

279 LOWELL ROAD CHANGE OF USE

SP# 06-23

STAFF REPORT

(See July 26, 2023 & August 23, 2023 report for prior comments)

September 13, 2023

SITE: 279 Lowell Road, Map 234 Lot 032

ZONING: General 1 (G-1)

PURPOSE OF PLAN: To illustrate the existing and proposed conditions at Hudson lot 234-32. The nature of the change of use is to convert an existing veterinarian clinic to a vape shop.

PLANS UNDER REVIEW:

Site Plan / 279 Lowell Road, Hudson, NH, Map 234 Lot 32; prepared by: Jeffrey Land Survey, LLC, 1 Burgess Drive, Litchfield, NH 03052; prepared for: Yanhong Yang King, Applicant, Lot 234-32, Hillsborough County, NH; consisting of 1 sheet and general notes 1-12; dated May 2023; revised September 6, 2023.

ATTACHMENTS:

- A. Email from Applicant, dated August 29, 2023

APPLICATION TRACKING:

- June 14, 2023 – Application received.
- July 26, 2023 – Public hearing continued.
- September 13, 2023 – Public hearing scheduled.

COMMENTS & RECOMMENDATIONS:

PROPERTY STUDY

In the interim between meetings the Applicant has communicated with planning staff regarding requirements for the impact study required by the board (**Attachment A**). In response, staff provided the Applicant with samples of reports previously prepared for site plan applications (Friars Drive industrial warehouse, Green Meadow warehouse).

A motion to reconsider requirement of the study was made and seconded at the previous meeting but the vote was postponed. It is staff's understanding that the Applicant has retained a consultant to perform the study.

PLAN REVISION

A newly revised plan-set was submitted on September 6, 2023. The plan-set is currently under review but staff offers the following preliminary comments:

1. The parking spaces in front of the building have been reconfigured to be two parallel parking spaces. While this configuration will allow for an appropriately sized aisle, the spaces are only 9x20 ft. as opposed to the required 10x20 ft, and thus will require a waiver. In addition, a new waiver will be required to no longer meet the required minimum number of parking spaces for the use type.
2. Bollards have been added near the Liquid Propane (LP) tank and HVAC condenser. LP tank may need to be moved further from the structure, which is a requirement subject to review by Inspectional Services at the time of building permit request.
3. Fence detail was requested at previous meeting, but has not yet been provided.
4. Loading space has been added, but plans do not provide dimensions for said space, whose minimum requirements are 12'x35' per §275.C.6(b).
5. ADA compliant parking spaces require a minimum combined space/aisle width of 16 feet, but plans currently show an 8-foot space and 5-foot aisle, requiring an additional 3 feet to meet regulation.
6. The plan features new notes #11-12, regarding hours of operation, sign illumination, and ADA certification for the existing ramp. Inspectional Services performs a building and life safety inspection on all change of tenants or occupancies. Part of the inspection includes handicap accessibility. Once a new tenant submits a certificate of occupancy application they are informed that an inspection will be required. Section 405.2 of the ADA Standard for Accessible Design requires a maximum ramp slope of 1:12 for new construction. There is an exception for existing buildings for ramp dimensions. ICC A117.1-2009 Accessible and Usable Buildings and Facilities 405.2 Slope. Exception:” In existing buildings or facilities, ramps shall be permitted to have slopes steeper than 1:12 complying with table 405.2 where such slopes are necessary due to space limitations.” In short, prior to occupancy of this building, ADA certification will be required which may include repairing or lengthening the existing ramp for which there appears to be adequate room. This is part of the Building Permit & Certificate of Occupancy process administered by Inspectional Services.

WAIVERS REQUESTED

Additional waivers required under the revised layout include Loading Space Dimension (§275.C.6(b)), and Parking Calculations (§275.C.2.p). The following waiver requests remain pending:

1. Waiver for Stormwater Control Plan, 275-9.A, to not require a stormwater control plan when one would otherwise be required. The applicant is proposing no additional impervious material or cutting any existing green areas, therefore the applicant believes

that the SMP would be unbeneficial, since the area will not have appreciably changed since the previous owners.

2. Waiver for Traffic Study, 275-9.B, to not require a traffic study.

Comment: This is only a requirement if requested by Staff or the Planning Board. A waiver may be unnecessary.

3. Waiver for Noise Study, 275-9.C, to not require a noise study when one would otherwise be required. The applicant is proposing a small retail shop where all business is conducted indoors next to a well-travelled State Highway. The applicant believes that her business would not contribute to any exiting noise pollution.

Comment: This is only a requirement if requested by Staff or the Planning Board. A waiver may be unnecessary.

4. Waiver for 40% Green Space, 276-11.1.B(24), to not require no less than 40% green space on the property. The applicant states that this would be impossible based on the current footprint of the building and was approved prior with the current amount of greenspace.
5. Waiver for Locations of roadways, driveways, travel areas, or parking areas within 200 feet of the tract, 276-11.1.B(16). The applicant states this would create unnecessary financial burden that would serve little purpose for an existing commercial lot.
6. Waiver for location of building setback lines, 276-11.1.B(12). The applicant states that this ordinance is impossible to comply with in the sites current layout, and that the prior commercial use used the same configuration and was approved.
7. Waiver for 35' Green Area Buffer, 276-11.1.B(22). The applicant claims that due to NHDOT taking that occurred prior a 35' Green Area buffer is no longer possible on the site.
8. Waiver for Off-street Loading Spaces, 275-8.C(6). The applicant states that due to the nature of products being sold only shipping in small boxes, a dedicated loading zone will not be required for the property.
9. Waiver for Parking Aisle Dimensions, 279-C.5. The applicant states that resizing the parking aisles to be larger would be an unnecessary burden and is not possible due to the NHDOT taking that occurred on the front of the property.

10. Waiver for Parking and Travel in Side yard Setbacks, 276-11.1.B(25). The applicant states that the current configuration was approved for the prior occupant, and that to reconfigure the property in such a way to meet the requirement would be impossible.
11. Waiver for Parking Spaces, 275-8.C.4. The applicant states that enlarging the spaces to the minimum 10ft by 20ft would not be possible, and pose a burden on the applicant.

RECOMMENDATIONS

- With the revised layout, the application suggests the parking requirements are not met for retail (1 per 200 sf) for the 1,805 sf retail space with the provided 6 spaces. The Applicant should confirm the available square footage of the retail space.
- Consideration of potential approval of this application is recommended to include a condition or note specifying that the approval is for a smoke shop only and that any future change of use shall be subject to site plan review. This is recommended to limit the approval from granting a broad brush approval of any “General Retail” activity and is similar to a condition imposed on this site by the 1990 approval of the veterinary clinic.
- Pre-existing non-conformities should be addressed by discussion of waiver requests, additional waiver requests should be filed as discussed in this report.
- There appears to be an encroachment of the site’s retaining wall on the north-western property line onto 277 Lowell Road (Map 234 Lot 33). This appears to mimic the approved site plan of 1990 but built slightly over the property line. The Applicant should obtain an easement from the property owner of 277 Lowell Road or remove the encroachment.
- In reviewing the Impact Fee Ordinance, no net increase would result from the change of category so no CAP fee is assessed (existing: Medical Office = \$5.30/sf; whereas proposed comparables from the Traffic Impact Fee Table include Shopping Center = \$3.87/sf, Pharmacy = \$5.30/sf).
- A fence detail should be provided in addition to other measures the Planning Board may require to screen the proposed retail use from abutting residential properties.
- The ADA parking space should be revised to conform with standards.
- The property study report needs to be filed with the application, or the Planning Board needs to address the request for reconsideration.

Recommended conditions in the event the Board considers approval are provided under Draft Motions in addition to draft motions related to the waiver discussion.

DRAFT MOTIONS

To GRANT a waiver:

- 1. §275-9.A – Stormwater Management Plan

I move to grant a waiver from §275-9.A, to not require a Stormwater Management Plan, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

- 2. §275-8.C.4 – Parking Space Dimensions

I move to grant a waiver from §279-8.C.4, to allow parking space dimensions of less than 10-feet by 20-feet, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

- 3. §275-8.C.5 – Parking Aisle Dimensions

I move to grant a waiver from §279-C.5., to allow reduced parking aisle dimensions, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

- 4. §276-11.1.B(12) – 100-foot buffer to residential

I move to grant a waiver from §276-11.1.B(12), to not require a 100-foot buffer between the improved portion of the commercial use and a residential use, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

- 5. §276-11.1.B(16) – Location of roadways, driveways, travel areas or parking areas with 200-feet

I move to grant a waiver from §276-11.1.B(16), to not require a plan showing all vehicular travelways within 200-feet, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

- 6. §276-11.1.B(22) – 35-foot green area between pavement and ROW

I move to grant a waiver from §276-11.1.B(22), to not require a 35-foot green area between pavement and ROW, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

7. §276-11.1.B(24) – Open space area equal to 40% of site

I move to grant a waiver from §276-11.1.B(24), to not require an open space area of 40% of the site, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

8. §276-11.1.B(25) – Parking and travel ways in side yard setback

I move to grant a waiver from §276-11.1.B(25), to allow parking and travel ways in the side yard setback, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

9. §275-9.B – Traffic Study

I move to grant a waiver from §275-9.B to waive the requirement of providing a Traffic Study for the proposed change of use, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

10. §275-8.C(6) – Loading Area

I move to grant a waiver from §275-8.C(6) to waive the requirement of a dedicated loading zone on site, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

11. §275-9.C – Noise Study

I move to grant a waiver from §275-9.C) to waive the requirement of a Noise Study for the proposed change of use, based on the Board’s discussion, the testimony of the Applicant’s representative.

Motion by: _____ Second: _____ Carried/Failed: _____

CONTINUE the public hearing to a date certain:

I move to continue the site plan application for Site Plan / 279 Lowell Road, Hudson, NH, Map 234 Lot 32, to date certain, _____, 2023.

Motion by: _____ Second: _____ Carried/Failed: _____

APPROVE the site plan application:

I move to approve the site plan application for the Site Plan / 279 Lowell Road, Hudson, NH, Map 234 Lot 32; prepared by: Jeffrey Land Survey, LLC, 1 Burgess Drive, Litchfield, NH 03052; prepared for: Yanhong Yang King, Applicant, Lot 234-32, Hillsborough County, NH; consisting of 1 sheet and general notes 1-12; dated May 2023; and,

That the Planning Board finds that this application complies with the Zoning Ordinances with consideration of the provisions of Article VIII – Nonconforming Uses, Structures and Lots, and with the Land Use Regulations with consideration of the waivers granted; and for the reasons set forth in the written submissions, together with the testimony and factual representations made by the applicant during the public hearing;

Subject to, and revised per, the following stipulations:

1. All stipulations of approval shall be incorporated into the Notice of Decision, which shall be recorded at the HCRD, together with the Plan.
2. Prior to the Planning Board endorsement of the Plan, it shall be subject to final administrative review by Town Planner and Town Engineer.
3. This approval is for 1,805 sf of finished retail space on one floor only and does not constitute approval of retail use of a finished basement.
4. The Planning Board’s approval is for a smoke shop only. Given the unique characteristics and limitations of the subject parcel, any future change of use shall be subject to site plan review and approval.
5. Parking spaces shall be restriped prior to issuance of Certificate of Occupancy.
6. Signage shall be placed to indicate employee parking spaces.
7. Approval of business signage shall be reviewed by the Engineering Department for vehicular sight lines and sight distance.
8. Construction activities involving the subject lot shall be limited to the hours between 7:00 A.M. and 7:00 P.M. No exterior construction activities shall be allowed on Sundays.
9. Hours of refuse removal shall be exclusive to the hours between 7:00 A.M. and 7:00 P.M., Monday through Friday only.

Motion by: _____ Second: _____ Carried/Failed: _____

From: Bonnie King <bonnieking7606@gmail.com>
Sent: Tuesday, August 29, 2023 1:24 PM
To: Groth, Brian
Subject: Letter to Brian and planning board members

EXTERNAL: Do not open attachments or click links unless you recognize and trust the sender.

Hello Brian,

Thank you and all the board members that were at the meeting for 279 Lowell Rd on Aug 23. After the meeting, I am still confused about what the house impact study is? I reviewed that recording of the meeting on July 26th that Mr. Oates clearly talked 6 times of Vape shop and tobacco shop concerning the house impact study. Mr. Crowley also talked 2 times about that. Nobody mentioned once about having it as a retail store instead of a vape store when requesting the house impact study. And Mr. Oates corrected himself on the August 23rd meeting, stating that during the July 26th meeting he said it was a retail store house impact study but not Vape store, which seems contradictory.

In the Letter I sent for the reconsideration of the house impact study before the August 23rd meeting, I mentioned I asked my broker to do the vape store house impact study and she said she thought it is difficult to do that due to her commercial broker license and lack of knowledge on vape stores. I don't know who I should find to do the study. Do I need to find a commercial property broker or residential property broker, or both, or Vape shop specialist broker? It is difficult for us to proceed because the expectations were so unclear and undefined which I mentioned in the letter. I am glad and thankful I got the engineers recommendation list for the site plan from the town when the application started in the beginning. But for this house impact study, I do not feel like it has enough instructions and resources.

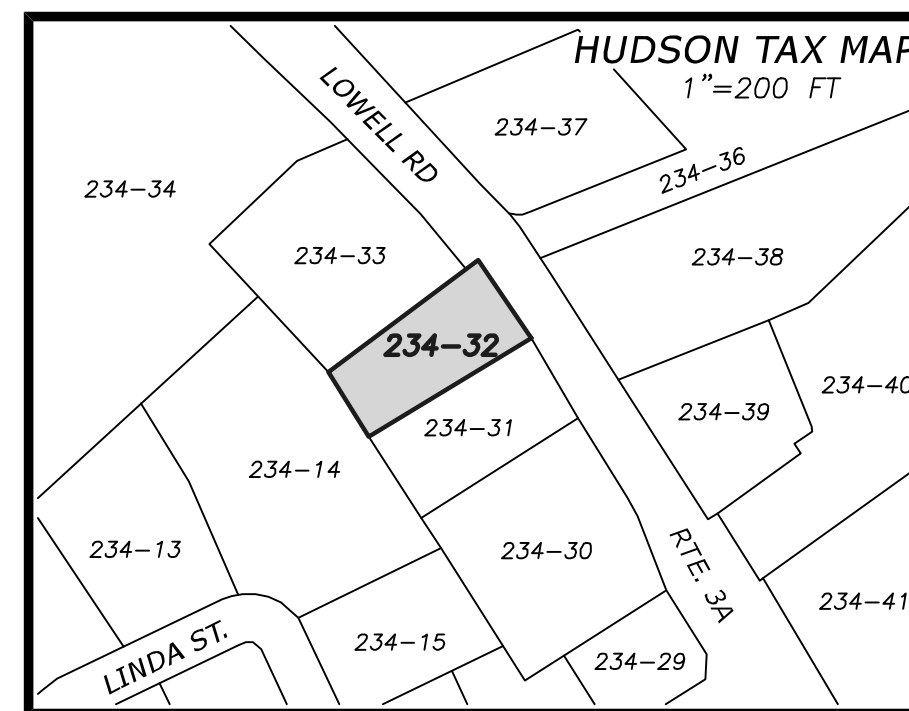
I am a single Mom, and work hard to support my 20 years old daughter in college. I do understand parents are protective over their children, but with the restrictions of the federal law and the discipline over themselves, the individuals who are younger than 21 have the right to make their own decisions. I will put my best effort in practicing the law by checking ID for each individual who would like to purchase products from the store, and I think no matter what the legal business is, it offers service for those people needed and should be fairly treated. My partner and I are still hoping the planning board supports us for small businesses that offer service for those people needed. Mr Groth, would you be able to send this letter to the planning board members please, Thank you!

Have a nice day!
Bonnie King

PARKING SUMMARY			
USE RETAIL 1,805 SF	1 SPACE PER 200 SF 1,805 SF / 200 SF = 9 SPACES	REQUIRED 9	PROPOSED 6 EXISTING
ONE ADA SPACE PROVIDED EXISTING - REF. WWW.ADA.GOV/TOPICS/PARKING/			

REFERENCE PLAN:

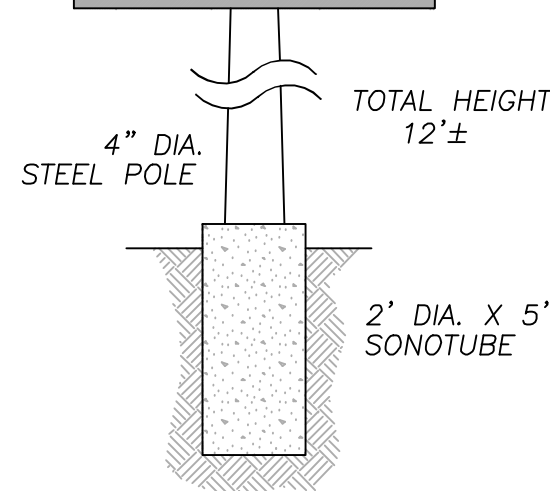
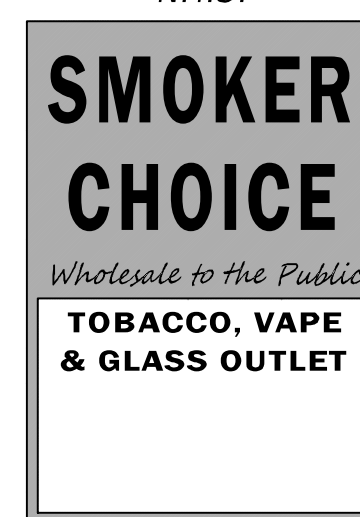
- REFERENCE PLAN: "PLAN OF LAND OF STUART & DORIS E. GROVES HUDSON, N.H.," DATED MAY, 1951 AND RECORDED IN THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS (HCRD) AS PLAN 1161.
- REFERENCE PLAN: "THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION CONSTRUCTIONS PLANS, FEDERAL AID PROJECT STP-X-000S(217) N.H. PROJECT NO. 12461, N.H. ROUTE 3A" ON FILE AT THE NH DOT, REFER TO: gis.dot.nh.gov/plan/12461.ASB.pdf.
- REFERENCE PLAN: "LAWSON SITE PLAN, LOWELL ROAD (LOT 32 MAP 7) HUDSON, NEW HAMPSHIRE" DATED MAY 1988 AND RECORDED AT THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS (HCRD) AS PLAN 24849.



PROPOSED
3' X 16' ROOF-MOUNTED SIGN
N.T.S.

SMOKER CHOICE
TOBACCO, VAPE & GLASS OUTLET

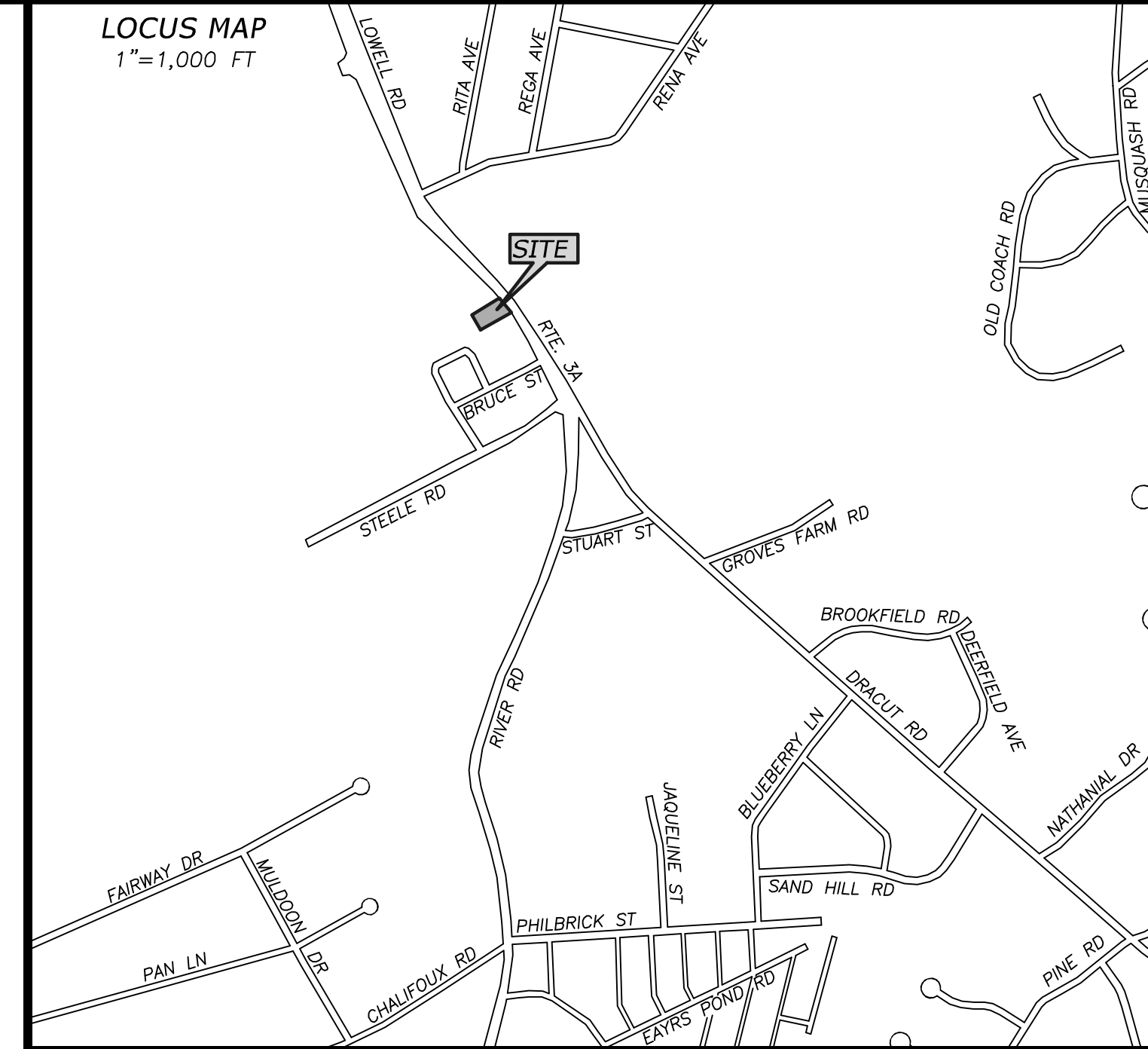
PROPOSED
5' X 7' POLE-MOUNTED SIGN
ILLUMINATED
N.T.S.



PLAN LEGEND

CONTOUR LINE	-156-
STONE BOUND (FOUND)	□
CONCRETE	■
SETBACK LINE	- - - - -
CATCH BASIN	□
PARKING SPACE COUNT	5
CHAIN LINK FENCE	x x x x
STOCKADE FENCE	□ □ □ □
EXISTING LIGHT	▲

LOCUS MAP
1"=1,000 FT



PLAN NOTES:

- THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE THE LOCATION OF THE OF AN EXISTING BUILDING AND THE PROPOSED IMPROVEMENTS TO COMPLETE A CHANGE OF USE. THE APPLICANT INTENDS TO CONVERT AN EXISTING ANIMAL HOSPITAL INTO A SMOKE SHOP.
- LOT AREA
TAX MAP 234 LOT 32 = 15,859 SF OR 0.364 AC.
- REFERENCE THIS PARCEL AS TOWN OF HUDSON TAX MAP 234 LOT 32.
- CURRENT ZONING DISTRICT:

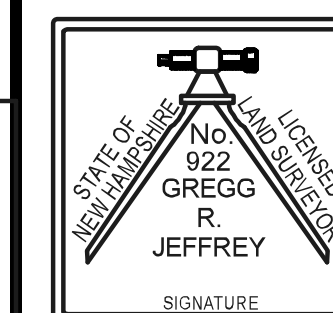
- FOR BOUNDARY INFORMATION SEE PLAN REFERENCES 1&2.
- TOPOGRAPHIC INFORMATION DEPICTED HEREON IS A RESULT OF AN ON-THE-GROUND SURVEY PREPARED BY THIS OFFICE MAY 2023.
- NO PORTION OF THE PROPERTY IS WITHIN THE 100-YEAR FLOOD PLAN AS PER FIRM MAP NUMBER 33011C0656D
- OWNER OF RECORD:

MAP 234 LOT 32
KOMMA HOLDING, LLC
28 WINDING RD.
BEDFORD, NH 03110
HCRD BK 8538 PG 576

- THERE WILL BE NO ADDITIONAL EXTERIOR LIGHTING.
- ALL SIGNS ARE SUBJECT TO APPROVAL BY THE HUDSON ZONING ADMINISTRATOR PRIOR TO INSTALLATION THEREOF.
- HOURS OF OPERATION: 9:00 AM TO 9:00 PM. HOURS OF SIGN ILLUMINATION: DUSK TO CLOSE OF BUSINESS.
- EXISTING RAMP SHALL BE CERTIFIED AS ADA COMPLIANT BEFORE START OF BUSINESS.

REV. 3	REV. PARKING, BOLLARDS, GRAVEL PAD, LOADING	9/6/23	BY:GRJ
REV. 2	PARKING, FENCE, LOADING, NOTES, WHEEL STOPS	8/9/23	BY: GRJ
REV. 1	SIGN DETAILS, TEXT	7/25/23	BY: GRJ

SITE PLAN
279 LOWELL ROAD, HUDSON, NH
PREPARED FOR
YANHONG YANG KING
APPLICANT, LOT 234-32
HILLSBOROUGH COUNTY, NH



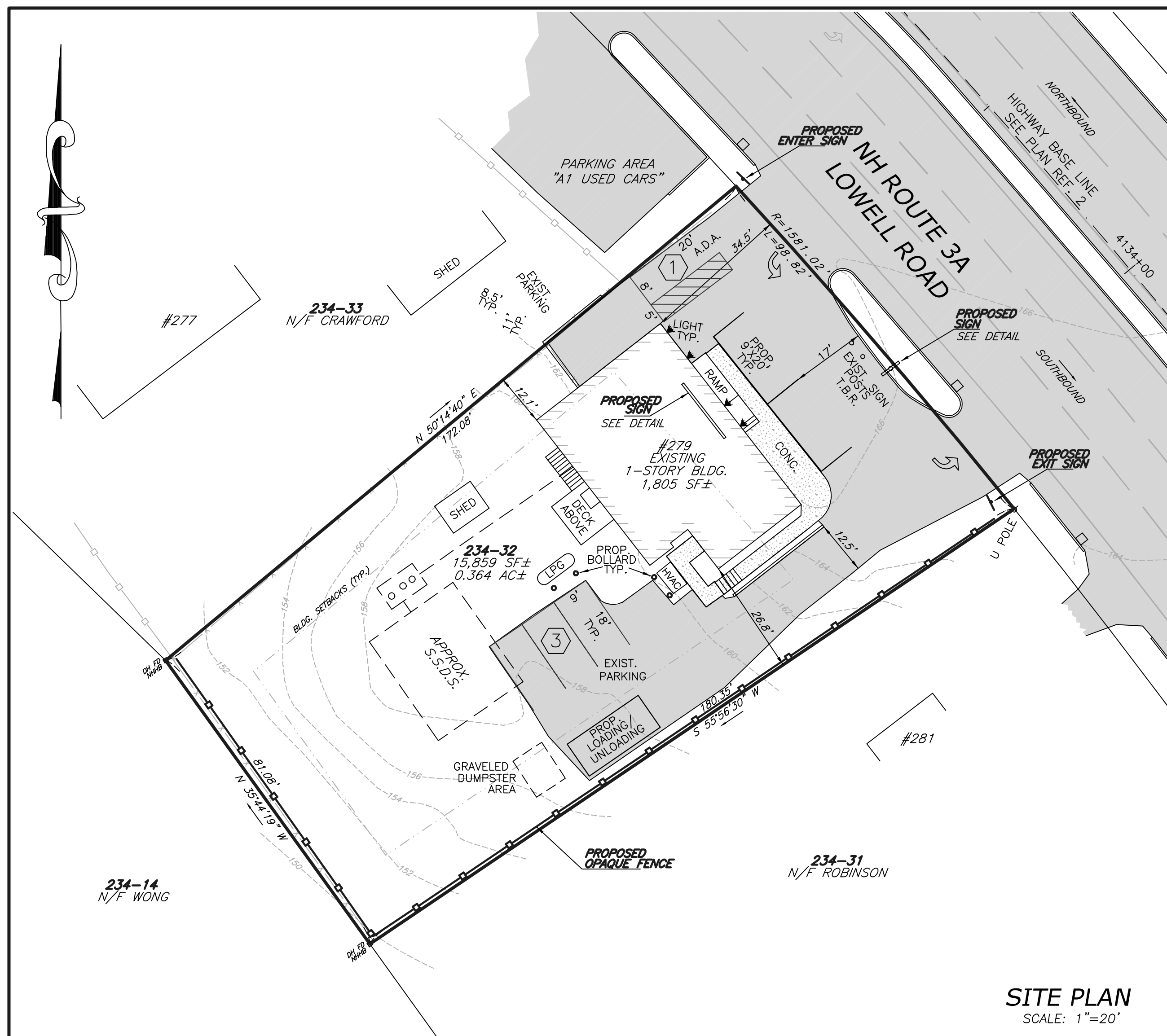
JEFFREY LAND SURVEY, LLC
1 BURGESS DRIVE
LITCHFIELD, NH 03052

SHEET 1 OF 1

1"=20'



DATE: MAY 23 2023



SITE PLAN
SCALE: 1"=20'

SUBJECT LOT: MAP 234 LOT 32 KOMMA HOLDING, LLC 28 WINDING RD BEDFORD, NH 03110 HCRD 8538/576	MAP 234 LOT 33 ANNETTE CRAWFORD, TRUSTEE BRENDA DEAN, TRUSTEE 277 LOWELL RD HUDSON, NH 03051 HCRD 8552/345	MAP 234 LOT 34 TARGET CORPORATION 1000 NICOLLET MALL, TPN 12H MINNEAPOLIS, MN 55403 HCRD 9688/512	MAP 234 LOT 39 286 LOWELL RD LLC 20 TRAFALGAR SQ. SUITE 610 NASHUA, NH 03064 HCRD 9349/337
DIRECT ABUTTERS: MAP 234 LOT 31 MICHELLE J. ROBINSON MARK A. LEDOUX 12 SHEPHERD HILL RD BEDFORD, NH 03110 HCRD 6337/1502	INDIRECT ABUTTERS: MAP 234 LOT 30 LISA PEZZAROSSO 283 LOWELL RD HUDSON, NH 03051 HCRD 8968/2258	MAP 234 LOT 36 MACTHOMPSON REALTY INC. 3 MARMON DR NASHUA, NH 03060 HCRD 9666/2952	MAP 234 LOT 37 MACTHOMPSON REALTY INC. 3 MARMON DR NASHUA, NH 03060 HCRD 9666/2868
MAP 234 LOT 14 DON R. WONG MELISSA E. WONG 18 LINDA ST HUDSON, NH 03051 HCRD 7862/478	MAP 234 LOT 15 EMERSON BARBOSA 20 LINDA ST HUDSON, NH 03051 HCRD 9217/1506	MAP 234 LOT 38 286 LOWELL RD LLC 20 TRAFALGAR SQ. SUITE 610 NASHUA, NH 03064 HCRD 9349/337	

PURSUANT TO THE SUBDIVISION OF LAND REGULATIONS OF THE HUDSON PLANNING BOARD, SUBDIVISION APPROVAL GRANTED HEREIN EXPIRES ONE YEAR FROM DATE OF APPROVAL	APPROVED BY THE HUDSON, NH PLANNING BOARD
	DATE OF MEETING: _____
	SIGNATURE _____ DATE _____
	SUBDIVISION PLANS ARE VALID FOR ONE YEAR FROM THE DATE OF PLANNING BOARD MEETING FINAL APPROVAL. FINAL APPROVAL COMMENCES AT THE PLANNING BOARD MEETING DATE AT WHICH THE PLAN ACHIEVES FINAL APPROVAL.

OWNER OF RECORD:

REP. FOR KOMMA HOLDING, LLC _____ DATE _____

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 ON THE GROUND BY THIS OFFICE DURING MAY OF 2023. SAID SURVEY HAS AN ERROR OF CLOSURE BETTER THAN ONE PART IN TEN THOUSAND (1:10,000).

LICENSED LAND SURVEYOR _____ DATE _____

CERTIFICATION:

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

LICENSED LAND SURVEYOR _____ DATE _____