

**General information**

Application for: Special Exception & Variance

Map# 20 Lot# 17 & 18

Date: 11/23/2020

Name & address of applicant: Ashuelot River LLC  
P.O. Box 56, Winchester, NH 03470 Phone: \_\_\_\_\_

Name & address of owner: Same as Applicant  
Phone: \_\_\_\_\_

Location of property: 46 & 48 Manning Hill Road  
Zoning District: Commercial District and Rural Residential District

Description of property (include a plot plan, frontage, side & rear lines, water, structures, etc.) See attached plot plan.

Proposed use or existing use: See attached Supplement to Application

Fill out the attached abutters list and submit the non refundable fee of \$150 with the completed application and other necessary forms at least 10 days prior to the review by the ZBA. The ZBA generally meets on the second Thursday of each month. A complete application will be reviewed for acceptance before a public hearing is held within 30 days. You or your representative must be present at the hearing. All owners NOT representing themselves must submit a letter of representation for the applicant with the application.

Please complete and submit the appropriate pages for the request of a variance, a special exception, an equitable waiver of dimensional requirements, an appeal from an administrative decision or a rehearing. Attach all other supporting documentation to the application.

\*\*\*\*\*  
After the public hearing, the board will typically render a decision within 30 days. You will be sent notice of this decision. If you believe the board's decision is wrong, you have the right to appeal. The Selectboard or any party affected has similar rights of appeal. With an appeal, you must first ask the board for a rehearing. All requests shall be submitted on the appropriate ZBA forms and include the required fee. The motion must be made within 30 days of the decision and must set forth the grounds on which the claimed the decision is unlawful or unreasonable. The board may grant a rehearing if it is determined there were errors of law or new information is stated in the motion. Notice to the public and abutters are required. Refer to RSA 677 for details.

**Special Exception:**

The undersigned hereby requests a special exception as provided in Article Aquifer Protection District  
Section 3, subparagraph h, of the Winchester zoning ordinance.

 11/4/20  
Signature of applicant and date

 11/4/20  
Signature of owner and date

Please respond to the following:

A) The proposed use shall be permitted in the district \_\_\_\_\_  
See attached Supplement to Application

B) The specific site is in an appropriate location for such use \_\_\_\_\_  
See attached Supplement to Application

C) The use as developed will not adversely affect the adjacent area \_\_\_\_\_  
See attached Supplement to Application

D) There will be no nuisance or serious hazard to vehicles or pedestrians \_\_\_\_\_  
See attached Supplement to Application


E) Adequate and appropriate facilities will be provided for the proper operation  
and use \_\_\_\_\_ See attached Supplement to Application

F) The proposed use shall comply with all frontage, setbacks, minimum land area,  
sanitary protection, sign, parking requirements for (itself or its most similar use, except  
where specifically named by the board, the reasons for such waiver to be set forth in  
writing by the board \_\_\_\_\_ See attached Supplement to Application

G) See Article XVI, 2.(i) (g) in the Town of Winchester Zoning Ordinance for the  
validity of a special exception.

**Variance:**

The undersigned hereby requests a variance to the terms of Article XXII, section \_\_\_\_\_, subparagraph \_\_\_\_\_, of the Winchester zoning ordinance.

 11/4/20  
Signature of applicant and date

 11/4/20  
Signature of owner and date

**Facts supporting the variance request:**

1. Granting of the variance would be of benefit to the public interest because:

See attached Supplement to Application

2. The use would not be contrary to the spirit of the ordinance because:

See attached Supplement to Application

3. By granting the variance substantial justice would be done because:

See attached Supplement to Application

4. No diminution in value of surrounding properties would be suffered because:

See attached Supplement to Application

5. Denial of the variance would result in unnecessary hardship to the owner seeking it, owing to special conditions of the property that distinguish it from other properties in the area, because:

a) 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 because:

See attached Supplement to Application

and b) the proposed use is a reasonable one because:

See attached Supplement to Application

Or, explain how if the criteria of (a)&(b) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

See attached Supplement to Application

**ASHUELOT RIVER LLC**  
**46 & 48 Manning Hill Road, Tax Map 20, Lots 17 & 18**  
**Winchester, New Hampshire**

**ZONING BOARD OF ADJUSTMENT APPLICATION**

**INTRODUCTION**

Ashuelot River LLC (the "Applicant") is the current owner of two (2) parcels located in the town of Winchester (the "Town") along Manning Hill Road, (i) 46 Manning Hill Road, as depicted on the Winchester Tax Maps at Map 20 Lots 17 ("Lot 17") and (ii) 48 Manning Hill Road, as depicted on the Winchester Tax Maps at Map 20 Lots 18 ("Lot 18" and together with Lot 17, the "Property").

Lot 17 is located entirely within the Commercial District and the Aquifer Protection District Overlay. There is a single existing building on Lot 17 which currently sits vacant and was most recently utilized as a retail space. The Applicant intends to build forty-two (42) new self-storage units in varying sizes on Lot 17.

Lot 18 is partly located in the Commercial District, partly in the Rural Residential District, and in the Aquifer Protection District Overlay. This Application is specifically in relation to the portion of Lot 18 that sits entirely within the Commercial District. Lot 18 currently consists of an existing building most recently used for indoor sales. The Applicant intends to continue to use Lot 18 as a retail space and would like to include outdoor sales and storage of materials and related equipment.

Following multiple communications with the Town's Land Use Administrator, Margaret Sharra, the Applicant has determined that the Property will require approval from the Town's Planning Board regarding the changes in use, as well as approval from the Town's Zoning Board of Adjustments (the "Board") for a variance and a special exception from the Town of Winchester Zoning Ordinance (the "Ordinance"), which variance and special exceptions are being requested herein.

Specifically, the Applicant will need approval of the Board for:

1. Special Exception from the Aquifer Protection District, Section 3(h), as applied to Lot 17: requiring a special exception for any properties in the Aquifer Protection District "that will render between 15% and 25% of the parcel covered with pavement, roofing or other material impervious to surfaces water"; and
2. Variance from Ordinance Article XXII, Table of Permitted Uses, as applied to Lot 18: prohibiting "open lot storage of sand, coal, aggregate and other similar materials" in the Commercial District.

**APPLICANT'S REQUEST FOR SPECIAL EXCEPTION –**  
**FACTS SUPPORTING THE REQUEST**

**Aquifer Protection District – Section 3(h) for Lot 17**

**Requiring a special exception for land uses that will render between 15% and 25% of the parcel covered with materials impervious to surface water.**

**A. The proposed use shall be permitted in the district:**

Lot 17 is located entirely within the Aquifer Protection District Overlay and the Commercial District. The Aquifer Protection District was created to prevent land use that will adversely affect water quality or quantity. Commercial uses that do not discharge waste on site other than in approved septic systems are, therefore, expressly permitted within the Aquifer Protection District. The Applicant is proposing to use Lot 17 as a self-storage facility, which will not involve the discharge of any impermissible waste, and is thus an appropriate commercial use allowed within the Aquifer Protection District.

The Commercial District allows for most business uses, including consumer services, as described in Article XXII of the Ordinance. The town's Land Use Administrator, Margaret Sharra, has advised the Applicant's counsel that the self-storage units fall under the purview of consumer services, and is therefore a permitted use within the Commercial District.

**B. The specific site is in an appropriate location for such use:**

Lot 17 is an ideal location for the proposed self-storage units. The lot is large enough to hold enough units to be viable for the business. Further, the lot is located in the Commercial District and the proposed business is a permitted use within that zone.

**C. The use as developed will not adversely affect the adjacent area:**

There is no reason to believe that the proposed storage units will have any negative impact upon surrounding properties. The proposed use is reasonably similar to the prior retail use of the lot, and therefore will not drastically change the use of the lot. The lots adjacent to Lot 17 are not highly developed and are not likely to be impacted by the proposed use of the premises.

Further, the Applicant plans to take preventive steps to protect the Property from substantial flooding and minimize the amount of water leaving the Property by installing pervious paving and infiltration systems. These proposed changes will significantly improve the percolation and infiltration on the Property.

**D. There will be no nuisance or serious hazard to vehicles or pedestrians:**

As noted above, the proposed use is reasonably similar to the prior retail use of the lot and, further, that the surrounding area is not heavily developed, therefore, there is no reason to believe that either vehicles or pedestrians will be impacted by the proposed use of the lot. In addition, the nature of self-storage units, whereby clients leave personal items and site that they do not need to access regularly, is such that the Applicant does not anticipate much coming and going from the lot.

**E. Adequate and appropriate facilities will be provided for the proper operation and use:**

The proposed plan submitted with this Application shall demonstrate that all such criteria are met.

**F. The proposed use shall comply with all frontage, setbacks, minimum land area, sanitary protection, sign, parking requirements for itself or its most similar use, except where specifically named by the board, the reasons for such waiver to be set forth in writing by the board:**

The proposed plan submitted with this Application shall demonstrate that all such criteria are met.



**APPLICANT'S REQUEST FOR VARIANCE –**  
**FACTS SUPPORTING THE REQUEST**

**Article XXII – Table of Permitted Uses – for Lot 18**

**Prohibiting “open lot storage of sand coal, aggregate and other similar materials” in the Commercial District.**

**1. Granting the variance would not be contrary to public interest.**

A variance request is contrary to the public interest when it unduly, and in a marked degree, violates the Ordinance's basic objectives. In order to determine whether a variance would violate the basic zoning objectives, it is appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten the public health, safety, or welfare. The essential character of the locality will not be changed or altered by granting the variance, and will not be contrary to the public interest.

The variance requested relates to the prohibition on storing bulk materials on properties in the Commercial District. The Applicant intends for Lot 18 to house a business that manufactures stone products and sells landscape supplies and specialty tools. The retail sales of these products is already a permitted use within the Commercial District, however, the outdoor storage of brick and stone and other related materials on site, such as masonry sand and bark mulch, along with related equipment for moving and maintaining such materials, is a crucial part of the proposed business. Storing materials necessary to the business does not depart greatly from the previous retail use of Lot 18, nor do any of the proposed materials pose a risk to the public's health or safety. Areas will be designated on the lot for the proposed storage wherein materials will be secured on three sides by concrete barrier blocks and the fourth side will be open on either level ground or on ground pitching down towards the back barrier to ensure materials remain safely within the designated areas. Fencing will be installed as necessary to ensure the materials are secure from potential theft or inappropriate access. Further, as can be seen in the proposed plan submitted with this Application, a silt fence will be installed along a portion of the lot. There is no reason to expect that permitting the onsite storage of materials essential to the business will negatively impact the public or alter the character of the neighborhood.

**2. If the variance is granted, the spirit of the Ordinance would be observed.**

The spirit of the Ordinance will be observed by the granting of this variance. The Ordinance's stated purpose of the Commercial District is to “provide opportunities for commercial development that is not suitable for the downtown area.” This purpose will be maintained and supported by the granting of the requested variance. A business that creates stonework and provides landscaping and specialty tools is a good opportunity for commercial development in the Town, though it is inappropriate for the downtown area due to the nature of developing and storing the stone and related materials. The granting of this variance will allow Lot 18 to house this business and allow it contribute to the Town's commercial development in a practical location.

**3. Granting of the variance would do substantial justice.**

The New Hampshire Supreme Court has often held that injustice occurs when any loss to the individual is not outweighed by a gain to the general public. The public has little, if anything,

to gain by a denial of this request, whereas the loss to the Applicant would be great. Denial of the requested variance will prevent the Applicant from making the most effective use of the Property. If this variance is not granted, then the business will be unable to successfully function and therefore unable to establish itself on Lot 18, leaving the lot vacant. By granting the variance, substantial justice will be done and the Applicant will be able to improve the functioning of the Property in a manner that is consistent with the Ordinance and provide an additional tax base to the town.

**4. If the variance is granted, the values of surrounding properties would not be diminished.**

The Applicant has no reason to believe that the value of surrounding properties will be negatively impacted by the proposed improvements to the Property. Granting the variance will allow Lot 18 to be operated in the manner in which the Ordinance intends for all properties in the Commercial District to be used. There is no reason to believe that permitting the storage of the materials and equipment essential to the business on Lot 18 will have any negative impact upon surrounding property values.

**5. Unnecessary Hardship**

**A. Owing to special conditions of the property that distinguish it from other properties in the area:**

The Property is unique in that its location is ideal for the proposed stone business. The surrounding lots are not highly developed and there is no foot traffic nearby, causing this commercial lot to be a less than ideal location for the average business that relies on such exposure. The proposed business, however, is a commercial venture that does not rely on heavy foot traffic, and actually requires that it be set apart from a typical, downtown retail environment. The Applicant's proposal includes an optimal use of the Property in a commercial manner while complying with the spirit of the Ordinance.

**B. Denial of the variance would result in unnecessary hardship because:**

**i. No fair and substantial relationship exists between the general purposes of the Ordinance provision and the specific application of that provision on the Property:**

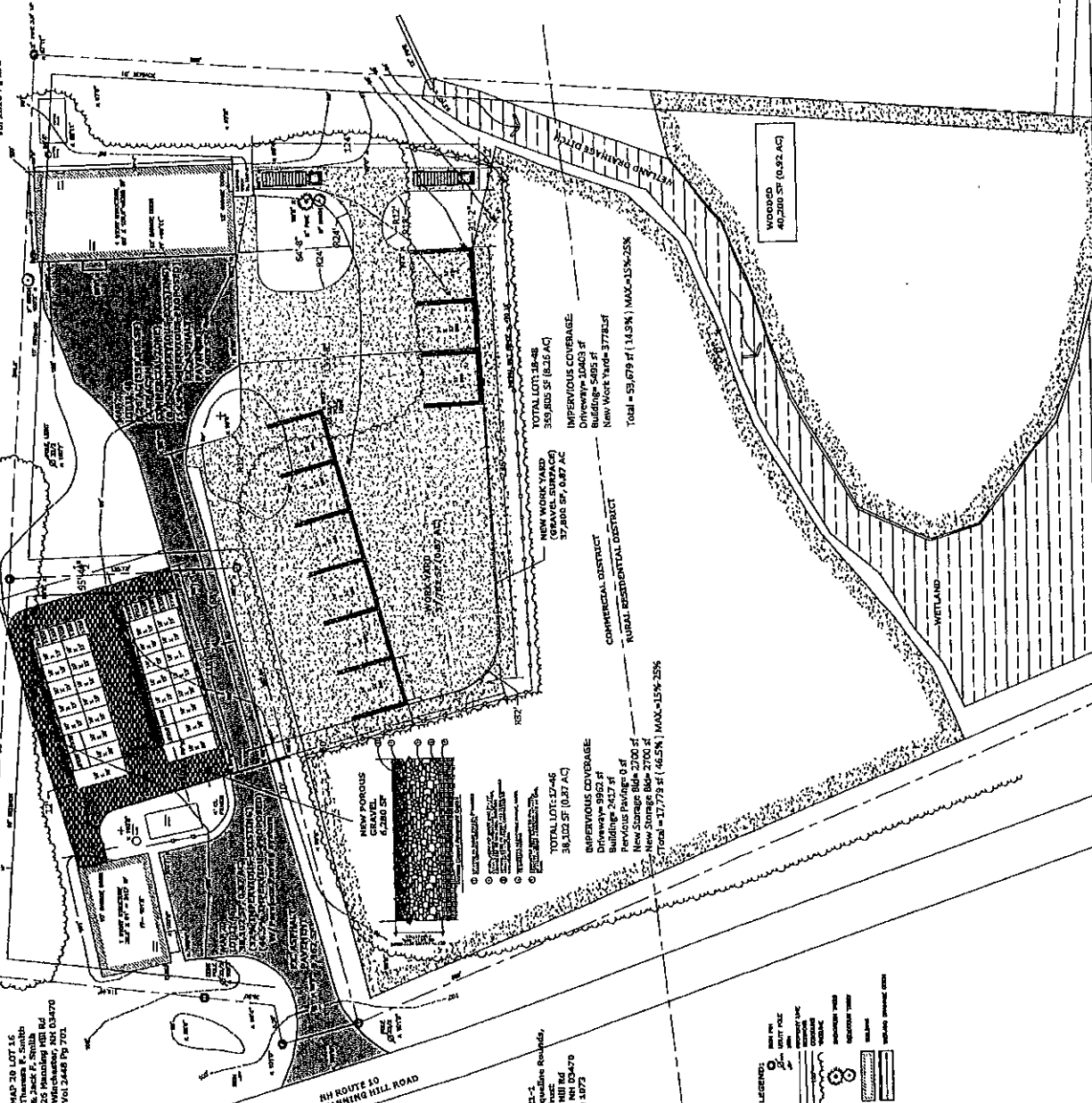
The general purpose of the Ordinance is to promote public health, safety and general welfare. No fair and substantial relationship exists between the stated general purpose and the denial of the Applicant's plan. The goal of the Ordinance is not to prevent reasonable uses of a property. The requested variance will allow a business on Lot 18 that will contribute to the local economy and general welfare of the Town. Denial of the requested variance will do nothing to contribute to the public's health or safety. For the reasons set forth above, the Applicant respectfully submits that the general purposes of the Ordinance will actually be served by the granting of the variance.

**ii. The proposed use is a reasonable one:**

The proposed use of Lot 18 is reasonable. The proposed use will allow for a viable business to establish itself on the Lot 18 without adverse impacts to the surrounding properties, resulting in an efficient use of the property that is consistent with the commercial activity in the surrounding area and that reflect the spirit of the Ordinance.

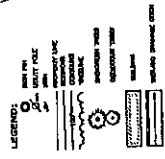


MAP 5 LOT 211  
 Ashuelot River LLC  
 23 MANNING HILL RD  
 WINCHESTER, NH 03470  
 Vol 2810 Pg 173



MAP 20 LOT 1, 2  
 Richard J. Scoville & Jack F. Smith  
 26 Manning Hill Rd  
 Winchester, NH 03470  
 Vol 2448 Pg 703

MAP 5 LOT 21-1  
 Richard J. Scoville & Jack F. Smith  
 27 Manning Hill Rd  
 Winchester, NH 03470  
 Vol 2802 Pg 1073

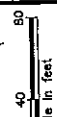


**NOTES:**

- OWNER OF RECORD:**  
 LOT 17: 46 MANNING HILL RD.  
 Ashuelot River LLC  
 c/o STEADMAN, CHRIS  
 89 BACK ASHUELOT RD.  
 WINCHESTER, NH 03470  
 518-461-9711
- LOT 18: 48 MANNING HILL RD.**  
 Ashuelot River LLC  
 c/o ADAM DREW MASONRY  
 203 Chestnut Rd  
 Harrisville, NH 03450  
 603-546-6935
- BOUNDARY LINES:**  
 FROM: Boundary Line Adjustment Plan by Cardinal Survey  
 Keene NH 603-499-6151.  
 Dated Jan. 29, 2018, Doc# 1804765, Plan: 18079  
 Map 20, Lot 17 & 18
- OUTREACH PROTECTION DISTRICT - SECTION 3**  
 If Land uses that will render between 15% and 25% of the parcel covered with pavement, roofing or other material Impervious to surface water will require a special exception.
- Minimum Lot and Yard standards: COMMERCIAL DISTRICT**  
 Lot Size: 35,000sqft with out to water & sewer  
 Lot Area: 20,000sqft with out to water & sewer  
 Setbacks: Front=20ft, Frontages=150ft, Side/Rear=10ft, Depth=100ft  
 5. **Minimum Lot & Yard Standards: RURAL RESIDENTIAL DISTRICT**  
 Lot Size= 1 acre  
 Setbacks: Frontage=200ft, front= 30ft, Depth=100ft, side/rear 20ft

**PROPOSED SITE PLAN**

Ashuelot River LLC  
 c/o STEADMAN, CHRIS  
 89 BACK ASHUELOT RD.  
 WINCHESTER, NH 03470  
 518-461-9711  
 Project at:  
 48 MANNING HILL RD. Map 20, Lot 17 & 18



| REV. | DATE | DESCRIPTION | C/O | DR | CK |
|------|------|-------------|-----|----|----|
|      |      |             |     |    |    |

SCALE: 1" = 40'

MAY 2011, 2020

**Donald R Scott, RLA**  
 Landscape Architect  
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 Dscott.R.L.A.@gmail.com