

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.



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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 – STAFF MEMO

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

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). The property is 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

ATTACHMENTS: Application; Complaint response letters, dated 3/1/2022

STAFF RECOMMENDATION: N/A

BACKGROUND INFORMATION

Per state law (*See* RSA 676:5) and **§ 170-52.C(1)(a), Powers and Duties** of the Zoning Ordinance, one of the powers of the Zoning Board of Adjustment is: "To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made [by the Zoning Administrator] in the enforcement of this Chapter (interpretation of ordinance)." *See also* Dover Code **§ 170-52.C(2), Interpretation of Chapter**.

Garry & Marcia Lane and Benjamin & Sarah Brunt appeal one aspect of the Zoning Administrator's determination, dated March 1, 2022, germane to lot coverage. The Zoning Administrator determined that the Browns' (subject parcel: 126 Emerald Lane) current lot coverage percentage does not constitute a zoning violation. Thus, while the Zoning Administrator had made other determinations, those determinations were not appealed.

Staff's interpretation was that the 10% lot coverage does not apply to lots in an open space subdivision since the footnote above the Dimensional Requirements in the Table of Use for R-40 refer to the Open Space Subdivision Regulations which are silent on lot coverage. This is established by the plain text reading of the R-40 Zoning Table and its reference to the Dover Land Subdivision Regulations §157-19 (A), governing open space subdivisions. The footnote placed at the very beginning of the R-40 Zoning Table evinces an intent to displace that entire section with the provisions of the referenced subdivision regulation.

While the text of the zoning ordinance is not ambiguous, it bears noting that the legislative purpose and history of the current provision at issue supports the Zoning Administrator's determination. The purpose of Open Space Subdivision is that the homes are clustered together with smaller lot sizes, or no lot lines at all, and the balance of the lot area required by conventional zoning is put into common open space to reduce sprawl, promote habitat, and reduce the amount of roadways and utilities in the most rural zoning districts.

The full lot size, in this case, 40,000 square feet, is used to calculate the density. In the R-40 district, building lots are intended to be 20,000 square feet, with the remaining 20,000 square feet set aside. By creating these clustered subdivision, the intent is to create housing within proximity to each other, and separate those houses from the natural wildlife already in the area, which is why the regulations are called Open Space Subdivisions. As noted in the purpose statement, the intent is to leave as much space outside of the house lots in a natural and open state. It is expected that homeowners will maximize their lots, as they have the open space to enjoy, collectively, outside their lots. This is also why there is no prohibition on removing vegetation outside of the external buffer areas.

The current Deputy City Manager, was the City Planner who drafted these regulations in 2002/2003. In reviewing the creation of the regulations, he recounted that the lot coverage requirement was purposefully not carried over

into the subdivision regulations. This was because Open Space Subdivisions do not require lot lines be created. A subdivision may be configured with one lot which has all of the units, which would be individually owned. While they may have limited common areas, those common areas are not lot lines. You could not calculate lot coverage under this scenario. To avoid confusion, this requirement was not included in the subdivision regulations.

Furthermore, if it had been, it would be reasonable that if you are reducing the lot size, the lot coverage would have been increased to accommodate the reduction in lot size. Either that or you would also calculate the portion of the open space that was created to ensure the required lot size, the delta between the provided lot size and the required minimum lot size in the zone, as that portion of the lot is still connected – from a density and yield stand point – with the lot with housing upon it. Solely counting the building lot and not adjusting to account for the required smaller lot size would be a dramatic impact on property rights and would negatively impact the ability to effectively use these lots, not to mention be unreasonable and unrealistic.

Also, while the text of the zoning ordinance is not ambiguous, the historic administration of the zoning ordinance and subdivision regulation further support the Zoning Administrator's determination. The current R-40 footnote and related subdivision regulation have been in place without change since 2015 but has had a similar footnote and location on the table since at least 1986. A review of tax cards for homes on Schooner Drive, Child's Drive, Boxwood Lane, Nicholas Circle, Cardinal Drive, Winterberry Drive and possibly others are all in an Open Space Subdivision in the R-40 that exceed 10% lot coverage when strictly looking at principal buildings built during the time the current R-40 footnote and subdivision regulation have remained in effect. *See* attached tax cards. Moreover, the subject property itself is evidence of historic administration and interpretation, given that the residential structure at 126 Emerald Lane was built in 2016 and, by

itself, exceeds the 10% lot coverage limitation asserted by the appellants. *See* attached tax card for 126 Emerald Lane. The same is true for other lots in this same subdivision upon which structures were built that exceed the 10% lot coverage limitation asserted by the appellants. *See* attached tax cards. "An administrative gloss is placed on an ambiguous clause of a zoning ordinance when those responsible for its implementation interpret the clause in a consistent manner and apply it to similarly situated applicants over a period of years without legislative interference." *Hansel v. City of Keene*, 138 N.H. 99, 104 (1993).

STAFF RECOMMENDATION

Staff recommends that the Board open the public hearing, accept testimony, and make findings.

Staff recommends that the Board review relevant language within the Dover Code, as well as the Rural Residential District (R-40) Purpose Statement (*See* § 170-7.B(1)(a)): "...New subdivisions are designed as open space developments with reduced lot sizes allowed in return for the permanent preservation of open space...".

Staff's opinion and view is that 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 . . ."). As well, the legislative history, common sense, and historic administration all support 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. This accomplishes the same goal as restricting the amount of a lot allowed to be developed.

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]

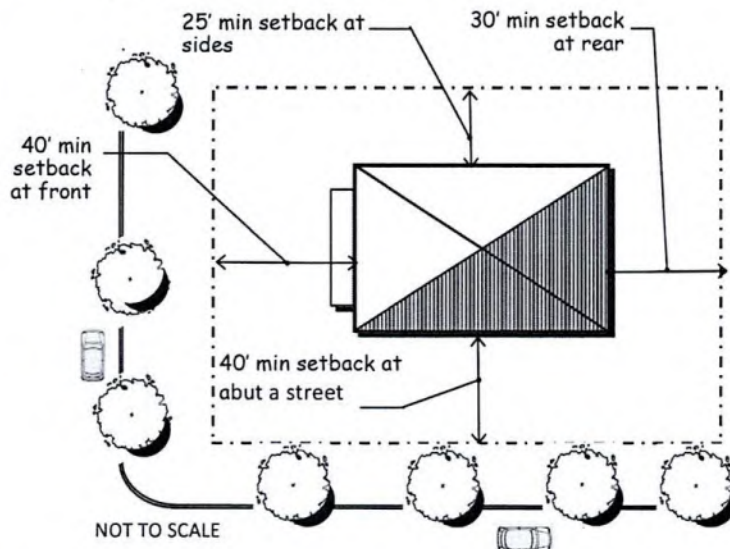
Uses Permitted by Special Exception

- 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.

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.

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.

DOVER CODE

- R-40 Rural Residential District
- R-20 Low-Density Residential District
- R-12 Medium-Density Residential District
- RM-SU Suburban Density Multi-residential District
- RM-U Urban Density Multi-residential District

(2) Nonresidential.

- C Commercial District
- CM Commercial Manufacturing
- IT Innovative Technology

(3) Mixed-use.

- G Gateway
- H Hospital
- LBW Little Bay Waterfront District
- O Office District
- CBD Central Business District
- CWD Cochecho Waterfront District

(4) Overriding.

- CD Conservation District
- URD Urban Renewal District
- RRD Riverfront Residential Overlay District
- GWP Groundwater Protection District
- HWD Hazardous Waste Landfill District
- RCM Residential-Commercial Mixed-Use
- SRD Scenic Road Overlay District
- TDR Transfer of Development Rights
- TEL Telecommunications Facilities
- WPD Wetland Protection District

B. District purpose statements.

- (1) Residential districts. The residential districts are intended to provide a wide range of residential units to provide the citizens of Dover with a balance of housing choices, with varying housing types, densities and costs. The goal is to preserve and create City neighborhoods that are safe and promote harmonious development.
 - (a) Rural Residential District (R-40). 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. Agriculture and farming are promoted in this district. Some nonresidential uses that are compatible with

ZONING

single-family homes are permitted, including churches, hospitals, elementary schools, high schools and child-care facilities.

- (b) Low-Density Residential District (R-20). The purpose of this residential district is to provide for conventional single-family neighborhoods on lots not less than 20,000 square feet. The homes in this district are likely served by municipal sewer and water, but there are some areas that still have on-site septic systems and wells. These districts are located near major roadways. The development of parcels with at least 15 acres can be done as open space subdivisions. Agriculture and farming are promoted in this district. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools and child-care facilities.
- (c) Medium-Density Residential District (R-12). The purpose of this residential district is to provide for conventional single-family neighborhoods on lots not less than 12,000 square feet. The homes in this district are almost all served by municipal sewer and water. Many of the neighborhoods surrounding the elementary schools are in this district and have a sidewalk system that is conducive to children walking to school. The development of parcels with at least five acres can be done as open space subdivisions. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools, colleges and child-care facilities.
- (d) Suburban Density Multi-Residential District (RM-SU) The purpose of this residential district is to provide an environment suitable for a variety of moderate-density housing types, including single-family, two-family, three- to four-family and multifamily dwellings. These districts are suburban neighborhoods located along major roadways outside of the center of the City. The homes in this district are almost all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, elementary schools, high schools, and child-care facilities.
- (e) Urban Density Multi-Residential District (RM-U). The purpose of this residential district is to provide an environment suitable for a variety of moderate/high-density housing types, including single-family, two-family, and three- to four-family dwellings. These districts are urban neighborhoods located close to the downtown area and contain many historic homes that are built close to the sidewalks and streets. The homes in this district are all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, funeral parlors, elementary schools, high schools, and child-care facilities.
- (f) Heritage Residential District (HR).
 - (a) These primarily residential neighborhoods surrounding the Silver Street area exhibit a rare collection of interesting architecture. While primarily Victorian and characterized by wide porches, bay windows, steep roofs, and intricate and involved woodwork, there are noteworthy Colonial buildings as well. In both instances, their original occupants were likely community leaders, whether early tavern keepers, or later senior managers and foremen from the mill facilities that lined the Cochecho River, as well as other community professionals.

City of Dover, NH
Monday, April 18, 2022

Chapter 157. Land Subdivision Regulations

Article IV. Open Space Subdivisions

§ 157-21. General requirements.

[Amended 7-5-1988; 3-19-1991; 4-25-2000; 2-11-2003; 2-10-2004; 8-26-2008; 3-23-2010]

A. Location.

- (1) Any major subdivision within an R-40 District shall be required to adhere to the following procedures for said development.
- (2) Any proposed development in an R-20 or R-12 District that meets the minimum lot size requirement for an open space subdivision shall be required to adhere to the following procedures for said development.

B. Permitted uses shall be as follows:

- (1) All uses permitted in the zoning district within which the open space subdivision is located.
- (2) Open space, private or public, providing for both passive as well as active recreational facilities.

C. Minimum project area permitted for an open space subdivision shall be as follows:

Zoning District	Contiguous Acres Required	
	Residential Only (acres)	With Commercial (acres)
R-40	No minimum	50
R-20	15	50
R-12	5	20

- (1) Projects not meeting the minimum acreage requirements of an open space subdivision shall follow these additional requirements:

- (a) A preliminary public hearing shall be conducted by the Planning Board prior to an applicant's formal submittal application for major subdivision approval. Prior to this preliminary public hearing, the applicant shall submit two different design review plans for general discussion, one yield plan showing a subdivision plan based on conventional regulations and a second plan design as an open space subdivision. At said preliminary public hearing, the applicant shall be responsible for demonstrating that the characteristics of his/her plan warrant consideration for development as an open space subdivision.

- [1] The disposition of the public hearing shall be executed as per the procedure established in § 157-12.

- [2] Within 30 calendar days of the date of public hearing, the Planning Board shall render a determination as to whether the applicant can process his/her application as an open space subdivision or as a conventional subdivision.
- (b) An impact statement shall be submitted which details the probable effects of the subdivision on the following aspects of concern to the City:
 - [1] Attendance at public schools;
 - [2] Increase in vehicular traffic;
 - [3] Changes in the number of legal residents;
 - [4] Increases in municipal costs;
 - [5] Load on public utilities or future demand for them;
 - [6] Public safety;
 - [7] Changes in tax revenue;
 - [8] Changes in surface drainage;
 - [9] Increased consumption of groundwater;
 - [10] Increased refuse disposal;
 - [11] Pollution of water or air;
 - [12] Land erosion or loss of tree cover;
 - [13] Disturbance to other aspects of the natural ecology;
 - [14] Blocking of views;
 - [15] Harmony with the character of surrounding development; and
 - [16] Location of utilities.

D. Density.

- (1) Density allocation. The maximum number of dwelling units permitted in an open space subdivision shall be determined by a submitted yield plan. The resultant number shall not allow a higher density than that provided by a conventional subdivision on the same parcel. An open space subdivision may consist of the following:
 - (a) A subdivision of land into reduced sized individual house lots.
 - (b) Cluster subdivision. One parcel with individual detached single-family dwellings located in a cluster arrangement.
- (2) Density bonus.
 - (a) If the proposed development is located in an R-40 or R-20 Zone and is greater than 50 acres, or is located within the R-12 Zone and is more than 20 acres, a nonresidential component shall be allowed, meeting the following the criteria:
 - [1] No more than 50% of the development site, including open space, shall be devoted to parking, streets, buildings, and accessory structures.
 - [2] Nonresidential uses allowed in the underlying district, as well as those listed below, shall be permitted as long as they are constructed to be compatible in scale and design with residential uses, be attractive and low-key (in terms of

building design, signage, lighting, and treatment of parking), and have a strong pedestrian orientation with a building footprint of not to exceed 10,000 square feet.

[a] Neighborhood scale personal service establishments, such as convenience stores, craft store, drugstores, beauty shops, tailors, laundromats, and banking establishments.

[b] Professional offices.

[c] Medical care uses, including medical care office buildings.

[d] Adult day-care facilities.

[e] Sales office for the sale or rental of property.

[f] Restaurants without a drive-up window.

[g] Elderly assisted care may have a building footprint of not to exceed 20,000 square feet.

[3] Prohibited uses and designs. The following uses and designs are not permitted in an open space subdivision unless they are already allowed in the underlying zoning district under an existing permit or as existing nonconforming uses: commercial telecommunication towers/wireless communications facilities as a primary use, gravel pits, hospitals, or wholesaling.

[4] The commercial uses delineated above may be located in a flexible spatial environment, assuring compatibility with residential uses and with the overall development design, provided that nonresidential uses do not exceed 33% of the net tract area of the open space subdivision. These limitations herein are maximums and should not be construed as by right permitted levels of development.

[5] No building shall exceed four stories in height (except for cupolas, dormers, building towers, and similar elements).

E. No structures or septic systems will be allowed to be built in the following areas: areas with a slope greater than 20%; areas within conservation districts; all flood hazard areas, unless floodproofing standards can be met through construction practices; and undevelopable wetlands as defined in Chapter 170, Zoning.

F. Dimensional requirements.

Zoning District	Minimum Lot Size for Subdivision Lots (square feet)	Minimum Frontage for Subdivision Lots (feet)	Minimum Buffer Along Frontage ¹ (feet)
R-40	20,000	40	100
R-20	12,000	30	100
R-12	8,000	20	100

¹ Does not apply to an existing house on the lot, if part of the total lot yield.
[Amended 5-24-2016]

Minimum Distance Around Individual Units in Clusters	Minimum Building Setbacks for Subdivision Lots
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Zoning District	Street Sides of Units (feet)	Between Units (feet)	Abutting a Street (feet)	Abutting a Lot Line (feet)
R-40	20	30	20	20
R-20	15	25	15	15
R-12	10	20	10	10

- (1) If a portion of a parcel of land is covered by a zoning district in which an open space subdivision is not permitted, this portion shall not be included in a proposed open space subdivision.
- (2) If a parcel of land is covered by more than one of the R-40, R-20 or R-12 Zoning Districts, and more than 50% of the parcel lies in the more restrictive district, the more restrictive regulations shall apply to the entire parcel.
- (3) Frontage requirements shall not apply to cluster subdivisions. Nevertheless, paved access suitable for emergency vehicles, and approved by the Planning Board, shall provide access from a City street or state highway to each of the units with the subdivision. All accessways shall be privately owned and comply with the private drive standards specified in Chapter **153**, Site Review Regulations, of the Code of the City of Dover.
- (4) Notwithstanding the dimensional requirements outlined above, structures or dwelling units in a proposed open space subdivision must maintain the following minimum buffer distances from existing structures, dwelling units and external boundaries:

Zoning District	Minimum Distance from Existing Structures or Dwelling Units (feet)	Minimum Distance from External Boundaries (feet)
R-40	100	50
R-20	75	40
R-12	50	30

- (a) For the purposes of the external boundary buffers required above, the buffer areas shall be considered an undisturbed natural area for the purpose of shielding the development from abutting properties. The external boundary buffer shall be preserved or established to comply with the perimeter landscaping standards in **§ 157-35F**.
[Amended 12-18-2012]
- G. Project ownership. The subject land may be owned, leased or controlled either by a single person, a corporation or by a group of individuals or corporations. An approved open space subdivision shall be binding on the project land and owner(s) and shall be so indicated on each individual deed.
- H. Additional considerations. In addition to the information required to be presented on the preliminary and final plat layout (see §§ **157-27** and **157-28**), the following additional information shall be required:
- (1) Dimensions and locations of all proposed common open spaces.
 - (2) The external dimensions of open space subdivision boundaries (see § **157-22**).
 - (3) Appropriate documents defining the deed restrictions and other provisions under which all common open spaces will be established.

- (4) A fiscal analysis demonstrating that the submitted yield plan is realistic shall be required of the applicant. At a minimum the following items shall be included:
 - (a) Potential road costs.
 - (b) Potential utility costs.
 - (c) Potential miscellaneous costs (to include the cost of moving existing structures).
- I. Community leach (septic) systems. An open space subdivision (OSS) may include a community or common leach system for the disposal of the effluent from household septic tanks. Such a system shall be installed by the subdivider and shall be installed under the following conditions:
 - (1) Community leach systems (CLS) may only be used in those areas of the appropriate zones served by the public water system of the City of Dover.
 - (2) All CLS shall meet the design requirements of the State of New Hampshire Department of Environmental Services and this chapter.
[Amended 1-14-2020]
 - (a) Each structure shall have its own septic tank sized according to the requirements of the New Hampshire Department of Environmental Services. Access to the septic tank cover should be provided by risers as necessary and location shown on the as-built plan submitted to the Dover City Engineer as described in Subsection I(3) below.
 - (b) Leach fields shall be located on land held in common by the property owners to be used exclusively for wastewater disposal. Each area designated for wastewater disposal shall be large enough to accommodate the required leach field and associated fill as well as an alternate reserve leach field, should replacement of the original field become necessary. The leach field and reserve field must have suitable soil according to the New Hampshire Department of Environmental Services rules for sewage disposal system design.
 - (c) All piping connecting septic tanks to leach systems and other mechanical equipment such as pumps, valves, etc., shall meet the standards of the State of New Hampshire and the City of Dover as detailed in § 157-41. All such equipment used by more than one dwelling shall be placed in an easement which shall be deeded to the maintaining authority, and such authority shall have the right to access at any time for the purposes of maintaining the system. All construction under this article shall be explicitly subject to the provisions of Article V of this chapter.
 - (d) The developer and homeowners' association are required to provide each new resident in the development a copy of the New Hampshire Department of Environmental Services pamphlet "You and Your Septic System."
 - (3) Facility ownership. At the conclusion of the construction of all piping, equipment and leach fields, a complete set of as-built drawings of the systems will be filed with the City Engineer. The owners of the CLS shall also comply with the following requirement:
 - (a) Whether or not the developer has opted to establish a cooperative legal entity to own and manage the common space, such an entity shall be set up to own and manage the common leach system. The bylaws of such an entity shall be established in accordance with state law governing such organizations (RSA 479-A:1 to 479-A:23, inclusive, as amended) and shall include the provisions of Article IV, § 157-22E, Requirements of a homeowners' association, by substituting the words "common leach system" for "common open space" in those regulations.
 - (4) Facility maintenance requirements. The following requirements shall be made part of any homeowners' association agreement:

- (a) The owner of the common leach system shall maintain a service contract with a licensed septic system service and installation contractor to perform the required maintenance. Such a contract shall detail the periodic maintenance to be performed on the distribution/collection system, including leach fields, distribution boxes, pumps, and collection pipes, etc. The service contract shall provide for an annual report to the City Engineer by the licensed septic system installer detailing the condition of the system and any repairs made that year or anticipated at the time of the report. A copy of the service contract shall be delivered to the City Engineer for review at least 30 days before it goes into force.
- (b) The owner of the common leach system shall collect from the users of the system an annual fee equal to the cost of repairs and an amount sufficient to establish a reasonable cost of replacement reserve. The fee should be assessed annually based upon the previous year's experience and the forthcoming service contract amount.
- (c) The maintaining authority shall keep a record of each individual septic tank, showing its location and the frequency of its pumping. As a guide to maintenance, each tank should be pumped at least once in every five-year period and not more frequently than every two years.
- (d) No structure shall be built on a leach field lot.

§ 157-22. Common open space.

[Amended 7-5-1988; 4-25-2000]

- A. General common open space shall be set aside for the use and benefit of the residents in an open space subdivision or dedicated to a public or nonprofit organization. Generally, the open space shall be usable for recreation and integrated into the layout and design of the subdivision. The location and configuration of the open space shall be at the discretion of the Planning Board.
- B. External boundaries. A buffer zone of 100 feet shall be provided along the perimeter of the subject tract that fronts existing public roadways, and a buffer zone equal to the external boundaries required by § 157-21F(4) shall be provided along the perimeter of the subject tract that abuts all adjacent parcels. If said perimeter is predominantly open land, it shall be suitably landscaped at the discretion of the Planning Board. Should the Planning Board find that the unique topography and other site conditions warrant a certain degree of flexibility in the extent of the required buffer zone, a waiver of the affected portion of said buffer will be taken under consideration.

[Amended 12-18-2012]

- C. Open space requirements.

- (1) The common open space for an open space subdivision that contains subdivision lots shall be depicted on the subdivision plat as bounded by property lines and as being exclusive of house lots; streets, driveways and parking lots; stormwater collection ponds; land area dedicated to septic systems; and easements and rights-of-way for stormwater drainage ways, streets or utilities. The common open space for an open space subdivision that contains dwelling units in cluster arrangements on a single parcel shall be depicted on the subdivision plat as land area exclusive of dwelling units and accessory structures; streets, driveways and parking lots; areas required for minimum buffers around dwelling units; land area required for septic systems; area covered by easements or rights-of-way for stormwater drainage systems, streets or utilities; and stormwater collection ponds. The legal and spatial disposition of such open space is at the sole discretion of the Planning Board.

- (2) The area of the open space shall equal or exceed the total allowed reduction in the lot sizes within the open space subdivision and shall be permanently dedicated as open space or for municipal use, as agreed upon. A minimum of 50% of the total open space land must be usable uplands and reasonably accessible to all property owners in the project.
 - (3) The open space shall be deeded to the City of Dover for municipal use or deeded to a nonprofit organization, or a deed restriction or easement shall be placed upon all common open space so that all said open space remains open space in perpetuity and shall never be developed or further subdivided. Acceptance of ownership of deeded open space is at the discretion of the City or nonprofit organization.
 - (4) Said deed restrictions and documents shall be placed on file with the City Clerk upon receipt of Planning Board subdivision approval and duly recorded at the Strafford County Registry of Deeds, where appropriate.
 - (5) The required common open space shall be owned and maintained by the developer until it is owned in one or more of the following ways:
 - (a) By the City of Dover, subject to acceptance by the City.
 - (b) By a private, nonprofit organization (such as the Nature Conservancy or Audubon Society) which has as its purpose the preservation of open space through ownership and control; provided, however, that the residents within the open space subdivision have access to the common open space for appropriate recreational uses.
 - (c) By a private, nonprofit corporation, association or other nonprofit legal entity, such as homeowners' association, established by the applicant for the benefit and enjoyment of the residents of the subdivision and over which said residents have control.
 - (6) No privately owned recreation structures shall be built in the open common space without the approval of the Planning Board.
 - (7) Current use limitation. The common land areas, open space areas and natural areas in an approved development are considered to be a part of the residential use of such development and shall not be considered to be open space land, farmland, wetlands, recreation land, floodplain or wild land within the meaning of RSA 79-A except where such consists of actively operated farmland.
- D. In the event that an open space subdivision is to be owned by a cooperative legal entity, all common open space shall be governed in accordance with the requirements of the RSA 479-A:1 to 479-A:23, inclusive, as amended.
[Amended 2-26-2019]
- E. Requirements of a homeowners' association.
- (1) The financial and administrative obligations for future maintenance of common open space and other common facilities shall be clearly stated, adequate and enforceable by the City, at the association's expense, in the event of negligence.
 - (2) In the event that the homeowners' association established to own and maintain common open space or any successor organization shall fail to maintain the common open space/facilities in a reasonable order and condition, the Planning Board may serve written notice upon such organization and shall demand that any deficiencies of maintenance be cured in 30 days of receipt of said notice. In addition, a trustee shall be designated by the homeowners' association to ensure that proper care of said common open space is continued. The trustee's responsibilities shall include, but not be limited to, passive and active recreational areas, retention ponds, drainage easements and common septic disposal systems.

- (3) In the event that the maintenance deficiencies have not been resolved within said prescribed time limits, the cost of maintenance by another party, other than the City of Dover, shall become a tax lien on the properties within the subdivision. Entry and maintenance of said common open space shall not exceed a period of one year.
- (4) Before the expiration of said year, the Planning Board shall, upon its initiative or upon the request of the organization heretofore responsible for the maintenance of the common open space, call a public hearing upon 15 days' notice to such organization or to the residents and owners of the development, at which hearing such organization or the residents or owners of the development shall show cause why such maintenance by the third party shall not, at the election of the City, continue for a succeeding year.
 - (a) If the Planning Board determines that said organization is able to maintain said common open space in a reasonable condition, the City shall cease to have such space maintained at the end of the prescribed time limit.
 - (b) If the Planning Board determines that such organization is not able to maintain said common open space in a reasonable condition, the City may continue to have such land maintained by a third party for a succeeding year, subject to a similar hearing and determination in each year thereafter. The decision of the Planning Board in each such case shall constitute the final administrative decision subject to judicial review.
- (5) The cost of such maintenance shall be assessed proportionately against the properties within the development that have a right of enjoyment of the common open space and shall become a tax lien on said properties. The City, at the time the third party enters upon said common open space for the purpose of maintenance, shall file a notice of such lien in the office of the City Assessor and the Registrar of Deeds for Strafford County upon the properties affected by such lien within the development, and the same shall be discharged by the City upon payment as with other liens.

Zoning District	Minimum Lot Size ¹	Minimum Frontage ¹	Front	Building Setbacks			Maximum Coverage of Lot (percent)	Maximum Floor Ratio	Maximum Height (feet)
				Rear	Side ^{1,2} (Abut a Lot)	(Abut a Street)			
Residential:									
R-40 ¹⁴	40,000 ^{4,5}	150	50	15	25	50	10	0.1	30
R-20 ¹⁴	20,000 ³	125	35	15	20	35	30	0.2	30
R-12 ¹⁴	12,000	100	30	15	15	30	30	0.2	30
RM-20	20,000 ³	150	50	20	20	50	40	0.5	40
RM-12 ⁹	20,000 ¹²	125 ⁷	35 ¹³	20 ^{13,14}	20 ^{13,14}	35 ¹³	40	0.5	40 ¹⁵
RM-10	10,000	80	20	15	15	20	40	0.5	40
RM-8	8,000	80	15	15	15	15	50	1.0	40
RM-6	6,000	60	15	15	15	15	50	1.0	60
Nonresidential:									
O	10,000	100	12	15	10	12	50	2.0	2.0
B-1	10,000	100	15	15	10	15	50	0.5	0.6
B-2	—	—	—	12	—	—	70	2.0	2.0
B-3	20,000 ⁹	125	50	15	12	50	50	1.0	0.6
I-1	40,000 ⁹	150	50	25	15	50	50	1.0	1.0
I-2	10,000	100	15	15	12	15	50	2.0	2.0
UMUD ¹⁰	—	—	—	—	—	—	70	2.0	—
CWD ¹¹	10,000	100	—	—	10	—	—	2.0	2.0
ETP ^{17,18,19,20,21}	10 acres	400	100	100	100	100	20	—	55

Footnotes

* These shall not apply to tracts of land legally existent at the time of passage of this chapter whose land area and lot frontage are less than those required herein, but are otherwise in conformance with this chapter prior to this amendment.

¹ Refer to §§ 170-13 and 170-14 for exceptions to lot size, frontage and setback requirements. Refer to § 170-17 for dimensional requirements for accessory buildings. [Amended 9-24-86 by Ord. No. 14-86; 6-10-87 by Ord. No. 13-87]

² Where a nonresidential district abuts a residential district, the minimum side yard requirements shall be twenty (20) feet, unless a greater distance is specified in this Table. [Amended 9-24-86 by Ord. No. 14-86]

³ A single-family residential dwelling may be constructed within this zoning district under the same dimensional regulations that govern development in a R-20 District.

⁴ Thirty thousand (30,000) square feet of lot area where city water and sewer services are available.

⁵ Refer to Chapter 155, Subdivision of Land, Article IV.

⁶ The front yard setbacks shall be as follows: one (1) unit: thirty-five (35) feet; two (2) to four (4) units: fifty (50) feet. Front yards shall be measured from the public way. [Amended 9-24-86 by Ord. No. 14-86]

⁷ The lot width shall be as follows: one (1) to two (2) units: one hundred twenty-five (125) feet; three (3) to four (4) units: one hundred fifty (150) feet. [Amended 9-24-86 by Ord. No. 14-86]

⁸ [Amended 7-24-85 by Ord. No. 9-85; 9-24-86 by Ord. No. 14-86]

⁹ Refer to Footnote⁹ in Table 1, Permitted Uses, Subsection C, Commercial uses.

¹⁰ [Added 3-30-83 by Ord. No. 5-83]

¹¹ [Added 4-27-83 by Ord. No. 12-83; amended 3-25-87 by Ord. No. 8-87]

¹² The minimum lot size shall be as follows: one (1) or two (2) units shall be supported by at least twenty thousand (20,000) square feet of land area; developments containing three (3) units or more shall be supported by at least twelve thousand (12,000) square feet of land area per dwelling unit. For multiunit development, the surface area of the existing water bodies and wetlands and those areas which support the federally designated floodway shall be deleted from the tract's gross developable land area. Structures shall not be erected on topographic slopes in excess of twenty percent (20%) or within the Conservation District as defined in § 170-27 of the Code of Dover. A maximum of four (4) units per building is allowed. [Amended 9-24-86 by Ord. No. 14-86]

¹³ The setback between any two (2) structures shall equal the height of the taller structure. [Amended 9-24-86 by Ord. No. 14-86]

¹⁴ The rear and side yard setbacks shall be as follows: one (1) to two (2) units: twenty (20) feet; three (3) to four (4) units: seventy-five (75) feet. [Amended 9-24-86 by Ord. No. 14-86]

¹⁵ The maximum building height shall be forty (40) feet, provided that at least two (2) parking spaces are enclosed beneath the dwelling unit. If parking is not enclosed beneath the dwelling unit, the maximum building height shall be thirty (30) feet. [Added 9-24-86 by Ord. No. 14-86]

¹⁶ In the case of an alternative design subdivision, in accordance with Article IV of Chapter 155 of the Code of Dover, the dimensional requirements shall be as specified in § 155-22 of the Code of the City of Dover, 1983. [Added 6-10-87 by Ord. No. 13-87]

¹⁷ [Added 7-8-87 by Ord. No. 15-87]

¹⁸ Structures shall be separated by a distance at least equal to the height of the taller structure. [Added 7-8-87 by Ord. No. 15-87]

¹⁹ At least fifty percent (50%) of the site shall be maintained as open space, either landscaped or left natural. [Added 7-8-87 by Ord. No. 15-87]

²⁰ Parking areas shall be set back at least twenty-five (25) feet from property lines. [Added 7-8-87 by Ord. No. 15-87]

²¹ Parcels greater than four hundred seventy-five thousand six hundred (475,600) square feet in area that contain a residential structure as of the public hearing posting date of this chapter may be subdivided one (1) time in such a manner as to separate the residential structure from the remaining vacant property. At least forty thousand (40,000) square feet of land area shall remain with the structure. [Added 7-8-87 by Ord. No. 15-87]

whether the applicant can process his/her application as an alternative design subdivision or as a conventional subdivision.

155-22. General Requirements

A. Location. An alternative design subdivision shall only be permitted in R-40, R-20 and R-12 Zoning Districts, where the applicant can clearly demonstrate that the characteristics of his/her holdings meet the expressed purpose and intent of this section.

B. Permitted uses shall be as follows:

- (1) All uses permitted in the zoning district within which the alternative design subdivision is located.
- (2) Open space, private or public, providing for both passive as well as active recreational facilities.

C. Minimum project area. The minimum area permitted for an alternative design subdivision shall be as follows:

<u>Zoning District</u>	<u>Contiguous Acres Required</u>
R-40	10 acres
R-20	5 acres
R-12	5 acres

D. Density allocation. The gross acreage of a tract of land, exclusive of the surface area of water bodies and wetlands, as defined in RSA 483-A:1a, shall be divided by the minimum square footage of a lot permitted in the zoning district within which the ADS is proposed.

E. No structures will be allowed to be built in the following areas: all areas with a slope greater than twenty (20) percent; areas within conservation districts; all flood hazard areas, unless flood proofing standards can be met through construction practices.

F. MINIMUM LOT SIZE, ROAD FRONTAGE AND BUFFER ZONES FOR ALTERNATIVE DESIGN SUBDIVISIONS

<u>ZONING DISTRICT</u>	<u>MINIMUM LOT SIZE (SQ. FT.)</u>	<u>MINIMUM ROAD FRONTAGE (AT ROW)</u>	<u>ON CUL-DE-SACS</u>	<u>BUFFER ZONES</u>
R-40	20,000	100 ft.	60 ft.	100 ft.
R-20	12,000	75 ft.	40 ft.	100 ft.
R-12	10,000	75 ft.	40 ft.	100 ft.

- (1) Where a tract of land supports more than one (1) zoning district only that area lying within the applicable zoning district shall be used to calculate the permitted density.
- (2) Where a tract of land supports more than one of the R-40, R-20 or R-12 Zoning Districts and not less than fifty (50) percent of the area of such tract lies in the more restrictive district, the regulatory provisions of the more restrictive zone shall apply to the remainder of the tract.

G. Project ownership. The subject land may be owned, leased or controlled either by a single person, corporation or by a group of individuals or corporations. An approved alternative design subdivision shall be binding on the project land and owner(s) and shall be so indicated on each individual deed.

H. Utility prerequisites. An alternative design subdivision shall only be permitted in those areas serviced by municipal water.

I. Additional considerations. In addition to the information required to be presented on the preliminary and final plat layout (see 155-28 and 155-29), the following additional information shall be required.

- (1) Dimensions and locations of all proposed common open spaces.
- (2) The external dimension of alternative design subdivision boundaries. (See 155-23.)
- (3) Appropriate documents defining the deed restrictions and other provisions under which all common open spaces will be established.

- (4) An impact statement which details the probable effects of the subdivision on the following aspects of concern to the City:

- (a) attendance at public schools;
- (b) increase in vehicular traffic;
- (c) changes in the number of legal residents;
- (d) increases in municipal costs;
- (e) load on public utilities or future demand for them;
- (f) public safety;
- (g) changes in tax revenue;
- (h) changes in surface drainage;
- (i) increased consumption of groundwater;
- (j) increased refuse disposal;
- (k) pollution of water or air;
- (l) land erosion or loss of tree cover;
- (m) disturbance to other aspects of the natural ecology;
- (n) blocking of views;
- (o) harmony with the character of surrounding development; and,
- (p) location of utilities.

J. Community Leach (Septic) Systems. An Alternative Design Subdivision (ADS) may include a community or common leach system for the disposal of the effluent from household septic tanks. Such a system shall be installed by the subdivider and shall be installed under the following conditions:

- (1) Community Leach Systems (CLS) may only be used in those areas of the appropriate zones served by the public water system of the city of Dover.
- (2) All CLS's shall meet the design requirements of the State of New Hampshire Water Supply and Pollution Control Commission and these regulations:
 - (a) Each dwelling structure shall have its own septic holding tank of sufficient capacity to serve the number of dwelling units in the structure. Each tank shall be located so that periodic pumping may be accomplished with minimum disruption to the lot.
 - (b) Leach fields for such systems shall be located on separate lots in the subdivision. Each leach field lot shall be large enough to contain the design size leach field, suitable vacant land to replicate that field, sufficient buffer so that the boundaries of the lot may be set back from the active and potential field by the required distance to a domestic well, and in any case the lot should meet the minimum zoning requirement for a building lot.

- (c) In order to guard against failure, the design of each leach field lot shall contain extra construction leaching capacity, to be used in alternation with the primary capacity, to be at least fifty (50) percent of the design size required by the State of New Hampshire Water Supply and Pollution Control Commission. Where more than one leach field lot is contained in a subdivision, a piped connection between the lots including valves and distribution boxes to allow the temporary use of the leach fields on one lot by dwellings connected to a failed leach field lot, while their leach field is being repaired, will meet this requirement.
 - (d) All piping connecting septic tanks to leach systems and other mechanical equipment such as pumps, valves, etc. shall meet the standards of the State of New Hampshire and the City of Dover as detailed in 155-42. All such equipment used by more than one dwelling shall be placed in an easement which shall be deeded to the maintaining authority and such authority shall have the right to access at any time for the purposes of maintaining the system. All construction under this article shall be explicitly subject to the provisions of Article V of these regulations.
- (3) Facility Ownership. At the conclusion of the construction of all piping, equipment and leach fields, a complete set of "As-Built" drawings of the systems will be filed with the City Engineer. The owners of the CLS shall also comply with the following requirement:
- (a) Whether or not the developer has opted to establish a cooperative legal entity to own and manage the common space, such an entity shall be set up to own and manage the common leach system. The By-Laws of such an entity shall be established in accordance with state law governing such organizations (New Hampshire RSA 479A:1-23 inclusive as amended) and shall include the provisions of Article IV, paragraph 155-23(E), "Requirements of a Homeowner's Association", by substituting the words "common leach system" for "common open space" in those regulations.
- (4) Facility Maintenance Requirements. The following requirements shall be made part of any homeowners association agreement:
- (a) The owner of the common leach system shall maintain a service contract with a licensed septic system service

Emerald Lane Tax Cards Included

**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.

Property Location:

126 Emerald Ln

Residential Property Record Card - Dover, New Hampshire

Parcel ID: F0015-048000

Map Block No. F-15-48-0

Class: R

Use:

101

Card 1 of 1

Current Owner
Brown Dana R & Brown Sherri L 126 Emerald Ln Dover Nh 03820

Previous Owner History		
Name	Deed	Date
Indian Ridge At Dover Llc	4350/139	01/04/2016
White Jeffrey S &	3885/0584	12/01/2010

Miscellaneous	
Deed Info:	4559/257-04/10/2018
Zoning:	R-40
Neighborhood:	167
Living Units:	1
Street/Road:	Private
Estimates	
MRA:	
Weighted:	
Market:	

Assessment Information		
Assessed Value:	*	Prior
Land:	147,300	147,300
Building:	459,000	355,400
Total:	606,300	502,700
Assessed Information:		
Value:	606,300	
Effective DOV:	4/1/2021	
Value Flag:	COST VALUE	

Notes

Entrance Information					
Date	Time	ID	Actv	Entrance Code	Source
09/18/2018	S	JF		Ext. Insp.	
02/24/2021	P	JF		Ext. Insp.	
12/29/2020	P	JF		Info At Door	Owner

Sales History				
Book/Page	Date	Price	Type	Validity
4559/257	04/06/2018	485,000	2	08
4350/139	12/31/2015	1,715,000	1	21

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
09/18/2020	20-411	28,000	44 Slr-14.96 Kw	100
10/25/2016	16-483	208,000	Sfd	100

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.465	0	147,260
Total Acres for this Parcel		0.465	Total Land Value	147,300

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
Solar Panels	44	2020	3	5	C	A	52%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Sun Solar Panel Value								30,000
								0
Total OBY for this card								30,000



Inspection witness by:

Property Location:

126 Emerald Ln

Residential Property Record Card - Dover, New Hampshire

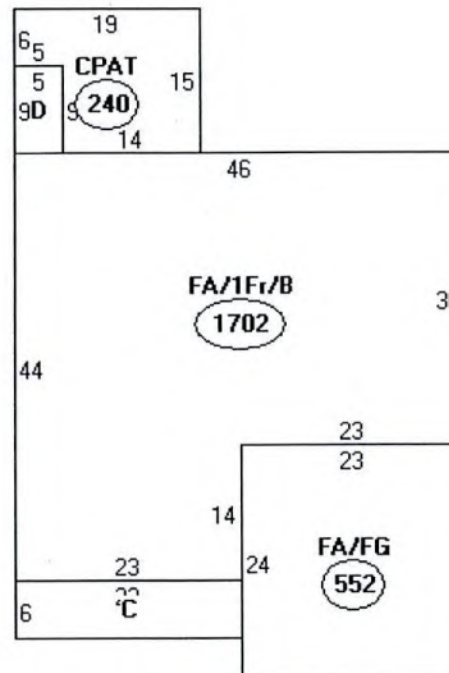
Parcel ID: F0015-048000

Map Block No. F-15-48-0

Class: R Use:

101 Card 1 of 1

Dwelling Information		Replacement Costs	
Style:	Cape	Base Price:	228,770
Condo Style:		Additions:	47,700
Exterior Walls:	Alum/Vinyl	Unfinished Area:	0
Story Height:	1.0	Basement:	0
Attic:	Full Finsh	Attic:	46,510
Interior/Exterior:		Plumbing:	11,590
Basement:	Full	Heating A/C Adj.:	8,520
Bsmt Garage:	0	FBLA:	0
Rec Room size:	0 0	Rec Room:	0
FBLA size:	0 0	Fire Place:	4,350
Unfinished Area:	0	Basement Garage:	0
WB Fireplace:	Stacks 0 Openings 1	Exterior Trim:	0
MTL Fireplace:	Stacks 0 Openings 0	Subtotal:	347,440
Heating Type:	Central A/C	Grade Factor:	1.26
Fuel:	Gas	C & D Factor:	0.00
Heating System:	Forced Air	Total RCN:	437,770
Year Built:	2016	Percent Good:	0.98
Eff. Yr Built:	0	Eco Depr:	0
Ground Flr Area:	1702	Func Depr:	0
Tot Living Area:	2649	Under Constn %:	0
Basement Area:	0	Market Adj.:	0.00
Grade:	B	Total RCNLD:	429,000
Condition:	Average		
CDU:	AV		
Building Notes:		Addition Information	
		Low 1st 2nd 3rd Area Points	
		13 19 552 33300	
		11 138 7700	
		15 45 4800	
		33 240 1900	
Rooms:		Low 1st 2nd 3rd Tot	
Bedrooms:		0 0 0 0 6	
Full Baths:		0 0 0 0 3	
Half Baths:		0 0 0 0 2	
Add'l Fixtures:		0 0 0 0 1	
		0 0 0 0 1	



Descriptor/Area

A: FA/1Fr/B
1702 sqftB: FA/FG
552 sqftC: OFF
138 sqftD: FBAY
45 sqftE: CPAT
240 sqft

Property Location:

159 Emerald Ln

Residential Property Record Card - Dover, New Hampshire
Parcel ID: F0015-016000

Map Block No. F-15-16-0

Class: R

Use:

101

Card 1 of 1

Current Owner		Previous Owner History			Miscellaneous		Assessment Information	
Lapierre Leon & Lapierre Susan E 159 Emerald Ln Dover Nh 03820		Name	Deed	Date	Deed Info:	4707/955-11/12/2019	Assessed Value:	* Prior
		Indian Ridge At Dover Llc	4350/139	01/04/2016	Zoning:	R-40	Land:	143,100 143,100
		White Jeffrey S &	3885/584	12/01/2010	Neighborhood:	167	Building:	554,400 447,600
		Northam Builders Inc	3338/573	03/02/2006	Living Units:	1	Total:	697,500 590,700
					Street/Road:	Private	Assessed Information:	
							Value:	697,500
Notes		Entrance Information			Estimates		Effective DOV: 4/1/2021	
Drainage Easement Rear Rp1= Est		Date	Time	ID Actv Entrance Code	Source	MRA:	Value Flag: COST VALUE	
					Entry & Sign	Weighted:		
		08/02/2021	P	RD	Ext. Insp.	Market:		
		06/29/2020	P	SH	Info At Door			
					Owner			

Sales History				
Book/Page	Date	Price	Type	Validity
4707/955	11/12/2019	620,500	2	08
4350/139	12/31/2015	1,715,000	1	21

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
09/24/2019	19-434	23,000	Ingrnd Pool	100
05/16/2019	19-179	270,000	Sfd	100

Land Information							Value
Type	Size	Grade	Influence Factor 1, 2 and %				
Primary	A	0.545 0	Easements	Drainage/Fld	-5		143,130

Total Acres for this Parcel 0.545 **Total Land Value** 143,100

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
Pool-Plastic Liner	1	2020	18	31	C	A	57%	13,970
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								13,970



Inspection witness by: _____

159 Emerald Ln

Residential Property Record Card - Dover, New Hampshire

Parcel ID: F0015-016000

Map Block No. F-15-16-0

Class: R **Use:**

101 Card 1 of 1

Dwelling Information

Style:	Cape
Condo Style:	
Exterior Walls:	Alum/Vinyl
Story Height:	1.0
Attic:	Full Fin./Wh
Interior/Exterior:	
Basement:	Full
Bsmt Garage:	0
Rec Room size:	0 0
FBLA size:	0 0
Unfinished Area:	0
WB Fireplace:	Stacks 1 Openings 0
MTL Fireplace:	Stacks 0 Openings 0
Heating Type:	Central A/C
Fuel:	Gas
Heating System:	Forced Air
Year Built:	2019
Eff. Yr Built:	0
Ground Flr Area:	1986
Tot Living Area:	3633
Basement Area:	0
Grade:	B
Condition:	Average
CDU:	AV

Building Notes:

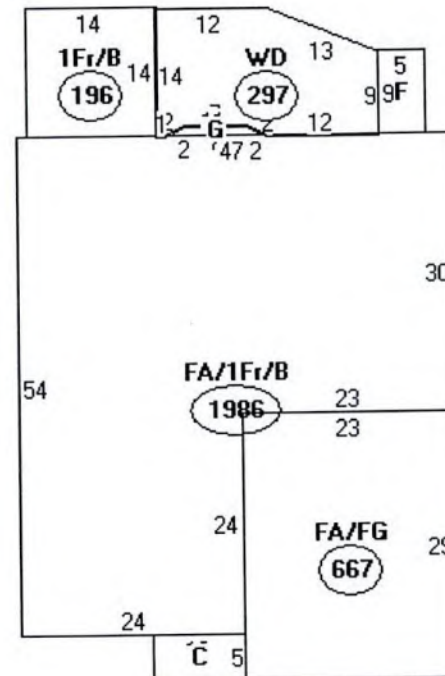
	Low	1st	2nd	3rd	Tot
Rooms:	0	0	0	0	5
Bedrooms:	0	0	0	0	3
Full Baths:	0	0	0	0	2
Half Baths:	0	0	0	0	1
Add'l Fixtures:	0	0	0	0	1

Replacement Costs

Base Price:	252,110
Additions:	82,100
Unfinished Area:	0
Basement:	0
Attic:	68,180
Plumbing:	11,590
Heating A/C Adj.:	9,540
FBLA:	0
Rec Room:	0
Fire Place:	9,660
Basement Garage:	0
Exterior Trim:	0
Subtotal:	433,180
Grade Factor:	1.26
C & D Factor:	0.00
Total RCN:	545,810
Percent Good:	0.99
Eco Depr:	0
Func Depr:	0
Under Constcn %:	0
Market Adj.:	0.00
Total RCNLD:	540,400

Addition Information

Low	1st	2nd	3rd	Area	Points
	13	19		667	40100
	11	17		50	5300
50	10			196	23700
	31			297	7200
	15			45	4800
50	10			9	1000

Descriptor/Area

A: FA/1Fr/B
1986 sqft
B: FA/FG
667 sqft
C: .5Fr/QFP
50 sqft
D: 1Fr/B
196 sqft
E: WD
297 sqft
F: FBAY
45 sqft
G: 1Fr/B
9 sqft

Property Location:

151 Emerald Ln

Residential Property Record Card - Dover, New Hampshire

Parcel ID: F0015-018000

Map Block No. F-15-18-0

Class: R

Use:

101

Card 1 of 1

Current Owner		Previous Owner History			Miscellaneous		Assessment Information	
Oczkowski Gary R & Bowers Rebecca A 151 Emerald Ln Dover Nh 03820		Name	Deed	Date	Deed Info: 4540/697-01/08/2018	Zoning: R-40 Neighborhood: 167 Living Units: 1 Street/Road: Private	Assessed Value: *	Prior
		Indian Ridge At Dover Llc	4350/139	01/04/2016			Land: 147,900	147,900
		White Jeffrey S &	3885/584	12/01/2010			Building: 431,500	357,600
		Northam Builders Inc	3338/573	03/02/2006			Total: 579,400	505,500
							Assessed Information:	
							Value: 579,400	
Notes		Entrance Information					Effective DOV: 4/1/2021 Value Flag: COST VALUE	
		Date	Time	ID	Actv	Entrance Code		
		11/19/2018	T	BL		Entry Gained		
		06/27/2018	P	SH		Ext. Insp.		
		10/10/2018	P	SM		Ext. Insp.		
							Estimates MRA: Weighted: Market:	

Sales History				
Book/Page	Date	Price	Type	Validity
4540/697	01/05/2018	449,900	2	08
4350/139	12/31/2015	1,715,000	1	21

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
04/04/2017	17-096	184,860	Sfd	100
05/01/2017	FLAG		Chk Hld'g 2018	100

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.48	0	147,900

Total Acres for this Parcel 0.48 **Total Land Value** 147,900

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
Detach Patio	1	2017	12	18	C	A	49%	2,790
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								2,790



Inspection witness by: _____

Property Location:

151 Emerald Ln

Residential Property Record Card - Dover, New Hampshire

Parcel ID: F0015-018000

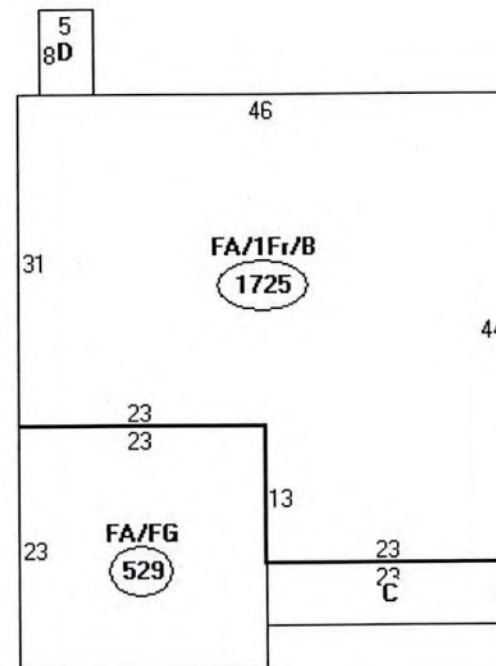
Map Block No. F-15-18-0

Class: R Use:

101 Card 1 of 1

Dwelling Information																																					
Style:	Cape																																				
Condo Style:																																					
Exterior Walls:	Alum/Vinyl																																				
Story Height:	1.0																																				
Attic:	Full Finsh																																				
Interior/Exterior:																																					
Basement:	Full																																				
Bsmt Garage:	0																																				
Rec Room size:	0 0																																				
FBLA size:	0 0																																				
Unfinished Area:	0																																				
WB Fireplace:	Stacks 0 Openings 1																																				
MTL Fireplace:	Stacks 0 Openings 0																																				
Heating Type:	Central A/C																																				
Fuel:	Gas																																				
Heating System:	Forced Air																																				
Year Built:	2017																																				
Eff. Yr Built:	0																																				
Ground Flr Area:	1725																																				
Tot Living Area:	2627																																				
Basement Area:	0																																				
Grade:	B																																				
Condition:	Average																																				
CDU:	AV																																				
Building Notes:																																					
<table border="1"> <thead> <tr> <th></th> <th>Low</th> <th>1st</th> <th>2nd</th> <th>3rd</th> <th>Tot</th> </tr> </thead> <tbody> <tr> <td>Rooms:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>7</td> </tr> <tr> <td>Bedrooms:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>3</td> </tr> <tr> <td>Full Baths:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>2</td> </tr> <tr> <td>Half Baths:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>1</td> </tr> <tr> <td>Add'l Fixtures:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>3</td> </tr> </tbody> </table>			Low	1st	2nd	3rd	Tot	Rooms:	0	0	0	0	7	Bedrooms:	0	0	0	0	3	Full Baths:	0	0	0	0	2	Half Baths:	0	0	0	0	1	Add'l Fixtures:	0	0	0	0	3
	Low	1st	2nd	3rd	Tot																																
Rooms:	0	0	0	0	7																																
Bedrooms:	0	0	0	0	3																																
Full Baths:	0	0	0	0	2																																
Half Baths:	0	0	0	0	1																																
Add'l Fixtures:	0	0	0	0	3																																

Replacement Costs					
Base Price:	230,700				
Additions:	41,100				
Unfinished Area:	0				
Basement:	0				
Attic:	47,000				
Plumbing:	15,460				
Heating A/C Adj.:	8,590				
FBLA:	0				
Rec Room:	0				
Fire Place:	4,350				
Basement Garage:	0				
Exterior Trim:	0				
Subtotal:	347,200				
Grade Factor:	1.26				
C & D Factor:	0.00				
Total RCN:	437,470				
Percent Good:	0.98				
Eco Depr:	0				
Func Depr:	0				
Under Constn %:	0				
Market Adj.:	0.00				
Total RCNLD:	428,700				
Addition Information					
Low	1st	2nd	3rd	Area	Points
	13	19		529	32400
	11			138	7700
	14			40	1000


Descriptor/Area

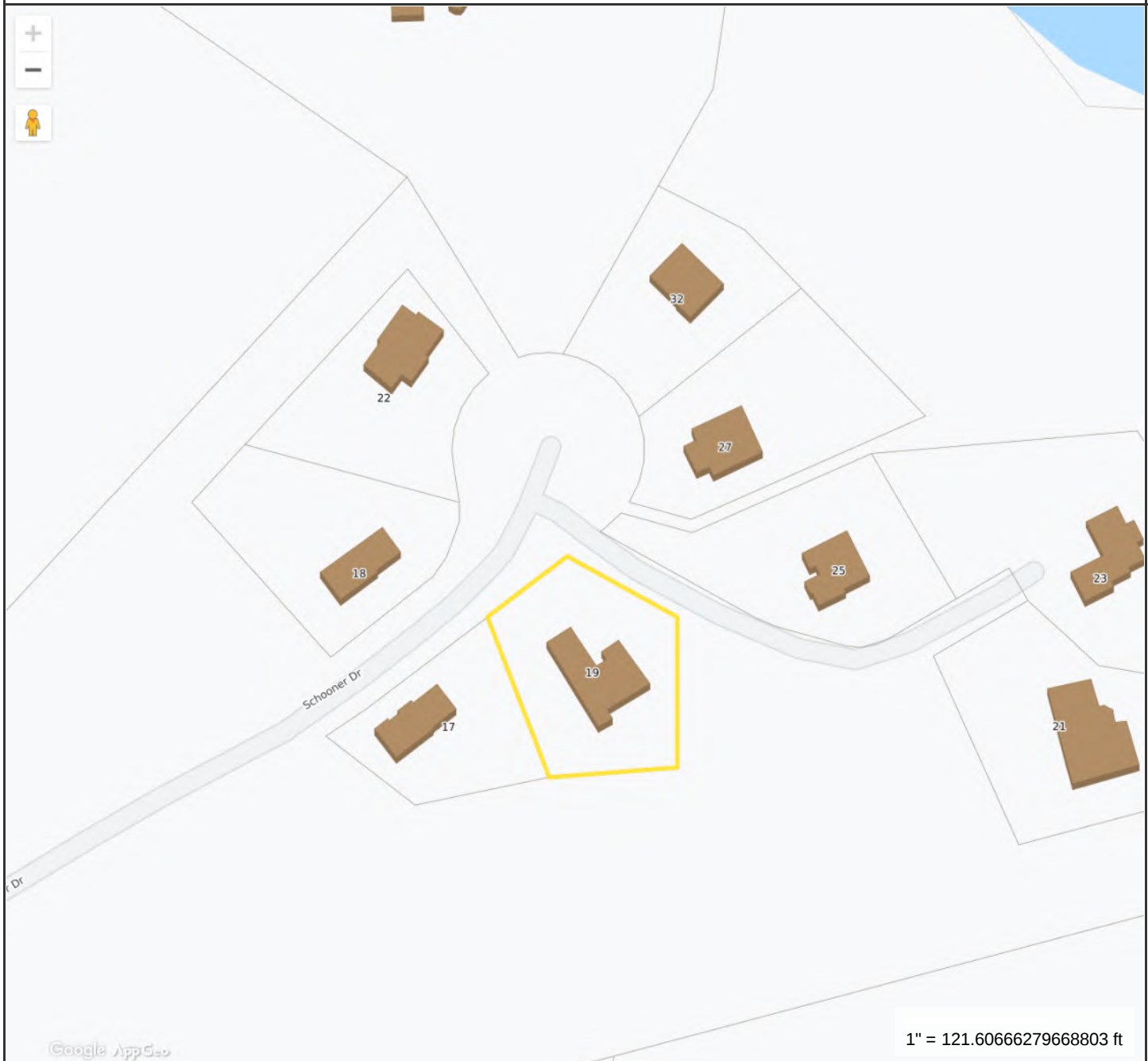
 A: FA/1Fr/B
1725 sqft

 B: FA/FG
529 sqft

 C: OFF
138 sqft

 D: FUB
40 sqft

19 Schooner Example Tax Card

**Property Information**

Property ID M0096-A00009
Location 19 SCHOONER DR
Owner COSTA MICHELLE
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.

Property Location:

19 Schooner Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: M0096-A00009

Map Block No. M-96-A-9

Class: R

Use:

101

Card 1 of 1

Current Owner	Previous Owner History				Miscellaneous		Assessment Information		
Karam Nicolas & Karam Nadine Berbari 18 Trafalgar Dr Plattsburgh Ny 12901-1325	Name	Deed		Date	Deed Info:	3992/443-02/13/2012	Assessed Value:	*	Prior
	Six High Street Llc	3555/410		07/25/2007	Zoning:	R-40	Land:	246,000	220,200
					Neighborhood:	161	Building:	741,100	619,500
					Living Units:	1	Total:	987,100	839,700
					Street/Road:	Private	Assessed Information:		
							Value:	987,100	
Notes	Entrance Information								
	Date	Time	ID	Actv	Entrance Code	Source			
					Entry & Sign				
	07/10/2012	S	BL		Info At Door	Owner			
	04/23/2013	P	BL		Est-See Note				
						Estimates			
						MRA:	Effective DOV: 4/1/2021		
						Weighted:	Value Flag: COST VALUE		
						Market:			

19 Schooner Dr

Parcel ID: M0096-A00009

Class: R **Use:**

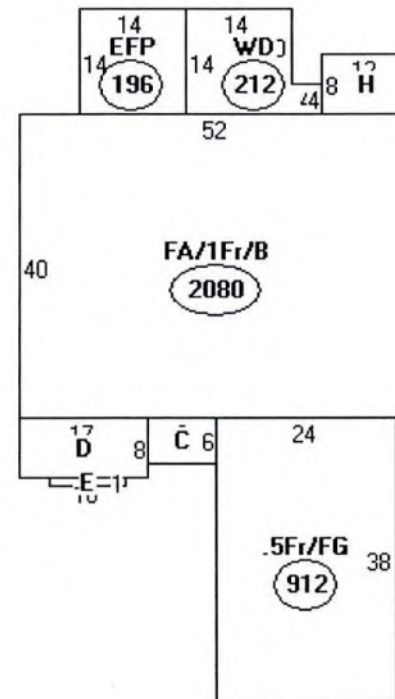
101 **Card 1 of 1**

Style:	Custom
Condo Style:	
Exterior Walls:	Frame
Story Height:	1.0
Attic:	Full Fin./Wh
Interior/Exterior:	Same
Basement:	Full
Bsmt Garage:	0
Rec Room size:	0 0
FBLA size:	1 1500
Unfinished Area:	0
WB Fireplace:	Stacks 0 Openings 2
MTL Fireplace:	Stacks 0 Openings 0
Heating Type:	Central A/C
Fuel:	Electric
Heating System:	Geo-Thermal
Year Built:	2011
Eff. Yr Built:	0
Ground Flr Area:	2080
Tot Living Area:	4150
Basement Area:	0
Grade:	B+
Condition:	Average
CDU:	AV

Rooms:	0	0	0	0	8
Bedrooms:	0	0	0	0	4
Full Baths:	0	0	0	0	3
Half Baths:	0	0	0	0	1
Add'l Fixtures:	0	0	0	0	4

Base Price:	259,650
Additions:	133,800
Unfinished Area:	0
Basement:	0
Attic:	70,900
Plumbing:	23,180
Heating A/C Adj.:	9,670
FBLA:	44,440
Rec Room:	0
Fire Place:	8,690
Basement Garage:	0
Exterior Trim:	0
Subtotal:	550,330
Grade Factor:	1.35
C & D Factor:	0.00
Total RCN:	742,950
Percent Good:	0.95
Eco Depr:	0
Func Depr:	0
Under Constcn %:	0
Market Adj.:	0.00
Total RCNLD:	741,100

	Low	1st	2nd	3rd	Area	Points
		13	17		912	79700
		11			54	2900
50		10			136	16400
		16			10	1000
		12			196	16900
		31			212	5300
50		10			96	11600



A: FA/1Fr/B
2080 sqft

B: .5Fr/FG
912 sqft

C: OFP
54 sqft

D:1Fr/B
136 sqft

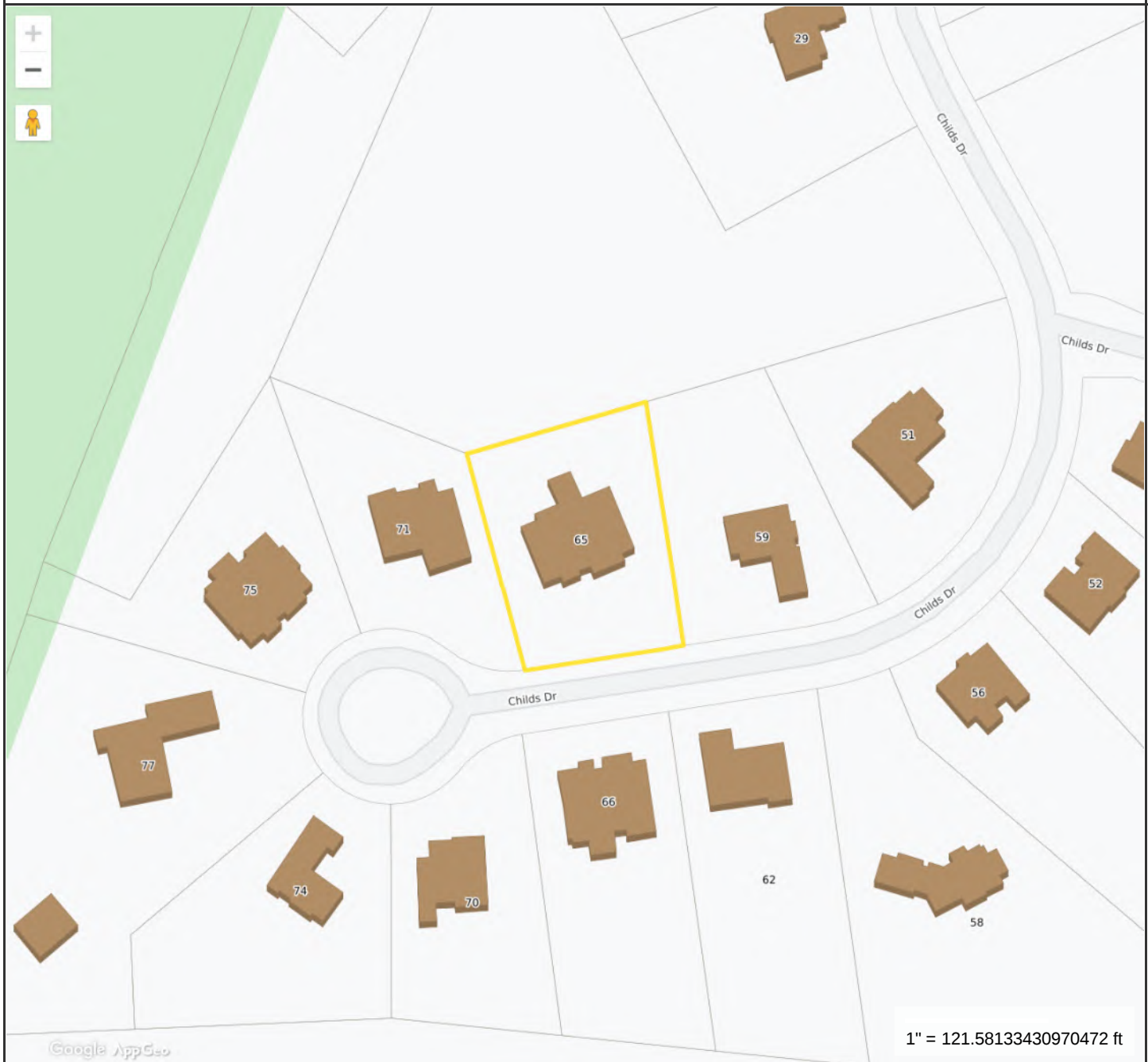
E:FOH
10 sqft

F: EFP
196 sqft

G:WD
212 sqft

H:1Fr/B
96 sqft

65 Childs Example Tax Card

**Property Information**

Property ID N0008-A00M00
Location 65 CHILDS DR
Owner CLOUSE JOHN R &
Land Use 101

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

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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.

Property Location:

65 Childs Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: N0008-A00M00

Map Block No. N-8-A-M

Class: R

Use:

101

Card 1 of 1

Current Owner
Clouse John R & Clouse Sharon A 65 Childs Dr Dover Nh 03820

Notes
Lot 5 On Plan Unmort Pat = Nv Fire Pit On Patio=nv Gen=nv Wob

Previous Owner History		
Name	Deed	Date
River Valley Development Corp	4016/827	05/09/2012

Entrance Information					
Date	Time	ID	Actv	Entrance Code	Source
08/13/2018	P	SM		Entry Gained	Owner
01/23/2017	H	BL		Entry Gained	Owner
08/25/2016	P	SM		Ext. Insp.	

Miscellaneous	
Deed Info:	4181/748-11/21/2013
Zoning:	R-40
Neighborhood:	161
Living Units:	1
Street/Road:	Private

Estimates	
MRA:	
Weighted:	
Market:	

Assessment Information		
Assessed Value:	*	Prior
Land:	243,000	216,000
Building:	851,800	713,100
Total:	1,094,800	929,100

Assessed Information:	
Value:	1,094,800
Effective DOV:	4/1/2021
Value Flag:	COST VALUE

Sales History				
Book/Page	Date	Price	Type	Validity
4181/748	11/20/2013	200,000	1	22

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
02/08/2017	17-208	72,000	Bsmt Remodel	100
06/30/2015	15-239	229,000	New Constrctn	100

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.6 0	0	243,000
Water Access	L	1x1 0	0	
Total Acres for this Parcel		0.6	Total Land Value	243,000

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
Shed-Frame	1	2016	8	12	C	A	80%	2,000
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								2,000



Inspection witness by:

65 Childs Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: N0008-A00M00

Map Block No. N-8-A-M

Class: R **Use:**

101 **Card 1 of 1**

Dwelling Information

Style:	Custom
Condo Style:	
Exterior Walls:	Alum/Vinyl
Story Height:	1.0
Attic:	Unfin
Interior/Exterior:	
Basement:	Full
Bsmt Garage:	0
Rec Room size:	0 0
FBLA size:	1 2340
Unfinished Area:	0
WB Fireplace:	Stacks 0 Openings 0
MTL Fireplace:	Stacks 0 Openings 0
Heating Type:	Central A/C
Fuel:	Electric
Heating System:	Geo-Thermal
Year Built:	2015
Eff. Yr Built:	0
Ground Flr Area:	2890
Tot Living Area:	2932
Basement Area:	0
Grade:	A
Condition:	Average
CDU:	AV

Building Notes:

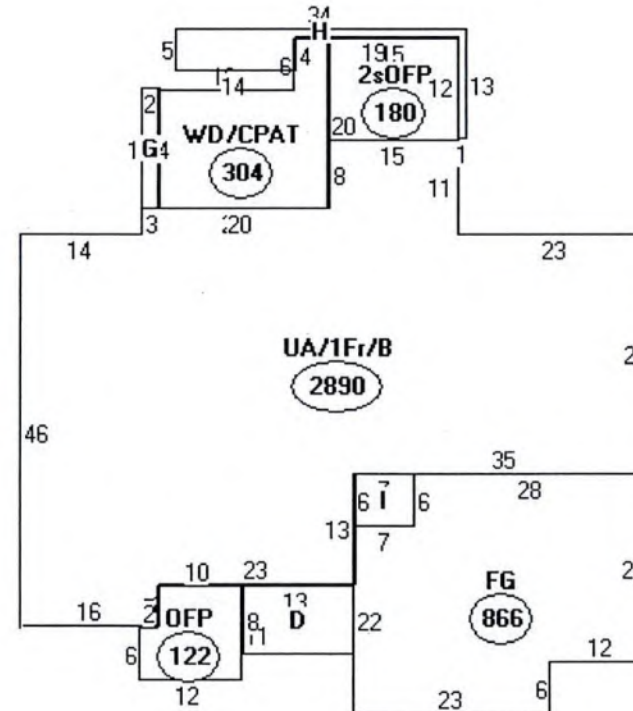
	Low	1st	2nd	3rd	Tot
Rooms:	0	0	0	0	10
Bedrooms:	0	0	0	0	3
Full Baths:	0	0	0	0	3
Half Baths:	0	0	0	0	1
Add'l Fixtures:	0	0	0	0	5

Replacement Costs

Base Price:	328,840
Additions:	79,800
Unfinished Area:	0
Basement:	0
Attic:	31,210
Plumbing:	25,120
Heating A/C Adj.:	12,250
FBLA:	54,770
Rec Room:	0
Fire Place:	0
Basement Garage:	0
Exterior Trim:	6,280
Subtotal:	538,270
Grade Factor:	1.55
C & D Factor:	0.00
Total RCN:	834,320
Percent Good:	0.97
Eco Depr:	0
Func Depr:	0
Under Constcn %:	0
Market Adj.:	0.00
Total RCNLD:	849,800

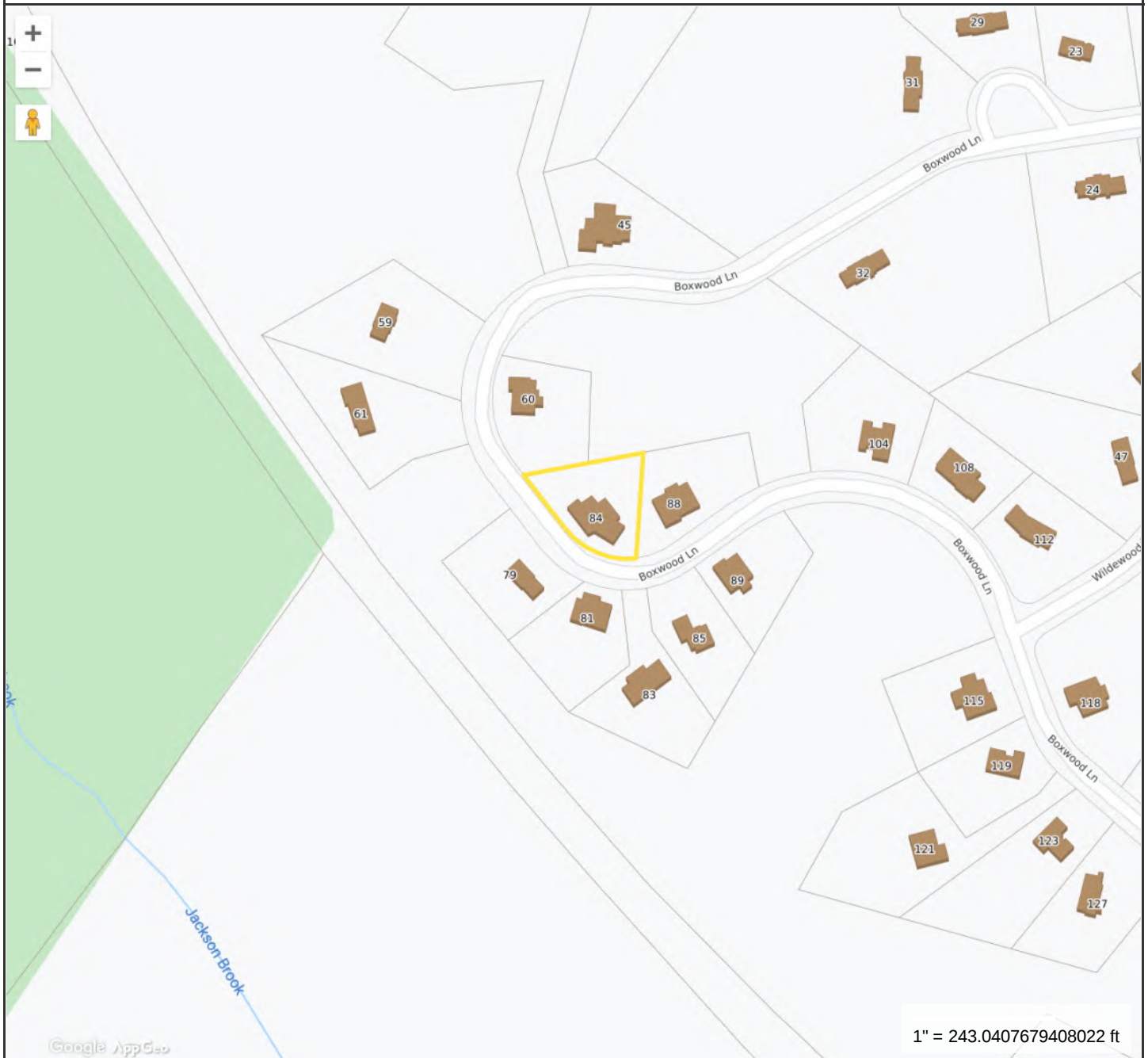
Addition Information

Low	1st	2nd	3rd	Area	Points
	13			866	35300
	11			122	6800
	11	18		104	6300
	11	11		180	16400
	33	31		304	9700
	33			28	
	33			102	1000
	10			42	4300

Descriptor/Area

A: UA/1Fr/B
2890 sqft
B: FG
866 sqft
C: OFP
122 sqft
D: UA/OFP
104 sqft
E: 2sOFP
180 sqft
F: WD/CPAT
304 sqft
G: CPAT
28 sqft
H: CPAT
102 sqft
I: 1Fr
42 sqft

84 Boxwood Example Tax Card

**Property Information**

Property ID B0021-030000
Location 84 BOXWOOD LN
Owner HYNES JOSHUA M &
Land Use 101



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

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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.

Property Location:

84 Boxwood Ln

Residential Property Record Card - Dover, New Hampshire
Parcel ID: B0021-030000

Map Block No. B-21-30-0

Class: R

Use:

101

Card 1 of 1

Current Owner
Hynes Joshua M & Hynes Cherish F 84 Boxwood Ln Dover Nh 03820

Previous Owner History		
Name	Deed	Date
Macleod John A Alexander li Tru	4239/576	09/03/2014
Macleod John A li	4227/153	07/11/2014
Macleod Sarah C C &	3817/782	03/08/2010

Miscellaneous	
Deed Info:	4635/226-02/15/2019
Zoning:	R-40
Neighborhood:	152
Living Units:	1
Street/Road:	Public
Estimates	
MRA:	
Weighted:	
Market:	

Assessment Information		
Assessed Value:	*	Prior
Land:	112,900	134,600
Building:	610,700	532,600
Total:	723,600	667,200
Assessed Information:		
Value:	723,600	
Effective DOV:	4/1/2021	
Value Flag:	COST VALUE	

Notes
1.75 Stry Hght =150sf Of Cath Ceiling Gen=nv

Entrance Information					
Date	Time	ID	Actv	Entrance Code	Source
06/22/2010	P	TC		Entry Gained	Owner
05/01/2019	S	SM		Ext. Insp.	
10/05/2009	R	TC		Est-See Note	

Sales History				
Book/Page	Date	Price	Type	Validity
4635/226	02/11/2019	549,900	2	08
3817/782	03/05/2010	564,000	2	00

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
06/22/2009	9-131	410,000	New Constrctn	100 0

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.474	0	112,910

Total Acres for this Parcel 0.474 **Total Land Value** 112,900

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								0


Inspection witness by:

Property Location:

84 Boxwood Ln

Residential Property Record Card - Dover, New Hampshire

Parcel ID: B0021-030000

Map Block No. B-21-30-0

Class: R Use:

101 Card 1 of 1

Dwelling Information

Style: Colonial
Condo Style:
Exterior Walls: Alum/Vinyl
Story Height: 1.8
Attic: Unfin
Interior/Exterior: Same
Basement: Full
Bsmt Garage: 0
Rec Room size: 1 1300
FBLA size: 0 0
Unfinished Area: 0
WB Fireplace: Stacks 0 Openings 0
MTL Fireplace: Stacks 1 Openings 0
Heating Type: Central A/C
Fuel: Gas
Heating System: Forced Air
Year Built: 2010
Eff. Yr Built: 0
Ground Flr Area: 1304
Tot Living Area: 3304
Basement Area: 0
Grade: B
Condition: Average
CDU: AV

Building Notes:

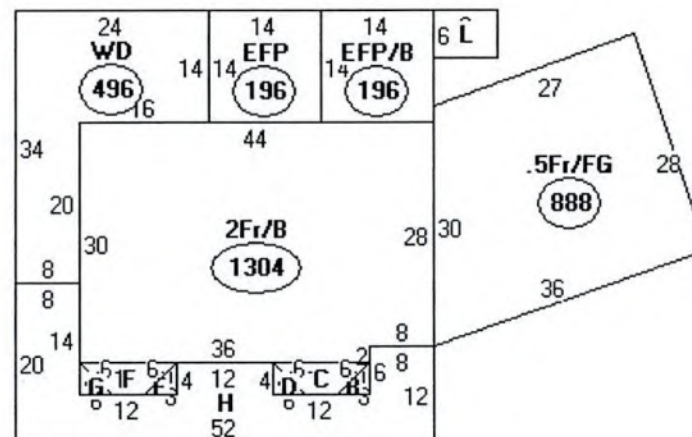
	Low	1st	2nd	3rd	Tot
Rooms:	0	0	0	0	11
Bedrooms:	0	0	0	0	4
Full Baths:	0	0	0	0	3
Half Baths:	0	0	0	0	2
Add'l Fixtures:	0	0	0	0	3

Replacement Costs

Base Price: 281,790
Additions: 175,300
Unfinished Area: 0
Basement: 0
Attic: 16,650
Plumbing: 25,120
Heating A/C Adj.: 10,650
FBLA: 0
Rec Room: 25,070
Fire Place: 2,420
Basement Garage: 0
Exterior Trim: 0
Subtotal: 537,000
Grade Factor: 1.26
C & D Factor: 0.00
Total RCN: 676,620
Percent Good: 0.95
Eco Depr: 0
Func Depr: 0
Under Constn %: 0
Market Adj.: 0.00
Total RCNLD: 610,700

Addition Information

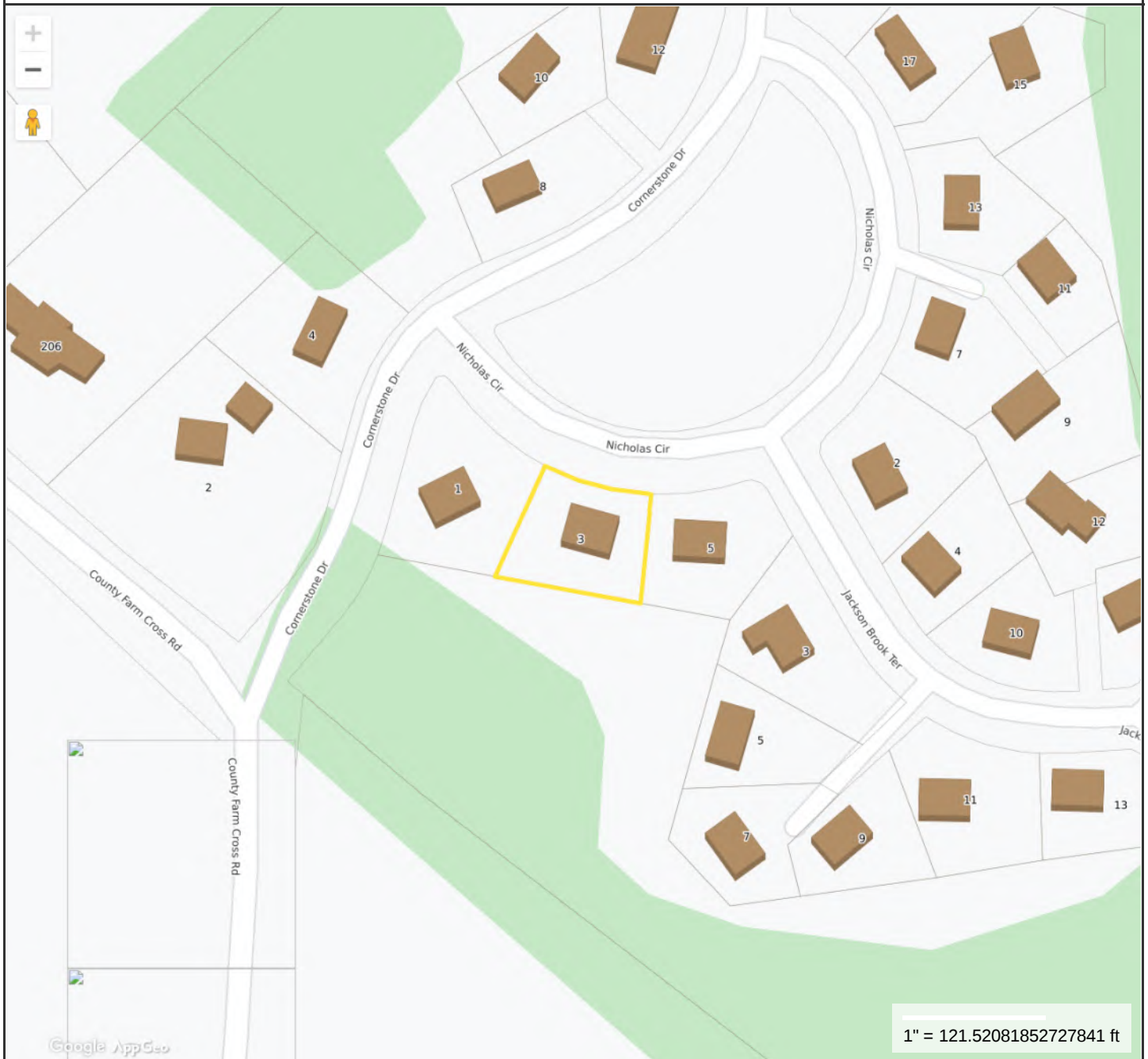
Low	1st	2nd	3rd	Area	Points
11	10			8	1400
50	10	10		32	6300
	11	10		8	1400
	11	10		8	1400
50	10	10		32	6300
	11	10		8	1400
	11			520	29000
	31			496	12100
	12			196	16900
50	12			196	20300
	14			48	1000
	13	17		888	77800



Descriptor/Area

A: 2Fr/B
 1304 sqft
 B: 1Fr/OFP
 8 sqft
 C: 2Fr/B
 32 sqft
 D: 1Fr/OFP
 8 sqft
 E: 1Fr/OFP
 8 sqft
 F: 2Fr/B
 32 sqft
 G: 1Fr/OFP
 8 sqft
 H: OFP
 520 sqft
 I: WD
 496 sqft
 J: EFP
 196 sqft
 K: EFP/B
 196 sqft
 L: FUB
 48 sqft
 M: 5Fr/FG
 888 sqft

3 Nicholas Example

**Property Information**

Property ID B0018-002000
Location 3 NICHOLAS CR
Owner MALONEY TIMOTHY C &
Land Use 101



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Geometry updated 5/3/2021
Data updated Daily

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Property Location:

3 Nicholas Cr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: B0018-002000

Map Block No. B-18-2-0

Class: R

Use:

101

Card 1 of 1

Current Owner	Previous Owner History			Miscellaneous		Assessment Information
Maloney Timothy C & Maloney Kristin M 3 Nicholas Cr Dover Nh 03820	Name	Deed	Date	Deed Info:	4186/412-12/16/2013	Assessed Value: * Prior
	Anderson Thomas B &	1955/195	09/26/1997	Zoning:	R-40	Land: 120,300 112,300
	Brown Stephen L	01520/0026	08/23/1990	Neighborhood:	130	Building: 158,100 129,200
				Living Units:	1	Total: 278,400 241,500
				Street/Road:	Private	Assessed Information:
						Value: 278,400
Notes	Entrance Information			Estimates		Effective DOV: 4/1/2021
1/51% Interest In Common Land Unmort Pat= Nv	Date	Time	ID Actv	Entrance Code	Source	Value Flag: COST VALUE
	10/12/2001		RC	Entry Gained	Owner	
	01/14/2019	C	BL	Ext. Insp.		
	03/04/2014	S	BL	Ext. Insp.		

Sales History				
Book/Page	Date	Price	Type	Validity
4186/412	12/13/2013	183,100	2	08
1955/195	09/26/1997	91,000	2	0

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
11/10/2014	14-387	1,000	Add 6x8 Wdk	100 0

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.208 0	0	120,300
Total Acres for this Parcel		0.208	Total Land Value	120,300

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
Shed-Frame	1	2000	8	12	C	A	32%	800
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								800



Inspection witness by: _____

Property Location:

3 Nicholas Cr

Residential Property Record Card - Dover, New Hampshire

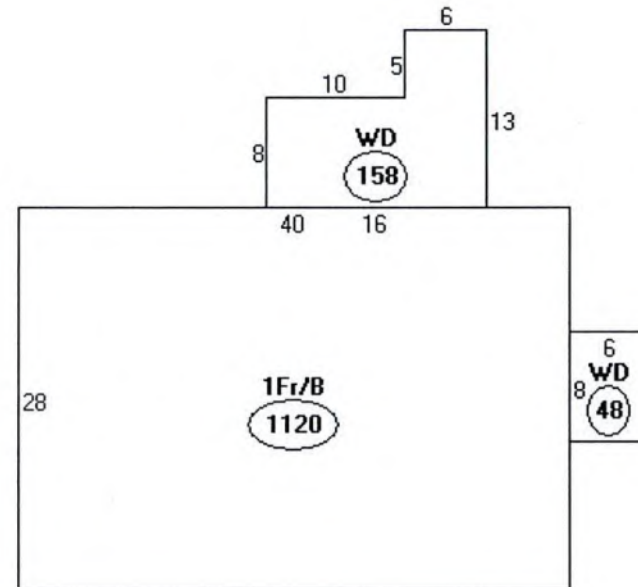
Parcel ID: B0018-002000

Map Block No. B-18-2-0

Class: R Use:

101 Card 1 of 1

Dwelling Information		Replacement Costs																																					
Style:	Ranch	Base Price:	173,810																																				
Condo Style:		Additions:	4,900																																				
Exterior Walls:	Frame	Unfinished Area:	0																																				
Story Height:	1.0	Basement:	0																																				
Attic:	None	Attic:	0																																				
Interior/Exterior:	Same	Plumbing:	0																																				
Basement:	Full	Heating A/C Adj.:	0																																				
Bsmt Garage:	0	FBLA:	0																																				
Rec Room size:	0 0	Rec Room:	0																																				
FBLA size:	0 0	Fire Place:	0																																				
Unfinished Area:	0	Basement Garage:	0																																				
WB Fireplace:	Stacks 0 Openings 0	Exterior Trim:	0																																				
MTL Fireplace:	Stacks 0 Openings 0	Subtotal:	178,710																																				
Heating Type:	Basic	Grade Factor:	1.00																																				
Fuel:	Gas	C & D Factor:	0.00																																				
Heating System:	Steam/Hot Wa	Total RCN:	178,710																																				
Year Built:	1990	Percent Good:	0.88																																				
Eff. Yr Built:	0	Eco Depr:	0																																				
Ground Flr Area:	1120	Func Depr:	0																																				
Tot Living Area:	1120	Under Constn %:	0																																				
Basement Area:	0	Market Adj.:	0.00																																				
Grade:	C	Total RCNLD:	157,300																																				
Condition:	Good																																						
CDU:	GD																																						
Building Notes:		<table border="1"> <thead> <tr> <th colspan="6">Addition Information</th> </tr> <tr> <th>Low</th> <th>1st</th> <th>2nd</th> <th>3rd</th> <th>Area</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td></td> <td>31</td> <td></td> <td></td> <td>158</td> <td>3900</td> </tr> <tr> <td></td> <td>31</td> <td></td> <td></td> <td>48</td> <td>1000</td> </tr> </tbody> </table>		Addition Information						Low	1st	2nd	3rd	Area	Points		31			158	3900		31			48	1000												
Addition Information																																							
Low	1st	2nd	3rd	Area	Points																																		
	31			158	3900																																		
	31			48	1000																																		
<table border="1"> <thead> <tr> <th></th> <th>Low</th> <th>1st</th> <th>2nd</th> <th>3rd</th> <th>Tot</th> </tr> </thead> <tbody> <tr> <td>Rooms:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>5</td> </tr> <tr> <td>Bedrooms:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>3</td> </tr> <tr> <td>Full Baths:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>1</td> </tr> <tr> <td>Half Baths:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Add'l Fixtures:</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> </tbody> </table>			Low	1st	2nd	3rd	Tot	Rooms:	0	0	0	0	5	Bedrooms:	0	0	0	0	3	Full Baths:	0	0	0	0	1	Half Baths:	0	0	0	0	0	Add'l Fixtures:	0	0	0	0	0		
	Low	1st	2nd	3rd	Tot																																		
Rooms:	0	0	0	0	5																																		
Bedrooms:	0	0	0	0	3																																		
Full Baths:	0	0	0	0	1																																		
Half Baths:	0	0	0	0	0																																		
Add'l Fixtures:	0	0	0	0	0																																		


Descriptor/Area

 A: 1Fr/B
1120 sqft

 B: WD
158 sqft

 C: WD
48 sqft

36 Cardinal Example Tax Map

**Property Information**

Property ID E0035-F00000
Location 36 CARDINAL DR
Owner LYNCH DANA & CLAUDIA TRUSTEES
Land Use 101



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

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Geometry updated 5/3/2021
Data updated Daily

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Property Location:

36 Cardinal Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: E0035-F00000

Map Block No. E-35-F-0

Class: R

Use:

101

Card 1 of 1

Current Owner
Lynch Dana & Claudia Trustees Lynch Dana And Claudia Revocable Living 36 Cardinal Dr Dover Nh 03820

Previous Owner History		
Name	Deed	Date
Lynch Dana C &	3471/768	12/15/2006
Douglas Dodd General Contracto	3154/739	03/14/2005

Miscellaneous
Deed Info: 3702/611-01/07/2009
Zoning: R-40
Neighborhood: 157
Living Units: 1
Street/Road: Private

Assessment Information		
Assessed Value:	*	Prior
Land:	176,500	176,500
Building:	467,500	388,600
Total:	644,000	565,100
Assessed Information:		
Value:	644,000	

Notes
Hip Roof / Vaultd Entry

Entrance Information					
Date	Time	ID	Actv	Entrance Code	Source
				Entry & Sign	
10/22/2007	S	TC		Ext. Insp.	
05/08/2007	P	RC		Ext. Insp.	

Estimates
MRA:
Weighted:
Market:

Effective DOV: 4/1/2021
Value Flag: COST VALUE

Sales History				
Book/Page	Date	Price	Type	Validity
3471/768	12/14/2006	555,800	2	08
3702/611	12/30/2008		2	44

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
05/30/2006	6-186	220,000	New Constructn	100
				0

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.266 0	0	122,480
Views	L	18x1 0	0	54,000
Water Access	L	1x1 0	0	
Total Acres for this Parcel		0.266	Total Land Value	176,500

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								0



E0035-F00000

Inspection witness by: _____

Property Location:

36 Cardinal Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: E0035-F00000

Map Block No. E-35-F-0

Class: R Use:

101 Card 1 of 1

Dwelling Information

Style: Cape
Condo Style:
Exterior Walls: Frame
Story Height: 1.0
Attic: Unfin
Interior/Exterior: Same
Basement: Full
Bsmt Garage: 1
Rec Room size: 0 0
FBLA size: 1 750
Unfinished Area: 0
WB Fireplace: Stacks 1 Openings 1
MTL Fireplace: Stacks 0 Openings 0
Heating Type: Basic
Fuel: Oil
Heating System: Steam/Hot Wa
Year Built: 2006
Eff. Yr Built: 0
Ground Flr Area: 1889
Tot Living Area: 1951
Basement Area: 0
Grade: B+
Condition: Average
CDU: AV

Building Notes:

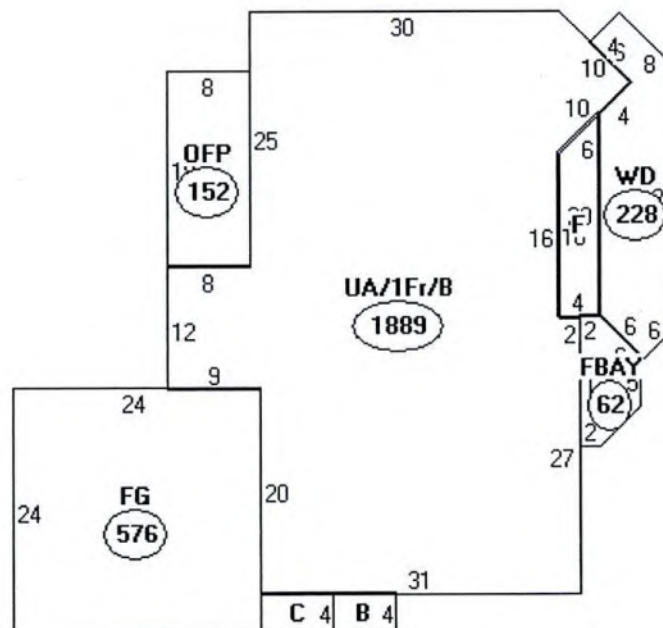
	Low	1st	2nd	3rd	Tot
Rooms:	0	0	0	0	7
Bedrooms:	0	0	0	0	2
Full Baths:	0	0	0	0	2
Half Baths:	0	0	0	0	1
Add'l Fixtures:	0	0	0	0	2

Replacement Costs

Base Price: 244,270
Additions: 49,300
Unfinished Area: 0
Basement: 0
Attic: 22,020
Plumbing: 13,520
Heating A/C Adj.: 0
FBLA: 29,220
Rec Room: 0
Fire Place: 9,660
Basement Garage: 4,350
Exterior Trim: 0
Subtotal: 372,340
Grade Factor: 1.35
C & D Factor: 0.00
Total RCN: 502,660
Percent Good: 0.93
Eco Depr: 0
Func Depr: 0
Under Constn %: 0
Market Adj.: 0.00
Total RCNLD: 467,500

Addition Information

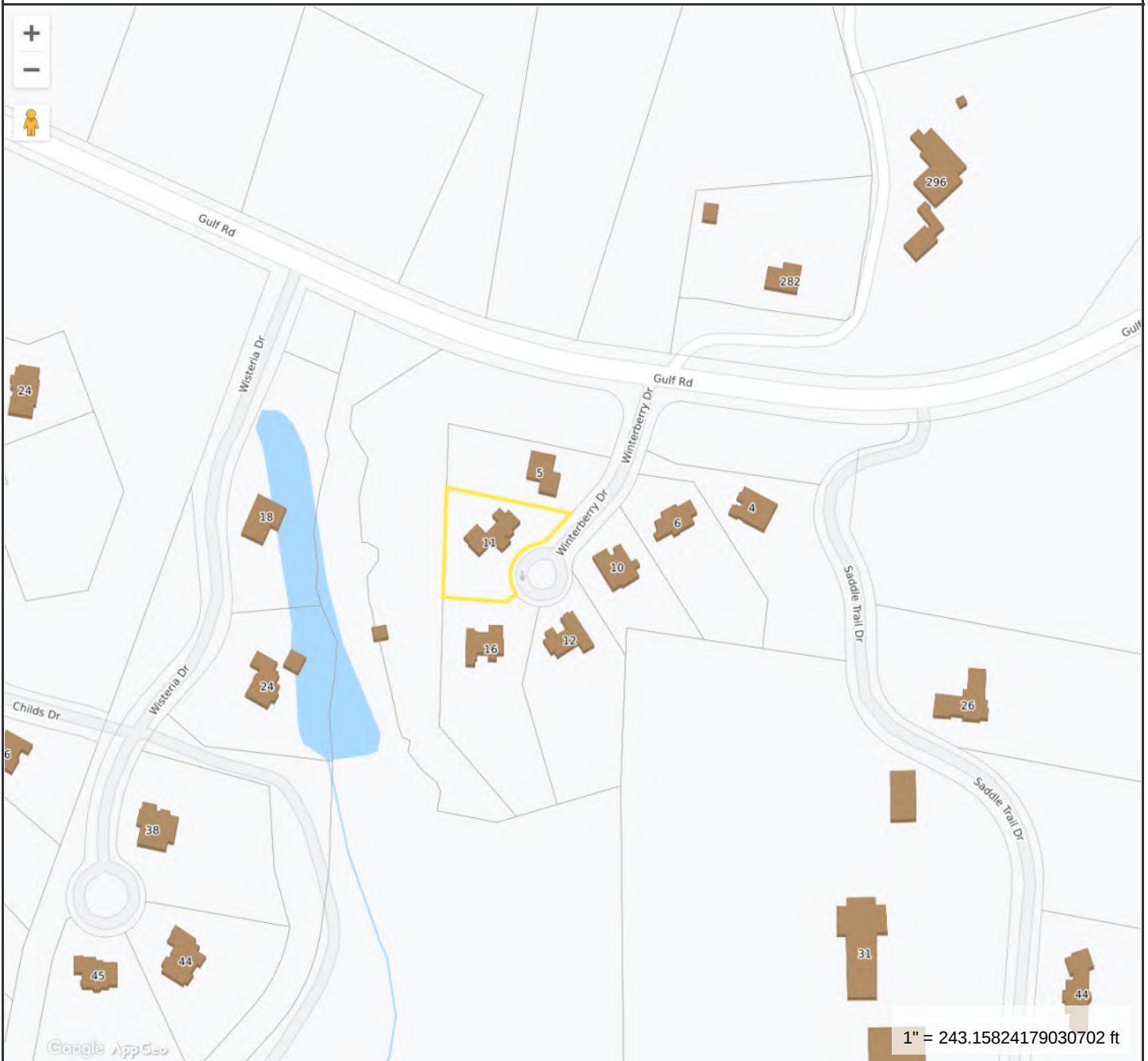
Low	1st	2nd	3rd	Area	Points
11				24	1400
32				28	500
13				576	23700
11				152	8200
11				72	3900
31				228	5300
15				62	6300



Descriptor/Area

A: UA/1Fr/B
 1889 sqft
 B: OFF
 24 sqft
 C: CNPY
 28 sqft
 D: FG
 576 sqft
 E: OFF
 152 sqft
 F: OFF
 72 sqft
 G: WD
 228 sqft
 H: FBAY
 62 sqft

11 Winterberry Tax Card Example

**Property Information**

Property ID N0008-000002
Location 11 WINTERBERRY DR
Owner WIRTH LAURA L
Land Use 101

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Geometry updated 5/3/2021
Data updated Daily

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activities should not be done using
this resource.

Property Location:

11 Winterberry Dr

Residential Property Record Card - Dover, New Hampshire

Parcel ID: N0008-000002

Map Block No. N-8-0-2

Class: R

Use:

101

Card 1 of 1

Current Owner	Previous Owner History			Miscellaneous	Assessment Information
Wirth Laura L 11 Winterberry Dr Dover Nh 03820	Name	Deed	Date	Deed Info: 4102/289-02/27/2013 Zoning: R-40 Neighborhood: 161 Living Units: 1 Street/Road: Private	Assessed Value: * Prior Land: 238,300 211,800 Building: 559,700 463,800 Total: 798,000 675,600 Assessed Information: Value: 798,000
Notes Unmort Pat= Nv 4x5 Cnpy=nv Size	Entrance Information			Estimates MRA: Weighted: Market:	Effective DOV: 4/1/2021 Value Flag: COST VALUE
	Date	Time	ID Actv Entrance Code Source		
	08/09/2019	P	SM	Entry & Sign Ext. Insp. Entry & Sign	

Sales History				
Book/Page	Date	Price	Type	Validity
4102/289	02/19/2013	564,000	2	08
4045/826	08/20/2012	801,000	1	21

Permit Information				
Date	Permit #	Price	Purpose	% Comp.
12/01/2017	17-525	10,000	Rear Deck W/Rf	100
08/19/2013	FLAG		Remov Uc	100

Land Information				
Type	Size	Grade	Influence Factor 1, 2 and %	Value
Primary	A	0.53 0	0	238,280

Total Acres for this Parcel 0.53 Total Land Value 238,300

Out Building Information								
Type	Qty	Year	Size1	Size2	Grade	Cond	%Good	Value
Shed-Frame	1	2017	8	10	C	A	84%	1,750
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
	0	0	0	0			0%	0
Total OBY for this card								1,750



Inspection witness by: _____

11 Winterberry Dr

Parcel ID: N0008-000002

Class: R **Use:**

101 **Card 1 of 1**

Replacement Costs

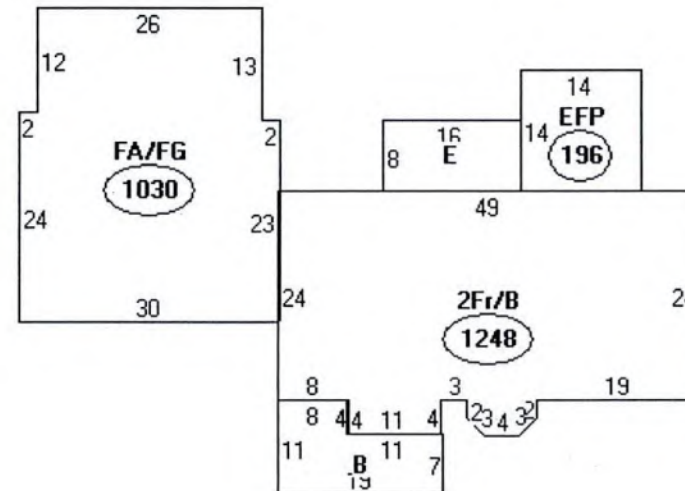
Building Notes:

	Low	1st	2nd	3rd	Tot
Rooms:	0	0	0	0	8
Bedrooms:	0	0	0	0	3
Full Baths:	0	0	0	0	2
Half Baths:	0	0	0	0	1
Add'l Fixtures:	0	0	0	0	0

Base Price:	277,190
Additions:	98,500
Unfinished Area:	0
Basement:	0
Attic:	0
Plumbing:	9,660
Heating A/C Adj.:	11,070
FBLA:	0
Rec Room:	0
Fire Place:	4,350
Basement Garage:	0
Exterior Trim:	0
Subtotal:	400,770
Grade Factor:	1.45
C & D Factor:	0.00
Total RCN:	581,120
Percent Good:	0.96
Eco Depr:	0
Func Depr:	0
Under Constcn %:	0
Market Adj.:	0.00
Total RCNLD:	557,900

Addition Information

Low	1st	2nd	3rd	Area	Points
	11	19		165	12600
	13	19		1030	61800
	12			196	16900
	11			128	7200

Descriptor/Area

A: 2Fr/B
1248 sqft
B: FA/DFP
165 sqft
C: FA/FG
1030 sqft
D: EFP
196 sqft
E: OFP
128 sqft



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.

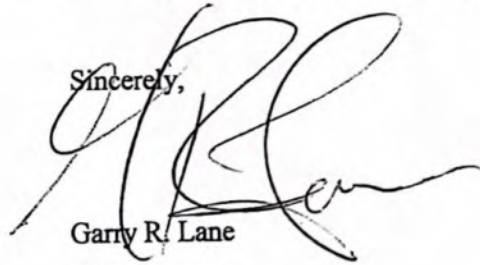
The location of the garage construction, whether it violates the 20-foot setback rule or even the lot coverage rule are not issues the ZBA will have to decide in this appeal. The sole issue on appeal is whether the 10 percent lot coverage rule of the R40 dimensional chart applies to open space subdivisions. 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 stylized flourish at the end.

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: danab10@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

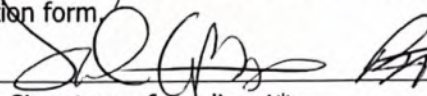
SIGNATURE PAGE

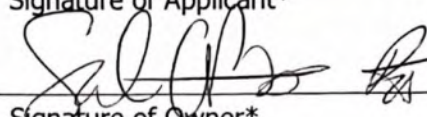
THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

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*

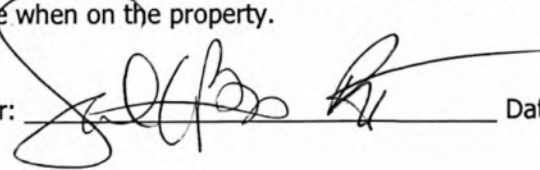

Signature of Owner*

*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.

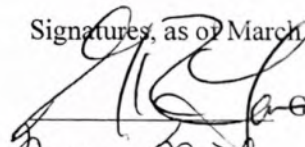
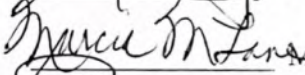
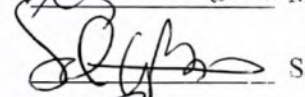
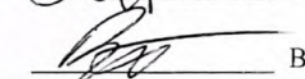
As explained above, footnote 1 to the R40 dimensional table does not state that all R40 dimensional rules are replaced. It simply says that the dimensional rules of 157-21F shall apply to open space subdivisions. Thus, it is reasonable to conclude that in those instances, such as height restrictions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

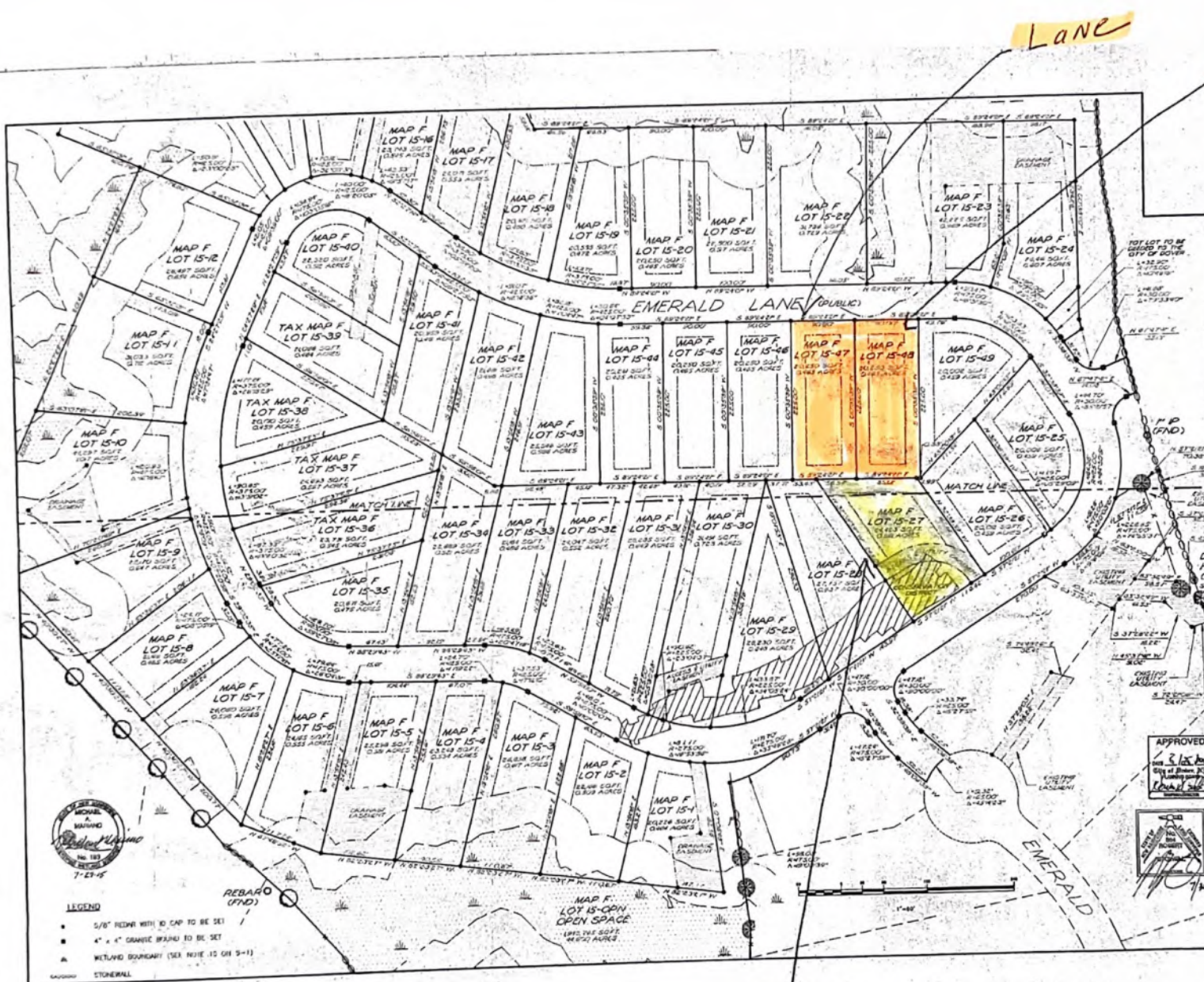
Signatures, as of March 25th, 2022:

 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)



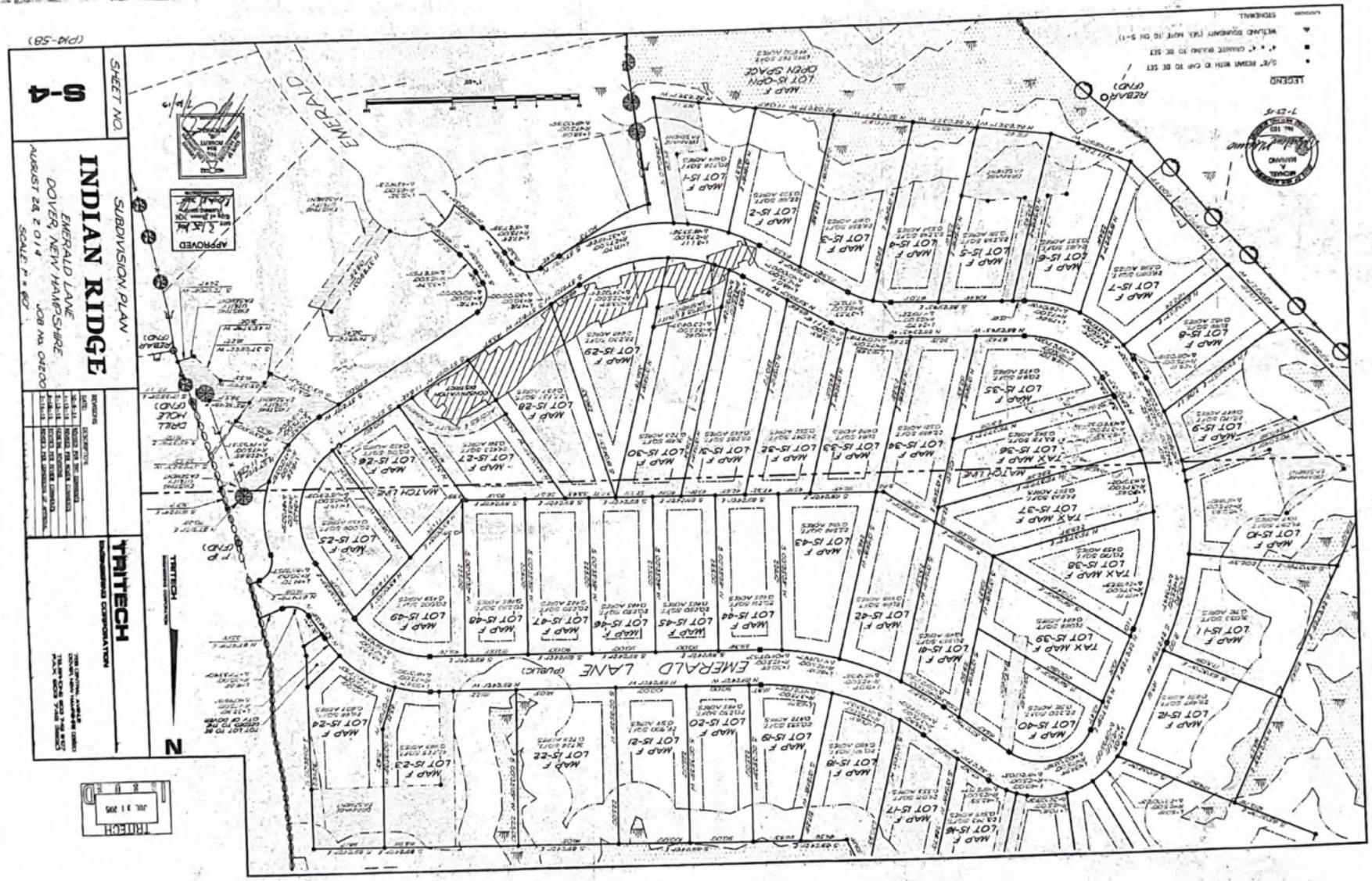
Lane

Brown



TRITECH ENGINEERING CORPORATION	
2000 CENTRAL AVENUE DOVER, NEW HAMPSHIRE 03820 PHONE: 603.333.1100 FAX: 603.333.1101 WWW.TRITECH-ENG.COM	
PROJECT: INDIAN RIDGE SHEET NO. 9-4 SUBDIVISION PLAN EMERALD LANE DOVER, NEW HAMPSHIRE AUGUST 29, 2014 JOB NO. 04200 SCALE: 1" = 80'	APPROVED [Signature] [Stamp]

Brunt



(DMA-58)

S-4

SHEET NO.

SUBDIVISION PLAN

INDIAN RIDGE

EMERALD LANE

DOVER, NEW HAMPSHIRE

JOB NO. 04200

SCALE: 1" = 60'

AUGUST 28, 2014

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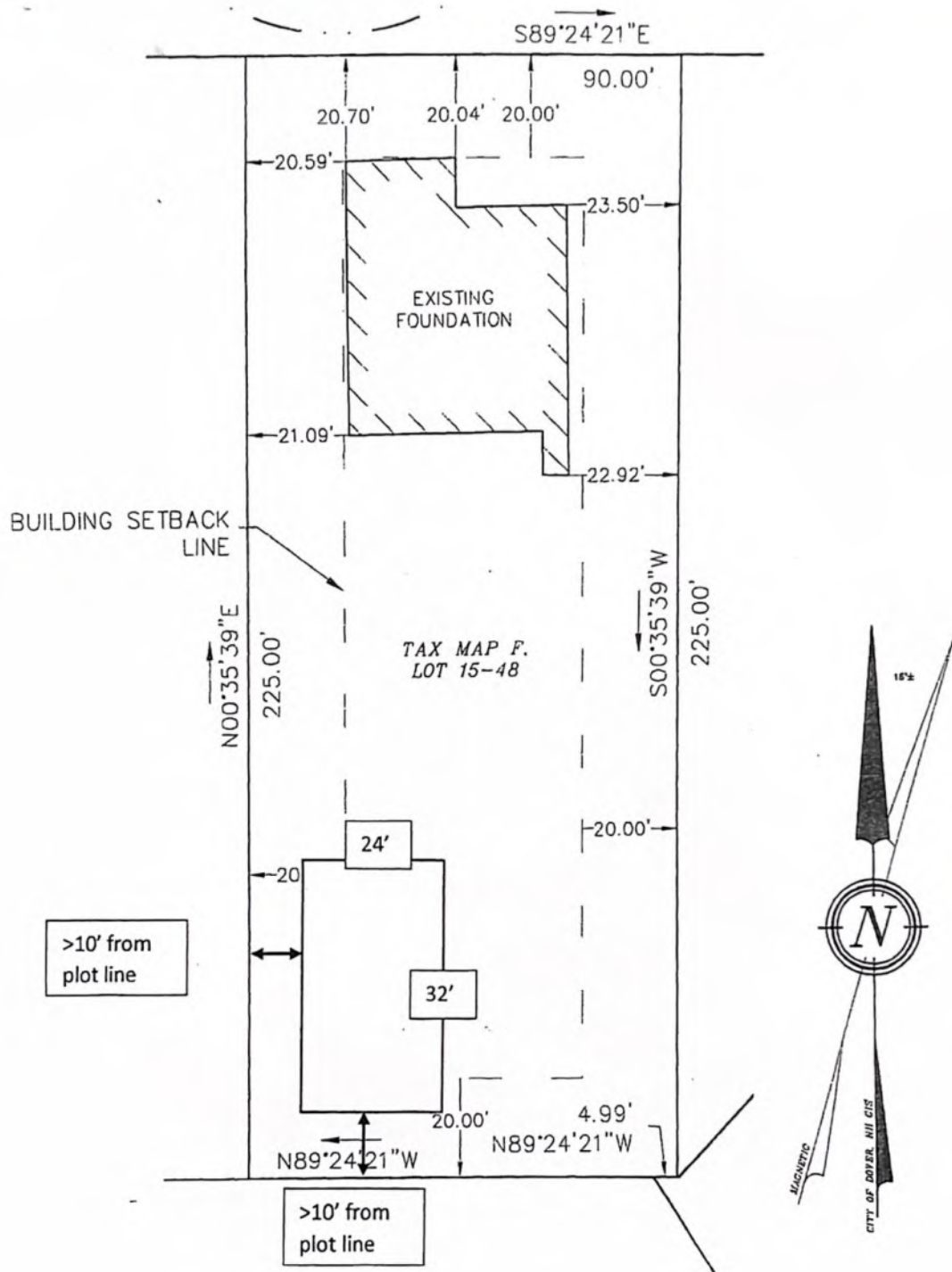
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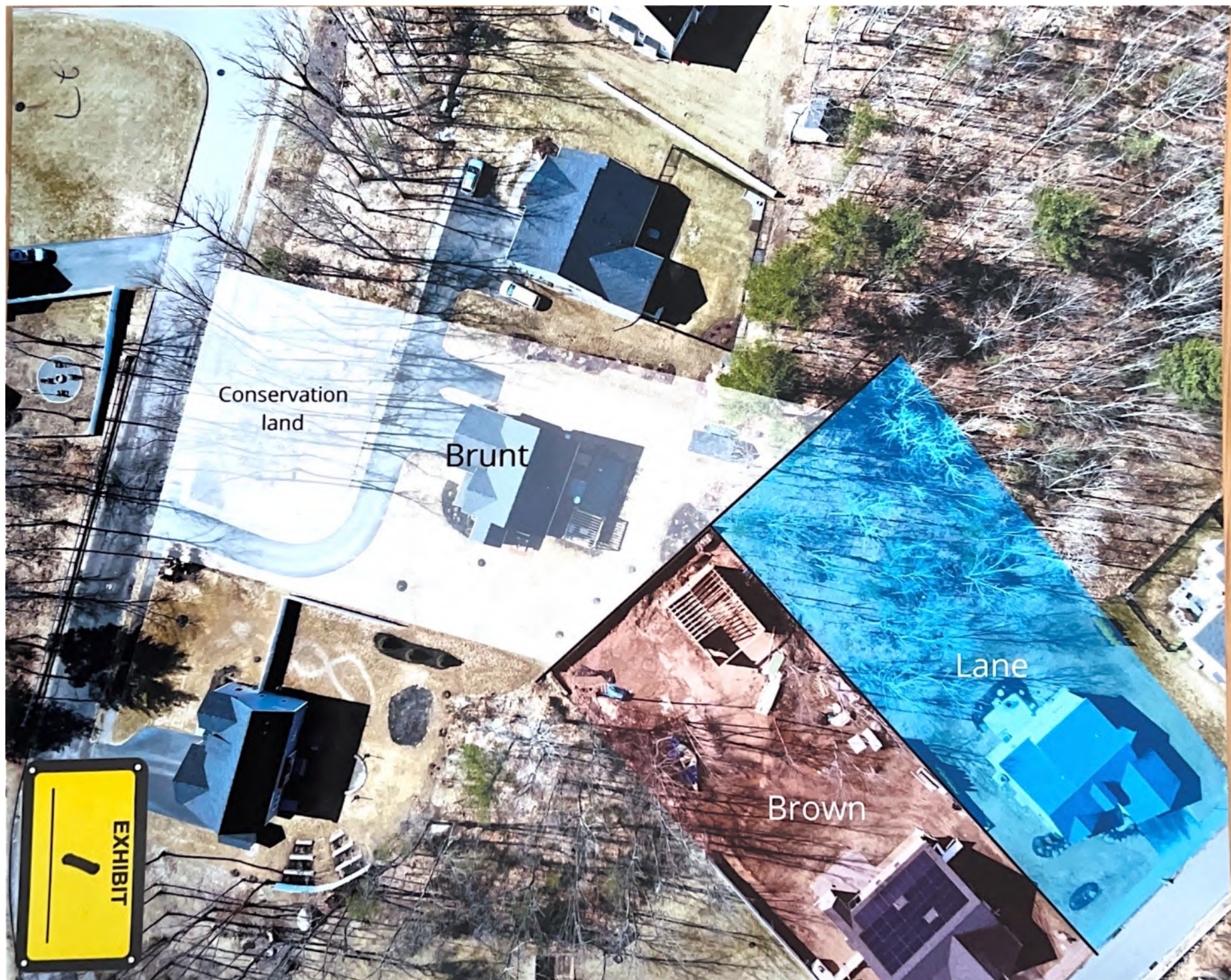
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Part of Brown
Building Permit
application

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



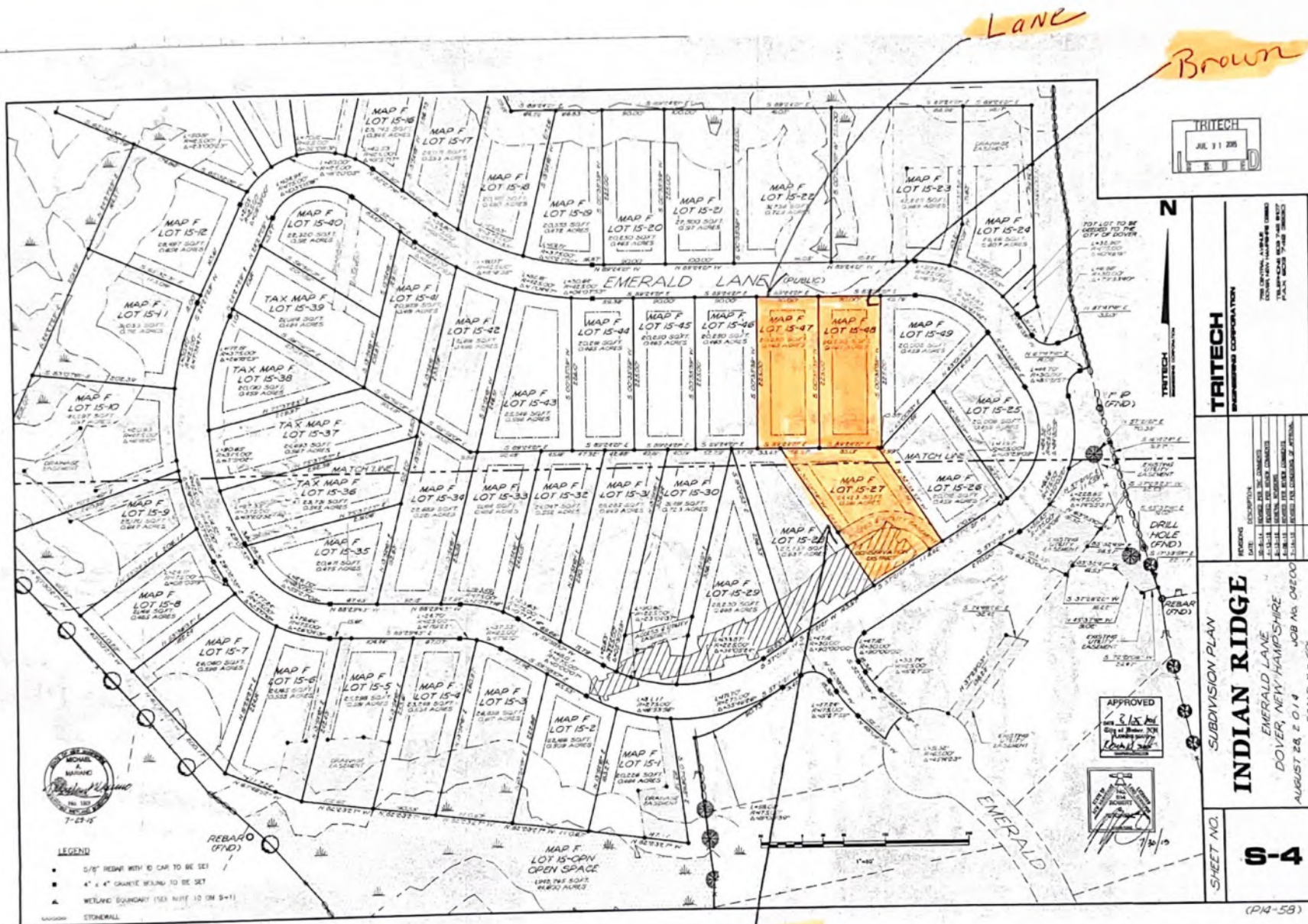
Conservation
land

Brunt

Lane

Brown

EXHIBIT
1



Brunt

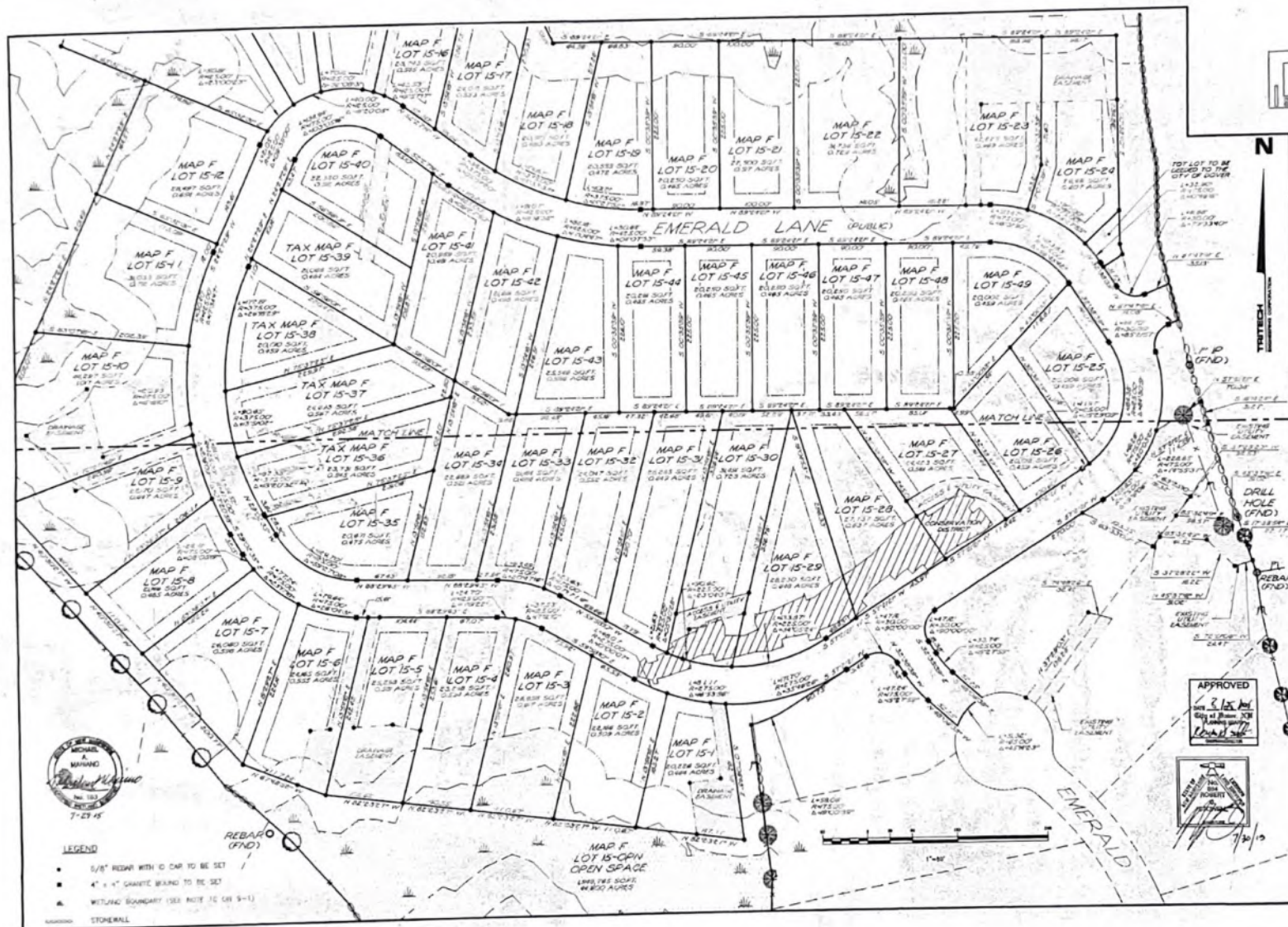


Exhibit 2 – February 9, 2022 Planning Department email to Mr. Brown encouraging waiver/variance application

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



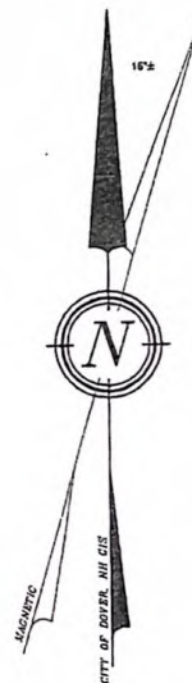
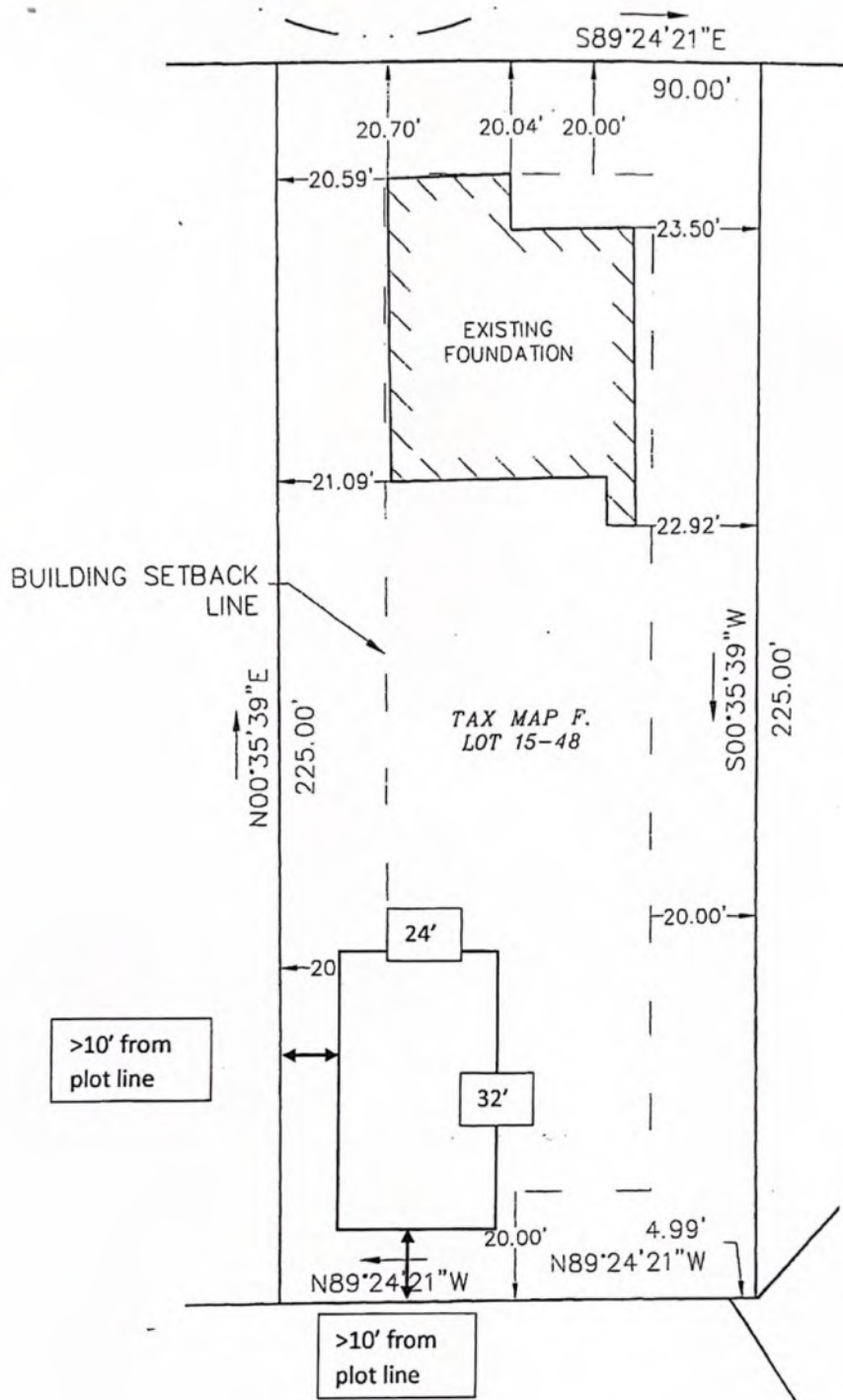
Exhibit 3 – Aerial shot showing tree buffer before Mr. Brown's tree cutting

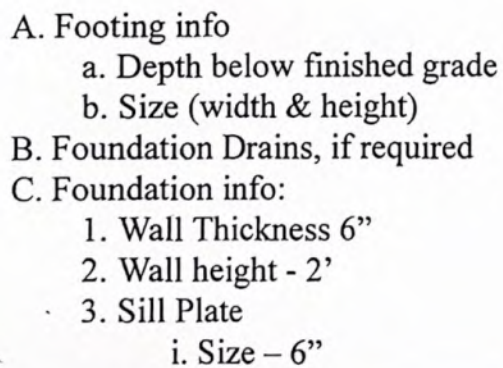


Exhibit 4 – Aerial View with Brown trees removed and garage
under construction



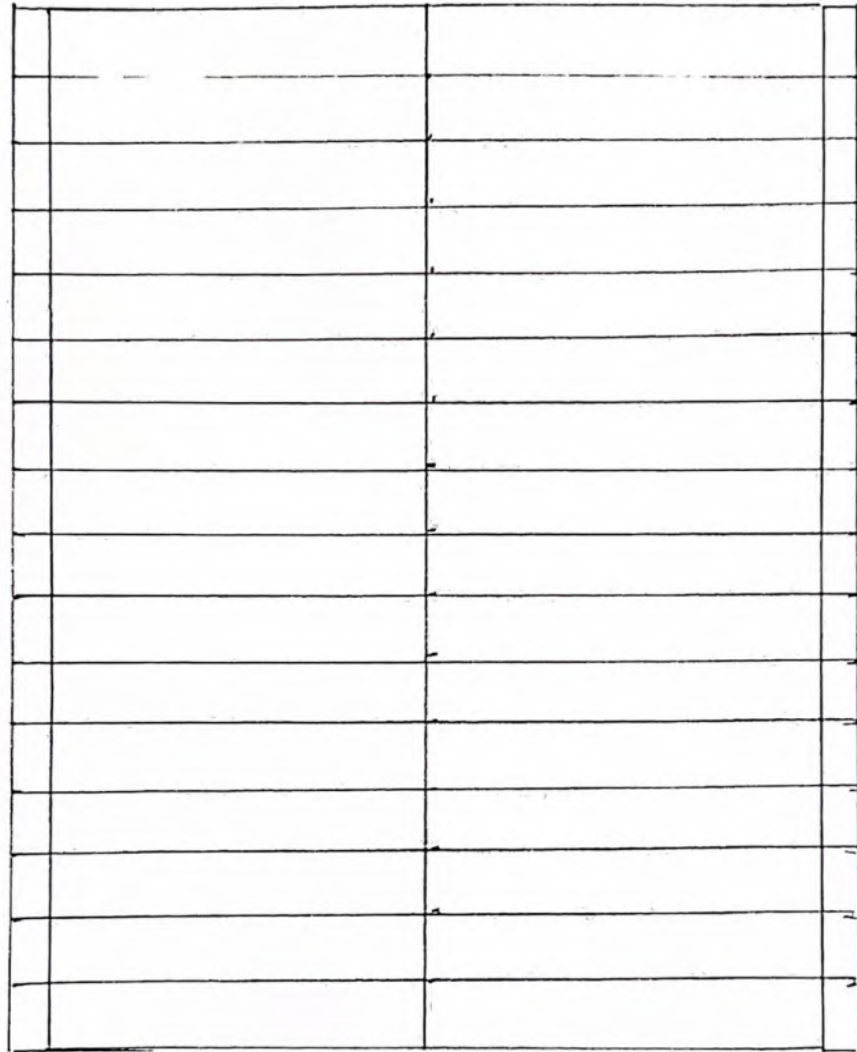
Exhibit 5 – Building permit material (including lot diagram presented by Brown showing the 20-foot setback lines and his proposed new construction sitting at about 10 feet (i.e. in violation of the 20-foot setback requirement)





DIMENSION PLAN

Rafter



32'

24'

26'



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

6/30/2021

Industrial _____ Commerical _____ 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, Dana Brown, 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: \$325.00 Check#: 2513 Cash: _____ Date: 10-1-21 Initials: ET

White — Applicant's Copy

44

Canary — Inspector's Copy

Pink — Assessor's Copy

57

CITY OF DOVER

NEW HAMPSHIRE



BUILDING PERMIT

PERMIT NO. 21-311

DATE 7/2/21

This Certifies That

DANA Brown
NAME OF OWNER

DOVER
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.

[Signature]

THE OWNER/APPLICANT HEREBY ACKNOWLEDGES THE ABOVE COMMENTS

danabrown53@gmail.com

ORIGINAL TO APPLICANT; COPY TO FILE

[Signature]

DATE: 7/13/2021

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BUILDING PERMIT APPLICATION REQUIREMENTS

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

DESCRIPTION: 126 EMERALD GARAGE 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) \$ _____
(If owner doing work - Cost of material times 2 = const. Value)

IF APPLICABLE:

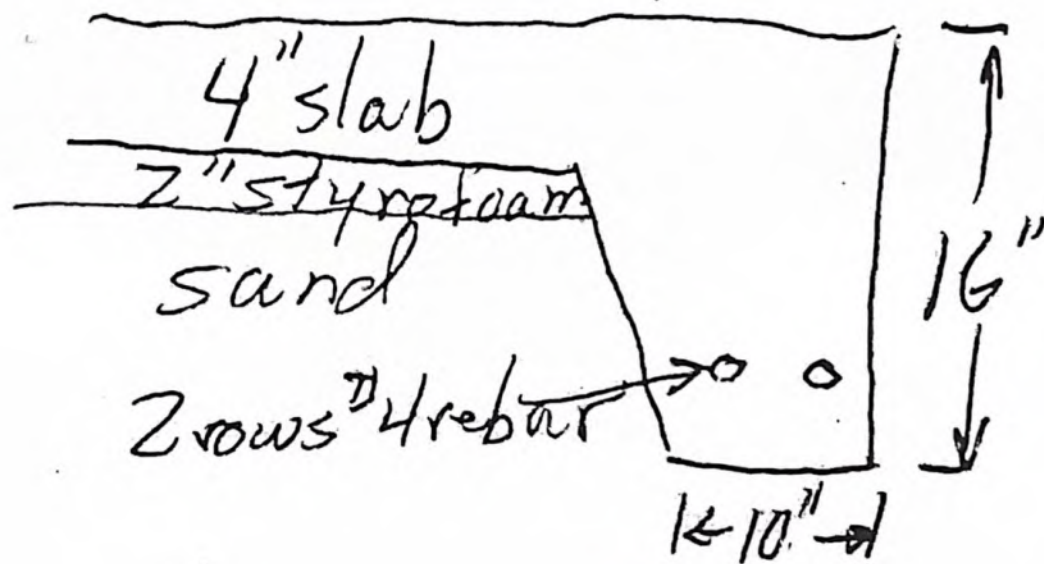
CITY WATER _____ CITY SEWER _____ WELL _____

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



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.

52

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: 12/1/20



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

11/10/21

OFFICE USE ONLY

Industrial _____ Commerical _____ Residential ☒

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

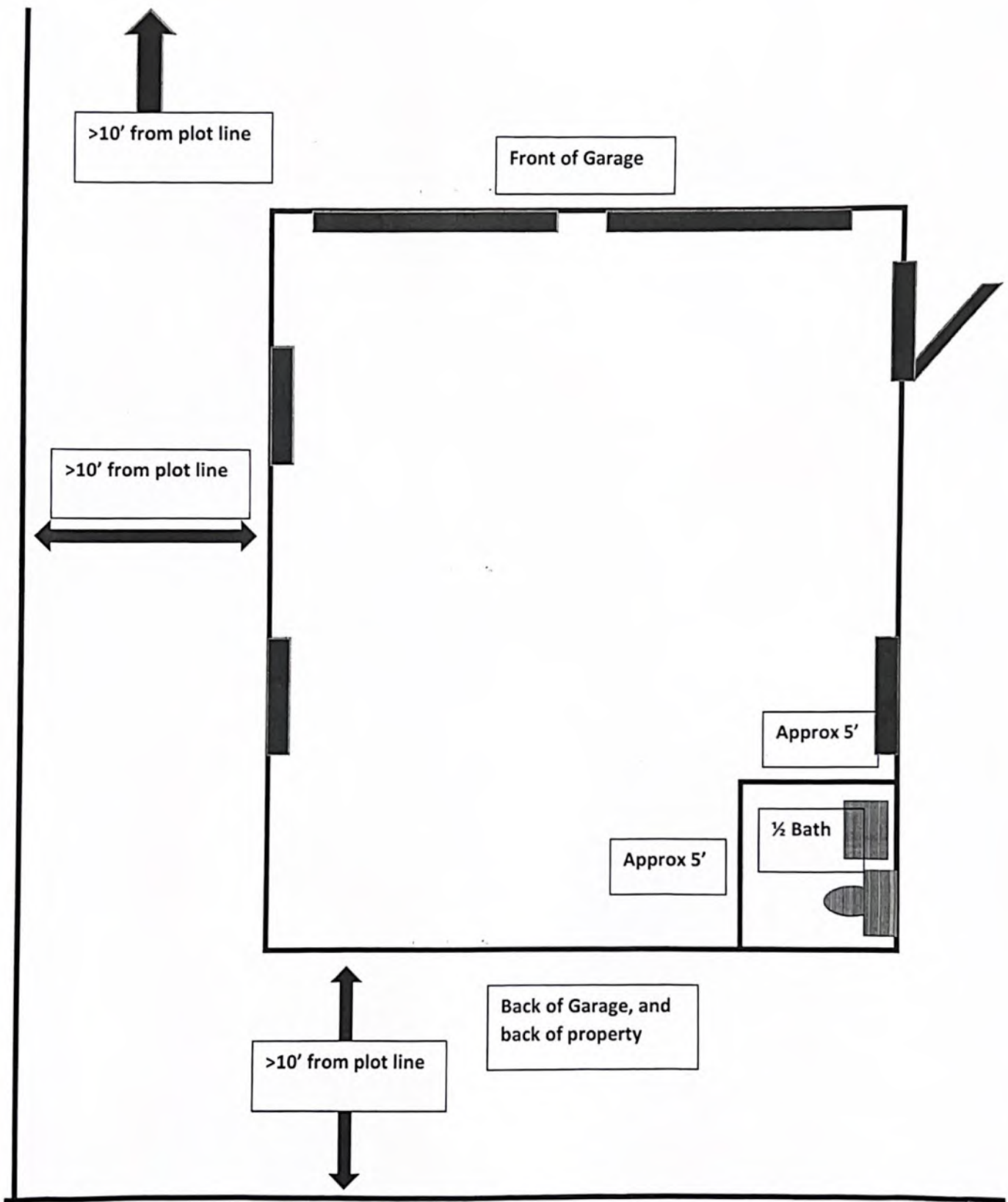
Applicant's Fee: \$65.00 Check#: 2533 Cash: _____ Date: 11/4/2022 Initials: MB

White — Applicant's Copy

Canary — Inspector's Copy

Pink — Assessor's Copy

55



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.

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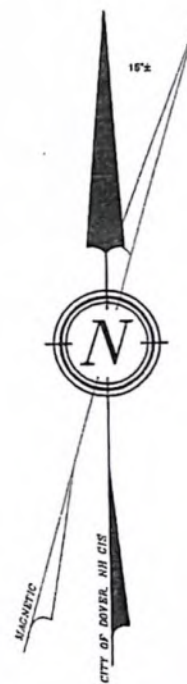
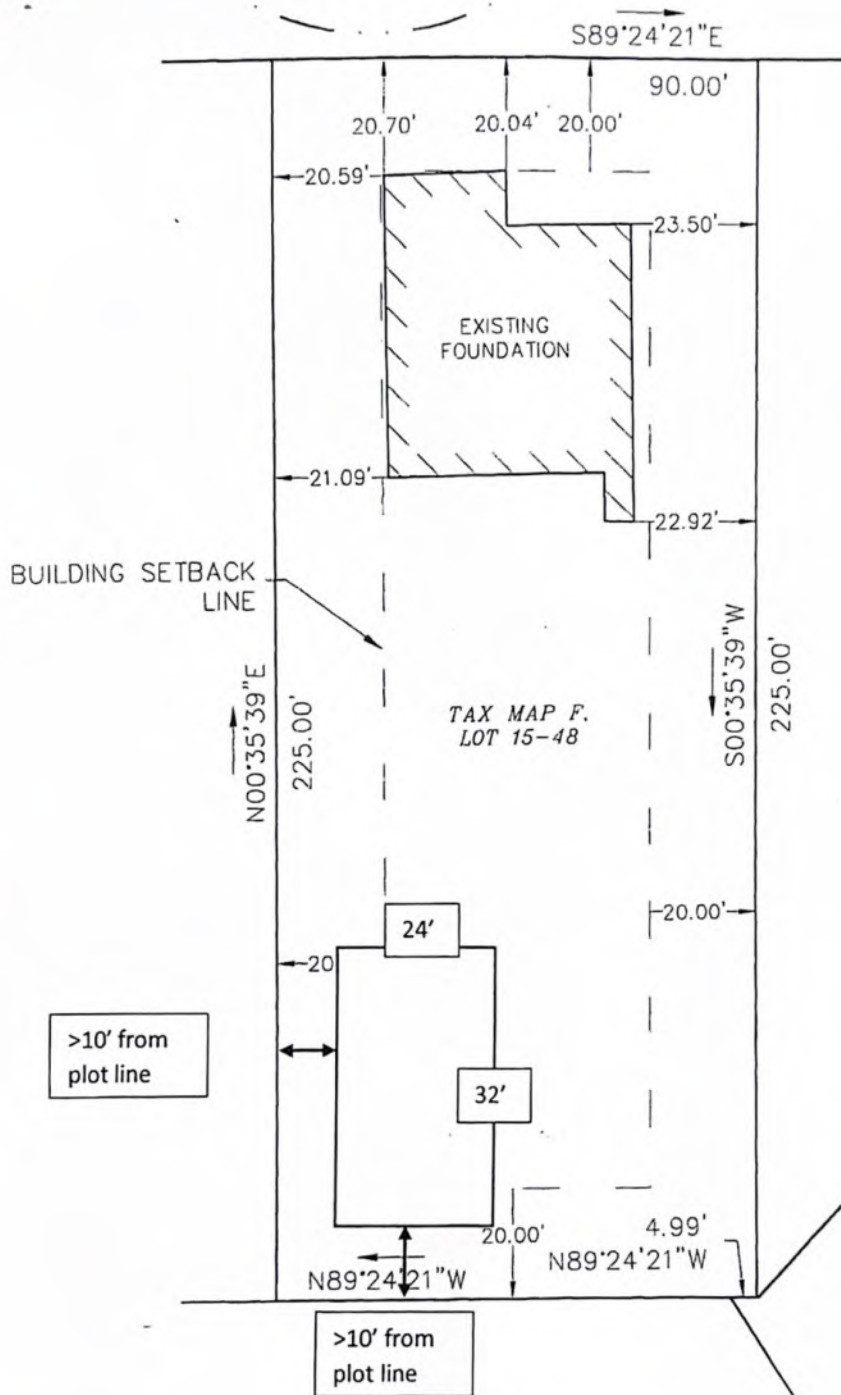


Exhibit 6 – Backside of new garage from viewpoint of the Brunt property





62



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



65



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]

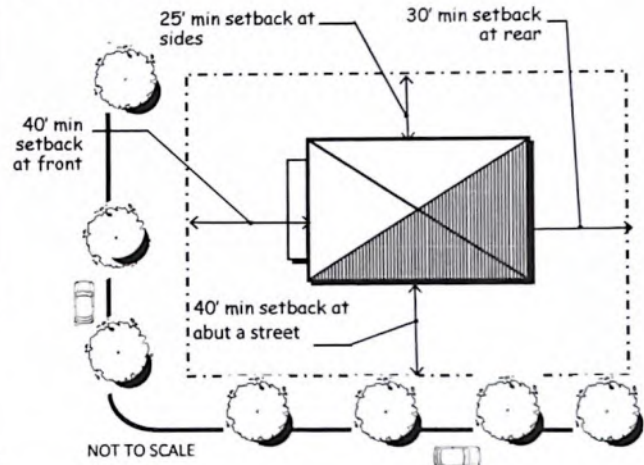
Uses Permitted by Special Exception

- 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@dover.nh.gov>
Cc: "Glidden, Jean" <J.Glidden@dover.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@dover.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@dover.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@dover.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@dover.nh.gov>

Cc: Glidden, Jean <J.Glidden@dover.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



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 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

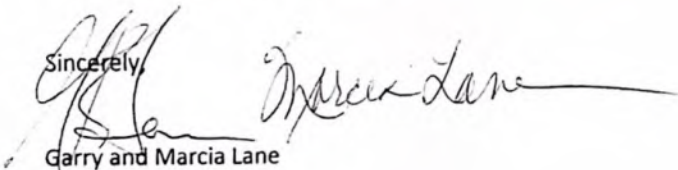
Attorney Joshua Wyatt, General Legal Counsel
City of Dover
288 Central Ave.
Dover, NH 03820

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 + SHERRI 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: (607) 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



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Dover, New Hampshire 03820-4169
(603) 516-6008
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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

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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:

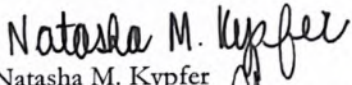
B. Appeals. Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely.

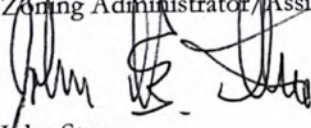
Further, Dover Code § 157-58 may provide you with an avenue of internal appeal concerning your driveway assertions. Dover Code § 157-58 provides that "[a]ny person aggrieved by a decision of the Community Services Director regarding driveways may request a hearing before the Planning Board on the merits 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@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, 2/9/20222

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



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

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:

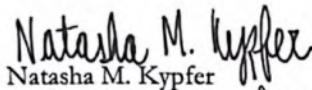
B. Appeals. Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely.

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.

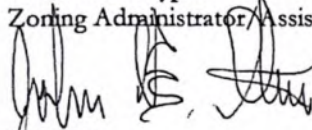
We appreciate the time you took to file a complaint with our office and your clear explanation and attention to detail. Furthermore, while this may not have been the exact outcome you were seeking, you should also be aware that specially damaged abutters, in some instances, may have standing to file 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@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

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

CHRISTOPHER G. PARKER, AICP
Deputy City Manager
c.parker@dover.nh.gov



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Dover, New Hampshire 03820-4169
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City of Dover, New Hampshire

OFFICE OF THE CITY MANAGER

Christopher Prior, Chair
City of Dover, Zoning Board of Adjustment
288 Central Avenue
Dover, NH 03820

Dear Chairman Prior,

I am writing to you in support of the Administrative Decision the Zoning Administrator made to not apply the lot coverage requirement to lots within Open Space Subdivisions, particularly the lot in question on Emerald Lane.

As you may recall, prior to being named Deputy City Manager, I was a member of the Planning Department beginning in 2002. In 2002, Steve Stancel, then Director of Planning and Community Development, assigned me as the staff support for a Planning Board subcommittee reviewing and drafting zoning and subdivision of land regulations. As such I was involved with reviewing changes to what were then considered Alternative Design Subdivisions. These are the precursor to Open Space Subdivisions.

At the time each subdivision was required to be a "conventional subdivision" laid out per the zoning code, and as an option, you could lay out your project as an open space or cluster design. The subcommittee recommended that Dover transition so that the Open Space layout was the required and the conventional layout was the alternative.

In order to do this, a clause was added to the zoning table noting that if you were in the R-40, R-20 and R-12 district you would refer to Chapter 157 of the City of Dover Code for dimensional requirements, to create an Open Space Subdivision. This was done to note that it is required by zoning that you create an open space subdivision, and that the specific lot size, frontage etc requirements are found in the Subdivision of Land regulations. The date of the Council ratification of this note was January 22, 2003.

In making the change, it was noted that the goal of the Open Space Subdivision is to place homes closer together and preserve as much land in the natural state and prevent habitat fragmentation. As such it did not make sense to carry all of the dimensional requirements forward. Included in this was the Lot Coverage requirement.

Open Space Subdivision may include layouts that have smaller lots, clusters of homes with no lot lines (homeowners purchase the home with no lot area), and (at the time) a combination of the two where homeowners bought the home, plus additional minimal lot area around the home. In the second two options there are no lot lines, so it would not be possible to calculate the lot coverage. Furthermore, under the first option, limited lot size, it was understood that the specific lot size was being reduced from the conventional size to close to half the original size and that short of increasing the allowed coverage, it would not be reasonable or realistic to calculate the lot coverage the same as calculated in a conventional layout.

In order to set a density for these subdivision, a land owner creates a yield plan, using the conventional lot size and frontage. For the Open Space layout, with lot lines, the lots are laid out so that homes are closer together and the area of the lot is reduced. In the case of the R-40 district, where Emerald Lane is, the lots are approximately 20,000 square feet, where they conventionally would be 40,000. The idea is that the excess 20,000 square feet is added to the open space.

At the time it was contemplated that, by staff, that in this manner each lot contributes to the Open Space lot generated. If there were a lot coverage calculated, the required open space would be considered for the calculation, as each lot had to contribute. In this case, you would have a 10% lot coverage, but would calculate that based upon 40,000 square feet of lot size, and not whatever size the lot is laid out as. Alternatively, it was considered to increase the lot coverage so that it was a similar effect to the conventional.

In the end, both options were determined to be confusing to homeowners and cumbersome to administer and review, as each district has a different lot size requirement. Instead, the decision was made by staff, and ratified by the Planning Board (which governs the Subdivision of Land Regulations) to not include lot coverage as a dimensional requirement in Open Space Subdivisions, thus that and other dimensional requirements were not included in Code, and has not been contemplated since adopted in 2003.

I hope this helps the Board understand the background of the Open Space Subdivisions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Parker", with a long horizontal flourish extending to the right.

Christopher G. Parker, AICP
Deputy City Manager

CC: Donna Benton, Director of Planning and Community Development
Josh Wyatt, City Attorney

From: Michael Claus <michael.claus@mail.com>

Sent: Wednesday, April 13, 2022 10:51 AM

To: City of Dover - Planning <Dover-Planning@dover.nh.gov>

Subject: Upcoming Zoning Board Meeting April 21 - Indian Ridge subdivision

Esteemed Members of the Dover Zoning Board,

I am writing as a concerned citizen of the Indian Ridge subdivision.

My wife and I live here on Emerald Lane since November 2017, when we moved from Miami, FL to retire in this beautiful neighborhood and be close to our son and grandkids.

The major appeal has been from the beginning the nice wooded area with mostly great neighbors close by.

The already started building of a massive garage on the Brown property, almost as tall and large as a 2nd home, put everything we were looking for in jeopardy, because it is an eyesore and it sets a precedent. I must assume that none of you have been here on site, looking at what is built by the Brown family, because otherwise, with all due respect, I would not understand how this is allowed.

As far as I know, property owners in the R40 district have protections, and in particularing the maximum lot coverage rule. Why is this not applied to our subdivision?

This here is not your typical NH rural setting, this is a 0.6 miles circle with houses on both sides and all houses and developments on the respective properties are visible by all.

We have numerous neighbors who own RVs, incl myself. How would it look like if myself and others build a similar type garage, or even bigger, on our properties, right next to my house for our RVs, boats or other 'toys'? Or if I build another little house as a guest house on my property?

I understood that the garage in question is supposed to have sewage and electricity. Having that and looking at the size, it appears to me this has the potential to double up as an 'in-law apartment'.

I am not a legal expert, but as a very concerned neighbor I am also looking at the aesthetical side of it, because it has a big impact on our property values and as a retiree this concerns me deeply. For the tremendous amounts of property taxes we pay, there should also be some protection, rules that do not allow unreasonable developments.

I hear frequently 'live free or die' and 'my property, my decision'. Of course I can agree to that in general, but not when it has a negative impact on others. If someone wants to build a mega garage, or have a chicken coop, or 2nd home on the property or whatever, very well, but why not buying property in a rural area in the first place, where no neighbors are affected?

And whilst I am not an engineer, I would also argue that the removal of all trees and bushes but three, will have a negative effect on the water management.

My property is right at the edge of a protected wetland area, which I am sure is there for a reason, and cutting down any number of trees incl roots will have a negative impact on the entire subdivision and not only on the bioponds. During last week's rainstorm (Friday or Saturday) we had behind the house more puddles, little ponds, than seeing anytime before since we live here. Again, I am not an engineer, but is this and cracks other neighbors, closer to the Browns, have in their foundations, with water finding its way into the basement, a coincidence? I highly doubt that.

I kindly ask you not to pave the way for destroying this otherwise beautiful subdivision by people who are not considerate and give us the necessary protection and also a mandate for replanting of trees.

Sincerely,

Michael K. Claus
169 Emerald Lane
Dover NH 03820
USA
+1 - 786 295 0224

April 13, 2022

To: Zoning Board of Adjustment

Via email – Dover-Planning@doover.nh.gov

Re: File: Z22-05

As noted in your Abutter Notice for a meeting on Thursday, April 21, 2022, we are responding in advance of your meeting to your invitation for comment on the file referenced above.

As homeowners in Indian Ridge Subdivision, we would like express our concern that as lot owners in an "open space" subdivision, we may not be entitled to the protections afforded any other Dover property owner in the R40 district. Specifically, we are very concerned that, based upon an apparent ZBA interpretation, it would be possible for any of our neighbors to build a structure (or add to an existing structure) that exceeds 10% of their lot size. This would open the door to extremely large and even potentially multi-story structures in a sub-division where that was never intended or anticipated.

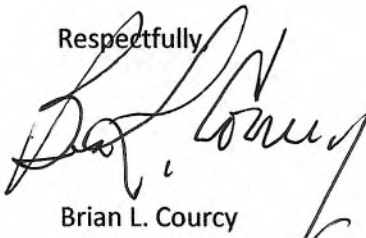
We are equally concerned that the City may waive the 20-foot set back rule for a building current under construction, which is adjacent to and very visible from our lot.

We purchased a lot in this sub-division with the expectation that said sub-division would retain, in perpetuity, the characteristics of any other similar residential neighborhood in Dover. If the aforementioned adjacent structure, currently under construction is allowed to be completed, we are extremely concerned that it will definitely change the dynamics of an otherwise very desirable neighborhood, and it is very likely to have a negative impact on our property values.

It is important to note that we do not harbor any ill feelings toward any of our neighbors, including those that wish to build appurtenant structures on their lots. We are more concerned that the Dover ZBA apparently allowed our neighbors to initiate the construction of a building with specifications that are terribly out of character for this sub-division.

We would suggest that a majority of lot owners in this sub-division would share our concerns. And, based upon the current property tax rates, we would estimate that the combined property tax revenue is near, or may exceed one million dollars for the residents of this sub-division. We respectfully ask that you consider the wishes and expectation of these tax payers.

Respectfully,



Brian L. Courcy
134 Emerald Lane, Dover



Kelly J. Courcy
134 Emerald Lane, Dover

Zoning Board of Adjustment

City of Dover, NH

After reading/listening to the concerns that have come up regarding the Browns' structure, it appears to be inappropriate for this type of development/neighborhood, according to our HOA covenants and the way the land was originally zoned in the R40 Zone. In my opinion it is very large and obtrusive.

If this structure is allowed to go forward, it will destroy the aesthetics and charm of the neighborhood we have come to love. Plus, it sets a precedent for others to put up any type of "out building" of any size and shape covering more than the 10% open space coverage now in place.

Reasons I would like for stopping this structure to continue are as follows:

Homeowners are not to do anything in or about their home that interferes with the rights or comfort of others in the subdivision. The subdivision is zoned strictly as a residential community.

Homeowners may maintain a personal home office for the private use in accordance with the Zoning Ordinance of the City of Dover. No, commercial, industrial, or retail activities shall be permitted in any home.

Every time one of these types of structures is permitted, it upsets our Eco system. We have bio-ponds and drainage that would be put under undo stress with all the runoff when the land is changed in such ways.

There are 49 dwellings in this development, with an average price of about \$500,000 each, which comes to about \$25 million dollars that we as a whole pay taxes to the City of Dover, NH. If these types of things are permitted that will lower our property values. Thus, lessen the amount of tax dollars that Dover would receive.

Sharon M. Ponte

160 Emerald Lane (lot 40)

Dover, NH 03020

From: BERNARD MCCABE <bfm382@comcast.net>

Sent: Monday, April 18, 2022 1:39 PM

To: City of Dover - Planning <Dover-Planning@doover.nh.gov>; Sarah@benbrunt.com;
Marcialane125@gmail.com

Subject: RE: garage construction at 126 Emerald Lane, Dover

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

Dear Zoning Board Members,

RE: garage construction at 126 Emerald Lane, Dover

I was dismayed to learn that a large garage being built in the back yard of 126 Emerald Lane was permitted by the City of Dover. I think the large size and location of the structure is totally inconsistent with the character of our Indian Ridge homes. Of the other 48 homes in Indian Ridge, none of the backyard structures that have been built have had the significant negative visual and environmental impact this large garage will cause for neighbors. Since our house is only 60-70 feet from the garage, its rear is in full sight of our entire back yard. It rises at least 10 feet above the 6 foot white fence it closely backs up to. When we purchased our house in June, 2020, we had no idea a structure of this size, which will surely affect the value of our house, would be permitted by the City of Dover.

Sincerely,
Bernard McCabe
92 Emerald Lane
Dover, NH

Good morning Zoning Board members,

We are writing today to support the appeal and appealants for File Z22-05 scheduled to be discussed at the April 21st meeting of the Zoning Board. While we are not direct abutters to the property in question, 126 Emerald Lane, our property is in direct eyesight of the under-construction garage. This monstrosity of a building can be viewed from all of our rear windows, including two bedrooms, our main living area, and our outdoor space (patio & deck).

We purchased in this community because of the green space that the developers left in place. From the moment we purchased our home 2.5 years ago, the neighborhood has felt like an established community. So much so that we are frequently approached by realtors asking if we are interested in selling because they have clients looking to move into our community specifically. A building of this size goes against the character of this neighborhood, especially given our smaller lot sizes. We cannot imagine that the writers of the zoning regulations for R-40 OSS intended on eliminating lot coverage while simultaneously expanding the setback regulations. The only reasonable interpretation of these regulations is that the more restrictive regulations should apply.

In Section 157-21 of the Code of the City of Dover, the Planning Board outlines what items it considers necessary to review for the impact of a new development in the City of Dover. Any number of the items listed in 157-21 are applicable to the impact of this Zoning Board's decision on this appeal, including:

- changes in surface drainage;
- increased refuse disposal;
- pollution of water or air;
- land erosion or loss of tree cover; and
- harmony with the character of surrounding development.

If these items are so important for ensuring a new development does not negatively impact the City of Dover, how can the City ignore their impact on an existing neighborhood and its residents. We firmly believe that property owners have a right to use their property in accordance with the rules and regulations established by law and local codes, except in cases that detract from the character of the neighborhood or possibly affect the property value of neighboring homes. Prior to living in New Hampshire, we resided in Northern Virginia (Arlington and Fairfax Counties). The housing boom in that region has destroyed the aesthetics of established neighborhoods, largely in part to the exact regulation under consideration in this appeal, lot coverage. Neighborhoods that once contained modest single family ranch homes or two-story colonials now have 10,000 sq ft homes towering over the existing properties. We don't want to see this happen to our neighborhood, or any neighborhood in Dover. Lot coverage matters.

Additionally, we share the appealants' concern about the potential effects of the additional impervious surfaces and potential for water runoff that will further erode ground cover and overburden the neighborhood bioponds. Furthermore, we understand that the property owner intends on utilizing this garage for automobile restoration and woodworking. What elements are in place to ensure the proper disposal of hazardous wastes that logically come from an automobile repair facility (whether hobby or commercial)? According to a quick internet search, automobile restoration commonly involves the use of hazardous chemicals such as asbestos, manganese, and solvents (benzene, xylene, toluene, etc.). How does the property owner plan to mitigate exhaust and prevent contaminants from entering our ground water and/or

public water system? This building stands 12 ft from the backyard of a family with young children and a mere 62 ft from their bedroom windows. Would you want this in your backyard?

We ask that the Zoning Board looks at this appeal and notes that the most reasonable interpretation of the regulations keeps intact the R-40 maximum lot coverage while also restricting the setback. If 10% lot coverage is applicable to a 40,000 sq ft lot, then how could the city planners not restrict the lot coverage of a lot half that size. A large portion of our "open space" (meant to be accessible and usable to the community) are designated wetlands. Wetlands are hardly usable to the community and would have been protected from development regardless of the designation of the property as R-40 OSS. This makes the protection of our small lots that much more important to the neighborhood. R-40 OSS developments are intended to, in addition to other elements, "prevent disruption of natural topography and drainage systems; maintain the rural and open character of the undeveloped area of the City; protect historically significant buildings, resources, and/or landscapes; protect valuable wildlife areas; allow for attractive site design." Allowing more than 10% lot coverage undermines all of these elements and destroys the very character that makes our neighborhood attractive to homeowners.

We respectfully request that the Zoning Board find in favor of the appealants and enforce the existing 10% lot coverage as it applies to R-40.

Thank you,
Adam and Katie Giroux

112 Emerald Lane
Dover, NH 03820

136 Emerald Lane

Dover, NH 03820

April 17, 2022

Zoning Board of Adjustment

Dover City Hall

288 Central Ave

Dover, NH 03820

Re: 126 Emerald Lane

File: Z22-05

This is in response to an abutter notice I received about decisions being made in regards to the construction at 126 Emerald Lane. I am very concerned about the precedent this sets for our planned neighborhood. My lot is only a half acre as are most in this neighborhood. If the 10% lot coverage requirement is not applied, the character of this planned development is irrevocably changed. I chose to invest in this neighborhood because I believed the city of Dover would help protect my investment by enforcing clear and appropriate zoning rules. I am now questioning if I should have built in my hometown of Dover at all and my children are second guessing buying houses in this city. Family and guests use to sit at the kitchen table or on the deck here and compliment the beautiful backyard. Now, they exclaim, "what the hell is that being built over there?!"

I believe this oversized "garage" is harmful to our property values here on Emerald Lane. It is concerning that the city substitutes a footnote for open space subdivisions in place of the R-40 rules. There is lacking clear and reasonable guidance to the homeowners/taxpayers. My Residential Property Record Card states "Zoning: R-40." We need that 10% lot coverage requirement to protect our investments in our homes and this city. As the city has chosen to interpret the

rules now nothing stops property owners from building massive structures that cover nearly the entire lot and harming neighborhood property values in the process. We are entitled to the same maximum lot coverage zoning protections as all R-40 property owners. As for the open space and trails we are supposedly enjoying here on Emerald Lane, all I can see are wetlands and bio ponds we homeowners are required to maintain. Looks like Dover and the developers took advantage of the taxpayers again. Please restore our faith in this city by doing the right thing for your taxpayers.

See you on April, 21st in our City Hall.

Joan M. Roberge

978-697-5143

From: Lino Patti <lpatti94@gmail.com>
Sent: Tuesday, April 19, 2022 7:39 PM
To: City of Dover - Planning <Dover-Planning@dover.nh.gov>
Subject: Comment on File Z22-05

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

Hello,

Via certified mail, I am an abutter to subject file and would like to make a comment. I support the Zoning Administrator's determination that within an Open Space Subdivision, the 10% lot coverage requirement of the underlying zoning district does not apply.

-Lino Patti
120 Emerald Lane
Dover, NH 03820

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Lino Patti | Email: lpatti94@gmail.com | Cell: 978-886-1674

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From: Rick Behun <jrichardbehun@gmail.com>

Sent: Wednesday, April 20, 2022 10:30 AM

To: City of Dover - Planning <Dover-Planning@dover.nh.gov>

Cc: Nancy Behun <nancybehun@gmail.com>

Subject: Dover Zoning Board of Adjustment issue regarding 126 Emerald Lane (Indian Ridge Development) [attention for the April 21 hearing]

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

As residents of the Indian Ridge subdivision of Emerald Lane, we wish to express our concern over the apparent misinterpretation of the zoning rules which thus allowed the backyard structure at 126 Emerald Lane to start construction.

Zoning laws are a critical part of the decision process when people wish to commit their funds and lives to choose to live in a particular area.

The structure in question violates the intended architectural design (both physical and landscape) of this subdivision which negatively impacts the value of the neighborhood (with significant impact to the value of the immediately adjacent properties).

The citizens of the City of Dover must have confidence in the city government to value the integrity of the zoning laws.

We strongly question if the zoning laws were treated with the intended respect and interpretation this area expected.

Sincerely,

J. Richard and Nancy H. Behun
161 Emerald Lane
Dover, NH 03820

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From: indianridgedoverhoa@gmail.com <indianridgedoverhoa@gmail.com>

Sent: Wednesday, April 20, 2022 12:30 PM

To: City of Dover - Planning <Dover-Planning@doover.nh.gov>

Subject: File Z22-05 / Meeting Date Thursday, April 21, 2022

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

Attention: Zoning Board, Dover City Hall, 288 Central Avenue, Dover, NH 03820

RE: An appeal by Applicants Garry & Marcia Lane and Benjamin and Sarah Brunt of the March 1, 2022, administrative decision regarding lot coverage.

In response to a certified mail abutter notice concerning the referenced matter, the Indian Ridge Homeowners' Association (the "HOA") respectfully submits the following comments to the Zoning Board of Adjustment:

- The HOA does not take a position with respect to the dispute among Garry & Marcia Lane (130 Emerald Lane), Benjamin & Sarah Brunt (96 Emerald Lane) and Dana & Sherri Brown (126 Emerald Lane), and this submission is made without prejudice to the rights of these parties.
- The HOA supports a review of the City of Dover's Zoning Ordinance as it impacts Open Space Subdivisions in R-40 zones, and in connection with such a review, asks that the Rural Residential (R-40) District Regulations Summary be amended to include a separate chart for Dimensional Regulations for Open Space subdivisions in lieu of the footnote approach that is used currently.
- The footnote approach is imprecise and subject to differing interpretations and does not provide clear guidance to residents or to the City's Building Department. It is foreseeable that this lack of precision will lead to disputes similar to the one that is currently before this Board and may also lead to unnecessary litigation.
- Moreover, the existing administrative interpretation by the City of Dover results in minimal dimensional zoning protection (a 20-foot setback requirement only) to residents of Open Space Subdivisions as compared to other R-40 districts.
- We further request that any revisions to the Open Space Subdivision regulations (including changes to the 20-foot setback requirement) be conducted in a fully open and transparent manner and that the amendment process allow input from Dover residents, including members of the HOA.

Respectfully submitted,

The Indian Ridge Homeowners' Association Board of Directors

By: Lee Lapierre, Its President

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From: Gail McCabe <gbm382@comcast.net>

Sent: Wednesday, April 20, 2022 12:44 PM

To: City of Dover - Planning <Dover-Planning@dover.nh.gov>

Subject: Gail McCabe's letter for ZBA, Meeting, April 21, 2022 - Emerald Lane Loop

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

April 20, 2022

RE: Zoning Board of Adjustment Meeting April 21, 2022

Z22-05 Lot 15-47 Lane, Lot 15-27, Brunt, Lot 15-48, Brown

My first impression of the Brown's accessory structure from in front of their house was the new construction appeared larger than the house. I also noticed the structure's presence and size is exaggerated because it is located very near the top of Indian Ridge on land that slopes toward the street and empties into a wetland area. When I looked from another perspective standing on Emerald Lane in the Brunt's driveway looking up the hill, the Brown's structure looks as big as a house.

I support the Lane's and Brunt's concerns; the Brown's accessory structure is too large and not appropriate for the neighborhood.

In my opinion, the Emerald Lane Loop Open Space Subdivision consists of 49 house lots that need zoning protection from the City of Dover, NH. Many house lots are less than 1/2 acre. Some lots include a Bio Pond, a Steep Slope designation or Wetland. When the Zoning Board approves construction for accessory structures and accessory dwellings, the goal should be to have structures that complement the primary dwelling and property. The "10% Lot Coverage" and 20-foot rear and side setback rules would protect the beautiful look of the Emerald Lane Loop neighborhood.

Gail McCabe
92 Emerald Lane
Dover, NH 03820

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From: Cathy Bruno <njbrunojr@aol.com>
Sent: Wednesday, April 20, 2022 5:17 PM
To: City of Dover - Planning <Dover-Planning@dover.nh.gov>
Subject: RE: File Z22-05 / Meeting Date Thursday, April 21, 2022

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RE: An appeal by Applicants Garry & Marcia Lane and Benjamin and Sarah Brunt of the March 1, 2022, administrative decision regarding lot coverage.

I am writing the Zoning Board to express my agreement with the position taken by Garry and Marcia Lane and Benjamin and Sarah Brunt. The assessed value of the 49 homes in Indian Ridge development total \$27,787,400. The tax revenue based on the current rate of \$21.70/\$1000 is \$602,986. The averaged assessed value is \$567,090, with the highest being \$714,000 and the lowest \$476,200. There is a home currently available for sale with an asking price of \$710,000 whose assessed value is \$580,600.

Based on my understanding of the City's position, the only zoning protection afforded this community can be found in footnotes to the R-40 regulations, which is a 20' setback. The majority of the lot owners in Indian Ridge are on half acre plots. Those of us whose property is in the circle's interior are exposed to our neighbors on all sides. What we do on our property greatly affects not only our property values but those of our many immediate neighbors. Allowing any type of structure of any size or width or purpose whose only requirement is that there be a 20' setback will lead to the very problem currently before the Board. The structure being constructed by the Browns dominates their backyard, backs up to and looms over the Brunt's backyard. It impairs the Brunt's enjoyment of their backyard and will affect the resale value of their property. And this is before the Brown's apply for a variance for an additional driveway that will be necessary for them to access this outbuilding. Based on the City's interpretation of the zoning regulations, this can happen to any one of us in the subdivision. I invite the Board to take a field trip to the neighborhood to see the effect the Brown's structure is having on their neighbors and ask themselves how they would feel about the construction if they were the Brunts or the Lanes.

It is my opinion that the footnotes in the dimensional tables in the R-40 regulations merely substitutes the 10' setback with a 20' setback, leaving all the other regulations/protections in R-40 such as 10% lot coverage in place for an R-40 Open Space subdivision. To interpret it any other way would leave the property owners in these highly valued subdivisions vulnerable to their neighbors actions and impair their ability to sell their property for the value assessed by the City.

Each year the City adjusts the assessed value of our homes by applying a % to the existing recorded assessed value without any regard to the condition of the property or the affect the neighbors activity has had on the resale value. The property owner is then stuck paying taxes on what may be an over assessed property and won't be able to definitively prove that until they sell their home at less than the assessed value as a result of a neighbor's action. The buyer at the lower price may get a tax break based on the lower price paid but the seller doesn't get a refund because of the over assessment. So unless the City intends to view all properties before the blanket application of these market value adjustments, the least the City can do is protect its property owners from the foibles of their neighbors.

Respectfully submitted.

Cathy and Nicholas Bruno
144 Emerald Lane
Dover, NH 03820

njbrunojr@aol.com

From: Robert Leopold <robertleopold@yahoo.com>
Sent: Wednesday, April 20, 2022 5:40 PM
To: City of Dover - Planning <Dover-Planning@dover.nh.gov>
Cc: Indian Ridge Homeowners' Association <indianridgedoverhoa@gmail.com>
Subject: Fw: File Z22-05 / Meeting Date Thursday, April 21, 2022

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

RE: An appeal by Applicants Garry & Marcia Lane and Benjamin and Sarah Brunt of the March 1, 2022, administrative decision regarding lot coverage.

As a member of the Indian Ridge Homeowners Association, we are concerned about the size of the structure being built on the lot in our Open Space Subdivision. As part of the R-40 Zone, the OSS restrictions are only addressed as a footnote and are confusing and not fully developed. If the 10% lot coverage rule is waived with no thought to an appropriate set of restrictions including setback, lot coverage, usage, and height restriction the subdivision will become a very different place from what we thought we were buying into.

We request that the ZBA not allow any changes or grant any variances to the R-40 zone restrictions that apply to our OSS until a thorough and complete rewrite of guidelines for an OSS is undertaken in an open and transparent way.

Robert & Karen Leopold
165 Emerald Lane, Dover NH 03820

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