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February 7, 2024

BY EMAIL & US MAIL

Micah Warnock, Chair
Town of Durham
8 Newmarket Road
Durham, NH 03824

Re: Response to Community Letter with Additional Supporting Materials
Applicant: MD Shaad Mahmud & Erika Nauman Gaillat
Property: Schoolhouse Lane, Durham, NH 03824
Map 108, Lot 73-1

Dear Chair Warnock:

Please accept this letter and additional supporting materials on behalf of the owners and applicants, MD Shaad Mahmud and Erika Nauman Gaillat. This letter is intended to address some of the concerns raised in the letter filed by several property owners of Old Landing Road and the General John Sullivan House, dated January 8, 2024.

The Applicants acknowledge the concerns of these property owners. However, we disagree that the construction of a four unit apartment building will negatively impact the area. At the outset, we note that “[a]ll properties on Old Landing Road” are not owner-occupied, as suggested in the letter. Lot 108-49 (4 Old Landing Road) is a multi-unit apartment building. Lot 108-50 (6-8 Old Landing Road) is a two-unit condominium. Lot 108-61 (5 Old Landing Road) contains an accessory apartment. Lot 108-62 (22 Dover Road), located at the corner of Dover Road (Route 4) and Old Landing Road, is a rooming house. Thus, Old Landing Road, like the rest of the area surrounding the subject property, contains a mix of uses.

As noted in the application materials, we believe that the proposed four-unit apartment is fully consistent with the surrounding area and especially Schoolhouse Lane, which is largely developed with apartments and commercial uses. It also contains a mix of zoning districts making it a textbook transition zone. The Applicants’ proposed building will be located towards Schoolhouse Lane, in line with the other buildings on the street, preserving the rear of the lot closest to Old Landing Road as an undeveloped buffer area. Accordingly, and as previously discussed in the application, the proposal creates a reasonable transition between the commercial and apartment uses on Schoolhouse Lane and the upper portion of Old Landing Road and the single-family residences on lower Old Landing.

DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	OF COUNSEL:
R. TIMOTHY PHOENIX	ALEC L. MCEACHERN	PETER V. DOYLE	SAMUEL R. REID
LAWRENCE B. GORMLEY	KEVIN M. BAUM	MONICA F. KIESER	JOHN AHLGREN
STEPHEN H. ROBERTS	JACOB J.B. MARVELLEY	STEPHANIE J. JOHNSON	

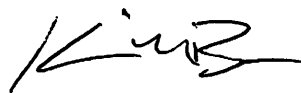
With respect to the numbered concerns raised in the January 8, 2024 letter, we offer the following response:

1. **Pre-existing Knowledge of Zoning and Neighborhood Character.** The Applicants agree that they had pre-existing knowledge of the neighborhood. As noted, the area contains a mix of commercial and apartment uses. The existence of zoning does not preclude property owners from requesting variances. Indeed, the variance “relief valve” is intended precisely for this type of situation, where zoning does not match the current character of the surrounding area. See *Belanger v. City of Nashua*, 121 N.H. 389 (1981) (finding the granting of a variance proper where ordinance no longer reflects the current character of neighborhood).
2. **Incompatibility with Residential Zoning.** The Applicants respectfully disagree that their proposal is incompatible with the surrounding area for the reasons noted above. It is precisely why a variance is appropriate in this instance. Moreover, the mere fact that a request is contrary to the express terms of the zoning ordinance may not be used by the ZBA as a reason to deny the variance. *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007).
3. **Impact on Surrounding Neighborhoods and Durham’s Historic District.** As noted, the proposed four-unit apartment is consistent with the area surrounding the subject property, which contains a mix of commercial and apartment uses, primarily on Schoolhouse Lane but including the upper portion of Old Landing Road. The subject property is not in the Historic District and its restrictions are not applicable. The General John Sullivan House, reference in the letter, is located approximately 1,000 feet away and across the Oyster River. Given this distance and the existence of multiple other uses closer to the property, the development of the subject property will have no measurable impact on the General John Sullivan House.
4. **Exacerbation of Water Runoff Issues and Environmental Impact.** There appears to be a misunderstanding as to the size of the proposed new apartment building. While the final design is not yet completed, the anticipated building size will be roughly the same footprint as the existing properties in the area, including several single family residences on Old Landing Road. See Exhibit 1 (Site Sketch showing proposed building outline). Additionally, unlike a single family home development, the proposed apartment building will undergo Planning Board site plan review where drainage and water runoff concerns will be fully vetted.
5. **Increased Density on a Smaller Lot.** As noted above and shown on Exhibit A, the proposed new building size will not be out of character for the area. It is also worth noting that additional density (up to 50% greater) is contemplated within the zone and permitted on the subject property for senior housing, eldercare facilities, and nursing homes pursuant to Durham Zoning Ordinance (“DZO”) Section 175-57(A).

6. Adverse Effect on Property Values. As noted, the size and density of the proposed building will not be out of character for the area. In fact, the Applicants have received a letter of support from a New Hampshire Realtor, Carol Camp of Carey & Giampa Realtors, indicating that in her professional opinion the proposal will not negatively impact surrounding property values. Exhibit 2 (Support Letter from Carol Camp).
7. Violation of Community Trust and Expectations. The undersigned counsel took part in the subdivision approval for the subject lot and strongly disagrees with the characterization made by the letter writer. That applicant did not make any statement that the new lot would only be developed for single family use. Rather, it was stated that any proposal other than single family use would require site plan review for which the abutters would be provided legal notice. That is precisely what will occur in this instance. Should the ZBA grant relief, the proposal will undergo full site plan review by the Planning Board, which will be fully noticed in accordance with RSA 676:4, I.
8. Loss of Privacy and Noise Concerns. The Applicants are not requesting any height variance. Thus, the proposed building will be no taller than any other structure, single family or not, that may be legally constructed on the property. However, the Applicants have proposed to construct the building and associated improvements on the front portion of the lot, towards Schoolhouse Lane, maintaining an undeveloped buffer towards the rear of the parcel closest to Old Landing Road. Thus, the proposal will result in less potential impact to privacy or noise to the southeast abutters than a single-family residence.
9. Inadequate Justification for Variance. The Applicants respectfully disagree with the letter writers' contention that the existence of multiple commercial and multifamily uses surrounding the subject property does not alter the character of the neighborhood justifying zoning relief, as noted in the application materials and supported by prior New Hampshire caselaw. See *Belanger, supra*; *Walker v. City of Manchester*, 107 N.H. 382, 386 (1966).

Thank you for your consideration of this application and supporting materials. Please do not hesitate to contact us should you need anything further.

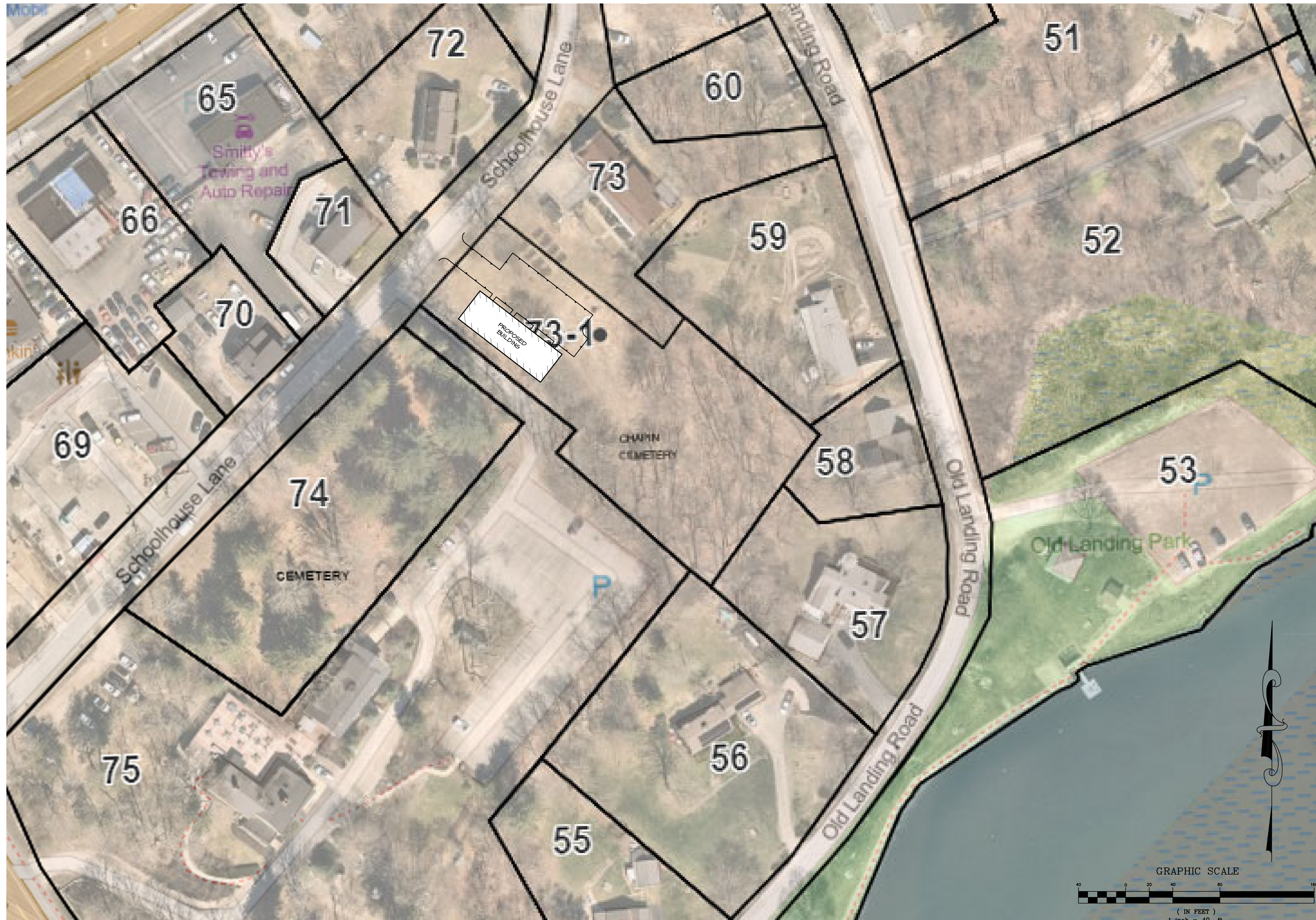
Very truly yours,



Kevin M. Baum, Esq.

KMB:slb
Enclosures

cc: MD Shaad Mahmud
Erika Nauman Gaillat
Emmanual Engineering, Inc.



NOTES:

- OWNER OF RECORD:
TAX MAP JOB, LOT 73-1
M.D. SHAAD MAHMUD
14 SCHOOLHOUSE LANE
DURHAM, NH 03824
RCRD BK 5015 PG 0268
- AERIAL PHOTO SHOWN WAS TAKEN FROM THE TOWN OF DURHAM GIS PUBLIC MAP VIEWER ON JANUARY 10, 2024.

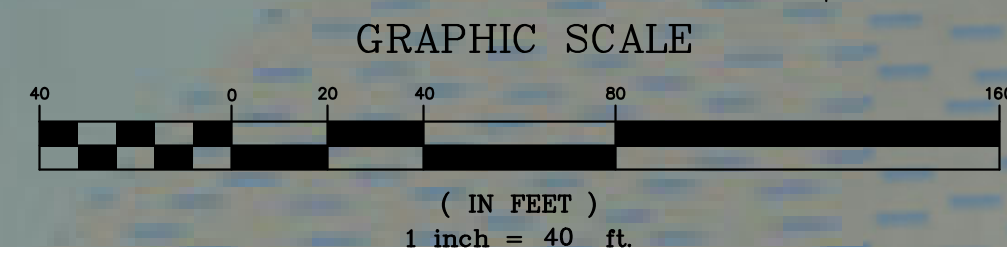
1	JAN 11, 2024	PRELIMINARY	
ISS. DATE:	DESCRIPTION OF ISSUE:		CHK.
DRAWN:	NCB	DESIGN:	NCB
CHECKED:	BDS	CHECKED:	BDS

EMANUEL ENGINEERING
 118 PORTSMOUTH AVENUE, A202
 STRATHAM, NH 03885
 P: 603-772-4400 F: 603-772-4487
 WWW.EMANUELENGINEERING.COM

CLIENT:
 M.D. SHAAD MAHMUD
 14 SCHOOLHOUSE LANE
 DURHAM, NH 03824

TITLE:
PRELIMINARY SITE SKETCH
 FOR
 M.D. SHAAD MAHMUD
 12 SCHOOLHOUSE LANE (SITE)
 DURHAM, NH 03824

PROJECT:	SCALE:	SHEET:
23-1107	1"=40'	C1



Subject: Support for the Construction of a 4-Unit Multifamily House at 12 Schoolhouse Lane

I am writing to express my strong support for the proposed construction of a 4-unit multifamily house at 12 Schoolhouse Lane. This project presents a significant opportunity for our community, and we believe it aligns perfectly with the existing characteristics of the area. Here are key reasons supporting this development:

1. **Harmony with Neighborhood Composition:** The construction of a multifamily residence on Schoolhouse Lane is in harmony with the area's existing property types. The neighborhood predominantly features multifamily residences (9,15,17,21 Schoolhouse Lane) and commercial uses (Three Chimneys and Timeline), suggesting that the addition of another multifamily unit would seamlessly blend with the current landscape. This integration ensures that the property values of surrounding areas remain unaffected.
2. **Precedent of Multifamily Units in Vicinity:** The presence of multifamily residences at 4, 5, and 6 Old Landing Road provides a clear precedent for similar developments in the area. These existing properties illustrate the community's openness to multifamily units, reinforcing the suitability of the proposed project at 12 Schoolhouse Lane.
3. **Addressing Critical Housing Needs in New Hampshire:** Durham, New Hampshire faces a growing demand for affordable and diverse housing options. The proposed development at 12 Schoolhouse Lane directly addresses this need by offering additional living spaces that are crucial for accommodating our growing population. Furthermore, the project will provide housing that aligns with the state's goals for sustainable and inclusive community growth. By increasing the housing stock, we can alleviate some of the pressures of the housing market, making our community more accessible to individuals and families of varying income levels.
4. **Positive Impact on Property Values:** A well-designed and well-maintained multifamily unit like the one proposed can enhance the neighborhood's overall appeal, potentially boosting the property values in the area over time.

I firmly believe that the 4-unit multifamily house at 12 Schoolhouse Lane is a valuable addition to our community, respecting the existing neighborhood character and contributing significantly to addressing our housing needs.

Sincerely,

Carol