



AnneMarie Skinner, AICP
City Planner

CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department
Planning Division

Staff Report for Planning Board

Meeting on December 18, 2024
Project Summary – Minor Subdivision

Project: 115 and 119 River Rd Lot Line Adjustment (2024-084)
Property Owner: Jesse E. Murray Revocable Trust of 1991 c/o Grady R. Crews and Ernest P. Sharpe Co-Trustees and Helen B. Murray Revocable Trust of 1991 c/o Grady R. Crews and Ernest P. Sharpe Co-Trustees
Applicant: Wilcox & Barton
Property Address: 115 and 119 River Rd
Tax Map Lot: 32Z 56 and 32Z 58

Determination of Completeness:

Per Section 9.06 *Determination of Completeness* of the Subdivision Regulations, a completed application will contain the required information listed in Section 15.01 *Required Information* and Section 15.02 *Plat Requirements* of the Subdivision Regulations and will be legible and competently prepared. In making a determination of completeness, the Board shall consider the written recommendation of the Planning Division, as well as any written communications from the applicant, abutters, and parties of interest; **however, no hearing shall be opened nor shall testimony be received on a determination of completeness.** If the application is determined complete, the Board shall open the public hearing on the application. An application which is determined to be incomplete may be revised and resubmitted to a subsequent hearing of the Board for another determination of completeness.

Section 35.16(1) *Determination of Completeness* of the Subdivision Regulations provides additional language regarding the determination of completeness, and states that a completed application shall contain all required information for each stage of the application process; shall be legible and properly prepared; shall accurately portray existing conditions; shall be accompanied by copies of special investigative studies; and shall contain sufficient information and detail for a full review and action by the Board.

The Planning Division reviewed the application for completeness based upon the criteria of the Subdivision Regulations and concludes that all criteria for completeness have not been met, the application does not contain all required information, and the application does not contain sufficient information and detail for a full review and action by the Board.

Based upon the Planning Division's review of the application, the Planning Division recommends that the Board move to:

- **Determine that the application is incomplete because the project as submitted does not meet the following sections of the Subdivision Regulations, all of which are necessary for a complete determination:**

- a. Section 6
- b. Section 12
- c. Section 13
- d. Section 15; and,
- Advise the applicant to revise and resubmit to a subsequent meeting of the Board for another determination of completeness.

If the Board chooses to deem the application incomplete, the Planning Division recommends that the Board move to:

- Determine the application complete;
- State that the project does not meet the criteria for a development of regional impact per New Hampshire RSA 36:55; and,
- Open the public hearing.

The Board has 65 days within which to consider and act on the application once the application is determined complete, per New Hampshire RSA 676:4(I)(c). The 65-day period shall commence upon the date of the regular meeting of the Board at which the application was accepted as complete. If the Board determines the application complete on December 18, 2024, then the 65-day review period would end on **February 21, 2025**. If the applicant has not demonstrated compliance with the Subdivision Regulations by the end of the statutory timeline (**February 21, 2025**), the applicant may request a postponement or the Board may approve, approve conditionally, or deny the application based on the information provided.

Project Description:

The applicant is seeking approvals for a minor subdivision and certain waivers from the Subdivision Regulations for a lot line adjustment between 115 and 119 River Road, in the Open Space Residential (RO) District.

Compliance:

The following analysis of compliance with the Zoning Ordinance and Subdivision Regulations is based on a narrative dated November 15, 2024, prepared by Richard D. Bartlett & Associates, LLC; a 1-sheet lot line adjustment plat, dated November 5, 2024, prepared by Richard D. Bartlett & Associates, LLC; and a 2-sheet waiver request, dated November 18, 2024, prepared by Richard D. Bartlett & Associates, LLC.

1. Project Details and Zoning Ordinance Compliance:

Zoning District:	Open Space Residential (RO) District
Existing Use:	115 River Road – Commercial greenhouse 119 River Road – Single family dwelling unit
Proposed Use:	115 River Road – Commercial greenhouse 119 River Road – Single family dwelling unit
Overlay Districts:	
Flood Hazard (FH) District	Yes
Shoreland Protection (SP) District	Yes
Historic (HI) District	None
Penacook Lake Watershed (WS) District	None
Aquifer Protection (AP) District	None

Zoning Code Item	Required	Existing	Proposed
Minimum Total Area	2 acres	115 River Rd – 76.41 acres 119 River Rd – 1.09 acres	115 River Rd – 76.89 acres 119 River Rd – 0.71 acre
Minimum Buildable Land	20,000 square feet	115 River Rd - Not Provided 119 River Rd - Not Provided	115 River Rd - Not Provided 119 River Rd - 18,656 square feet
Minimum Lot Frontage	200 feet	115 River Rd - Not Provided 119 River Rd - Not Provided	115 River Rd – Not Provided 119 River Rd - Not Provided
Minimum Front Yard	50 feet	115 River Rd – Not Provided 119 River Rd - Not Provided	115 River Rd - Not Provided 119 River Rd - Not Provided
Minimum Rear Yard	50 feet	115 River Rd - Not Provided 119 River Rd - Not Provided	115 River Rd - Not Provided 119 River Rd - Not Provided
Minimum Side Yard	40 feet	115 River Rd – 0 feet 119 River Rd – 0 feet	115 River Rd – 8 feet 119 River Rd – 8 feet
Maximum Lot Coverage	10%	115 River Rd - Not Provided 119 River Rd - Not Provided	115 River Rd -Not Provided 119 River Rd -13%

1.1 Staff determined that the application as submitted does not conform with the Zoning Ordinance, as described in items 1.2 through 1.7 below.

1.2 Section 28-4-1(h) *Table of Dimensional Regulations* states in the base districts as established in Article 28-2, *Zoning Districts and Allowable Uses*, of the ordinance, buildings, structures, or impervious surfaces shall not be constructed except in conformance with the standards set forth in the Table of Dimensional Regulations, subject to all other provisions and standards of the ordinance, and other local, State, and federal laws, rules, and regulations.

For 115 River Road, the proposed lot line adjustment shows a side yard setback of 8 feet between the greenhouse structure and the lot line with 119 River Road and is not compliant with the 15-foot setback variance granted by the Zoning Board of Adjustment on June 5, 2024 (ZBA 0188-2024). The application does not alternatively provide evidence to support consideration of a legal non-conforming status in accordance with Article 28-8 *Nonconforming Lots, Uses and Structures* of the Zoning Ordinance.

1.3 Section 28-7-7(g)(2) *Setbacks from Lot Lines* states no off-street parking shall be located within 5 feet of any lot line except that parking lots may be contiguous or interconnected.

For 115 River Road and 119 River Road, a proposed lot line is shown on top of an existing driveway resulting in no separation between the proposed lot line and the existing driveways and parking areas, and is not compliant with the required 5-foot separation requirement. The materials submitted with the application did not include an intent to convey an access easement, or any other documentation further clarifying how the driveway and parking area are intended to be utilized. The application does not alternatively provide evidence to support consideration of a legal non-conforming status in accordance with Article 28-8 *Nonconforming Lots, Uses and Structures* of the Zoning Ordinance.

1.4 Section 28-7-8(b) *Separation of Driveways in Residential Districts* states one driveway is permitted for lots with up to 100 feet of lot frontage. One additional driveway is permitted for

each additional 150 feet of lot frontage. Where compliance cannot be achieved with these standards, the Planning Board may grant a conditional use permit pursuant to Section 28-7-11, *Alternative Parking Arrangements*, of the Zoning Ordinance.

Existing and proposed lot frontages have not been provided as part of this application. Staff estimates the proposed lot line adjustment would provide 115 River Road with 3 driveways with only approximately 256 feet of lot frontage and 119 River Road with 2 driveways with only approximately 242 feet of frontage. Neither situation is compliant with the required minimum frontage for the number of driveways. No conditional use permit application accompanied this application. The application does not alternatively provide evidence to support consideration of a legal non-conforming status in accordance with Article 28-8 *Nonconforming Lots, Uses and Structures* of the Zoning Ordinance.

- 1.5 Section 28-4-1(b) *Minimum Lot Size* states no buildings or structures shall be constructed and no use shall be established on a lot having less total area and less buildable land area than the minimum amounts indicated in Section 28-4-1(h), *Table of Dimensional Regulations*, of the Zoning Ordinance.

The proposed lot line adjustment provides 18,656 square-feet of buildable land area for 119 River Road and is not compliant with the required minimum buildable land area for the Open Space Residential (RO) District. The application does not alternatively provide evidence to support consideration of a legal non-conforming status in accordance with Article 28-8 *Nonconforming Lots, Uses and Structures* of the Zoning Ordinance.

- 1.6 Section 28-4-1(e) *Maximum Lot Coverage* states no buildings, structures, or impervious surfaces or combination thereof shall be constructed on a lot such that the area of the lot covered by buildings, structures, and impervious surfaces, when calculated as a percentage of the total lot area, shall exceed the percentage as specified in Section 28-4-1(h), *Table of Dimensional Regulations*, of the Zoning Ordinance.

The proposed lot line adjustment provides 13% lot coverage for 119 River Road and is not compliant with the required maximum lot coverage for the Open Space Residential (RO) District. The application does not alternatively provide evidence to support consideration of a legal non-conforming status in accordance with Article 28-8 *Nonconforming Lots, Uses and Structures* of the Zoning Ordinance.

- 1.7 Section 28-6-7(m) *Signs Prohibited Under This Ordinance* states, billboards and signs unrelated to the principal use or uses of the premises on which the sign is located, except as provided in Section 28-6-9(c)(5);

The proposed lot line adjustment for the purpose of separating the single-family dwelling from the commercial use retains the “Murray Farms Green House” sign on the single-family dwelling lot and is not compliant with the Zoning Ordinance prohibiting the use of signs unrelated to the principal use or uses of the premises on which the sign is located. The application does not alternatively provide evidence to support consideration of a legal non-conforming status in accordance with Article 28-8 *Nonconforming Lots, Uses and Structures* of the Zoning Ordinance.

The sign shall either be removed or relocated prior to final approval, or if the sign is determined to be compliant with zoning through determination of a legal nonconformity or variance.

2. Subdivision Regulations Compliance and Comments:

- 2.1 Per Section 2.02, land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace, and land shall not be subdivided until adequate public facilities, open space, public safety services, and transportation facilities exist and proper provisions have been made for stormwater drainage, sewage disposal, potable water supply, and capital improvements such as schools, parks, recreation facilities, transportation improvements, and public safety facilities.
- 2.2 Per Section 2.03, the existing and proposed public improvements shall conform to and be properly related to the proposals shown in the Master Plan and Official Map of the municipality, and it is intended that the regulations shall supplement and facilitate the enforcement of the provisions and standards contained in building and housing code, health codes, and zoning ordinances.
- 2.3 Staff notes that, per Section 4.04, the Subdivision Regulations shall apply to re-subdivisions, minor lot line adjustments, and condominiums. Since the applicant is requesting approval for a minor lot adjustment, the Subdivision Regulations apply.
- 2.4 Per Section 6.01(4) *Conformity with Zoning*, for an application to be determined complete, the proposed application must be in conformity with the Zoning Ordinance at the time the notices are mailed to the abutters notifying them of the Board's consideration of completeness. Notices were mailed on December 2, 2024, for the Board's consideration of completeness on December 18, 2024.

However, the application did **not conform** with the Zoning Ordinance at the time of the mailing as noted above in items 1.1 through 1.7; therefore, the application **cannot** be considered for completeness.

- 2.5 Staff notes that, per Section 6.01(5) *Conditional Use Permits*, where conditional use permits are required in conjunction with a proposed subdivision, a completed conditional use permit application shall be made at the same time as the subdivision application. Where a conditional use permit is required, no subdivision application may be considered complete without a complete conditional use permit application.

The project appears to require a conditional use permit for the number of driveways proposed in a residential district, but **no conditional use permit applications were submitted**. No subdivision application may be considered complete without a complete conditional use permit application as stated in Section 6.01(5)

- 2.6 Section 6.02 *Classification of Subdivisions* identifies the classification of subdivisions as minor or major subdivisions. Subdivisions not classified as a minor subdivision shall be major subdivisions. Existing developments proposed for conversion to condominiums, where there will be no change in the use of land and no change in the site layout shall be classified as minor subdivisions. Developments proposed for conversion to condominiums involving a change of use of the land or a change in the site layout shall be classified as major subdivisions.

Staff notes that the site is an existing development, there will be no change in the use of land, and there will be no change in the site layout; therefore, the subdivision application shall be classified as a minor subdivision by the Clerk.

- 2.7 Per Section 9.02 *Minor Subdivision Application Requirements*, the applicant shall file certain items for a completed application. These items are a completed application form endorsed by the owner or submitted by the owner's agent with written authorization from the owner; application fee; abutters list; copies of the final plat meeting the requirements in Section 15 *Minor Subdivision Requirements*; complete conditional use permit applications, where applicable; copies of permit applications to state and federal agencies, where applicable; and, any requests for waivers from Subdivision Regulations as set forth in Section 35.11 *Waiver Petition*.

Staff notes that the application form, owner authorization, application fee, and abutters list were submitted as required. An assessment of compliance with Section 15 *Minor Subdivision Requirements* follows. No conditional use permit applications were submitted. No permit applications to state and federal agencies are necessary. The application included requests from waivers as described in item 4 of this staff report.

- 2.8 Per Section 12.01 *Research*, applicants shall familiarize themselves with all city, state, and federal regulations relative to zoning, subdivision, land sales, utilities, drainage, health, buildings, roads, and other pertinent data so that the applicants are aware of the obligations, standards expected, and documents to be submitted.
- 2.9 The Engineering Division reviewed the application and commented that the well radius would not be contained entirely on the proposed house lot and that the Murray Farm Greenhouse sign would be on the proposed house lot.
- 2.10 The Fire Department reviewed the application and had no comments.
- 2.11 The Assessing Department reviewed the application and noted that Map Block Lot 32Z 58 should have a deed reference of Book 2154, Page 1460.
- 2.12 The General Services Department reviewed the application and had no comments.

The following items from Sections 12, 13, and 15 of the Subdivision Regulations appear to be missing from the application, all of which are minimum components necessary to determine the application complete.

- 2.13 Section 15.01(1) and Section 15.01(2) require all items set forth in Section 12 *General Requirements for All Drawings*, Section 13.01 *All Applications*, and Section 13.02 *Documentation Required Prior to Recording of Plans*. Information missing from those sections is noted below in items 2.14 through 2.23.
- 2.14 Section 12.02(4) *Conditions of Planning Board Approval* requires listing conditions of approval which remain to be fulfilled after plat recording. The Planning Board Conditions shown on the plat shall include reference to Case 2024-084.
- 2.15 Section 12.07 *Wetland Delineations* requires that the existing conditions plan and the subdivision plat contain the signature and seal of the New Hampshire certified wetland scientist who

performed the wetland delineation, as well as the date of the wetland delineation. This required information appears to be missing from both the existing conditions plan and the subdivision plat. If the site does not contain any wetlands, a note needs to be added to both the existing conditions plan and the subdivision plat stating that the site does not contain any wetlands.

Staff notes the applicant has requested a waiver from Section 15.01(3) *Wetlands* and recommends the applicant and Board include this section for the same consideration.

- 2.16 Section 12.08(8) *Parking, Loading, and Access* requires that the location and layout of existing driveways, curb cuts, parking lots, and loading areas be shown on the existing conditions plan. This required information appears to be missing from the existing conditions plan, specifically the parking and loading areas of the commercial use.
- 2.17 Section 13.01(6) *State and Federal Permits* requires that a copy of any application made to a state or federal agency required for the approval of the subdivision, including those required for the development of the individual lots, be submitted with the application. Note 18 states New Hampshire State Subdivision approval is required, and a copy of that application shall be provided.
- 2.18 Section 13.02(9) *Agreement to Convey a Private Easement* requires an agreement to convey a private easement shall be provided where easements or common facilities are to benefit the future owners of the individual lots including, but not limited to, vehicular and pedestrian access, drainage, utility, and access for maintenance purposes. The lot line adjustment results in a portion of the 75-foot wellhead protection radius serving 119 River Road to fall within the property of 115 River Road. An agreement to convey a private easement, benefiting 119 River Road, to protect the wellhead radius shall be provided for review by City staff and subsequent recording with the Merrimack County Registry of Deeds.
- 2.19 Section 13.02(9) *Agreement to Convey a Private Easement* requires an agreement to convey a private easement shall be provided where easements or common facilities are to benefit the future owners of the individual lots including, but not limited to, vehicular and pedestrian access, drainage, utility, and access for maintenance purposes. The lot line adjustment creates a shared driveway between 115 and 119 River Road. An agreement to convey an access and maintenance easement shall be provided for review by City staff and subsequent recording with the Merrimack County Registry of Deeds.
- 2.20 Section 15.03(1) *Abutting Property* requires showing existing abutting properties, property lines, buildings, wells, septic systems, owner's names and addresses, property addresses, and tax map block lot information. Although the owner's names and addresses are shown, the plat is missing the actual property addresses of the existing abutting properties and shall be added. Specifically, the actual property addresses of the following abutting properties are missing and shall be added: Map 32Z 59 – 210 Bog Road; Map 32Z 58 – 119 River Road; and, Map 32Z 56 – 115 River Rd.
- 2.21 Section 15.03(4) *Topography* requires that existing topographic conditions and all proposed changes in ground elevation at a contour interval of two feet be shown on the plat. This information appears to be missing from the plat.

Staff notes the applicant has requested a waiver from Section 12.08(3) *Topography* and recommends the applicant and Board include this section for the same consideration.

- 2.22 Section 15.03(5) *Monumentation* requires the type and location of existing and required monuments be shown on the plat at the corners of lots, points of curvature, tangency, and deflection points along the street rights-of-way. This required information appears to be missing from the plat. Specifically, the type of monument to be set at all new property corners must be shown, but is not shown as required.
- 2.23 Section 15.03(17) *Conditions of Approval* requires that the conditions of approval as set forth by the Planning Board which remain to be fulfilled after the recording of the plat shall be duly noted on the plat. The Planning Board Conditions shown on the plan shall include reference to Case 2024-084.

3 Variances:

- 3.1 At the meeting held on June 5, 2024, the Zoning Board of Adjustment granted the applicant's requested variances as follows:

ZBA 0188-2024 for 115 River Road

- Article 28-4-1(h) for a setback of 15 feet where 40 feet is required.

ZBA 0173-2024 for 119 River Road

- Article 28-4-1(h) for a setback of 8 feet where 40 feet is required
- Article 28-4-1(h) for a lot size of approximately 0.6 acre where 2.0 acres is required.

4 Waivers:

- 4.1 The applicant requests waivers from the following sections of the Subdivision Regulations:

- a. Section 12.08(3) *Topography*;
- b. Section 12.08(10) *Municipal Utilities*;
- c. Section 12.08(18) *Lighting*;
- d. Section 12.08(23)(c), (d), and a portion of Appendix B, partial request for coverage calculations on lot 56 and lot 58 – Useable land cannot be shown due to smaller lot size allowed by variance;
- e. Section 15.01(3) *Wetlands*;
- f. Section 15.03(11) *Municipal Sewer* (not available on site);
- g. Section 15.03(13) *Municipal Water Supply* (not available on site); and,
- h. Section 15.03(15) *Other Utilities*.

5 Conditional Use Permits:

- 5.1 No conditional use permits are requested.

6. Architectural Design Review

- 6.1 Architectural Design Review is not necessary for this application.

7. Conservation Commission:

- 7.1 No appearances before the Conservation Commission are necessary for this application.

8. Recommendations:

- 8.1 Determine the application incomplete because the project as submitted does not comply with Section 6, Section 12, Section 13, and Section 15 of the Subdivision Regulations.

- 8.2 Advise the applicant to revise and resubmit to a subsequent meeting of the Planning Board. All resubmissions shall be subject to the same deadlines, meeting dates, and parameters as though it was a new plan application. Revisions shall also include a revised abutter notification list and fees for noticing the new public hearing date.

Prepared by: ATB