

**APPLICATION OF MOTORBIKES PLUS, LLC**  
**650 MAPLEWOOD AVENUE**  
**Map 220, Lot 88**

**APPLICANT'S NARRATIVE**

**A. The Project.**

The Applicant, Motorbikes Plus, LLC, is under contract to acquire the property located at 650 Maplewood Avenue, 1.72 acre lot and the site of an approximately 7325 square feet warehouse facility currently housing the Rexall Electrical industrial/warehouse/retail and office use. The property is at the northeastern corner of Maplewood Avenue and Emery Street. According to City tax records, the existing building dates to 1970. The Applicant seeks to relocate its existing retail sales operation from 3 Cate Street, where it has operated since 2001, to this location. The Applicant will be making minimal exterior changes to the building and property, beyond usual and customary changes to signage and landscaping.

The property is an irregularly shaped lot and the building is oriented such that it is parallel to Emery Street and at sharp angle to Maplewood. In the immediate vicinity are a bus depot, commercial uses on the Rte. 1 By-Pass, an electrical transformer station, the Oddfellows lodge, and residential uses. One abutter has been approved for a place of religious assembly. The proposal is not incompatible with these uses.

The proposed sale of motorcycles does not produce excessive noise, and the property is not in any event a "quiet" site given its proximity to the By-Pass, I-95 and the nearby commercial uses. The Applicant will, at most, store only limited product or equipment outdoors overnight and is open to the public during normal business hours (9am -5pm) from Tuesday through Friday, and from 9am to 3pm on Saturdays. The business is closed Sundays and Mondays.

The products applicant offers for sale are primarily specialized, and, as such, the business does not generate an excessive amount of retail traffic.

The property is in the Business (B) zoning district, the purpose of which is "[t]o provide for a mix of retail, commercial and residential uses in areas of the City where a mix of such uses is desirable." §10.410.

Motor vehicle sales are permitted in the B zone by special exception. §10.440.11.10. It should be noted, however, that the applicant's business is very different than what is typically considered "motor vehicle" related. Sales and repair of motorcycles are only a portion of its business. Most items fall into other categories, like helmets, apparel, parts, accessories and even bicycles. The majority of the use would be permitted on the property.

Because this site abuts residential districts to the west and the south and across Maplewood Avenue, relief from §10.592.20 is required as the proposed use,<sup>1</sup> motor vehicle sales, is within 200 feet of such residential districts.

The applicant does not plan to make any significant changes to the exterior of the building and intends to retain and utilize the parking areas as they currently exist. The current parking is in places within forty feet of the Maplewood Avenue and Emery Street rights of way. Accordingly, for this use, relief from §10.843.21 is also necessary<sup>2</sup>.

### **B. The Special Exception.**

The Applicant believes the proposal easily meets the criteria for the necessary special exception. Those criteria are set forth in the ordinance at §10.232.20.

First, the use proposed here, “motor vehicle sales,” is permitted within this district by special exception, see §10.440 Table of Uses, no. 11.10. §10.232.10.

Second, the proposed use will pose no hazard to the public or adjacent properties on account of potential fire, explosion or release of toxic materials. §10.232.22. No explosives, toxic materials or unusual accelerants will be stored on site. Any motor vehicle fluids will be disposed of properly by the Applicant privately in accordance with accepted practices. This has never presented any issue for the Applicant at its Cate Street location.

Third, there will be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. §10.232.23. Commercial use has existed on this site for at least fifty years. There will be, at most, limited overnight outside storage of product or equipment on site. The existing use by Rexall includes permanent outdoor storage of equipment and supplies (which will be discontinued by the applicant), which has had no discernible effect on property values in the vicinity. Ambient noise from the traffic on the By-Pass and I-95 mitigates any minor noise impact this use will produce.

The building already exists and no new construction or site disturbance is contemplated.

Fourth, there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. §10.232.23. The existing use is comprised of industrial/warehouse/retail and office use. The applicant’s operation is geared towards a

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<sup>1</sup> “Use” is defined in the ordinance to include “[a]ny purpose for which a lot, building or other structure or a tract of land may be designated, arranged, intended, maintained or occupied; or any activity, occupation, business or operation carried on or intended to be carried on in a building or other structure or on a tract of land.” This would presumably include the parking areas, which the applicant does not intend to alter at this time.

<sup>2</sup> The applicant has not commissioned an as-built survey of the lot, so the exact location of the parking areas from the rights of way is not known, but it is assumed relief is necessary.

specialized clientele and does not generate significant traffic. The property currently has 28 designated/marked parking spots, which is more than sufficient for this proposed use. The Cate Street operation, for example, has only 11 spaces.

Fifth, there will be no excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools. §10.232.24. None of these services will be implicated by this proposal.

Finally, the project will result in no significant increase of stormwater runoff onto adjacent property or streets. §10.232.25. There will be no change to the existing building footprint or impervious surfaces.

### **C. The Variances.**

The Applicant submits that the proposal meets the criteria for granting the requested variances.

**Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The “public interest” and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

The proposed use fits in well with the mix of commercial, religious and other assembly and residential uses characteristic of this neighborhood. The existing structure and lot will not be altered in any material way. The health, safety and welfare of the public will not be threatened in any fashion if the proposed use is within 200 feet of the abutting residential zones or if the forty foot parking setback is not maintained.

**Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner. The required 200 foot separation cannot be maintained without moving the building and substantially altering the parking areas. The forty foot parking/motor vehicle storage setback requirement is unnecessary to protect any abutting properties. The properties across Emery Street consist of a PSNH facility and an entirely commercial facility. At least one of the residential properties across Maplewood Avenue is oriented away from this property, and Maplewood itself provides a natural separation from other properties.

Accordingly, the loss to the applicant clearly outweighs any gain to the public if the applicant were required to conform to the ordinance.

**The values of surrounding properties will not be diminished by granting the variance.** The proposal will modernize and update a very modest commercial building and will spruce up the site. Deliveries and the noise associated with them will likely decrease. The abutting residential zone to the west is separated from the proposed use by heavy vegetation and a six foot privacy fence. The residential zone to the south is separated from the use by a utility corridor and heavy vegetation. The residential zone to the north is separated from the use by Maplewood Avenue. The values of surrounding properties will not be negatively affected in any way.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property is an irregularly shaped corner lot with an existing built environment that is very easily adapted to the proposed use for the sale of motorcycles. The existing building is sited so that it is parallel to Emery Street but at an odd angle to Maplewood. Compliance with the ordinance would require, at a minimum, the relocation of the building on the property and the substantial removal and re-configuration of the parking. Pulling the parking area to 40 feet from the rights of way would impede the safe flow of traffic through the site given its irregular shape and the orientation of the building on the site.

**The use is a reasonable use.** The proposal is permitted by special exception in this zone and is not inconsistent with the intent of the Business zone or the existing mix of commercial, religious and general assembly and residential uses in the area.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** All of the variance relief here requested is driven by the applicant's desire to reuse the property as it is currently configured. The purpose of the 200 foot from residential zones is to assure residential uses are adequately protected from the potentially deleterious effect of having a busy and very highly visible motor vehicle showroom in close proximity. The purpose of the forty foot parking setback from the public right of way is to blunt the adverse aesthetic affect a large automobile parking lot is presumed to have on the motoring public. None of these purposes are frustrated by this proposal for this site given that heavy vegetation, a privacy fence, a utility corridor and Maplewood Avenue all separate the proposed use from the abutting residential zones. As noted above, compliance with these requirements would mean moving the building and re-configuring the parking lot, which is an unnecessary hardship in this circumstance.

Accordingly, the relief requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of these requirements and their application to this property.

**D. Conclusion.**

For the foregoing reasons, the applicant respectfully requests the Board grant the special exception and variances as requested and advertised.

Respectfully submitted,

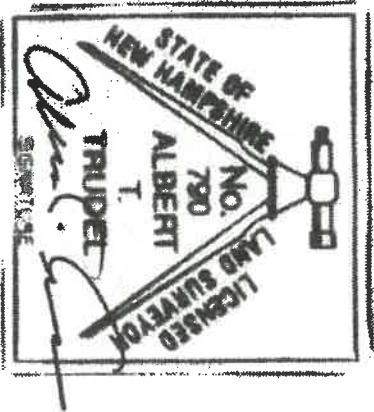
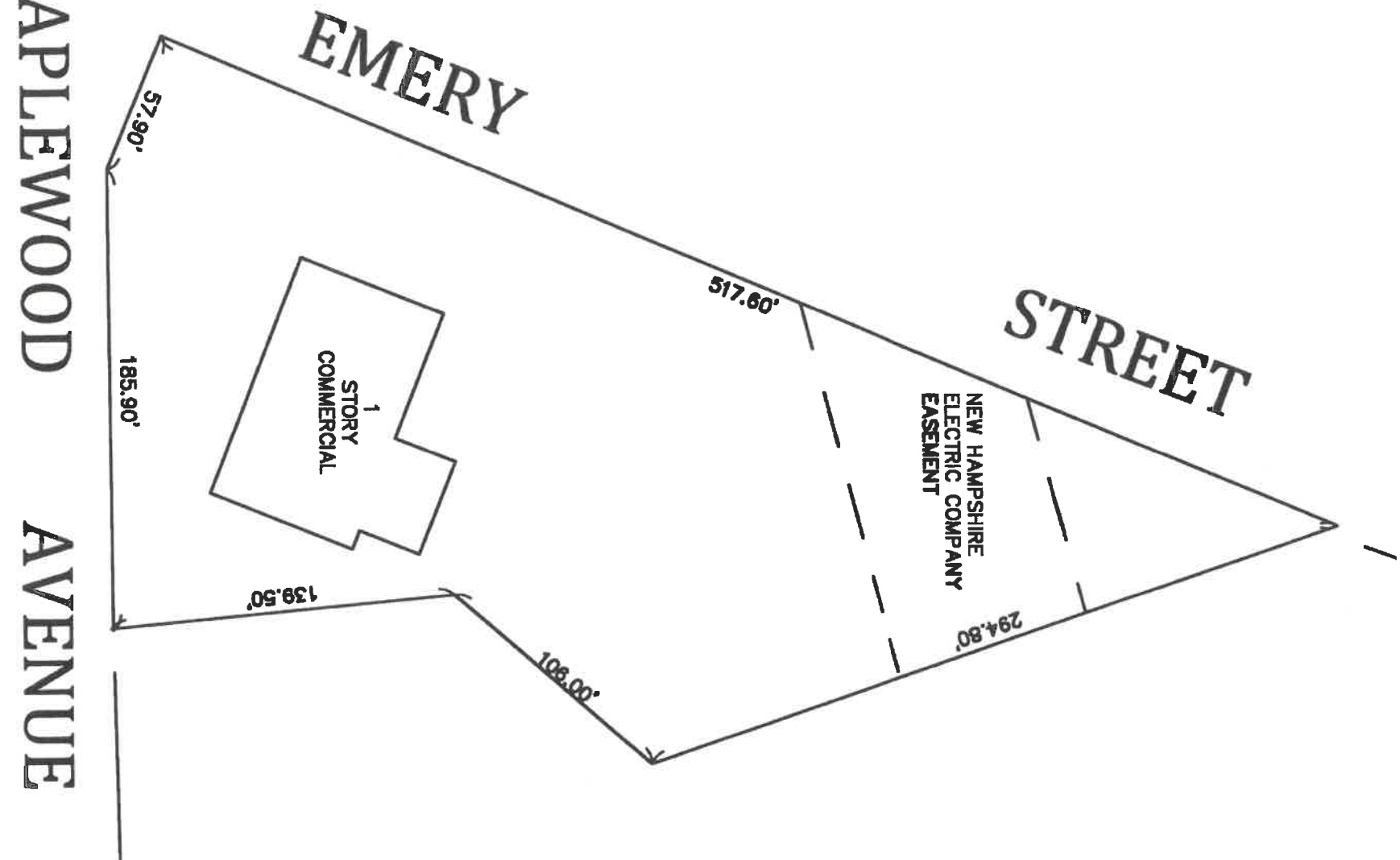
Dated: May 25, 2021

By: /s/ John K. Bosen.  
John K. Bosen, Esquire

MORTGAGE PLOT PLAN  
S.E.C. & ASSOCIATES 2, INC.  
PHONE 978-469-1985

MORTGAGOR: JAMES KENNY  
ADDRESS OF PRINCIPLE BUILDING: 650 MAPLEWOOD AVE. PORTSMOUTH, NH

DEED REF. BK. 2909 PG.977  
PLAN REF. 02976  
DATE OF INSPECTION: APRIL 20, 2020  
SCALE 1" = 80'



Certification to:  
This Mortgage Plot Plan was prepared specifically for mortgage purposes only and it is not intended or represented to be a property line or land survey. This plan is not to be used to establish any of the property lines for any purpose. No responsibility is extended to the land owner or occupant. This is a tape survey based on the location of survey markers of others. This plan is not to be used for building permits or any such use.

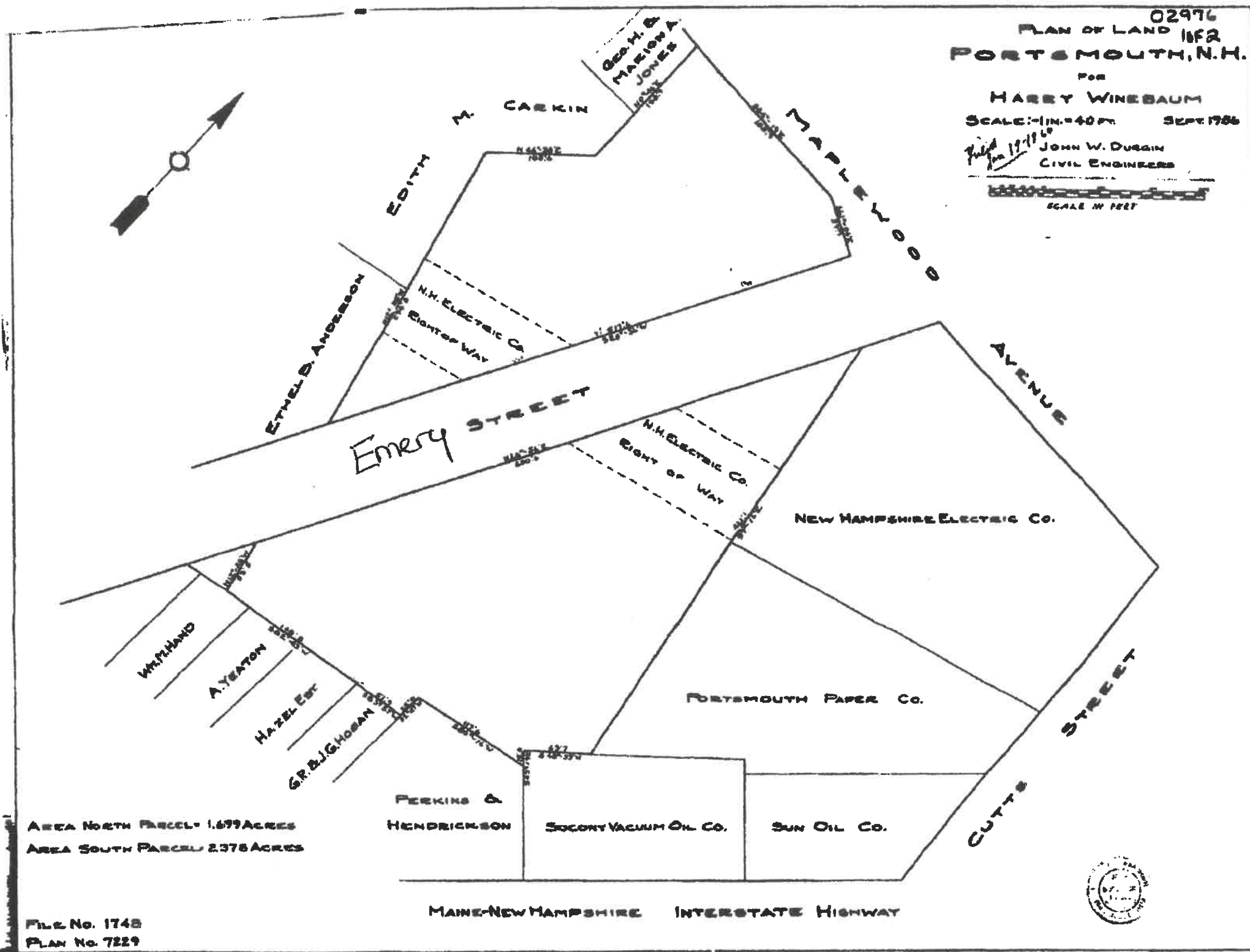
The approximate location of the principle structure/s conform with the horizontal building setback requirements in effect when constructed.

The principle structure on this plan is not located within a special flood hazard area as scaled from FIRM Map # 33015C-0259 E  
Date: 5/17/2005

Prepared for: CASASSA LAW OFFICE

File No.

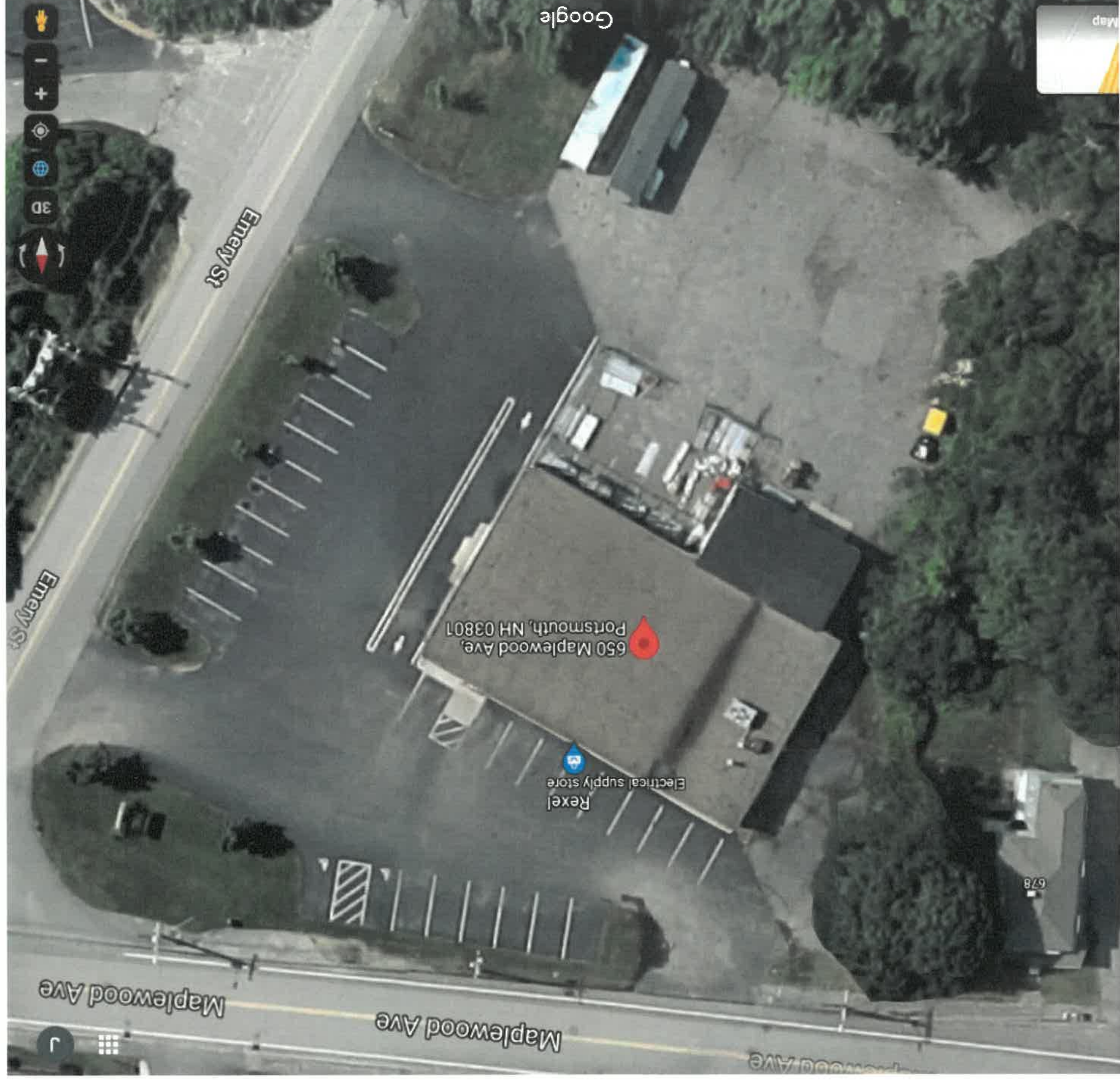
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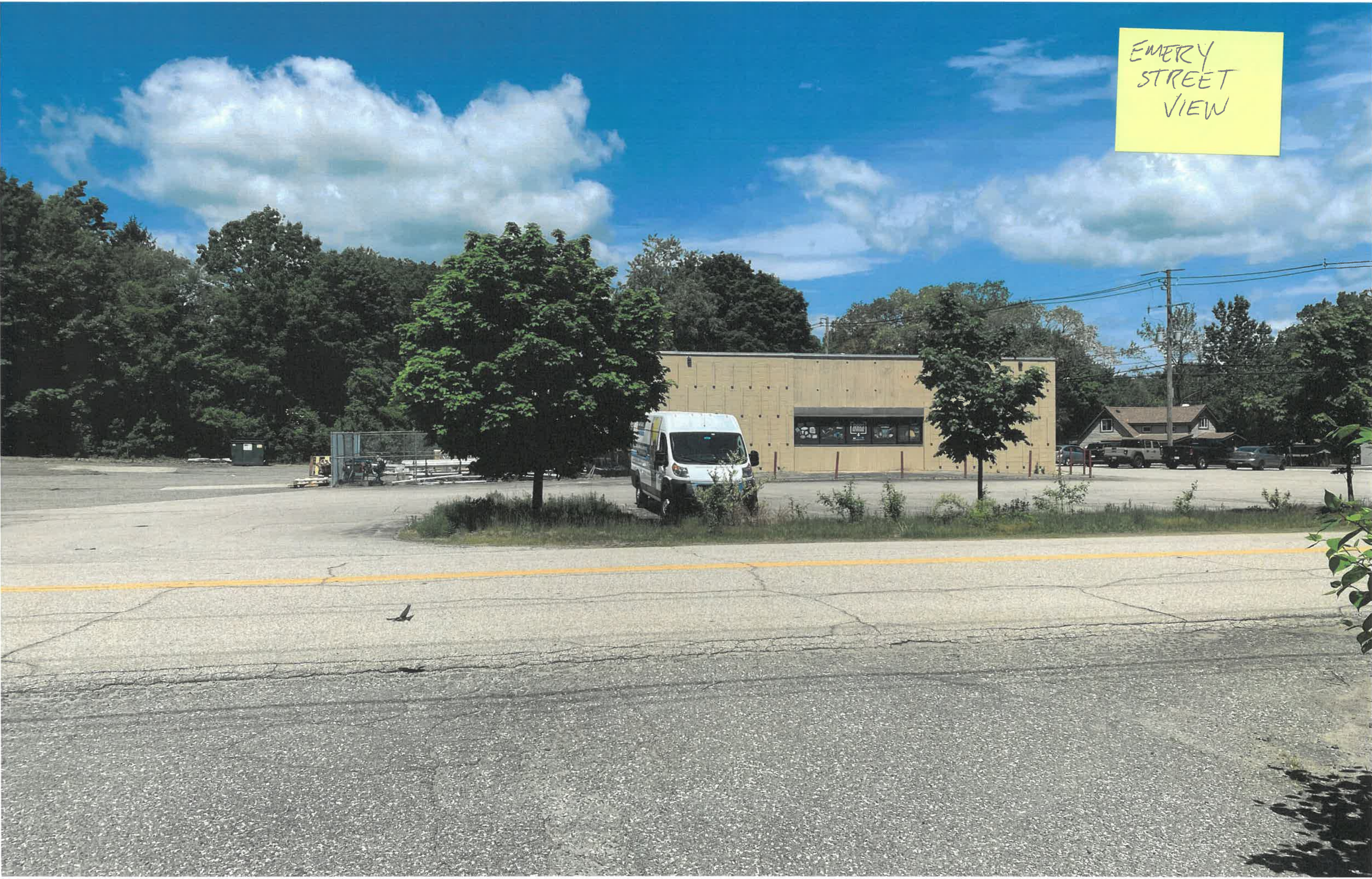
AREA NORTH PARCEL 1.679 ACRES  
AREA SOUTH PARCEL 2.378 ACRES

FILE NO. 1748  
PLAN NO. 7229

Plan 02976 Requested by C from RET7PC at Rockingham on 3/11/2020



EMERY  
STREET  
VIEW



MAPLEWOOD  
AVENUE  
VIEW

