



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

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TWO CAPITAL PLAZA, P.O. BOX 1137  
CONCORD, NEW HAMPSHIRE 03302-1137

July 21, 2022

**VIA UPS - OVERNIGHT**

Kristy Jobin  
Town of Chichester  
Planning Coordinator  
54 Main Street  
Chichester, NH 03258

Re: Jeffrey R. Day and Amy J. Day  
67 Kelly's Corner Road (Lot 9-89)  
71 Kelly's Corner Road (Lot 9-90)

Dear Ms. Jobin:

Enclosed for filing on behalf of Jeffrey R. Day and Amy J. Day is one (1) fully-executed original Application for a variance from Article 2, Section 2.04(c)(v) of the zoning ordinance to permit Lot 89 to have 0.49 acres of contiguous buildable area where 1 acre is required and only 0.36 acres exist; and Lot 90 to have 0.51 acres of buildable area where 1 acre is required and 0.64 acres exist. Also enclosed are the following:

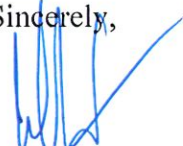
1. Two (2) copies of the Application;
2. Abutters List;
3. Mailing Labels; and
4. This firm's check in the amount of \$495.00 to cover the cost for the filing of this Application.

We would appreciate it if you would contact our office to let us know when this matter will be placed on the Board's agenda.

Kristy Jobin  
Town of Chichester  
July 21, 2022  
Page 2

Please contact me if you need further information or have any questions.

Sincerely,



Jeffrey C. Christensen

JCC/sm  
Enclosures  
cc: Mr. and Mrs. Jeffrey Day

\*\*\*\*\*  
DO NOT WRITE IN THIS SPACE  
Case # \_\_\_\_\_  
Date Filed \_\_\_\_\_  
Signed \_\_\_\_\_  
\*\*\*\*\*

CHICHESTER BOARD OF ADJUSTMENT

A \$225.00 filing fee plus \$8.00 for each abutter, which is to include the applicant and/or owner, must accompany this application before a hearing will be scheduled.

Please mail the completed application and fees, payable to the Town of Chichester, to:

Kristy Jobin  
54 Main Street  
Chichester, NH 03258  
(603) 798-5350

APPLICATION FOR A VARIANCE

Name of applicant Jeffrey R. Day and Amy J. Day  
Address 964 Back Mountain Road, Goffstown, NH 03065  
Owner Same

(If same as applicant, write "same")

Location of property 67 Kelly's Corner Road (Lot 9-89) and 71 Kelly's Corner Road (Lot 9-90)  
(Street, number, sub-division, map & lot number)

NOTE: This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

APPLICATION FOR A VARIANCE

A variance is requested from Article 2 Section 2.04(c)(v) of the zoning ordinance to permit Lot 89 to have 0.49 acres of contiguous buildable area where 1 acre is required and only 0.36 acres exist; and Lot 90 to have 0.51 acres of buildable area where 1 acre is required and 0.64 acres exist.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest: See attached

2. If the variance were granted, the spirit of the ordinance would be observed because: See attached

3. Granting the variance would do substantial **justice** because: See attached

4. If the variance were granted, the **value** of the surrounding properties would not be diminished: See attached

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary **hardship** because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: \_\_\_\_\_

See attached

and

ii. The proposed use is a reasonable one because: See attached

B. Explain how, if the criteria in subparagraph (A) 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. \_\_\_\_\_

Applicant Jeffrey R. Day Date July 19, 2022  
(Signature) Jeffrey R. Day

Applicant Amy J. Day Date July 19, 2022  
(Signature) Amy J. Day

**Jeffrey R. Day and Amy J. Day**  
**67 Kelly's Corner Road (Lot 9-89)**  
**71 Kelly's Corner Road (Lot 9-90)**  
**APPLICATION FOR VARIANCE**

**Background and Description**

Jeffrey R. Day and Amy J. Day (collectively, the "Applicants") own the two adjacent parcels of land located at 67 Kelly's Corner Road (identified on Tax Map 9 as Lot 89; "Lot 89" and 71 Kelly's Corner Road (identified on Tax Map 9 as Lot 90; "Lot 90" and collectively with Lot 89, the "Day Lots"). The Day Lots have historically been in common ownership. The Applicants intend to adjust the boundary lines between these two properties for various reasons including, without limitation, to address encroachments across the boundary lines and to decrease the overall nonconformity with the Zoning Ordinance.

The Subject Property is located partially in the Residential Zoning District and partially in the Commercial/Industrial Zoning District. The Subject Property contains a building that was used for primarily commercial purposes (specifically a daycare facility). The Applicants intend to convert the Subject Property to a duplex residential structure to become more consistent with the character of the surrounding neighborhood, which is generally residential.

The Adjacent Property is located entirely in the Residential Zoning District. The Adjacent Property is used as a single-family residence, although the home itself is partially encroaching onto the Subject Property and shares a driveway with the Subject Property.

The Applicants previously applied for and received a variance approval from Section 2.04(c)(ii) of the Zoning Ordinance (relating to the minimum lot size) in order to adjust the boundary lines. During discussions, the Board raised the issue of buildable area pursuant to Section 2.04(c)(v) of the Zoning Ordinance, which provides that each lot shall contain one buildable acre. Both Day Lots are already nonconforming lots in this regard, which will not change. Lot 89 will increase from approximately 0.36 acres (15,661 square feet) of contiguous buildable area to approximately 0.49 acres (21,400 square feet) of contiguous buildable area. Lot 90, in turn, will decrease from 0.64 acres (27,840 square feet) to approximately 0.51 (22,102 square feet) of contiguous buildable area.

The Day Lots will in all other ways remain compliant with the Ordinance. Both single-family and duplex residential uses are permitted in the Residential Zoning District. The frontage of both lots will remain unchanged and compliant with the Ordinance. The Lot 89 will have 200 feet of frontage while Lot 90 will have 250 feet of frontage, as required by Section 2.04(c)(ii) for single-family and duplex properties, respectively. Lot 89, a single family residence, will be approximately 2.0 acres, satisfying the minimum lot size requirements for a single-family property provided by Section 2.04(c)(ii) and Lot 90, at 2.48 acres, has already been approved by the previously granted variance. In all other respects, the Day Lots will remain unchanged.

The proposed boundary line adjustment is necessary to improving the existing overall nonconformity of the Day Lots maintaining the integrity of the buildings and improvements on

both Day Lots with a reasonable, simple boundary configuration. Essentially, the area of the encroachment will be transferred from the Subject Property to the Adjacent Property, while undeveloped backland of the Adjacent Property will be transferred in the reverse to increase the lot size of the Subject Property. Currently, there are two lots, with nonconforming buildable areas, boundary encroachments, a nonconforming use, and a nonconforming lot size. After this variance and the lot line adjustment, there will still be two lots with nonconforming buildable areas, but without the encroachments, with no nonconforming use, and no nonconforming lot sizes. This will be a general improvement with no detrimental impact whatsoever.

#### **Details of Request**

The Applicant requests a variance from Section 2.04(c)(v) to allow Lot 89 to have 0.49 acres of contiguous buildable area where 1 acre is required and only 0.36 acres currently exist; and to allow Lot 90 to have 0.51 acres of buildable area where 1 acre is required and 0.64 acres currently exist.

#### **Variance Standards**

*1. The variance will not be contrary to the public interest.*

A variance is contrary to the public interest when it unduly, and in a marked degree, conflicts with the Zoning Ordinance such that it violates the Zoning Ordinance's basic zoning objectives. Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 105 (2007). There are two methods for determining whether a variance would violate a Zoning Ordinance's basic zoning objectives: (1) "whether granting the variance would alter the essential character of the neighborhood" or (2) "whether granting the variance would threaten the public health, safety or welfare". Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011).

The variance requested here would not alter the essential character of the neighborhood. The direct impact of the variance is to adjust the boundary lines of the two Day Lots, which will have no impact on any third party or the public at large. In all likelihood, the change will be entirely unnoticed and unnoticeable. Indirectly, the variance will enable Lot 90 to be converted from a commercial use to a residential use, which will be *more* consistent with the essential character of the neighborhood. As a result, the variance serves the public interest, rather than being contrary to it.

There is also no reason to suspect that the variance would threaten the public health, safety, or welfare in any way. There will be no practical change to the Day Lots. The buildings will remain where they are. The buildable area is inconsequential in light of the fact that the buildings thereon already exist and are not being expanded. If anything, the change in use from commercial to residential will improve public health, safety, and welfare in the neighborhood, such as by reducing the traffic in the area. The variance will be consistent with the public interest.

*2. The spirit of the Zoning Ordinance is observed by granting the variance.*

The requirement that the variance not be “contrary to the public interest” is “related to the requirement that the variance be consistent with the spirit of the Zoning Ordinance.” Malachy Glen, 155 N.H. at 105. The variance will allow the Day Lots to become overall more conforming with the Zoning Ordinance. The use of Lot 90 is arguably already a nonconforming use. Moreover, the buildable area of Lot 89 will increase, and become more conforming, offsetting any nonconformity in Lot 90. The variance, by allowing a change to the Day Lots that overall increases conformity, inherently observes the spirit of the Zoning Ordinance.

*3. Substantial justice will be done by granting the variance*

The “substantial justice” element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general public is an injustice, and whether the proposed development is consistent with the area’s present use. Malachy Glen, 155 N.H. at 109. As discussed above, this variance will allow the Applicants to address encroachments between the two Day Lots and mitigate the nonconforming condition of Lot 90.

Denying the variance, on the other hand, would be a detriment to the Applicants and the public. It would harm the Applicants by denying the reasonable use of Lot 90 and preventing the Applicants from addressing the encroachments thereon. At the same time, it would prevent the Applicants from reducing the nonconformity of the Day Lots, at the public detriment. At the same time, there is no benefit to the public in denying the application and forcing the Day Lots to remain in its less nonconforming state. The harm to the Applicant of strict enforcement of the Zoning Ordinance will outweigh the little, if any, benefit to the public. Granting the variance will therefore result in substantial justice.

*4. The values of surrounding properties will not be diminished.*

The Proposal is consistent with the surrounding area and neighborhood. The adjustment of the boundary lines between the Day Lots will have no impact or even be noticeable to anyone in the neighborhood. The conversion of Lot 90 from a commercial use to a residential use will make the Property more conforming and more consistent with the neighborhood as a whole. There is no reason to suspect that the value of the surrounding properties will be diminished. If anything, the variance, by allowing the lot line adjustment and change of use, will improve the value of the surrounding properties.

5. *A. Owing to special conditions of the Subject Property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because*

*i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property.*

Dimensional requirements, such as buildable area requirements, are generally enacted to prevent overcrowding of the land. The proposed lot line adjustment will have no impact on the overcrowding of the land in this case. All of the buildings and improvements on the Day Lots will remain in the same locations. There will be no increase in the density. The only change to the land will be the legal ownership thereof. The change in the use of Lot 90 will actually improve the conditions thereon. One of the negative impacts of overcrowding is traffic. By allowing the change of Lot 90 from commercial use to a duplex residential use, the traffic in the area will decrease.

Instead, the proposed lot line adjustment will *decrease* the nonconformity of the Day Lots, both by making the Lot 90 more conforming overall, while offsetting the buildable area nonconformity by increasing the conformity of Lot 89. It is undeniable that increasing the conformity with the Zoning Ordinance *supports* the general public purposes thereof, and is not contrary to it.

*ii. The proposed use is reasonable*

A landowner need not establish that a variance is “necessary” for a property’s use, only that the proposed use is reasonable given the particular conditions of the property. See Harborside Assocs., 162 N.H. at 519. “This factor, however, does *not* require the landowner to show that he or she has been deprived of *all* beneficial use of the land.” Harrington v. Town of Warner, 152 N.H. 74, 80-81 (2005) (emphasis added). The question of whether the property can possibly be used differently from what the applicant has proposed is not a material consideration. Malachy Glen, 155 N.H. at 108.

A duplex is a permitted use under the Zoning Ordinance and is therefore presumed reasonable. See Malachy Glen, 155 N.H. at 107. The buildable area requirement will have no impact on the neighborhood, the public, or the Town in light of the fact that the buildings already exist and no expansion or change to the physical configuration or layout of the Day Lots is contemplated. Under the circumstances, and in light of the conditions of the Property, this minor deviation from the requirements of the Zoning Ordinance is reasonable.

The Applicant reserves the right to amend, modify, and/or supplement this application at or before the hearing thereon.



**LIST OF ABUTTERS/NOTIFICATION LIST**  
**County of Merrimack**  
**Chichester, New Hampshire**  
**67 Kelly's Corner Road (Lot 9-89)**  
**71 Kelly's Corner Road (Lot 9-90)**  
**Variance Application**

<b>Owner Applicant</b>	<b>Street Address</b>	<b>Map/Block/Lot</b>
Jeffrey R. Day Amy J. Day 964 Mountain Back Road Goffstown, NH 03045	67 Kelly's Corner Road 71 Kelly's Corner Road	Lot 9-89 Lot 9-90
<b>Applicant's Consultants</b>	<b>Street Address</b>	<b>Map/Block/Lot</b>
Cleveland Waters and Bass, P.A. Two Capital Plaza, 5 <sup>th</sup> Floor P.O. Box 1137 Concord, NH 03302-1137 Attn: Timothy E. Britain, Esq.	N/A	N/A
Richard D. Bartlett & Associates, LLC 214 North State Street Concord, NH 03301	N/A	N/A
<b>Abutters</b>	<b>Street Address</b>	<b>Map/Block/Lot</b>
Guy H. Goodwin, TTEE Faith A. Duclos, TTEE Goodwin-Duclos Revocable Trust 116 Kaime Road Chichester, NH 03258	116 Kaime Road	Lot 9-84
Phillip N. Stewart Susan H. Stewart 112 Kaime Road Chichester, NH 03258	112 Kaime Road	Lot 9-85
Tracey Elizabeth Bourbeau Mark S. Bourbeau 106 Kaime Road Chichester, NH 03258	106 Kaime Road	Lot 9-86
Donna M. Saad Revocable Trust 201 Donna M. Saad, Trustee 104 Kaime Road Chichester, NH 03258	104 Kaime Road	Lot 9-87
Tacey Weir 2 Ring Road Chichester, NH 03258	2 Ring Road	Lot 9-88

Jeffrey R. Day Amy J. Day 964 Mountain Back Road Goffstown, NH 03045	67 Kelley's Corner Road	Lot 9-89
Northeast Veterinary Real Estate 1794 Bridge Street Suite 27-B Dracut, MA 01826	76 Kelley's Corner Road	Lot 9-113
Charlton Trust of 2002, F&B Fred & Bernice Charlton, TTES 68 Kelley's Corner Road Chichester, NH 03258	68 Kelley's Corner Road	Lot 9-113-A
Pamela L. Russell Bruce R. Russell 64 Kelley's Corner Road Chichester, NH 03258	64 Kelley's Corner Road	Lot 9-113-B
Damar Realty Investment, LLC 7 Lehoux Drive Hooksett, NH 03106	81 Kelly's Corner Road	Lot 9-91-A

4862-9693-1103, v. 1



Map 9, Lot 86  
Tracey E. & Mark Bourbeau  
106 Kalme Road  
Chichester, NH 03258  
Book 3382, Page 1447

Map 9, Lot 85  
Phillip H. & Susan H. Stewart  
112 Kalme Road  
Chichester, NH 03258  
Book 1403, Page 856

Map 9, Lot 88  
Tracey Weir  
2 Ring Road  
Chichester, NH 03258  
Book 2797, Page 1895

Map 9, Lot 90  
Jeffery R. & Amy J. Day  
964 Mountain Back Road  
Goffstown, NH 03045  
Book 3595, Page 2889  
99,921 sq. ft. or  
2.27 acres  
Area after Lot Line Adjustment  
107,805 sq. ft. or 2.48 ac.

Map 9, Lot 89  
Jeffery R. & Amy J. Day  
964 Mountain Back Road  
Goffstown, NH 03045  
Book 3595, Page 2889  
96,395 sq. ft. or  
2.21 acres  
Area after Lot Line Adjustment  
87,411 sq. ft. or 2.00 ac.

Map 9, Lot 91  
Damar Realty Investment, LLC  
7 Lehoux Drive  
Hooksett, NH 03106  
Book 3463, Page 685

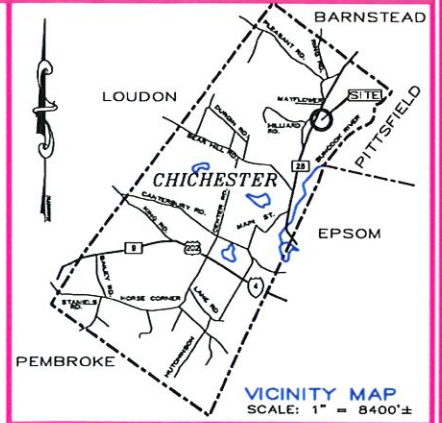
Map 9, Lot 113  
Northeast Veterinary Real Estate, LLC  
1794 Bridge Street, Suite 27-B  
Dracut, MA 01826  
Book 3721, Page 1367

Map 9, Lot 113-A  
F&B Charlton Trust 2002  
68 Kelley's Corner Road  
Chichester, NH 03258  
Book 3256, Page 786

Map 9, Lot 113-B  
Pamela L. & Bruce R. Russell  
64 Kelley's Corner Road  
Chichester, NH 03258  
Book 2055, Page 1404

**SOIL TYPES**

- 1660 Canterbury fine sandy loam 15-25% slopes NHDES group 3 soil
- 459B Metacomet fine sandy loam 3-8% slopes, very stony NHDES group 3 soil
- 647B Pillsbury fine sandy loam, 0-8% slopes, very stony NHDES group 5 soil



**LEGEND**

- PROPERTY LINE
- EDGE OF PAVEMENT
- EDGE OF GRAVEL
- OVERHEAD UTILITY LINES
- DRAINAGE LINE
- SEWER LINE
- GAS LINE
- TEL. LINE
- UNDERGROUND ELECT.
- DOUBLE YELLOW LINE
- SINGLE WHITE LINE
- VERTICAL OR SLOPED GRANITE CURB
- SHORE LINE
- CHAIN LINK FENCE
- STOCKADE FENCE
- STONE WALL
- EDGE OF WOODS
- CONCRETE
- SIGN HC-HANDICAPPED
- HCV-VAN ACCESSIBLE
- NF-NO PARKING
- CONFEROUS TREE
- SHRUB
- DECIDUOUS TREE
- ARTESIAN WELL
- IRON PIPE OR REBAR
- GRANITE OR CONCRETE BOUND (OR OR CB)
- DRILL HOLE (OH)
- UTILITY POLE
- LIGHT POLE
- SEWER MANHOLE
- DRAIN MANHOLE
- CATCH BASIN
- HYDRANT
- WATER SHUTOFF
- WATER VALVE
- IRRIGATION CONTROL VALVE
- GAS SHUTOFF
- MONITORING WELL

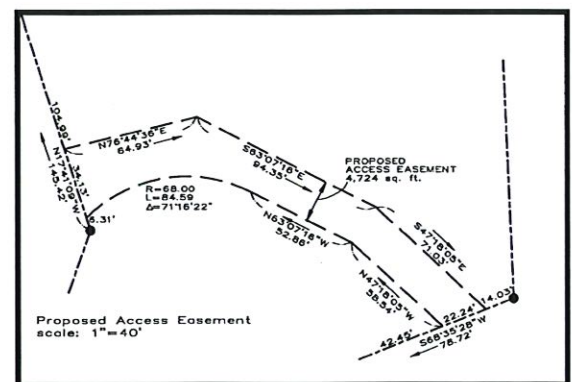
**NOTES**

- Survey by total station between the dates of April 5 - 12, 2021. Control Traverse error of closure 1:
- Horizontal datum is based on New Hampshire State Plane Coordinate System NAD 83 based on GPS observations and OPUS solutions.
- Vertical datum is based on NAVD 88.
- Owner of record: Jeffrey R. & Amy J. Day 964 Black Mountain Road Goffstown, NH 03045 Map 9, Lots 89 & 90 Book 3595, Page 2889
- The subject premises is within the Residential zoning district. Minimum lot size = 2 acres, Minimum frontage = 200', Building setbacks: front=30'; rear=15'; side=15', a portion of the parcel is within the Commercial-Industrial Multi-Family zone.
- The underground utilities depicted hereon have been located from field survey information and plotted from existing drawings. The surveyor makes no guarantee that the underground utilities depicted comprise all such utilities in the area, either in service or abandoned. The surveyor further 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. The surveyor has not physically located the underground portion of the utilities. All contractors should notify, in writing, any utility company and appropriate governmental agencies prior to any excavation work and call DIG-SAFE at 811.
- The intent of this plat is to depict a lot line adjustment between lots 89 and 90.

**REFERENCES**

- Plat entitled "Site Plan Kelly Corner School" dated May, 2004 by T.F. Bernier, Inc and recorded at the M.C.R.D. as plan no. 16925.
- Plat entitled "Annexation land of Lawrence C. & Ethel F. Cleasby" dated June 3, 1987 by Stanley H. Prescott, II and recorded at the M.C.R.D. as plan no. 9739.
- Plat entitled "Resubdivision of land Belonging to John T. Gray, Associates" dated April 23, 1978 by Gilbert C. Castle and recorded at the M.C.R.D. as plan no. 5477.
- Plat entitled "6 Lot, Subdivision for Approval" dated February 22, 1977 and revised through October 25, 1977 by Bradley Associates and recorded at the M.C.R.D. as plan no. 5161.
- Plat entitled "Property of Roger V & Beatrice A. Nelson" dated September 7, 1972 by Roger V. Nelson and recorded at the M.C.R.D. as plan no. 3081.

**APPROVED**  
UNDER THE PROVISIONS OF R.S.A. 674:35 & R.S.A. 674:36  
**PLANNING BOARD**  
TOWN OF CHICHESTER, NEW HAMPSHIRE  
in accordance with vote of the board dated:  
Approval of this plat is limited to lots as shown.  
Clerk \_\_\_\_\_ Choir \_\_\_\_\_



I HEREBY CERTIFY THAT THIS PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT IMMEDIATE SUPERVISION, AND DEPICTS A SURVEY CONDUCTED WITH A TOTAL STATION HAVING AN UNRAI CLASSIFICATION AND A MINIMUM ERROR OF CLOSURE LESS THAN 1:10,000.

SIGNATURE \_\_\_\_\_ LICENSE NO. \_\_\_\_\_ DATE \_\_\_\_\_

NO.	DATE	REVISION

FOR: RICHARD D. BARTLETT & ASSOCIATES, LLC

**RICHARD D. BARTLETT & ASSOCIATES, LLC**  
214 North State Street  
Concord, N.H. 03301  
Tel.: (603) 225-6770  
info@richarddbartlett.com  
www.richarddbartlett.com  
LICENSED LAND SURVEYORS

**LOT LINE ADJUSTMENT PLAT prepared for JEFFREY R. & AMY J. DAY**  
PROJECT: 67 & 71 KELLY'S CORNER ROAD  
LOCATION: CHICHESTER, NH  
MAP 9, LOTS 89 & 90  
GRAPHIC SCALE: 0 20' 40' 80'  
DATE: APRIL, 2022  
JOB NO.: 321.123  
SHEET 1 OF 1