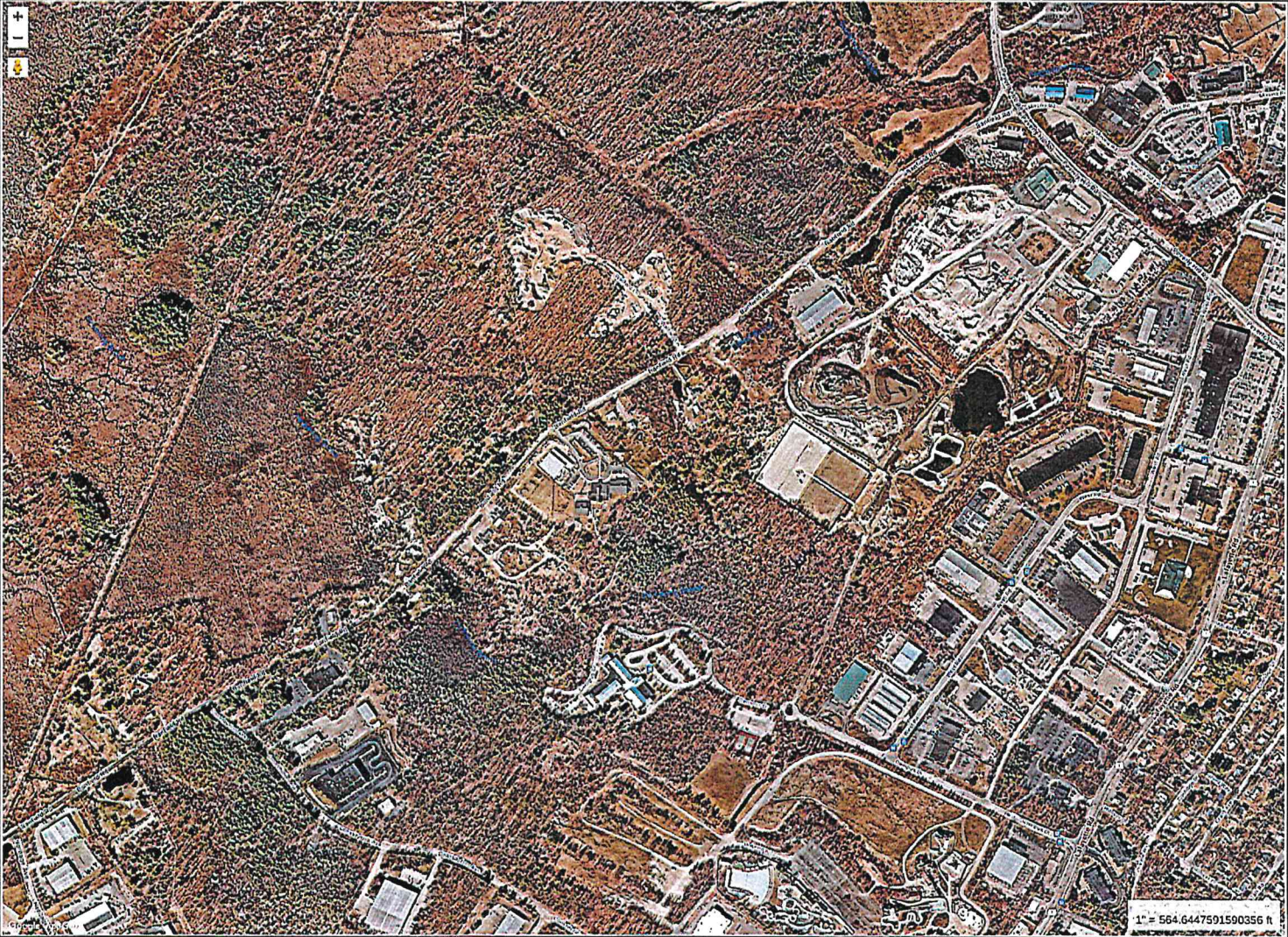
AM
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DRAWING TITLE:
CONCEPTUAL SITE PLAN
OPTION 7

SHEET NO.
1

Banfield-Peverly to Constitution



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 3/9/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Having the 'hottest housing market' means you don't have enough houses

BLOG, FEATURED, HOUSING, LOCAL GOVERNMENT



New Hampshire has the top two hottest housing markets in the country, as rated by real estate search website realtor.com [<http://realtor.com>]. These ratings should be taken with a grain of salt, as they're based in part on search queries on a single listings website. But even if the rankings are an accurate representation of the market, that's not really great news for Granite Staters, as it's further confirmation that the state suffers from a severe housing shortage.

market. Demand is just one side of the coin. Supply is the other, and that's a big reason why New Hampshire has claimed the top two spots on the list.

The demand side of the realtor.com [http://realtor.com] rankings is based on unique viewers per property on that website only (which is a serious limitation). Concord tops the list at 3.2 views per property. Manchester is second at 2.6.

The proxy for the supply side of the ranking is based on how long homes stay on the market. Median time spent on the market in Concord is 13 days, according to the site. For Manchester it's 12 days.

Rochester, N.Y., has a median time on the market of 12 days, making it the only other community in the site's list of top 20 hottest markets that is close to the Concord and Manchester numbers.

Such a short time spent on the market indicates not just high demand, but an extremely low supply. A balanced market is considered one that has at least six months of inventory. It would take less than a month to sell every home on the market in New Hampshire, according to the New Hampshire Housing Finance Authority.

The realtor.com [http://realtor.com] ranking shows Concord and Manchester to be in the top four communities for price, behind two other New England metropolitan areas. That's another sign that our supply is extremely low.

The top median listing prices were Portland, Maine, at \$549,000, Burlington, Vt., at \$484,000, Manchester at \$478,000, and Concord at \$457,000.

A [housing growth map](https://www.axios.com/2022/07/18/housing-construction-us-map?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axios&stream=top) [https://www.axios.com/2022/07/18/housing-construction-us-map?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axios&stream=top] published this week by Axios helps illustrate the underlying supply problem. It shows the percent change in housing units from last July to this July, by county.

Only three counties in New England experienced at least a 1% increase in housing units in the last year. Grafton County was the only one in the Granite State.

The New Hampshire Housing Finance Authority's annual [Housing Market](https://www.nhhfa.org/wp-content/uploads/2022/06/NH-Housing-Market-Report-06-2022.pdf) [<https://www.nhhfa.org/wp-content/uploads/2022/06/NH-Housing-Market-Report-06-2022.pdf>] report, released last month, again noted that it "would take at least 20,000 housing units to achieve a balanced market" in the state.

New Hampshire is indeed a highly desirable place to live. The combination of remote work and the pandemic have boosted demand for homes in the Granite State. With remote work now a permanent and growing feature of white collar employment, and [blue state refugees seeking low-tax jurisdictions from which to live and work](https://jbartlett.org/2022/07/irs-data-show-migration-from-high-tax-to-lower-tax-states-including-new-hampshire/) [<https://jbartlett.org/2022/07/irs-data-show-migration-from-high-tax-to-lower-tax-states-including-new-hampshire/>], demand for homes in New Hampshire is likely to remain elevated for years.

But it's important for policymakers and voters to understand that this is not the cause of New Hampshire's housing shortage or high prices. Housing prices in the state have risen steadily since 2012. The recent bump in demand just adds to the previously existing imbalance.

Being labeled home to the nation's "hottest housing market" would be nice if that term measured demand only. In reality, it's further confirmation that we don't have enough housing.

JULY 19, 2022

BY ANDREW CLINE

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Concord Monitor – February 20, 2022

Zeroing in on housing crunch

Business leaders want more stick than carrot to solve project jams

By DAVID BROOKS

The state's housing situation has gotten so tight that businesses almost have to be real estate agents for new employees, but easing the shortage may require forcing communities to allow multi-family or more clustered housing even if locals don't like it.

Those were among the items that came up during an hour-long webinar Thursday titled "What N.H. Business Can Do to Help Solve the Housing Crisis," held by New Hampshire Business Review.

The half-dozen participants were unanimous in lamenting the difficulty of finding housing of any type in many parts of the state and how that is making it hard for businesses to thrive.

"(Human resource) departments are adding almost a Realtor function to their job," said Michael Skelton, the new director of the New Hampshire Business and Industry Association. "Nowadays, many discussions with (prospective employees) span into: 'Do you have a place to live, and can we help you solve that issue, because we want to be able to hire you.'"

Possible solutions mentioned in the webinar ranged from businesses getting a developer to build housing on land that it owns to trying to change minds in the local town or city about the need to allow more housing.

"Speaking out is really critical. Joining local land-use boards, or speaking out in the news about the importance of new housing as a real public good, a place their workers need – that's important," said Rob Dapice, director of NH Housing, a quasi-government agency that supports affordable housing.

Speakers were enthusiastic about some current legislative action, including SB400 that would create an affordable housing "toolkit," including state support and training for local land-use boards that are often filled by volunteers with little experience in the field. They also praised Gov. Chris Sununu's announcement in his State of the State address shortly before the webinar that federal money would be used to create a \$100 million affordable housing fund, although details are scant.

But some speakers said more aggressive action was needed to overcome local opposition. "We have a lot of carrots; we don't have a lot of sticks," said Darren Winham, economic development director in Exeter. "We need sticks."

Winham pointed to communities in the Seacoast area that have regulations such as two-acre minimum zoning and opposition to sewer or municipal water systems, which makes it almost impossible to build anything but a relatively small number of expensive single-family homes. "They want to see other people to solve the problem; they don't want to solve the problem themselves," he said.

Several speakers praised the Housing Appeals Board created by the legislature in 2020 to provide a quicker, cheaper way to appeal decisions by local planning boards. The board has drawn criticism from those who think it overrides local control and would be disbanded or curtailed under several bills being considered by the legislature. Skelton said it was among NHBIA's "highest priority" to keep the appeal board operating as it does.

While New Hampshire has a law that requires communities to create a reasonable amount of "workforce housing," Dapice said its effect is limited. "There is a lot of confusion about what exactly compliance looks like."

Opposition to cluster or multi-family housing often carries concern that it will lower the value of existing houses in the area. Dapice said overcoming this fear is a necessary step.

"Exeter is a great example of a place where people want to be," he said. The new housing "contributes to the vibrancy of the community and that increases property



values." A development on Pleasant Street in Greenville has put up its first phase of new housing.

ASHLEY SAARI / Monadnock Ledger-Transcript

BUSINESS PERSPECTIVE: TROUBLE AHEAD IF NH DOESN'T SOLVE HOUSING CRISIS

[Back to News Releases \(https://members.biaofnh.com/news-releases\)](https://members.biaofnh.com/news-releases)

 By Rick Fabrizio  10/4/2021



Since May, I have traveled to all corners of the state meeting with chamber of commerce leaders and learning about top issues facing their member companies. From Portsmouth to Colebrook, Nashua to North Conway, the answers were all the same: Lack of workers and lack of housing.

There may not be a greater long-term threat to New Hampshire's economy than the lack of a diversified housing stock. Employers are struggling to fill open positions and soon it will slow the overall economy. The lack of affordable housing within a reasonable commuting distance to work is one contributing factor adding to staffing difficulties employers face. The Business and Industry Association, New Hampshire's statewide chamber of commerce and leading business advocate, ranks the need for more workforce housing among its top issues.

The 2021 BIA Forum on Workforce Housing: New Hampshire's Housing Crisis and the Economy will be held Wednesday, Oct. 6 from 11:30 a.m. to 1 p.m. The event, sponsored by New Hampshire Housing, will be held in-person at the DoubleTree by Hilton Manchester Downtown Hotel. Cost to attend the luncheon is \$40 for BIA and BIA Capitol Connect members, members of partnering organizations and regional housing coalitions. Cost for the general public is \$55. For more information and to register, visit <https://bit.ly/BIA-Housing> (<https://bit.ly/BIA-Housing>).

The stagnant supply of lower-cost, workforce housing is a chronic issue, dating back at least 20 years. It's now showing up in the most pronounced way. Employers can't find workers because workers can't find affordable places to live. They can barely find any place to live.

What housing goes to market sells at record prices in days. The state's median home sale price rose above \$400,000 this summer. The vacancy rate for apartments is less than 1% (5% is considered a balanced market), drawing tens of applicants for those that are available and driving up cost. Businesses are doing the best they can, pushing the state's de facto minimum wage to and above \$15 an hour. Many manufacturing companies are offering around \$20 an hour or more. It's still not enough.

NH Housing's 2021 Rental Survey Report showed the statewide median gross rent (including utilities) at \$1,498 for two-bedroom units, up 6% over 2020. It's \$1,672 in Rockingham County and \$1,643 in Hillsborough County. Statewide, a studio costs \$876; a 1-bedroom unit costs \$1,118.

There's not much economy in a barren desert. People are the economy and declining populations lead to withering economies. New Hampshire is approaching that risk.

The state's population increased just 4.6% from 2010-2020, the lowest since 2.9% in 1910-1920. This followed 2000-2010 when New Hampshire saw 6.5% population growth, while 1990-2000 saw 11.4%. The 1960s, 1970s and the 80s, each saw increases of more than 20%. Population growth has largely ground to a halt in the Granite State, but its economy expands decade after decade. Thus, you get the problem we're seeing now, and it's getting worse.

Manufacturers can't fill orders in a timely fashion because they don't have full staffing. This is true in the state's populous southern tier and rural northern tier where an infusion of well-paying jobs would be a new economic lifeline. Many hospitality businesses can't open for full hours due to the lack of workers; some are even closing.

The 1960s in New Hampshire saw population increase 21.5%, followed by 24.8% in the 1970s and 20.5% in the 80s. That's the origin of the problem as residents moved to outlying towns that went from rural to "bedroom communities."

Claire Monier, executive director of New Hampshire Housing from 1988 to 2007, recently told me those decades of growth, particularly in rural towns, prompted the rise in land-use restrictions. These restrictions effectively

eliminated starter-home subdivisions of the 60s and 70s, giving rise to larger, more expensive homes, and many fewer of them.

The state is seeing an increase in new market-rate apartments, particularly in its southern tier. It helps but there's a long way to go. N.H. Housing says the state needs 20,000 new single-, multi- and special-needs homes to achieve a balanced market. That should include a true mix, from affordable housing via local housing authorities, to market-rate apartments, to starter homes. If the state only sees new market-rate apartments, which is largely what's being built now, it's not solving the problem. Workers who live in apartments will want to move to starter homes as they start their families.

As Monier told me: "If you want a stable community you have to have home ownership. That will foster community harmony. Homeownership is very important."

##

ADDITIONAL INFO

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NEW HAMPSHIRE'S STATEWIDE CHAMBER OF COMMERCE

Business & Industry Association

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BIA TO HOST WORKFORCE HOUSING FORUM AS CRISIS CONTINUES

[Back to News Releases \(https://members.biaofnh.com/news-releases\)](https://members.biaofnh.com/news-releases)

 By Rick Fabrizio  9/14/2021



The 2021 BIA Forum on Workforce Housing: New Hampshire's Housing Crisis and the Economy is scheduled for Wednesday, Oct. 6. The event, sponsored by the New Hampshire Housing, will be held in-person from 11:30 a.m. to 1 p.m. at the DoubleTree by Hilton Manchester Downtown Hotel.

The lack of a diversified housing stock with more affordable options for workers remains one of New Hampshire's biggest challenges, if not its biggest one, and it threatens the Granite State's economic growth. The Business and Industry Association, New Hampshire's statewide chamber of commerce and leading business advocate, ranks the need for more workforce housing among its top issues.

"BIA members, including chambers of commerce, across the state put the housing crisis among the most pressing issues in New Hampshire," said BIA Interim President David Juvet. "The difficulty in securing workers for open positions is directly tied to the lack of adequate housing options in the state for working people. The lack of housing is restraining economic development in New Hampshire."

A panel of experts will discuss the impact of housing on hiring; how cost and availability of housing affects working professionals' decisions on where to live; and how communities are planning for their future housing needs. The panel will discuss practical options for how employers, housing advocates and community planners can increase the availability of workforce housing in communities. Panelists include:

David Duncan, Vice President, Facilities Management, Dartmouth Hitchcock

Bill Weidacher, N.H. Association of Realtors

Greg Michael, Chair, State of New Hampshire Housing Appeals Board

Rob Dapice, Managing Director, Management & Development, New Hampshire Housing

Event partners include Housing Action NH, the N.H. Association of Realtors, N.H. Automobile Dealers Association, N.H. Lodging and Restaurant Association, Vital Communities and the Workforce Housing Coalition of the Greater Seacoast.

Cost to attend the luncheon program is \$40 for BIA and BIA Capitol Connect members, members of partnering organizations and regional housing coalitions. Cost for the general public is \$55. Members of the media can attend at no cost and should email Rick Fabrizio for details. For more information and to register, visit <https://bit.ly/BIA-Housing> (<https://bit.ly/BIA-Housing>).

ADDITIONAL INFO

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September 7, 2022

John G. Cronin, Esquire
Cronin, Bisson & Zalinsky, P.C.
722 Chestnut Street
Manchester, New Hampshire 03104

Re: Applicant Name – Variance for 60 Unit Multi Family Development in the Industrial
Zone 225 Banfield Road, Portsmouth, New Hampshire

Dear Attorney Cronin:

At your request, I reviewed the ZBA Application proposed to develop sixty (60) multi-family units on properties zoned industrial located at 225 Banfield Road, Portsmouth, New Hampshire (LU-22-91). The Applicant proposes to consolidate the lots if the project is approved. It is my understanding that the Zoning Board of Adjustment considered the application and granted the requested variances. However, an industrial abutter filed a request for re-hearing that was subsequently granted.

You requested that I review the application and plans and make a determination based on my education, training, experience and residency in Portsmouth whether the variances, if granted, will diminish the value of the adjacent industrial facility. I have reviewed the plans and the application and understand that the unit mix proposed is 20 studio units and 40 single bedroom units. I am familiar with the site and the location as an almost 12 year resident of the community. My children participate in youth sports and I visit the community fields on a regular basis.

The adjacent industrial site, operated by Pike Industries, is an active industrial site that has been in operation for many years. Since Pike Industries started operations at the site, the real estate environment in the community has changed dramatically with demand for housing far outpacing supply. The waterfront location, bustling downtown and continuing improvements make Portsmouth one of the most desirable communities in New England. Young professionals are attracted to the seacoast in general and Portsmouth in particular for the lifestyle and employment opportunities. It is no secret that there is an inadequate supply of housing to meet demand and there is an employment crisis throughout the State of New Hampshire. The proposal for smaller studio and one-bedroom

units provides diversity in the housing stock and provides housing opportunities that are attractive to young professionals and recent graduates seeking to enter the workforce.

I am sensitive to the concerns of the industrial abutter who may be concerned that having residential units close to their active operation could generate complaints about noise, smell and impacts from industrial operations. If this were a fee simple project where units were sold to third party purchasers, the concern would have merit. As a rental community on property also occupied by the owner for non-residential uses, the issue is less of a concern. You have advised the Applicant is willing to agree to conditions that requires every lease to include an acknowledgment of the abutting industrial use and waiver of any complaints arising from the industrial use. My understanding is the Applicant is also willing to consider an indemnification provision to protect the industrial abutter from any complaints.

There is a suggestion that a residential use would lower the potential resale value of the Pike Industries parcel. In their motion for rehearing the abutter, through their attorney states in Paragraph 18:

"Anyone considering purchasing the Pike Property for redevelopment would be concerned about sixty-residential abutters opposing any redevelopment that is inconsistent with what would be, in their minds, a residential space."

Having been at the abutting community campus fields for countless practices and games in the fall and spring, I can say for certainty that there is no question of the industrial use to the area. Pike Industries towers over the landscape. Physically their piles stand above the trees of the subject property and the city field. When their crews are working it is audible from adjacent parcels. When it is dusk there are light stations up. In short, the current use a Pike Industries makes it known by all that this is an industrial zone. In any sort of redevelopment of the Pike Industries parcel to a different industrial use, it is more likely than not, that the use would be more discreet than the current one. But even if it were to be of the same type of manufacturing, there is an expectation that has been set in the area because of the visibility of what Pike Industries does on site.

Another consideration for concern, was safety and its impact on value. Elsewhere in the same paragraph the abutter, through their attorney states:

"[Potential buyers] would be concerned about the increased safety costs of having to operate so close to residential uses where children may inadvertently wander into the Pike Property."

I disagree with the general premise that an industrial user would turn down a site because of proximity to children. But if I were to grant that concern merit, I would suggest the larger contributor would be the existing abutter in the ball fields, not the proposed apartment use. Children are not a large concern in studio and one-bedroom units. However more to the point, if there are safety concerns for children the likely source would be the playing fields. And while there are parents and coaches watching the players, there are always siblings on site at these events.

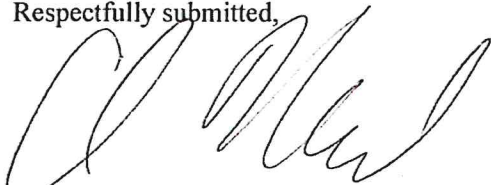
Lastly in the same Paragraph 18 discussing diminution of value, there is a general concern that "...comingling industrial and residential uses creates burdens to the industrial businesses..." I would suggest that the area around Banfield Road is already a comingling of industrial and residential

uses. In addition to the projects outlined already in this letter there is a housing project across Banfield near the subject. There are industrial projects south of the projects. There are also other non-residential and non-industrial uses that also are nearby including a school and a kids camp. In short the area has already been comingled.

The area, like the entire seacoast, is in transition and recent developments in the immediate area include a successful housing project directly across the street that sold out in record time. Also, the community fields and the children that use them are more likely to be impacted by the industrial operations and certainly the fields would not have been developed if there was any concern for public health, safety and welfare. Based on my education, training and over 20 years in the real estate industry it is my opinion these uses can co-exist without any diminution to their respective property values.

The conditions of approval, buffers and long distances to actual operations within the industrial site bolster my opinion. Thank you for your consideration.

Respectfully submitted,

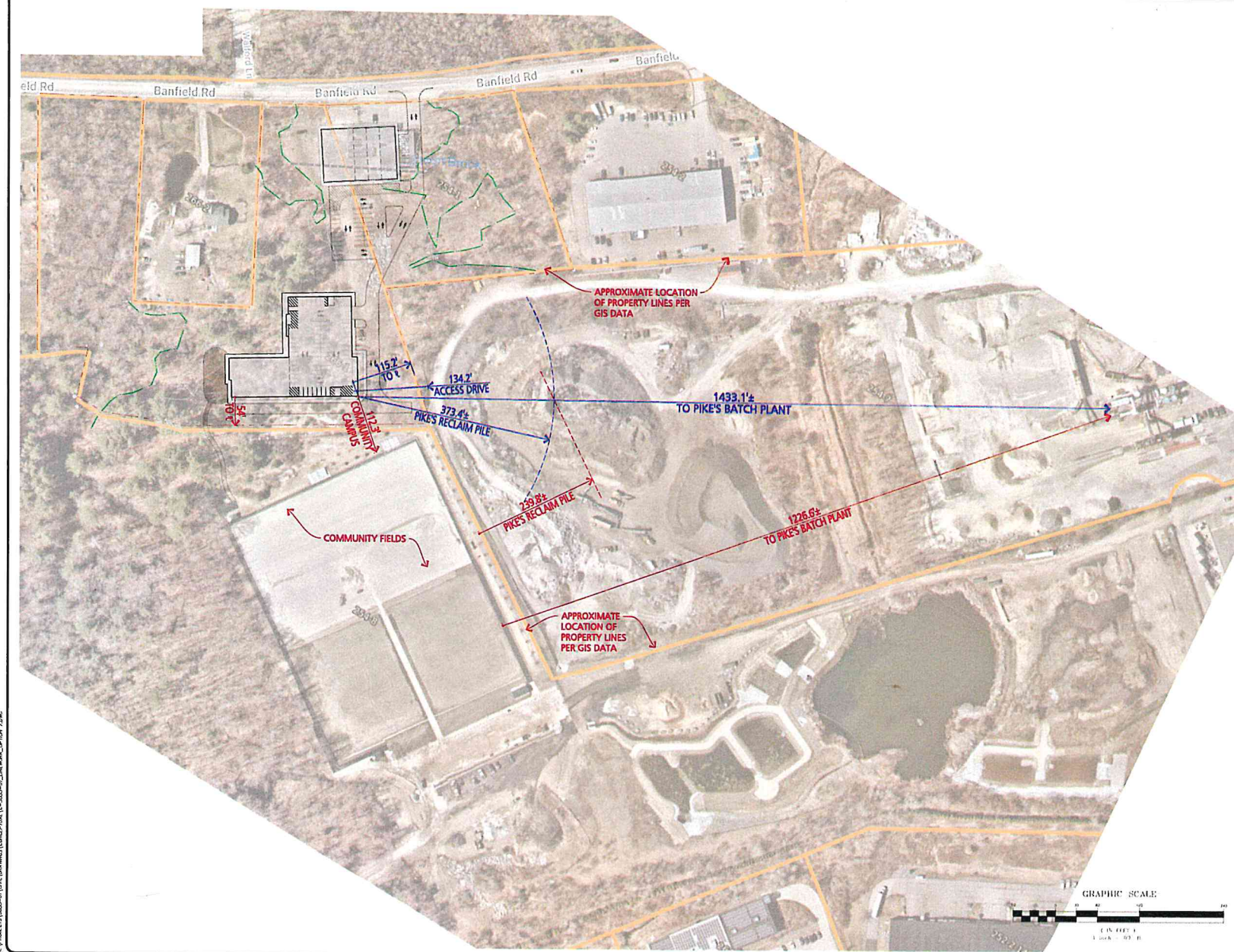
A handwritten signature in black ink, appearing to read 'Chris Norwood', written over a light blue horizontal line.

Chris Norwood, CCIM

President

NAI Norwood Group, Inc.

JRDEV, LLC
AERIAL DIMENSIONS TO
ABUTTING PROPERTIES



PROFESSIONAL ENGINEER FOR
ALLEN & MAJOR ASSOCIATES, INC.

[illegible]

REV	DATE
APPLICANT/OWNER:	

**RICCI CONSTRUCTION
PORTSMOUTH, NH**

PROJECT:

SITE DEVELOPMENT
225 BANFIELD ROAD
PORTSMOUTH, NH

PROJECT NO.	3055-01	DATE:	04-22-22
SCALE:	1" = 40'	DWG. :	3055-01_LAYOUT_OPTION 1
DRAFTED BY:	JG	CHECKED BY:	MAM



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DRAWING TITLE:
CONCEPTUAL SITE PLAN
OPTION 7

SHEET NO.	1
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Pike Concrete Plant

Pike Asphalt Plant

~1,500 feet

~1,450 feet

JRDEV, LLC
Proposed Apartment
Building



JRDEV, LLC
PROPOSED APARTMENT
BUILDING ELEVATION PHOTOS



**First Floor Window Sill Elevation
Northeast View**





