

LAND USE

120 Attachment 8

Town of Windham

**Appendix H
Windham Center Contract Zone**

CONTRACT ZONING AGREEMENT BETWEEN THREE STONES, LLC. and THE TOWN
OF WINDHAM

This Contract Zoning Agreement made this 25th day of October, 2010 by and between the TOWN OF WINDHAM, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter the "Town") and THREE STONES, LLC. (hereinafter "Three Stones"), a Maine limited liability corporation with an address of 225 Pope Road, Windham, Maine 04062.

WHEREAS, Three Stones seeks to redevelop and reutilize a parcel of real estate located at 354 Gray Road, Windham, Maine (the "Property") which is shown on Tax Map 9, Lot 27C.

WHEREAS, the Property is currently located in a Farm Residential District as established by the Windham Land Use Ordinance.

WHEREAS, the Property has been the site of a commercial/industrial use.

WHEREAS, Three Stones wishes to renew commercial activity on the Property.

WHEREAS, Three Stones and the Town have agreed that it is desirable that the Property be rehabilitated for commercial use.

WHEREAS, the Town has the authority to enter into a contract zone for the Property pursuant to 30-A M.R.S.A. § 4352 and Section 108 of the Windham Land Use Ordinance.

WHEREAS, after notice and hearing and due deliberation of this re-zoning proposal, the Windham Planning Board recommended the re-zoning of the Property.

WHEREAS, the Town, by and through its Planning Board and Town Council, have determined that the re-zoning is consistent with the Comprehensive Plan.

WHEREAS, this re-zoning has been authorized by the Town Council.

NOW THEREFORE, in consideration of the mutual promises made by each party, the parties covenant and agree as follows:

1. The Town will amend the Land Use Ordinance and Zoning Map of the Town of Windham to create and to make reference to the Windham Center Contract Zone, as shown on Exhibit A, attached hereto and hereby incorporated by reference.

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2. Three Stones, its successors and assigns, shall use the property in compliance with all applicable requirements set forth in Exhibit B, attached hereto and hereby incorporated by reference. Curb cuts and parking shall be established substantially in accordance with Exhibit C, attached hereto and hereby incorporated by reference.
3. Three Stones shall record the fully executed Contract Zoning Agreement and all Exhibits thereto in the Cumberland County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement Officer and Planner before any site work is undertaken or any building permits are issued.
4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Town and Three Stones or its successors in interest to the Property and after compliance with State law for adoption or amendment of contract zones.
5. The restrictions, provisions and conditions of this Contract Zoning Agreement are an essential part of the rezoning, shall run with the Property and shall bind Three Stones, its successors in interest and any assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.
6. If any of the restrictions, provisions, conditions or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions hereof.
7. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Town of Windham Land Use Ordinance.
8. In the event that Three Stones or its successors or assigns fail to complete the project within three years or operate the project in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Town Council of the Town shall have the authority, after written notice to Three Stones, and reasonable opportunity to cure, to terminate this Agreement and to rezone the Property to Farm Residential or any successor zone. In the event of such a rezoning, the Property shall then be used for only such uses as otherwise allowed by law. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Land Use Ordinance through the provisions of 30-A M.R.S.A § 4452.

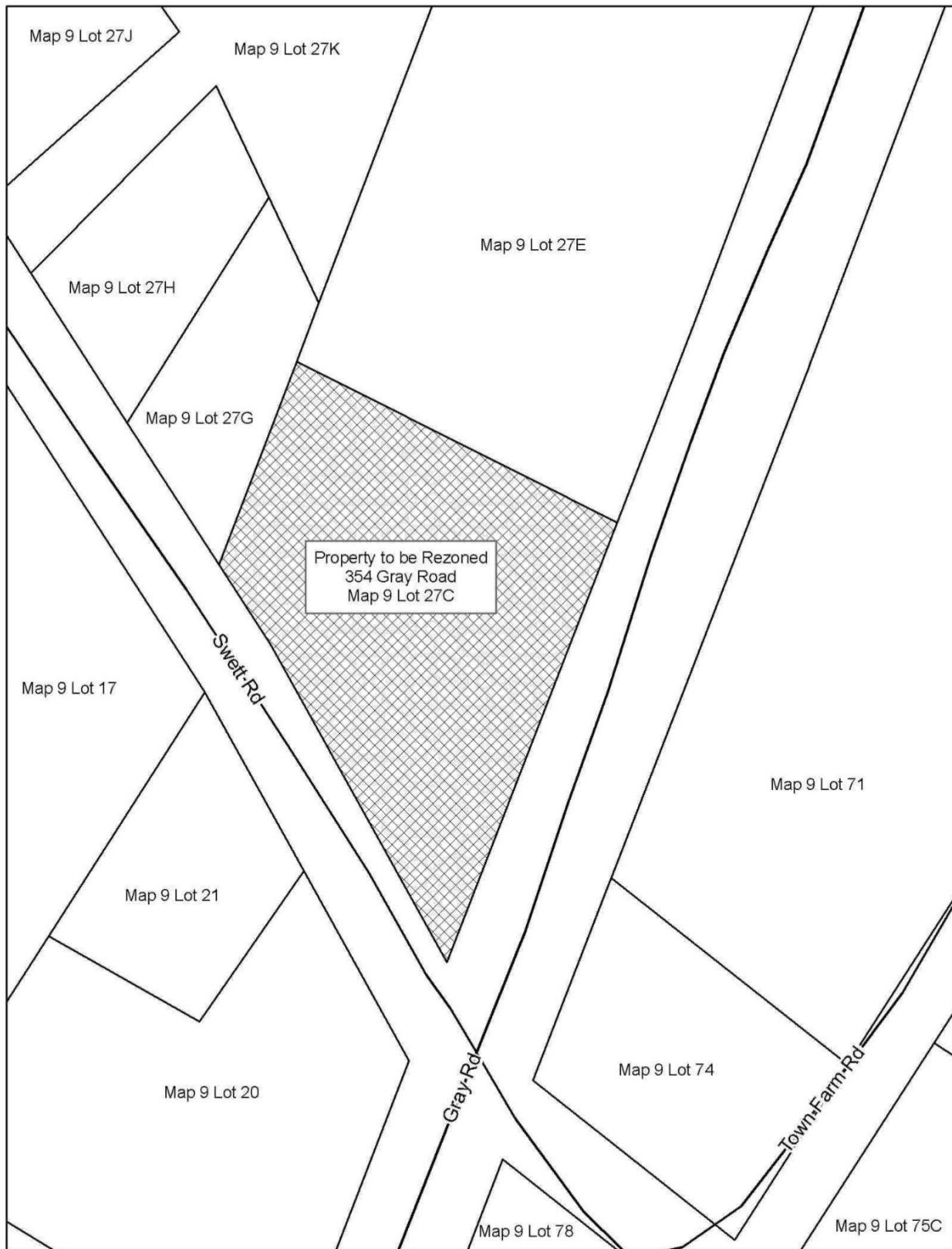
NOW THEREFORE, this Agreement is hereby made official by the signature below:

LAND USE

<u>Budd name</u> Witness	TOWN OF WINDHAM <u>APL</u> Anthony Plante Its Town Manager
<u>Budd name</u> Witness	THREE STONES, LLC <u>Jay P. Hackett</u> Jay P. Hackett Print Name Its <u>member</u>
<u>T. H. A.</u> Witness	HERITAGE METALCRAFT, INC. <u>MARK NELSON</u> MARK NELSON Print Name Its <u>Owner</u>

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EXHIBIT A



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EXHIBIT B

Windham Center Contract Zone

1. Intent

The Windham Center Contract Zone intends to enable the redevelopment and reuse of a long-standing commercial use in the Windham Center area. The reuse of this property will benefit the Town through the redevelopment of an abandoned and dilapidated building. The contract zone is located within the 2003 Comprehensive Plan's, "Windham Center Growth Area," and is appropriately located on U.S. Route 202.

2. Permitted Uses

The following uses, as they are defined in Section 300, shall be permitted in the Windham Center Contract Zone as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Building, Accessory
- Campground, Commercial
- Campground, Personal
- Cemetery
- Child Care, Family Home
- Distribution Center
- Dwelling, Single-Family Detached
- Forestry
- Golf Course
- Home Occupation 1
- Home Occupation 2
- Industry, Light
- Kennel, Minor
- Mineral Extraction
- Place of Worship
- Public Building
- Retail Sales
- Sawmill, Temporary
- Shipping Container
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

3. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 513. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture, Piggery
- Agriculture, Poultry Facility
- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Retail Sales, Convenience
- Retail Sales, Nursery
- Riding Stable
- Kennel, Major
- Medical Office
- Nursing Home
- Public Utility Facility
- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Sawmill, Permanent

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4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

5. Dimensional Standards

The following dimensional standards shall apply in the Windham Center Contract Zone:

- (a) Minimum Lot Size: 50,000 square feet
- (b) Net Residential Density: 40,000 square feet.
- (c) Minimum Frontage: 150 feet
- (d) Minimum Front Setback: 30 feet
 - (1) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
- (e) Minimum Side Setback: 10 feet
- (f) Minimum Rear Setback: 10 feet
- (g) Maximum Building Height: 35 feet
 - (1) Agriculture, Public Buildings, Church Steeples No Limit
- (h) Maximum Building Coverage: 15%

6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Windham Center Contract Zone:

- (a) Agriculture, Poultry Facility
 - (1) A facility may raise 25 or fewer birds at any one time.
- (b) Agriculture, Piggery. Piggeries shall conform with the standards for "Agriculture, Piggery" in Section 502 of the Performance Standards.
- (c) Curb Cuts.
 - (1) Lots in the contract zone shall be limited to two thirty-foot curb cuts on the same street.

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- (2) Curb cuts on the same street serving the same lot shall be separated a minimum distance of 60 feet. An earthen berm with a minimum height of six inches and a maximum height of four feet, covered with loam and seed, shall be installed between, and at the sides of, curb cuts located on the same street.
- (3) The curb cut turning radius shall be designed by a licensed professional to accommodate ingress and egress by tractor-trailer vehicles. The distance between the curb cut radii may be greater than 30 feet, based on the recommendation of a licensed professional.
- (4) The curb cut standards of Section 515, with the exception of Subsection 515(B), shall apply to the Windham Center Contract Zone.
- (d) Medical Office. See "Medical Office" in Section 500 Performance Standards for size limitations.
- (e) Buffer Requirements for Specific Non-residential Uses. A landscaped buffer strip with a minimum depth of 50 feet shall be maintained on the north and northwest property lines of the contract zone as depicted in Exhibit C.

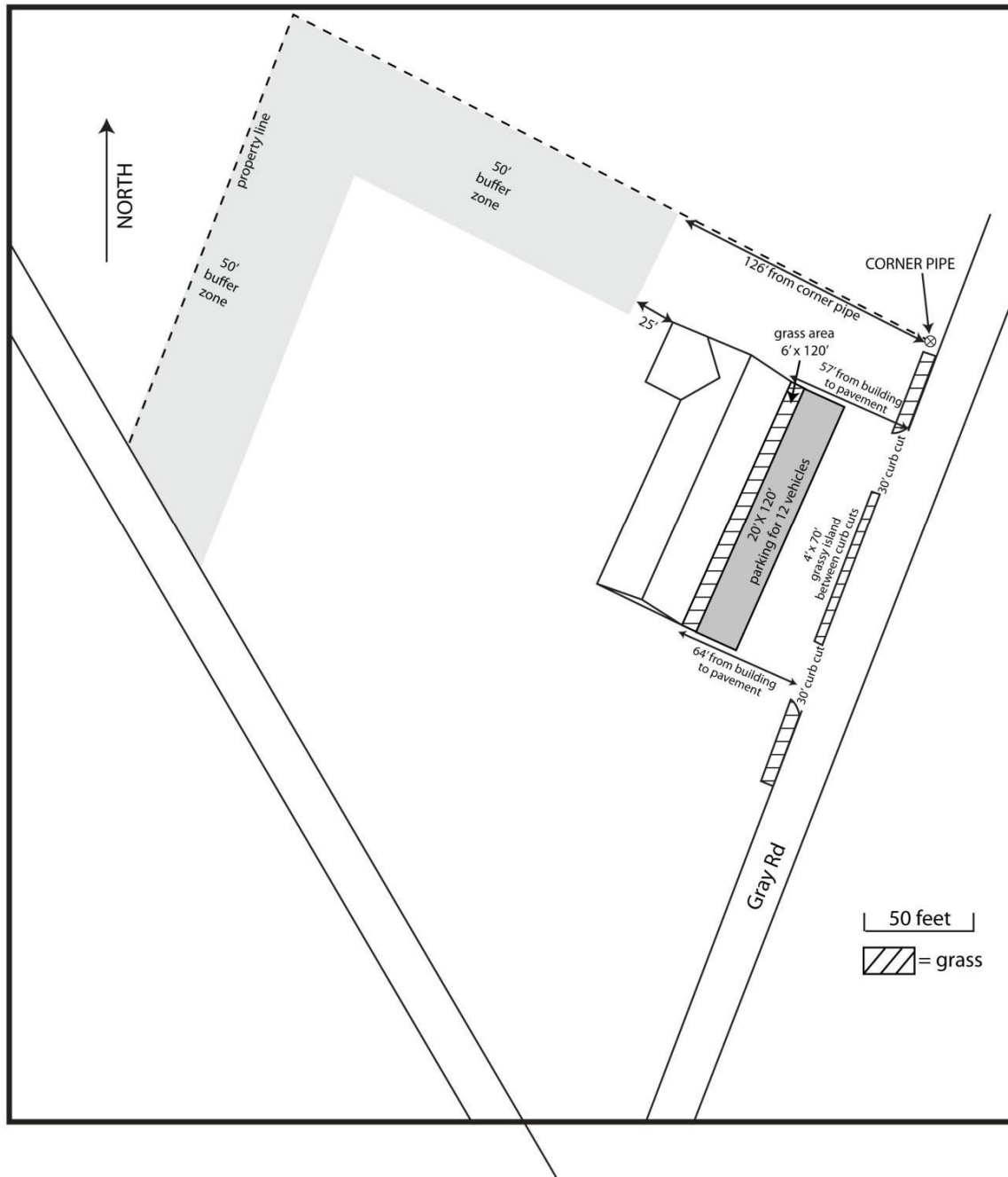
As depicted on Exhibit C, the landscaped buffer along the north property line shall commence at a point 25 feet from the northwest corner of the building, or 126 feet from the property's northeast corner pipe.
- (f) Parking and Loading. Lots in the contract zone shall meet the standards of Section 812(C) of the Land Use Ordinance, with the following exceptions:
 - (1) Distribution Centers shall be required to provide a minimum of two off-street parking spaces per 1,000 square feet of gross floor area.
 - (2) The loading requirements of Section 812(C)3 shall not be required.
- (g) Retail Sales, Outdoors. Outdoor sales, as defined, shall not be permitted in the Windham Center Contract Zone.
- (h) Signs. For the purposes of sign regulation, the contract zone shall be considered a residential district. Therefore, in addition to all applicable standards contained in Section 700, the sign standards for residential districts contained in Section 709 shall apply to all uses in the contract zone.

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EXHIBIT C

354 Gray Road
Map 9, Lot 27C

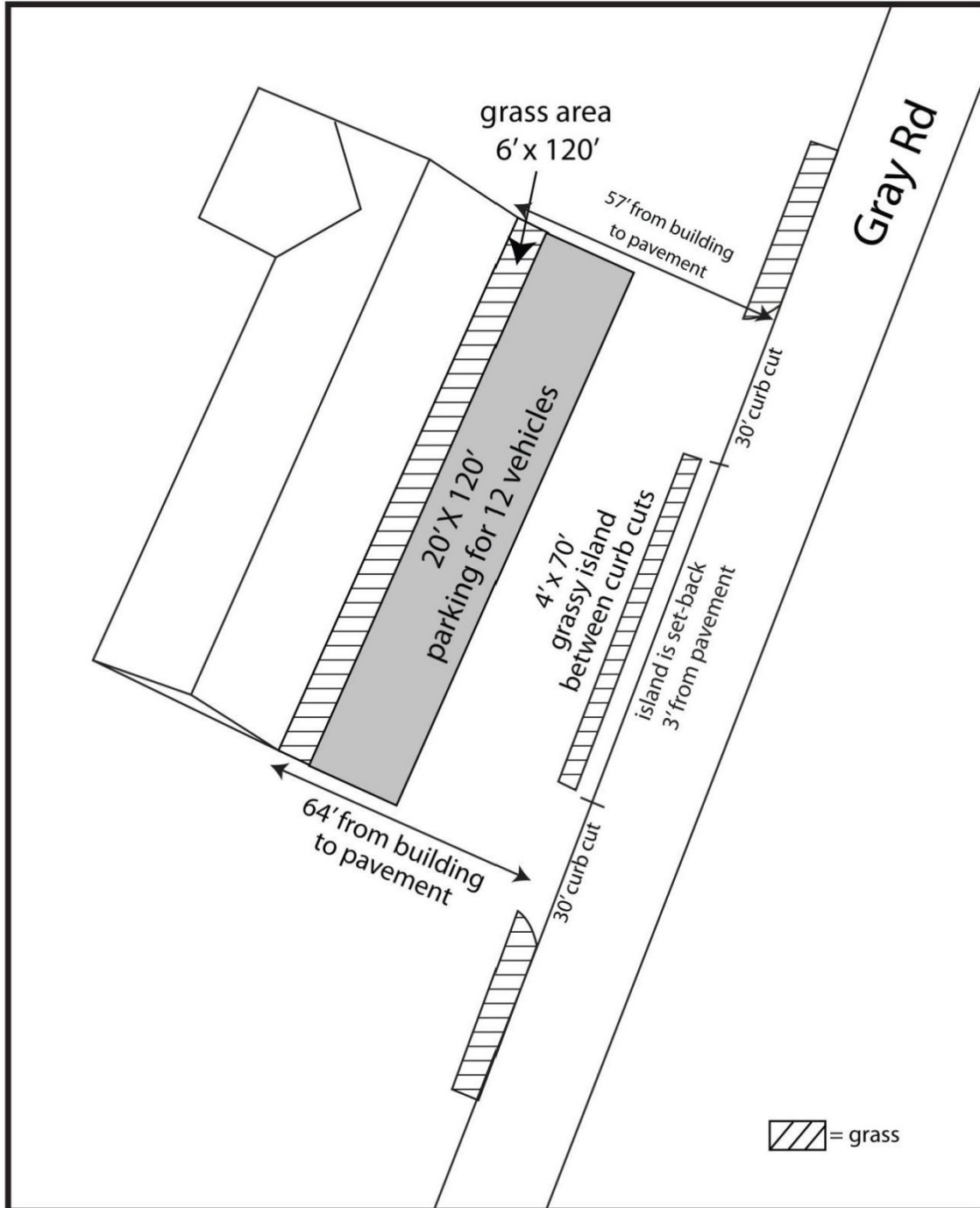
PROPOSED CURB CUTS & PARKING



LAND USE

354 Gray Road
Map 9, Lot 27C

PROPOSED CURB CUTS & PARKING



CLOSE-UP VIEW

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AMENDMENT TO CONTRACT ZONING AGREEMENT BETWEEN RKR, LLC AND THE TOWN OF WINDHAM

This Amendment to Contract Zoning Agreement, made this 24th day of September, 2013, by and between the TOWN OF WINDHAM, a municipal corporation, located in the County of Cumberland and State of Maine (hereinafter the "Town") and RKR, LLC, a Maine limited liability company with a mailing address of 84 Prospect Street, Biddeford, Maine 04005, (hereinafter "RKR").

WHEREAS, the Town entered into a Contract Zoning Agreement with Three Stones, LLC dated October 25, 2010 and recorded in the Cumberland County Registry of Deeds in Book 28243, Page 67 (hereinafter the "Contract Zoning Agreement") that established zoning regulations for a parcel of real estate located at 354 Gray Road, Windham, Maine, (hereinafter "the Property"), also referred to as the Windham Center Contract Zone; and

WHEREAS, the Property consists of Lot 27C on the Town's Tax Map 9; and

WHEREAS, the Contract Zoning Agreement established use, dimensional and performance standards for the Property, including access regulations; and

WHEREAS, RKR has acquired the Property and seeks to amend the access regulations established by the Contract Zoning Agreement in order to facilitate development and use of the Property; and

WHEREAS, the Town has the authority to enter into a contract rezoning for property and to amend the contract rezoning, pursuant to 30-A M.R.S.A. § 4352(8) and Section 108 of the Windham Land Use Ordinance; and

WHEREAS, after notice and hearing and due deliberation upon this rezoning proposal, the Windham Planning Board recommended this Amendment to the Contract Zoning Agreement on August 26, 2013 and the Windham Town Council voted to adopt the amendment on September 24, 2013; and

WHEREAS, this Amendment will change only access standards for the Property and will not allow additional uses on the Property; and

WHEREAS, both the Planning Board and the Town Council determined that the original Contract Zoning Agreement was pursuant to and consistent with the Town's Comprehensive Plan and the Town Council has authorized the execution of this Amendment to Contract Zoning Agreement;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. **Amendment to Contract Zoning Agreement, Exhibit B.** The Contract Zoning Agreement is amended to Exhibit B as shown on Exhibit B to this Amendment.

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2. **Amendment to be recorded.** RKR shall be responsible for recording a copy of this Agreement, including its Exhibit, in the Cumberland County of Registry of Deeds and for providing proof of the recording to the Code Enforcement Officer and Town Planner.
3. **Remaining provisions remain in full force and effect.** Except as expressly amended herein, the provisions of the Contract Zoning Agreement shall remain in full force and effect.

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TOWN OF WINDHAM

Anthony T. Plante
Its Town Manager (duly authorized by
vote of the Windham Town Council
on September 24, 2013)

RKR, LLC

Edward Maurais
Its Member

STATE OF MAINE
CUMBERLAND, ss
10/24, 2013

Personally appeared the above-named Anthony T. Plante, in his capacity as Town Manager for the Town of Windham, and made oath that the foregoing instrument is his free act and deed in his said capacity and the free act and deed of the Town of Windham.

Notary Public

SUSAN M. ROGERS
Notary Public, Maine
My Commission Expires 4-1-2017
Print Name

STATE OF MAINE
York, ss
October 24, 2013

Personally appeared the above-named Edward Maurais in his capacity as Member of RKR, LLC, and made oath that the foregoing instrument is his free act and deed in his said capacity and the free act and deed of RKR, LLC.

Notary Public/

Print Name
BARBARA L. DeROSIE
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES OCT. 5, 2018

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