

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Avenue, Dover NH 03820
Meeting Date: **Thursday, April 21, 2022**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF MARCH 17, 2022

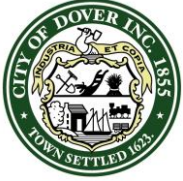
3. HEARINGS

- A. *Z22-05 Applicants Garry & Marcia Lane (of 130 Emerald Lane; Tax Map F, Lot 15-47) and Benjamin & Sarah Brunt (of 96 Emerald Lane; Tax Map F, Lot 15-27) appeal a March 1, 2022 administrative decision regarding lot coverage under **Section 170-12(B) of the Zoning Ordinance** relative to an under-construction garage at 126 Emerald Lane (Tax Map F, Lot 15-48), and property owners Dana & Sherri Brown, located in the Rural Residential (R-40) Zoning District. The Zoning Administrator determined that within an Open Space Subdivision, the 10% lot coverage requirement of the underlying zoning district does not apply.

4. OTHER BUSINESS

5. ADJOURN

*Indicates that if the application is accepted for discussion, the public hearing will be held the same evening. Note that some hearings will be continued from one meeting to another and some may be postponed. Since this is only a partial description of the proposal and may change, persons with questions or wishing to see the plans are invited to visit the Planning Office, Monday through Thursday from 8:30 am to 5:30 pm and Friday 8:30 am to 4:00 pm or email Dover-Planning@dover.nh.gov. You may also view materials at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>. The public is encouraged to leave comments in advance by emailing Dover-Planning@dover.nh.gov, or mailing written comments to the Zoning Board of Adjustment, Dover City Hall, 288 Central Ave., Dover, NH 03820. Messages must be received no later than 4 p.m. the day of the meeting and should identify the name and Dover address of the person leaving the message or providing the comment.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820
Meeting Date: Thursday, March 17, 2022
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior (Chair), James Burdin (Alternate), Rich Onufry (Alternate)

Members Absent (Excused): Casey Conley (Alternate), Anthony Sillitta, Nick Couturier

Members Absent (Unexcused): Otis Perry (Vice Chair), George Reagan

Staff Present: Natasha Kypfer (Zoning Administrator/Assistant City Planner)

The Chair called the meeting to order at 7:05 PM.

2. APPROVAL OF MEETING MINUTES OF JANUARY 20, 2022

Motion: Burdin moved to approve the minutes of January 20, 2022 as amended. Seconded by Onufry.

Vote: U/A

The Chair noted one of the two cases scheduled for tonight has asked to be rescheduled.

The Chair read the following into the record:

*Z22-04 Applicant New Style Homes - Michael Allfrey, (Property Owners: Brian & Maribeth Hopkins), 417 Middle Road #9 "9 Pine Tree Lane", (Tax Map M, Lot 62-9), located in the Low-Density Residential (R-20) Zoning District, requests an Equitable Waiver of Dimensional Requirements from **Section 170-12.B.** to allow after-the-fact placement of a new mobile home at 2.6' from the rear setback, where as 15' is required.

Motion: Burdin moved to continue case Z22-04 to April 21st. Seconded by Onufry. Vote: U/A

Chair Prior noted the process for the ZBA as per the Rules of Procedure. There are three members of the Board present which does make a quorum, but the applicant can choose to postpone. The applicant chose to move forward tonight with the hearing.

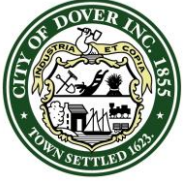
3. HEARINGS

- A. *Z22-03 Applicants John F. and Linda M. O'Connor, 48 Horne Street, (Tax Map 35, Lot 25), located in the Medium- Density Residential (R-12) Zoning District, requests a Variance from **Section 170-12.B.** to allow construction of a 14'x22' shed 5' from the side property lines, where 10' is required and to allow for the outbuilding to be closer than the principal building for the abut a street setback.

John O'Connor, 48 Horne Street presented the case, and reviewed the need for the shed on their property, which is a small lot. The home is on a corner of two streets. Under the regulations, the shed would be very close to his home and in the middle of his yard area. He expounded on his reasons for seeking variance and noted the three abutters wrote letters in support.

Mr. O'Connor answered some questions of the board members.

Public hearing was opened.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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Planning Department recommendation: N. Kypfer noted staff supports the variance, referencing the three abutters did reach out and show support via letters. In addition, the placement of the shed will allow for space away from the brook that runs along the back of the property.

Public Hearing was closed.

Burdin found the argument compelling. Other homes are set close to the front setbacks, and this will not be inconsistent with the neighborhood. Corner lots are tougher to find shed locations because of the double frontage and setbacks. Denying the variance would create a hardship.

Onufry stated the request meets the five criteria.

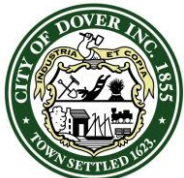
Motion: Burdin moved to grant the variance with no conditions based upon the representations made by the applicant and the testimony provided. Onufry seconded. Vote: U/A

4. OTHER BUSINESS

None

5. ADJOURN

Motion: Onufry moved to adjourn at 7:24 pm. Burdin seconded. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – ABUTTER NOTICE

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, April 21, 2022
Meeting Time:	7:00 pm

Dear Property Owner: You are an abutter to the project listed in **bold** on the agenda.

INTENT: The Applicants appeal a March 1, 2022 administrative decision regarding lot coverage under Section **170-12(B)** of the Zoning Ordinance relative to an under-construction garage at 126 Emerald Lane (Tax Map F, Lot 15-48), and property owners Dana & Sherri Brown, located in the Rural Residential (R-40) Zoning District. The Zoning Administrator determined that within an Open Space Subdivision, the 10% lot coverage requirement of the underlying zoning district does not apply.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: R-40

FILE: Z22-05

APPLICANT/APPEALANTS: Garry & Marcia Lane and Benjamin & Sarah Brunt

LOCATION OF APPEALANTS: Lane's (of 130 Emerald Lane; Tax Map F, Lot 15-47) / Brunt's (of 96 Emerald Lane; Tax Map F, Lot 15-27)

LOCATION OF SUBJECT PROPERTY: 126 Emerald Lane (Tax Map F, Lot 15-48 owned by Dana R. and Sherri L. Brown)

ACREAGE: N/A

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

The complete Meeting Agenda:

1. Attendance
2. Approval of Meeting Minutes of March 17, 2022
3. Hearings
 - A. **Z22-05 Applicants Garry & Marcia Lane (of 130 Emerald Lane; Tax Map F, Lot 15-47) and Benjamin & Sarah Brunt (of 96 Emerald Lane; Tax Map F, Lot 15-27) appeal a March 1, 2022 administrative decision regarding lot coverage under Section 170-12(B) of the Zoning Ordinance relative to an under-construction garage at 126 Emerald Lane (Tax Map F, Lot 15-48), property owners Dana & Sherri Brown, located in the Rural Residential (R-40) Zoning District. The Zoning Administrator determined that within an Open Space Subdivision, the 10% lot coverage requirement of the underlying zoning district does not apply.**
4. Other Business
5. Adjourn

MORE INFORMATION AVAILABLE TO YOU:

Since this is only a partial description of the proposal and it may change, persons with questions or wishing to see the plans are invited to visit the Planning Office, Monday through Thursday from 8:30 am to 5:30 pm and Friday 8:30 am to 4:00 pm. You may view the rest of the agenda and materials at www.dover.nh.gov or contact the Planning and Community Development Department at City Hall or 603-516-6008.

Learn more Dover's Zoning at <https://ecode360.com/32591412>

We invite you to review and comment on the proposal:

- In person at the hearing,
- Phone: 516-MEET (6338) | 516-6008
- Email: Dover-Planning@dover.nh.gov
- Mail: Zoning Board, Dover City Hall, 288 Central Ave., Dover, NH 03820.

Messages regarding applications must be received no later than 4 p.m. the day of the meeting and should identify the name and Dover address of the person leaving the message or providing the comment.

**Property Information**

Property ID F0015-048000
Location 126 EMERALD LN
Owner BROWN DANA R &
Land Use 101

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

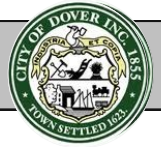
City of Dover, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 5/3/2021
Data updated Daily

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Rural Residential (R-40) District

Amended: 11-28-12 by Ord. No. 2012-11.14-24, Amended:10-13-21 by O – 2021.09.08 - 006



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE [5]
- ASSEMBLY HALL
- Bank [5]
- Beauty and Barber Shop [5]
- BED and BREAKFAST
- CHILD CARE FACILITY
- CHILD CARE HOME
- Clinic
- CONSERVATION LOT
- Conversion of Existing Dwelling to Accommodate not more than 2 units [6]
- COUNTRY CLUB [7]
- Dwelling, 2 Family [8]
- Dwelling, 3 To 4 family [8]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- EXCAVATION [7]
- FARM [9]
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [10]
- Hospital
- MANUFACTURED HOUSING
- OFFICE [5] [11]
- PERSONAL SERVICE ESTABLISHMENT [5]
- PUBLIC RECREATION
- Public Utility
- Recreational Camp
- Retail Sale of Agricultural or Farm Products Raised on Site
- Theater [5]
- Veterinary Office, Animal Hospital or KENNEL [12]
- WHOLESALING of Farm Products [7]

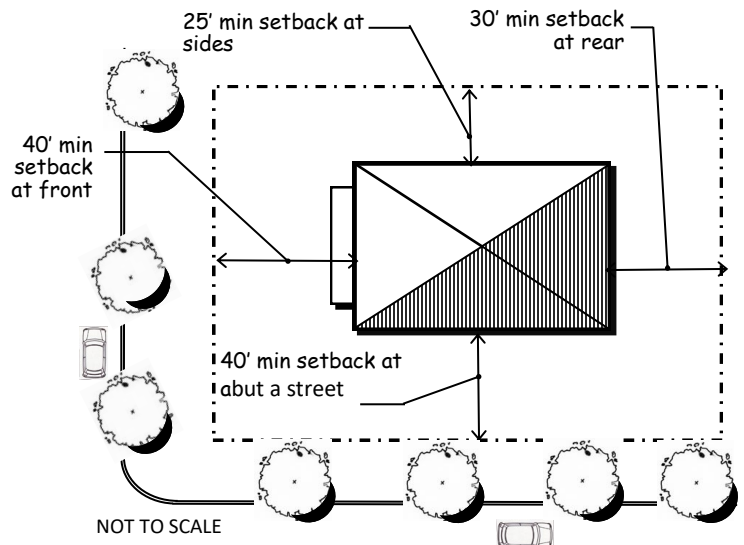
Uses Permitted by Special Exception

- ASSISTED LIVING FACILITY
- CONGREGATE CARE FACILITY
- CONTINUING CARE COMMUNITY FACILITY
- EDUCATIONAL INSTITUTION, POST SECONDARY
- ELDERLY ASSISTED CARE HOME
- Helicopter Take Offs & Landings
- JUNKYARD
- MANUFACTURED HOUSING Park
- NURSING HOME

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size [3] [4]	40,000 sf
Maximum LOT COVERAGE	10%
Minimum FRONTAGE	150 ft
PRINCIPAL BUILDING	
Front SETBACK	40 ft
Abut a Street SETBACK	40 ft
Side SETBACK	25 ft
Rear SETBACK	30 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	40 ft
Abut a Street SETBACK	40 ft
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	35 ft max
OUTBUILDING	35 ft max

Principal Building Placement



Sign Regulations

Size	R-40 District
Total signs permitted	1
Total area permitted	16 sf (customary home occupation sign 2 sf max, development identification SIGN 20 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted



Footnotes

- [1] In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in 157-21 of the Code of the City of Dover, 1983.
- [2] Refer to 170-13, 170-14 and 170-27D for exceptions to lot size, frontage and setback requirements.
- [3] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [4] Refer to Chapter 157, Subdivision of Land, Article IV for the minimum lot size for a major Subdivision. In an R-40 district, any major subdivision must follow the procedures for an Open Space Subdivision (OSS).
- [5] Use is allowed as a commercial component to an Open Space Subdivision. (See 157.21 section 7).
- [6] Any dwelling unit, may be converted, not replaced, provided that the lot shall contain at least four thousand (4,000) square feet per dwelling unit and a minimum floor area of five hundred (500) square feet per dwelling unit.

2 family dwellings shall be designed to look like single family dwellings (i.e. the 2 family dwelling should not look like it was designed to occupy more than one family). At a minimum, this shall mean that only one entrance shall be visible from a public street, and only one driveway shall exist with no on street parking required for residents.
- [7] Use is not allowed as a commercial component to an Open Space Subdivision. (See 157.21 section 7).
- [8] Use is allowed when included within an Open Space Subdivision with commercial components. (See 157.21 section 7).
- [9] FARM ANIMALS permitted, provided that the tract upon which such animals are kept shall support a minimum land area of one hundred thousand (100,000) square feet. In no instance shall the shelters used to contain said animals be closer than one hundred (100) feet from any property boundary.
- [10] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line.
- [11] Permitted only if operated as a customary home occupation (Refer to definition in 170-6B)
- [12] Veterinary Office, Animal Hospital uses are allowed as a commercial component to an Open Space Subdivision. (See 155.22 section 7). Shelters and runs used to house and/or contain animals shall be no closer than one hundred (100) feet from any property line and must support a minimum tract size of one hundred thousand (100,000) square feet.

Special Exception Criteria

ASSISTED LIVING FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 sf of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

CONGREGATE CARE FACILITY: CONGREGATE CARE FACILITY is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-40 District in areas not serviced by City water and sewer utilities at a density of one unit per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one unit per 7,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

CONTINUING CARE COMMUNITY FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 square feet of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

ELDERLY ASSISTED CARE HOME: ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms shall meet the following density requirements: In the R-40 District in areas not serviced by City water and sewer utilities at a density of one bedroom per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one bedroom per 7,500 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

Helicopter Take offs and Landings: Helicopter take offs and landings are allowed as a special exception subject to the following conditions:

- A. There shall be a distance of one thousand (1,000) feet between any existing residential structure and any proposed helicopter landing pad.
- B. Except in the case of an emergency, no helicopter take offs or landings shall occur between the hours of 9:00 p.m. and 7:00 a.m.
- C. The facility shall be accessory to the principal use located on the lot.
- D. All facilities shall be located and designed so that the operation thereof will not adversely affect adjacent residential areas, particularly with respect to noise levels.
- E. The conditions for granting a Special Exception, contained in Chapter 170-52-C(3), must also be satisfied

JUNKYARD: A JUNKYARD may only be permitted upon the determination that the property values of land adjacent to such use will not be compromised. Conditions may include but not be limited to the provision of adequate and properly maintained screening around land so used.

MANUFACTURED HOUSING Parks: MANUFACTURED HOUSING parks shall be subject to the following regulations:

- A. The proposed park must conform to the Manufactured Home Chapter of the Code (Ch. 126, Manufactured Home Parks)
- B. All plans for the proposed park must have been granted preliminary approval from the Dover Planning Board.
- C. A determination by the Zoning Board of Adjustment that the proposed MANUFACTURED HOUSING will not adversely affect overall land values in the neighborhood.
- D. A determination by the Zoning Board of Adjustment that the proposed MANUFACTURED HOUSING will not result in the creation of hazardous traffic conditions.

NURSING HOME: NURSING HOME is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-40 District in areas not serviced by City water and sewer utilities at a density of one bedroom per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one bedroom per 7,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

RECEIVED
Planning Office
MAR 28 2022
Dover, New Hampshire

130 Emerald Lane
Dover, NH 03820
March 28, 2022

Ms. Donna Benton
Ms. Natasha Kypfer
City of Dover Department of Planning and Community Development
288 Central Avenue
Dover, NH 03820-6094

Hand-delivered

Re: Appeal of Administrative decision

Ms. Benton and Ms. Kypfer:

Attached for filing is the appeal to the Zoning Board of Adjustment by Garry and Marcia Lane and by Ben and Sarah Brunt from the March 1, 2022 administrative decision letters issued by the Planning Department under the signature of Ms. Kypfer. We enclose the ten copies required by the City's instructions plus one additional copy so that the City can provide a copy to Mr. and Mrs. Brown if it deems that appropriate. The only issue that is presently ripe for appeal and that is being appealed at this time is the issue of whether the 10% lot coverage rule of the R40 dimensional chart is applicable to R40 open space subdivisions. That is a legal issue and thus not dependent on charts or lot lines or even on the issue of whether the Brown construction exceeds 10% lot coverage.

Thus, while each packet includes, at bates pages 21- 24, two 8 and ½ by 11 inch copies of the Tritech Indian Ridge Subdivision Plan (both a clean copy and a highlighted copy to show the Brown, Lane and Brunt lots) and a copy of the diagram drawn by Mr. Brown showing the location of his then-proposed new garage, the 20-foot setback lines and existing house location, we have not included larger size copies of this plan with a scale of at least 1 inch = 40-feet. Before going to this needless expense of obtaining copies of a large scale drawing which would serve no purpose in the appeal, we want to discuss with staff whether this larger size version is required for the appeal. In addition to the copies provided. We also call to your attention, Exhibit 1 at bates page 27 (pages notated in lower left-hand corner), an aerial photo of the three lots showing the current state of the properties and with each lot shaded a different color. Thus, the

GL

ZBA will easily be able to see the location of the lots, location of the three homes and the location of the Brown garage construction. As you know, that building is located approximately 12 feet from the rear and side lot lines.

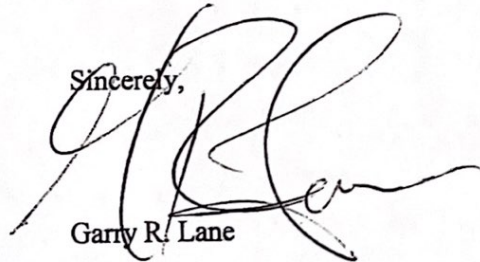
The location of the garage construction, whether it violates the 20-foot setback rule or even the lot coverage rule are not issues the ZBA will have to decide in this appeal. The sole issue on appeal is whether the 10 percent lot coverage rule of the R40 dimensional chart applies to open space subdivisions. Thus, having a large scale copy of the subdivision is not relevant to the sole legal issue on appeal.

This appeal package is being hand-delivered and if payment is required at that time, payment will be provided in the specified amount.

Finally, please note that while Garry Lane is an attorney and is the person delivering this appeal package to the Planning Department office, this joint appeal is taken by Garry Lane, Marcia Lane, Ben Brunt and Sarah Brunt and Garry Lane is only acting as an attorney for himself and for his wife. The Brunts may decide to bring in counsel to the proceedings but, at present, represent themselves.

Please advise if you need any additional documentation or information from the appealing parties, whether to complete the appeal or simply to assist the ZBA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Garry R. Lane', with a large, stylized initial 'G' and 'R'.

Garry R. Lane

603-507-7527



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

Office Use Only	Case #:	_____	Date Received:	_____
	Amount Paid:	\$ _____	Time Received:	_____

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Garry + Marcia Lane Ben + Sarah Brunt Phone # Garry Lane 603-507-7527
Marcia Lane 603-781-8622
Ben Brunt 802-238-8572
Sarah Brunt 802-734-4260

Address of Applicant: Lanes 130 Emerald Ln Dover NH 03820
Brunt 96 Emerald Ln Dover NH 03820

E-Mail Address: garrylane2@mac.com; marcialane125@gmail.com;
ben@benbrunt.com; sarah@benbrunt.com

PROPERTY OWNER (if different from applicant): Applicants are owners of their properties

Address: Dana + Sherri Brown are owners of the property at 126 Emerald Ln, Dover NH
Phone # 617-686-6838 Dana Brown

E-Mail Address: dana610@hotmail.com; Dana Brown 53@gmail.com; sherribrown53@gmail.com

PROPERTY/PARCEL INFORMATION This appeal from administrative decision relates to three properties. The Brown property at 126 Emerald Ln at which the Browns are
Address: Constructing a large garage which abuts the Lanes at 130 and the
Brunt at 96

Brief Directions: Littleworth Rd to Emerald Lane. Drive to the 1st stop sign and go
straight. Drive around the circle and proceed to the 2nd stop sign. The Brunt
property #96 is diagonally across the street on the hill. To reach the Browns
at #126 and the Lanes at #130 turn right and proceed.

Zoning District: R40 Assessor's Map # F-15 Lot(s) # 48 - Brown 47 - Lane
27 - Brunt

TYPE OF APPEAL: (Please check one)

- | | |
|---|---|
| ☐ Variance | from Section _____ of the Zoning Ordinance |
| ☐ Physical Disability Variance (RSA 674:33-V) | from Section _____ of the Zoning Ordinance |
| ☐ Special Exception | per Section _____ of the Zoning Ordinance |
| ☒ Appeal of Administrative Decision | regarding Section _____ of the Zoning Ordinance |
| ☐ Equitable Waiver | per Section _____ of the Zoning Ordinance |

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

Dana + Sherri Brown are building a [second] very large, detached garage on their property
for use to park + work on cars. The construction was stopped temporarily on
Feb 7, 2022 for violation of the 20' setback rule in the R40 open space, Code Section
157-21F. The Brunt and Lanes also contend that the construction
violates the 10% lot coverage rule of the R40 dimensional table.
The Lanes and the Brunt use their properties for peaceful residential enjoyment.

APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION TO BE COMPLETED BY APPLICANTS APPEALING AND ADMINISTRATIVE DECISION

Explain why you feel that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.

See attached 14-page detailed explanation of issue and legal analysis.

In brief, the appealing parties are two families whose properties in the Indian Ridge subdivision off from the Emerald Lane loop abut the property of Dana and Sherri Brown located at 126 Emerald Lane. The building official approved building permits for Mr. Brown to construct a massive, detached, [second] two-bay garage that is either 24 feet by 32 or 26 x 32 (both dimensions appear in his building application). The appearance of the building is very much out of character and is disturbing to multiple residents, not just the appealing parties. The placement of the building violates the 20-foot setback rule applicable in R40 open space subdivisions and, we contend, the 10% lot coverage rule of the R40 dimensional table.

When Lane made his complaint to the City, primarily about the driveway expansion that would run next to the Lane property, he also investigated whether the construction complied with zoning. Under applicable law, the R40 dimensional chart is required to lay out dimensional requirements such as setback, lot coverage, building height etc. for *all* properties in a district. In the R40 district where the properties are situated, there is a 10% maximum lot coverage rule and a 35-foot height restriction. The chart also includes setbacks for the principal building and a 10-foot setback for accessory buildings. In approving the Brown construction, the Building Official relied upon the 10-foot setback rule for accessory buildings in the R40 dimensional chart in approving the Brown garage construction.

Lane ran some lot coverage calculations and it is clear that the construction violates the 10% lot coverage rule. The Assistant Planning Director advised that in applying the R40 dimensional chart to open space subdivisions such as ours, the building official made an assumption that every lot was at least 40,000 square feet (even though open space lots may be only 20,000 square feet) and based his assessment of lot coverage on that assumed 40,000 square foot number. Lane wrote, by email, to the Assistant Planning Director to say that was an unreasonable and unlawful application of the coverage rule.

Less than an hour later, the Planning Director responded to Lane's email with a change of position for the City. Now, instead of applying the R40 dimensional chart to open space subdivisions, the City's new position was that, because of a footnote that cross-referenced Code section 157-21, those open space subdivision provisions of section 157, which contained no lot coverage rules, applied and that the Brown construction was therefore perfectly lawful even though it resulted in greater than 10% lot coverage. Lane studied the section 157 provisions cited by the Planning Director and then pointed out to her, that if her position was correct, the

construction is still unlawful because it violates the 20-foot setback rule of 157-21F, and under that section, "building" was defined to include all buildings attached to the ground and made no distinction between the primary building and an accessory building. Apparently, the Planning Department was unaware of the 20-foot setback rule when it did its about-face and took the new position that the R40 dimensional chart did not apply to open space subdivisions after-all. Three days later, after a meeting at City Hall of Planning Department officials and Building Department officials and presumably the City Attorney, the City determined Lane's position on the 20-foot setback was correct. Following the meeting, the City shut down the construction and suspended the building permits for a likely violation of the 20-foot setback rule.

The setback rule is not before the ZBA until such time as Mr. Brown takes action to bring the suspension before the ZBA or unless the Building officials rescind the suspension and allow the construction to proceed. What is at issue is whether, as the appealing parties contend, the lot coverage rule applies to R40 open space subdivisions.

The appealing parties believe that, as a legal matter, the City's about-face on the application of the R40 dimensional rules is arbitrary and contrary to law for the reasons explained in the attached 14-page appeal document. The 10% lot coverage rule most certainly applies.

Lane

SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.

JR Lane and Jessica Lane
Signature of Applicant*

JR Lane and Jessica Lane
Signature of Owner*

*Both Signatures Required

Lane property: 130 Emerald Lane, Dover

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner: *JR Lane + Jessica Lane* Date: *3/25/2022*

The Brunts and the Lanes give permission to enter their properties at 130 Emerald Lane and 96 Emerald Lane. They do not have authority to authorize access to the Brown property at 120 Emerald. However, the Brown property can be easily viewed from the Lane and Brunt properties

Brunt

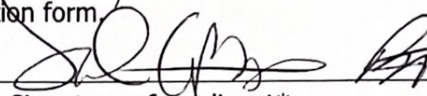
SIGNATURE PAGE

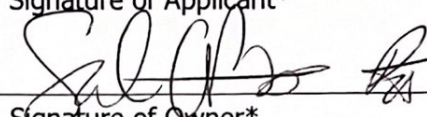
THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

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Signature of Applicant*

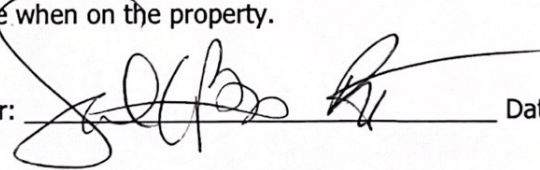

Signature of Owner*

*Both Signatures Required

Brunt property: 96 Emerald Lane, Dover

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner: 

Date: 3/25/2022

The Brunts and the Lanes give permission to enter their properties at 130 Emerald Lane and 96 Emerald Lane. They do not have authority to authorize access to the Brunt property can easily be viewed from the Lane and Brunt properties.

APPLICATION CHECKLIST (Please check off)

- A. **Application signed** by Applicant and Property Owner (if different from Applicant) _____
Note: In order for the application to be accepted by Planning Department staff and placed on the ZBA agenda YOU MUST COMPLETE (1) ALL SECTIONS ON PAGE 1 as well as (2) ALL QUESTIONS FOR THE SPECIFIC APPEAL YOU ARE SEEKING.
- B. **10 Copies of Completed Zoning Board of Adjustment Application** _____
Note: Only include those pages of the application that are relevant to your request. Please do not include the abutters list with the 10 copies (include only as part of original signed application (Part A above)).
- C. **10 copies of a plot plan** drawn in accordance with a boundary line to scale not less than 1" = 40'. They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks. _____
- D. Submit at least one (1) copy of the plot plan at a size of **8 1/2 x 11** (this is in addition to the 10 copies required in 'C' above). _____
- E. **10 copies of photos** (suggested but optional) and any **other materials** applicant would like to submit in support of the application. _____
- F. **Abutter Notification/Mailing Labels** - this office will create and print the abutter list and provide labels in triplicate for each abutter. The applicant/owner will need to provide to this office the engineer, architect, land surveyor or soil scientist whose professional seal appears on the plan with names and addresses for notices. You will be notified with the amount due, once this has been completed.
1. Applicant & Owner, engineer, architect, land surveyor or soil scientist
Certified letters fee # _____ of x \$8.00 =
 2. Certified letters fee: # of abutters _____ X \$8.00 = \$ _____
 3. First Class Mail fee (for individual owner of units within a condominium or other collective form of ownership): # of abutters _____ X \$1.00 = \$ _____
 4. Creating/Printing Abutter Labels in triplicate per sheet _____ x \$10.00 = \$ _____
- G. **TOTAL FEE** paid by cash or check made payable to "City of Dover"
1. Application fee of:
 - \$100.00 VARIANCE (per Section requested) \$ _____
 - \$100.00 SPECIAL EXCEPTION \$ _____
 - \$100.00 APPEAL FROM ADMINISTRATIVE DECISION \$ _____
 - \$100.00 EQUITABLE WAIVER \$ _____
 2. Foster's newspaper public notice \$ **100.00**
- TOTAL FEE** \$ _____

The Brunts and the Lanes request that the ZBA visit the Brunt and Lane properties at 96 and 130 Emerald Lane *sometime in advance of the hearing* to view the construction on the Brown lot so that the Board can appreciate the significance of this construction to the Lane and Brunt properties and how out of character the Brown construction is for this neighborhood.

What this appeal addresses:

This is a joint appeal of Ben and Sarah Brunt and Garry and Marcia Lane to the Zoning Board of Adjustment from a decision by the City Planning Department, contained in two letters written by Assistant City Planner, Natasha Kypfer, dated March 1st, 2022 (one letter addressed to Garry and Marcia Lane and the other addressed to Ben and Sarah Brunt).¹ The appeal concerns the unlawful construction of a massive, detached [second] two-car garage (including electric, water, sewerage connection and bathroom) on the property of Sherri and Dana Brown who live at 126 Emerald Lane. The Lanes (130 Emerald Lane) own the property immediately abutting the westerly sideline of the Brown property and the Brunts (96 Emerald Lane) own the property to the south, immediately abutting the rear property line of the Brown property. See Exhibit 1, attached.

The complaints filed by the Brunts and the Lanes with the Planning Department addressed:

- 20-foot setback in open space subdivisions
- Violation of 10% lot coverage rule
- Granting of building permits for a garage with no analysis of what driveway will be installed and its effects on the neighbors, especially the Lanes, and on runoff to the street
- Significance of any decision by the Planning Department on the wooded areas inside the Emerald Lane loop and effect on runoff and potential damage to the City-mandated bio ponds

The present appeal, however, is limited to the issue of lot coverage rules and whether they apply to open space developments in the R40 zone. The Planning Department's position is that the R40 lot coverage rules do not apply to, or protect lots in, open space subdivisions in the R40 zone. Thus, the Planning Department did not require the Browns to demonstrate that their proposed construction would be in compliance with the R40 10% maximum lot coverage rule (it would not be) nor did the Planning Department make a ruling whether the Brown's construction would exceed 10% lot coverage (though the Planning Department certainly knows it would). Thus, all that is ripe for appeal for the ZBA to rule on at this time is the lot coverage issue, specifically whether the lot coverage rule in the R40 district applies to open space subdivisions in the R40

¹ While there are two decisional letters, the result of the rulings is the same in both cases. The Brunts are appealing both the decision as contained in the decisional letter to the Lanes as well as in the one to the Brunts and the Lanes are appealing both the decision as contained in the decisional letter to the Lanes and as well as the one to the Brunts. For ease of the filing parties, the Planning Department and the ZBA, this appeal is filed as a joint appeal and Garry Lane advised the Planning Department of this intent in advance of filing this appeal. The Planning Department advised that it left those choices to the appealing parties.

zone. If the ZBA agrees with the appealing parties, it could then order the Planning Department and the Browns to address whether the additional construction meets the R40 10% maximum lot coverage rule. The conclusion of that analysis would be that the Brown construction exceeds 10% lot coverage. By our calculations, the total lot coverage, with new construction included, is ~16%.

Related issues that are not part of this appeal but may later come before the ZBA or, on the driveway issue, before the Planning Board:

For clarification, the Planning Department decision letters address multiple issues, not all of which are ripe for appeal and thus are only referenced here in passing. The City has temporarily suspended two building permits of the Browns and halted the related construction for violating the 20-foot setback rule that was part of the approval of the Indian Ridge subdivision and is required by Code section 157-21F. The Brown garage under construction is located approximately 12 feet from the rear lot line and 12 feet from the sideline. The 20-foot setback rule applies to *any building* in an open space subdivision in the R40 zoning district regardless of whether the building is the primary home or an accessory building. The properties in question are in the R40 District and are part of an open space subdivision. The development is not a cluster subdivision.

The Planning Department, intentionally, has not made the decision on the 20-foot setback rule final, presumably so that the Planning Department could (1) quietly slip through a zoning amendment, without informing the Lanes or the Brunts, that would have eliminated the 20-foot setback rule in order to allow the Browns to keep their partially completed garage (that attempt, as explained elsewhere in this document, failed by unanimous vote of the Planning Board) or alternatively (2) give the Browns the chance to file for a variance or equitable waiver (neither of which, as a legal matter, they come close to qualifying for but which the Planning Department encouraged the Browns to apply for, regardless). As the interim ruling on set-back is favorable to the Lanes and Brunts, it is not appealable by them. Should the Planning Department or the Building Department reverse course and lift the suspension, the Lanes and the Brunts will appeal the setback decision to the ZBA and, if necessary, to the courts. If the Planning Department or Building Department does not convert the temporary suspension into a revocation, the Lanes and the Brunts will explore further legal remedy.

Similarly, while the Planning Department letters of March 1st, 2022 also address the issue of the City allowing the Browns to build a massive additional two car garage without applying for a driveway expansion permit or even considering the effects of a driveway to the garage, that dispute, according to the Planning Department March 1st, 2022 decision letter to the Lanes, would go to the Planning Board, not to the ZBA. The City's position (the March 1st letter is also signed by Director of Community Services, John Storer, as to the driveway permit issue) is that the Browns are not required, yet, to apply for a driveway expansion permit. Thus, the driveway

issue is not part of the present appeal and is not before the ZBA other than by way of background.

Finally, the March 1st letter addressed the issue of Dana Brown's tree removal by misconstruing the Lane/Brunt position on the tree removal. The Brunts and Lanes never argued that the tree removal was a zoning violation but was brought up by them to alert the City that the effect of the tree removal, by itself, results in additional surface runoff to the street and that the massive new structure will greatly exacerbate that runoff problem. Further, the Brunts and Lanes wanted the City to realize the significance of any ruling allowing the Browns to advance their construction. Other, current or future property owners in the development, inclined as Mr. Brown, to build and build on these small lots, would know that the City will allow such construction without restriction and some of those homeowners will cut down the trees (that help control runoff from the subdivision) to accommodate large structures too. Ms. Kypfer dismissed those arguments simply saying the tree cutting was not a zoning violation. The appealing parties never claimed otherwise.

Why this appeal matters even though the City has suspended the building permits and the Browns, for now, have stopped construction

While the appealing parties do not believe that the Browns can meet the legal requirements for a variance or an equitable waiver, if the ZBA and then the Courts were to approve a variance or equitable waiver to the 20-foot setback rule, the lot coverage rule becomes critical for the appealing parties to protect their rights. Further, the Planning Department has already once tried to put through a zoning amendment to legalize, after-the-fact, the Brown construction and, the Planning Department may try that approach again. In fact, at the end of the Planning Department meeting on March 8th, 2022, Ben Brunt heard Planning Director, Donna Benton, state words to the effect "we will try again in 6 months." In other words, the composition of the Planning Board will change and a future Board may be willing to vote into law the 10-foot setback rule pursued by Ms. Benton favoring the Browns. While we do not know for sure that she was referring to the proposal the Planning Board voted down that evening, it is a logical inference given that that was the only thing the Board voted down that evening and the only thing for which there would be a need to "try again."²

² The Planning Director, Donna Benton, after the Lanes and Brunts brought to her attention that the City had allowed construction of the massive garage in violation of the 20-foot setback rule, asked the Planning Board at the Planning Board meeting of February 22nd, 2022 to make a housekeeping rule change that would have had the effect of wiping out the 20-foot setback rule protection for open space subdivisions. Any vote by the Planning Board to include the surreptitious zoning change into overall zoning revisions being considered by the Planning Board was put off until the next meeting on March 8th, 2022. Fortunately, Ben Brunt happened to be watching the Planning Board meeting on TV and heard Donna Benton propose the rule change (that did not even mention the 20-foot rule but would have eliminated it). Because the Board did not vote on the proposal at the February 22nd meeting, the Lanes and the Brunts then were able to speak at the meeting on March 8th and explain why the 20-foot rule was critical and that if anything, the Planning Board should be working to strengthen the zoning protections in open space subdivisions rather than eliminating the single protection the Zoning and subdivision regulations provide to owners in open space developments according to the Planning Department's interpretation of those rules. After hearing from Garry Lane and Sarah Brunt opposing the rule change and comments of the former Planning Director, Christopher Parker, admitting that the City never followed the legal requirements of Code provision 157-21(F) 20-foot setback rule, the Planning Board discussed the proposed rule change and then voted it down unanimously. Ms. Kypfer, Ms. Benton and James Maxfield (Building Official) also encouraged Dana Brown at a meeting on February 8th, 2022 to apply for a variance or an equitable waiver of the 20-foot rule and put that advice in writing in an email dated February 9th, 2022. See Exhibit 2. While the Browns have not filed for a variance or equitable waiver yet, there is absolutely no way, from a legal

The Indian Ridge open space subdivision and the Brown construction

The Indian Ridge subdivision on Emerald Lane is in the R40 zoning district and is an open space subdivision. The lots are generally less than a half-acre. The homes are moderately high end, now generally selling in the \$600,000 to \$700,000+ range. Owners typically are paying about \$12,000 or more per year in property taxes. There are 49 lots, all developed with, and restricted to, single family homes. The homes are situated on the inside and outside of the Emerald Lane loop. All the homes on the inside of the loop, originally, had a significant buffer of trees. See Exhibit 3 showing what the inner circle tree area looked like before the Browns cut down their trees. The developer failed to protect the trees with protective covenants in the HOA although the trees are more than likely critical to controlling runoff and for protecting the functioning of the City-mandated bio ponds. See Exhibit 4 showing the Brown lot with the trees removed and the large garage partially constructed.

While the Open Space subdivision regulations require that the open space area in such a development be reasonably accessible to all lot owners, the City approved this development apparently doing little to confirm that would be true. The lots were sold to buyers with representations that there would be walking trails throughout the open space. In fact, there are no such walking trails and cannot be any because most of that space is wetlands and not readily or easily accessible. Thus, while wetlands are valuable to preserve, the land is essentially unusable by lot owners. This is significant given Ms. Kypfer's argument that open space development lots do not need any protection from lot coverage rules because the lot owners have plenty of other land to use in the open space areas. In other words, lot owners in open space developments have no right to care what their neighbors' lots look like because they can always walk to the open space areas to get away. In the case of the Indian Ridge Development on Emerald Lane, surrounding wetlands (the "open space") are environmentally important, but the developers could never have developed that land whether the development was open space or not. That land was guaranteed to be protected wetland whether or not it was protected as part of an open space development.

While all the lots on the inner side of the Emerald Lane circle had significant trees, the Browns cut down most of their trees. The new Brown garage is described on one of the two building permits as 24 feet wide by 32 feet deep (as big as, and taller than, a small home). See Exhibit 5. The survey map that the Browns submitted with one of their building permit applications shows the 20-foot setback line for *all buildings* in this subdivision. The survey appears to be taken from either a tax map or from the subdivision approval plats. On top of the map, Mr. Brown has inserted the garage location and it clearly shows that the building would violate the 20-foot setback rule for both side line and rear lot lines and notes on Mr. Brown's diagram indicate the

standpoint, that the Browns can meet the legal requirements of the variance statute (among other problems, there is no hardship) or the equitable waiver statute (among other problems, the construction is not and was not "substantially complete" when the 20-foot rule violation was brought to the attention of the City or to the Browns). Because the Planning Department setback interim ruling is favorable to the Lanes and the Bruns and in conformity with the law, and because there presently is no variance or equitable waiver application, the setback rule is not at issue in this appeal. However, if the Browns file for variance or waiver as the Planning Board has encouraged, that issue will become before the ZBA.

building would be set about 10 feet from those lot lines (totally ignoring the 20-foot setback lines).

The Brown garage is massive not only in footprint size but also in height. The walls are nearly two stories tall and built on top of a full foundation that rises about three to four feet above the land contours at that location. Thus, if Mr. Brown builds up the soil or adds any hard surface around his building, it may well result in pushing the substantial runoff that will be generated by this building either to the Lane property or to the Brunt property or both (possibly causing basement flooding as Mr. Brown has regularly experienced at his own property). If the land elevation is not raised around the building, then the runoff may run straight down the hill from the garage, across the sidewalk and into the street. If the driveway for this new building is not slanted to one side or the other, all the water may run to the street. However, if the driveway is tilted or crowned, substantial amounts of water could run onto the Lane's, back, side and or front lawn areas or possibly into their basement.

The Browns presently keep four cars at their less-than-half-acre property with an additional one kept in storage. The plan, apparently, is to bring a 5th car to the property so Mr. Brown can work on it in his new garage. As the present two car garage attached to the house is normally fairly full, three cars are usually parked in front of the house, with one commonly parked on the lawn area in violation of the HOA protective covenants or parked in the no parking side of Emerald Lane.

The Brown garage, per requested building permits, would include running water, sewerage hookup, a bathroom and presumably, electric. The back side of the garage includes what appears to be a full length transom window situated in such a way relative to the Brunt home that light from the interior of the garage will shine into the Brunts' home at night. See Exhibit 6.

History of neighborhood complaints, building application, the Planning Department Ruling of March 1, 2022

When the contractors first raised the massive sidewall on the new garage, the Brunts, as did other neighbors, appalled by the enormous building, starting calling the Planning Department out of concern for what the out-of-place building would do to the character of the neighborhood, property enjoyment, property values and questioned the lawfulness of the construction.

The Brunts first contacted the Planning Department on February 2nd, 2022 but were told, incorrectly, that the construction was perfectly lawful and there was nothing the Brunts or anyone else could do about it. A photograph of what the Brunts now see looking out their windows is attached as Exhibit 6.

The Lanes initially assumed that since the Browns had obtained a building permit, the construction must be lawful. Garry Lane, however, went to the Planning Department to find out what, if any, restrictions there were on installing new driveways or expanding existing ones as the new garage would clearly need a driveway and it would necessarily run beside the Lane's front lawn and diminish the appearance of the Lane property or possibly cause flooding onto the

Lane property. The temporary construction driveway is an eyesore where construction vehicles have torn up and muddied the soil within a couple feet of the Lanes' front lawn. See Exhibit 7. Lane eventually found the requirements for driveway expansion and additionally started investigating whether the building under construction complied with applicable zoning laws. He reviewed the dimensional chart for the R40 zoning district, and quickly was reminded of the 10% maximum lot coverage rule applicable in the R40 district. See Exhibit 8 (R40 dimensional table).

With a copy of the Brown's property tax card and a few quick calculations, Lane determined that the building violated the 10% maximum coverage rule for R40 and discussed that with Ms. Kypfer by phone. During one of those discussions, Ms. Kypfer advised Lane that as for applying the 10% lot coverage rule from the R40 dimensional chart to an R40 open space subdivision, Mr. Maxfield, the building official, made the assumption that all lots in the R40 district (even in an open space subdivision), regardless of actual size, were at least 40,000 square feet. Thus, as to an open space subdivision with a 20,000 square foot lot, Mr. Maxfield would calculate maximum allowed coverage based on a 40,000 square foot lot (thereby increasing allowed lot coverage from 2,000 square feet to 4,000 square feet). Lane emailed Ms. Kypfer of the Planning Department on February 3rd, 2022, at 4:47 p.m. as follows:

From my review [of] the City zoning ordinance, my interpretation as a lawyer is that the building permit was improperly granted and the allowed building violates the allowed 10% lot coverage rule. The building inspector apparently assumes lots in R40 are at least 40,000 square feet and in applying the 10 percent rule, he uses the assumed lot size. That is totally a violation of the law and a completely unreasonable reading of the ordinance...

See Exhibit 9.

About 50 minutes later, Planning Director Benton, in place of Ms. Kypfer, responded to the above email from Lane with a totally new interpretation of how to apply the R40 dimensional table to R40 open space subdivisions. The City's new position: none of the dimensions in the R40 table apply to open space subdivisions. Specifically, because of footnotes 1 & 2³ to the R40 dimensional table, the 10% rule did not apply. See Exhibit 10.

Lane responded to Ms. Benton's analysis with an emailed letter on Friday morning of February 4th (10:21 a.m.) both challenging her conclusions about the 10% rule but additionally pointing out that the Code section 157-21F that she had called to Lane's attention, establishes a 20-foot set-back for *all buildings* in an R40 open space subdivision, not the 10-foot rule from the R40 dimensional table that the Planning Department and Mr. Maxfield had relied upon until 5:35 p.m. the day before. See Lane letter, Exhibit 11.

³ Footnote 1 to the R40 dimensional chart is relevant to the issues at hand. Footnote 2, however, is irrelevant. FN 2 to the table states: "Refer to 170-13, 170-14 and 170-27D for exceptions to lot size, frontage and setback requirements." None of these sections is relevant to the Indian Ridge subdivision or to the Brown construction. 170-13 addresses lot size minimums when sewer and water facilities are not provided or if sewer is not provided. The Indian Ridge subdivision has public water and sewer. 170-14 addresses nonconforming lots. The lots in the Indian Ridge subdivision comply with the R40 open space subdivision requirements. Thus, while they are smaller lots than those in non-open space parts of the R-40 district, they are not non-conforming lots. Section 170-27D deals with the Conservation District and prohibits certain subdivisions of land that do not meet certain size requirements. This is not an issue in the Indian Ridge subdivision or with the Brown garage construction and thus is not relevant here.

Lane pointed out that the Brown building was set about 12 feet from the rear and side lot lines even though 157-21F clearly requires 20 feet and applies to all buildings (accessory or otherwise). Thus, while the City Planning Department, as well as building officials, should have known about the provisions of 157-21F all along, at least as of 10:21 a.m. Friday February 4th, 2022, the City Planning Department was made fully aware both of the applicable 20-foot setback rule and that the Brown construction violated that rule. They should have immediately stopped the construction for further investigation but instead allowed it to continue all day. At 10:40 a.m. Friday February 4th, 2022, Ms. Benton acknowledged receipt of Lane's emailed letter. See Exhibit 12. Ms. Benton responded, "Thanks for the correspondence. We will come out next week to check it out in person and will review your attachment."

No construction took place over the weekend of February 5th and 6th. Concerned that the Brown's contractors would resume construction on Monday morning, Lane sent separate email letters to both Dana Brown and to Sherri Brown on Sunday, February 6th advising them that he believed the Brown's construction violated both the setback rules and the maximum lot coverage rules. Lane suggested that the Browns might want to stop construction until the zoning issues were resolved. See Exhibit 13. Attached as Exhibit 14 is a photograph of the new Brown garage taken Monday February 7th, 2022 at 7:41 a.m. before construction had started for the day. At that point, only a single roof truss was in place. The construction as of Friday morning, February 4th, when Lane advised the Planning Department of the 20-foot rule, would have been even less advanced. The building was not "substantially complete" on the morning of February 4th, on the morning of February 7th or even part way through the day when construction stopped on February 7th. Thus, it is inexplicable why the Planning Department would encourage the Browns to file for an equitable waiver when the equitable waiver statute only applies if the construction in question was "substantially complete" when the 20-foot rule was first brought to the City's or the lot owner's attention.

On the morning of February 7th, Ms. Benton, Ms. Kypfer and Mr. Maxfield visited the property; no immediate action was taken at that time. Later that morning or afternoon, Ms. Benton, Ms. Kypfer, Mr. Maxfield and presumably the City Attorney met to discuss the Brown construction and the Lane letter advising that the property was subject to a 20-foot setback requirement. Shortly after that, Mr. Maxfield and one other City official returned to the Brown property and ordered the construction to stop. The contractors packed their equipment and left the property. They have not done further work on the site since February 7th other than picking up the remainder of their equipment on February 8th.

On February 14th, 2022, the Lanes and the Brunts filed written complaints with the Planning Department in order to obtain a ruling on the lawfulness of the Brown construction. See Exhibits 15a and 15b. By letters dated March 1st, 2022, the Planning Department issued its formal decision. See Exhibits 16a and 16b. Ms. Kypfer confirmed that the construction permits had been suspended (not revoked) based on what the City determined was a "likely violation" of the 20-foot setback rule. Thus, the City Planning Department acknowledged the setback violation but was not issuing a formal order to the Browns as they were "working cooperatively" with the

City to “come into compliance.” What she did not advise was that the way the Browns might come into compliance was for the Planning Director to attempt to surreptitiously slide in a zoning amendment to eliminate the 20-foot rule. She did reveal that the City alternatively encouraged the Browns to file for a variance or an equitable waiver (even though, from a legal perspective it is clear the Browns can neither establish a “hardship” needed for a variance nor show that the building was “substantially complete” as required, among other things, for an equitable waiver). It is from those two letters that the Brunts and the Lanes appeal. While there are numerous reasons the City should require the Browns to remove their offending building, the appeal is presently limited to the issue of whether the 10% lot coverage rule applies to open space subdivisions in the R40 zone. The answer is yes, it does apply.

The lot coverage rule of the R40 dimensional table applies because there is no provision in Code section 157-21F replacing it.

The Planning Department decision letter to the Lanes explains the Planning Department’s argument why it believes the 10% lot coverage rule does not apply to the Indian Ridge subdivision. Specifically, they contend that the maximum lot coverage rules of the R40 chart (which includes the dimensional restrictions) state in footnote 1 that, “In the case of an open space subdivision, in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in 157-21 of the Code of the City of Dover, 1983.” Section 157-21, however, is silent regarding lot coverage. It contains a minimum, all sides, 20-foot setback for any “building” and requires a minimum lot size of 20,000 square feet.

There are two interpretations of footnote 1. One interpretation is that the provisions of section 157-21 replace all dimensional provisions in the R40 chart. That interpretation, explained later, would lead to a plethora of problems, and is an unreasonable interpretation. The other interpretation, which is closer to the position taken historically by the Planning Department and the Building Department, is that the R40 dimensional chart provisions apply to open space subdivisions except where expressly replaced by the provisions of 157-21. In fact, until 5:35pm February 3rd, 2022, the City’s position was that the R40 dimensional chart applied to open space subdivisions. While the Planning Department and the building department apparently did not enforce the 20-foot setback provisions of 157-21, or perhaps even know of their existence, they implicitly assumed that they could apply some of the provisions of the R40 dimensional chart to all open space subdivisions by assuming all lots in R40, even in open space subdivisions, were at least 40,000 square feet. And, perhaps because they may not have known of the existence of footnote 1 to the R40 dimensional table that cross referenced section 157-21, they assumed, incorrectly, that any building other than the primary residence, was an accessory building. Since the dimensional chart allowed “accessory buildings” to be 10 feet from rear and side lot lines, they believed that the 10-foot rule of the R40 dimensional chart would apply. Alternatively, the Planning Department may have been aware of footnote 1 to the R40 dimensional table and its cross reference to section 157-21 but, nevertheless, applied the 10-foot setback rule from the R40 dimensional chart anyway (i.e.: rather than the stricter 20-foot setback established by 157-21F).

The problem with that reasoning, as Lane previously brought to the Planning Department's attention, is that 157-21 applies to *all buildings* (including accessory buildings) and thus, the 20-foot setback rule, being the stricter rule, would apply even to buildings otherwise considered to be accessory buildings. The Planning Department's March 1st, 2022 letter states that the Planning Department is now in agreement with that interpretation.

However, now that it was no longer convenient for the Planning Department to assert that any portion of the R40 dimensional chart continued to apply in R40 open space subdivisions, the City's new position, as of 5:35p.m. on February 3rd, 2022, is that no provisions of the R40 chart can apply to an R40 open space subdivision. In interpreting the reasonableness of the Planning Department's new position, it is important for the ZBA to realize that the Planning Department's new position that no part of the dimensional table for R40 applies to open space subdivisions is, as explained above, actually a very recent change of position.

As explained above and in Lane's February 4th memo/letter to the Planning Director, there are two interpretations of the poorly drafted footnote 1. First, there is the new position of the Planning Department that footnote 1 means that all the provisions of the R40 dimensional chart are replaced with whatever is contained in Code section 157-21. The footnote does not expressly say that but it's one interpretation. The second interpretation, the more reasonable one, is that the dimensional provisions of the R40 dimensional chart apply except where Code section 157-21 provides a different or stricter rule. Under that interpretation, all the provisions of the R40 dimensional chart would be replaced by the 157-21 provisions except for the maximum height restriction of 35 feet and the 10% maximum lot coverage rule because 157-21 contains stricter provisions as to each of the other R40 dimensional chart standards. That interpretation is reasonable because, in fact, the dimensional provisions of 157-21 would be given effect, just as footnote 1 to the R40 dimensional table requires.

Given that there are two possible interpretations of footnote 1 to the R40 dimensional table, one needs to decide which is the more reasonable interpretation. The Lanes and the Brunts contend that one way to ascertain the intent of that footnote is to (1) first analyze why the City of Dover has dimensional zoning rules at all and (2) analyze whether, as to height restrictions and maximum lot coverage rules, the justifications for those rules would fall away if one went from a 40,000 plus square foot lot in general R40 to a smaller, 20,000 square foot lot in an R40 open space subdivision. As explained below, if anything, the height and lot coverage rules are even more important in an R40 open space subdivision with smaller lots than in general R40 areas.

Here are some reasons why cities create dimensional zoning rules:

1. Maintain property values by:
 - a. Protecting attractive and/or common characteristics of a neighborhood; property values benefit when similar structures, built and organized in an orderly fashion, compose a neighborhood quality;

- b. Protecting resale of properties by ensuring uncluttered lots and unimpeded use of property by limiting building size and lot coverage in a residential community;
- c. Providing predictable use of neighboring properties, thus, when someone buys a property in a particular neighborhood, they have reasonable assurance that that is the way the neighborhood will continue to look;
- d. Promoting livable and viable communities;
- e. Maximizing enjoyment of one's own property without impeding neighbor's likewise enjoyment;

Why wouldn't these be equally important on a smaller lot?

2. Create safe environments for communities to thrive:

- f. Greater lot coverage probably means greater intensity of use of the property, ensuring less room for children to play in safe yards and more likely to play in the streets; intense use of land also leads to inadequate parking, which results in more cars being parked on the streets, making streets harder to use and for vehicles to navigate and less safe for children riding bikes or scooters or even crossing the street;
- g. Reducing fire risks that occur with tightly packed buildings and improving firefighter access. If the City's present (newly revised) interpretation of the R40 dimensional table and 157-21 applies, someone with a 0.46 acre lot in an R40 open space subdivision could lawfully create a massive home, covering every single inch of the lot other than in the 20-foot setback line area. With no height restriction, the home might be 4 stories at 37,400 square feet. If the 20 foot setback area had trees, debris or cars, firefighters would have a hard time reaching all parts of the home and the fire could easily spread to neighboring homes;

Why wouldn't this justification for maximum lot coverage rules be equally applicable to a smaller lot in an open space R40 subdivision?

3. Ensure environmental safety and perpetual wellbeing:

- h. By limiting lot coverage, more soil is available to soak up rainwater and reduce flooded basements – (flooded basement has been a chronic problem for the Brown property);
- i. Protecting the bio ponds mandated by statute law and the City from excessive runoff and lawn chemicals;
- j. If more lot area can be covered with buildings of unlimited size, this results in tree removal (which in turn reduces the major water absorption by trees and reduces the amount of CO₂ removed from the atmosphere and negatively affects air quality);
- k. Protecting wildlife by providing wooded areas for small birds, animals, and even butterflies/pollinators;
- l. Protecting the welfare of the people in a community as it relates to land use;

Why wouldn't this be equally important on a smaller lot?

4. Ensure financial viability of community services:
 - m. By securing the property values, safety, and environmental concerns of the residential communities (in the aforementioned rationale for lot coverage limitations), effective zoning maximizes tax revenues by keeping property values higher, helping pay for city services and schools;

Why wouldn't this be equally important on a smaller lot?

Given the justifications outlined above, it is the Lane/Brunt position that there are few if any reasons to assert that R40 open space subdivisions deserve or require fewer zoning protections as compared to the general R40 district, especially if the perk of open space in that subdivision is unusable wetlands and, therefore, the residents are limited to their own lots for recreation. Given that conclusion, it is unreasonable to interpret the R40 dimensional table footnote one to replace all protections of the R40 dimensional table for open space developments.

Conclusion

Without footnote 1 to the R40 dimensional chart, it is certain that the R40 dimensional rules in the chart would apply to R40 open space subdivisions. Section 170-7 divides the City into various residential and non-residential districts. One of those is the R40 – the Rural Residential District. Section 170-12 provides:

- a. Uses permitted in zoning districts identified in 170-7 shall be as set forth in the Tables of Dimensional Regulations by District.
- b. The minimum regulations for lot size, lot frontage, building set back standards for front side and rear yards, building heights and lot coverage shall be as specified in the Tables of Use and Dimensional Regulations by District.

If the subdivision rules in the City Code, such as 157-21F, conflicted with the R40 dimensional chart, the stricter of the two provisions would automatically control. *See* Chapter 170 section 4 and Chapter 157 section 4. Because the starting place for analysis, under 170-7, quoted above, is that the regulations applicable for each zoning district “for lot size, lot frontage, building set back standards for front, side and rear yards, building heights and lot coverage shall be as specified in the Tables of Dimensional use...” the R40 dimensional table would apply to all properties in the R40 zone unless another provision *expressly* provided that the chart dimensional rules would not apply.

Since 170-7 clearly contemplates that the regulations will set standards for, among other things, lot coverage, we first should look to the dimensional rules in the R40 table as to what the table

dictates for maximum lot coverage and then see if that standard (maximum 10% lot coverage) is expressly and clearly replaced. That brings us to footnote 1 of the R40 dimensional table which reads that for open space subdivisions in R40, "the dimensional requirements shall be as specified in 157-21." Given that 157-21 contains a strict 20-foot setback for all buildings (whether they are accessory or otherwise) but does not address the lot coverage rules that Code section 170-7 clearly contemplated would be addressed, there is no reason to infer that section 157-21 has voided the minimum lot coverage rule for open space subdivisions contained in the R40 dimensional table. Had 157-21 contained a provision that stated that there are no minimum lot coverage rules (which would have made no sense) in open space subdivisions or if the Code provision had set a different lot coverage rule, for example, 8% or 12%, then it would be clear that 157-21 was intended to supplant all the rules of the R40 dimensional chart not just the ones that conflicted with it.

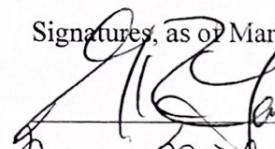
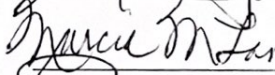
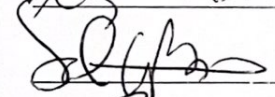
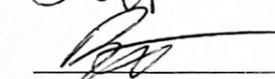
As explained above, footnote 1 to the R40 dimensional table does not state that all R40 dimensional rules are replaced. It simply says that the dimensional rules of 157-21F shall apply to open space subdivisions. Thus, it is reasonable to conclude that in those instances, such as height restrictions and lot coverage, where the 157-21 rules are silent, the dimensional rules in the R40 dimensional chart would continue to apply.

One way to analyze the reasonableness of the two interpretations of footnote 1 to the dimensional table is to ask whether there is such a difference between regular R40 lots (40,000 square foot lots and above) and open space subdivisions with less than half acre lots, that the drafters of the footnote 1 to the dimensional table must have intended that lot coverage and building height standards were unimportant in open space developments. Above, we listed a number of reasons why cities, including the City of Dover, might want dimensional zoning rules. In each example, the justification is just as strong for having such a rule in an open space subdivision as it is in a larger lot in R40. In fact, many of those justifications or purposes are even more important in the smaller-sized open space lots than for larger lots.

In addition, in interpreting footnote 1 to the R40 dimensional table, the ZBA should be mindful of what it would mean if the Planning Department's new interpretation is the law (that none of the provisions in the R40 dimensional chart ever apply to R40 open space subdivisions). Specifically, what the Planning Department is arguing is that none of the R40 dimensional table restrictions apply in open space subdivisions, including the 10% maximum lot coverage restriction or the height restriction. If this were true, then someone could lawfully build a house on one of the Indian Ridge subdivision 0.47 acre lots (approximately 90 x 225 feet) that was 50 feet wide and 187 feet deep. That would be a massive 9,350 square foot home if it were one story; 18,700 square feet if two stories; 28,050 square feet if three stories and 37,400 square feet if four stories. Could this possibly be what the drafters of footnote 1 to the R40 dimensional table intended by their cross reference to Code section 157-21? Not likely.

For all those reasons, it is more reasonable to conclude that what footnote 1 to the R40 dimensional chart is intended to say is that, as to those provisions in Code section 157-21 that conflict with the R40 dimensional table, those section 157-21 rules shall apply. However, if 157-21 does not have a conflicting rule, then the dimensional provisions, namely the maximum lot coverage rule and the height rule (that Code section 170-12 expected to be addressed), would continue to apply in open space subdivisions. Accordingly, the ZBA should rule that the 10% maximum lot coverage rule of the R40 dimensional table applies to the Indian Ridge subdivision and that Mr. Brown must demonstrate the total lot coverage of his house and new construction as compared to the total square footage of the lot. We believe that his calculation will show that his new construction results in ~16% lot coverage and violates the 10% rule.

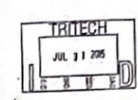
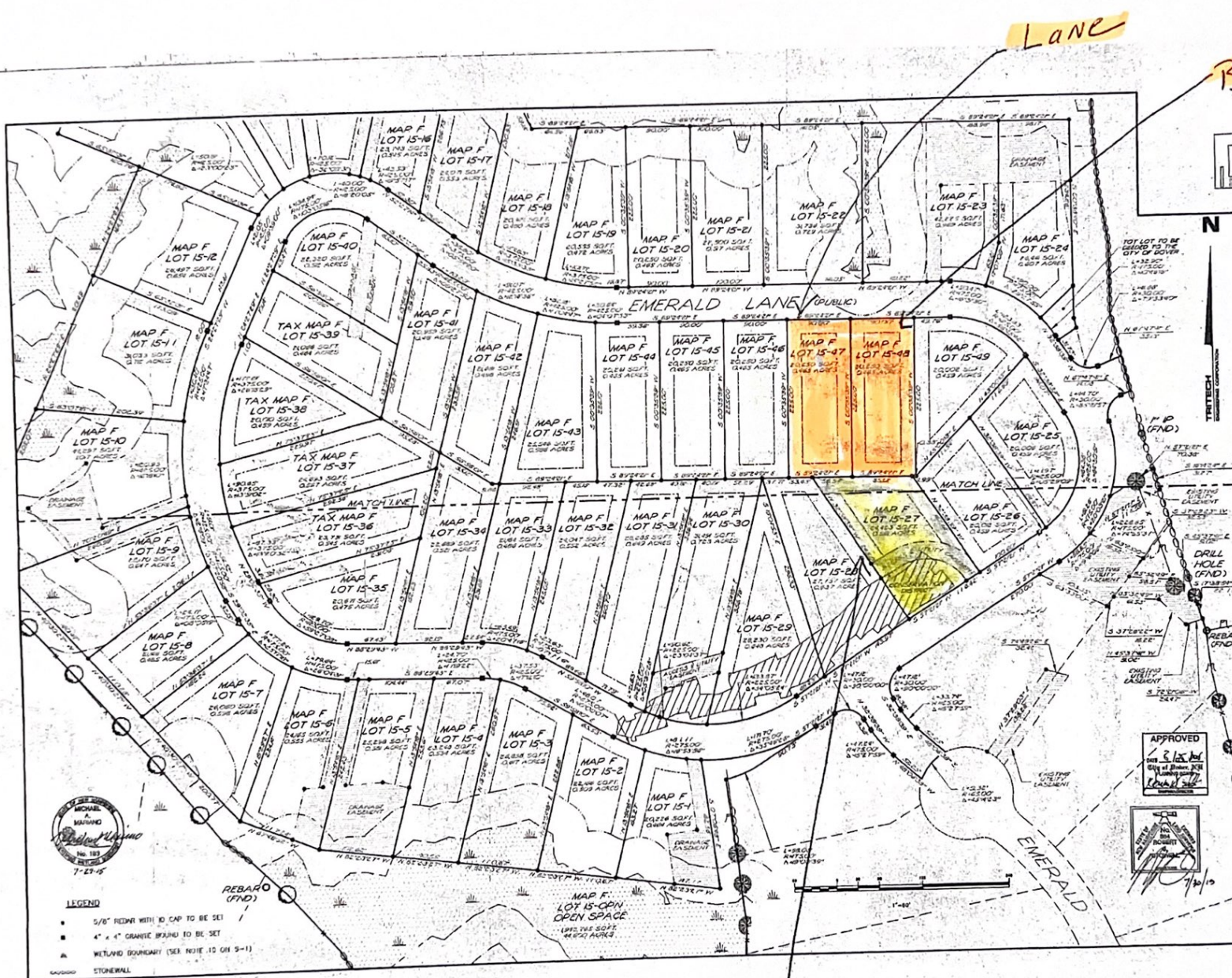
Signatures, as of March 25th, 2022:

 Garry Lane
 Marcia Lane
 Sarah Brunt
 Ben Brunt

The Brunts and the Lanes have worked together to prepare this joint appeal. Please note, however, that while Garry Lane is a licensed, New Hampshire attorney (retired), he only is representing himself and his wife, Marcia, in this matter.

List of Exhibits:

- Exhibit 1 Aerial view of the Brown, Brunt, and Lane lots
- Exhibit 2 2.9.2022 Planning Department email to Mr. Brown
- Exhibit 3 Aerial photo of lots with tree buffer
- Exhibit 4 Aerial view of development with Brown trees removed and garage under construction
- Exhibit 5 Building permit application and permits
- Exhibit 6 Photograph of garage under construction from Brunt window
- Exhibit 7 Photograph of construction driveway to new garage
- Exhibit 8 R40 dimensional chart and footnotes
- Exhibit 9 Lane to Planning Dept. (Ms. Kypfer) email of 2.3.2022 (4:47 p.m.)
- Exhibit 10 Planning Dept. (Ms. Benton) email to Lane of 2.3.2022 (5:35 p.m.)
- Exhibit 11 Lane Friday 2.4.2022 letter to Planning Department (emailed 10:21 a.m.)
- Exhibit 12 Ms. Benton 2.4.2022 email (10:40 a.m.) to Lane acknowledging receipt of Lane 2.4.2022 letter
- Exhibit 13 Lane Sunday 2.6.2022 email Mr. Brown and to Mrs. Brown
- Exhibit 14 7:41 a.m. Monday 2.7.2022 photograph of new construction with one roof truss
- Exhibit 15 Lane (15a) and Brunt (15b) formal complaint filing with Planning Department) 2.14.2022
- Exhibit 16 Planning Department Decision letters (16a to Lanes and 16b to Brunts)



TRITECH
ENGINEERING CORPORATION

INDIAN RIDGE
EMERALD LANE
DOVER, NEW HAMPSHIRE

AUGUST 29, 2014 JOB NO. 04200
SCALE: 1" = 80'

SUBDIVISION PLAN
SHEET NO.

9-4

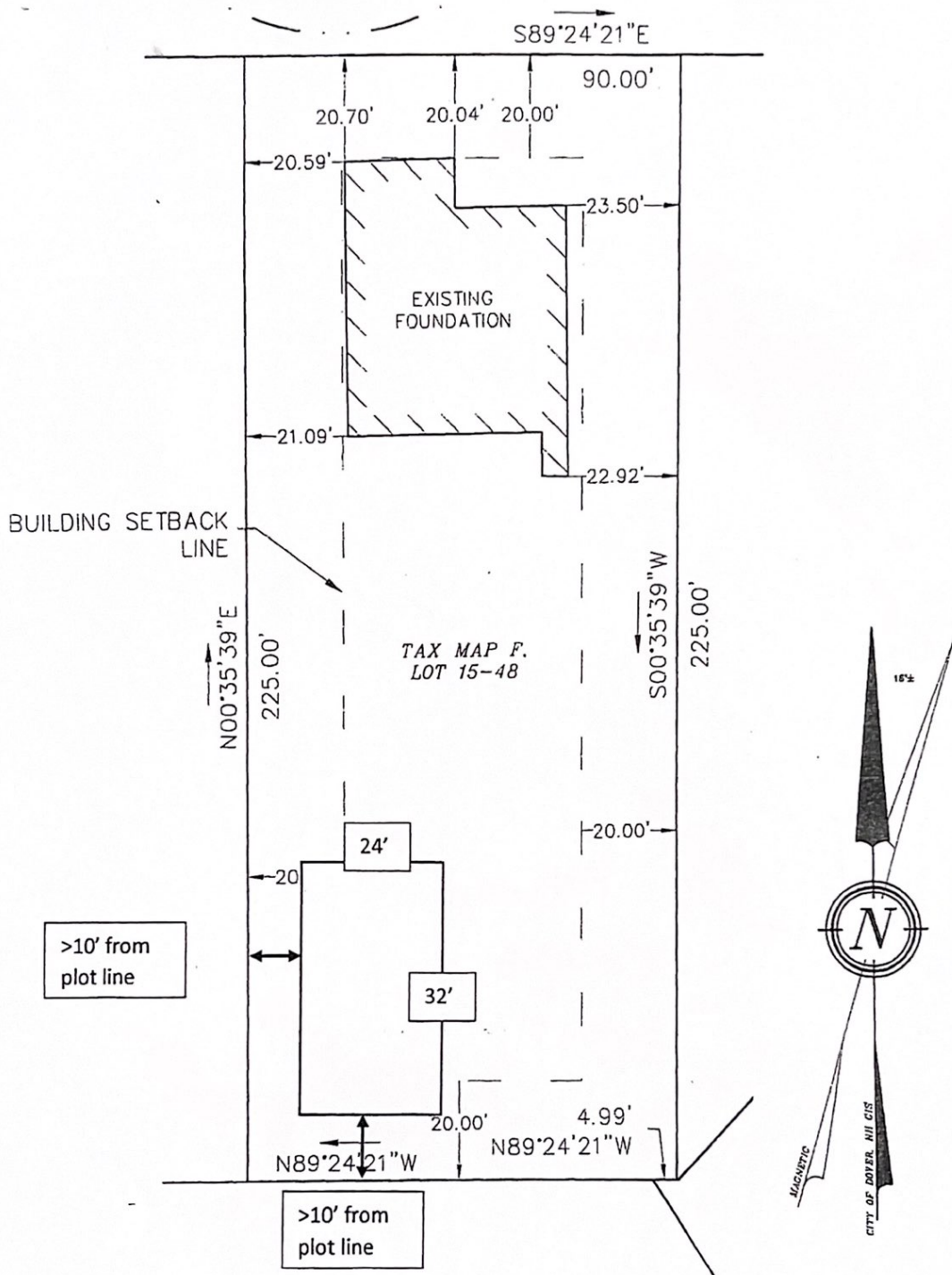
(PI4-58)



- LEGEND**
- 5/8" RED LINE WITH 10 CAP TO BE SET
 - 4" x 4" GRANITE BRANCH TO BE SET
 - WETLAND BOUNDARY (SEE NOTE 10 ON S-1)
 - STONEWALL

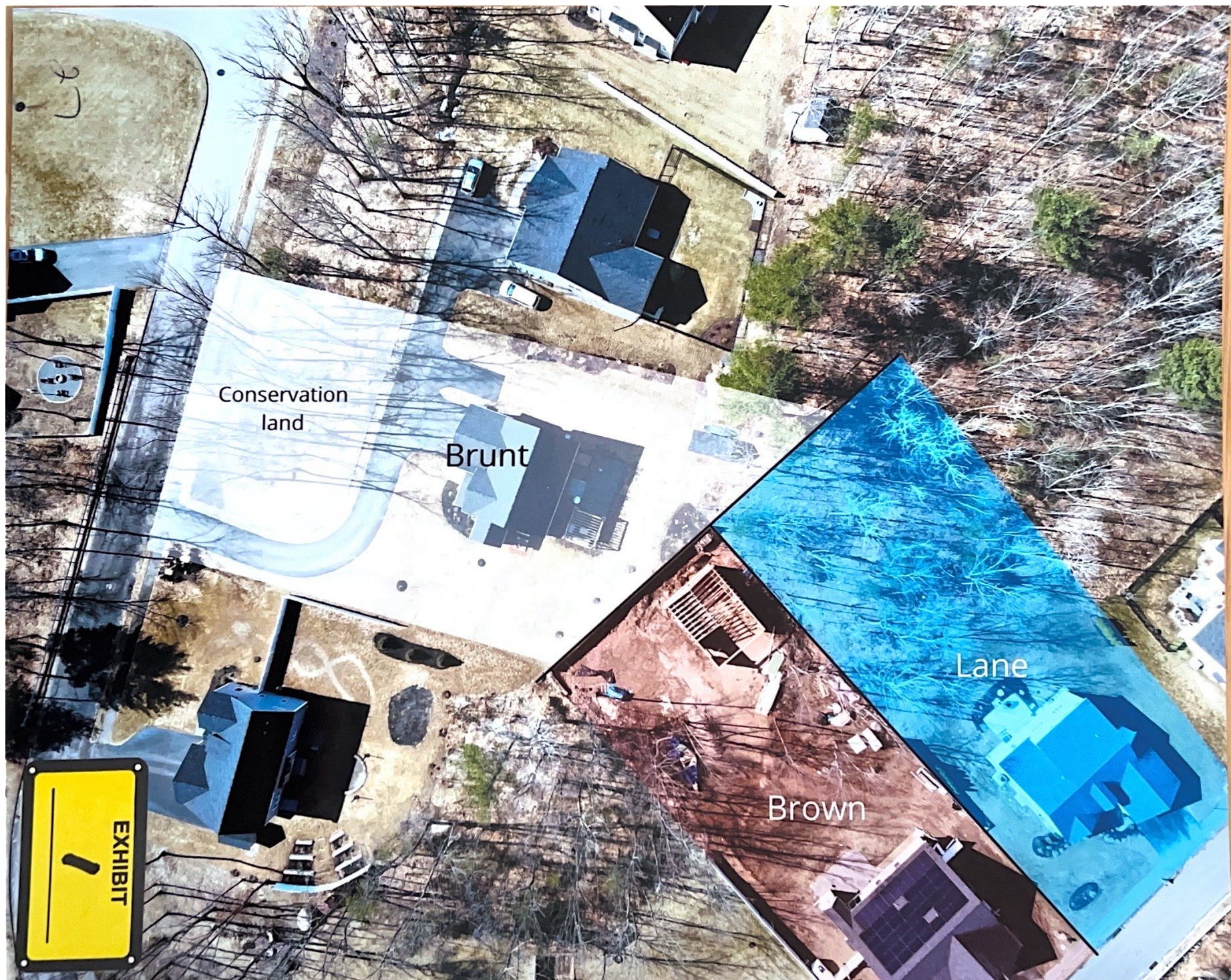
Brunt

22



Part of Brown
Building Permit
application

Exhibit 1 – aerial shot showing Brunt, Lane and Brown lots



Conservation
land

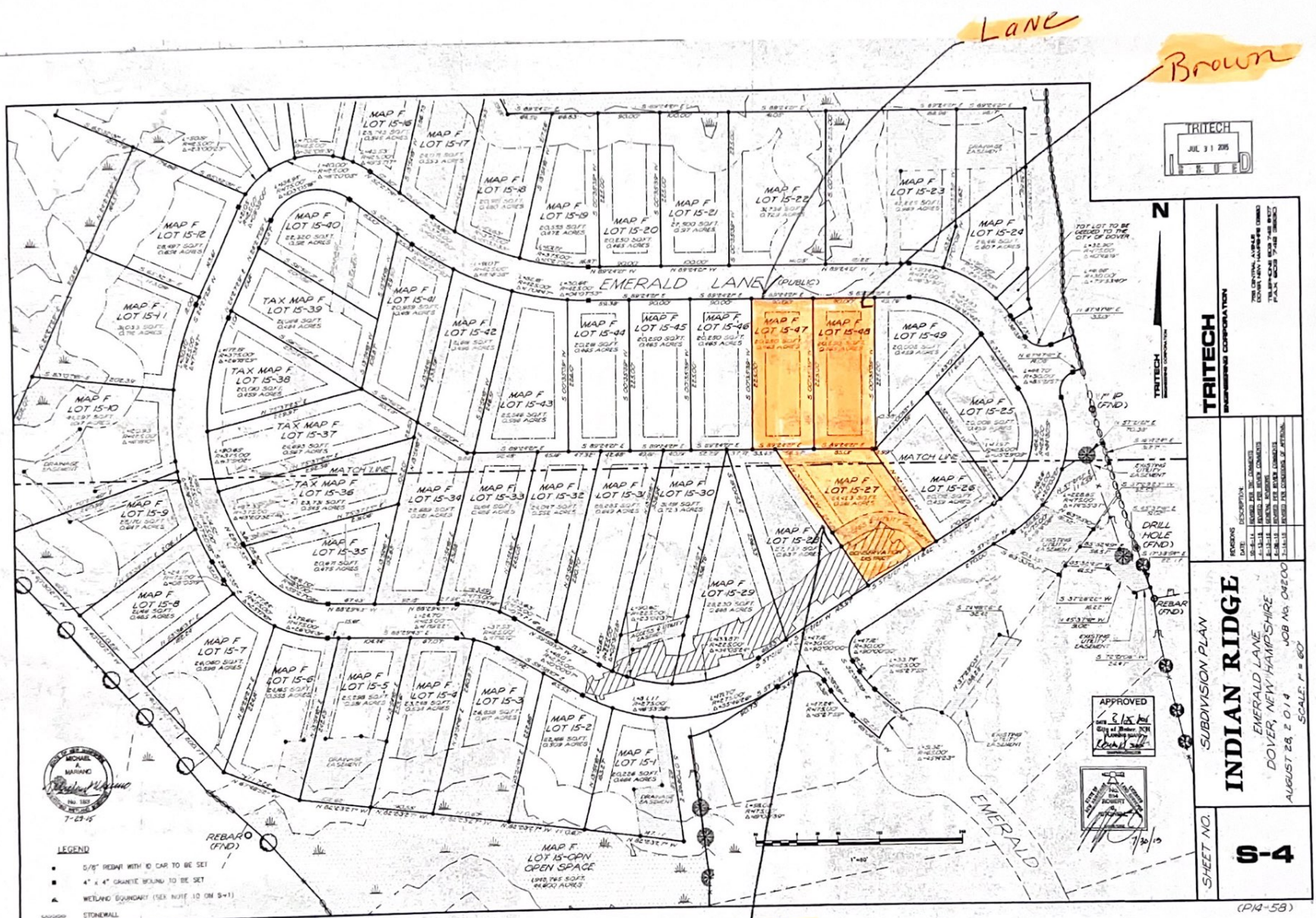
Brunt

Lane

Brown

EXHIBIT
1

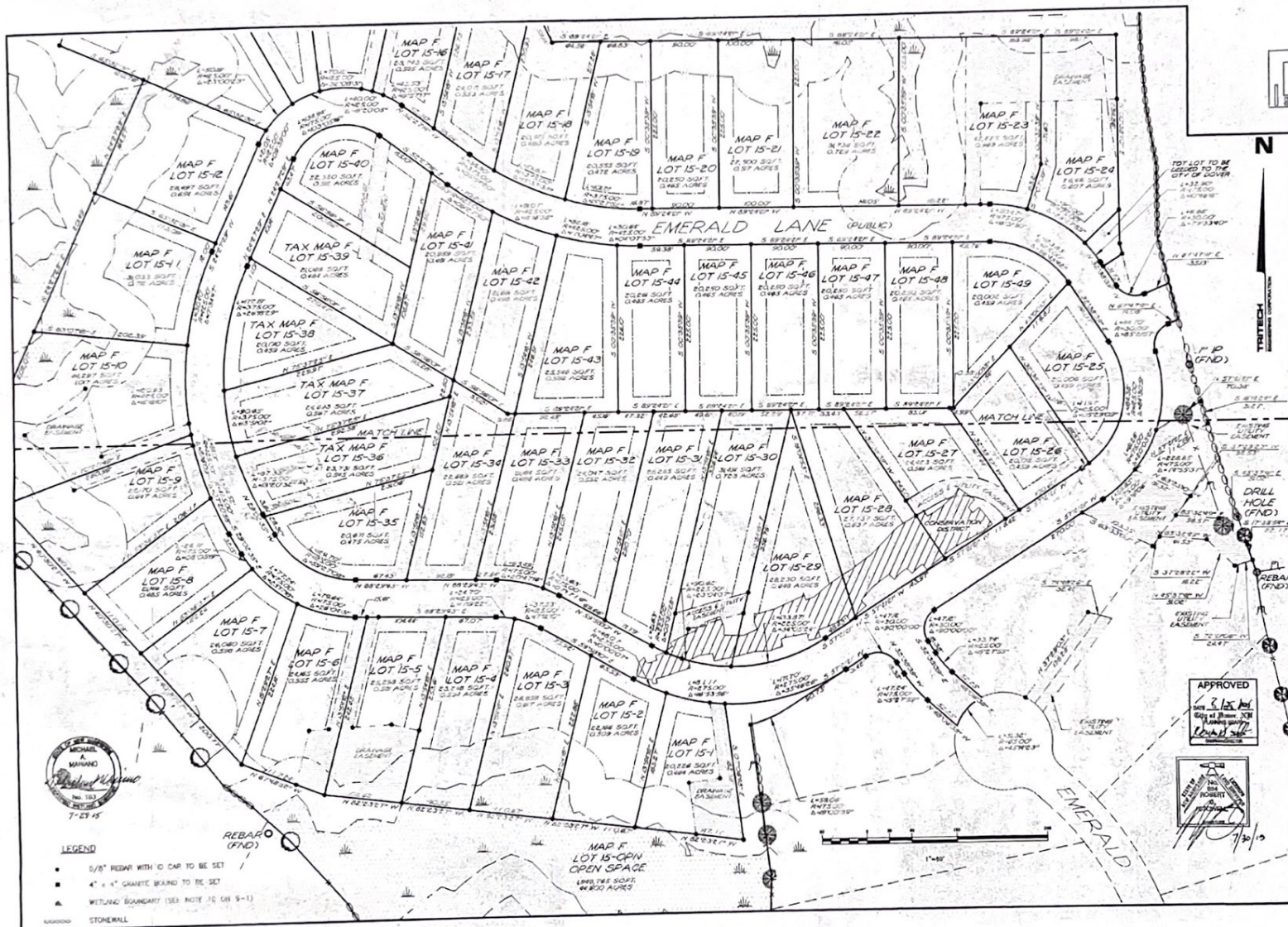
17



Brown

Lane

Brown



TRITECH
ENGINEERING CORPORATION

TRITECH
ENGINEERING CORPORATION

REVISION	DATE	DESCRIPTION
1	08/28/05	ISSUED FOR PERMITS
2	08/28/05	ISSUED FOR PERMITS
3	08/28/05	ISSUED FOR PERMITS
4	08/28/05	ISSUED FOR PERMITS
5	08/28/05	ISSUED FOR PERMITS
6	08/28/05	ISSUED FOR PERMITS
7	08/28/05	ISSUED FOR PERMITS
8	08/28/05	ISSUED FOR PERMITS
9	08/28/05	ISSUED FOR PERMITS
10	08/28/05	ISSUED FOR PERMITS

INDIAN RIDGE
EMERALD LANE
DOVER, NEW HAMPSHIRE
AUGUST 28, 2014
JOB NO. 04000
SCALE: 1" = 60'

SUBDIVISION PLAN
SHEET NO. **6-4**

(PM-58)

Exhibit 2 – February 9, 2022 Planning Department email to Mr.
Brown encouraging waiver/variance application

From: Kypfer, Natasha
Sent: Wednesday, February 9, 2022 2:34 PM
To: 'danabrown53@gmail.com'
Cc: Benton, Donna; Maxfield, Jim
Subject: Follow-up, 126 Emerald Lane

Dear Mr. Brown:

Thank you for taking the time to meet with myself and my colleagues, Planning Director Donna Benton and Building Official Jim Maxfield, yesterday afternoon at City Hall. Please allow this email to serve as a recap of what we discussed.

Our office identified during an on-site inspection on Monday, February 7th that your under-construction accessory structure ("garage") is most likely infringing upon the established Open Space Subdivision (OSS) rear property line setback and therefore would constitute a zoning violation.

Per the City of Dover's Land Subdivision Regulations §157-21(F), a twenty (20) foot setback is required, whereas your under-construction garage foundation sits approximately twelve (12) feet from the rear lot line.

Mr. Maxfield suggested that you suspend any further construction while this concern is reviewed and addressed, and you agreed.

As we discussed at our meeting, in our view there seem to be several potential options you may want to consider pursuing for coming into compliance:

- Move the structure to adhere to the established setbacks; or,
- Seek relief through a Variance before the Zoning Board of Adjustment (ZBA) at its discretion; or,
- Seek relief through an Equitable Waiver of Dimensional Requirements before the Zoning Board of Adjustment (ZBA) at its discretion (RSA 674:33-a).

At our meeting, we discussed the above options in detail, and provided you with the complete ZBA packet which includes both the application forms and the fee schedule. We also provided you with the Department's 2022 meeting schedule and the applicable regulations chapter, Article IV: Open Space Subdivisions, §157-19 through §157-22.

You mentioned your interest in retaining a Land Use Attorney to represent yourself as the applicant thus, once hired, if you or your attorney have further questions about the application process as you navigate the next steps, please let us know. We appreciate you working with us to remedy this situation.

Sincerely,

Natasha Kypfer
Assistant City Planner/Zoning Administrator



Exhibit 3 – Aerial shot showing tree buffer before Mr. Brown's tree cutting



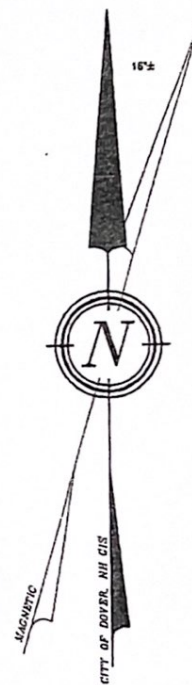
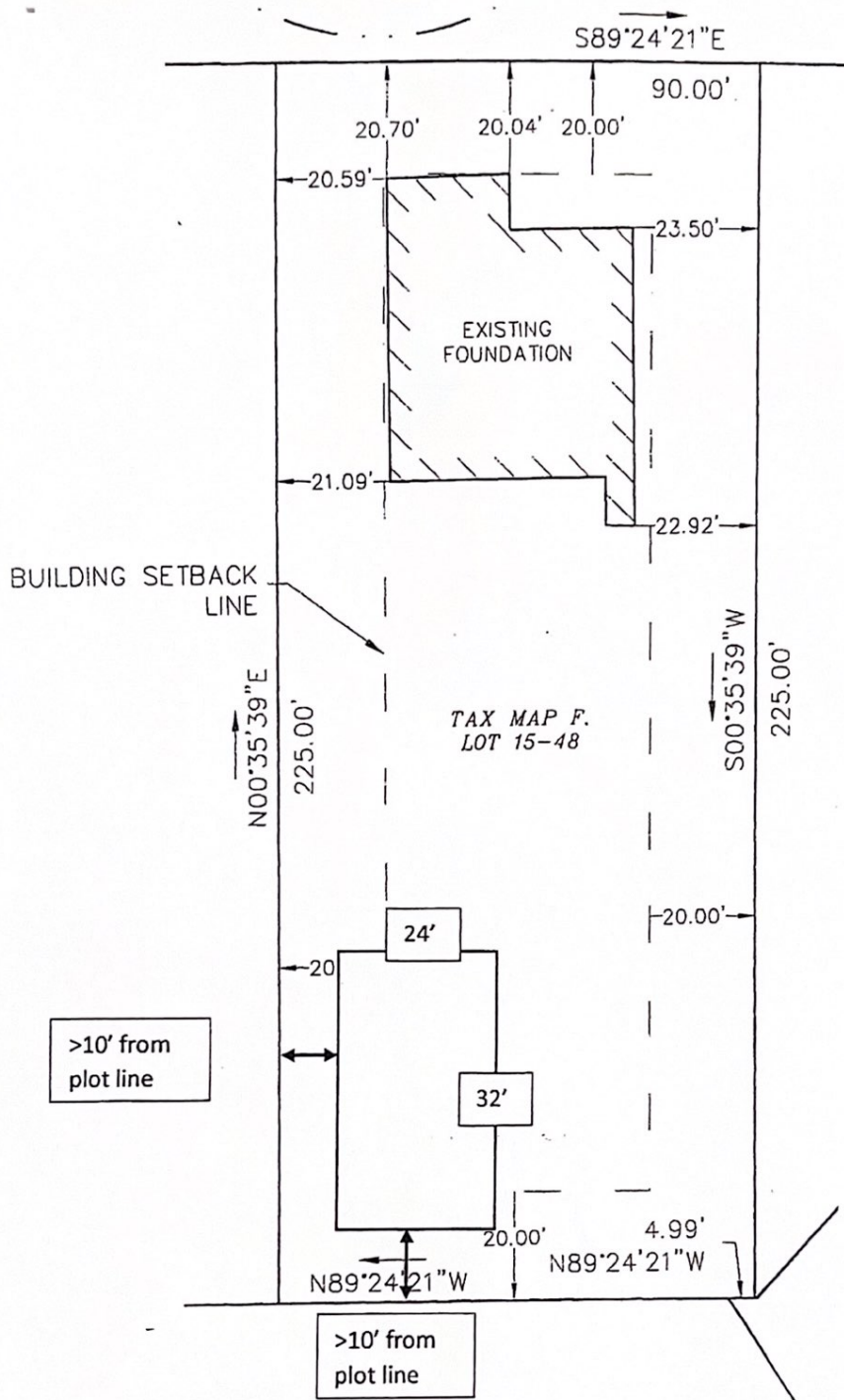
35



Exhibit 4 – Aerial View with Brown trees removed and garage
under construction

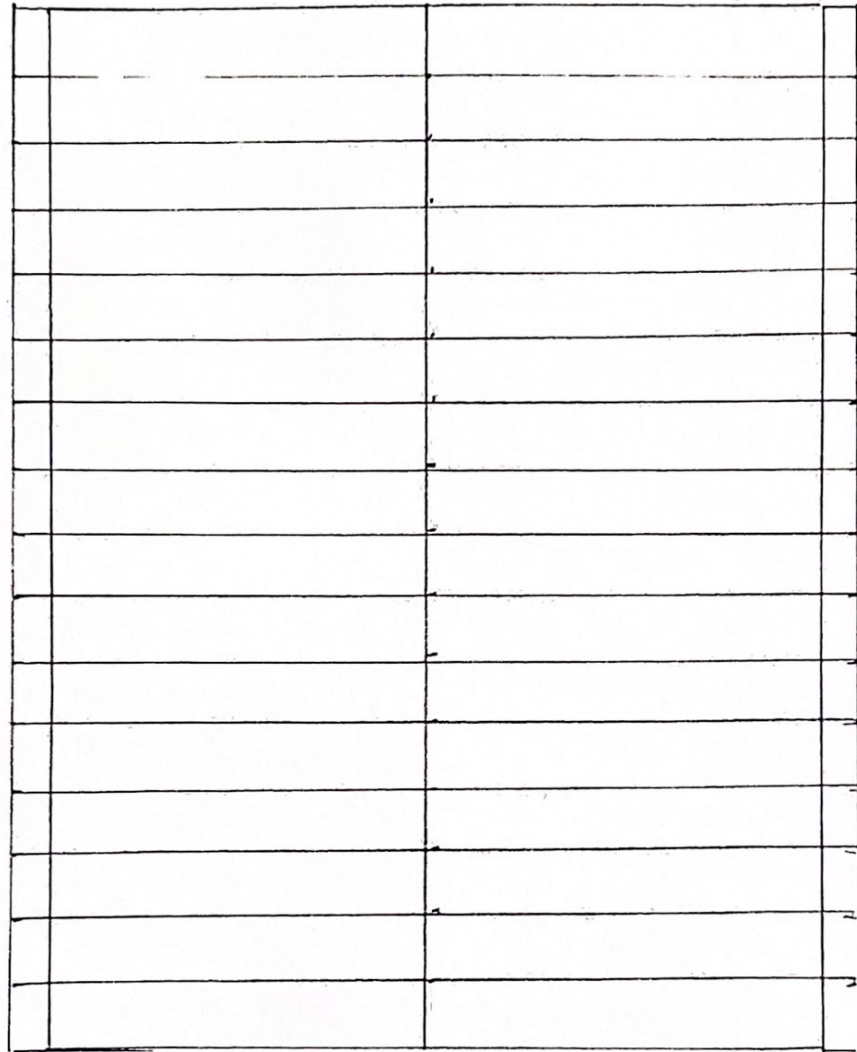


Exhibit 5 – Building permit material (including lot diagram presented by Brown showing the 20-foot setback lines and his proposed new construction sitting at about 10 feet (i.e. in violation of the 20-foot setback requirement)



DIMENSION PLAN

Rafter's



32'

24'

26'



CITY OF DOVER
APPLICATION FOR BUILDING PERMIT* OR CHANGE IN LAND USE

6/30/2021

Industrial _____ Commercial _____ Residential ☒

OFFICE USE ONLY

Building Permit 21-311
Est. Cost: \$36,000
Fee: \$325.00
Date: 7/1/21

Location: 126 Emerald Lane Dover, NH 03820 Zone: R-40 Map: F Lot: 15480

1. Owner's Name: DANA BROWN Tel: _____
2. Owner's Address: 126 EMERALD LANE Cell: 617-686-6838
3. Contractor's Name: Larry Roakes Roland Poulton Renovations Plus Inc Tel: 207-232-5050
4. Address: 16 Rocky Rd. Otisfield, ME 04274 Cell: 207-515-5624
5. Architect: MEDTON MELLIS 128 WELLEY Specs: _____ Plans: _____

Proposed Use: Storage and workshop (wood + Auto Hobby) No. Families: N/A

This Application For:

_____ Dwelling ☒ Garage _____ Shed _____ Pool _____ Alterations _____ Additions _____ Demolitions
_____ Change of Use _____ Removal _____ Other: _____

New Building or Addition Size: 24 x 32 No. Stories 1 No. Bedrooms 0

*NOTES TO APPLICANT:

1. Separate permits are required by the installers of plumbing, mechanical and electrical.
2. It is the applicant's responsibility to notify the Building Inspector's Office at 516-6038 for inspections upon completion of the following: Footings; Foundation; Framing; Sprinkler; Fire Alarm; Wiring; Plumbing; Mechanical; Insulation; and Final.
3. Construction features must be supplied on plans or separate listing as per the Building Permit Application Requirements.
4. The issuance of the Building Permit No. 21-311 to: Brown shall not be construed as a right to occupy and/or use such building or structure upon completion of work. A final inspection by the Building Inspector, with approvals (if applicable) from the Planning Director, Public Works Director, and Fire and Police Chief's are required prior to the issuance of a Certificate of Occupancy by the Building Inspector. Failure to comply with the foregoing could result in fines and/or legal action.

The above numbered permit is issued upon the condition that the building, structure or land use must conform in all respects to the provisions of the zoning ordinance and other applicable city ordinances. The City of Dover, by issuing the permit, does not express or imply that the ordinances have been complied with.

I, the undersigned, certify that the above information given is true and correct to the best of my knowledge. No major changes will be made without approval of the Building Inspector. Responsibility for compliance with the City ordinances is that of the applicant.

DANA BROWN

Applicant's Name (please print)

[Signature]

Applicant's Signature

[Signature]

Building Inspector's Signature

Applicant's Fee: \$325.00 Check#: 2513 Cash: _____ Date: 10-1-21 Initials: ET

White — Applicant's Copy

Canary — Inspector's Copy

Pink — Assessor's Copy

44

57

CITY OF DOVER

NEW HAMPSHIRE



BUILDING PERMIT

PERMIT NO. 21-311

DATE 7/12/21

This Certifies That DANA Brown DOVER
NAME OF OWNER ADDRESS OF OWNER

has permission To Construct

at 126 EMERALD LANE
ADDRESS WHERE WORK IS TO BE DONE

[Signature]
BUILDING INSPECTOR

IMPORTANT

This Building Permit (1) is subject to any applicable ordinances; (2) is void if work is not begun within six months of the above date; and (3) is issued based on the plans and/or specifications submitted.

This permit is not an authorization to occupy and/or use such building or structure upon completion of work.

THIS CARD MUST BE CONSPICUOUSLY POSTED AT THE FRONT OF THE PREMISES AND MUST NOT BE REMOVED UNTIL THE COMPLETED WORK HAS BEEN APPROVED BY THE BUILDING INSPECTOR.

7



James H. Maxfield
Building Official
J.maxfield@dover.nh.gov

262 Sixth St.
Dover, NH 03820-4169
Phone (603) 516-6038
Fax: (603) 516-6146

CITY OF DOVER, NEW HAMPSHIRE

OFFICE OF THE BUILDING OFFICIAL

PERMIT/PLAN REVIEW

THE FOLLOWING SHALL BECOME PART OF THIS PERMIT'S OFFICIAL RECORD

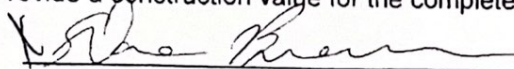
BP # 21-311

PG. 1 OF 1

LOCATION: 126 EMERALD LANE

PROJECT DESCRIPTION: CONSTRUCT A DETACHED GARAGE

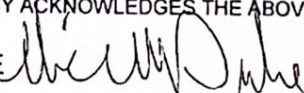
- 1) An approved temporary toilet facility must be on site for construction workers.
- 2) The structure shall be located in compliance w/ applicable zoning setback regulations. Contact Zoning Administrator @516-6008 with any questions. Provide proposed setbacks and how verification of setbacks will be accomplished.
- 3) Provide a dimensional floor, foundation, and elevation plans with structural plan showing joists, rafters direction and locations of beams as applicable.
- 4) Min. depth below grade for concrete footings = 48". Provide reinforcing steel in the top of wall and at the mid-span of foundation wall as required by IRC.
- 5) This permit is issued as an unheated garage. If heated/cooled the proposed R-values will need to comply with minimum requirements.
- 6) If habitable area above garage egress through garage is not permitted.
- 7) Posts must be attached to footings, beam attached to posts & joists attached to beam using approved fasteners.
- 8) Required stair dimensions: min. width = 36"; min. tread = 10" nosing-to-nosing; max. riser = 7 1/4"; w/ graspable handrail (34"-38") and guardrails installed (min height of 34" on stairs & 36" other locations w/ max. opening in railing system must be less than 4").
- 9) All building products associated with this building permit shall be installed in accordance with manufacturer's specifications. Note: Stair stringer spacing shall comply with ESR Report for specific decking product/manufacturer. Trex requires 9-12" spacing for stringers and joists.
- 10) The assigned address shall be properly displayed prior to occupancy (use a contrasting color in a location clearly visible from the street).
- 11) Provide a construction value for the complete scope of work.



THE OWNER/APPLICANT HEREBY ACKNOWLEDGES THE ABOVE COMMENTS

danabrown53@gmail.com

ORIGINAL TO APPLICANT; COPY TO FILE



DATE: 7/13/2021

47

BUILDING PERMIT APPLICATION REQUIREMENTS

This sheet must be completed and returned to this office along with your application

DESCRIPTION: <u>126 EMERALD GARAGE</u>	REQ.
A. BUILDING PERMIT APPLICATION	_____
B. PLOT PLAN (setbacks) OR FLOOR PLAN	_____
C. ZONING APPROVAL OF PLOT PLAN	_____
D. WETLANDS IMPACT ☐ NHDES PERMIT REQ'D <u>YES</u> <u>NO</u>	_____
E. LIST OF MATERIAL & CONSTRUCT SPECIFICATIONS (2 sets)	_____
F. CONSTRUCTION VALUE (labor & materials) \$ _____ (If owner doing work - Cost of material times 2 = const. Value)	_____

IF APPLICABLE:

CITY WATER _____ CITY SEWER _____ WELL _____

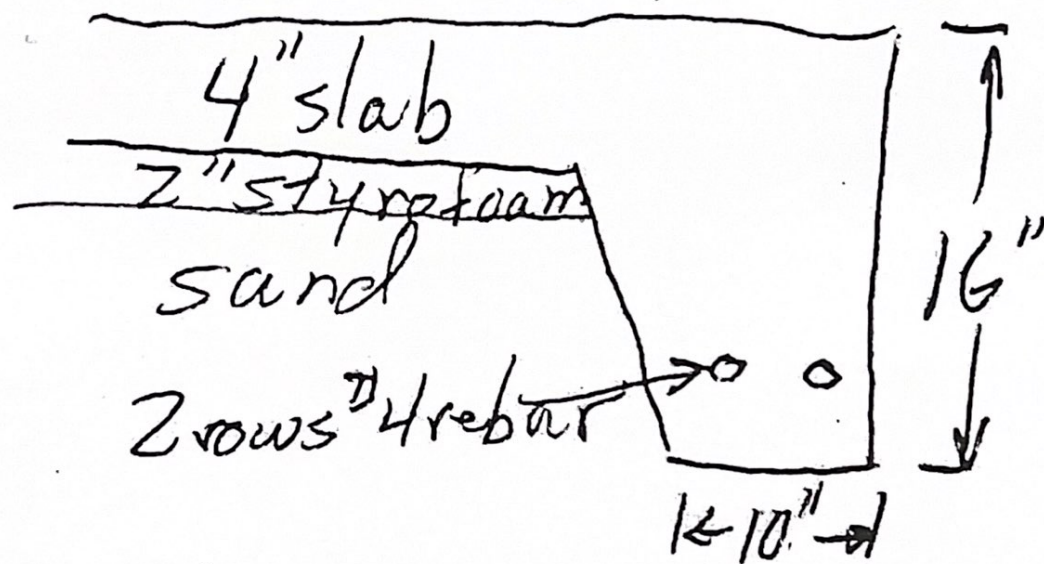
SEPTIC SYSTEM _____ APPROVED SEPTIC # _____

ELECTRICAL YES NO PLUMBING/MECH YES NO

Separate permits must be submitted for all electrical, plumbing and mechanical issues.

- ii. Material – PT 2" x 6"
 - iii. Anchoring method - Pins
- D. Type of Supporting Columns
- E. Main Girder info
- F. Joist Info: (for floors & ceilings)
- G. Sub-floor and underlayment details
- H. Exterior Wall Construction details
 - 1. Stud size – 2" x 6"
 - 2. Spacing – 16" OC
 - 3. Header details for all door and window openings – 2" x 10"
Where needed for weight bearing
- I. Rafter Info - Trusses
 - 1. Pitch 5/12
 - 2. Span 24'
- J. Ridge Board Size
- K. Exterior Sheathing info:
 - a. Walls – 5/8" Zip system
 - b. Roof – 7/16" OSB
- L. Exterior Siding – Vinyl
- M. Roof Covering – Asphalt Shingles
- N. Door and Window Schedule
 - a. (2) Garage Doors,
 - b. (1)
- O. Interior Wall Construction Details
- P. Min Finished Ceiling Height – 8'
- Q. Stairway Info:
- R. Energy Code Ingo:
- S. Ceiling Access
- T. Details of attic ventilation – Ridge & Soffit Vent
- U. Fire Separation Details – N/A

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Dube, Michelle

From: Dana Brown <danabrown53@gmail.com>
Sent: Monday, August 30, 2021 7:46 AM
To: Dube, Michelle
Subject: Re: couple more item needed for 126 Emerald Lane

Security Notice: External sender. Use caution with hyperlinks or attachments.

Michelle,

The ceiling will be at top plate and rafter size and ceiling size will be determined by the truss company. Please let me know if this answers the question, or if I should contact the Truss company for further details.

Thank you,
Dana

On Sun, Aug 29, 2021 at 11:21 AM Dube, Michelle <M.Dube@doover.nh.gov> wrote:

Mr. Abbott the Building Inspector who performs the plan reviews is asking about rafter size?, ceiling joist size and location (at top plate or elevated higher on rafter)?

Michelle Dube

"Take the first step in faith. You don't have to see the whole staircase, just take the first step."

Dr. Martin Luther King Jr.

Office Manager

Inspection Services, Dover Fire & Rescue
262 Sixth Street
Dover, NH 03820-4169
phone: (603) 516-6038 fax: (603) 516-6146

Dube, Michelle

From: Dana Brown <danabrown53@gmail.com>
Sent: Friday, August 13, 2021 4:20 AM
To: Dube, Michelle
Subject: Re: 126 Emerald Lane plan review
Attachments: Scan_Apr_23_2021 (4).pdf; Scan_2021-08-13_034847.pdf; Scan_2021-08-13_041905.pdf

Security Notice: External sender. Use caution with hyperlinks or attachments.

Michelle,

Responses to the questions below & attached. Please let me know if there are further questions.

- Provide proposed setbacks and how verification of setbacks will be accomplished.

Property has been surveyed, with markers. Measurements from markers will be used. Setback from back lot line, and back right lot line will be greater than 10 feet.

- Provide a construction value for the complete scope of work.

Value for complete scope of work of \$32,000

See attached sketch for dimensions and rafter direction.

Thank you,
Dana Brown
617-686-6838(m)

On Tue, Jul 13, 2021 at 2:49 PM Dube, Michelle <M.Dube@doover.nh.gov> wrote:

Hello Dana,

Attached is the plan review for your project.

The highlighted items needs a response for further review.

Please respond and I will have the inspect review and be in touch.

Michelle Dube
Secretary

Dover Fire & Rescue Inspection Services
262 Sixth Street

BUILDING PERMIT APPLICATION REQUIREMENTS

This sheet must be completed and returned to this office along with your application

DESCRIPTION: Half Bath addition to Garage Build

REQ.

A. BUILDING PERMIT APPLICATION

B. PLOT PLAN (setbacks) OR FLOOR PLAN

C. ZONING APPROVAL OF PLOT PLAN

D. WETLANDS IMPACT ☐ NHDES PERMIT REQ'D YES NO

E. LIST OF MATERIAL & CONSTRUCT SPECIFICATIONS (2 sets)

F. CONSTRUCTION VALUE (labor & materials) \$ \$4K
(If owner doing work - Cost of material times 2 = const. Value)

IF APPLICABLE:

CITY WATER _____ CITY SEWER _____ WELL _____

SEPTIC SYSTEM _____ APPROVED SEPTIC # _____

ELECTRICAL YES NO

PLUMBING/MECH YES NO

Separate permits must be submitted for all electrical, plumbing and mechanical issues.

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Dube, Michelle

From: Dana Brown <danabrown53@gmail.com>
Sent: Wednesday, November 10, 2021 9:38 PM
To: Abbott, Thomas
Cc: Dube, Michelle
Subject: 126 Emerald Permit

Security Notice: External sender. Use caution with hyperlinks or attachments.

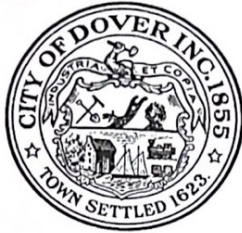
Mr Abbott,

I've changed builders from my original permit application. In the process the new builder is planning to put in a foundation rather than a monolithic slab that was planned and submitted in the permit application. Does the permit need to be updated to reflect the foundation change, and the new builders' contact information? Does the foundation need to be inspected prior to backfill?

Builder: Renovations Plus
Roland Poulin
207-232-5050
renovationsplusinc@yahoo.com

Thank you,
Dana Brown
617-686-6838(m)

53



James H Maxfield
Building Official
j.maxfield@dover.nh.gov

262 Sixth St.
Dover, NH 03820-4169
(603) 516-6038
Fax: (603) 516-6146

CITY OF DOVER, NEW HAMPSHIRE

OFFICE OF THE BUILDING OFFICIAL

PERMIT/PLAN REVIEW

THE FOLLOWING SHALL BECOME PART OF THIS PERMIT'S OFFICIAL RECORD

BP # 21-564

Pg. 1 OF 1

LOCATION: 126 EMERALD LANE

PROJECT DESCRIPTION: ADD BATHROOM TO GARAGE

- 1) Indicate if there was a new contractor and frost walls for original permit.
- 2) Required smoke & CO detectors must be installed in accordance with the International Residential Code 2015 edition and RSA 153:10-a. Contact Life Safety Insp., Rebecca Jalbert, @ 516-6038 re: compliance w/ State adopted Fire Code (i.e. Life Safety Code).
- 3) Bathroom should be a minimum of 60" inside finish dimension to maintain fixture clearances.
- 4) Ensure 30" of clearance at water closet and a minimum of 15" clearance from lavatory to wall.
- 5) Bathroom glazing within 60" of tub or shower less than 60" above floor requires safety glazing.
- 6) Construction shall conform to the adopted State of NH Fire and Building Codes with Amendments including the adopted energy code.
- 7) All building products associated with this building permit shall be installed in accordance with manufacturer's specifications.
- 8) The assigned address must be properly displayed prior to occupancy (use a contrasting color in a location clearly visible from the street).

THE OWNER/APPLICANT HEREBY ACKNOWLEDGES THE ABOVE
ORIGINAL TO APPLICANT; COPY TO FILE

DATE: 12/1/2021

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CITY OF DOVER
APPLICATION FOR BUILDING PERMIT* OR CHANGE IN LAND USE

11/10/21

Industrial _____ Commercial _____ Residential ☒

OFFICE USE ONLY

Building Permit 21-564
Est. Cost: \$4000
Fee: \$65
Date: 11/24/21

Location: 126 EMERALD LN DOVER NH Zone: R40 Map: F Lot: 15480

1. Owner's Name: DANA BROWN Tel: _____
2. Owner's Address: 126 EMERALD LN DOVER NH 03820 Cell: 617-686-6830
3. Contractor's Name: _____ Tel: _____
4. Address: _____ Cell: _____
5. Architect: _____ Specs: _____ Plans: _____

Proposed Use: Eventual Bathroom addition to garage build No. Families: 0

This Application For:

_____ Dwelling _____ Garage _____ Shed _____ Pool _____ Alterations _____ Additions _____ Demolitions
_____ Change of Use _____ Removal ☒ Other: Addition of plumbing for half bath (water, sewer, vent) to existing garage build + trenching + connection to Residence.

New Building or Addition Size: 5' x 5' No. Stories 0 No. Bedrooms 0

*NOTES TO APPLICANT:

1. Separate permits are required by the installers of plumbing, mechanical and electrical.
2. It is the applicant's responsibility to notify the Building Inspector's Office at 516-6038 for inspections upon completion of the following: Footings; Foundation; Framing; Sprinkler; Fire Alarm; Wiring; Plumbing; Mechanical; Insulation; and Final.
3. Construction features must be supplied on plans or separate listing as per the Building Permit Application Requirements.
4. The issuance of the Building Permit No. 21-564 to: Brown shall not be construed as a right to occupy and/or use such building or structure upon completion of work. A final inspection by the Building Inspector, with approvals (if applicable) from the Planning Director, Public Works Director, and Fire and Police Chief's are required prior to the issuance of a Certificate of Occupancy by the Building Inspector. Failure to comply with the foregoing could result in fines and/or legal action.

The above numbered permit is issued upon the condition that the building, structure or land use must conform in all respects to the provisions of the zoning ordinance and other applicable city ordinances. The City of Dover, by issuing the permit, does not express or imply that the ordinances have been complied with.

I certify that the above information given is true and correct to the best of my knowledge. No major changes will be made without approval of the Building Inspector. Responsibility for compliance with the City ordinances is that of the applicant.

DANA BROWN

Applicant's Name (please print)

Dana Brown

Applicant's Signature

[Signature]

Building Inspector's Signature

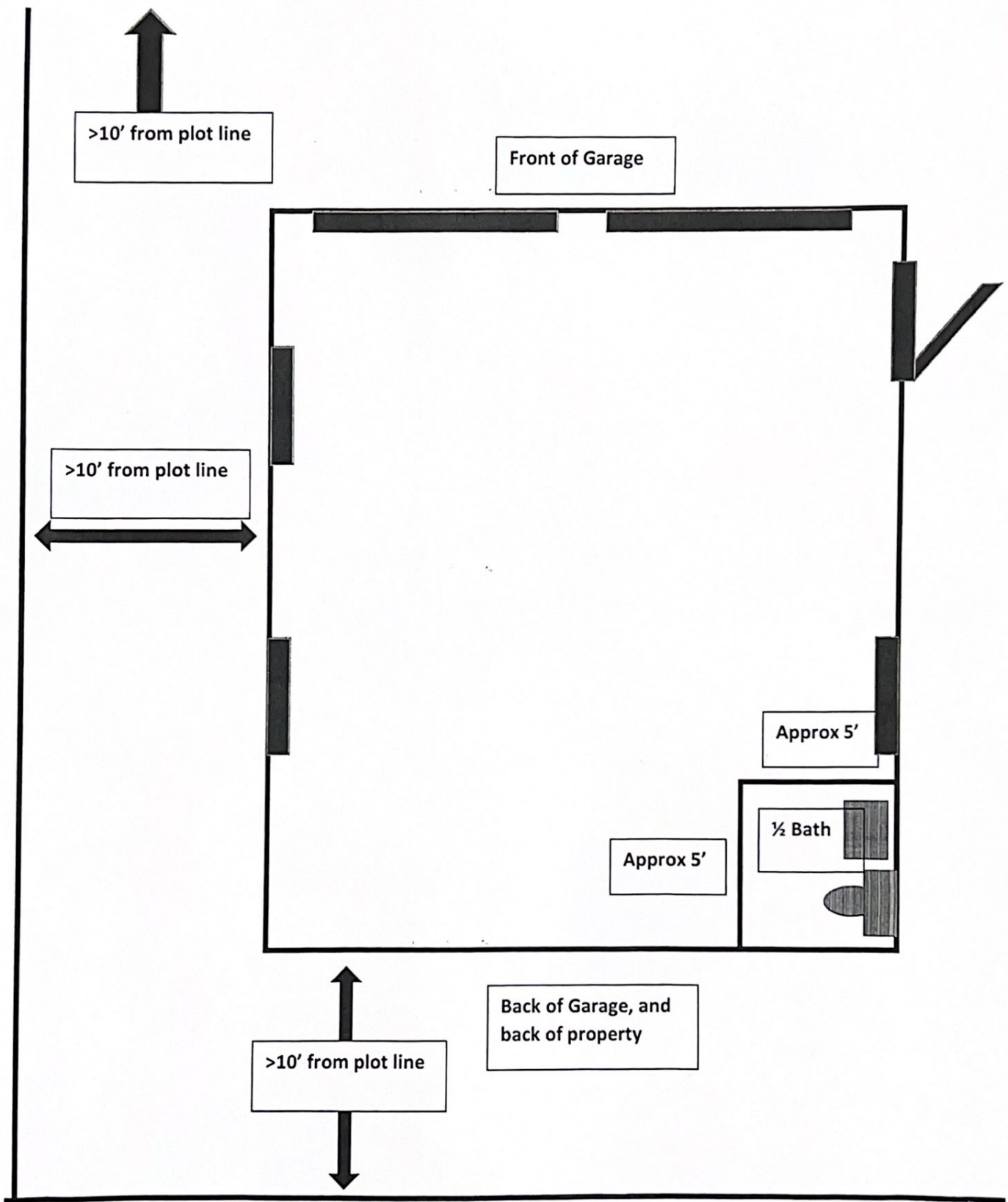
Applicant's Fee: \$65 (X) Check#: 2533 Cash: _____ Date: 11/4/2022 Initials: MB

White — Applicant's Copy

Canary — Inspector's Copy

Pink — Assessor's Copy

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CITY OF DOVER
NEW HAMPSHIRE



BUILDING PERMIT

PERMIT NO. 21-564

DATE 11/24/21

This Certifies That DANA BROWN
NAME OF OWNER DOVER
ADDRESS OF OWNER

has permission TO ADD BATHROOM TO GARAGE PROJECT

at 126 EMERALD LANE
ADDRESS WHERE WORK IS TO BE DONE

[Signature]
BUILDING INSPECTOR

IMPORTANT

This Building Permit (1) is subject to any applicable ordinances; (2) is void if work is not begun within six months of the above date; and (3) is issued based on the plans and/or specifications submitted.

This permit is not an authorization to occupy and/or use such building or structure upon completion of work.

THIS CARD MUST BE CONSPICUOUSLY POSTED AT THE FRONT OF THE PREMISES AND MUST NOT BE REMOVED UNTIL THE COMPLETED WORK HAS BEEN APPROVED BY THE BUILDING INSPECTOR.

65

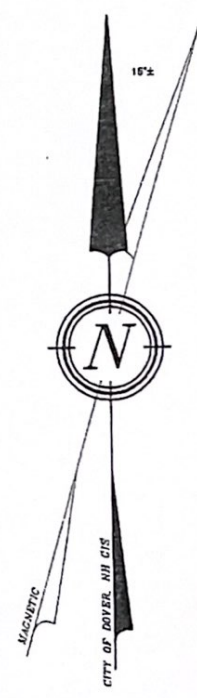
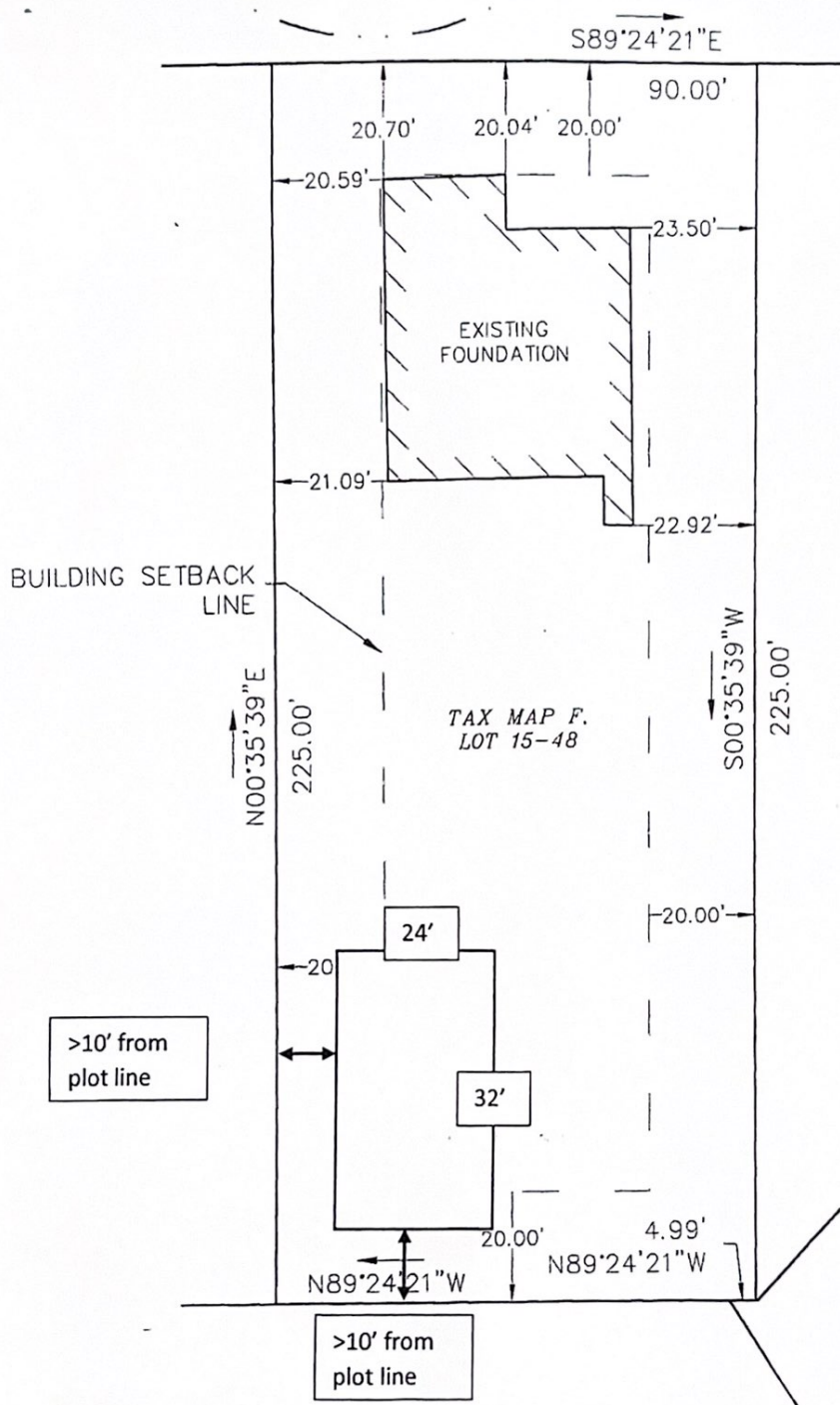


Exhibit 6 – Backside of new garage from viewpoint of the Brunt property





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Exhibit 7 – Photo of construction driveway and likely route of
eventual regular driveway



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Exhibit 8- R40 Dimensional Chart and footnotes

Rural Residential (R-40) District

Amended: 11-28-12 by Ord. No. 2012-11.14-24, Amended:10-13-21 by O – 2021.09.08 - 006



Permitted Uses

- ACCESSORY DWELLING UNIT
- ADULT DAY CARE [5]
- ASSEMBLY HALL
- Bank [5]
- Beauty and Barber Shop [5]
- BED and BREAKFAST
- CHILD CARE FACILITY
- CHILD CARE HOME
- Clinic
- CONSERVATION LOT
- Conversion of Existing Dwelling to Accommodate not more than 2 units [6]
- COUNTRY CLUB [7]
- Dwelling, 2 Family [8]
- Dwelling, 3 To 4 family [8]
- DWELLING, SINGLE FAMILY
- EDUCATIONAL INSTITUTION, K-12
- EXCAVATION [7]
- FARM [9]
- FARM ANIMALS FOR FAMILY USE, for non-commercial purposes, on lots containing a one or two family dwelling [10]
- Hospital
- MANUFACTURED HOUSING
- OFFICE [5] [11]
- PERSONAL SERVICE ESTABLISHMENT [5]
- PUBLIC RECREATION
- Public Utility
- Recreational Camp
- Retail Sale of Agricultural or Farm Products Raised on Site
- Theater [5]
- Veterinary Office, Animal Hospital or KENNEL [12]
- WHOLESALING of Farm Products [7]

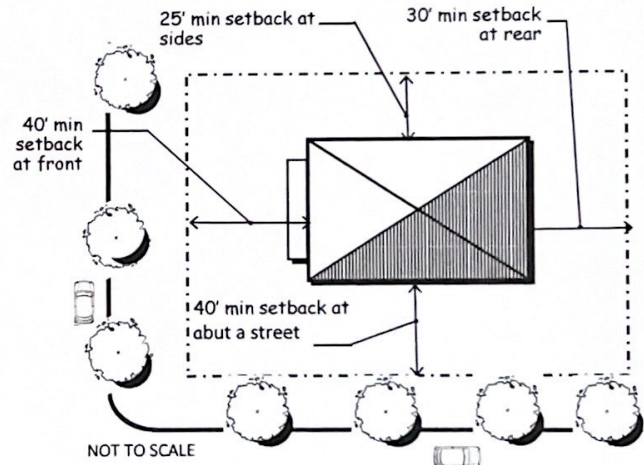
Uses Permitted by Special Exception

- ASSISTED LIVING FACILITY
- CONGREGATE CARE FACILITY
- CONTINUING CARE COMMUNITY FACILITY
- EDUCATIONAL INSTITUTION, POST SECONDARY
- ELDERLY ASSISTED CARE HOME
- Helicopter Take Offs & Landings
- JUNKYARD
- MANUFACTURED HOUSING Park
- NURSING HOME

Dimensional Regulations [1] [2]

LOT	
Minimum LOT Size [3] [4]	40,000 sf
Maximum LOT COVERAGE	10%
Minimum FRONTAGE	150 ft
PRINCIPAL BUILDING	
Front SETBACK	40 ft
Abut a Street SETBACK	40 ft
Side SETBACK	25 ft
Rear SETBACK	30 ft
OUTBUILDING/ACCESSORY USE	
Front SETBACK	40 ft
Abut a Street SETBACK	40 ft
Side SETBACK	10 ft
Rear SETBACK	10 ft
HEIGHT OF BUILDING	
PRINCIPAL BUILDING	35 ft max
OUTBUILDING	35 ft max

Principal Building Placement



Sign Regulations

Size	R-40 District
Total signs permitted	1
Total area permitted	16 sf (customary home occupation sign 2 sf max, development identification SIGN 20 sf max)
Type	
FREESTANDING	permitted (10 ft setback required)
PROJECTING	permitted
WALL/ Awning	not permitted
Temporary	not permitted



Rural Residential (R-40) District



Footnotes

- [1] In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in 157-21 of the Code of the City of Dover, 1983.
- [2] Refer to 170-13, 170-14 and 170-27D for exceptions to lot size, frontage and setback requirements.
- [3] All land containing wetlands shall not be counted in determining the gross land area of a lot for the purposes of minimum lot size or minimum density requirements for residential uses. The minimum non-wetland portion of any newly created lot shall be contiguous. For the purposes of this calculation, wetlands shall include areas that meet the definition of wetland in the NH Code of Administrative Rules – Wt. 101.87 and the 1987 Federal Manual For Identifying Jurisdictional Wetlands. Wetland buffers shall only be allowed to count for 40 percent of the minimum lot size required.
- [4] Refer to Chapter 157, Subdivision of Land, Article IV for the minimum lot size for a major Subdivision. In an R-40 district, any major subdivision must follow the procedures for an Open Space Subdivision (OSS).
- [5] Use is allowed as a commercial component to an Open Space Subdivision. (See 157.21 section 7).
- [6] Any dwelling unit, may be converted, not replaced, provided that the lot shall contain at least four thousand (4,000) square feet per dwelling unit and a minimum floor area of five hundred (500) square feet per dwelling unit.

2 family dwellings shall be designed to look like single family dwellings (i.e. the 2 family dwelling should not look like it was designed to occupy more than one family). At a minimum, this shall mean that only one entrance shall be visible from a public street, and only one driveway shall exist with no on street parking required for residents.
- [7] Use is not allowed as a commercial component to an Open Space Subdivision. (See 157.21 section 7).
- [8] Use is allowed when included within an Open Space Subdivision with commercial components. (See 157.21 section 7).
- [9] FARM ANIMALS permitted, provided that the tract upon which such animals are kept shall support a minimum land area of one hundred thousand (100,000) square feet. In no instance shall the shelters used to contain said animals be closer than one hundred (100) feet from any property boundary.
- [10] Use is allowed on the portion of the lot that is behind the principal structure, provided the following standards are met: Chickens: No more than six (6) chickens and no roosters, with three (3) square feet of chicken coop and twenty (20) square feet of a fenced enclosure yard per chicken; all coops and enclosures shall be twenty (20) feet from any property line. Sheep or goats: one animal per 10,000 square feet of lot area, with a maximum of six (6) animals; ten (10) square feet of shelter and thirty (30) square feet of a fenced enclosure yard per animal; all shelters and enclosures shall be thirty (30) feet from any property line.
- [11] Permitted only if operated as a customary home occupation (Refer to definition in 170-6B)
- [12] Veterinary Office, Animal Hospital uses are allowed as a commercial component to an Open Space Subdivision. (See 155.22 section 7). Shelters and runs used to house and/or contain animals shall be no closer than one hundred (100) feet from any property line and must support a minimum tract size of one hundred thousand (100,000) square feet.

Special Exception Criteria

ASSISTED LIVING FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 sf of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

CONGREGATE CARE FACILITY: CONGREGATE CARE FACILITY is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-40 District in areas not serviced by City water and sewer utilities at a density of one unit per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one unit per 7,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

CONTINUING CARE COMMUNITY FACILITY:

- A. The facility shall be serviced by municipal sewer.
- B. The density per unit requirement is 7,500 square feet of lot area in the R-40 District.
- C. Parking lots and service areas are screened from abutting residential uses.
- D. The facility shall obtain a license from the State of New Hampshire.

ELDERLY ASSISTED CARE HOME: ELDERLY ASSISTED CARE HOME is allowed by Special Exception in accordance with the densities and provisions stated below:

- A. ELDERLY ASSISTED CARE HOMES larger than 6 bedrooms shall meet the following density requirements: In the R-40 District in areas not serviced by City water and sewer utilities at a density of one bedroom per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one bedroom per 7,500 sq. ft.
- B. Provided that parking and service areas are screened from abutting residential uses.
- C. Notwithstanding the above requirements, the maximum number of bedrooms and residents allowed in a facility may be increased provided the increase is found not to be detrimental to the surrounding properties and conforms with parking standards in Chapter 170-44 (Off Street Parking). Furthermore, any increase to an existing structure must be contained within or contiguous to the original structure. [Added 01-22-03 by Ord. No. 35-02]

Helicopter Take offs and Landings: Helicopter take offs and landings are allowed as a special exception subject to the following conditions:

- A. There shall be a distance of one thousand (1,000) feet between any existing residential structure and any proposed helicopter landing pad.
- B. Except in the case of an emergency, no helicopter take offs or landings shall occur between the hours of 9:00 p.m. and 7:00 a.m.
- C. The facility shall be accessory to the principal use located on the lot.
- D. All facilities shall be located and designed so that the operation thereof will not adversely affect adjacent residential areas, particularly with respect to noise levels.
- E. The conditions for granting a Special Exception, contained in Chapter 170-52-C(3), must also be satisfied

JUNKYARD: A JUNKYARD may only be permitted upon the determination that the property values of land adjacent to such use will not be compromised. Conditions may include but not be limited to the provision of adequate and properly maintained screening around land so used.

MANUFACTURED HOUSING Parks: MANUFACTURED HOUSING parks shall be subject to the following regulations:

- A. The proposed park must conform to the Manufactured Home Chapter of the Code (Ch. 126, Manufactured Home Parks)
- B. All plans for the proposed park must have been granted preliminary approval from the Dover Planning Board.
- C. A determination by the Zoning Board of Adjustment that the proposed MANUFACTURED HOUSING will not adversely affect overall land values in the neighborhood.
- D. A determination by the Zoning Board of Adjustment that the proposed MANUFACTURED HOUSING will not result in the creation of hazardous traffic conditions.

NURSING HOME: NURSING HOME is allowed as a Special Exception in accordance with the density and provisions stated below:

- A. In the R-40 District in areas not serviced by City water and sewer utilities at a density of one bedroom per 10,000 sq. ft. of land; in the R-40 District in areas serviced by City water and sewer utilities at a density of one bedroom per 7,500 sq. ft. of land;
- B. Provided that parking and service areas are screened from abutting residential uses.

Exhibit 9 – Lane to Planning Dept. (Ms. Kypfer) email of
2.3.2022 (4:47 p.m.)

From: Garry Lane <garrylane2@mac.com>
Date: February 3, 2022 at 4:47:06 PM EST
To: "Kypfer, Natasha" <N.Kypfer@doover.nh.gov>
Cc: "Glidden, Jean" <J.Glidden@doover.nh.gov>
Subject: Re: Follow-up, 126 Emerald Lane

Thanks, Natasha. From my review the City zoning ordinance, my interpretation as a lawyer, is that the building permit was improperly granted and the allowed building violates the allowed 10 percent lot coverage rule. The building inspector apparently assumes lots in R40 are at least 40,000 square feet and, in applying the 10 percent rule, he uses the assumed lot size. That is totally a violation of the law and a completely unreasonable reading of the ordinance. Also, how the city can allow a building to be constructed without a driveway alteration permit in place (with proper side yard set backs and drainage analysis) is shocking. Looks like this will quickly be headed to litigation. I hope the City will take action to correct this situation. Garry

Sent from my iPhone

On Feb 3, 2022, at 4:04 PM, Kypfer, Natasha <N.Kypfer@doover.nh.gov> wrote:

Hello Garry,

Thank you for your follow-up email and phone call.
The day got away from me with meetings and deadlines, so I will ring you back tomorrow morning.

Kind regards,

Natasha Kypfer
Assistant City Planner/Zoning Administrator
City of Dover, New Hampshire
288 Central Avenue
Dover, NH 03820-4169
e: n.kypfer@doover.nh.gov
p: 603.516.6008 f: 603.516.6049

Dover: First in New Hampshire, First with you!



Exhibit 10 – Planning Dept. (Ms. Benton) email to Lane of
2.3.2022 (5:35 p.m.)

From: "Benton, Donna" <d.benton@dover.nh.gov>
Date: February 3, 2022 at 5:35:04 PM EST
To: garrylane2@mac.com
Cc: "Kypfer, Natasha" <N.Kypfer@dover.nh.gov>, "Wyatt, Joshua" <J.Wyatt@dover.nh.gov>, "Maxfield, Jim" <J.Maxfield@dover.nh.gov>
Subject: Follow-up, 126 Emerald Lane

Hello Attorney Lane,

Thank you for your email which was forwarded to me by Jean Glidden with your inquiry into lot coverage and improper issuance of a building permit within the Indian Ridge Subdivision, along Emerald Lane.

If you refer to the zoning table for the Rural Residential (R-40) District under the Dimensional Regulations section there is reference at the top by the header to footnotes 1 and 2 which refer to the Open Space Subdivision regulations. The footnotes read:

[1] In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in 157-21 of the Code of the City of Dover, 1983.

[2] Refer to 170-13, 170-14 and 170-27D for exceptions to lot size, frontage and setback requirements.

Please note, the above was also in place in the 2014 version of the regulations (which were in effect when the Planning Board granted their approval for the subdivision on July 31, 2015).

The intent of the footnotes and Open Space Regulations in general is such that in an open space subdivision, with cluster arrangements, have reduced lot size and therefore no established minimum lot coverage as shown on the zoning note on the approved subdivision plan. Section 157-21. F (Dimensional Requirements) only state minimum lot size, minimum frontage, and minimum buffer, then minimum distance around individual units, and minimum building setbacks for dimensional requirements. So a building permit can be released as the 10% lot coverage is not a factor in Open Space Subdivisions similar to reduced frontage, setbacks, and reduced lot sizes allowed.



Outbuildings and/or additions are allowed to be built without driveways. If a new curb cut is proposed or a driveway change in the amount of impervious surface, then the Community Services Department would review the driveway permit and stormwater plan accordingly.

If you feel there are violations to the zoning or subdivision regulations, please let us know by submitting a complaint form and we will gladly review.

Happy to continue the dialogue if you have further questions.

Take care,

Donna

Donna Benton, AICP

Director of Planning and Community Development

City of Dover, NH

288 Central Avenue

Dover, NH 03820-4169

e: d.benton@doover.nh.gov

p: 603.516.6008 f: 603.516.6049

Dover: First in New Hampshire, First with you!

www.dover.nh.gov

<http://dovernhplanning.tumblr.com/>

Facebook: <https://www.facebook.com/DoverNHPlanning>

Twitter: @DoverNHPlanning

From: Garry Lane <garrylane2@mac.com>

Sent: Thursday, February 3, 2022 4:47 PM

To: Kypfer, Natasha <N.Kypfer@doover.nh.gov>

Cc: Glidden, Jean <J.Glidden@doover.nh.gov>

Subject: Re: Follow-up, 126 Emerald Lane

Security Notice: External sender. Use caution with hyperlinks or attachments.

Thanks, Natasha. From my review the City zoning ordinance, my interpretation as a lawyer, is that the building permit was improperly granted and the allowed building violates the allowed 10 percent lot coverage rule. The building inspector apparently assumes lots in R40 are at least 40,000 square feet and, in applying the 10 percent rule, he uses the assumed lot size. That is totally a violation of the law and a completely unreasonable reading of the ordinance. Also, how the city can allow a building to be constructed without a driveway alteration permit in place (with proper side yard set backs and drainage analysis) is shocking. Looks like this will quickly be headed to litigation. I hope the City will take action to correct this situation. Garry

Sent from my iPhone

Please consider conserving our natural resources before printing this e-mail and/or any attachments.

This electronic message and any attachments may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. It is intended only for the use of the person and/or entity identified as recipient(s) in the message. If you are not an intended recipient of this message, please notify the sender immediately and delete the material. Do not print, deliver, distribute or copy this message, and do not disclose its contents or take any action in reliance on the information it contains unless authorized to do so. Thank you.

Exhibit 11 – Lane Friday Feb. 4, 2022 email (10:21 a.m.)

emailed
10:21 a.m.
2/4/2022

To: Donna Benton , Dover Director of Planning and Community Development
From Garry Lane, owner of 130 Emerald Lane property
2/4/2022
Re: 126 Emerald Lane 126 monster second garage

Donna –

Please note that I send this letter on my own behalf as a landowner and not as a member of the HOA Board of Directors. Also, although I am a lawyer, I am not representing anyone in this matter other than myself.

Thank you for your email response yesterday about the large garage that is being built on 126 Emerald Lane, the lot immediately adjacent to ours at 130 Emerald. While I appreciate the time you took to respond, I respectfully disagree with your position. To summarize what you said, you claim that the maximum lot coverage rules of the R40 district do not apply to open space developments because footnote 1 to the R40 chart (which includes dimensional restrictions) states that the dimensional requirements in the case of open space developments in R40 shall be as specified in Code section 157 -21. That section, however is silent as to lot coverage. It contains a minimum all sides 20- foot set back for any building (the building under construction is only 12 feet from the property lines). Thus, in my opinion, the open space dimensional requirements of 157-21 only replace the various property line setback requirements of the general R40 dimensional rules but do not replace the maximum lot coverage rule (maximum 10%). If the 157-21 open space code provision expressly stated that there shall be no maximum lot coverage restriction, then I would agree that that provision was intended to supplant the R40 coverage restriction rule. As it simply does not address lot coverage, it cannot be deemed to replace the general R40 maximum coverage rule. And, any rule that expressly stated that there are no maximum lot coverage rules in a subdivision like ours would be a disaster, as explained a couple paragraphs down.

As Code section 157-55 provides, "In any case where this chapter is in conflict with any other regulations, ordinances or laws in effect in the City, the more restrictive regulations or provisions of law shall prevail." The more restrictive rule, of course, is the 10 percent rule not a rule that allows any amount of coverage as long as the 20 foot perimeter is met.

Apart from the Code 157-55 conflict provision, common sense demonstrates that your position is not a reasonable argument. Based on your argument that the rule on maximum coverage does not apply, someone could take one of our 0.47 acre lots (approximately 90 x 227 feet) and lawfully build a house that was 50 feet wide and 187 feet deep. That would be a massive 9350 square foot home if it was only one story. If it was the typical two story house, someone would be able to build an 18,700 square foot home on our 0.47 acre lot. I don't believe a court would



accept your reading of the Code provisions as that interpretation would lead to an absurd result.

Also, I had the chance to go out this morning and measure the location of the foundation from the rear and side property lines. That distance is approximately 12 feet. The rule for R40 open space subdivisions is 20 feet not the ten feet in the regular R40 subdivisions.

As to driveway permits, I again do not see how it is reasonable for the City to approve the construction of a massive, completely out of place two car garage structure on the assumption that it won't need a driveway. Again, not a compelling argument to make to a court. Whether the Browns put in a gravel drive, a paved drive or just drive their cars in and out of the garage by a grass driveway, they are still expanding their driveway. You then state that "If a new curbcut is made or a "driveway change in the amount of impervious surface, then the Community Services Department would review the driveway permit and stormwater plan accordingly." However, that approach would completely ignore the City Code driveway provisions in the case of any drive that was made of gravel or grass. I assume the Browns would not attempt to expand their curbcut and I assume, thus, that they will drive their cars from the new garage to their existing driveway and exit to the street through the existing curbcut. That still requires a driveway permit and drainage review.

Code section 157-50 provides:

"It shall be unlawful to construct, reconstruct, alter, surface or resurface any driveway in a manner which affects the size, elevation or grade of such driveway until the Community Services Director has reviewed and approved of such construction or alteration and has issued a written permit for such work. No permit shall be required for any existing driveway, entrance or approach unless the grade, elevation, location or width of said driveway is changed. For purposes of this section, any driveway so constructed, reconstructed, altered, surfaced or resurfaced as indicated above which abuts or is clearly designed to provide access to a public way as defined by RSA 259:125 shall be presumed to be situated within the right-of-way."

I have not measured the distance from the Brown's driveway (say midsection) to the new garage but it's probably over a hundred feet. That is a major alteration of their existing driveway. The first time they drive one of their cars to that garage, they are using that lawn as a driveway. If your interpretation of when Community Services needs to review a new driveway, they would not review the grass driveway that would soon produce two tire tracks of packed top soil. If the driveway did not have to go through approvals, the Browns may not respect the minimum 5 foot set back required from our property line for a driveway. Water will run down hardpacked soil about as easily as it could on a paved drive.

The drainage issues are already potentially a problem in this development because, as I understand it, the developers' engineers' calculations on run off (for the complex legally required drainage system and bio retention ponds) assumed that all the trees on the inner circle of our development would be preserved. As you know, trees soak up tremendous

amounts of water. However, the developers failed to protect those trees in their development restrictions (to their own surprise apparently) and the City apparently missed the problem too. Thus, the Browns, to everyone's great chagrin, were allowed to cut down almost every tree in their back yard. That alone will put additional runoff burden on our development's drainage system. And, now, with this massive garage, the problem will be magnified further. Add a driveway, packed soil, pavement or whatever, and the runoff from their lot will put additional stress on our bio ponds. One of those already failed when the developers were still in charge of the property. Another failure might cost residents of our subdivision \$20,000 to fix a bio pond. So, my concerns about the removal of the trees, the addition of a massive roof that will concentrate water streams, and soon, a 100 foot plus long driveway, are not trivial concerns. So, I believe the City cannot escape its obligations to analyze the effects of a driveway by saying the rules only apply to paved drives or only apply if someone tries to expand the curbcut. This all should have been addressed before the building permit was approved. It's also not reasonable to say that the City allows outbuildings to be built without driveways. That is not a reasonable position given that the construction of a massive two car garage necessarily means a driveway will follow.

Even if you disagree with everything I've said except for the 20 foot set back requirement for a "building" (which this structure meets the definition), the Browns have built their building with only about a 12 foot setback. That is a major code violation.

I have reviewed the City's regulations on line and it is possible that some regulation has been updated. If I am quoting any provision that is out of date, please let me know. Thank you for your consideration. Thank you for your consideration. Garry Lane 603 507 7527
garrylane2@mac.com.

Exhibit 12 – Ms. Benton Feb. 4, 2022 email (10:40 a.m.) to
Lane acknowledging receipt of Lane 2.4 email letter

From: "Benton, Donna" <d.benton@doover.nh.gov>
Date: February 4, 2022 at 10:40:12 AM EST
To: Ben Brunt <ben@benbrunt.com>, Garry Lane <garrylane2@mac.com>, "Kypfer, Natasha" <N.Kypfer@doover.nh.gov>
Cc: Leon Lapierre <leesusanlapierre@outlook.com>, Marcia Lane <marcialane125@gmail.com>, "Wyatt, Joshua" <J.Wyatt@doover.nh.gov>
Subject: Re: 126 Emerald Lane - unlawful garage construction

Thanks for the correspondence. We will come out next week to check it out in person and will review your attachment.
Have a great weekend,
Donna



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Exhibit 13 – Lane email sent separately to Mrs. Brown and to Mr. Brown advising construction violates setback rule and lot coverage rule. May want to pause construction.

From: Garry Lane <garrylane2@mac.com>

Date: February 6, 2022 at 6:23:49 PM EST

To: Dana Brown <danab10@hotmail.com>, sherribrown53@gmail.com

Cc: Garry Lane <garrylane2@mac.com>, Marcia Lane <marcialane125@gmail.com>

Subject: Garage construction

See next
page



February 6, 2022

Dana and Sherry,

One of the reasons we selected this neighborhood of small lots to build our retirement home is that we wanted to be part of a community. We wanted to be part of a cordial neighborhood and not part of one where neighbors fight. Maintaining good relations with our neighbors is very important to us. For that reason, this is a very difficult message for us to write. However, we feel forced to write this message and we want you to hear this from us first rather than through the grapevine or through the City Planning and Zoning officials. We have expressed our concern both verbally and in writing to the City concerning the enormous garage you are building. From what we can tell, many others in the neighborhood have complained as well. Further, we plan to file, on our own behalf, a formal complaint with the City of Dover regarding the construction of your very large garage in your backyard and, in addition, the lack of any driveway application, runoff analysis or permit.

We understood that you had a plan to construct a small garage to store your antique car. You advised the HOA President, Lee Lapierre, that this was going to be a small garage to house one car. Clearly what you told Lee was not accurate. Thus, it was your unilateral choices including choosing not to inquire first how your neighbors might feel about this - without considering the effects on others, the effects on market value - that now puts all of us in this awkward position.

This past week, when the sides were raised on the building, we were absolutely shocked at the size and height of the garage. Unfortunately, it is very visible in the living area of our home which is in the back of our house. It saddens us to not have a view of the trees that were originally there, but this garage view is so very upsetting to us. It is not what we expected in our retirement home, when we purchased a small lot in an upscale neighborhood. We are also very concerned about the impact that this building will have on the value of our property and the property of other abutters. Further, although we believe that the building does not comply with zoning regulations, if the City allows your building to stand, others, whether current landowners or future ones, will realize that they can do this as well, cut down the trees, put up a massive garage or other similar building. It will absolutely destroy the character of this neighborhood, the value of properties in this development and the equity that many of us have built with hard work over many years.

Upon review of Dover planning and zoning ordinances (including, among other requirements, setback requirements and maximum lot coverage rules), we do not believe that this garage complies with either the 20-foot set back rule for open space developments in R40 or the 10% maximum lot coverage regulations and should not be allowed to remain standing. While it is certainly up to you (and perhaps City officials), you may want to consider delaying further construction while the dispute of the zoning regulations plays out in the City boards and then in the courts, if necessary.

We are sorry to have to raise this issue; however, you did not consider the impact on your neighbors before commencing this construction or even talk to us to see how we might feel. Each of our individual choices in a neighborhood this close can adversely affect other neighbors – both happiness-wise and financially. Thus, regrettably, we feel you have forced us to take the course we are now on.

Garry and Marcia Lane

Exhibit 14 – 7:41 a.m. Monday, February 7, 2022 photograph of
new construction with one roof truss only

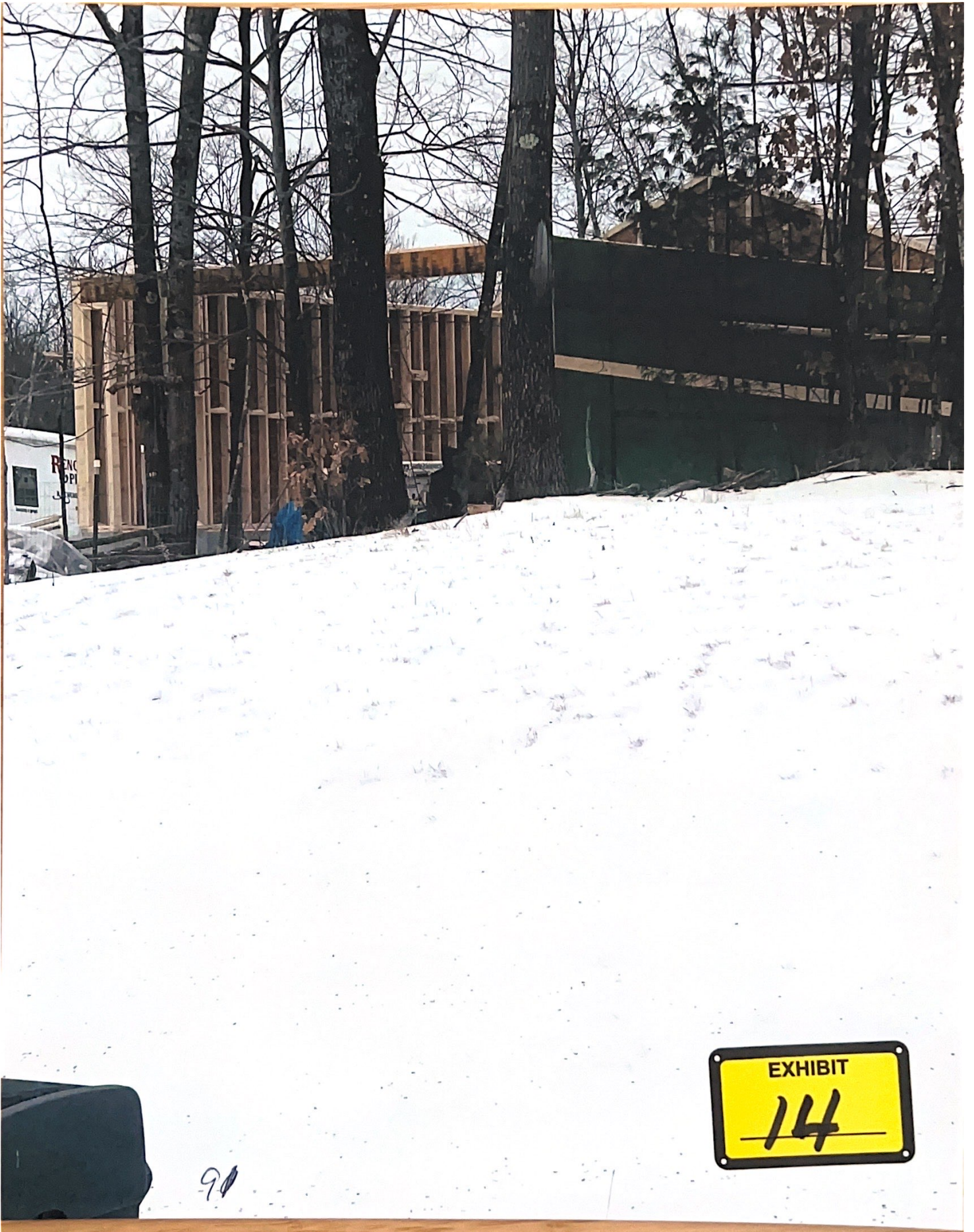


EXHIBIT
14

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Exhibit 15 – Lane (15a) and Brunt (15b) formal complaint filing
with the Planning Department

Garry and Marcia Lane
130 Emerald Ln.
Dover, NH 03820

February 14, 2022

Ms. Donna Benton, ACIP
Director of Planning and Community
City of Dover
288 Central Avenue
Dover NH 03820

Ms. Natasha Kypfer,
Assistant City Planner/Zoning Administrator
City of Dover
288 Central Avenue
Dover NH 03820

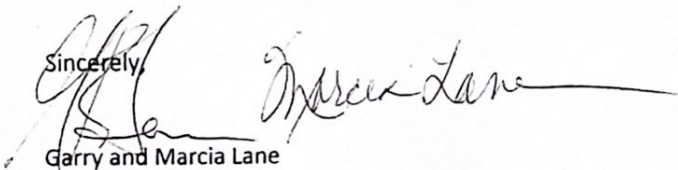
Attorney Joshua Wyatt, General Legal Counsel
City of Dover
288 Central Ave.
Dover, NH 03820

HAND DELIVERED

Enclosed is the completed **City of Dover NH Code Enforcement Complaint Form** and a nine-page document of explanation filed by Garry and Marcia Lane regarding the construction of a garage by Dana and Sherri Brown at 126 Emerald Lane.

Thank you for your consideration.

Sincerely,


Garry and Marcia Lane

RECEIVED
Planning Office

FEB 14 2022

NEW HAMPSHIRE





City of Dover, New Hampshire Code Enforcement Complaint Form

RECEIVED
Planning Office

[Revision Date: August 23, 2018]

Office Use Only Date Received: FEB 14 2022 Case Number: 72-05

Dover, New Hampshire

Complainant Name: GARRY + MARCIA LANE Address: 130 EMERALD LN DOVER NH 03820
Telephone #: (603) 507-7527, 781-8023 Email: garrylane2@gmail.com marcialane125@gmail.com
Address in Question 126 EMERALD LN Owner: DANA + SHERI BROWN
Owner Telephone: 619-316-1269 Owner Address: 126 EMERALD LN DOVER NH 03820

Please Briefly State the Problem: SEE ATTACHED DOCUMENT FOR DETAILS. Illegal construction of a large additional garage in violation of set back rules for "buildings" in R-40 open space developments. Violation of lot coverage rules. Building necessarily implies need for a new driveway or expansion of existing driveway. No permit obtained. Any expansion of existing drive or additional drive cannot be made under present regulations.

Signature: [Signature] SEE ATTACHED Date: 2/14/2022

After the investigation, you will receive a copy of the findings of fact, recommendations applicable, and action taken.

(for office use only)

INVESTIGATION SUMMARY

Findings of Fact:

Recommendations Applicable:

Action Taken:

Zoning Administrator

Date

P:\Forms\Code Enforcement\Complaint Form 2021.docx

Attachment to the 2.14.2022 Code Enforcement Complaint Submitted by Garry and Marcia Lane regarding the construction of a large garage on the Dana and Sherry Brown property located at 126 Emerald Lane, Dover.

Introduction: Garry and Marcia Lane's home property immediately abuts the Brown property. We purchased our home in this development because the lots and the homes were attractive, the properties had sidewalks and the homes are relatively close together (both our lot and the Brown lot are 0.465 acres, approximately 90 feet of road frontage and 225 feet deep) where we could be part of a community. The development is an Open Space Development in the R40 zoning district.

Marcia is recently retired and Garry will probably retire in a few years. Like many people, the value of our home represents years of savings. We spend a lot of time at our home and yard and obtain great pleasure in owning our property. We take care to make sure our property is attractive and well maintained both because of pride and also because, in a neighborhood with houses this close, what we do to our property, good or bad, affects how neighbors enjoy their properties and the value of those properties. That is true in reverse too. What the Brown's do to their property will affect our enjoyment of our property and the value of our investment.

Both our property and the Browns' property (in its original form at the time of their purchase) were half-forested. As we understand it, the engineer's calculations on runoff and drainage (and the design of required bio retention ponds) assumed the continued existence of that forested land on the inner circle of our development. However, after the Brown's purchased their property, they cut down most of the trees, thus likely putting an additional burden on the drainage system and bio retention ponds. According to the US Forest Service, "A healthy 100-foot tall tree has about 200,000 leaves. A tree of this size can take 11,000 gallons of water from the soil and release it into the air again, as oxygen and water vapor in a single growing season."¹

Apparently, the developer, to its own surprise, had failed to protect the inner circle of trees in any of the subdivision restrictions or protective covenants. Thus, while many in the neighborhood were upset with the Brown's tree removal, including the developer, there apparently was nothing even the developer could do to stop the Browns from cutting the trees.² While the trees may seem like an irrelevant issue to whether a building should be allowed, it is important for the City to realize that if it allows the unlawful construction to continue, it could influence the decisions of other property owners now and in future years to do what the Browns have done (cut down the trees to build additional, enormous, buildings).

¹ Forests – Water & Trees – The role trees play in water quality. <https://www.fs.usda.gov> (printed 2.12.2022)

² We have not yet had the chance to review all the subdivision applications and approvals. It is possible that the City placed some restriction on tree cutting for the inner circle of our development. If so, we have not found that so far. Section 157-35D, "Parks, open space and natural features" provides "Preservation of natural features. The Planning Board shall, whenever possible, establish the preservation of those natural features which add value to residential/commercial developments and to the community, such as tree masses, watercourses, historic sites, vistas and similar irreplaceable assets." If the Planning Board followed this provision and protected the trees in the inner circle of the Indian Ridge subdivision, which it clearly could have done, then the Browns might be required to restore the trees they cut down.

If the City interprets its regulations to allow the Brown's garage, and necessarily, a major driveway expansion, then it means other lot owners would have that same right (and not just in our subdivision). While most present lot owners would probably want to preserve the trees and would not consider putting such a massive additional building on their properties, future buyers could look to the Brown precedent and decide that they too can do the same thing. Trees will come down, large buildings will go up, the charming character of the neighborhood will be destroyed, and the drainage from what was once forested land will substantially increase, and the legally mandated and expensive bio retention ponds in the development could fail. Homeowners in the development will each incur thousands of dollars to repair or redesign and rebuild the drainage system and bio pond system. Lots will be less attractive. Property values will fall. Thus, while you could view this as a dispute among three neighbors with abutting properties, the decision made in this case, will have serious consequences, good or bad, for the future of this entire subdivision and all homeowners, their enjoyment of their properties and the values of their individual investments.

Code provisions outlined:

Rules of Interpretation

In the Subdivision rules, Code section 157-55 provides:

In any case where this chapter is in conflict with any other regulations, ordinances or laws in effect in the City, the more restrictive regulations or provisions of law shall prevail.

Similarly, in Chapter 170 (Zoning), section 170-4 provides:

Whenever the regulations made under the authority hereof differ from those prescribed by any ordinance or regulations, that provision which imposes the greater restriction shall apply.

Districts

Section 170-7 divides the City into various residential and non-residential districts. One of those is the R40 – the Rural Residential District. Section 170-7 B (1)(a) states that “The purpose of this residential district is to provide for conventional single-family neighborhoods in the more rural areas of the City. These areas have larger lot sizes (one or more acres) and the homes are most likely served by on-site septic systems and wells, but there are some portions of the district that have municipal sewer and water. New subdivisions are designed as open space developments with reduced lot sizes allowed in return for the permanent preservation of open space.”

Section 170-12 provides:

- A. Uses permitted in zoning districts identified in 170-7 shall be as set forth in the Tables of Dimensional Regulations by District.

- B. The minimum regulations for lot size, lot frontage, building set back standards for front, side and rear yards, building heights and lot coverage shall be as specified in the Tables of Use and Dimensional Regulations by District.”

Tables of Dimensional Regulations

The dimensional regulations table for the R40 District includes a minimum lot size of 40,000 square feet, a maximum lot coverage of 10%, minimum frontage of 150 feet. It then distinguishes, for setback distances, between the principal building and outbuildings/accessory uses. For the principal building side setbacks are 25 feet and rear are 30 feet. For outbuildings, the rear and side setbacks are 10 feet. It then has a maximum height restriction of 35 feet. However, the table has a number of footnotes.

Footnote 1 states that “In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in 157-21 of the Code of the City of Dover, 1983.” The R40 dimensional requirements in 157-21F requires a minimum lot size of 20,000 square feet for an open space subdivision such as the Indian Ridge subdivision. On a subdivision (as opposed to a Cluster division), the setbacks for any “building” is 20 feet on front, side and rear lot lines. The 157-21 provisions do not address height or maximum lot coverage and, instead of the breakdown between principal buildings and outbuildings, the 157-21 dimensional requirements replace that with a simple 20 foot setback for anything that qualifies as a “building.” The Brown construction is a “building.”

Footnote 2 to the R40 Dimensional Table states: “Refer to 170-13, 170-14 and 170-27D for exceptions to lot size, frontage and setback requirements.” None of these sections is relevant to the Indian Ridge subdivision or the Brown construction. 170-13 addresses lot size minimums when sewer and water facilities are not provided or if sewer is not provided. The Indian Ridge subdivision has public water and sewer. 170-14 addresses non-conforming lots. The lots in the Indian Ridge subdivision comply with the R40 open space subdivision requirements. Thus, while they are smaller lots than those in the non-open space parts of the R40 district, they are not non-conforming lots. 170-27D deals with the Conservation District and prohibits certain subdivisions of land that do not meet certain size requirements. That is not an issue in the Brown garage construction and thus is not relevant here.

Other provisions relevant to Setbacks

Section 157-60 Definitions: “Building” – “Any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind and which is constructed and permanently affixed on the land. Such building includes open porches, open breezeways and any other roofed areas. ...”

157-28 Final plat layout (for subdivision) – subsection B (8) requires the final subdivision plat to show “minimum building line setback on all lots.” In the Indian Ridge subdivision, those setbacks are shown both in text on the plat and are drawn on the approved plat plan drawing as 20 feet on all sides.

Driveways

Code Section 157- 50 (Driveways) provides in relevant part:

- A. The provisions of this section apply to the *construction, reconstruction, alteration, surfacing or resurfacing* of any driveway which intersects with the right-of-way of any City-owned, City-maintained way and/or other private way. ...
- B. *It shall be unlawful to construct, reconstruct, alter, surface or resurface any driveway in a manner which affects the size, elevation or grade of such driveway* until the Community Services Director has reviewed and approved of such construction or alteration and has issued a written permit for such work. No permit shall be required *for any existing driveway, entrance or approach unless the grade, elevation, location or width of said driveway is changed.* For purposes of this section, any driveway so constructed, reconstructed, altered, surfaced or resurfaced as indicated above which abuts or is clearly designed to provide access to a public way as defined by RSA 259:125 shall be presumed to be situated within the right-of-way.

Emphasis added.

- (1) Pursuant to this section, a written construction permit application must be obtained from and filed with the Community Services Department by any landowner or by his/her paving contractor, if he/she is employing one, affected by the provisions of this section.
- (2) Before any construction or alteration work is commenced, said permit application shall have been reviewed and approved and a construction permit issued by the Community Services Director. Said permit shall:
 - (a) Describe the location, area and width of the driveway, as well as the entrance, exit or approach. The location shall be selected to most adequately protect the safety of the traveling public.
 - (b) Describe any drainage structures, traffic control devices and channelization islands to be installed by the applicant.
 - (c) Establish grades that adequately protect and promote street drainage and permit a safe and controlled approach to the street in all seasons of the year.
 - (d) Include any other terms and specifications necessary for the safety of the traveling public.
- C. The following construction standards must be adhered to for driveways:
 - (1) Unless an all-season sight distance of 400 feet in both directions along the street can be obtained, the Community Services Director shall not permit more than one access to a single parcel of land, and this access shall be at that location determined to be safest. The Community Services Director shall not

give final approval for use of any additional access until it has been demonstrated that the 400-foot, all-season sight distance has been approved.

- (2) ...
- (3) With the exception of shared driveways, no driveway, including any flare, shall be within five feet of a side property line.
- (4) ...
- (5) ...
- (6) The type of construction where the driveway meets the edge of the traveled way shall be commensurate with existing conditions with respect to drainage and curb configuration and shall be subject to approval of the Community Services Director. The property owner shall be responsible for the proper installation and maintenance of all drainage facilities (driveway culvert, swale, etc.) and the driveway bed that lies between the edge of the traveled way and the parcel's property line.
- (7) In no case shall the permitted driveway construction cause water to stand on the pavement, shoulders or within the street right of way limits. In those cases where property development increases drainage runoff such that existing street drainage structures are insufficient to adequately dispose of all drainage, the applicant will be required to provide additional or large drainage facilities to prevent any ponding within the street right-of-way or adjacent lands thereto.
- (8) No construction permit shall allow a residential driveway entrance, exit or approach to be constructed more than 22 feet in width.

Code Chapter 153-14 C addressing driveways, access ways and internal roads provides:

C (1) All driveways, access ways, internal roads, and loading and servicing areas shall be graded, *paved*...

Emphasis added.

The Browns' construction

The Browns have begun construction of a second, very large and tall, two-car garage on the back of their property about 12 feet from the rear line and 12 feet from our common side line (probably about 180 feet back from the road). The building has a full foundation and thus the building is deemed to be permanently attached to the ground and thus is a "building" for purposes of the setback rule in 157-21. The Browns already have a two car garage and while they clearly want to have an additional garage, it is by no means a necessary structure for them to use or enjoy their property as a single family residence.

The Brown garage violates the 20-foot setback requirement:

As explained below, the enormous, tall, oversized two car garage, a second garage for the Browns, violates the Dover Code in multiple ways. First, the "building" setback as established for the R40 open space subdivision rules and on the approved plan of subdivision, is 20 feet from front, side and rear property lines. The Browns placed their building well within that prohibited setback area. While Mr. Maxfield, a Dover Building Official, contends that the garage is an "accessory building" and, therefore subject only to a 10-foot setback, "accessory building" is an irrelevant concept in an open space development. In the R40 open space subdivision provisions, whether a building is a primary dwelling, or an accessory building or some other kind of a "building," if the structure is permanently affixed to the ground as the Brown building is, it is a "building" within the R40 open space subdivision definition and must be set back at least 20 feet from all property lines.³

Note that the approved plats for the Indian Ridge subdivision show 20-foot setback lines, consistent with section 157-28 and 157-21 F (Dimensional Requirements – 20 foot setback from all property lines). "Building" has a specific meaning in the definition section, 157-60. If a structure qualifies as a "building" within that definition, and the Brown's oversized garage clearly does, it cannot be constructed within 20 feet of any property line. That is a black and white rule. The restriction is not limited to the dwelling unit. Even if a structure meets any definition of "accessory" building, that does not exempt it from the 20-foot rule if the lot in question is part of an open space subdivision as Indian Ridge is. Any 10-foot rule, even if otherwise seemingly applicable as Inspector Maxfield has argued, is completely irrelevant if the structure meets the definition of "building." Under various Code sections quoted above, if two standards apply to the same situation or lot, the more restrictive standard applies. The 20 feet set back rule is more restrictive than a ten foot one and there is no doubt about that. It is what the regulation requires and it's what shows on the approved plot plan. Any lot owner desiring to put up a "building" is on notice of that rule/restriction.

The Browns' garage necessarily requires a driveway; however, they cannot lawfully obtain a permit for further expansion of their existing driveway or for a completely new driveway

The City, in granting the building permit, did not require any application for a driveway permit at this time. It could and should have. While some city officials contend that no driveway permit is required before the City can grant a building permit for this commercial-size garage (i.e. apparently letting the driveway issue be addressed at some later date), it is unreasonable for the City to allow construction of a garage that necessarily will require a driveway that could never lawfully be built – either as a completely new, additional driveway and new curb cut or as a 180 foot expansion of the existing driveway (see discussion below). The City code provisions

³ Mr. Maxfield would apparently pick and choose among the R40 dimensional rules he wants to enforce in an open space subdivision. He wants to keep the distinction made in the regular (non-open space) dimensional table between the primary building and any accessory building but throw out the 10% coverage rule. He cannot, logically, have it both ways.

regarding driveways, makes it unlawful for anyone to *"construct, reconstruct, alter, surface or resurface any driveway in a manner which affects the size, elevation or grade of such driveway until the Community Services Director has reviewed and approved of such construction or alteration and has issued a written permit for such work. No permit shall be required for any existing driveway, entrance or approach unless the grade, elevation, location or width of said driveway is changed.*

In the case of the Brown property, to use the garage, whether to park cars in it or to have boards delivered for the shop area of the garage, the Browns would, by definition, be using part of their property as a driveway. This new driveway would be about a 180 feet long addition to the existing driveway. As the driveway would have to go uphill to reach the garage, they are altering their existing driveway by dramatically increasing its size, its elevation, location, grade and width. In other words, the City Code requires a driveway permit. However, the Browns' property cannot qualify for either a new driveway or for an expansion of their present one. Thus, to allow the Browns to build an oversized garage on the top of their hill, a use that necessarily requires a driveway, when they cannot lawfully meet the Code requirements for a new driveway or a driveway expansion, is completely unreasonable on the part of the City.

Specifically, because any additional drive on the Brown property would not have the required 400-foot sight line, the maximum number of curb cuts allowed on the property is *one*. Thus, they cannot add another driveway. The Browns' driveway already appears to be at the maximum 22-foot width. If the Browns were to extend their existing driveway (the approximately 180 feet needed to reach their new garage), they would have to merge the new portion into the original drive thus adding approximately 8-10 feet of width to the drive where it merges into the original section of driveway. That would make the driveway, at that point, 8 -10 feet wider than the maximum 22 feet allowed under the Code. Thus, the expansion of the driveway, would violate the regulations related to driveway width and cannot be allowed. Accordingly, it is unreasonable to approve the construction of a major garage building when the necessary driveway for that garage would be completely unlawful under the Code.

If the City were to allow the Browns to keep their oversized, two stall garage, any use of that garage by vehicles, will make that travel way, regardless of the surface, a "driveway." This, as discussed above, requires permits and, apparently paving. While, as explained above, there can be no lawful additional driveway and new curb cut (property cannot meet the 400 foot sight line rule in both directions for a second driveway) and there can be no expansion of the existing drive. However, were the City to somehow allow the Browns to construct a driveway for their new garage, consider the effects of that.

The new garage sits on a hill. The driveway would essentially be a straight shot, downhill, toward the road with approximately 180 feet of new pavement. If the drive were 10 feet wide, that is 1800 square feet of new hard surface for rainwater to surge down. What was once forested land before the Brown's tree cutting and building and could absorb rainwater into the soil, is now

covered by a new building with an apparent footprint, according to the building permit, of 24 feet by 32 feet = 768 square foot roof footprint. If 1800 feet of paved drive is added to that, there will be a total of about 2568 square feet of new, impervious surface. Based on a calculation that assumes the roof concentrates about 0.6 gallons per square foot with an inch rainstorm, the roof, in a one-inch storm, would concentrate about 461 gallons of water, all of which would likely run down the new driveway. If we apply that same 0.6 gallons per square foot to the driveway area, that would add an additional 1080 gallons running down the driveway, for a total of 1541 gallons rushing down the drive and out into the street with a single 1-inch rainfall event. On July 30, 2021 the City of Dover received 1.72 inches of rain overnight. Also recall the evening rainstorm of August 13, 2014 that caused sewer lines in Dover, at a construction site, to surge into downtown restaurants. Or, the May 14, 2006 "Mother's Day" floods in NH where there was 12 inches of rain in a 72-hour period. Rain that was previously able to land on the Brown property and absorb into the ground, will concentrate into heavy roof-runoff streams that will surge downhill along the new drive. Rain that hits the 180 feet of driveway extension that formerly might have been slowed by grass or even absorbed by the ground, will now rush down the Brown's new driveway like a fast-flowing river.

The 10% lot coverage rule

While the general R40 rules restrict coverage on an R40 lot to 10 percent of the lot's square footage, some in the Planning Department contend that the 10% rule does not apply because one of the footnotes to the R40 dimensional chart states that the dimensional rules for R40 open space developments shall be as specified in Code section 157-21. While 157-21 clearly controls "building" setbacks, as discussed above, that section is completely silent on maximum lot coverage.

Two interpretations are possible. One is that only the dimensional rules in 157-21 apply and no others. That would eliminate the 35-foot height limitation of the general R40 dimensional chart and would eliminate the 10 percent maximum lot coverage rule of the R40 dimensional chart. The other interpretation, the one we believe is more reasonable, is that when the footnote to the R40 dimensional chart states that section 157-21 dimensional provisions shall apply to R40 open space subdivisions, it means that those dimensional restrictions contained in 157-21 apply but as to other R40 dimensional rules that 157-21 does not override, those rules would continue to apply. That section 157-21 rule clearly says that if a structure is a "building" it is subject to the 20-foot setback (regardless of whether the building is a primary building, a primary dwelling unit or an accessory building). However, it does not say that there shall be no maximum lot coverage rule in R40 open space subdivisions; it is silent on the topic. Thus, since it is silent, one, reasonable interpretation is that the 10% coverage rule still applies as it has not been replaced by any provision in section 157-21.

If there is no lot coverage rule in open space subdivisions such as ours, then, there is almost no zoning protection for lot owners in R40 open space developments. For example, our lot is 90 feet by 225 feet. If we subtracted the 20 foot setbacks, in a world where there is no maximum lot

coverage rule, we or anyone else, could build a home on our lot that was 50 feet wide by 185 feet. If we kept the home to one level, that would be a 9250 square foot home on a lot that is only 0.465 acres. If we build a two story home, as is common, the house would be 18,500 square feet. Make it four stories and this interpretation of the R40 open space dimensional requirements would allow us to have a 37,000 square foot home on a lot that is less than a half-acre. That is an absurd result and thus, the City should reject an interpretation of its rules, no coverage limits, that would produce such an absurd result. Thus, if the R40 open space subdivisions are deemed to include the 10% coverage rule, the Browns would not be allowed to have this oversized garage anywhere on their property. Their home, even without the massive additional garage, exceeds the 10% rule.

Conclusion: There is no reasonable question about the setback for a "building" (i.e. one permanently affixed to the ground) both under the R40 open space dimensional rules and under the requirements of the subdivision approval for this specific development. That setback is 20-feet from all property lines for any "building." Further, while it can be argued both ways, we believe the 10% lot coverage rule should apply because it was not expressly or impliedly replaced by the section 157-21 provisions. If the 10% rule applies, the Brown garage is simply not allowed on that lot. Further, while the City granted the building permit, that permit placed the burden on the Browns and their builder to comply with all zoning regulations. The permit stated that the granting of the permit was not an agreement by the City that the building or its location complied with all applicable code provisions. Finally, while the City chose to issue the building permit for a building that will necessarily require a driveway, even before the Browns filed a driveway permit or made all the showings needed to obtain such a driveway (e.g. effect on runoff and drainage), the City could and should have required such a permit first. Under the City of Dover Code regulations for driveways, the Browns cannot legally add a completely new driveway nor can they legally extend the existing driveway to the new building 180 feet away. Thus, if no driveway to reach the garage would be lawful and, the new garage would require a driveway, it is unreasonable to grant a building permit for such a garage.

The choices made by the City on this matter are far broader than a single lot. The rules the City deems applicable to the Browns will be the same for all other lot owners in this development (and likely in all other open space subdivisions in R40). A decision to allow the garage could result, in the future, in lot owners destroying the remaining trees in the inner circle of this development, adding virtually unlimited-in-size buildings and creating major drainage problems that may overwhelm the drainage system and bio retention ponds designed for this subdivision. It will make the neighborhood a less desirable place to live and property values will fall.

Thank you for your time in considering our complaint.

F0015-048000



City of Dover, New Hampshire **Code Enforcement Complaint Form**

RECEIVED
Planning Office

[Revision Date: August 23, 2018]

Office Use Only	Date Received: <u>FEB 14 2022</u>	Case Number: <u>22-04</u>
<u>Dover, New Hampshire</u>		

Complainant Name: Sarah & Ben Brunt Address: 96 Emerald Ln, Dover NH 03820
 Telephone #: (802) 734-4250 Email: sarah@benbrunt.com
 Address in Question 126 Emerald Ln Owner: Dana & Sherry Brown
 Owner Telephone: (617) 686-6838 Owner Address: 126 Emerald Ln, Dover NH 03820

Please Briefly State the Problem: Large, 2 car garage (detached) built too close to property line and without consideration of necessary driveway.

We have a detailed statement (attached) that should be considered to help complete this section of the form as well.

Signature [Signature] Date 2/14/22

After the investigation, you will receive a copy of the findings of fact, recommendations applicable, and action taken.

(for office use only)

INVESTIGATION SUMMARY

Findings of Fact:

Recommendations Applicable:

Action Taken:

Zoning Administrator _____

Date _____

P:\Forms\Code En



**Attachment to the 2.14.2022 Code Enforcement Complaint Submitted by Ben and Sarah Brunt
regarding the construction of a large garage on the Dana and Sherry Brown property located at 126
Emerald Lane, Dover**

We appreciate this forum to air our grievances against the construction of an oversized garage in what feels/looks like it might as well be in our backyard.

Our development is built up of 49 homes that all have on average 0.5 acres of property. Despite the smaller lot sizes, homes here are positioned in such a way as to offer privacy, with many wooded areas and separation between lots that provide a peaceful home environment while still conducive to building a neighborly, vibrant little community very close to downtown.

Before we even moved into our beautiful dream home, this wooded privacy was taken away when our neighbor chose to clear cut his property, much to the chagrin of our neighbors and most especially, our family. Almost all of the trees separating our backyard from Mr. Brown's were removed. This was quite a shock as we were specifically instructed by the developer that the trees were not to be touched, and were essential for drainage and aesthetics of the neighborhood. What was left was essentially unfettered views of our backyard from his and vice versa until an installation of a white vinyl fence that he put directly on the property line.

Our home is positioned with a fairly large set back so we have a shallow backyard, with our outdoor living space about 50' from the property line. This building is positioned so that it overpowers the backyard (quite literally casts a shadow, covering our outdoor space). In addition to the massive scale of this project, we dread what is to come - its intended use: Mr. Brown has made it clear he plans to tinker with cars, ensuring that there will be plentiful car shop noises in our private space. It's worth noting that this is also the side of the house where we have 2 bedrooms that have windows overlooking the backyard and Mr. Brown's previous yard activities (hours of wood-chipping, construction, etc.) have been at early and late hours of the day, both on weekends and weekdays.

This change does not just affect our sense of security, privacy, and peace; our realtor also stated that by eliminating our wooded view and erecting a large structure so close to our backyard, Mr. Brown's choices will very likely affect our home value and make our house harder to sell in the future. It feels unjust that our neighbors' choices should impact our largest investment so negatively.

Improper screening between properties is a huge issue. With no trees, there is nothing that will hide this building from our view. Even if something is planted, it would take decades to grow large enough and, if not maintained, turn into another eyesore.

Additionally, the grading of his property is going to directly affect every home in this neighborhood. His new garage appears to be positioned on an incline on his property (the grading appears to drain towards his house and street); the runoff from this building and subsequent driveway could likely overpower the stormwater plan that was engineered by the city. A large roof is going to direct lots of water where it shouldn't go, which has financial ramifications as we are legally bound to maintain the bio ponds surrounding our

development that control such runoff. Additional runoff burden is very likely to be costly as at least one of the bio ponds already failed before the developers relinquished control of our HOA and needed to be replanted and re-engineered (at great expense to the developers).

Harkening back to earlier in our statement, it feels unjust that there are no protections in place to prevent harm (environmental, financial, etc.) from befalling homeowners from their neighbor's choices. We would like to hope that updated zoning should be in place to prevent things like this from happening in the future and to help resolve our current dilemma.

We hope the City of Dover hears our concerns and acts accordingly. Thank you for your thoughtful consideration of these issues.

Exhibit 16 – Planning Department March 1, 2022 decisional letters emailed March 2, 2022 (16a Lane; 16b Brunt)

DONNA P. BENTON, AICP
Director of Planning and
Community Development
d.benton@dover.nh.gov



288 Central Avenue
Dover, New Hampshire 03820-4169
(603) 516-6008
Fax: (603) 516-6049
www.dover.nh.gov

City of Dover, New Hampshire

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

March 1, 2022

Garry and Marcia Lane
130 Emerald Lane
Dover, NH 03820

RE: Response to Lane's 2/14/2022 Complaint Letter

Dear Mr. and Mrs. Lane:

Thank you for the submission of your Compliant Form dated Monday, February 14, 2022 regarding multiple issues of concern over the construction of an accessory structure ("garage") at your easterly abutting neighbor's property, 126 Emerald Lane.

In your correspondence you identify the following issues: trees; setbacks; driveway access; and, lot coverage. I will address each item by topic below.

1. **Trees** – Landowners generally have a right to grow, maintain, or cut down trees on their own property as they see fit. In my assessment, at this time, the Browns' removal of trees, on their own property, does not constitute a zoning violation. Furthermore, as your letter mentioned, since that area is not part of a no-cut/no-disturb buffer, it does not constitute a subdivision violation.
2. **Setbacks** – Our office identified during the below-mentioned site visit that the Browns' under-construction garage is most likely infringing upon the established Open Space Subdivision (OSS) rear property line setback. Per the Land Subdivision Regulations §157-21(F), a twenty (20) foot setback is required, whereas the garage foundation sits approximately twelve (12) feet from the rear lot line. The Browns have been alerted (see detailing below) and are actively working to remedy the situation. Therefore, at this time, I am not yet taking any enforcement action. First, I do not yet have a plan confirming or delineating a setback violation. Second, and more importantly, Dover's planning staff typically take an approach to enforcement (in non-emergency situations) to first seek compliance through cooperation before taking other, more formal enforcement actions. I would also note, however, that as a result of a site visit of the subject property on Monday, February 7, 2022, and a meeting at City Hall between the property owner and staff (Planning Director Benton, Building Official Maxfield, and myself) on Tuesday, February 8, 2022, it was agreed amongst all parties that the applicable Building Permits were to be suspended. Please find a copy of the letter attached, dated Tuesday, February 15, 2022 from the Building Official, documenting such

110



3. **Driveway / Access** – Per the Land Subdivision Regulations §157-50 (A):

A. “The provisions of this section apply to the construction, reconstruction, alteration, surfacing or resurfacing of any driveway which *intersects with the right-of-way* of any City-owned, City-maintained way and/or other private way.” Dover Code § 157-50(A); (emphasis added); *see also* RSA 236:13, V & VI.

A driveway permit was issued on January 6, 2017 (Permit No. 2016-128) for the subject property; please find a copy attached to this letter. It is my understanding that the current driveway at 126 Emerald Lane will not be altered, moved, or resurfaced. The property owner has the ability to navigate their own property (i.e. this is not “[intersecting] with the right-of-way”) to reach their accessory structure. Furthermore, it is my understanding the building will be utilized for storage and/or a workshop, therefore, an expansion to their existing driveway may not be necessary. In my assessment, with concurrence of the Director of Community Services, at this time, the Browns’ current driveway, and method for access to their rear yard, do not constitute a code violation.

4. **Lot Coverage** – Per the Land Subdivision Regulations §157-19 (A):

A. “An open space subdivision (OSS) represents a form of residential development where, instead of subdividing an entire tract of land into lots of conventional size and arrangement, a similar number of single-family housing units, duplexes in an R-12 Zone, may, at the discretion of the Planning Board, be arranged on the land in a more innovative fashion which better fits the topography and natural attributes of the site. The remaining land in the tract which has not been built upon shall be set aside for municipal use or integrated among the housing units and reserved for usable common open space. Said open space shall be held in a form of ownership that will prevent it from being further subdivided or developed.” Dover Code § 157-19(A).

By way of overview, the purpose of an OSS, as outlined above, is that lots are arranged in clusters, having reduced lot size, and therefore no established minimum lot coverage calculations. This is further identified in the zoning footnote referenced in the zoning table for the Rural Residential (R-40) District, see the Dimensional Regulations section where there is reference at the top by the header to footnotes 1 and 2 which refer back to the Open Space Subdivision regulations. In my assessment, the 10% lot coverage rule does not apply to Indian Ridge subdivision (an OSS) for two reasons.

First, the plain text of the zoning table indicates that the Dimensional Regulations in the R-40 table are, as a whole, displaced and replaced by the provisions of Dover Code § 157-21. *See* R-40 table at n. 1 (“In the case of an Open Space Subdivision, in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in 157-21”).

Second, common sense supports the plain text noted above. For the purpose of an OSS, open space is by definition delineated and protected from development. As such, there is already a significant portion of the contiguous lot coverage in the OSS that is protected from development. *See* Dover Code § 157-22.

///

Accordingly, I find the Browns' current lot coverage percentage does not constitute a zoning violation.

In closing, this letter serves as my formal administrative determination. As I mentioned, above, it is the position of the City of Dover's planning staff to procure compliance through cooperation in non-emergency situations. As such, we are awaiting to learn the intent of the Browns, germane to how they would like to proceed with the options presented to them in their pursuit of coming into compliance with their garage at 126 Emerald Lane. For your reference, please find a copy of an email attached, dated Wednesday, February 9, 2022, written by myself to the property owner, documenting such.

Finally, I would call your attention to your potential appeal rights. You may have the ability to appeal my determinations concerning the City of Dover's zoning ordinance to the Zoning Board of Adjustment (ZBA) pursuant to the RSA 676:5. Be aware that the ZBA imposes a 30-day filing requirement per its Rules of Procedure, Article V. - Procedures:

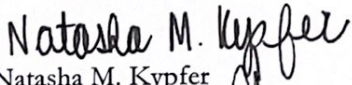
B. Appeals. Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely.

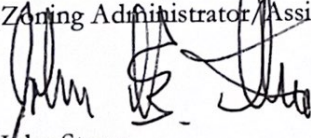
Further, Dover Code § 157-58 may provide you with an avenue of internal appeal concerning your driveway assertions. Dover Code § 157-58 provides that "[a]ny person aggrieved by a decision of the Community Services Director regarding driveways may request a hearing before the Planning Board on the merits of his or her case." I am unaware of any time-based requirement for requesting such a hearing, other than the Planning Board's established deadlines for making a particular agenda for any particular meeting.

We appreciate the time you took to file a complaint with our office and your clear explanation and attention to detail. Furthermore, while this may not have been the exact outcome you were seeking, you should also be aware that specially damaged abutters, in some instances, may have standing to file a civil suit directly, against the perceived unlawfulness of a local building or structure or portion thereof, pursuant to RSA 676:15.

If you have any questions, please feel free to contact me directly, either by telephone at (603) 516-6008 or by email at n.kypfer@dover.nh.gov.

Sincerely,


Natasha M. Kypfer
Zoning Administrator / Assistant City Planner


John Storer,
Director Community Services (as to the asserted Driveway/Access issue)

encl: Copy of 126 Emerald Lane's Driveway Permit, 1/6/2017
Copy of Letter to Brown's by Building Official Maxfield, 2/15/2022
Copy of Email to Dana Brown by Zoning Administrator Kypfer, 2/9/2022

cc: Donna P. Benton, AICP Director of Planning & Community Development (emailed)
James H. Maxfield Building Official (emailed)
Christopher G. Parker, AICP Deputy City Manager (emailed)
Joshua Wyatt City Attorney (emailed)
Dana and Sherri Brown Property Owners of 126 Emerald Lane
Joshua P. Lanzetta, Esq. Browns' Legal Council

DONNA P. BENTON, AICP
Director of Planning and
Community Development
d.benton@dover.nh.gov



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City of Dover, New Hampshire

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

March 1, 2022

Benjamin and Sarah Brunt
96 Emerald Lane
Dover, NH 03820

RE: Response to Brunt's 2/14/2022 Complaint Letter

Dear Mr. and Mrs. Brunt:

Thank you for the submission of your Compliant Form dated Monday, February 14, 2022 regarding multiple issues of concern over the construction of an accessory structure ("garage") at your northerly abutting neighbor's property, 126 Emerald Lane.

In your correspondence you identify the following issues: trees; setbacks; and, driveway access. I will address each item by topic below.

1. **Trees** – Landowners generally have a right to grow, maintain, or cut down trees on their own property as they see fit. In my assessment, at this time, the Browns' removal of trees, on their own property, does not constitute a zoning violation. Furthermore, as your letter mentioned, since that area is not part of a no-cut/no-disturb buffer, it does not constitute a subdivision violation.
2. **Setbacks** – Our office identified during the below-mentioned site visit that the Browns' under-construction garage is most likely infringing upon the established Open Space Subdivision (OSS) rear property line setback. Per the Land Subdivision Regulations §157-21(F), a twenty (20) foot setback is required, whereas the garage foundation sits approximately twelve (12) feet from the rear lot line. The Browns have been alerted (see detailing below) and are actively working to remedy the situation. Therefore, at this time, I am not yet taking any enforcement action. First, I do not yet have a plan confirming or delineating a setback violation. Second, and more importantly, Dover's planning staff typically take an approach to enforcement (in non-emergency situations) to first seek compliance through cooperation before taking other, more formal enforcement actions. I would also note, however, that as a result of a site visit of the subject property on Monday, February 7, 2022, and a meeting at City Hall between the property owner and staff (Planning Director Benton, Building Official Maxfield, and myself) on Tuesday, February 8, 2022, it was agreed amongst all parties that the applicable Building Permits were to be suspended. Please find a copy of the letter attached, dated Tuesday, February 15, 2022 from the Building Official, documenting such.



3. **Driveway / Access** – Per the Land Subdivision Regulations §157-50 (A):

A. “The provisions of this section apply to the construction, reconstruction, alteration, surfacing or resurfacing of any driveway which *intersects with the right-of-way* of any City-owned, City-maintained way and/or other private way.” Dover Code § 157-50(A); (emphasis added); *see also* RSA 236:13, V & VI.

A driveway permit was issued on January 6, 2017 (Permit No. 2016-128) for the subject property; please find a copy attached to this letter. It is my understanding that the current driveway at 126 Emerald Lane will not be altered, moved, or resurfaced. The property owner has the ability to navigate their own property (i.e. this is not “[intersecting] with the right-of-way”) to reach their accessory structure. Furthermore, it is my understanding the building will be utilized for storage and/or a workshop, therefore, an expansion to their existing driveway may not be necessary. In my assessment, with concurrence of the Director of Community Services, at this time, the Browns’ current driveway, and method for access to their rear yard, do not constitute a code violation.

In closing, this letter serves as my formal administrative determination. As I mentioned, above, it is the position of the City of Dover’s planning staff to procure compliance through cooperation in non-emergency situations. As such, we are awaiting to learn the intent of the Browns, germane to how they would like to proceed with the options presented to them in their pursuit of coming into compliance with their garage at 126 Emerald Lane. For your reference, please find a copy of an email attached, dated Wednesday, February 9, 2022, written by myself to the property owner, documenting such.

Finally, I would call your attention to your potential appeal rights. You may have the ability to appeal my determinations concerning the City of Dover’s zoning ordinance to the Zoning Board of Adjustment (ZBA) pursuant to the RSA 676:5. Be aware that the ZBA imposes a 30-day filing requirement per its Rules of Procedure, Article V. - Procedures:

B. Appeals. Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely.

Further, Dover Code § 157-58 may provide you with an avenue of internal appeal concerning your driveway assertions. Dover Code § 157-58 provides that “[a]ny person aggrieved by a decision of the Community Services Director regarding driveways may request a hearing before the Planning Board on the merits of his or her case.” I am unaware of any time-based requirement for requesting such a hearing, other than the Planning Board’s established deadlines for making a particular agenda for any particular meeting.

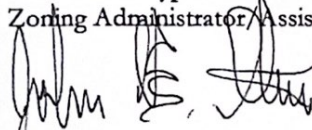
We appreciate the time you took to file a complaint with our office and your clear explanation and attention to detail. Furthermore, while this may not have been the exact outcome you were seeking, you should also be aware that specially damaged abutters, in some instances, may have standing to file a civil suit directly, against the perceived unlawfulness of a local building or structure or portion thereof, pursuant to RSA 676:15.

If you have any questions, please feel free to contact me directly, either by telephone at (603) 516-6008 or by email at n.kypfer@doover.nh.gov.

Sincerely,



Natasha M. Kypfer
Zoning Administrator/Assistant City Planner



John Storer,
Director Community Services (as to the asserted Driveway/Access issue)

encl: Copy of 126 Emerald Lane's Driveway Permit, 1/6/2017
Copy of Letter to Brown's by Building Official Maxfield, 2/15/2022
Copy of Email to Dana Brown by Zoning Administrator Kypfer, 2/9/2022

cc:	Donna P. Benton, AICP	Director of Planning & Community Development (emailed)
	James H. Maxfield	Building Official (emailed)
	Christopher G. Parker, AICP	Deputy City Manager (emailed)
	Joshua Wyatt	City Attorney (emailed)
	Dana and Sherri Brown	Property Owners of 126 Emerald Lane
	Joshua P. Lanzetta, Esq.	Browns' Legal Council

Z22-05

126 Emerald Lane

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
F0015-000000	LITTLEWORTH RD	INDIAN RIDGE HOMEOWNERS' ASSOCIATION		P.O Box 1981	DOVER	NH	03820
F0015-000TOT	EMERALD LN	CITY OF DOVER		288 CENTRAL AVE	DOVER	NH	03820
F0015-020000	141 EMERALD LN	CREGO NICHOLAS P &	CREGO CARYN NICOLE	141 EMERALD LN	DOVER	NH	03820
F0015-021000	137 EMERALD LN	BINGHAM JONATHAN &	BINGHAM JENNIFER	137 EMERALD LN	DOVER	NH	03820
F0015-022000	133 EMERALD LN	PELLMAN NICHOLAS T &	PELLMAN ANDREA M	133 EMERALD LN	DOVER	NH	03820
F0015-023000	125 EMERALD LN	GAL ADILSON JR &	GAL RAFAELA L	125 EMERALD LN	DOVER	NH	03820
F0015-024000	121 EMERALD LN	BERTOLINI MARK E &	BERTOLINI LEE H	121 EMERALD LN	DOVER	NH	03820
F0015-025000	112 EMERALD LN	GIROUX ADAM T &	GIROUX KATIE L	112 EMERALD LN	DOVER	NH	03820
F0015-026000	102 EMERALD LN	SNYDER BRICE R &	SNYDER NICOLE L	102 EMERALD LN	DOVER	NH	03820
F0015-028000	92 EMERALD LN	MCCABE BERNARD FRANCIS JR &	MCCABE GAIL BARBARA	92 EMERALD LN	DOVER	NH	03820
F0015-029000	216 EMERALD LN	FOURNIER PETER F & DANIELLE L TRUSTEES	FOURNIER FAMILY REV TRUST	216 EMERALD LN	DOVER	NH	03820
F0015-030000	210 EMERALD LN	WHITE ALMA F TRUSTEE	WHITE ALMA F REVOCABLE TRUST	210 EMERALD LN	DOVER	NH	03820
F0015-031000	206 EMERALD LN	CANCILLA DAVID &	CANCILLA LOUISE	206 EMERALD LN	DOVER	NH	03820
F0015-044000	140 EMERALD LN	VARGA KRISZTINA &	BALAZ MILAN	140 EMERALD LN	DOVER	NH	03820
F0015-045000	136 EMERALD LN	ROBERGE JOAN M		136 EMERALD LN	DOVER	NH	03820
F0015-046000	134 EMERALD LN	COURCY BRIAN L &	COURCY KELLY J	134 EMERALD LN	DOVER	NH	03820
F0015-049000	120 EMERALD LN	PATTI LINO N		120 EMERALD LN	DOVER	NH	03820
F0022-A00010	88 EMERALD LN	CHISAMORE BRIAN J &	CHISAMORE SARA	88 EMERALD LN	DOVER	NH	03820
F0022-A00011	89 EMERALD LN	GASTON MICHAEL J &	GASTON SUSAN E	89 EMERALD LN	DOVER	NH	03820
F0022-A00012	87 EMERALD LN	MACNEIL CHARLES W &	MACNEIL JENNIFER L	87 EMERALD LN	DOVER	NH	03820
F0015-027000	96 EMERALD LN	BRUNT BENJAMIN &	BRUNT SARAH	96 EMERALD LN	DOVER	NH	03820
F0015-047000	130 EMERALD LN	LANE GARRY &	LANE MARCIA	130 EMERALD LN	DOVER	NH	03820
F0015-048000	126 EMERALD LN	BROWN DANA R &	BROWN SHERRI L	126 EMERALD LN	DOVER	NH	03820