

Town of Milford
ZONING BOARD OF ADJUSTMENT



NOTICE OF HEARING

Town Hall
1 Union Square
Milford, NH 03055-4240
(603) 249-0620
Fax (603) 673-2273
www.milford.nh.gov
TDD Access:
Relay NH 1-800-735-2964

Notice is hereby given for a Public Hearing to be held on November 1, 2012 at 7:00 PM in the Board of Selectmen's Meeting Room.

New Carbon Northeast, LLC, owners of Map 7, Lot 5-6, 18 Hollow Oak Ln, in the "ICI" district, are requesting an equitable waiver of dimensional requirements from Article V, Section 5.08.5, to allow an existing manufacturing building to encroach .5 inch +/- by thirteen (13) feet +/- in the side setback line where fifteen (15) feet is required.

Case # 2012-26

Dated: October 19, 2012

Kevin Johnson
Kevin Johnson, Chairman

Owner/authorized representative must attend hearing; abutters requested to attend.



Town of Milford
Zoning Board of Adjustment

Date Received:	<u>10/5/12</u>
Case #:	<u>2012-24</u>
Application #:	<u>20121033</u>
Payment amount:	<u>[REDACTED]</u>
Date: <u>10/5/12</u>	By: <u>[REDACTED]</u>

Application for Equitable Waiver of Dimensional Requirements

Name of Applicant: New Carbon Northeast, LLC. Phone #: 574-247-2270

Rick McKeel
Email: rickm@goldenmalted.com cc: mcabana@beangroup.com

Address: 4101 William Richardson Drive South Bend, Indiana 46628

Owner: New Carbon Northeast, LLC.
(If same as applicant, write "Same")

Owner's Address: 4101 William Richardson Drive South Bend, Indiana
(If same as applicant, write "Same")

Property Location: 18 Hollow Oak Lane Map 7 Lot 5-6
(Number and Street)

Description of property: Manufacturing and distribution facility located on a 2.0 acre lot
serviced by public water, public sewer and natural gas. Facility
consists of approximately 5,000 square feet of warehouse
space and 2,000 square feet of office space.
(Lot dimension, total area, present use)

This application is not considered acceptable unless all required statements have been made and all sections completed. Additional information may be supplied on separate sheets if necessary.

Fees: \$75.00 per case plus abutter fees, including owner and representative (if applicable).

Town of Milford New Hampshire
One Union Square · Milford, NH 03055 · Phone (603) 249-0620 · Fax (603) 673-2273
www.milford.nh.gov

Section 1 - APPLICATION FOR EQUITABLE WAIVER

An Equitable Waiver of dimensional requirements from Article 5 Section 5.08.4 of the Zoning Ordinance is requested to permit:

to permit the structure encroachment .5' x 13' in the side setback

Facts supporting this request:

1. Explain how the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value:

The improvements on the property, constructed in 1999 minimally encroach on the 15' side setback line. Applicant discovered this de minimis encroachment when it had the property surveyed in connection with its acquisition of the property on April 23, 2012. The encroachment area is shown on the attached ALTA survey

2. A. Explain how the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority:

Applicant acquired the property on April 23, 2012. A copy of the deed is attached. As part of its due diligence in acquiring the property, Applicant engaged Holden Engineering to conduct an ALTA survey of the property. Prior to the completion of the survey, Applicant had no knowledge of and was never

informed that there was an encroachment.
or

- B. In lieu of 2.A, demonstrate that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected:

The current building was completed in 1999 and has been in continuous use and operation since that year. The encroachment on the side set back was not noted until the Applicant commissioned the survey in 2012. Applicant, after diligent inquiry, is not aware of any written notices of violation or enforcement actions

from the date the building was constructed in 1999 through and including the date of this application, a period spanning over 12 years.

3. Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:

Upon inspection of the attached survey, you will see that the encroachment into the setback is minimal. The encroachment has no impact on abutters currently, and no abutter would be affected in the future use of their property by this minimal encroachment.

4. Explain how, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected:

In order to conform to the setback requirement, Applicant would be required to remove a portion of the side wall on its building. While the Applicant has not gotten a cost estimate, intuitively one can conclude that removing a wall that is weight and support bearing and rebuilding the wall to conform would be a project

of significant expense and would cause a substantial amount of business disruption. It would create an undue economic hardship on the applicant to require such a removal, especially in light of the minimal encroachment and the fact that the encroachment has existed for over 12 years.

Section 2 - ABUTTERS

See attached sheet.

Section 3 - ATTACHMENTS

- A. A plan of the property and all buildings, drawn to scale, is required.
B. A Building Permit Application as needed (to be determined by the building official.)
C. Additional explanations, justification, abutters' statements, letters, etc.

Section 4 - REPRESENTATION

Owner(s) authorization for the applicant or other agent to represent the owner at the proceedings:

C. Wilson Sullivan

Print the name of the person or party representing the owner(s)

The applicant or agent, as stated hereon, has authorization from the property owner to submit this Zoning Board of Adjustment application and to represent the property owner on matters relative to said process.

Rein J. Parker
Owner's Signature

10/4/12
Date

Section 5 - SIGNATURES

Signature of Applicant *Rein J. Parker*

Date 10/4/12

Signature of Owner *Rein J. Parker*

Date 10/4/12

Signature of Zoning Official *Bill Parker*
COMMUNITY DEVELOPMENT DIRECTOR / ZONING ADMINISTRATOR

Date 10/19/12

For office use only

Code Enforcement Officer's decision and comments:



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18 HOLLOW OAK LN

Location	18 HOLLOW OAK LN	Assessment	\$336,300.00	PID	4928
Mblu	7/ 5/ 6/ /	Appraisal	\$336,300.00	Building Count	1
Acct#	010936				
Owner	NEW CARBON NORTHEAST LLC				

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2012	\$228,200.00	\$108,100.00	\$336,300.00

Assessment			
Valuation Year	Improvements	Land	Total
2012	\$228,200.00	\$108,100.00	\$336,300.00

Owner of Record

Owner	NEW CARBON NORTHEAST LLC	Sale Price	\$336,333.00
Co-Owner		Book & Page	8419/0647
Address	4101 WILLIAM RICHARDSON DR SOUTH BEND, IN 46628	Sale Date	04/23/2012

Ownership History

Ownership History			
Owner	Sale Price	Book & Page	Sale Date
TRI-STATE MALTED WAFFLE REALTY LLC	\$0.00	6140/1470	08/04/1999

Building Information

Building 1 : Section 1

Year Built: 1999
Building Area: 7050
Replacement Cost: \$228,342.00
Depreciation Percent: 89
Replacement Cost Less Depreciation: \$203,200.00

Building Attributes	
Field	Description
STYLE	Pre-Eng Warehs
MODEL	Industrial
Grade	Average

Stories:	1
Occupancy	1
Exterior Wall 1	Pre-finish Metl
Exterior Wall 2	Br/St Vaneer
Roof Structure	Gable/Hlp
Roof Cover	Metal/Tin
Interior Wall 1	Minim/Masonry
Interior Wall 2	Drywall/Sheet
Interior Floor 1	Concr-Finished
Interior Floor 2	
Heating Fuel	Gas
Heating Type	Hot Air-no Duc
AC Type	None
Bldg Use	IND WHSES
Total Rooms	
Total Bedrms	
Total Baths	
data input	VS
1st Floor Use:	
Heat/AC	NONE
Frame Type	STEEL
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & MIN WL
Rooms/Prtns	AVERAGE
Wall Height	18
% Comn Wall	

Building Photo



Building Layout



Building Sub-Areas		Legend	
Code	Description	Gross Area	Living Area
BAS	First Floor	5760	5760
AOF	Office, (Average)	1290	1290
		7050	7050

Extra Features

Extra Features			Legend
Code	Description	Size	Value
MEZ	MEZZANINE	555 S.F.	\$7,400.00
A/C	AIR CONDITION	1290 S.F.	\$3,400.00

Land

Land Use

Use Code 4010
Description IND WHSES
Zone ICI
Neighborhood I06
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 2
Frontage
Depth
Assessed Value \$108,100.00
Appraised Value \$108,100.00

Outbuildings

Outbuildings		Legend
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Carmela D. Coughlin



Please Return to:
Susan A. Manchester, Esq.
Sheehan, Phinney, Bass + Green
1000 Elm Street
Manchester, New Hampshire 03101
FRASCA & FRASCA, PA #293



**NEW HAMPSHIRE STATUTORY
WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS THAT, Tri-State Malted Waffle Realty, L.L.C., a New Hampshire limited liability company, having a principal place of business of P.O. Box 197, Milford, County of Hillsborough and State of New Hampshire 03055, for consideration paid grants to **New Carbon Northeast, LLC**, a New Hampshire limited liability company, having its principal office at 4101 William Richardson Drive, South Bend, St. Joseph County, Indiana 46628, with Warranty Covenants, the following:

A certain tract or parcel of land situated in the Town of Milford, County of Hillsborough and State of New Hampshire, being Tax Lot 7-5-6 as shown on a certain plan entitled "Subdivision Plan, Hollow Oak-Ridge L.L.C., Tax Lot Map 7, Lot 5, Elm Street, Milford, New Hampshire," prepared by Sanford Surveying & Engineering dated January 22, 1999, most recently revised on July 27, 1999, drawn at a scale of 1" = 50' recorded in the Hillsborough County Registry of Deeds as Plan #29968 said lot being more particularly bounded and described according to said Plan as follows:

Beginning at a granite bound to be set at the northeasterly corner of the lot herein conveyed and on the westerly side of Hollow Oak Lane; thence South 21° 22' 20" West for 50.00 feet along the easterly side of the lot herein conveyed to a granite bound to be set on the westerly side of Hollow Oak Lane; thence South 68° 37' 40" East for 25.00 feet to a granite bound to be set on the westerly side of Hollow Oak Lane; thence 39.27 feet along a curve to the right having a radius of 25.00' and along the easterly side of the lot herein conveyed to a granite bound to be set on the westerly side of Hollow Oak Lane; thence South 21° 22' 20" West for 13.29 feet along the easterly side of the lot herein conveyed to a granite bound to be set on the westerly side of Hollow Oak Lane; thence 145.09 feet along a curve to the left having a radius of 5050.00' and along the easterly side of the lot herein conveyed on the westerly side of Hollow Oak Lane to a granite bound to be set at the southeasterly corner of said lot; thence North 63° 46' 25" West for 336.13 feet along the southerly side of the lot herein conveyed and along the property line of tax lot 7-5-4 to an iron rod to be set at the southwesterly corner of said lot; thence North 04° 43' 36" West for 266.00 feet along the westerly side of the lot herein conveyed to an iron rod to be set at the northwesterly corner of said lot; thence South 63° 46' 25" East for 401.30 feet along the northerly side of the lot herein conveyed to the point of beginning.

Said premises are conveyed together with a non-exclusive easement for purposes of ingress to and egress from the premises over a certain portion of Lot 7-5 shown on said plan and being labeled "Driveway Easement Possible Future Shared Driveway." Said easement shall not be the primary access to or egress from the premises but shall be used for the purpose of facilitating deliveries to and, pick-ups from, the premises. The grantee, its successors and assigns, shall be solely responsible for the cost of installing, maintaining and repairing any driveway constructed on the easement until such time, if ever, that such driveway is used, in common, by the owner of Lot 7-5, at which time the cost of maintaining and repairing such driveway shall be shared equally between the owners of Lot 7-5-6 and the owners of Lot 7-5.

This conveyance is made subject to the following conditions:

1. Such state of facts as depicted and noted on Plan Nos. 29968, 29487 and 29244 of the Hillsborough County Registry of Deeds and as shown on ALTA/ACSM Land Title Survey Prepared by Bock & Clark's National Surveyors Network, as Project No. 201200185, 002, dated 2/9/12, last revised April 13, 2012.
2. Title to and rights of the public and others entitled thereto in and to those portions of the insured premises lying within the bounds of Hollow Oak Lane.
3. Said premises are conveyed subject to a certain "drainage easement" as shown on Plan No. 29968.
4. Subject to non-exclusive easement for purposes for ingress and egress from the premises over a certain portion of Lot 7-5 shown on said plan and being labeled "Driveway Easement Possible Future Shared Driveway." Said easement shall not be the primary access to or egress from the premises but shall be used for the purpose of facilitating deliveries to and, pick-ups from, the premises. The grantee, its successors and assigns, shall be solely responsible for the cost of installing, maintaining and repairing any driveway constructed on the easement until such time, if ever, that such driveway is used, in common, by the owner of Lot 7-5, at which time the cost of maintaining and repairing such driveway shall be shared equally between the owners of Lot 7-5-6 and the owners of Lot 7-5.
5. Easement to New England Telephone and Telegraph Company d/b/a Bell Atlantic-North and Public Service of New Hampshire dated December 31, 1998 and recorded in the Hillsborough County Registry of Deeds in Volume 6061, Page 1439.
6. Restrictions, conditions and notes as shown on Plan #28650.
7. Terms and conditions of a certain Site Access Agreement, to the extent applicable, between Hitchner Manufacturing Co., Inc. and Conductron Corporation, dated April 12, 1994 and recorded in the Hillsborough County Registry of Deeds in Volume 5548, Page 440.
8. Rights of air, access, light and view as reserved to the State of New Hampshire in the Notice of Condemnation dated August 15, 1977 and recorded in the Hillsborough County Registry of Deeds in Volume 2550, Page 509.
9. Subject to a wooden planter encroaching onto the abutting property 3.5' +/- x 18' +/-.

10. Subject to building encroachment into the side setbacks 0.5' x 13' +/-.
11. The right of Hollow Oak-Ridge, L.L.C. to grant an easement to the Town of Milford reserved in deed from said Hollow Oak-Ridge, L.L.C. to grantor dated August 4, 1999 and recorded in the Hillsborough County Registry of Deeds in Volume 6140, Page 1470.
12. Liens for real estate taxes for the current fiscal year, not yet due and payable, and for subsequent years, and for unpaid municipal assessments, water and sewer charges, if any.
13. All easements, restrictions and reservations of record.

Meaning and intending to describe and convey the same premises conveyed to the within Grantor by Warranty Deed of Hollow Oak, L.L.C. dated August 4, 1999 and recorded with the Hillsborough County Registry of Deeds at Volume 6140, Page 1470.

Executed this 17th day of April, 2012.

Tri-State Malted Waffle Realty, L.L.C.

Christine Stappinos
Witness

By: [Signature]
Name: Timothy W. Quick
Title: Sole Member

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

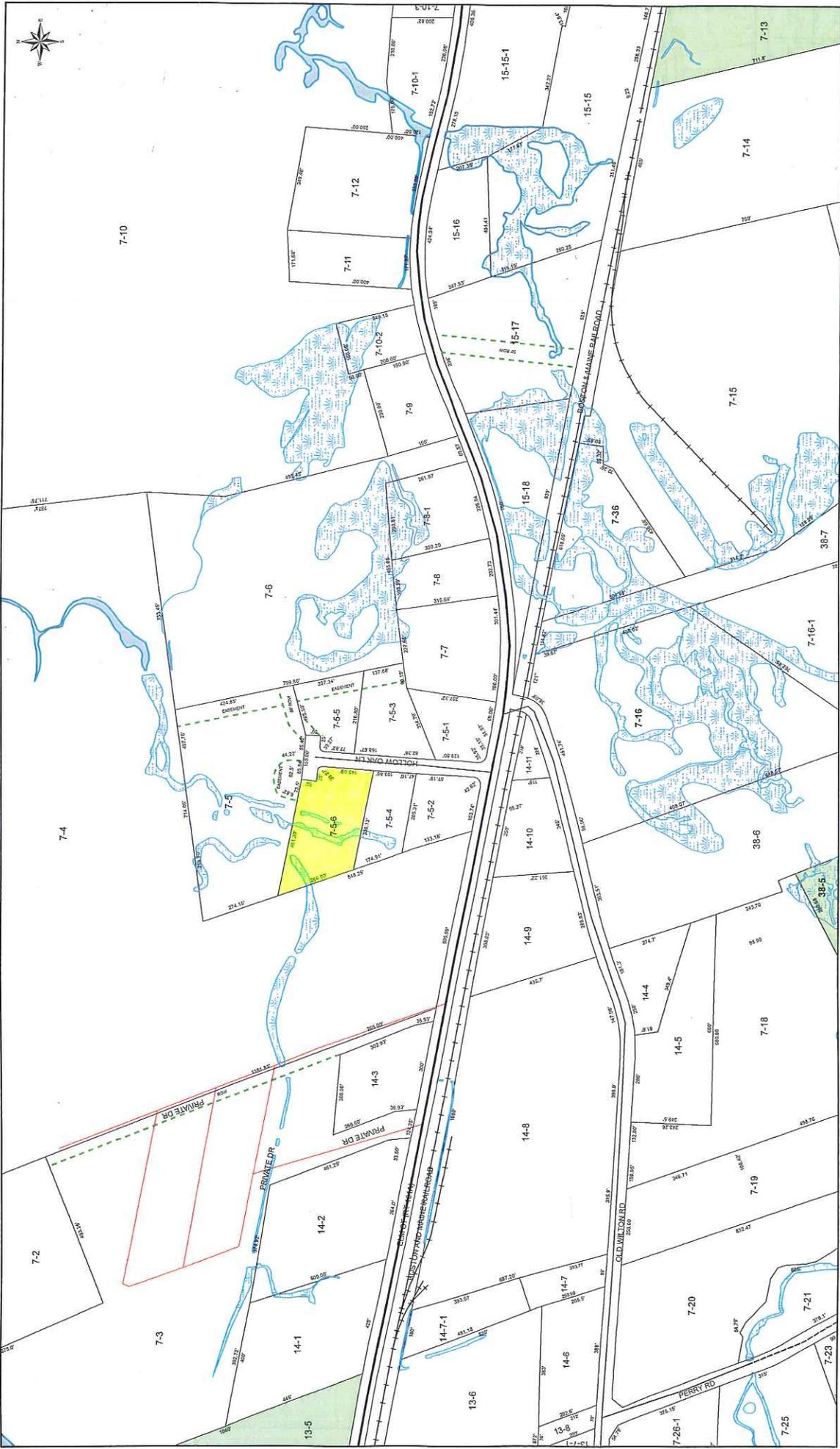
The foregoing instrument was acknowledged before me this 17th day of April, 2012, by Timothy W. Quick the duly authorized Sole member of Tri-State Malted Waffle Realty, L.L.C., a New Hampshire limited liability company.

Christine E. Stappinos
Notary Public
My Commission Expires: 8/13/13



g:\smanchester\tri-state malted waffle\warranty deed bl 041212.docx

AFTER RECORDING, PLEASE RETURN TO:
Chicago Title Insurance Company
ATTENTION A. HALL
Suite 1900, Two Gateway Center
603 Stanwix Street
Pittsburgh, PA 15222
M120043-2



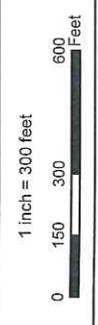
D3
7, 13, 14, 15

DATE:
April 2012
Rev. 10/2012

The Community Development Department maintains a continuing program to identify and correct errors. The Department makes no claims to the validity or reliability, or to any implied uses of this representation.

MILFORD, NH

This document has been prepared to show approximate lot location only. Information shown is not to be used for deed descriptions.

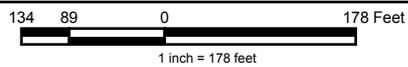




Milford, NH

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MAP 7 LOT 5-6

18 HOLLOW OAK LN

