

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, July 21, 2022**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF JUNE 16, 2022 AND JULY 7, 2022

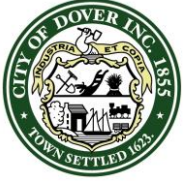
3. HEARINGS

- A. *Z22-07 Applicants Dana R. and Sherri L. Brown, 126 Emerald Lane, (Tax Map F, Lot 15-48), located in the Rural Residential (R-40) Zoning District, request an Equitable Waiver of Dimensional Requirements from **Section 170-12(B) of the Zoning Ordinance** to allow the completion of a 24' x 32' garage on the southwest corner of the subject property approximately 11-12' from the side and rear property lines, where 20' is required. *Continued from June 16, 2022 meeting.

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, June 16, 2022**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Anthony Sillitta, Nick Couturier, Rich Onufry (Alternate)

Members Absent (Excused): Casey Conley (Alternate), George Reagan, Otis Perry (Vice Chair), James Burdin

Members Absent (Unexcused):

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

The Chair called the meeting to order at 7 PM.

2. APPROVAL OF MEETING MINUTES OF MAY 19, 2022

Motion: R. Onufry moved to approve the minutes of May 19, 2022. Seconded by A. Sillitta. Vote: All in favor with A. Sillitta abstaining

3. HEARINGS

- A. *Z22-07 Applicants Dana R. and Sherri L. Brown, 126 Emerald Lane, (Tax Map F, Lot 15-48), located in the Rural Residential (R-40) Zoning District, request an Equitable Waiver of Dimensional Requirements from **Section 170-12(B) of the Zoning Ordinance** to allow the completion of a 24' x 32' garage on the southwest corner of the subject property approximately 11-12' from the side and rear property lines, where 20' is required.

The board received a request from Attorney Josh Lanzetta on behalf of the Browns to continue this item to the July 21st ZBA meeting.

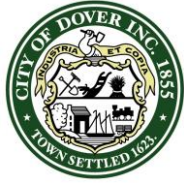
Motion: N. Couturier moved to continue the item to July 21, 2022. Seconded by A. Sillitta. Vote: U/A

4. OTHER BUSINESS

None

5. ADJOURN

Motion: A. Sillitta moved to adjourn at 7:05 pm. R. Onufry seconded. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

1. Attendance

Members Present: Chris Prior (Chair), Anthony Sillitta, Nick Couturier, Rich Onufry (Alternate), Otis Perry (Vice Chair), James Burdin

Members Absent (Excused): Casey Conley (Alternate), George Reagan

Members Absent (Unexcused): None.

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

The Chair called the special meeting to order at 7 PM and noted alternate J. Burdin will be voting tonight.

2. Old Business

- A. Z22-05R, a Motion for Rehearing of Z22-05, by 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), where Z22-05 was an appeal of 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. The appeal request was denied by the Board on May 19, 2022.

The chair explained the criteria for granting a rehearing: new evidence brought forward, or a procedural error by the board has been made.

Motion: O. Perry moved to deny the request for a rehearing. J. Burdin seconded.

Chair Prior noted no new evidence has been submitted by the applicant. No procedural or technical error was identified in the application. The applicant presented a 32-point document. Chair Prior commented on several of the points and noted his support of denying the request.

J. Burdin also commented on various points submitted by the applicant.

O. Perry noted he's read through the document and did not see new evidence or proof of ZBA error.

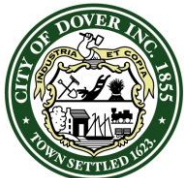
Vote: 5-0 (U/A).

3. Other Business

None

4. Adjourn

Motion: O. Perry moved to adjourn at 7:13 pm. A. Sillitta 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, July 21, 2022
Meeting Time:	7:00 pm

INTENT: The Applicants request an Equitable Waiver of Dimensional Requirements from **§170-12(B) of the Zoning Ordinance** to allow the completion of a 24' x 32' garage on the southwest corner of the subject property approximately 11-12' from the side and rear property lines, where 20' is required.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: R-40

FILE: Z22-07

APPLICANT/OWNER: Dana R. and Sherri L. Brown

LOCATION: 126 Emerald Lane (Tax Map F, Lot 15-48)

ACREAGE: 0.47± acres

EXISTING LAND USE: Residential

PROPOSED LAND USE: No change

SURROUNDING LAND USE:
Residential

PREVIOUS ZBA ACTION: May 2022 / Z22-05, Appeal of an Administrative Decision was denied, and the Zoning Administrator's determination regarding lot coverage within an Open Space Subdivision was upheld.

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application materials; Staff Exhibit A

STAFF RECOMMENDATION: Staff does not support or oppose the request

BACKGROUND INFORMATION

This item was intended to be heard at the ZBA meeting on June 16, 2022, however, the Board moved to continue the application to the next regular meeting (tonight's hearing) at the applicant's request.

The property subject to this request is a 0.47± acre lot (20,473± square feet) within the Indian Ridge Subdivision on the western side of the City. Located on the property is a cape-style house, which was built in 2016, according to the property record card. The structure pertinent to this application is a detached accessory structure ("garage"), to be completed at 768± square feet in size, and which is currently mid-construction on the rear, southwest corner of the property.

The subject property is within the Rural Residential (R-40) zoning district and an open space subdivision ("OSS"). As Indian Ridge is an OSS, the provisions in the footnote above the Dimensional Requirements in the Table of Use for R-40 displace the normal dimension requirements in the R-40 district. Therefore, while 10-foot side and rear setbacks apply to outbuilding/accessory use structures in most residential zoning districts, in the case of an OSS (and as directed by the footnote) in accordance with Article IV of Chapter 157 of the Code of Dover, the dimensional requirements shall be as specified in §157-21. As such, the garage is required to meet 20-foot side and rear setbacks as required in the dimensional requirements chart of §157-21.F labeled *Minimum Building Setbacks for Subdivision Lots: Abutting a Lot Line (feet)*.

Based upon the Certified Plot Plan by Berry Surveying & Engineering dated April 7, 2022, which was provided by the applicant in their application materials packet, the garage currently has the following setbacks: 11.9' and 11.3' on the westerly side setback and 12.8' and 12.4' on the southerly rear setback.

The Zoning Administrator was first alerted as to a potential compliance issue relative to the property, when a neighbor stopped by the Planning office on approximately 1/28/2022; at the time the abutter initially queried about driveways, but the complaints later grew in scope.

Staff performed an on-site inspection of the subject project on February 7, 2022. Subsequently, staff met with Mr. Brown at City Hall the following day (February 8, 2022) to discuss the garage, which was identified as most likely infringing upon the established setbacks. Following both these events, the Zoning Administrator drafted an email summarizing the meeting and identifying possible next steps the Browns' could pursue in order to come into compliance (*see Exhibit A attached*).

A brief overview of dates pertinent to the Building Permit ("BP") follows:

- 6/30/21; BP application submitted to Inspection Services.
- 7/12/2021; plan review is performed and later forwarded to applicant. The setback issue was apparently not identified at this time. The BP application and several related documents are attached (*see Exhibit B attached*).
- 10/1/2021; the BP is issued.
- 1/26/2022; Inspection Services confirmed foundation passed inspection.
- 2/15/2022; Inspection Services issued a letter to suspend the building permit.

While the BP was issued by Inspection Services, the rear and side setback issue was apparently not identified. Furthermore, historically, City staff has advised the home owners of lots within residential zoning districts that setbacks for accessory structures (like detached garages and sheds) are generally 10-feet. This case has highlighted the need to be cognizant of and more carefully apply the 20-foot setbacks for such accessory structures existing within OSS subdivisions.

REASON FOR RECOMMENDATION

State law (NH RSA 674:33-a) requires that the ZBA grant an equitable waiver if all of the following four criteria are met:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

STAFF RECOMMENDATION

Staff recommends that the Board open the public hearing, accept testimony, and make findings based on the four criteria within RSA 674:33-a. Staff does not support or oppose the granting of this Equitable Waiver of Dimensional Requirements request.

**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.

EXHIBIT A

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

City of Dover, New Hampshire
288 Central Avenue
Dover, NH 03820-4169
e: n.kypfer@doover.nh.gov
p: 603.516.6008 f: 603.516.6049

Dover: First in New Hampshire, First with you!
<http://www.dover.nh.gov>



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

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: 1548-0

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 04270 Cell: 207-515-5624
5. Architect: MEDTON MULLS 128 WHELEY 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 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)

Applicant's Signature

Building Inspector's Signature

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

CITY OF DOVER

NEW HAMPSHIRE



BUILDING PERMIT

PERMIT NO. 21-311 DATE 7/2/21

This Certifier That Dana Brown ADDRESS OF OWNER DOVER

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.



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 3/4"; 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

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.

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@dover.nh.gov> wrote:

Hello Dana,

Attached is the plan review for your project.

The highlighted items needs a response for further review.

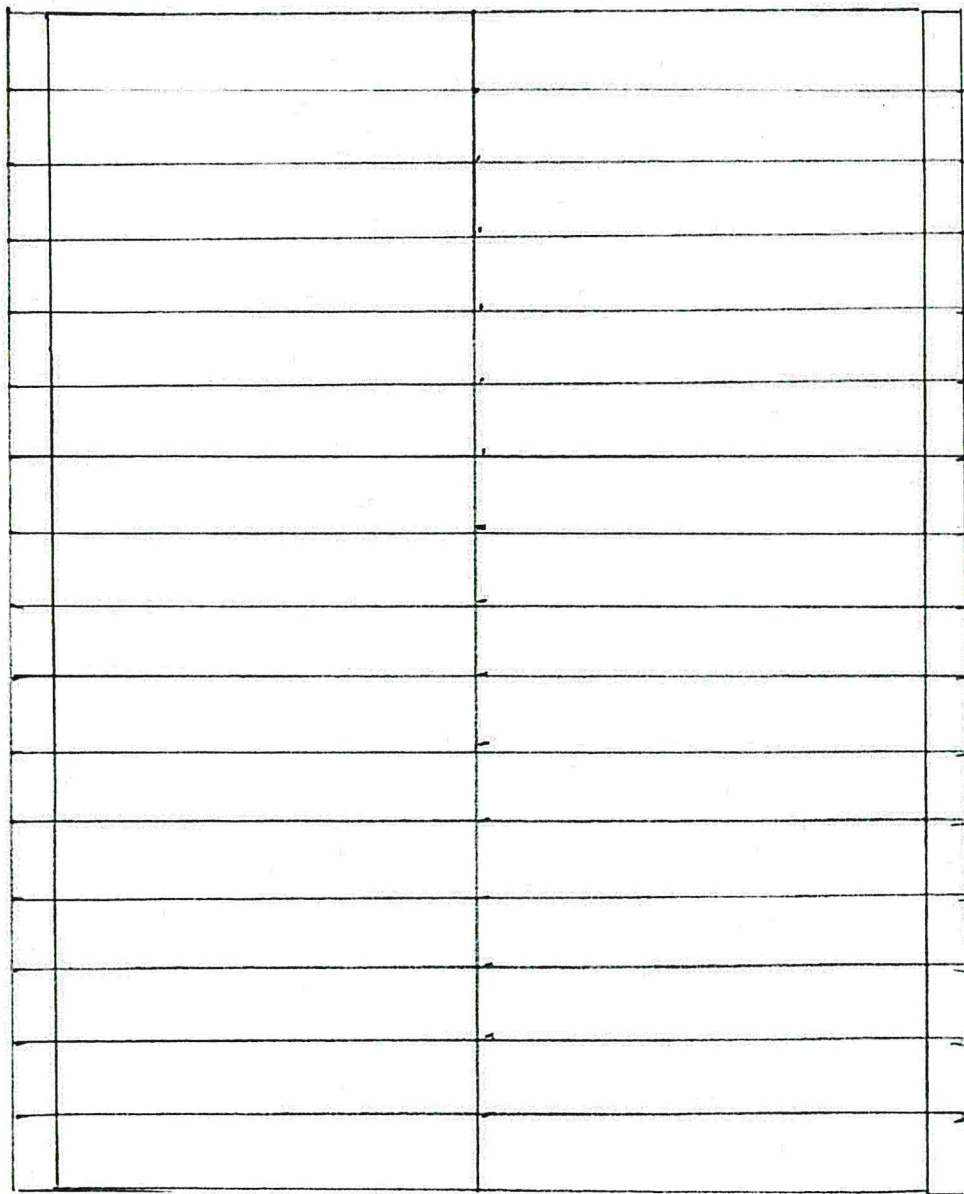
Please respond and I will have the inspect review and be in touch.

Michelle Dube
Secretary

Dover Fire & Rescue Inspection Services
262 Sixth Street

DIMENSION PLAN

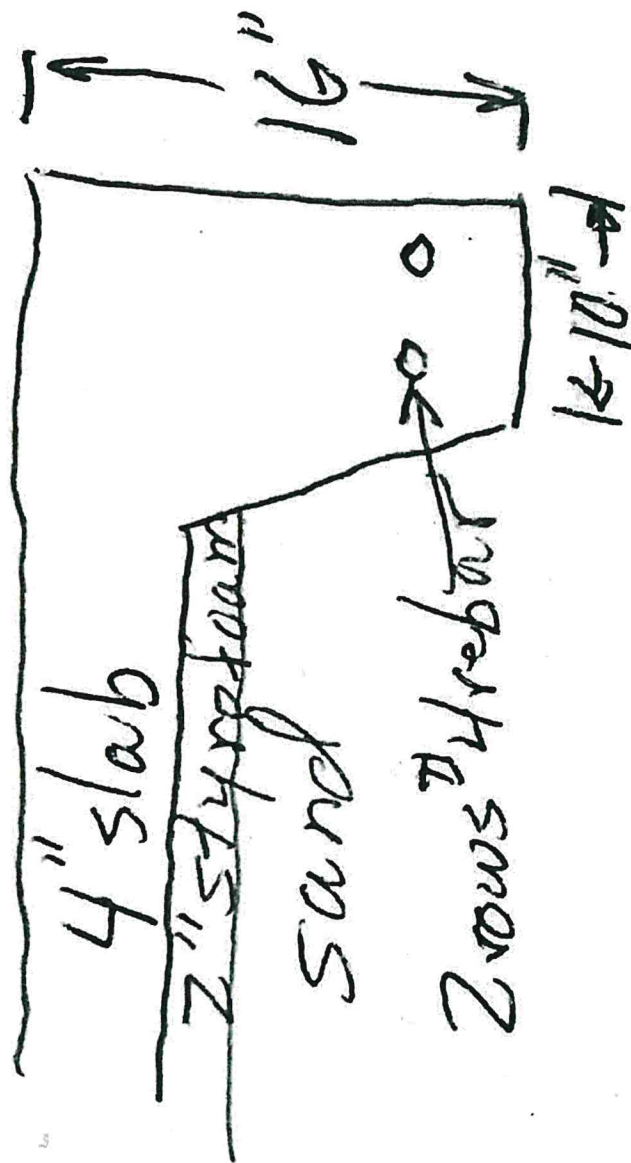
Rafter's

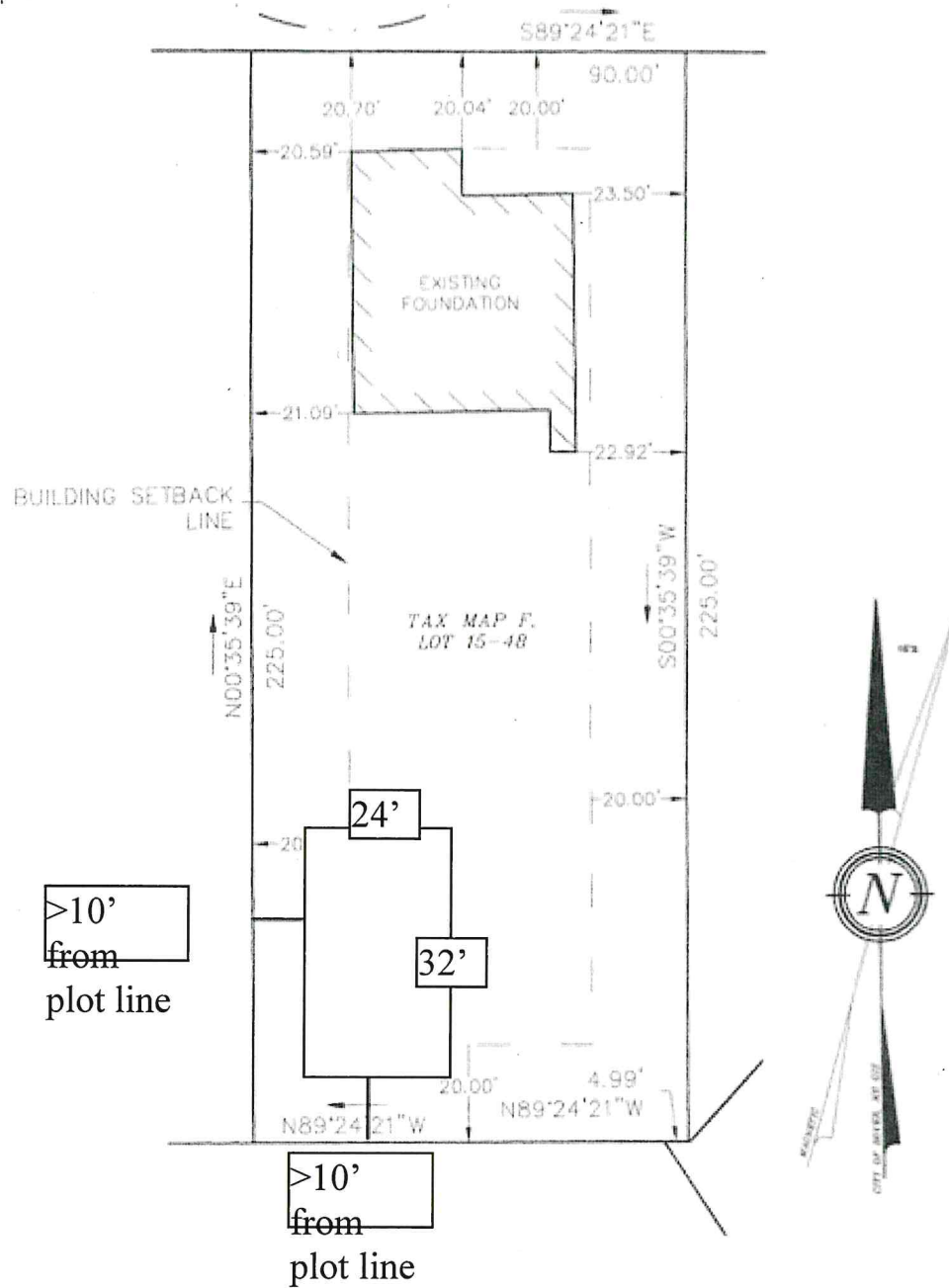


32'

24'

26'





A. Footing info

- Depth below finished grade
- Size (width & height)

B. Foundation Drains, if required

C. Foundation info:

- Wall Thickness 6"
- Wall height - 2'
- Sill Plate
 - Size - 6"

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

FRANCIS X. BRUTON, III
CATHERINE A. BERUBE
JOSHUA P. LANZETTA

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC

ATTORNEYS AT LAW

601 Central Avenue
Dover, NH 03820

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(603) 743-6300
FAX (603) 343-2986

www.brutonlaw.com

May 16, 2022

City of Dover, New Hampshire
Zoning Board of Adjustment
288 Central Avenue
Dover, NH 03820

RECEIVED
Planning Office
MAY 16 2022
Dover, New Hampshire

Re: Equitable Waiver
Owner: Dana & Sherri Brown
Applicant: Dana & Sherri Brown
MBLU: F-15-48-0
Address: 126 Emerald Lane in Dover, New Hampshire
Zone: R-40

Dear Zoning Board of Adjustment:

The purpose of this letter is to submit the enclosed Equitable Waiver of Dimensional Requirements (the "Waiver") on behalf of C (the "Applicant") related to construction of a garage on real property located at MBLU F-15-48-0, otherwise identified as 126 Emerald Lane in Dover, New Hampshire (the "Property").

Pursuant to RSA 674:33-a¹, and the Zoning Ordinance of the City of Dover, New Hampshire,² the Applicant seeks an equitable waiver of dimensional requirements under section 170-12.B³, and respectfully requests the Zoning Board of Adjustment (the "ZBA") schedule a hearing to review and grant the Application.

I. ENCLOSED DOCUMENTS

Enclosed please find the following documents:

1. Waiver dated April 27, 2022; and
2. Building Permit Application dated June 30, 2021 (the "BP Application");
3. Plumbing Permit Application (the "PP Application");

¹ NH RSA 674:33-a (2022).

² Zoning Ordinance, City of Dover, N.H., Chapt. 170 (2022) (the "Ordinance").

³ Ordinance § 170-12.B, 170-41.

4. Building Permit No. 21-311;
5. Permit Plan Review dated July 13, 2021; and
6. Certified Plot Plan drafted by Berry Surveying & Engineering and dated April 7, 2022.

II. PROJECT NARRATIVE

On June 30, 2021, the Applicant submitted the BP Application to Dover's building department, seeking issuance of a building permit to construct a 24' x 32' garage on the southwest corner of his Property. This BP Application followed the Applicant's approval of the proposed garage from the Indian Ridge Subdivision Homeowner's Association (the "Association"), as required by the Association's Declaration and Bylaws.

On July 12, 2021, the City processed Building Permit No. 21-311, and on July 13, 2021, the City's Building Official, Jim Maxfield, reviewed the BP Application and completed a Permit/Plan Review (the "Initial Review"). In his review, Mr. Maxfield asked for various plans, and made construction recommendations. Thereafter, the Applicant submitted a Boundary Plan, Dimension Plan, and Foundation Plan (together the "Plans"), in compliance with Mr. Maxfield's recommendations, and Mr. Maxfield acknowledged receipt thereof.

On August 29, 2021, Mr. Maxfield requested rafter and ceiling joist information, and on August 30, 2021, the Applicant provided the requisite answers.

On October 2021, the Applicant received Building Permit 21-311 from the Building Department.

In November of 2021, the Applicant began a dialogue with the Mr. Maxfield related to an ancillary permit to add a bathroom to building permit 21-311, and on November 10, 2021, the Applicant requested to amend permit 21-311 to change the proposed foundation from a monolithic slab to a frost protected foundation.

Construction on the foundation ensued, and on January 14, 2022, Mr. Maxfield inspected—and passed—the foundation as complete. On January 25, 2022, the Applicant emailed the Building Department to confirm the foundation passed inspection, because Mr. Maxfield did not sign the back of Permit 21-311 during his physical inspection at the Property. On January 26th, 2022, the Building Department confirmed the foundation passed inspection and was complete.

Construction of the first floor, sheathing and roof ensued, substantially completing the garage, however, on February 2, 2022, the Applicant was informed that a complaint was made to the building department regarding the garage's side and rear setbacks. In response, the Applicant and his builder met with Mr. Maxfield, to review the BP Application and discuss the complaint. During this meeting, Mr. Maxfield represented 1) that he should not have issued the building

permit, and 2) confirmed the garage setbacks were in compliance with the City's Zoning and Subdivision Ordinance.

On February 7, 2022, Mr. Maxfield visited the Property to inspect the garage's location, resulting in issuance of stop work order on February 15, 2022.

III. ANALYSIS

The Applicant respectfully requests the ZBA grant an equitable waiver of dimensional requirements from the Ordinance to construct a garage as currently located and/or illustrated on the Certified Plot Plan.⁴

The questions from the Application are enumerated and *italicized* below with the Applicant's answers following in plain text.

1. *Does the request involve a dimension requirement, not a use restriction?*

Yes, this Application requests waiver of a dimensional requirement.

2. *a) Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the city OR b) explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser AND how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.*

The nonconformity, i.e., the garage's proximity to the side and rear lot lines, was discovered after the garage was substantially completed, given the foundation, walls, and roof trusses were erected and sheathed. This setback violation was not an outcome of ignorance of the law or bad faith, in fact, the violation occurred after Mr. Maxfield 1) reviewed the Applicant's building permit application, 2) made construction recommendations that did not include adjusting the location of the foundation, 3) issued a building permit, and 4) visually inspected and passed the foundation.

3. *Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.*

The nonconformity i.e., minor encroachment, does not burden any other property, and it is likely that addition of a garage to the Property increases its value, and the value of surrounding properties.

4. *Explain how the cost of correction far outweighs any public benefit to be gained.*

To date, the Applicant has paid forty-six thousand dollars to substantially complete the garage. The garage is built to the specifications outlined in the underlying R-40 zone,

⁴ *Id.*

and is only encroaching on the property line because of a discrepancy between the R-40 zone and the City's subdivision regulations. The encroachment does not create a safety issue, and razing the garage to be rebuilt a mere 9-feet away would likely double the Applicant's cost of construction. As such, there is no public benefit to be gained by moving the garage.

IV. RELIEF REQUESTED

For the reasons stated herein the Applicant respectfully requests the ZBA:

1. Approve the Application.
2. Grant any and all relief necessary to affect the aforementioned request.

Please do not hesitate to contact me with questions or concerns at josh@brutonlaw.com or 603-749-4529.

Sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form the name 'Joshua P. Lanzetta'.

Joshua P. Lanzetta, *Esq.*

-1-



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: Dana & Sherri Brown Phone # 617-686-6838

Address of Applicant: 126 Emerald Lane, Dover, NH 03820

E-Mail Address: danabrown53@gmail.com

PROPERTY OWNER (*if different from applicant*): Same as Applicant

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 126 Emerald Lane, Dover, NH 03820

Brief Directions: _____

Zoning District: R-40 Assessor's Map # F-1 Lot(s) # 15-48-0

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:

Please see attached.

APPLICATION CHECKLIST (Please check off)

- A. **Application signed** by Applicant and Property Owner (if different from Applicant) X _____
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** X _____
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. X _____
- 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). X _____
- 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	\$ _____
	\$ <u>100.00</u>
 2. Foster's newspaper public notice

TOTAL FEE \$ _____

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

THIS SECTION TO BE COMPLETED BY EQUITABLE WAIVER APPLICANTS ONLY

An Equitable Waiver of Dimensional Requirements is requested from Article 157 Section 21(F) of the Zoning ordinance to permit Please see attached.

1. Does the request involve a dimension requirement, not a use restriction? ☐ yes ☒ no
Please see attached

2. a) Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the city **OR** b) explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser **AND** how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

Please see attached

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.

Please see attached

4. Explain how the cost of correction far outweighs any public benefit to be gained.

Please see attached

NOTE: The Board must find in the affirmative on all four questions or the request must be denied

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.

Signature of Applicant*

Signature of Owner*

*Both Signatures Required

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: _____

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.

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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.

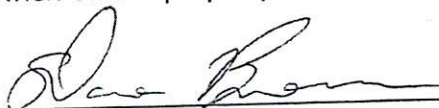

Signature of Applicant*


Signature of Owner*

*Both Signatures Required

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: 4/28/2022

-2-



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

Industrial _____ Commerical _____ Residential ☒

6/30/2021
OFFICE USE ONLY

Building Permit 21-311
Est. Cost: \$30,000
Fee: \$325.00
Date: 7/1/21

Location: 126 Emerald Lane Dover, NH 03820 Zone: R-40 Map: F Lot: 5480

1. Owner's Name: DANA BROWN Tel: _____
2. Owner's Address: 126 EMERALD LANE Cell: 617-686-6838
3. Contractor's Name: Larry Roakes Tel: _____
4. Address: 16 Rocky Rd. Otisfield, ME 04274 Cell: 207-515-5624
5. Architect: _____ 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:

- Separate permits are required by the installers of plumbing, mechanical and electrical.
- 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.
- Construction features must be supplied on plans or separate listing as per the Building Permit Application Requirements.
- 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 certify that the above information given is true and correct to the best of my knowledge. No major changes will be made without approval of the Building Inspector. Responsibility for compliance with the City ordinances is that of the applicant.

DANA BROWN

Applicant's Name (please print)

[Signature]
Applicant's Signature

[Signature]
Building Inspector's Signature

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

White — Applicant's Copy

Canary — Inspector's Copy

Pink — Assessor's Copy

-3-



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

OFFICE USE ONLY

Industrial _____ Commerical _____ Residential ☒

Building Permit

Est. Cost: _____

Fee: _____

Date: _____

Location: 126 EMERALD LN DOVER NH Zone: _____ Map: _____ Lot: _____

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. _____ to: _____ 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)

[Signature]
Applicant's Signature

Building Inspector's Signature

Applicant's Fee: _____ Check#: _____ Cash: _____ Date: _____ Initials: _____

White — Applicant's Copy

Canary — Inspector's Copy

Pink — Assessor's Copy

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.

>10' from plot line

Front of Garage

>10' from plot line

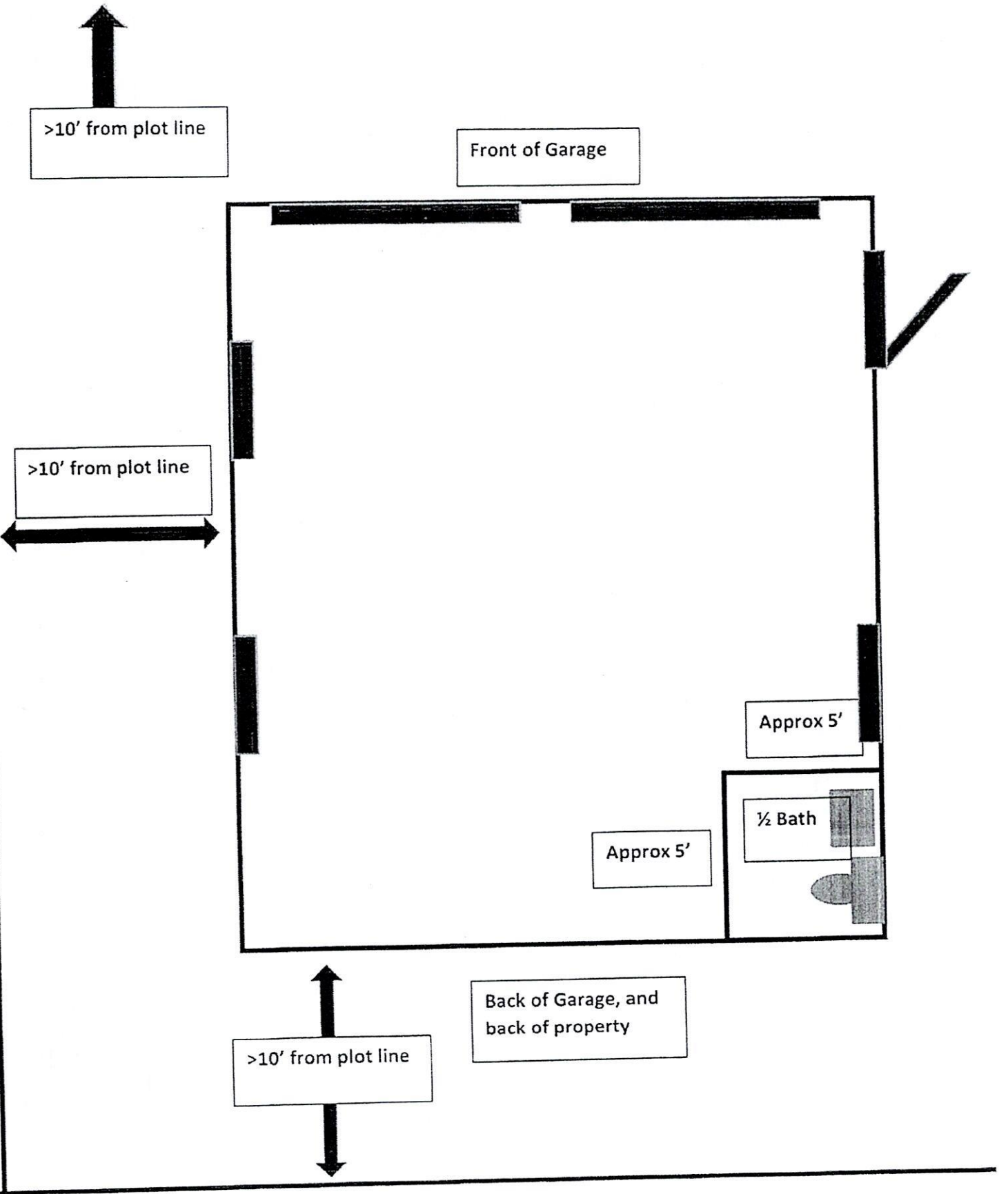
Approx 5'

Approx 5'

½ Bath

Back of Garage, and
back of property

>10' from plot line



-4-

CITY OF DOVER

NEW HAMPSHIRE



BUILDING PERMIT

PERMIT NO. 21-311

DATE 7/12/21

This Certifies That

DANA BROWN
NAME OF OWNER

DOVER
ADDRESS OF OWNER

has permission

TO CONSTRUCT

at

126 EMERALD LAKE

ADDRESS WHERE WORK IS TO BE DONE

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.

REQUIRED INSPECTIONS

516-6038

APPROVED

NOT APPROVED

IF APPLICABLE:

FOOTINGS CERTIFICATION

FOUNDATION INSPECTION

FRAMING INSPECTION

SPRINKLER

FIRE ALARM

ROUGH PLUMBING/MECHANICAL

ROUGH ELECTRICAL

INSULATION

-5-



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 3/4"; 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

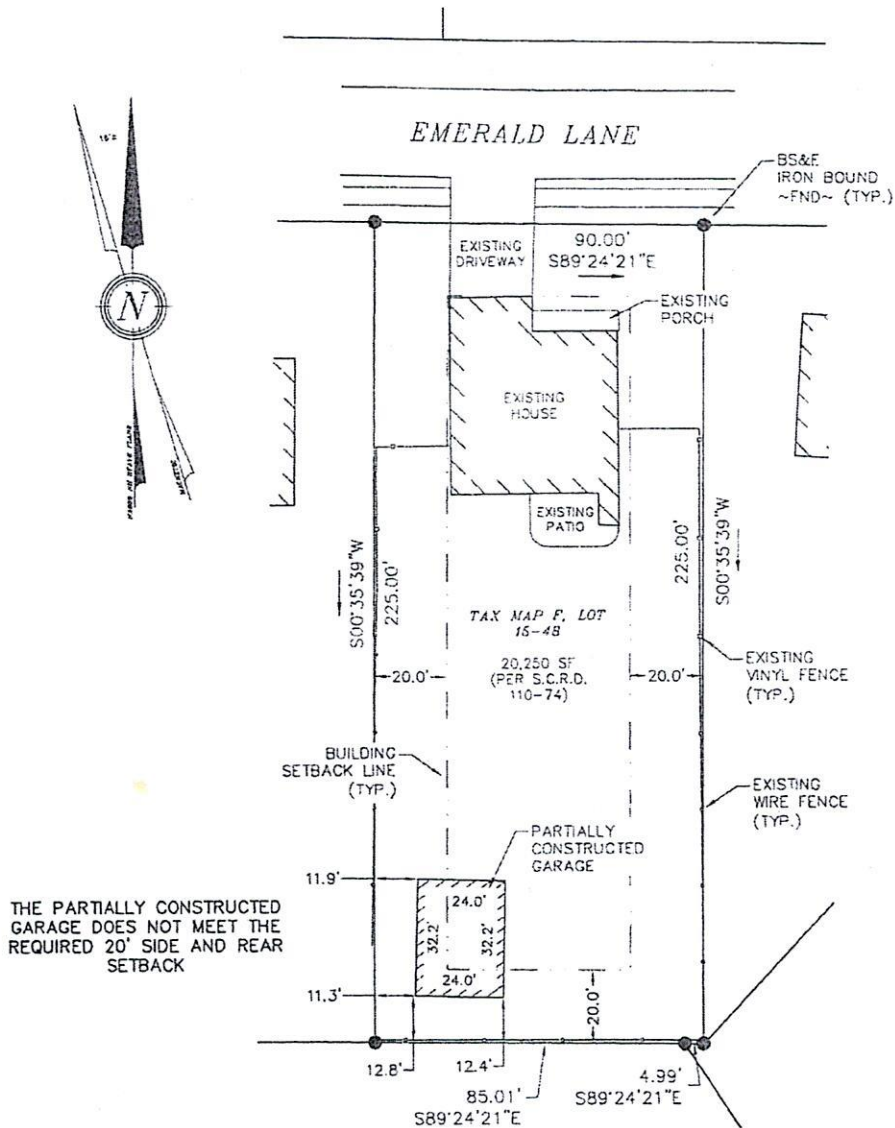
danabrown53@gmail.com

ORIGINAL TO APPLICANT; COPY TO FILE

[Signature]

DATE: 7/13/2021

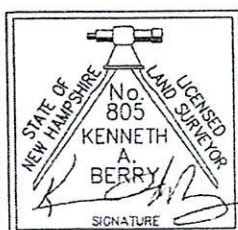
-6-



THIS IS NOT A BOUNDARY SURVEY

ZONE : R-40
OPEN SPACE SUBDIVISION
SETBACKS:
FRONT, SIDE, & REAR: 20'
S.C.R.D PLAN #110-70
S.C.R.D PLAN #110-74
S.C.R.D. BOOK 4559, PAGE 257

CERTIFIED PLOT PLAN
FOR
DANA & SHERRI BROWN
126 EMERALD LANE
DOVER, N.H.
TAX MAP F, LOT 15-48



BERRY SURVEYING & ENGINEERING
335 SECOND CROWN POINT RD.
BARRINGTON, N.H. 332-2863

SCALE : 1 IN. EQUALS 40 FT.

DATE : APRIL 7, 2022

FILE NO. : DB 2022-030

136 Emerald Lane

Dover, NH 03820

June 13, 2022

Zoning Board of Adjustment

Dover City Hall

288 Central Ave

Dover, NH 03820

Re: 126 Emerald Lane

File: Z22-07

RECEIVED
Planning Office

JUN 15 2022

Dover, New Hampshire

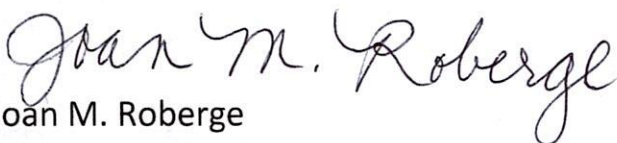
This is in response to an abutter notice I received about decisions being made in regards to the construction at 126 Emerald Lane. I am very concerned about the precedent this sets. My lot is only a half an acre as are most in this neighborhood, and according to the declarations made at the previous Zoning Board meeting our only protection is the 20 foot setbacks. The fact that our smaller lots have less protection than the R-40 listed on my Residential Property Record Card defies logic. It seems inadequate and unprofessional that the city substitutes a footnote for "open space" subdivisions in place of the R-40 rules and does not even note this on the Residential Property Record Cards. There is lacking clear and reasonable guidance to the homeowners/taxpayers. If as it is claimed 20 foot setbacks are our only protection, it is outrageous to think even that protection will be taken away. I believe the permit showed the 20 foot setbacks on the back and side of the property in question along with the proposed "garage" clearly

RECEIVED
Planning Office

within the setbacks. This violation of the zoning protection was right there in the permit.

As for the argument we are provided "open space" to enjoy in exchange for bigger lots and reasonable zoning protections here on Emerald Lane? All I can see are wetlands and bio ponds we homeowners are required to maintain. Did anyone from the city even look at the "open space" we are provided in place of bigger lots and meaningful zoning protections? Looks like Dover and the developers took advantage of the taxpayers again. I expect the city of Dover to protect my investment by enforcing clear and appropriate zoning rules. Please restore our faith in this city by doing the right thing for your taxpayers. Enforce the 20 foot setback rule.

See you on June, 16th in our City Hall.


Joan M. Roberge

978-697-5143

From: Garry Lane <garrylane2@me.com>

Sent: Thursday, June 16, 2022 9:33 AM

To: Kypfer, Natasha <N.Kypfer@doover.nh.gov>; Benton, Donna <d.benton@doover.nh.gov>; Wyatt, Joshua <J.Wyatt@doover.nh.gov>

Cc: Ben Brunt <ben@benbrunt.com>; Sarah Brunt <sarah@benbrunt.com>; Marcia Lane <marcialane125@gmail.com>; Garry Lane <garrylane2@mac.com>

Subject: Dana Brown request for Equitable Waiver

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

Ms. Kypfer- Attached is the objection to, and legal analysis of, the Browns' request for equitable waiver that is on the ZBA agenda for this evening. Please bring this document to the attention of the ZBA members. Please note that although I prepared portions of this letter, it is, ultimately, the effort of Ben and Sarah Brunt and Garry and Marcia Lane jointly. As you know, although I am a (retired) lawyer, I represent only myself and my wife. I am not counsel to the Brunts. Thus, nothing I may say tonight should be counted against the Brunts nor should the Brunts be subject to some higher legal standard as the ZBA imposed in the prior hearing on the maximum lot coverage issue. Please let me know if you require anything additional from any of the four of us. Thanks. Garry Lane

Sent from my iPhone

Benjamin and Sarah Brunt
96 Emerald Lane
Dover, NH 03820

Garry and Marcia Lane
130 Emerald Lane
Dover, NH 03820
June 16, 2022

Zoning Board of Adjustment
Dover City Hall
288 Central Avenue
Dover, NH 03820

By hand-delivery and by email at: Dover-Planning@doover.nh.gov

Re: File Z22-07 Dana and Sherri Brown request for equitable waiver (hearing June 16, 2022)

Dear Zoning Board Members:

This letter is jointly written and submitted to the ZBA by Ben Brunt, Sarah Brunt, Garry Lane and Marcia Lane concerning the Request by Dana and Sherri Brown, pursuant to RSA § 674:33-a, for an equitable waiver of dimensional requirements of the Dover Zoning Ordinance. The hearing on the Brown's petition before the ZBA is scheduled for June 16, 2022.

The Brown property is located at 126 Emerald Lane. The Lanes own the property located at 130 Emerald Lane that is immediately adjacent to the westerly property line of the Brown property. The Brunts own the property located at 96 Emerald Lane that is immediately adjacent to the southerly property line of the Brown property. For the reasons stated in this letter, the Lanes and Brunts object to the Brown petition for equitable waiver of the 20-foot side and rear setback requirement.

The Browns cannot satisfy the four requirements of the Equitable Waiver statute.

a. The Brown garage is not *substantially completed*.

While the Browns have the burden of proving they meet all four requirements of the Equitable Waiver statute (and each of those provisions is discussed below), the Brunts and the Lanes, in this objection, believe that the primary reason that the ZBA cannot reasonably consider granting an equitable waiver is that the statute requires, among other things:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent, representative or municipal official, until after a structure in violation had been *substantially completed*, ..."

RSA § 674:33-a I(a).

Even as of today's date, the garage is not "substantially completed" under any reasonable interpretation of those words. (See Exhibit 1, current photo of uncompleted garage 6.14.2022) Moreover, at the time that Garry Lane informed the City officials (Planning Director, Donna Benton) of the setback violation by email on February 4, 2022 at 10:21 a.m., at most, there was one roof truss set up, and most likely, there were no roof trusses in place and probably some of the outside wall sheathing was not in place. Ms. Benton acknowledged receipt of the email by responsive email, also on February 4th, at 10:40 a.m. (See attached Exhibits 2 and 3 emails).

While we do not have photos of the state of construction as of Friday morning, we know that on Monday morning, February 7th, before construction started for the day, that there was only a single roof truss in place. Thus, what is shown in the Monday morning photo represents the state of construction at the end of the day on Friday February 4, after a full day of construction that occurred *after* Lane informed Ms. Benton of the setback violation. (See Exhibit 4 attached, February 7, 2022 photograph). Therefore, on Friday morning, February 4, 2022, at 10:21 a.m., the construction necessarily was less advanced than on Monday, February 7th when there was only one roof truss in place.

Given that City officials were on notice of the setback violation on the morning of Friday February 4 and given that the burden of proof as to the state of construction is on the Browns, the ZBA should require them to establish what was completed as of that date and time. That is the state of construction that should control in determining whether the building was "substantially completed." Since the photo (see Exhibit 4 attached) from Monday morning, February 7th, shows only one roof truss in place, we know for certain that the state of the building on the morning of February 4th was even less advanced – probably no roof trusses in place and perhaps, outside wall sheathing was incomplete.

Not only did Lane inform the building officials of the setback violation on February 4th, but, in addition, on Sunday February 6th, he sent an email to each of Dana Brown and Sherri Brown advising them that the Lanes were filing a complaint with the City, that the construction violated both the setback [and lot coverage rules] (See Exhibit 5 attached). That email suggested that the Browns might want to stop construction until a final determination was made. Notwithstanding the notice to the City on Friday morning and to the Browns on Sunday, February 6th, the Browns allowed construction to start back up on the morning of the 7th. After the Browns and the City had notice of the violation, the Brown's contractor added an additional 9 roof trusses. In determining whether the building construction was substantially complete, the ZBA cannot reasonably consider those 9 trusses. However, even if the ZBA analyzed "substantial completion" based on the current state of the building, it is still not substantially complete and the ZBA has no discretion to declare otherwise in order to grant an equitable waiver.

RSA § 674:33-a does not define the term "substantially completed" and we did not find any NH case law interpreting those words in RSA § 674:33-a. However, another NH construction statute, RSA § 508:4-b (a construction statute of repose), does define when building construction is "substantially complete":

II. The term "substantial completion" means that construction is sufficiently complete so that an improvement may be utilized by its owner or lawful possessor for the purposes intended...

RSA § 508:4-b.¹

The Brown garage was to include a bathroom, running water, and presumably electricity and heat. As of February 4, February 7, and even at present, the garage had/has none of those things. According to the building permit, if heating was to be added, particular levels of insulation were required. The insulation has not been installed and probably is not even on site. As of February 4 – 7, it was presumably cold and to use the garage as intended, would have required a fully enclosed building to keep out snow, rain and sleet, a completed roof, insulation, water and electric piped to the building, bathroom installed, electric wiring and outlets completed, plumbing installed, lights completed, plywood roofing and shingles, a cement floor, two garage doors, several windows and at least one door for people and probably various other things. None of those construction items was or is finished.

As to the state of the building as of February 4 -7 (and even at present), the building was not ready to be used for its intended purpose and thus, the Browns cannot meet the first requirement

¹ A quick internet search of Construction and Substantial Completion, shows that the NH RSA § 508:4-b definition is very much the universal definition in construction matters.

of the equitable waiver statute. The building cannot be considered substantially complete for the purposes of either RSA § 674:33-a or RSA § 508:4-b.

A reasonable interpretation of the term “substantially complete” might be that the building has reached the point that it was fit for the owner to move into it or use it for its intended purpose with only “punch list” items remaining. If the Brown’s building contract had required them to make final payment on the garage when construction was substantially completed, it seems highly unlikely the Brown’s would have agreed that their garage is substantially completed or that they would have been willing to write that final payment when construction reached the stage it was at on the morning of February 7th. Even now, not all roof trusses are in place (it would appear that they are about half installed with another 8-9 to be put in place) and there is no covering over them, contrary to what the Browns represented in their petition to the ZBA (where they say the roof and other parts of the building were substantially complete and fully sheathed). The roof trusses are only about half complete and none of them is “sheathed” as argued by the Browns. There are no doors or windows, no concrete flooring, no insulation, no running water or electricity or heat. No electric outlet plugs, switches, lighting. The building is not and was not substantially complete and the ZBA cannot properly grant an equitable waiver.

b. There was a *failure to inquire* by Mr. Brown

The second part of the equitable waiver statute requires the Browns to prove:

(b) That the violation was not an outcome of ignorance of the law or ordinance, **failure to inquire**, obfuscation, misrepresentation, or bad faith on the part of any owner, owner’s agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner’s agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

RSA § 674:33-a I(b). (emphasis added).

While it is not totally clear from the Brown’s petition, the Browns may be claiming that the error in placing the building was made by the building official, James Maxfield. Mr. Maxfield is in charge of enforcing the State Building Code adopted by the City. He is not a zoning official. The 20-foot setback requirement is, first, a zoning requirement. Even if the Browns can establish that Mr. Maxfield is at fault, that is not the end of the analysis. Subsection b requires that the “ordinance interpretation” error did not result from “failure to inquire.” In that regard, the Browns apparently argue that it was enough that they inquired of Mr. Maxfield. We contend that Brown’s obligation required more than inquiry of Mr. Maxfield for the following reasons.

The plan submitted by the Browns as part of their building permit application (which they left out of their equitable waiver petition) appears to be a copy of part of one of the subdivision plans showing the required four-side, 20-foot setback lines on each of the lots (See Exhibit 6). On that plan, Mr. Brown drew the location of the proposed garage, literally with the 20-foot setback line in the middle of his garage. Thus, he was fully on notice that there was a serious issue to be resolved here *before* he spent \$46,000² on a garage. Did Mr. Brown inquire of the Planning Department in addition to inquiring of Mr. Maxfield as the zoning form signed by Mr. Brown told him he should have? Did Mr. Brown consult a real estate/land use lawyer familiar with zoning rules? Did Mr. Brown talk to his neighbors, the Lanes and the Brunts [no].

Typed in bold on the building permit application signed by Mr. Brown and dated June 30, 2021, is the following cautionary instruction to the applicant:

The above mentioned 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 ordinances. The City of Dover, by issuing this permit does not express or imply that the ordinances have been complied with.

Immediately above Mr. Brown's signature on the building permit application, the application again warns:

Responsibility for compliance with the City ordinances is that of the applicant.

Further, Mr. Brown signed a document on July 13, 2021 (copy included with the Brown's ZBA waiver application) entitled "PERMIT/PLAN REVIEW. The document states that:

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

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.

² Mr. Brown's building permit materials suggest the whole project was going to cost about \$32,000 but he is now claiming, correctly or incorrectly, that he has spent \$46,000. To the extent that the price of his construction matters, he should provide evidence of such payment and evidence that he could not make use of any of the existing building materials.

Mr. Maxfield is well-qualified to enforce the Building Code and he has the authority to issue building permits. But, as stated above, that permit stated that the Browns had the obligation to comply with the zoning setback rules and the form, signed by Mr. Brown, even stated, in bold, that any questions about zoning setbacks should be directed by the Browns to the Zoning Administrator. Did Mr. Brown do so, when, and, if so, what was stated? The form signed by Mr. Brown did not direct him to the Building Official, Mr. Maxfield, to resolve any zoning issues such as setbacks. The form directed Mr. Brown to the Zoning Administrator and even included the Administrator's phone number.

Had Mr. Brown been unaware of the 20-foot setback line drawn on the plan and had he submitted a plan showing the proposed location of the garage where that plan did not contain the 20-foot setback lines drawn onto the plan, Mr. Brown's duty of inquiry might have been less. Perhaps then it could be said that the violation of the setback rule was not the result of "failure to inquire" (see RSA § 674:33-a I(b) quoted above). But here, Mr. Brown was warned on two separate building application or permit forms that it was his responsibility to comply with all ordinances including setback rules. He was expressly directed to the Zoning Administrator concerning the setback requirements. He submitted a plan showing the 20-foot setback lines and thus he was fully aware of those lines – regardless of whether he knew when those setback lines applied and to what. Knowing that it was his responsibility to comply with the zoning setback rules and knowing that Mr. Maxfield's primary function was to enforce the Building Code, not to interpret the Zoning or subdivision ordinances, knowing that the plan Mr. Brown submitted showed a 20-foot setback line, knowing that the building form he signed referred Mr. Brown to the Zoning Administrator regarding setback rules, and knowing that the construction would be expensive, Mr. Brown had a *duty to inquire* not just of Mr. Maxfield, but also of the Zoning Administrator. Did he do that before he started construction? Did she inform him that the applicable setback rule was 10 feet not 20 feet? Did he consult with a real estate/land use lawyer? If the answer to these last few questions is No, then Mr. Brown cannot show that the violation was "not an outcome of ignorance of the law or ordinance" or "failure to inquire." Thus, the Browns cannot satisfy subsection I(b) of the equitable waiver statute.

- c. The setback violation is likely to diminish the value of the Brunt and Lane properties. It is the Brown's burden to prove otherwise through expert testimony of accredited real estate appraisers.**

The Browns must also prove, as required by subsection I(c) of the equitable waiver statute:

- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

RSA § 674:33-a I(c).

Neither the Brunts nor the Lanes know if the placement of the garage 8-9 feet closer to the property lines than allowed will make the garage a nuisance and probably will not know unless the garage is finished and a driveway installed (adverse rain runoff) or the garage is put to use (possible noise). However, it is the Brown's burden of proof to establish the structure's location is not a nuisance. It may well be that Mr. Brown's working on cars, as is planned for this building, will result in noise. The Brunt's backyard patio area, because of conservation area setbacks, is far from the street and closely abuts the Brown's southerly property line where the garage is located. While the Brunts may not find out until Mr. Brown is using the garage, it may well be that having the garage 8-10 feet closer to their back yard may mean that they are more likely to be disturbed by car maintenance and woodworking. Thus, the garage in operation, at its present location, could be a nuisance; the Brunts cannot say. As to the Lane property, they do not have a present basis for saying that the extra closeness of the garage will necessarily result in a nuisance for them, but it could. They enjoy their back patio area as well. While it is not as close to the garage as is the Brunt's patio area, it is possible the garage, in operation, could be a nuisance and that the setback violation is a factor in that. Showing that the garage location is not a nuisance, is the Brown's burden of proof.

Subsection c quoted above also requires the Browns to prove that the violation does not adversely affect land values of neighboring properties. The Browns had the temerity to argue in their request for equitable waiver that the existence of the garage could actually increase the value of neighboring properties. That statement is without factual support and is contrary to common sense. Having the Brown garage closer to the Brunt and Lane properties than allowed, can only reasonably be presumed, without contrary testimony under oath by a credentialed real estate appraiser (not a real estate agent), to diminish the property values of the Lanes and the Brunts. The building overshadows the Brunt's backyard patio area. While the mere presence of the garage detracts from the land values of the Lanes and Brunts (and certainly of their enjoyment of their properties), having this massive structure 11-12 feet from the property lines rather than the 20-22 feet that would be expected, has to have an adverse effect on property values, especially for the Brunts. Even for the Lanes, the garage abuts the Lane's small wooded area that they have been cleaning out of underbrush and dead wood and planting of flowering bushes to make that area as attractive and, eventually, as park-like as possible. Having the massive garage, 9-11 feet closer than it ought to be does indeed detract from the Lane's wooded area. It is reasonable to conclude that the violation adversely affects their land values. The Browns cannot meet their burden of proof by self-serving statements by them that the violation does not affect land values and that the presence of the garage actually increases the value of surrounding properties. If a burden of proof means anything, they need much more substantial *expert* testimony by a qualified real estate appraiser.

d. It would not be inequitable to require the violation to be corrected.

The final requirement, subsection (d) of the equitable waiver statute states:

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction far outweighs the public benefit to be gained, that it would be inequitable to require the violation to be corrected.

The Browns assert in their equitable waiver petition that they have spent \$46,000 so far on this garage and that to redo it will cost them a similar amount. The statute requires the ZBA to conclude, among other things, in order to grant an equitable waiver, that requiring the Browns to comply with the law would somehow be unfair or inequitable. Consider that the setback violation would likely have been avoided if the Browns, before starting construction: talked to the Zoning Administrator about the setback requirements, and talked to a land use lawyer (in light of the fact the very plan submitted by Mr. Brown to the City showed the 20-foot setback lines and that his building would sit on top of those lines) and perhaps, most easily and inexpensively, talked to his immediate neighbors, the Brunts and the Lanes, to show them what he intended to build and where it would be located. Lane, while not a land use lawyer, very quickly would have informed him that the proposed location would violate the setback requirements. The Browns might not have immediately agreed with that conclusion but then could have consulted with the Zoning Administrator and their own land use lawyer about Garry Lane's position. That issue could have then been resolved before the Browns spent a single penny on construction. Is it equitable to the Brunts and the Lanes that the massive garage structure is located so close to their properties in violation of the zoning laws and in violation of the "conservation restriction" statutes discussed below? The present situation could have been easily avoided by the Browns had they exercised a modicum of diligence in verifying legal compliance and a modicum of courtesy to their neighbors. Under these circumstances, if the garage has to be moved, it is not inequitable. The Brunts and the Lanes would benefit significantly, for the reasons described above, if the Browns were required to move the garage.

Even if the ZBA were to grant an equitable waiver, the 20-foot setback requirement would still be enforceable by neighboring lot owners as a *conservation restriction*.

By statute, NH RSA § 674:21-a, the 20-foot setback requirement included on multiple of the plans approved by the Planning Board as part of the open space subdivision process (see Exhibits 7, attached), is not merely a zoning rule; it is a conservation restriction that runs with the land and is enforceable by other landowners. Even if the ZBA had the legal authority to grant an

equitable waiver, which, for the reasons stated above, we don't believe the ZBA has, it has no legal right or authority to waive the 20-foot setback *conservation restriction* created by statute.

NH RSA § 674:21-a provides, in part, that:

Any open space designation or other development restriction which is part of a cluster development, planned unit development, village plan alternative subdivision or other proposal approved under innovative land use controls, or which is lawfully imposed by a local land use board as a condition of subdivision, site plan, variance, or other type of approval, and which has been filed in the records of the local land use board in accordance with its established procedures, shall be deemed to create a conservation restriction as defined in RSA 477:45, I, which shall run with the land, and shall be enforceable by the municipality, or by the owner of any property which would be specially damaged by the violation of such restriction, regardless of whether any deed or other instrument conveying such restriction has been executed or recorded. For purposes of this section, an applicant's statement of intent to restrict development, submitted with or contained in an application which is subsequently approved, shall be deemed a condition of the approval.

RSA § 477:45, referenced in the statute above, provides in subsection I as follows:

A conservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitations, or obligation is appropriate to retaining or maintaining such land or water area, including improvements, thereon, predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space or forest use, or in any other use of condition consistent with protection of environmental quality.

NH RSA § 674:21-a is not limited to protecting the "open space" portion of an open space subdivision. According to the ZBA at its last meeting (in ruling on the maximum lot coverage issue in open space subdivisions), the individual lots used by homeowners and the open space area all work together, and the rules and restrictions applicable to an open space subdivision all are part of a single total. According to the ZBA, the 20-foot setback rule in open space subdivisions is the one and only protection the homeowners in an open space subdivision have *for their individual lots* as distinguished from protection of the commonly owned open space land. Since it, the 20-foot setback rule, is part of the overall open space plan and the 20-foot setback is designated on the approved plans, it is not something the ZBA has the right to

undermine, nor can the Planning Board make the protection vanish by making a proposed amendment to the subdivision rules to change, after-the-fact, the 20-foot rule to a 10-foot rule.

The 20-foot setback rule, once approved on the plats for the open space subdivision, constitutes not only a zoning rule but, additionally, a *conservation restriction* which is separately enforceable apart from the zoning 20-foot setback rule. Changing the zoning rule, replacing it, or granting an equitable waiver, does not change the enforceability of the *20-foot conservation restriction* and the equitable waiver statute does not give the ZBA the authority to waive the 20-foot *conservation restriction* which is a right that belongs to other property owners. The ZBA has no authority to take away that right of other property owners (including from the Brunts or the Lanes).

This duality of the 20-foot zoning setback and the 20-foot conservation restriction would be similar to an open space subdivision subject to both the 20-foot setback zoning rule and to a homeowners' association protective covenant that prohibited buildings from being erected within 20-feet of the property line. The ZBA, under the right circumstances, might have the authority to grant an equitable waiver for the City zoning rule that imposed the 20-foot setback, but it would not have legal authority to override a protective covenant of a homeowners association.³ Similarly, the zoning 20-foot setback rule is also, separately, a conservation restriction directly enforceable by other landowners. The ZBA's powers to grant equitable waivers applies only to the zoning rule, not to the additionally-created conservation restriction.

Miscellaneous other

In the Browns' petition, they misrepresent the state of the construction. This Brunt/Lane letter discusses those misrepresentations and discusses the actual state of the construction which is *not* substantially completed. Further, we note that in the Browns' petition, or on page two of Attorney Lanzetta's letter, the Browns admit that they were aware of the complaint about setbacks as early as February 2, 2022. To the extent that is accurate, that is the date from which

³ When the Planning Department, after-the fact, tried to slip in an amendment to the 20-foot setback rule to change it to ten feet specifically for the purpose of making the Brown garage lawful (which amendment the Planning Board unanimously voted down), the Indian Ridge Homeowners recently voted into effect a new protective covenant that makes the 20-foot setback a protective covenant, not just a zoning rule. Thus, if the Planning Department were to again try to slip in an amendment to the 20-foot zoning setback requirement, the new covenant would prevent anyone from building within the 20-foot setback area even if the City changed its rule to 10 feet and would nullify any attempt by the ZBA to issue an equitable waiver. The new protective covenant would not apply to the Browns garage-under-construction, however. Thus, it is important that the ZBA not grant the equitable waiver the Browns have requested and that, if necessary, the courts enforce the environmental 20-foot setback restriction enforceable by affected property owners per NH statute.

the ZBA should assess “substantial completion,” not the February 4th date assumed by the Brunts and the Lanes. Others, besides Lane, who complained about the setback violation on February 4th, may have complained about the setback violation at an earlier date.

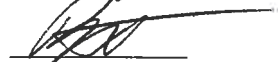
Finally, under Section II of Attorney Lanzetta’s letter (Project Narrative), the Browns represent that sometime before June 30, 2021 when Mr. Brown submitted his building permit application, he had obtained “approval of the proposed garage from the Indian Ridge Subdivision Homeowners’ Association as required by the Association’s Declarations and Bylaws.” It is unclear what provision of the Declarations and Bylaws required Mr. Brown to obtain approval, what Mr. Brown supposedly proposed or submitted to the HOA or when he submitted it or who gave any such alleged approval. The assertion of Association approval, without any supporting documentation/proof, is not credible, but it is also not relevant.

Garry Lane is on the present Board of Directors of the Homeowners’ Association and is its corporate Secretary. The Association records do not show any such request or any approval. Moreover, Mr. Brown also made this representation to the HOA Board President who in response questioned that such request or approval was ever made to or obtained from the HOA. Mr. Brown advised that the approval was from the developer and Mr. Brown had nothing in writing (neither the request for permission nor the alleged approval). Regardless, while such approval to add a new building was not in fact required from anything we can tell, the most recently passed HOA Amended Bylaws and Protective Covenants would now require approval by the HOA for any new construction. Regardless, however, of whether Mr. Brown requested some kind of permission from the developer or not or regardless of what the request was for (was it to violate the 20-foot setback?), it is ultimately not relevant to the equitable waiver statute.

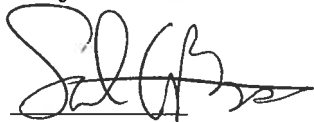
For all of the above reasons, the Brunts and Lanes respectfully request that the ZBA deny the Browns request for equitable waiver.

Finally, please note that while Garry Lane is a retired attorney, he does not claim to be a land use or zoning expert. He also is not acting as counsel to Sarah or Ben Brunt. Thank you for your consideration.

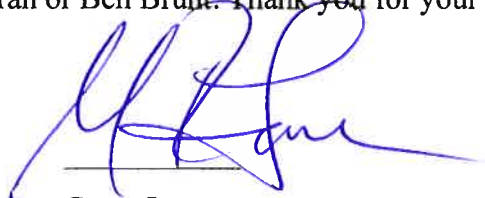
Sincerely,



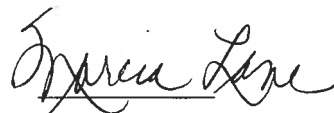
Benjamin Brunt



Sarah Brunt



Garry Lane



Marcia Lane

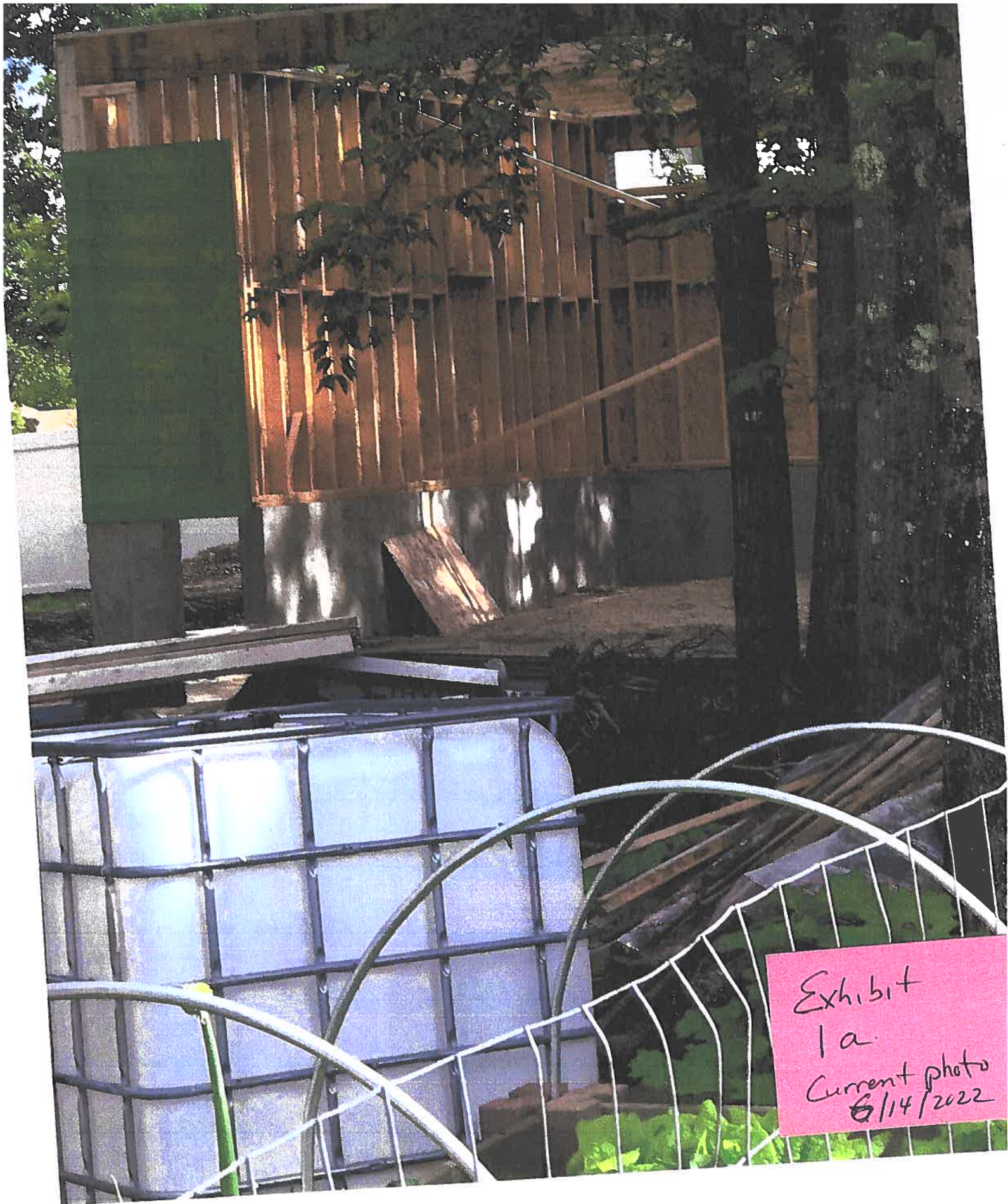


Exhibit
1a.
Current photo
6/14/2022

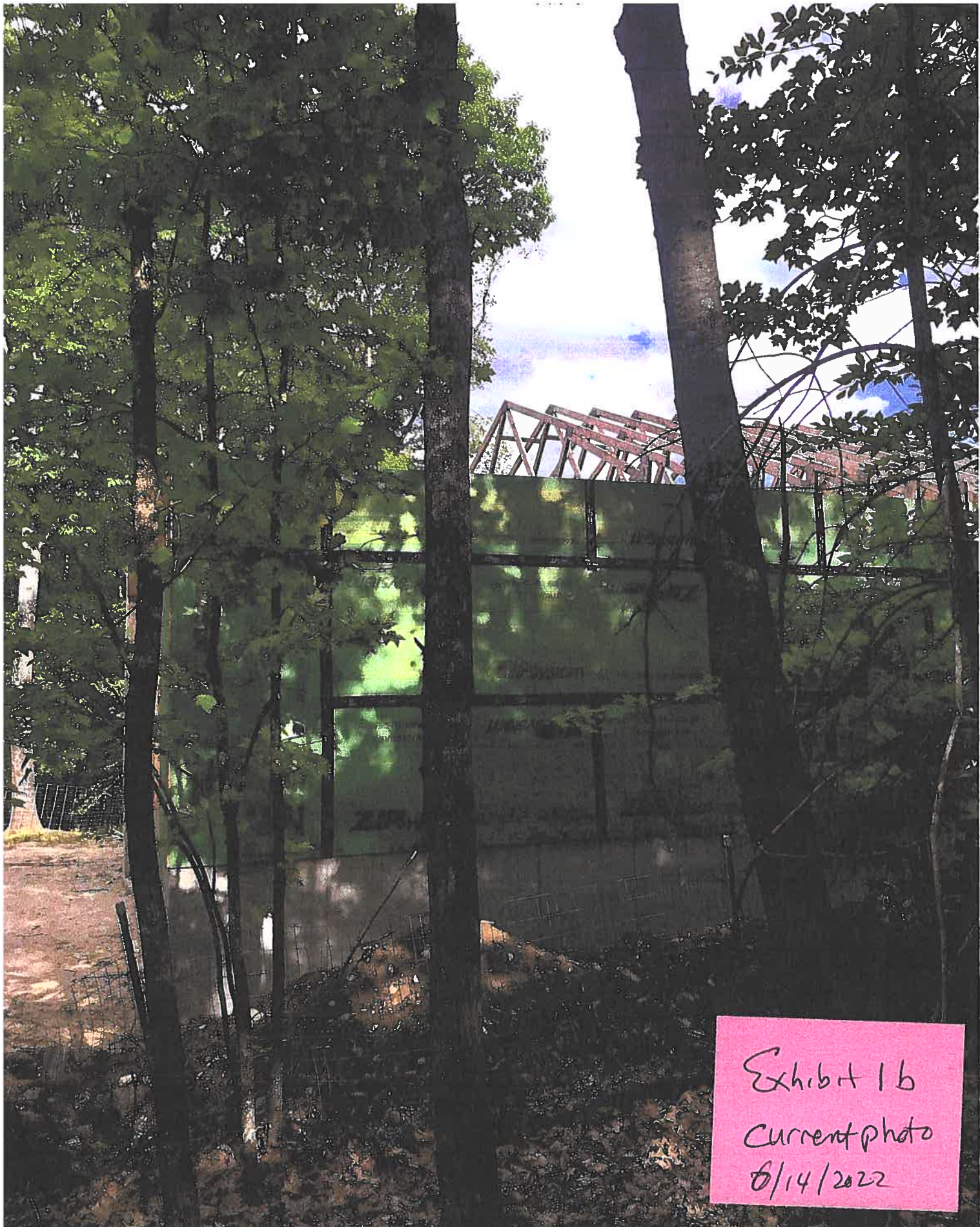


Exhibit 1b
Current photo
6/14/2022

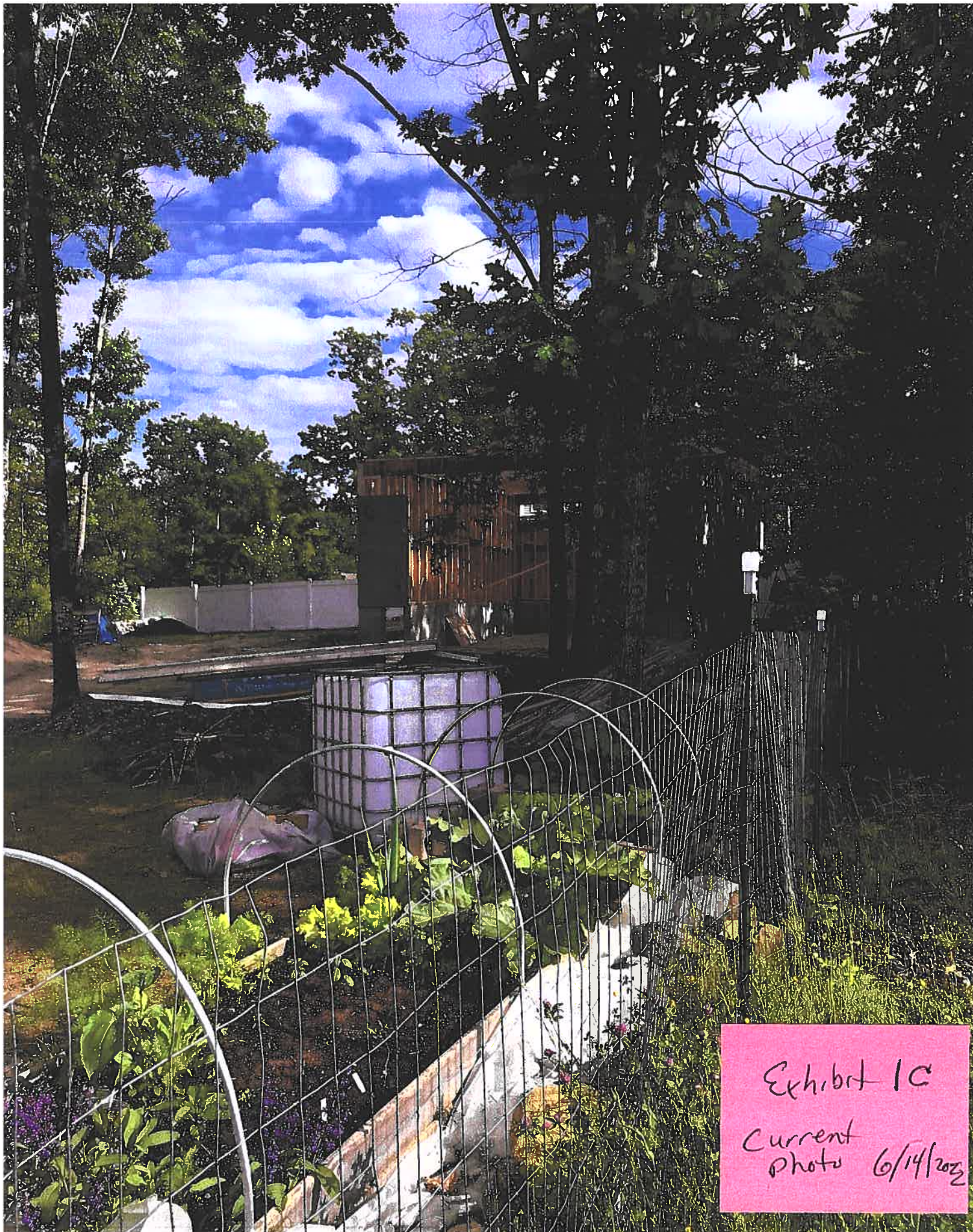


Exhibit 1C
Current
photo 6/14/2022

mailed
10:21 am
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

Exhibit 2

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.

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
3

Exhibit 4 - 7:41 a.m. Monday, February 7, 2022 photograph of
new construction with one roof truss only



Exhibit
4
7:41 a.m.
2/7/2022

91

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

Exhibits
emails to

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

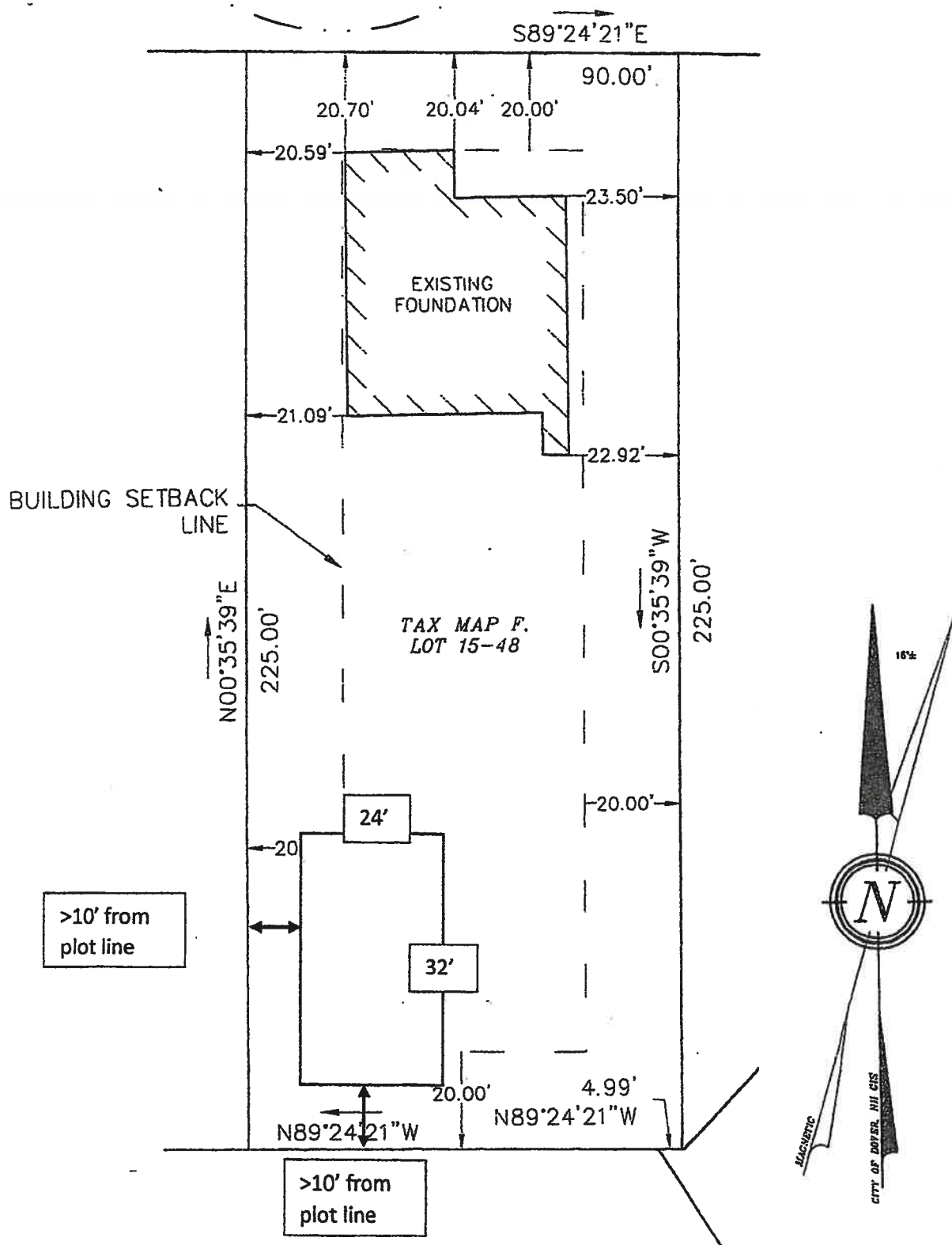


Exhibit 6

Part of Brown
Building Permit
application



09-01

EMERALD LANE
DOVER, NEW HAMPSHIRE

108 No 01200

REVISIONS	
DATE:	DESCRIPTION:
10-6-14	REVISED FOR TIG COMMENTS
4-12-15	REVISED FOR REVIEW COMMENTS
8-12-15	GENERAL REVISIONS
8-06-15	REVISED FOR REVIEW COMMENTS
7-16-15	REVISED FOR COMMENTS OF APPROVAL

705 CENTRAL AVENUE
DOVER NEW HAMPSHIRE 03820
TELEPHONE 603 748 6107
FAX 603 742 0830



Exhibit 8
View of
area from