



TOWN OF WARNER

P.O. Box 265, 5 East Main St.
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
landuse@warnernh.gov

General Instructions for an Appeal to the Zoning Board of Adjustment

All applications are subject to RSA 91-A, which affords the public access to government records

Getting Started

Before filling out the application, be certain you know which application you should file. If the application is incomplete, it will be returned causing a delay in the processing of the application and hearing before the Zoning Board of Adjustment (ZBA).

When you're ready to get started, make sure you read everything included with the application, follow all the steps listed and work with the Land Use office to make sure everything is complete before you submit your application.

The burden of preparing and submitting a complete ZBA application is with the applicant.

Types of Appeals

1. Variance

- a. A variance is an authorization, which may be granted under special circumstances, to allow your property relief from requirements specified in the Zoning Ordinance. For a variance to be legally granted, you must show that your proposed use meets the five criteria listed in the Ordinance.
- b. If you have a referral from the Select Board, Planning Board or Building Department, a copy must be included with your application.

2. Special Exception

- a. The Zoning Ordinance provides that uses, buildings or activities in a particular zone will be permitted by Special Exception if specified criteria are met. The necessary criteria for a Special Exception are given in the Ordinance. Your appeal for a Special Exception will be granted if you can show that the criteria stated in the application are met.

3. Appeal of Administrative Decision (RSA 677)

- a. Decisions made by administrative officers involving what the ordinance says and means are appealable by anyone with standing (RSA 677:2). This includes decisions by the Select Board the Planning Board, the ZBA or any other "administrative officer" regarding the terms of the ordinance. This does not mean, however, that decisions to enforce (or not enforce) the ordinance are also appealable to the ZBA. These decisions are discretionary and are not reviewable under RSA 676:5, II (b) or any other statute.
- b. The appeal must be made normally within 30 days of the decision. The appeal will be granted if you can show that the decision was made in error.
- c. A copy of the decision being appealed must be attached to the application.
- d. The ZBA will not reopen a case based on the same set of facts unless it is convinced that the original decision was unlawful or unreasonable.

4. Equitable Waiver of Dimensional Requirements

- a. If you have found that your structure does not conform to the dimensional requirements for the zoning district in which it is located as a result of an error by your builder, yourself or a public official, you may be eligible for an Equitable Waiver. This does not mean that your structure is then legally non-conforming, but rather recognizes the error and prevents any enforcement action against that error in the future. All subsequent construction at the site must then comply with all dimensional requirements.

Application Instructions

1. Read, complete and sign the proper application for the type of appeal required. If the application is incomplete, it will be returned, which will cause a delay in the processing of the application and the hearing before the Zoning Board of Adjustment (ZBA).
2. The ZBA strongly recommends that prior to filing an application, the applicants become familiar with the applicable Warner Zoning Ordinance.
3. If a variance is requested, it may be based on a referral from the Select Board, the Planning Board or a denial of a building permit.
4. Please include the following along with your application:
 - a. A list of all abutters within 200 feet of the boundaries of the property on the supplied form. Accuracy of the list is the applicant's responsibility.
 - b. A copy of any order, referral, notice of violation or other communications that pertain to the property.
 - c. A copy of the property deed.
 - d. Authorization from Owner(s) which must be signed by all property owners and designate if someone will speak on behalf of the property owner(s).
 - e. Plot Plans shall:
 - 1) Clearly indicate where the site is located (locus map) and what is proposed *drawn to scale*.
 - 2) Show the boundary lines with footage on all sides and setback lines for the lot.
 - 3) Name the road the lot fronts on.
 - 4) Show all existing structures on the lot, clearly indicating their dimensions, distance from other structures and distance from adjacent property lines drawn to scale and measured from roof overhang.
 - 5) For a proposed structure, include all of the above and a floor plan with dimensions, (length, width, and height) and yard setback distances measured from roof overhang.
5. A check for the correct amount made out to the **Town of Warner** must be provided at the time of filing.

Application Fee		Notification Fee	
Residential	\$50.00	Per Abutter _____ x	\$15.00
Commercial	\$100.00	Newspaper Notification	*\$60.00

*Standard Posting: Intertown Record = \$60.00 Upon request of applicant a Special Posting in the Concord Monitor = \$300.00

6. A completed application must be received at least 21 days prior to the next ZBA meeting. Public notice of the hearing will be posted and printed in a newspaper, and notice shall be given to the applicant, all abutters, and to parties the ZBA may deem to have interest, at least five days prior to the date of the hearing. The applicant and all other parties are expected to appear at the hearing in person, or by agent, to state reasons why the appeal should or should not be granted.

Public Hearing Process

8. The applicant, or the applicant's agent, shall present the application at the hearing. If an attorney represents the applicant and desires to present a written brief, the brief may be delivered with the application.
9. At the beginning of the public hearing the ZBA will decide if the application is complete.
10. After the public hearing, the ZBA will reach a decision. The decision could be postponed to a date specified to allow for additional information or to consult with Town Counsel. After the ZBA reaches a decision, a formal Notice of Decision will be mailed to the applicant and property owner(s), placed in the ZBA files and distributed as specified in the Rules of Procedure.
11. The applicant, Select Board, any party to the action or proceedings, or any person directly affected thereby may appeal for a rehearing. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application. (RSA 677:2)

12. **Abutter(s) List instructions:**

- a. Please list the name and addresses of all owners of the property that abut the subject property, defined as follows:
 - 1) Any person whose property is located in New Hampshire and;
 - i. adjoins or is directly across a street or stream from or;
 - ii. has a boundary which is within 200 feet of any boundary of the land under consideration by the ZBA or;
 - iii. has frontage on a pond on which the land under consideration by the ZBA also has frontage.
 - 2) In case of an abutting property being under a condominium or other collective form of ownership, the term “abutter” means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. (also see RSA 672:3)
- b. In addition to abutters, please include the names and addresses of the applicant, owner(s) of the subject property and as applicable, the owner’s agent engineer, land surveyor, architect, soil scientist, wetland scientist, and holders of conservation, preservation, or agricultural preservation restrictions.
- c. If the property abuts a street, the Select Board shall receive a notice as an abutter. If the property abuts a State Highway, the State Department of Transportation as well as the Select Board shall be noticed as abutters. If the property is within ¼ mile of the Warner River, the Warner River Local Advisory Committee shall be noticed as an abutter. If a referral was received from the Planning Board, they shall be noticed as an abutter.
- d. The abutter list must be obtained from the Town of Warner’s Assessors records and submitted with the application.



TOWN OF WARNER

P.O. Box 265, 5 East Main St.
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
landuse@warnernh.gov

Application for appeal: Administrator's Decision or Interpretation

Return application within 30 days of posted notice of decision

The undersigned alleges that an error has been made in the interpretation and /or administration of the provisions of the Zoning Ordinance as follow:

Article: II Section: C.2. Date of Decision: June 23, 2025

Applicant/Contact Person:

Name of Applicant: Peacock Hill Road LLC

Date:

Mailing Address: 15 Constitution Drive, Suite 1A

Town: Bedford

State: NH

Zip: 03110

Telephone:

Alternate:

Email:

Owner of Property:

Name of Owner: Same as above.

Date:

Mailing Address:

Town:

State:

Zip:

Telephone:

Alternate:

Email:

Location of Property:

Map#: 7

Lot#: 39 & 39-1

Zoning District: R-2, R-3

Address: Route 103, Warner, NH

List documents included pertinent to decision being appealed:

Letter dated June 23, 2025 from Chrissy Almanzar, Town of Warner Land Use interpreting buildable area calculations and Zoning Ordinance Article II.C.2.

Application for appeal: Administrator's Decision or Interpretation

Return application within 30 days of posted notice of decision

State in writing how the decision was made in error and be prepared to present the application at a public hearing. The burden of proof is on the applicant.

NH RSA 674:33 and NH RSA 676:5

Explanation of administrator's decision/interpretation:

See narrative attached herewith prepared by project engineer Jason Lopez, Keach-Nordstrom Associates, Inc., and A. Eli Leino, Esq., Bernstein, Shur, Sawyer & Nelson, P.A.

Appellant's requested decision or interpretation:

As further detailed in the attached narrative, Ms. Almanzar's interpretation of the buildable area calculation creates an unjust result when applied to proposed multi-family dwellings in lots separated into two districts by the zoning map (in this case, between R-2 and R-3). As such, the Applicant requests a "prorated" buildable area calculation, as provided to the Planning Board, is used to determine the project density.

Applicant's Signature: _____ Date: _____

Print Name: _____

Owner's Signature:  _____ Date: 7/23/25

Print Name: Gary Fitzgerald, Member

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s):

1. I (We) hereby designate A. Eli Leino, Esq. & Jason Lopez to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [ZBA].

2. By submitting this application, I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the ZBA may at some point during the review process schedule a public site visit, which will be duly posted.

3. I (We) understand that the ZBA will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.

4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s):  Date: 7/23/25

Date: _____

Signature of Applicant(s)
if different from Owner: _____ Date: _____

Date: _____

Printed name of person(s) who signed above:

Gary Fitzgerald, Member

For Zoning Board of Adjustment Use Only			
Assigned Case #:			
Date Received at Land Use Office:			
Received by:			
Fee Amount:	Cash:	Check #:	Other:
Abutter List Received: Yes:		No:	
Date of Review:	Date of Hearing:	Date Approved:	

Town of Warner Zoning Board of Adjustment Abutter(s) List

Please list all abutters within 200 feet of the boundaries of the property. Applicant must reference and follow stipulations on Page 3 of the Application Instructions. In addition to abutters, please include the names and addresses of the applicant, owner(s) of the subject property, and, as applicable, the owners' agent, engineer, land surveyor, architect, soil scientist, wetland scientist, and holders of conservation, preservation, or agricultural preservation restrictions.

Map: ____	Lot: ____	Name: <u>see attached</u>
Address: _____		
Map: ____	Lot: ____	Name: _____
Address: _____		
Map: ____	Lot: ____	Name: _____
Address: _____		
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Address: _____		



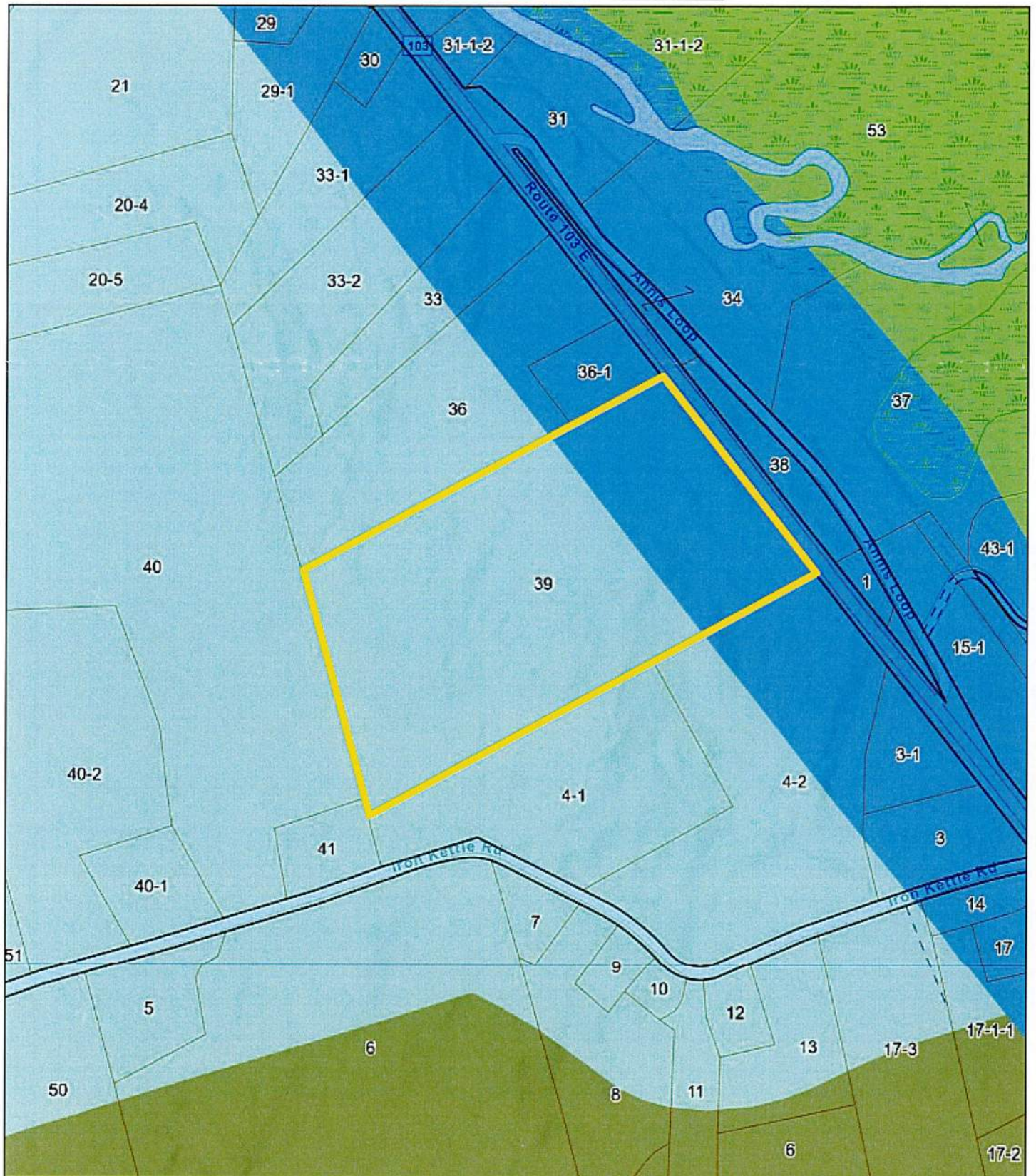
Warner, NH

1 inch = 500 Feet



www.cai-tech.com

July 15, 2025



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

Abutter's List
Route 103
Warner, NH
KNA#24-0307-1
Updated 7/21/2025

Tax Map 7	Lot 39	Owner/ Applicant Peacock Hill Road, LLC C/O Fitzgerald 145 Old Town Road Weare, NH 03281
Tax Map 3	Lot 1 4-2	Direct Abutters Donald & Laura Green 460 Route 103 East Warner, NH 03278
3	4-1	M&P Brown Family Rev. Trust Trustees Michael W. & Paula J. Brown 100 Iron Kettle Road Warner, NH 03278
7	34	Nathanael M Burrington PO Box 221 Warner, NH 03278
7	36	Donald C & Barbara M Lassonde 402 Route 103 East Warner, NH 03278
7	36-1	Dan A Richardson 406 Route 103 East Warner, NH 03278
7	38	Czora Revoc Trust of 2016 Trustee Brian J Czora 60 Annis Loop Warner, NH 03278
7	40	Richard Cook & Rebecca Courser 374 Schoodac Road Warner, NH 03278
7	41	David P & Ann S Ries 115 Chestnut Circle Lincoln, MA 01773

NHDOT – District 5
16 East Point Drive
Bedford, NH 03110

Town of Warner -Select Board
PO Box 265
Warner NH 03278

Town of Warner -Planning Board
PO Box 265
Warner NH 03278

Warner River LAC
Daniel Morrissey, Chair
561 South Road
Hopkinton, NH 03229

Professionals to be notified:

Surveyor

J.E. Belanger Land Surveying PLLC
61 Old Hopkinton Road
Dunbarton, NH 03046

Engineer

Keach-Nordstrom Associates Inc.
10 Commerce Park North, Suite 3B
Bedford, NH 03110

Soil Scientist

Hurley Environmental & Land Planning, LLC
PO Box 356
Epsom, NH 03234

Wetland Scientist

Timothy Ferwerda - Ferwerda Mapping LLC
43 Bartlett Hill Road
Deering, NH 03244

Attorney

Bernstein Shur
A. Eli Leino, Esq.
PO Box 1120
Manchester, NH 03105-1120

Return to:
Grantee
15 Constitution Drive
Suite 1A
Bedford, NH 03110

T.S. \$2,025.00

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That Joseph L. Anthony, Single, for consideration paid grant(s) to Peacock Hill Road LLC, a New Hampshire Limited Liability Company, with a principal place of business of 15 Constitution Drive, Suite 1A, Bedford, New Hampshire 03110, with WARRANTY COVENANTS:

A certain tract or parcel of land, situated in the Town of Warner, County of Merrimack and State of New Hampshire, described as follows:

Beginning at a point on the Westerly side of Route 103, at the Northeasterly corner of the herein described parcel at an iron pin found; thence running S 22 degrees 34' 10" E a distance of five hundred fifty and eighty-eight hundredths (550.88) feet, more or less, to a concrete bound set; thence S 23 degrees 06' 10" E a distance of three hundred sixty-eight and four hundredths (368.04) feet, more or less, to a concrete bound found; thence along said course a distance of thirty-two and ninety-four hundredths (32.94) feet, more or less, to a steel pin found; thence turning and running S 78 degrees 27' 45" a distance of seven and sixteen hundredths (7.16) feet, more or less, to a drill hole at the Northeasterly end of a stone wall; thence running S 78 degrees 27' 45" W along a stone wall a distance of one hundred and fifty hundredths (100.50) feet, more or less, to a point; thence running S 77 degrees 10' 10" W along said stone wall a distance of one hundred thirty-seven and four hundredths (137.04) feet, more or less, to a point; thence running S 77 degrees 36' 40" W along said stone wall a distance of two hundred ninety and fifteen hundredths (290.15) feet, more or less, to a point; thence running s 77 degrees 12' 15" W along said stone wall a distance of one hundred forty-five and seventy hundredths (145.70) feet, more or less, to a point; thence running S 80 degrees 19' 30" W along said stone wall a distance of thirty-four and forty-four hundredths (34.44) feet, more or less, to a point; thence running S 76 degrees 47' 25" W a distance of two hundred thirty-seven and thirteen hundredths (237.13) feet, more or less, to a point on the stone wall; thence running S 77 degrees 49' 45" W along said stone wall a distance of two hundred ninety-nine and thirty-five hundredths (299.35) feet, more or less, to a point; thence running S 77 degrees 00' 10" W along said stone wall a distance of six hundred thirty-three and forty one hundredths (633.41) feet, more or less, to a drill hole at a corner of stone walls; thence turning and running N 01 degrees 32' 25" W a distance of fifty-two and fifty-eight hundredths (52.58) feet,

more or less, to a point; thence running N 01 degrees 34' 20" E a distance of four hundred thirty-three and fifty hundredths (433.50) feet, more or less, to a point on a stone wall; thence running N 01 degrees 28' 05" E along said stone wall a distance of three hundred twenty-seven and forty-three hundredths (327.43) feet, more or less, to a point; thence running N 02 degrees 15' 25" E along a stone wall a distance of one hundred three and two hundredths (103.02) feet, more or less, to a steel pin at a corner of stone walls; thence turning and running N 79 degrees 39' 10" E along a stone wall a distance of forty-two and seventy-six hundredths (42.76) feet, more or less, to a point; thence running N 76 degrees 03' 45" E along said stone wall a distance of one hundred sixty-seven and seventy-seven hundredths (167.77) feet, more or less, to a point; thence running N 77 degrees 00' 40" E along said stone wall a distance of five hundred thirty-five and seventy-two hundredths (535.72) feet, more or less, to a point along said stone wall; thence running N 76 degrees 00' 15" E along said stone wall a distance of four hundred three and ten hundredths (403.10) feet, more or less, to a point on said stone wall; thence running N 77 degrees 27' 40" E along said stone wall a distance of one hundred forty-three and ninety-three hundredths (143.93) feet, more or less, to a point along said stone wall; thence N 77 degrees 09' 40" E along said stone wall a distance of one hundred ninety-nine and eighty-five hundredths (199.85) feet, more or less, to the point of beginning. Containing 34.60 acres, more or less.

Subject to and with the benefit of the following:

Any and all matters as shown or noted on plan recorded in said Registry as Plan #12109.

Application of Current Use with the Town of Warner recorded at Book 1799, Page 949.

Petition for Commissioners' Return of New Hampshire Department of Public Works recorded at Book 739, Page 310.

Emendation Commissioners' Return of Highway Layout recorded at Book 991, Page 365.

Boundary Revision Agreement recorded at Book 1862, Page 172.

Meaning and intending to describe and convey the same premises conveyed to Joseph L. Anthony by virtue of a Warranty Deed from W. Jed Larson and Janet A. Larson, dated March 17, 2021 and recorded in the Merrimack County Registry of Deeds at Book 3729, Page 1057.

Said premises are not the homestead property of the within grantor nor any spouse.

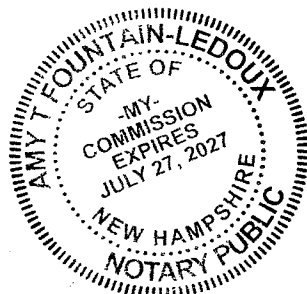
Executed this 29 day of June, 2023.

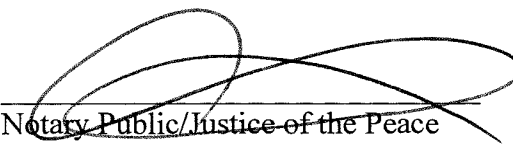


Joseph L. Anthony

State of New Hampshire
County of Hillsborough

Then personally appeared before me on this 29 day of June, 2023 the said Joseph L. Anthony and acknowledged the foregoing to be his voluntary act and deed.





Notary Public/Justice of the Peace
Commission expiration:

**Peacock Hill Road LLC
Route 103, Warner, NH
Map 7, Lots 39 & 39-1
Appeal of Administrative Decision**

NARRATIVE

Introduction

On May 5th, 2025, the Warner Planning Board voted to conditionally APPROVE a Subdivision for Peacock Hill Rd LLC for Map 07, Lot 039 into three lots, each more than five acres. One lot was to be used for a single-family home and the two larger lots to be used for multifamily housing.

On June 2, 2025, the Warner Planning Board voted to accept a site plan application as substantially complete for the development of two lots as multifamily housing. During the meeting questions arose regarding the application of the buildable area calculations.

On June 23, 2025, a letter from Chrissy Almanzar, Land Use, Town of Warner, was received. The letter stated *“The suggestion that you should take the “buildable area” requirement in the R-2 portion and the “buildable area” requirement in the R-3 portion and create a prorated buildable area that applies to the entire lot does not apply, and the Warner Zoning Ordinance does not give the Planning Board the discretion to approve that allowance.”* We have accepted this letter as an Administrative Decision that does not permit the application as proposed.

Legal Standard

The interpretation of an ordinance is a question of law and requires a determination as to the intent of the enacting body. *See Feins v. Town of Wilmot*, 154 N.H. 715, 719 (2007). We use the traditional rules of statutory construction when interpreting zoning ordinances. *Id.* According to the New Hampshire Supreme Court, in matters of statutory interpretation, the intent of the legislature is “expressed in the words of a statute considered as a whole.” *Petition of Carrier*, 165 N.H. 719, 721 (2013). “We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.” *Id.* “We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Id.* “The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.” *Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009) (quotation omitted). “We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *Carrier*, 165 N.H. at 721. “Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole.” *Id.* “This enables us to better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.”

Administrative Appeal

In response to the June 23, 2025, Administrative Decision we take exception to the position and have concern that it only focuses on one excerpt of the Town of Warner Zoning Ordinance (ZO). We present the following challenge based on the whole of the ordinance.

The primary excerpt being focused on is ZO Article II, Districts, C, 2 which states *“Where a lot is located within more than one Zoning District all the relevant Zoning Ordinance requirements pertaining to each Zoning District type shall remain for each corresponding area of the lot.”*

The subject parcel is located within the R-2 and R-3 zoning districts, therefore the above applies to the property and subject application. The June 23, 2025, Administrative Decision is suggesting that the number of units permitted on a property based on the buildable area calculation needs to be segregated based on the zoning line. But that is not what the ordinance states. It simply states, *“all the relevant Zoning Ordinance requirements pertaining to each Zoning District type shall remain for each corresponding area.”* The number of permitted units on a property is based on the Buildable Area calculation.

ZO Article III, Definitions, states *“Buildable Area” means total acreage of the parcel or lot minus the following:*

- 1. Slopes in excess of 25%;*
- 2. Waterways, including streams, rivers, ponds, lakes and other water course or water bodies;*
- 3. Wetlands;*
- 4. Poorly drained or very poorly drained soils as defined by the New Hampshire Department of Environmental Services Water Division;*
- 5. Land within existing highway or utility rights of way;*
- 6. Land within a 100 year floodplain or floodway as determined by the Federal Emergency Management Agency;*
- 7. Areas which are subject to an easement or a right of way that limits building or development, in favor of the Town, County, State, or Federal Government, or any third party. [Approved March 2005]*

Any calculation of Buildable Area must include all the area of the parcel minus the areas outlined. Based on the Ordinance the calculation must be performed for the land area within the R-2 district and within the R-3 district based on the following. ZO Article IV, General Provisions, K. states *“Multi-Family Development: In districts where multi-family development is permitted, the minimum Buildable Area shall be increased by 1/2 the minimum Buildable Area for single family dwellings in that particular district for each dwelling unit in excess of one (1), up to a maximum of four (4) dwelling units in any one building.”*

Based on ZO Article VI, Medium Density Residential District – R2, the minimum Buildable Area of at least two (2) acres is required. Based on ZO Article VII, Low Density Residential District – R3, the minimum Buildable Area of at least three (3) acres is required. Further, both sections permit a smaller Buildable Area in each zone if the lot is served by sewer. The Buildable Area is based on a function of wastewater loading for a lot. The proposal has provided the Buildable Area calculations on the Sheet 3 of the submitted plans.

LOT NUMBER	LOT AREA (SF)	LOT AREA (ACRES)	R-2 BUILDABLE AREA (ACRES)	R-3 BUILDABLE AREA (ACRES)	TOTAL BUILDABLE AREA (ACRES)
MAP 7 LOT 39	488,497	11.2140	4.3100	4.4640	8.7740
MAP 7 LOT 39-1	665,946	15.2280	2.5480	8.5020	11.0500

R-2: 2 acres for one unit + (½ * 2 acres)/extra units * 3 extra units = 5 acres for four units

R-3: 3 acres for one unit + (½ * 3 acres)/extra units * 3 extra unit) = 7.5 acres for four units

The total acreage of the parcel was analyzed as required and the calculation performed with the specified Buildable Area calculation based on the minimum requirement of each zoning district. In prior discussions with the Planning Board the industry term “prorated” was used to describe this process. Based on the “prorated” calculation the two proposed lots can support a maximum of 11 units where 8 are proposed.

The proposal provides one 4-unit multifamily units on each lot. Both buildings are located in the R-2 zoned portion of the lot. Based on Table 1, Use Regulations, Multi-family dwellings are permitted by right in the R-2 District. If a multi-family dwelling was proposed in the R-3 District then a special exception would be required by the Town of Warner Zoning Board of Adjustment (ZBA).

TABLE 1
Use Regulations

Buildings, structures, or land shall be used as permitted by this ordinance. Any use NOT listed in this ordinance is prohibited. [Amended March 2023]

RESIDENTIAL

USES	R-1	R-2	R-3	B-1	C-1	OC-1	INT	OR
1. One-family detached dwelling [Amended March 2012]	P	P	P	P	S	P		P
2. Two-family dwelling [Amended March 2012]	P	P	S	P	S			
3. Multi-family dwelling [Amended March 2012]	P	P	S	P	S			
4. Conversion of existing dwelling structure to multifamily dwelling	P	P	S	P	P	S		
5. Accessory Apartment [Adopted March 2012]	P	P	P	P		P		P
6. Multi-Family Workforce Housing [Amended March 2021]	P	S	S	P	S		S	

S (Special Exception) P (Permitted)

It has been suggested that the subject proposal seeks a special exception from the ZBA. The problem with this suggestion is the Ordinance does not support the request in the case of the subject application.

ZO Article XVII, Board of Adjustment, E. Granting of Special Exceptions states “1. *The Board shall hear and decide requests for a Special Exception and shall grant a Special Exception only when it finds that each of the following criteria has been met:*

- a. The **use requested** is identified in the Use Table of the Zoning Ordinance as a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance.*
- b. The **requested use** is essential or desirable to the public convenience or welfare.*
- c. The **requested use** will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals or welfare.”*

The requested use is multi-family dwelling which is proposed in the R-2 District which is permitted by right. The requested use is not located in the R-3 District, therefore there is no basis for a special exception to be filed or heard. The underlying concern is with the calculation of the Buildable Area. Buildable Area is not a Use outlined in Table 1 of the ZO so the ZBA cannot issue a special exception.

For these reasons we believe the application fully complies with the spirit and intent of the Town of Warner Zoning Ordinance as a whole and we seek the ZBA to overturn the June 23, 2025 Administrative Decision and provide the Planning Board with a determination that can be used on this project and future applications.



TOWN OF WARNER

P.O. Box 265, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Email: landuse@warnernh.gov

June 23rd, 2025

Jason Lopez, Senior Project Manager
Keach-Nordstrom Associates, Inc.
10 Commerce Park N, Suite 3B
Bedford, NH 03110

RE : Jennesstown Manor Site Plan Application
Tax Map 7, Lot 39 & 39-1, Warner, NH

Dear Mr. Lopez,

Regarding your site plan presentation at the June 2nd Planning Board meeting, as well as your correspondence dated May 27th, 2025, and the interpretation therein of Article II.C.2. of the Town of Warner Zoning Ordinance which states, "Where a lot is located within more than one Zoning District all the relevant Zoning Ordinance requirements pertaining to each Zoning District type shall remain for each corresponding area of the lot," we have asked two separate legal counsel to respond to the assertion that a "prorated calculation" must be used to calculate buildable acreage for the lot. Both have maintained that in accordance with Article II.C.2., the zoning requirements of each district shall remain.

This means that the requirements for R-2 apply to that portion of the lot in R-2 and the requirement for R-3 applies to that portion of the lot in R-3. Therefore, with regard to Map 7, Lots 39 and 39-1, which are divided between R-2 and R-3 districts, if you wish to build a development completely in the R-2 district, you will have to comply with all of the requirements applicable to the portion of the lot in the R-2 district, including the requirement of 5 acres of land in the R2 district for the units proposed.

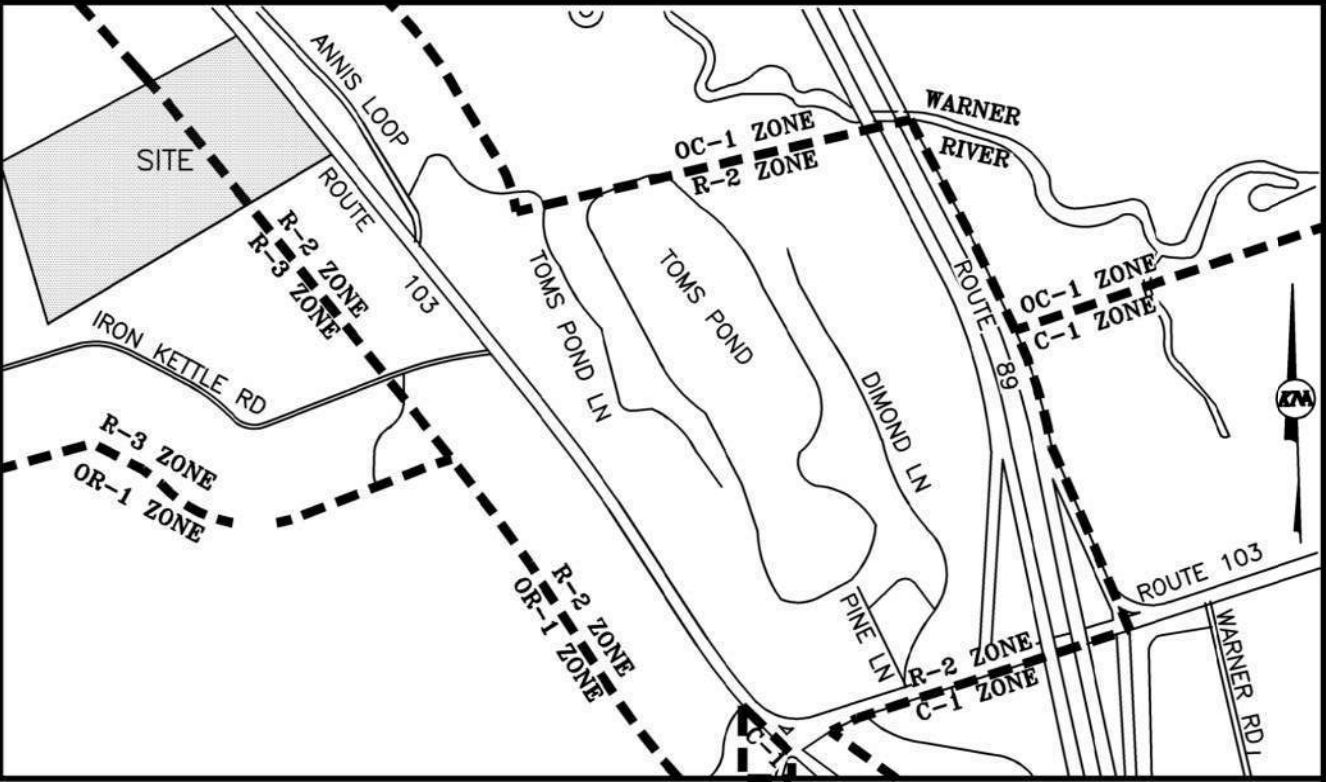
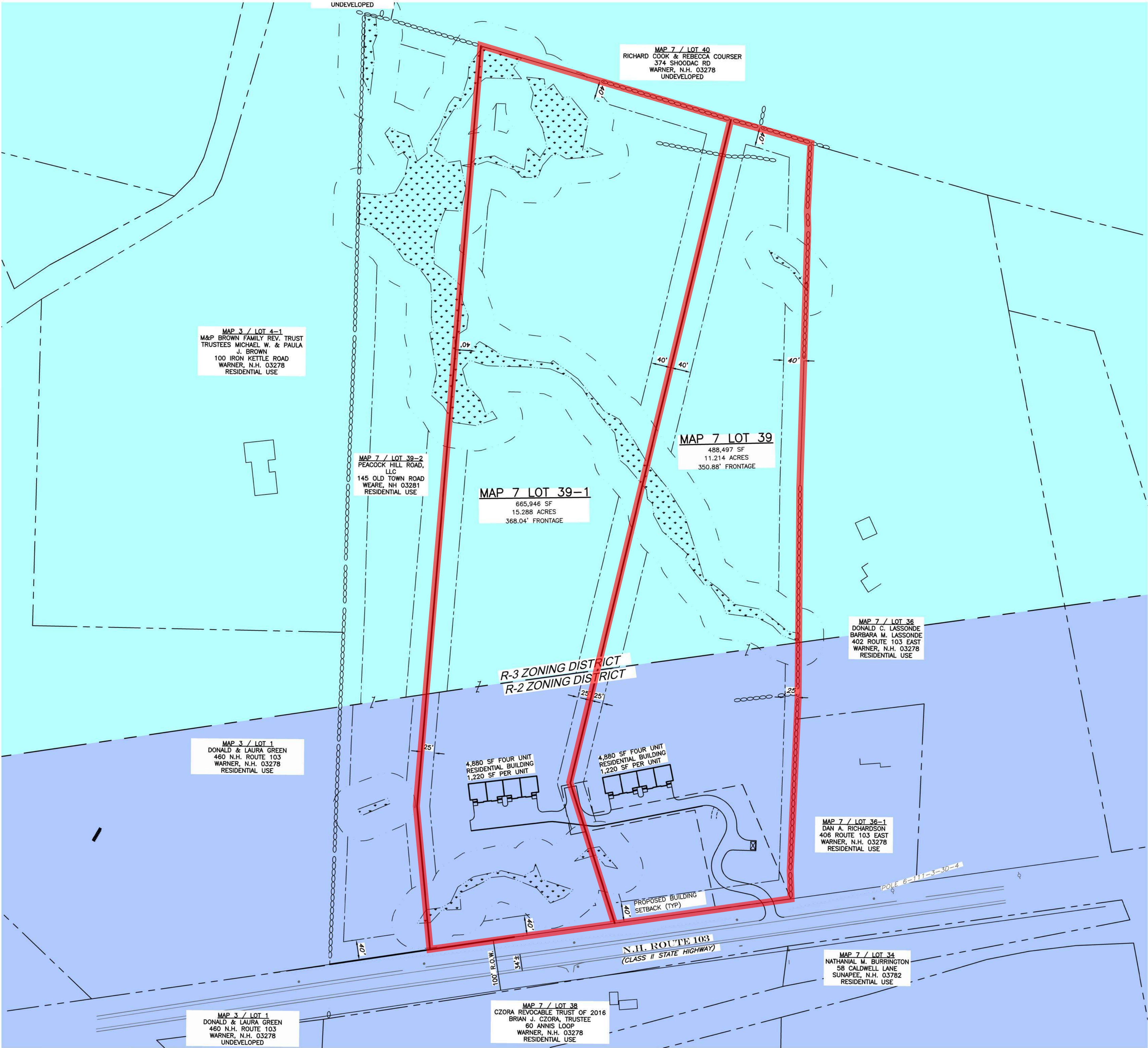
If there is not sufficient "buildable area" in the R-2 portion of the lot to meet the requirements, then you have the choice to either seek a variance for "buildable area" from the ZBA or move the building to the R-3 portion of the lot and seek a special exception for multifamily housing in R-3.

Neither counsel agrees with the suggested proposal for a "prorated approach" to the building area. If no building is proposed in the R-3 portion of the lot, then you may not factor in that portion of the property in calculating the "buildable area."

The suggestion that you should take the "buildable area" requirement in the R-2 portion and the "buildable area" requirement in the R-3 portion and create a prorated buildable area that applies to the entire lot does not apply, and the Warner Zoning Ordinance does

not give the Planning Board the discretion to approve that allowance.

Sincerely,
Chrissy Almanzar
Land Use
Town of Warner
landuse@warnernh.gov



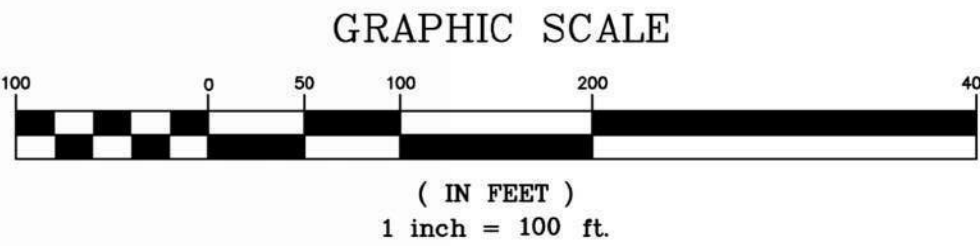
VICINITY MAP
SCALE: 1" = 1,000'

- NOTES:**
- THE PURPOSE OF THIS PLAN IS TO DEPICT THE IMPROVEMENT REQUIRED FOR A 4-UNIT BUILDING ON ASSESSOR'S MAP 7 LOTS 39 AND 39-1, SHOWN HEREON.
 - REFERENCE THESE PARCELS AS LOT 39 ON WARNER TAX MAP 7.
 - MAP 7 LOT 39 IS PRIMARILY FORESTED AND CONTAINS NO EXISTING STRUCTURES. IT IS PARTIALLY CLEARED AND CONTAINS AN EXISTING GRAVEL DRIVEWAY AND RIPRAP DRAINAGE DITCHES. THE EXISTING AREA IS 1,507,247 S.F. OR 34.60 AC.
 - SUBJECT PARCELS ARE SITUATED IN THE R2 AND R3 DISTRICT, BUT CONSTRUCTION IN ITS ENTIRETY WILL TAKE PLACE IN R2. THE FOLLOWING DIMENSIONAL STANDARDS APPLY:

REQUIREMENT	R2	R3
MIN BUILDABLE AREA	2 ACRES	3 ACRES
MIN LOT FRONTAGE	200 FT	250 FT
FRONT SETBACK	40 FT	50 FT
SIDE SETBACK	25 FT	40 FT
REAR SETBACK	25 FT	40 FT
MIN STRUCTURE SETBACK FROM WETLANDS	50 FT	50 FT
 - BUILDABLE AREA REQUIRED**

UNITS ON MAP 7 LOT 39	MINIMUM AREA REQUIRED: 2 AC + (1/2 x 2 ACRES)/EXTRA UNIT x 3 EXTRA UNITS = 5 AC	MINIMUM AREA PROVIDED: 8.774 ACRES
UNITS ON MAP 7 LOT 39-1	MINIMUM AREA REQUIRED: 2 AC + (1/2 x 2 ACRES)/EXTRA UNIT x 3 EXTRA UNITS = 5 AC	MINIMUM AREA PROVIDED: 11.050 ACRES
 - AN INVESTIGATION OF FEMA'S NATIONAL FLOOD INSURANCE RATE MAPPING FOR MERRIMACK COUNTY, NEW HAMPSHIRE (PANEL NO. 33013C0294E) HAVING AN EFFECTIVE DATE OF APRIL 19, 2010 SUGGESTS THOSE PORTIONS OF THE SUBJECT PARCEL SHOWN ON THIS PLAN IS NOT SITUATED IN A DESIGNATED FLOOD HAZARD AREA HAVING A BASE FLOOD ELEVATION (100-YEAR) ELEVATION OF 396.
 - TOPOGRAPHICAL SURVEY INFORMATION SHOWN HEREON IS REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929.

LOT NUMBER	LOT AREA (SF)	LOT AREA (ACRES)	R-2 BUILDABLE AREA (ACRES)	R-3 BUILDABLE AREA (ACRES)	TOTAL BUILDABLE AREA (ACRES)
MAP 7 LOT 39	488,497	11.2140	4.3100	4.4640	8.7740
MAP 7 LOT 39-1	665,946	15.2280	2.5480	8.5020	11.0500



ZONING BOARD EXHIBIT PLAN

JENNESSTOWN MANOR
MAP 7, LOTS 39 & 39-1

ROUTE 103
WARNER, NEW HAMPSHIRE
MERRIMACK COUNTY

OWNER/APPLICANT:

PEACOCK HILL ROAD, LLC
145 OLD TOWN ROAD
WEARE, NH 03281
BK. 3829 PG. 2512



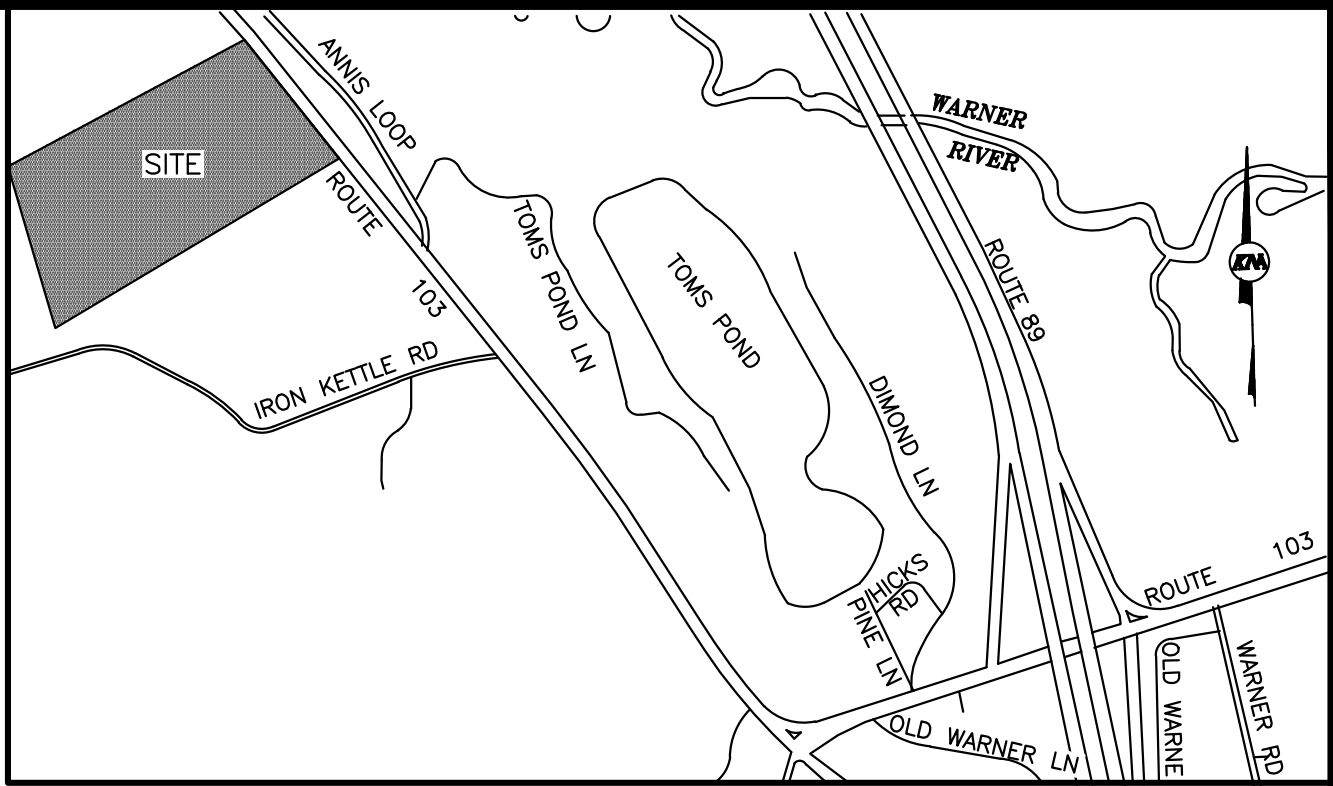
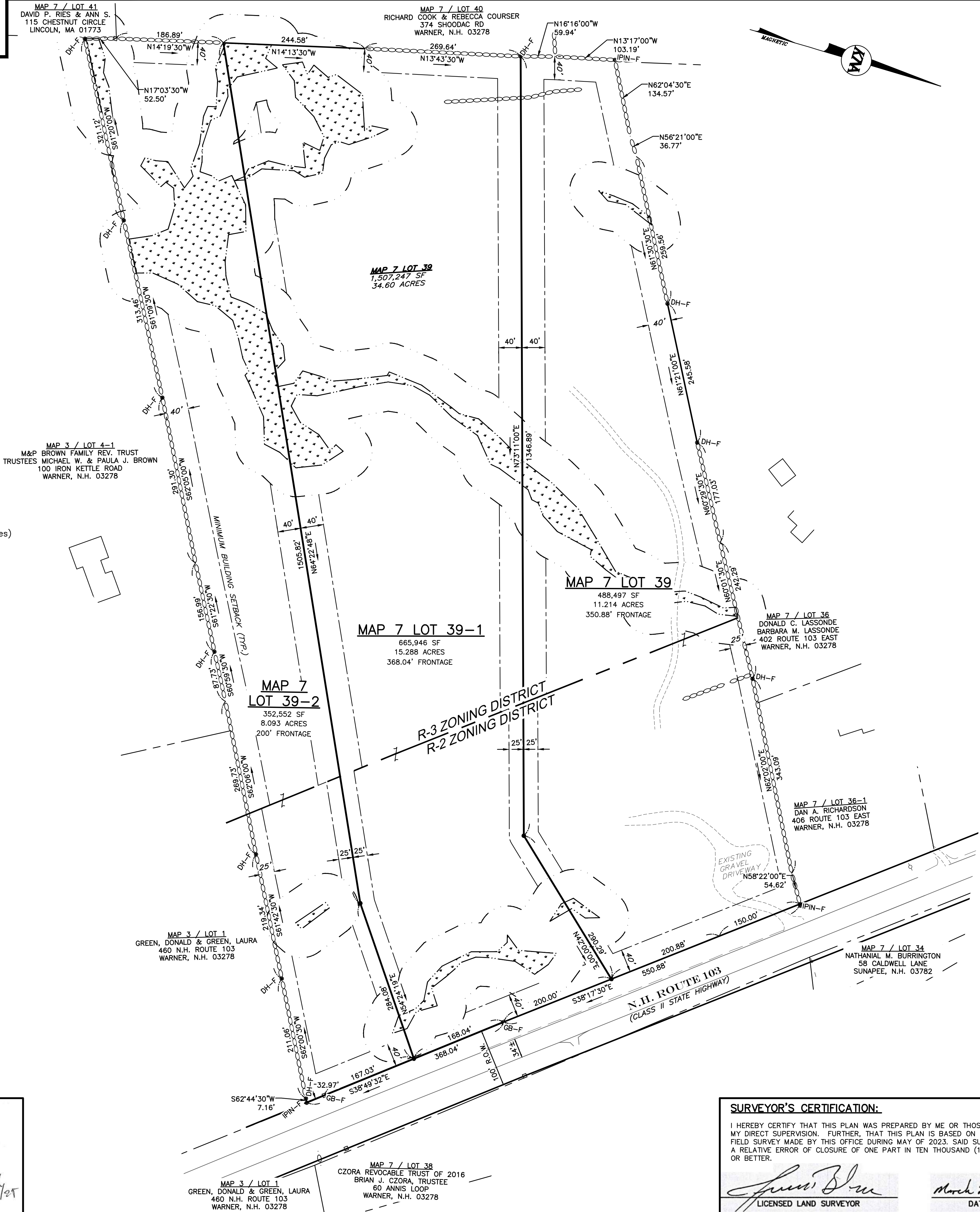
KEACH-NORDSTROM ASSOCIATES, INC.

Civil Engineering Land Surveying Landscape Architecture
10 Commerce Park North, Suite 3B, Bedford, NH 03110 Phone (603) 627-2881

REVISIONS			
No.	DATE	DESCRIPTION	BY
1	5/22/25	PER PB AND AOT COMMENTS	AEW
DATE: MARCH 25, 2025		SCALE: 1" = 100'	
PROJECT NO: 24-0307-1		SHEET 1 OF 1	

UTILITY NOTE

THE UNDERGROUND UTILITIES DEPICTED HEREON HAVE BEEN DRAWN FROM FIELD SURVEY INFORMATION AND OR PLOTTED FROM EXISTING DRAWINGS. KEACH-NORDSTROM ASSOCIATES, INC. MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES DEPICTED COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. FURTHER, KEACH-NORDSTROM ASSOCIATES, INC. DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. ALTHOUGH THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE. KEACH-NORDSTROM ASSOCIATES, INC. HAS NOT PHYSICALLY LOCATED THE UNDERGROUND PORTIONS OF THE UTILITIES.

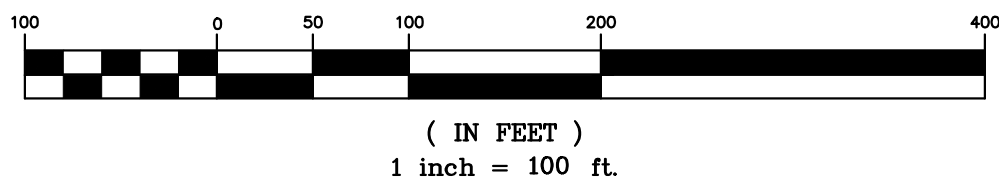


VICINITY MAP
SCALE: 1" = 1,000'

- NOTES:**
1. THE PURPOSE OF THIS PLAN IS TO SUBDIVIDE MAP 7 LOT 39 INTO 3 LOTS AS SHOWN HEREON AND NO OTHER PURPOSE.
 2. MAP AND LOT NUMBERS INDICATE THE TOWN OF WARNER ASSESSOR'S MAP AND LOT NUMBERS
 3. THE EXISTING AREA OF THE PARCEL IS 1,507,247 S.F. OR 34.60 ACRES.
 4. MAP 7 LOT 39 IS PRIMARILY FORESTED AND CONTAINS NO EXISTING STRUCTURES. IT IS PARTIALLY CLEARED AND HAS AN EXISTING GRAVEL DRIVEWAY.
 5. SUBJECT PARCEL IS SITUATED IN THE R2 AND R3 DISTRICT. THE FOLLOWING DIMENSIONAL STANDARDS APPLY:

REQUIREMENT	R2	R3
MIN BUILDABLE AREA	2 ACRES	3 ACRES
MIN LOT FRONTAGE	200 FT	250 FT
FRONT SETBACK	40 FT	50 FT
SIDE SETBACK	25 FT	40 FT
REAR SETBACK	25 FT	40 FT
MIN STRUCTURE SETBACK FROM WETLANDS	50 FT	50 FT
 6. BOUNDARY INFORMATION SHOWN HEREON IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED BY THE OFFICE OF J.E. BALENGER LAND SURVEYING, PLLC IN MAY OF 2023.
 7. THE PROPOSED PARCELS ARE ALL OVER 5 ACRES IN SIZE AND THEREFORE DO NOT REQUIRE NHDES SUBDIVISION APPROVAL.
 8. MAP 7 LOTS 39 AND 39-1 WILL HAVE A SHARED DRIVEWAY.
 9. THE PROPOSED PARCELS WILL BE SERVICED WITH ON-SITE WATER SUPPLY AND ON-SITE SEWAGE DISPOSAL SYSTEMS.
 10. AN INVESTIGATION OF FEMA'S NATIONAL FLOOD INSURANCE RATE MAPPING FOR MERRIMACK COUNTY, NEW HAMPSHIRE (PANEL NO. 33013C0294E) HAVING AN EFFECTIVE DATE OF APRIL 19, 2010 SUGGESTS THOSE PORTIONS OF THE SUBJECT PARCEL SHOWN ON THIS PLAN IS NOT SITUATED IN A DESIGNATED FLOOD HAZARD AREA HAVING A BASE FLOOD ELEVATION (100-YEAR) ELEVATION OF 396.
 11. TOPOGRAPHICAL SURVEY INFORMATION SHOWN HEREON IS REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929.
 12. THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN HEREON IS APPROXIMATE. KEACH-NORDSTROM ASSOCIATES, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF THE UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR OR OWNER SHALL CONTACT DIG-SAFE AT 811.
 13. SUBJECT TO EASEMENTS, RIGHTS AND RESTRICTIONS SHOWN OR IDENTIFIED HEREON ARE THOSE FOUND DURING RESEARCH AT THE MERRIMACK COUNTY REGISTRY OF DEEDS. OTHER EASEMENTS, RIGHTS AND RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF THE SUBJECT PREMISES MAY DETERMINE.
 14. THE APPLICANT SHALL OBTAIN ANY OTHER FEDERAL, STATE, OR LOCAL APPROVALS THAT MAY BE REQUIRED.
 15. THE SUBDIVISION REGULATIONS OF THE TOWN OF WARNER ARE A PART OF THIS PLAT, AND APPROVAL OF THE PLAT REQUIRES THE COMPLETION OF ALL THE REQUIREMENTS OF SAID SUBDIVISION REGULATIONS EXCEPTING ONLY ANY RELAXATION OF REQUIREMENTS GRANTED IN WRITING BY THE PLANNING BOARD.
 16. SHEET 1 SHALL BE RECORDED IN THE MERRIMACK COUNTY REGISTRY OF DEEDS. ALL THREE SHEETS IN THE PLAN SET ARE ON FILE WITH THE TOWN OF WARNER.

GRAPHIC SCALE



SUBDIVISION PLAN
JENNESSTOWN MANOR
MAP 7, LOT 39
ROUTE 103
WARNER, NEW HAMPSHIRE
MERRIMACK COUNTY

OWNER/APPLICANT:

PEACOCK HILL ROAD, LLC
145 OLD TOWN ROAD
WEARE, NH 03281
BK. 3829 PG. 2512

KEACH-NORDSTROM ASSOCIATES, INC.
Civil Engineering Land Surveying Landscape Architecture
10 Commerce Park North, Suite 3B, Bedford, NH 03110 Phone (603) 627-2881

REVISIONS

No.	DATE	DESCRIPTION	BY

DATE: MARCH 25, 2025

SCALE: 1" = 100'

PROJECT NO: 24-0307-1

SHEET 1 OF 3

SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION. FURTHER, THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY MADE BY THIS OFFICE DURING MAY OF 2023. SAID SURVEY HAS A RELATIVE ERROR OF CLOSURE OF ONE PART IN TEN THOUSAND (1:10,000) OR BETTER.

[Signature]
LICENSED LAND SURVEYOR

March 21/25
DATE

WETLAND CERTIFICATION:

TIMOTHY FERWERDA, CERTIFIED WETLAND SCIENTIST #39 OF FERWERDA MAPPING LLC, OF DEERING, NH, PERFORMED THE WETLAND IDENTIFICATION AND DELINEATION IN DECEMBER, 2022 ACCORDING TO THE CORPS OF ENGINEERING WETLAND DELINEATION MANUAL AND THE REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL; NORTH CENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012, US ARMY CORPS OF ENGINEERS.

CERTIFIED WETLAND SCIENTIST

DATE



[Signature]
3/24/25