





# Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing


Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

[www.merrimacknh.gov](http://www.merrimacknh.gov)

## MEMORANDUM

**Date:** June 18, 2018  
**To:** Town Council  
**CC:** Eileen Cabanel, Town Manager  
Dawn Tuomala, PE, Deputy Director of Public Works/Town Engineer  
Robert Price, Planning & Zoning Administrator  
**From:** Timothy J. Thompson, AICP, Community Development Director   
**Subject:** **Authorization for Issuance of Building Permits on a Class VI Road - Northview Homes & Development, Old Blood Road**

Please find this memo as a summary of the process that is required for Northview Homes & Development to obtain building permits for 2 single family homes to be accessed from a portion of Old Blood Road, a Class VI roadway. Attached to this memo are meeting minutes and staff memos from the Zoning Board and Planning Board which led to the request before the Council.

### Background

On February 24, 2016, Northview Homes & Development obtained a variance to permit a 4 lot subdivision, where 2 of the lots would not have the required frontage on a Class V or better roadway. The proposal called for 2 lots to have frontage and access from Baboosic Lake Road, and 2 lots to have frontage and access from a portion of Class VI Old Blood Road (see attached GIS map, and the plans provided by the applicant).

Following the granting of the variance by the ZBA, the Planning Board reviewed and approved the 4 lot subdivision of the land in April 2016. As part of the approval for the subdivision, the applicant was required to obtain appropriate authorization for building permits on the 2 lots to be accessed via Class VI Old Blood Road. The applicant is now preparing to begin construction on the lots, and is appearing before the Council to obtain the authorization, as is the process outlined in RSA 674:41.

*(Note: the staff memos to the ZBA & Planning Board as well as the Planning Board's general conditions of approval incorrectly referenced a different portion of 674:41, which specified the ZBA rather than the Council. After further review by staff, it is clear that the Council is the appropriate body for this decision under the statute. For clarity purposes, these items in the memos have been crossed out.)*

The process from RSA 674:41 for the Council is as follows:

- The local governing body after review and comment by the Planning Board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and
- The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and



- Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds.

By reviewing and approving the subdivision plan with the access improvements to the portion of Class VI Old Blood Road as part of the plan, the Planning Board has fulfilled their obligation to “review and comment” per the statutory requirements.

In addition to the process that has occurred, as described above, staff has reviewed the applicant’s proposed “Notice, Agreement and Release of Municipal Liability and Responsibility” and verified the language is consistent with previously recorded documents that have been reviewed and approved by Legal Counsel.

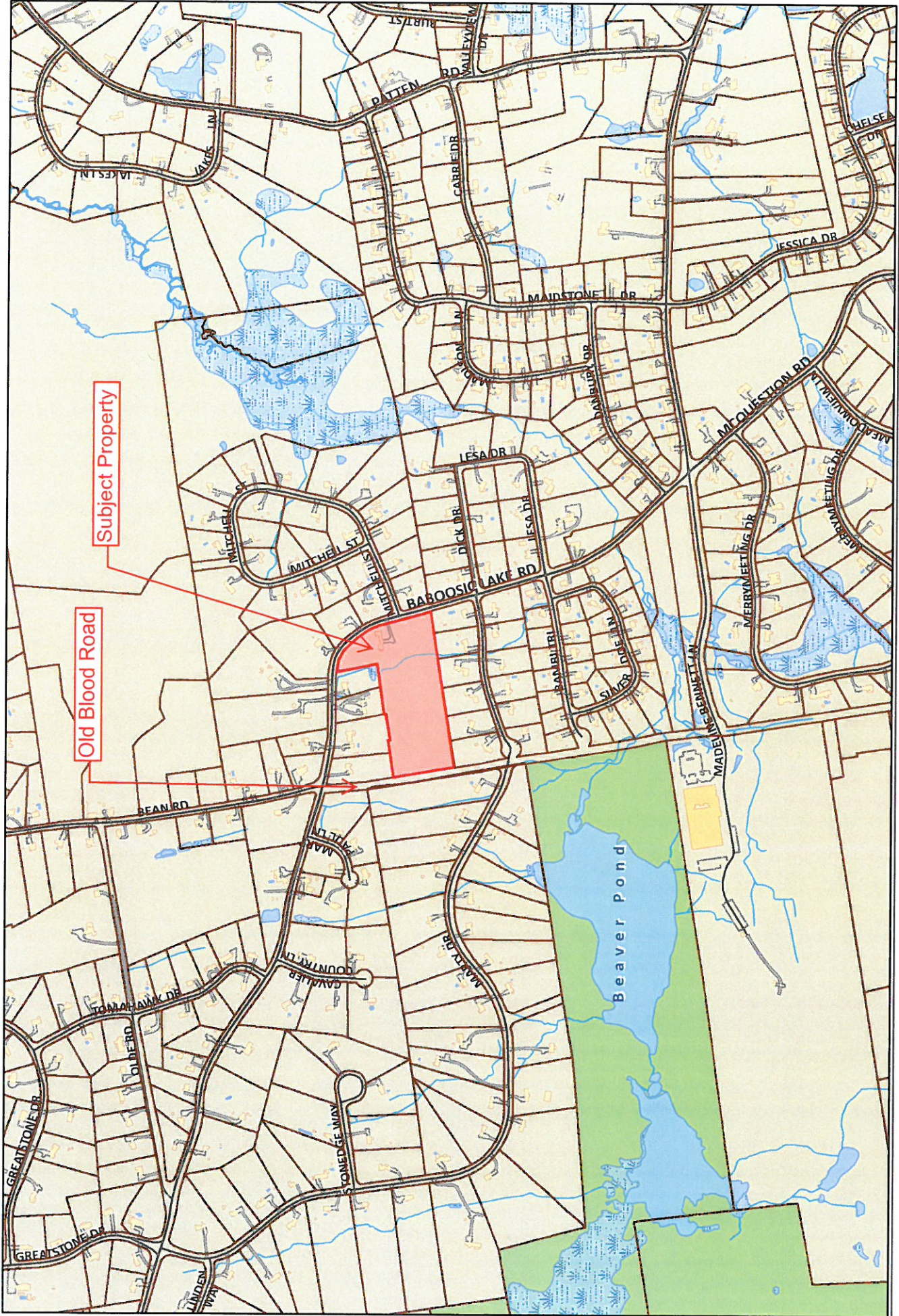
**Recommendation**

Given the issuance of the variance and the subdivision approval (including the design of the access to the 2 lots), staff recommends that the Council grant authorization to Northview Homes & Development to obtain 2 building permits for lots to be accessed from the Class VI portion of Old Blood Road and authorize the Council Chair to sign the Notice, Agreement and Release of Municipal Liability and Responsibility, with the following conditions:

- The access design shall substantially conform to the approved subdivision plans on file with the Town and recorded in the Hillsborough County Registry of Deeds as Plan No. 38895; and
- The applicant shall record the Notice, Agreement and Release of Municipal Liability and Responsibility pursuant to RSA 674:41, I at the Hillsborough County Registry of Deeds prior to the issuance of a building permit.

In my absence from the office from June 19 through June 25, please contact Planning & Zoning Administrator Robert Price if you have any further questions, or if we can provide any additional information.





# Merrimack, NH



1 inch = 761 feet



The Town of Merrimack, NH shall assume no liability for any errors, omissions, or inaccuracies in the information provided regardless of how caused or any decision made or action taken or not taken by reader in reliance upon any information or data furnished hereunder.



3. Granting the variance would do substantial justice because it will not adversely affect the neighboring area, and does not threaten public health and safety
4. The values of the surrounding properties will not be diminished because the garage area is in the same general aesthetic design as the neighboring properties. With only office and engineering work being conducted the added traffic will be minimal.
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
  - 1.) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because there will be no great increases in traffic, the garage area and proposed driveway will contain all vehicles needed. The design of the new construction is in accordance with the neighboring buildings. Rejection of the variance will result in the owner needing to pay rent for additional office space.
  - 2.) the proposed use is a reasonable one because the increase in number of non-resident employees will be kept to a minimum, an anticipated variance of two (2) engineers and a secretary is intended.

**6. Meridian Land Services, Inc. (petitioner) and North View Homes & Development, Inc. (owner) - Variances under Section 1.03 (A) (25) of the Zoning Ordinance to permit a four-lot subdivision with two of the lots having frontage on a Class VI road. The parcel is located at 190 Baboosic Lake Road in the R-3 (Residential) District. Tax Map 5B, Lot 045. Case #2016-09.**

This agenda item was taken up after agenda item #9.

Attorney Greg Michael, Bernstein Shur, said the property is unique. Approximately nine acres, it has frontage on Baboosic Lake road to the east and the unpaved Old Blood Road (a Class VI road) to the west. Both are Town roads. Subdivision frontage requires a Class V road. A portion of the property is wetland with slight soils. The petitioner intends to subdivide the property into four lots of 2+ acres, each with municipal water and private septic. The historic home would be kept on one lot. The stone wall would be retained. Two lots would have a common driveway. Several things could be done with the parcel. There is enough frontage, soils and area on Baboosic Lake Road for four lots, but that is not the best thing to do.

Richard Conescu asked why one would build on a road that could be gated at any time. Attorney Michael replied that anyone abutting the road could always access it. If there were a gate, the statute says they must be given a key. The Town will not maintain the road. An indemnity agreement would be filed stating that the abutters must plow and



maintain the driveway on Old Blood Road. An access cross-easement would require that both lots contribute to maintaining the road/driveway. It would be 400' long from Marty Drive.

Ken Clinton, President, Meridian Land Services, Inc., said Town Council approved another driveway on South Grater Road that was on a Class VI road. The Board's packet of materials includes a typical indemnity agreement document.

Attorney Michael said that, in the 1970s, a 50'-wide road dedication was made to bring Old Blood Road up to standards. The applicant wants to do the same along the Old Blood frontage so it would be available if the Town wanted to make it into a Class V road.

Ken Clinton said this use is less than what was intended. This is the last piece of road. There is no need for a Town through road. There would be no need for a variance if this were a Class V road.

Richard Conescu asked whether Town Council must approve. Attorney Michael and Ken Clinton explained that Town Council approval would be sought following Zoning Board of Adjustment (ZBA) approval.

Attorney Michael read the statutory criteria into the record.

Attorney Michael stated that this plan is superior to subdividing the entire parcel on Baboosic Lake Road. Richard Conescu agreed that it is a more logical design. Ken Clinton showed an alternative plan on a Class V road/Baboosic Lake Road with a cul-de-sac and six smaller house lots that would not require a variance/ZBA approval. The plan being proposed is less expensive and would have less impact.

In answer to Patrick Dwyer, Attorney Michael stated that only Planning Board, not ZBA, approval is needed for a subdivision.

Fran L'Heureux asked if the owners would automatically own the road after maintaining it for a certain number of years. Attorney Michael explained that it is a Town road and Town Meeting would have to vote to make it a private road. In answer to Richard Conescu, Attorney Michael stated that a Class VI road is not legal frontage for subdividing land (depending on the particular town). He repeated that a subdivision requires frontage on a Class V road or better.

Tony Pellegrino asked who would own the road in the six-lot plan. Ken Clinton replied that it would be a Town road, although the developer would build it. Richard Conescu asked why the applicant would not build six lots and have the Town maintain the road. Attorney Michael replied that some people "are not in it for the bucks".

#### **Public comment**

Donald Warner, 15 Marty Drive, said that the ZBA was being misled about Old Blood Road. One cannot go from Marty Road without sinking in mud. So much water runoff is a threat to the entryway. The road is not passable. The other end of Old Blood Road is wider.



Donald Warner read his February 23, 2016, letter of opposition into the record. To the right of Old Blood Road off Marty Drive is a group of trees that are mostly dead and are in standing water. One has fallen across the entry to Old Blood Road and another has snapped halfway up and is leaning over, creating a safety hazard. This issue is caused by the water table in that area and will continue. An incredible amount of water runoff comes through the Warner property and settles onto the lower part of Old Blood Road. It is uncertain how a developer can stop that from occurring without addressing the issue of excess water flowing through the Warner lot. Other Marty Drive neighbors have similar water issues that flow from the proposed subdivision area. The wildlife habitat in the proposed subdivision could be adversely affected and Old Blood Road could no longer be used recreationally. The proposed driveway will pass along the right side of the Warner property, then turn left and pass directly behind the lot within a few feet of the backyard. The proposed access way could have a negative economic impact on the future resale of the Warner property. The scale of the proposed subdivision does not clearly reflect the impact the project will have on neighboring properties. The ZBA should explore a second set of plans that accesses the lots from the other end of Old Blood Road off Baboosic Lake Road that would have far less impact on the neighboring properties. As to the statutory criteria, the project would alter the essential character of the neighborhood and the values of surrounding properties and would not sufficiently separate 11 and 15 Marty Drive.

Attorney Michael noted that the Warner house abuts a Class VI Town road. The road could be repaired without creating drainage issues and the trees could be chopped down. The road could be used because it is a Class VI road.

Noting that it would be shorter, Patrick Dwyer asked why not come in from Baboosic Lake Road? Ken Clinton said it is not as safe. The road curves and intersects Bean Road, necessitating a less safe four-way intersection. Full road design would have more wetland impact. The proposed driveway would not impact the wetland. The Warners bought a lot that is substantially wet. A 24" culvert was installed that the applicant would use as part of the design. The applicant must meet the Public Works Department (PWD) requirement that runoff not come onto the public road. A drainage system is already in place for the driveway that would have no impact. Most of the Warner runoff is not associated with Old Blood Road; it is from Baboosic Lake Road and the Warner property. This plan could improve the Warners' drainage. 1'-2' of soil would be removed and the 12" pipe replaced with a 15" pipe to fix the drainage and pave the driveway. That would improve the drainage. Ken Clinton showed the location of the culvert. He met with both PWD and with the Planning Board.

Janice Tibbetts, 1 Marty Drive, asked whether the road would be public and available for walking. Attorney Michael said it would be.

Leon Luksha, 1 Marty Drive, said it is a bike trail rather than a road. He has water issues in the cellar, especially since the new school was built. He asked how the proposal would affect his property.

Tony Pellegrino asked whether the road and culvert would be better maintained. Ken Clinton said the 12" culvert does not work as well as it should and would be replaced



with a 15" culvert at the proper elevation. It could possible remediate the Warners' drainage issues without impacting the flow. The project cannot increase runoff onto abutting properties; they would probably reduce it. they would sign a document stating that Old Blood Road would remain a public road for public use. Attorney Michael agreed that the road would be improved.

Donald Warner asked what would be done about the tree hazard. Patrick Dwyer said the applicant would have to remove them in order to create the driveway. Richard Conescu added that it is a Planning Board issue.

Donald Warner asked where the water would go if Old Blood Road were raised. Attorney Michael repeated that regulations state that the applicant is not allowed to change or increase runoff to abutters. Town consulting engineers will review the plan for the Planning Board, which will also deal with trees as part of the Driveway Permit. Patrick Dwyer said drainage is a Planning Board and not a ZBA issue. At this meeting, the ZBA is only being asked to approve a subdivision with lots fronting on a Class VI road. Attorney Michael and Ken Clinton agreed with Donald Warner that Marty Drive at the cul-de-sac is private property that is not on the Town right-of-way.

Leon Luksha said he owns 10' beyond the wall behind the property. Attorney Michael explained that the Planning Board requires survey data and the 10' strip would have no impact on the project. The lots are still of sufficient size, frontage, etc.

Nancy Warner, 15 Marty Drive, opposes using Marty Drive as an access road. She asked what would happen to the stone wall if the road were widened. One of them is along her property line and #11 Marty Drive. Their privacy would be gone. She asked why people would enter at the narrowest and wettest part of Marty Drive. She prefers that all homes access from Baboosic Lake Road. Ken Clinton said he evaluated the full length of Baboosic Lake Road. It is less safe for vehicles, although he could still do it. He would still need a variance. Richard Conescu explained that whichever way the ZBA votes, the applicant can still build. Patrick Dwyer noted there are many roads on corners like Baboosic Lake road, but that is not a ZBA issue.

Fran L'Heureux asked if there is a law that prevents demolishing old stone walls. Attorney Michael referenced state statutes regarding scenic roads, but this was not designated as such. He stated that the applicant would retain the walls as much as possible, even if he has to relocate them. He is trying to preserve what is there. Ken Clinton said he is committed to doing what the PWD recommends.

David Pauly, 9 Marty Drive, is concerned about water issues and runoff. He had to relocate his garage. He was not advised he had a water problem when he bought the house. His property is lower than the new road would be. He asked where the water would go when the new road is built.

Donald Warner said he asked the builder when he bought the lot if there was water and the builder denied there was. If Donald Warner knew, he would not have bought the house.



Patrick Dwyer stressed that there would be several more reviews after the ZBA's, which is deciding only whether the applicant can subdivide on that road. By law the petitioner is not allowed to make water runoff worse for abutters.

Richard Conescu was comfortable with the plan because something will be built, regardless. It is better to have a plan that requires Planning Board review.

Fran L'Heureux and Patrick Dwyer noted that the applicant could create four lots with four driveways on Baboosic Lake Road.

**The Board voted 5-0-0 to grant the Variance, with the condition that the applicant shall obtain subdivision approval from the Planning Board for the proposed two-lot subdivision, on a motion made by Richard Conescu and seconded by Leonard Worster.**

#### **Findings of Fact**

1. The granting of the variance would not be contrary to the public interest because the residential use and configuration of proposed Lots 45-2 and 45-3 would not alter the essential character of the neighborhood. The health, safety or general welfare of the public would not be threatened as the resulting homes, infrastructure and driveway access would be constructed by modern design methods that would meet Town and State requirements. All surrounding lots are one acre, half the size of these 2+-acre lots. The driveway owners would be responsible for its maintenance;
2. The spirit of the Ordinance is observed because proposed Lots 45-2 and 45-3 would be consistent with the frontage requirements. Minimum frontage requirements in the residential zone both controls the density of the neighborhood and allows for sufficient separation of houses, driveways and especially water and sewage provisions. Frontage along a Class V road ensures adequate access to public roads and utilities. Class V vs. Class VI road is a legal technicality;
3. Granting this variance would do substantial justice because there is no apparent gain to the general public that would outweigh the loss to the applicant. Proposed Lots 45-2 and 45-3 are consistent with the area's present use and will have properly designed, approved and documented access. The public benefit is road maintenance and four well-designed large lots. The applicant's benefit is the ability to use his property;
4. The values of the surrounding properties would not be diminished because the proposed residential use is consistent with the residential zone. Proposed Lots 45-2 and 45-3 would otherwise meet or exceed the dimensional requirements of the Ordinance. Access to those lots would be *per* a properly endorsed and recorded agreement with the Town of Merrimack. The Old Blood Road right-of-way has been widened and includes appropriate drainage for future development of a new road that could access significantly more lots and homes. By comparison a single driveway would clearly be a minor impact. The public would



see only a single driveway from Marty Drive, which will appear less substantial than is typical of the neighborhood due to its separation and the lack of visible house and associated uses. The lot sizes are double those in the area, thus enhancing neighbors' property values;

5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because, although the parent lot has 715' of road frontage along Baboosic Lake Road, the lot narrows considerably to a width of 365'. A portion of the Baboosic Lake Road frontage is along a sharp curve, which prevents safe driveway access. The location of the existing house #190 is an impediment to efficient use of the Baboosic Lake Road frontage on either side of it. Compounding the lot width restriction is the existence of wetlands that bisect the property into two distinct areas. The parent lot has a unique secondary access along Old Blood Road that has been planned for access since the 1970s.

2) The proposed use is a reasonable one because the special characteristics of the unique parent lot make it different from others in its immediate area. Granting the variance would allow the property to be used according to the residential zone requirements in a way that eliminates unnecessary environmental impact and protects the health, safety and welfare of the general public.

#### **10. Discussion/possible action regarding other items of concern**

Richard Conescu asked whether it was known that one ZBA member would be absent. Jillian Harris replied in the affirmative.

#### **11. Approval of Minutes – January 27, 2016**

The minutes of January 27, 2016, were approved as submitted, by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Richard Conescu.

#### **12. Adjourn**

The meeting adjourned at 10:12 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.





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## Memorandum

**Date:** February 17, 2016  
**To:** Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment  
**From:** Robert Price, Assistant Planner  
**Subject:** **Meridian Land Services, Inc. (petitioner) and North View Homes & Development, Inc. (owner)** – Variances under Section 1.03 (A) (25) of the Zoning Ordinance to permit a four-lot subdivision with two of the lots having frontage on a Class VI road. The parcel is located at 190 Baboosic Lake Road in the R-3 (Residential) District. Tax Map 5B, Lot 045. Case #2016-09.

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The following information is provided to aid in your consideration of the above referenced cases. Additional background and application materials are included in your packet.

### Background:

Map 5B / Lot 45 is located at 190 Baboosic Lake Road, across from Mitchell Street. The property is located in the R (Residential) District (R-3 by soils), is approximately 9 acres in size and contains an existing residence. It is abutted entirely by residential uses. It has frontage on Baboosic Lake Road to the east and Old Blood Road (Class VI) to the west. The petitioner intends to subdivide the property into four lots, each to be serviced by municipal water and private septic.

The property does have some historic relevance, although it is important to note that it is not currently listed on either the National or State Register of Historic Places. The existing home, referred to as the Samuel Barron House, was originally constructed in 1771.

- Moses Eaton, one of New England's premier stencil artists, spent a winter in the house sometime between 1800 and 1825. He did stencil work in the home in exchange for room & board.
- Grace Goodhue Coolidge's parents were married in the home. Grace is the wife of President Calvin Coolidge.
- This home served as part of the Underground Railroad during the Civil War. There was evidence of two removable floorboards to the right of the center chimney in the cellar, which offered a place for two people to stand and hide next to the warm chimney.

The petitioner seeks variances under Section 1.03 (A) (25) of the Zoning Ordinance to permit a four-lot subdivision with two of the lots having frontage on a Class VI road. The reason variances are required is because of the definition of Frontage in the Zoning Ordinance:

25. Frontage: *The length of the lot line connecting the side lot lines which borders on a Class V or better highway (excepting the F.E.*



*Everett Turnpike and other Limited Access Highways as defined in RSA 230:44 (as may be amended from time to time)), or a street on a subdivision plat approved by the Planning Board, or land designed to become a Class V or better highway. (Section 1.03 (25)*

**Informational Only:**

~~If the variances are granted and if the subdivision is approved, then in the future, the petitioner will have to return to the ZBA to request authorization for the issuance of building permits on proposed lots 45-2 and 45-3, in accordance with RSA 674:41 (II). That statute states that the ZBA "may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if:~~

- ~~a. The issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based; and~~
- ~~b. Erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality."~~

~~This would be done as an Appeal of Administrative Decision. In cases such as this (where an applicant will be seeking building permits on lots with frontage on a Class VI road), the appeal process is controlled by Statute. When the appeal process is not controlled by Statute, the granting of an Appeal of Administrative Decision changes how the Zoning Ordinance language is enforced. In situations like this, future requests for building permits on lots with frontage on a Class VI road would still require ZBA authorization first, regardless of how the ZBA acts on this issue if and when it comes before you.~~

~~Again, this serves as information only at this time. It was only included in an effort to answer any questions about the effect of granting the requested variances and does not apply to the application currently before you.~~

**Standard of Review:**

It is the burden of the Petitioner to demonstrate that the five criteria for the granting of the variances under Section 1.03 (A) (25) of the Zoning Ordinance to permit a four-lot subdivision with two of the lots having frontage on a Class VI road have been met.

**Staff recommends, should the Board vote to grant the variances, that they be granted with the following condition:**

- The applicant shall obtain subdivision approval from the Planning Board for the proposed 2-lot subdivision.

Cc: Zoning Board File  
Correspondence

Ec: John Tenhave, North View Homes & Development  
Kenneth Clinton, Meridian Land Services, Inc.  
Fred Kelly, Carol Miner, & Leslie Tejada, Building Department  
Captain John Manuele, Fire Department



3. The applicant shall note any waivers granted by the Board on the plan (including Section, and date granted) as applicable;
4. The applicant shall address any forthcoming comments from the Public Works Department, as applicable;
5. The applicant shall address any forthcoming comments from the Building Department, as applicable;
6. The applicant shall address any forthcoming comments from the Wastewater Division, as applicable;
7. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
8. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
9. The applicant shall provide a vicinity plan/map, indicating where the proposed project is located within the BAE campus;
10. The applicant shall address the following planning staff technical comments:
  - a. The applicant shall revise the floor area used in the parking calculations on sheet C-2 to reflect the approved square footage of the building;
  - b. The applicant shall revise the “proposed gross floor area” label on Sheet C-2 (and subsequent sheets) to reflect the approved square footage;
  - c. The applicant shall revise Note 7, Sheet C-2 to indicate that the site is served by Pennichuck Water and Town Sewer;
  - d. The applicant shall add a note per Section 4.06.1(k) with the required statement;
  - e. Applicant to include the following statement that references the Stormwater Management Ordinance: “This project is subject to the requirements of the Town of Merrimack Stormwater Management Standards (Chapter 167 of the Town’s code of ordinances). A Pre-construction meeting with the Town of Merrimack Community Development Department and Public Works Department shall take place at least two weeks prior to commencement of disturbance in accordance with Chapter 167 of the Stormwater Management Standards adopted by the Town of Merrimack Town Council on July 21, 2011”.

#### **General and subsequent condition**

1. The applicant shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed Land Surveyor) to the Community Development Department prior to the issuance of a Certificate of Occupancy for the building addition.
- 5. Meridian Land Services, Inc. (applicant) and North View Homes & Development, Inc. (owner) – Review for acceptance and consideration of Final**



Approval for a minor subdivision of one lot into four lots. The parcel is located at 190 Baboosic Lake Road in the R-3 (Residential) District. Tax Map 5B, Lot 045.

Robert Best recused himself from discussing and voting on this item. Alastair Millns assumed the chair.

Jillian Harris said the nine-acre parcel is on both the Class VI portion of Old Blood Road and Baboosic Lake Road. Tim Thompson informed the Board that the Zoning Board of Adjustment (ZBA) granted two variances to permit a four-lot subdivision with two of the lots having frontage on a Class VI road. The original plan sought access to the two lots fronting Old Blood Road via Marty Drive. After a meeting with the Public Works Department (PWD), access to the two lots would be via Baboosic Lake Road across from Bean Road.

Ken Clinton, President, Meridian Land Services, Inc., said two lots would be on Baboosic Lake Road and two on Old Blood Road. The driveway was changed because of abutters' concerns about access from Marty Drive. It would now be longer and flatter with less impact to the stone walls. There could possibly be a culvert at the exit. The shared driveway would undergo drainage review. The drainage was improved. An old vacant historic house, a leach field and well are on one lot currently. Each lot would be over two acres. The Fire Department has requested that the portion of Old Blood road stretching from Marty Drive to Baboosic Lake Road be renamed, to satisfy E911 requirements.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

**The Board voted 5-0-0 to accept the application for review, on a motion made by Desirea Falt and seconded by Nelson Disco.**

Condition #5 states that, if the Board does not determine peer review of drainage applicable, none shall be necessary. Tim Thompson explained that the escrow money was received, but was not sent to CLD yet. Since there would be only minor drainage improvements with a simple design, there is no need for CLD review.

Nelson Disco stated that a sidewalk waiver is not necessary because there could be no future subdivision and because it would be for only two blocks on an arterial road.

**The Board voted 5-0-0 that a sidewalk waiver is not necessary, on a motion made by Nelson Disco and seconded by Desirea Falt.**

In answer to Board questions, Ken Clinton said there would be town water and private septic systems. Once the driveway is paved, the rest of Old Blood Road would be left as is. Because it is a Class VI road, the public may pass over it. Except where the driveway comes into for Lot 45, the stone wall would remain. The driveway would have more than 300' of sight distance in both directions. A topographical survey was done. The driveway would be brought up to grade at Baboosic Lake Road, which is a negative grade. It is not a closed system. Sheet flow would go off to each side. New gravel would firm up the driveway. Runoff would go south to a culvert under the driveway to a



level spreader that would control the flow. Condition #9a states that the water line running along Old Blood Road shall be private and some type of ownership/maintenance agreement shall be written. The actual maintenance has not yet been decided. The electric utilities would be underground. No one knows how long Old Blood Road has been a Class VI road; it is not traversable. Tim Thompson opined that it was classified by state statute.

### **Public comment**

Jack Rothman, 202 Baboosic Lake Road, suggested a stop sign or traffic light at the four-way intersection. Alastair Millns explained that there could be no light because there are only two houses on the road. Tim Thompson explained that the Bean Road stop sign would remain. This is a private road/driveway, so there could not be a stop sign. Jack Rothman asked about the stone wall, which Ken Clinton repeated would remain. The driveway would be the same distance from the wall as the Rothman property is.

Janice Tibbetts, 1 Marty Drive, asked about the location of the homes, stating that there is wetland behind some homes on Marty Drive. Tim Thompson explained the houses must be outside the wetland setbacks; the developer would determine their location.

Rose Burke, 3 Marty Drive, who has problems with water coming from the road, asked what recourse she would have if water came into her home. Alastair Millns explained that the developer must guarantee that there would be no increase in the water rate onto the neighboring properties. Any recourse is through the courts.

Daniel Jaskiewicz, 15 Whispering Pines Lane, asked about the width of the driveway on Old Blood Road and the distance between the two stone walls. Ken Clinton said the driveway would be 16' wide and 22'-30 wide at the two stone walls. He stated that there would be no impact to the stone walls. Daniel Jaskiewicz asked how snow removal would affect the wall. Alastair Millns explained that Old Blood Road is not maintained by the Town and the homeowners would clear the snow themselves. How they do it is not a Planning Board matter.

Bill Boyd stated that he opposed the project because it would have too many impacts to the neighborhood.

Staff recommends that the Board vote to grant conditional Final Approval to the application, with precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

**The Board voted 4-1-0 to grant final approval, with the following conditions, on a motion made by Nelson Disco and seconded by Desirea Falt. Bill Boyd voted in the negative.**

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits (NHDES Subdivision, NHDES Wetlands, and any others as may be applicable), note the approvals/permits



- on the final plans and mylars and provide copies to the Community Development Department;
3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;
  4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
  5. The applicant shall address any forthcoming drainage comments from the Town's peer review consultant, CLD;
  6. The applicant shall address any forthcoming comments from the Assessing Department, as applicable;
  7. The applicant shall address the following comments from the Building Department:
    - a. Add notes to indicate all currently-enforced fire safety, building and electrical codes will be utilized where any modification to the existing structure takes place;
  8. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
  9. The applicant shall address the following comments from Merrimack Village District, as applicable:
    - a. The water line running along Old Blood Road shall be private and some type of ownership/maintenance agreement shall be written;
    - b. Merrimack Village District shall have access to, and permitted use of individual shut offs, to be installed, within the "utility" easement;
  10. The applicant shall address any forthcoming comments from the Police Department:
    - a. Access for Lots 45-2 & 45-3 is off Old Blood Road and notes as a "driveway", but there does not appear to be a plan for access to Lot 45-1.
  11. The applicant shall address the following comments from the Public Works Department:
    - a. Consideration should be given to the need for a sign indicating "Not a Thru Road" to avoid confusion, particularly from those on Bean Road approaching Baboosic Lake Road (Note: Since Old Blood Road is a Class VI road, it cannot be marked "Private Drive");
    - b. The first 20 feet of the driveway apron where it meets Baboosic Lake Road should be paved.
  12. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
  13. The applicant shall address the following Planning Staff Technical Comments:
    - a. The address listed under Map 5B, Lot 48 should be "7 Marty Drive" instead of "9 Marty Drive";



- b. Note 11 regarding the filing of a Stormwater Management Plan mentions Map 4B, Lots 153 and 153-2. Please replace these with the appropriate Map & Lot numbers.

**General and subsequent conditions**

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
  2. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
  3. The applicant shall obtain right-of-way permits from the Public Works Department for all new driveways.
  4. The Fire Department assigns addresses as follows:
    - a. Tax Map 5B, Lot 45 shall remain 190 Baboosic Lake Road;
    - b. Tax Map 5B, Lot 45-1 shall be 188 Baboosic Lake Road.
  5. In accordance with RSA 674:41 (II), the applicant is required to request authorization of building permits for proposed lots 45-2 & 45-3 from the Zoning Board of Adjustment prior to starting construction on these lots.
  6. The Building Department adds the following:
    - a. Most recently adopted building, fire safety and electrical code requirements will be requested with building permit applications. All conditions will be noted with issuance of building permits.
- 6. Meridian Land Services, Inc. & North View Homes & Development, Inc. (applicants) and Lena Parker, Parker Family Revocable Trust & Lena Parker Revocable Trust (owners) – Review for acceptance and consideration of Final Approval for a Lot Line Adjustment and minor subdivision of three lots into four lots. The properties are located at 258, 264 & 270 Baboosic Lake Road in the R-3 (Residential) District. Tax Map 6A, Lots 29, 29-2 & 30.**

Robert Best returned to the Board and resumed as chair.

Tim Thompson said that the applicant intends to adjust the lot lines of the existing three lots, then subdivide off one additional lot, for a total of four separate lots, each to be serviced by municipal water (MVD) and private septic systems.

Ken Clinton, President, Meridian Land Services, Inc., listed the proposed acreage for each lot. This parcel with oddly shaped lots is what remains after other properties around it were subdivided. The applicant has no issue with the proposed conditions.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.





# Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

[www.merrimacknh.gov](http://www.merrimacknh.gov)

Planning - Zoning - Economic Development - Conservation

## MEMORANDUM

**Date:** April 13, 2016  
**To:** Robert Best, Chairman, & Members, Planning Board  
**From:** Robert Price, Assistant Planner  
**Subject:** **Meridian Land Services, Inc. (applicant) and North View Homes & Development, Inc. (owner)** – Review for acceptance and consideration of Final Approval for a minor subdivision of one lot into four lots. The parcel is located at 190 Baboosic Lake Road in the R-3 (Residential) District. Tax Map 5B, Lot 045.

### Background

Map 5B / Lot 45 is located at 190 Baboosic Lake Road, across from Mitchell Street. The property is located in the R (Residential) District (R-3 by soils), is approximately 9 acres in size and contains an existing residence. It is abutted entirely by residential uses. It has frontage on Baboosic Lake Road to the east and Old Blood Road (Class VI) to the west. The applicant intends to subdivide the property into four lots, each to be serviced by municipal water and private septic.

The property does have some historic relevance, although it is important to note that it is not currently listed on either the National or State Register of Historic Places. The existing home, referred to as the Samuel Barron House, was originally constructed in 1771.

At the February 24, 2016 Zoning Board of Adjustment meeting, the applicant was granted two variances under Section 1.03 (A) (25) of the Zoning Ordinance to permit a four-lot subdivision with two of the lots having frontage on a Class VI road.

The original iteration of this plan sought access to the two lots fronting Old Blood Road via Marty Drive, however the version before you proposes to access these two lots by way of Baboosic Lake Road across from Bean Road. The applicant has been proactive in seeking comment from the abutters, several of whom voiced strong opposition to having the access from Marty Drive at the ZBA meeting in February.

The Fire Department has requested that the portion of Old Blood Road stretching from Marty Drive to Baboosic Lake Road be renamed. The rationale behind this request is that the developed section of Old Blood Road, which runs from Wilson Hill Road to Madeline Bennett Lane, no longer connects to this portion. As such, confusion could result in the event emergency or other services are needed. A change in road name is also being driven by E-911 addressing requirements. It is not the burden of the applicant to bring such a request to the Town Council; rather the Fire Department would be responsible. Further, a change in road name can only be authorized by vote of the Council, not the Planning Board.

~~Lastly, it should be noted that if the subdivision is approved, the applicant will have to return to the ZBA to request authorization for the issuance of building permits on proposed lots 45-2 and 45-3,~~



~~in accordance with RSA 674:41 (II), as these lots are fronting a Class VI road. This would be handled as an Appeal of Administrative Decision and has been noted as a condition of approval.~~

### **Completeness**

**Staff recommends that the Board vote to accept the application**, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision.

### **Waivers**

Although none have been requested, staff recommends a sidewalk waiver be submitted **in writing** per Section 4.06.1(r) of the Subdivision and Site Plan Regulations, or a determination under Section 4.07 that it is not necessary.

**Staff recommends that the Board vote with respect to any requested waivers utilizing the criteria from RSA 674:36:**

- Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; **or**
- Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

### **Recommendation**

Based on the information available to date, **staff recommends that the Board grant conditional final approval to the application with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:**

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;
2. The applicant shall obtain all required State approvals/permits (NHDES Subdivision, NHDES Wetlands, and any others as may be applicable), note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;
3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;
4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;
5. The plan's drainage shall be peer reviewed if the Board determines it applicable. If the Board does not determine peer review applicable, then no peer review shall be necessary.
6. The applicant shall address any forthcoming comments from the Assessing Department, as applicable;
7. The applicant shall address the following comments from the Building Department:
  - a. Add notes to indicate all currently-enforced fire safety, building and electrical codes will be utilized where any modification to the existing structure takes place;



8. The applicant shall address any forthcoming comments from the Fire Department, as applicable;
9. The applicant shall address the following comments from Merrimack Village District, as applicable:
  - a. The water line running along Old Blood Road shall be private and some type of ownership/maintenance agreement shall be written;
  - b. Merrimack Village District shall have access to, and permitted use of individual shut offs, to be installed, within the "utility" easement;
10. The applicant shall address any forthcoming comments from the Police Department:
  - a. Access for Lots 45-2 & 45-3 is off Old Blood Road and notes as a "driveway", but there does not appear to be a plan for access to Lot 45-1.
11. The applicant shall address the following comments from the Public Works Department:
  - a. Consideration should be given to the need for a sign indicating "Not a Thru Road" to avoid confusion, particularly from those on Bean Road approaching Baboosic Lake Road (Note: Since Old Blood Road is a Class VI road, it cannot be marked "Private Drive");
  - b. The first 20 feet of the driveway apron where it meets Baboosic Lake Road should be paved.
12. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;
13. The applicant shall address the following Planning Staff Technical Comments:
  - a. The address listed under Map 5B, Lot 48 should be "7 Marty Drive" instead of "9 Marty Drive";
  - b. Note 11 regarding the filing of a Stormwater Management Plan mentions Map 4B, Lots 153 and 153-2. Please replace these with the appropriate Map & Lot numbers.

**Staff also recommends that the following general and subsequent conditions be placed on the approval:**

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
2. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. The applicant shall obtain right-of-way permits from the Public Works Department for all new driveways.
4. The Fire Department assigns addresses as follows:



- a. Tax Map 5B, Lot 45 shall remain 190 Baboosic Lake Road;
  - b. Tax Map 5B, Lot 45-1 shall be 188 Baboosic Lake Road.
5. In accordance with RSA 674:41 (II), the applicant is required to request authorization of building permits for proposed lots 45-2 & 45-3 from the Zoning Board of Adjustment prior to starting construction on these lots.
6. The Building Department adds the following:
- a. Most recently adopted building, fire safety and electrical code requirements will be requested with building permit applications. All conditions will be noted with issuance of building permits.

Cc: Planning Board File  
Correspondence

Ec: John Tenhave, North View Homes & Development, Inc. (owner)  
Ken Clinton, Meridian Land Services, Inc.  
Greg Michael, Esq., Bernstein, Shur, Sawyer & Nelson, P.A.  
Assessing Department Staff  
Building Department Staff  
John Manuele, Merrimack Fire Department  
Lori Barrett, Highway Division  
Dave Fredrickson, Merrimack Village District  
Mark Doyle, Police Department  
Kyle Fox, Public Works Department

Z:\P & Z\PB Memos 2016\PB\_Memo\_2016-04-19\_190\_Baboosic\_Subdivision.docx



Return to:  
Town of Merrimack  
Attn: Becky Thompson  
6 Baboosic Lake Rd.  
Merrimack, NH 03054

NOTICE, AGREEMENT AND RELEASE OF MUNICIPAL LIABILITY AND  
RESPONSIBILITY PURSUANT TO RSA 674:41, I

AGREEMENT made this 5<sup>th</sup> day of June 2018 between North View Homes and Development, Inc. of 20 Parkhurst Road, Merrimack, New Hampshire and owner of property located at Lot 045, Tax Map 5B Merrimack, New Hampshire (hereinafter "Owner") and the Town of Merrimack, acting through its Town Council.

WHEREAS, Owner is the owner of certain real property consisting of 4.15 acres of land located off Old Blood Road in Merrimack, Hillsborough County, New Hampshire, shown as Lot 045, Tax Map 5B (hereinafter "Property") on the records from said Town of Merrimack (hereinafter "the Town").

WHEREAS, the portion of said Old Blood Road upon which Owner's Property fronts is a Class VI Highway as classified by New Hampshire Revised Statutes Annotated (RSA) 229:5.

WHEREAS, upon filing of this notice pursuant to RSA 674:41, the Town has agreed to allow Owner to upgrade approximately 570 feet of the Class VI Old Blood Road, from Baboosic Lake Road to Owner's Property approximately 570 feet from the intersection with Baboosic Lake Road (hereinafter "the Designated Portion"), to provide access to Owner's Property and has further agreed to issue building permits for the construction of single-family residences on said Property. pursuant to the following terms and conditions, which conditions shall run with the land and be binding upon all subsequent owners of said Property:

- a. The stone wall presently located next to Old Blood Road shall not be removed, altered, destroyed or changed in any way and if the wall shall suffer any impacts, intentional or otherwise, Owner shall immediately restore/repair it;
- b. De-icing agents, chemicals or compounds shall not be used on Old Blood Road without prior written permission from the Town;
- c. Snow plowing and snow storage on the Designated Portion shall not block or impede emergency access to and from the Property;



- d. Snow removal from the Designated Portion shall be placed in the swales and recharge basins to be installed by Owner on the Designated Portion;
- e. Visitors and licensees to the Property shall not park on or along Old Blood Road;
- f. Stormwater run-off onto Baboosic Lake Road from the Designated Portion shall not increase and Owner shall implement and/or construct all necessary drainage facilities to ensure such, including installation of swale(s) and recharge basin(s);
- g. A turnout shall be installed and maintained on the Property at the site of the house sufficient to allow a Merrimack Town fire truck to turn around, to be approved by the Fire Department;
- h. All work performed on the Designated Portion shall be done in such a way so as not to preclude any future upgrade to Old Blood Road;
- i. The entirety of Old Blood Road, including the Designated Portion shall remain a public right-of-way for current and future use by the public;
- j. The Designated Portion of Old Blood Road which will be used to access said Property shall be maintained in a condition that will allow minimum width for fire and emergency equipment, as determined by the Fire Chief;
- k. Tree cutting shall be kept to a minimum and only as necessary to perform the necessary upgrades to Old Blood Road for access to the Property, and in any case, cutting shall not occur any further than 3' off of Old Blood Road as it presently exists;
- l. A minimum of 10-foot paved apron shall be installed and maintained by Owner at the intersection of Old Blood Road and Baboosic Lake Road;
- m. The design and upgrades to the Designated Portion shall substantially conform to the approved subdivision plans on file with the Town and recorded in the Hillsborough County Registry of Deeds as Plan No. 38895;
- n. All costs associated with constructing, maintaining or repairing the Designated Portion of Old Blood Road to accommodate Owner's use shall be the sole responsibility of Owner;
- o. No work of any kind shall be commenced on Old Blood Road without the approval of the Director of Public Works; and
- p. No work of any kind shall be commenced on Old Blood Road prior to the recording of this Notice, Agreement and Release.



NOW THEREFORE, Owner (on behalf of himself, his heirs, legal representatives, successors and assigns), and the Town agree as follows:

- I. The Town has indicated that it will issue Owner building permits to construct single-family residences pursuant to an application for the same on the above-described Property on Old Blood Road; and
- II. The Town neither assumes responsibility for maintenance including, but not limited to, snow plowing or snow removal, nor liability for any damages resulting from the use of Old Blood Road, a class VI road; and
- III. Owner shall be responsible for maintaining access to the Property and does hereby forever release and discharge the Town, its officers, agents and employees from the obligation of maintaining Old Blood Road, a Class VI road, and from any claim of any nature, whether in tort or otherwise, which Owner might have against the Town for any loss or damage, including those incurred through failure to provide a municipal service, including, but not limited to, police, fire and ambulance services, arising out of the condition of the Designated Portion of Old Blood Road;
- IV. Owner assumes responsibility for transporting any children residing in any home located on the Property to the nearest existing regular school bus stop;
- V. Owner assumes responsibility for maintenance and repair of the Designated Portion of Old Blood Road and agrees that at Owners' expense or at the expense of Owner and other owners of property located along Old Blood Road, to clear and maintain the Designated Portion of Old Blood Road to such specifications necessary to insure access for emergency vehicles in a good and passable condition;
- VI. The construction and occupancy of single-family dwellings authorized by this Agreement shall not be deemed to constitute evidence of public necessity and convenience requiring layout or alteration of Old Blood Road;
- VII. This Agreement and Release shall be binding on Owner's heirs, successors and assigns;
- VIII. This Agreement and Release shall remain in force so long as that portion of Old Blood Road is not legally required to be maintained by the Town. The obligation to indemnify shall apply to any incident occurring while this Agreement is in effect.



Date: \_\_\_\_\_, 2018

\_\_\_\_\_  
John Tenhave, President

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by John Tenhave, known to me as, or satisfactorily proven to be, the person executing the same.

\_\_\_\_\_  
Justice of the Peace/ Notary Public  
My commission expires: \_\_\_\_\_  
Stamp:

\_\_\_\_\_  
Town of Merrimack:

Date: \_\_\_\_\_, 2018

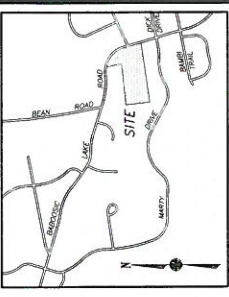
\_\_\_\_\_  
By: Finlay C. Rothhaus  
Chair, Town Council  
on behalf of the Town Council  
duly Authorized by vote of the  
Council on \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
by Finlay C. Rothhaus, Chair, Town Council, known to me as, or satisfactorily proven to be, the  
person executing the same.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_  
Stamp:

This document shall not constitute nor be interpreted as authorization by the Merrimack Town Council to  
sanction or approve an intersection with a state highway, such jurisdiction being the sole province of the  
NH Department of Transportation.



**NOTES:**

1. SUBDIVISION PLAN OF LAND - STONERIDGE ESTATES - MERRIMACK, N.H., THOMAS F. MOYAN INC. (N.C.R.D. PLAN #11736).
2. SUBDIVISION PLAN OF 58-44 - CARLETON K. & MYRLE L. MASON - BABOOSIC LAKE ROAD - MERRIMACK, N.H. - PREPARED FOR: CANTERBURY BUILDERS, SCALE: 1"=50' DATED JUNE 13, 1985 AND LAST REVISED 7/22/86 BY GEORGE F. KELLER INC. (N.C.R.D. PLAN #1815).
3. PROPERTY - OF - CARLETON K. AND - MYRLE L. MASON - MERRIMACK, N.H., SCALE: 1"=50' DATED DECEMBER 1970 (N.C.R.D. PLAN #451).
4. SUBDIVISION PLAN - WESTBROOK ACRES - BABOOSIC LAKE ROAD - MERRIMACK, N.H., SCALE: 1"=50' DATED DECEMBER 1970 (N.C.R.D. PLAN #451) 5/17/77 BY A.E. MAYNARD CIVIL ENGINEER (N.C.R.D. PLAN #10212).

**LEGEND:**

- RIGHT-OF-WAY LINE
- PROPOSED BOUNDARY LINE
- BOUNDARY LINE
- LOT LINE
- EXISTING TREE LINE
- IRON PIPE FOUND
- C.B.F. ( )
- UNION(LIBS)
- GRANITE BOUND TO BE SET
- UTILITY POLE
- AND GUT WIRE
- WATER GATE
- HYDRANT
- TEST PIT
- EXISTING WETLAND
- 10' CONTOUR INTERVAL
- 2' CONTOUR INTERVAL
- LIMIT OF SCS SOILS
- PROPOSED EASEMENT LINE
- STONE WALL
- EXISTING BUILDING
- SEPTIC TANK
- SEPTIC TANK AREA
- PREFERRED DRIVEWAY LOC.

**REFERENCE PLANS:**

1. SUBDIVISION PLAN OF LAND - STONERIDGE ESTATES - MERRIMACK, N.H., THOMAS F. MOYAN INC. (N.C.R.D. PLAN #11736).
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**OWNER'S SIGNATURE:**

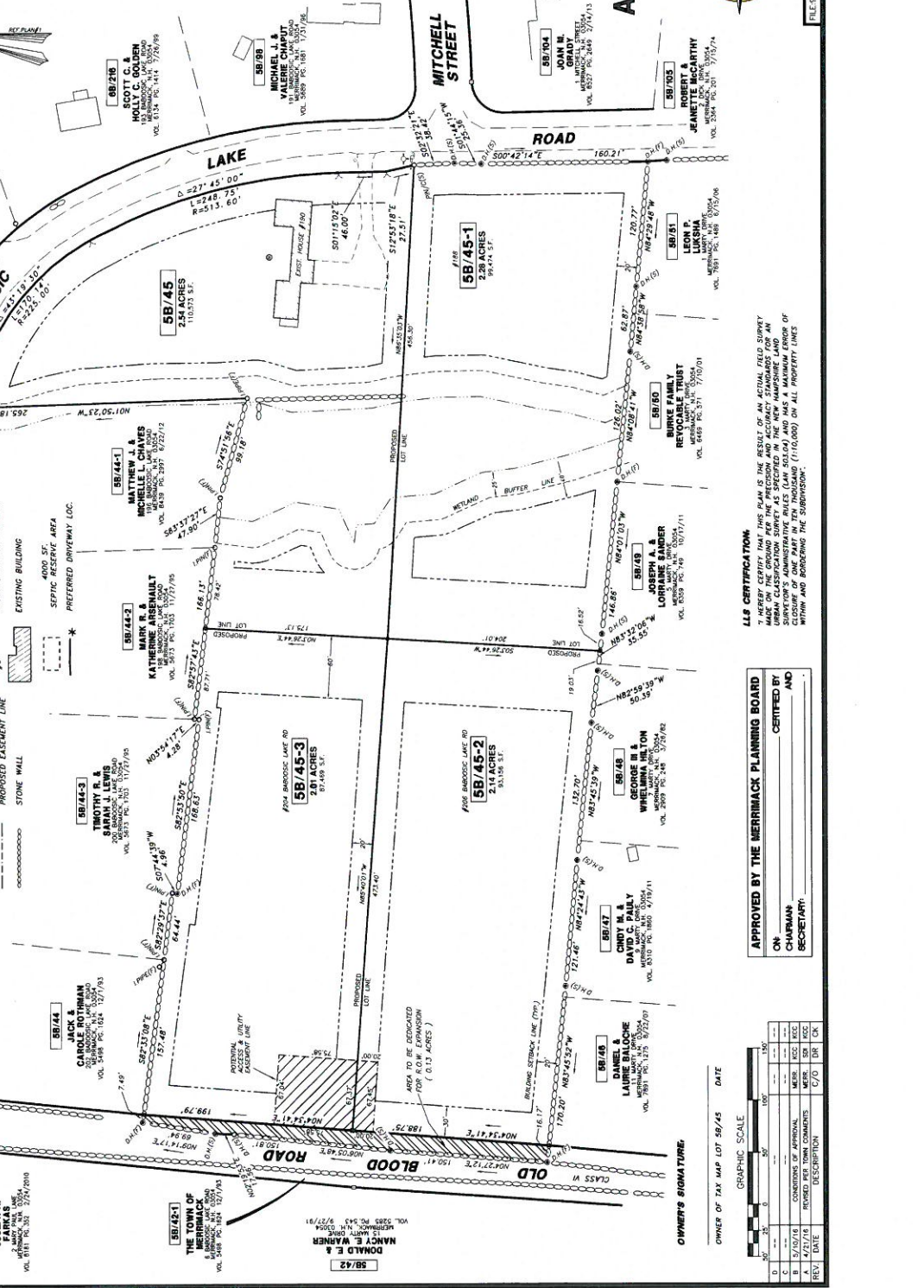
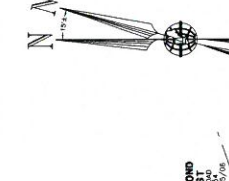
**OWNER OF TAX MAP LOT 58/45** DATE

**GRAPHIC SCALE**

**APPROVED BY THE MERRIMACK PLANNING BOARD**

ON \_\_\_\_\_ CERTIFIED BY \_\_\_\_\_ AND \_\_\_\_\_

CHAIRMAN SECRETARY



**NOTES:**

1. THE SUBDIVISION REGULATIONS OF THE TOWN OF MERRIMACK ARE A PART OF THIS PLAN.
2. THE OWNER OF RECORD OF TAX MAP PARCEL 58/45 NORTHVIEW HOMES & DEVELOPMENT INC. 20 FRANKLIN ROAD, MERRIMACK, NH 03041 (SEE N.C.R.D. VOL. 588 PC. 542 11/27/91).
3. THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED IN THE OFFICE SINCE THE MONTHS OF DECEMBER, 2015 AND JANUARY, 2016, WITH ADDITIONAL DATA SUPPLEMENTED BY THE TOWN OF MERRIMACK GIS INFORMATION.
4. THE TOTAL AREA OF TAX MAP PARCEL 58/45 IS 9.14 ACRES OR 398,141 SF.
5. 2015/16 LIES WITHIN THE 7<sup>th</sup> RESIDENTIAL ZONING DISTRICT AND THE LOTS ARE BASED ON P-1 DEPTH OF 150 FEET. BUILDING SETBACKS ARE 30 FEET FRONT, 20 FEET SIDE, 60 FEET REAR AND 40 FEET TO WETLANDS.
6. THIS PLAN IS SUBJECT TO THE OFFICIAL 0.000 WETLAND ZONE FOR OPEN FLOOD PLAINLAND AND 2.000 CONSERVATION MANAGEMENT ZONE THAT ARE SHOWN ON THE TOWN OF MERRIMACK SURVEY. INSPECTIONS WERE CONDUCTED ON 5/13/15 BY THOMAS J. FERRELLA, CHIEF OF MERRIMACK LAND SERVICES.
7. THIS PLAN IS SUBJECT TO THE MERRIMACK COUNTY ZONING ORDINANCE OF DECEMBER 1984. A COPY IS TO BE FILED WITH THE TOWN OF MERRIMACK COMMUNITY DEVELOPMENT DEPARTMENT.
8. SEE ZONING VARIANCE GRANTED FOR LOTS 58/42-2 & 45-3 TO HAVE THEIR FRONTAGE ON A CLASS V ROW (CASE #2015-09), DATED 02/25/2016).
9. SEE SHEET 2 FOR THE COMMON DRIVEWAY DETAIL FOR LOTS 58/42-2 & 45-3.
10. THIS PLAN IS SUBJECT TO THE TOWN OF MERRIMACK ZONING ORDINANCE (SEE 05A 12A.141 V.C.D.) FOR LOTS 58/42-2 & 45-3 IS TO BE RECORDED IN THE 4000 PRIOR TO ISSUANCE OF THEIR BUILDING PERMITS.
11. LOTS 58/42-2 & 45-3 SHALL BE SUBJECT TO ROW DEDICATION AND ACCESS & UTILITY.
12. ALL CONDUITS ENCASED IN 2" SAFETY, BUILDING AND ELECTRICAL CODES WILL BE UTILIZED WHERE ANY MODIFICATIONS ARE MADE TO EXISTING STRUCTURES ON SITE.

**OWNER'S SIGNATURE:**

**OWNER OF TAX MAP LOT 58/45** DATE

**GRAPHIC SCALE**

**APPROVED BY THE MERRIMACK PLANNING BOARD**

ON \_\_\_\_\_ CERTIFIED BY \_\_\_\_\_ AND \_\_\_\_\_

CHAIRMAN SECRETARY

**REFERENCE PLANS:**

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2. SUBDIVISION PLAN OF 58-44 - CARLETON K. & MYRLE L. MASON - BABOOSIC LAKE ROAD - MERRIMACK, N.H. - PREPARED FOR: CANTERBURY BUILDERS, SCALE: 1"=50' DATED JUNE 13, 1985 AND LAST REVISED 7/22/86 BY GEORGE F. KELLER INC. (N.C.R.D. PLAN #1815).
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4. SUBDIVISION PLAN - WESTBROOK ACRES - BABOOSIC LAKE ROAD - MERRIMACK, N.H., SCALE: 1"=50' DATED DECEMBER 1970 (N.C.R.D. PLAN #451) 5/17/77 BY A.E. MAYNARD CIVIL ENGINEER (N.C.R.D. PLAN #10212).

**LOCUS MAP NOT TO SCALE**

**SCALE: 1" = 50'**

**MARCH 29, 2016**

**FILE #624000849.dwg**

**PROJECT NO. 16025.00**

**SHEET NO. 1 OF 2**

**LAND SERVICES, INC.**

ENGINEERING SURVEYING CONSULTING

1100 WASHINGTON ROAD, AMHERST, NH 03031

MERRIMACK, NH 03041

FAX 603-331-1588

LANDSERVICES.COM

**NORTH VIEW HOMES AND DEVELOPMENT, INC.**

**TAX MAP 58 LOT 45**

**MERRIMACK, NEW HAMPSHIRE**

**LLP CERTIFICATION**

THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND FOR THE PRECISION AND ACCURACY STANDARDS FOR AN ENGINEERING SURVEY. THE SURVEYOR HAS TAKEN ALL REASONABLE PRECAUTIONS TO ACHIEVE THE PRECISION AND ACCURACY STANDARDS FOR AN ENGINEERING SURVEY AND HAS A MAXIMUM ERROR OF CLOSURE OF ONE PART IN TEN THOUSAND (1/10,000) ON ALL PROPERTY LINES WITHIN AND BORDERING THE SUBDIVISION.

**APPROVED BY THE MERRIMACK PLANNING BOARD**

ON \_\_\_\_\_ CERTIFIED BY \_\_\_\_\_ AND \_\_\_\_\_

CHAIRMAN SECRETARY

**OWNER'S SIGNATURE:**

**OWNER OF TAX MAP LOT 58/45** DATE

**GRAPHIC SCALE**



**SCS SOIL TYPES:**  
 C&B CANTON FINE SANDY LOAM 0-3% SLOPES  
 LWA LEICESTER-WALPOLE COMPLEX 0-3% SLOPES  
 SANITARY FACILITY ABSORPTION SEWER

**LEGEND:**

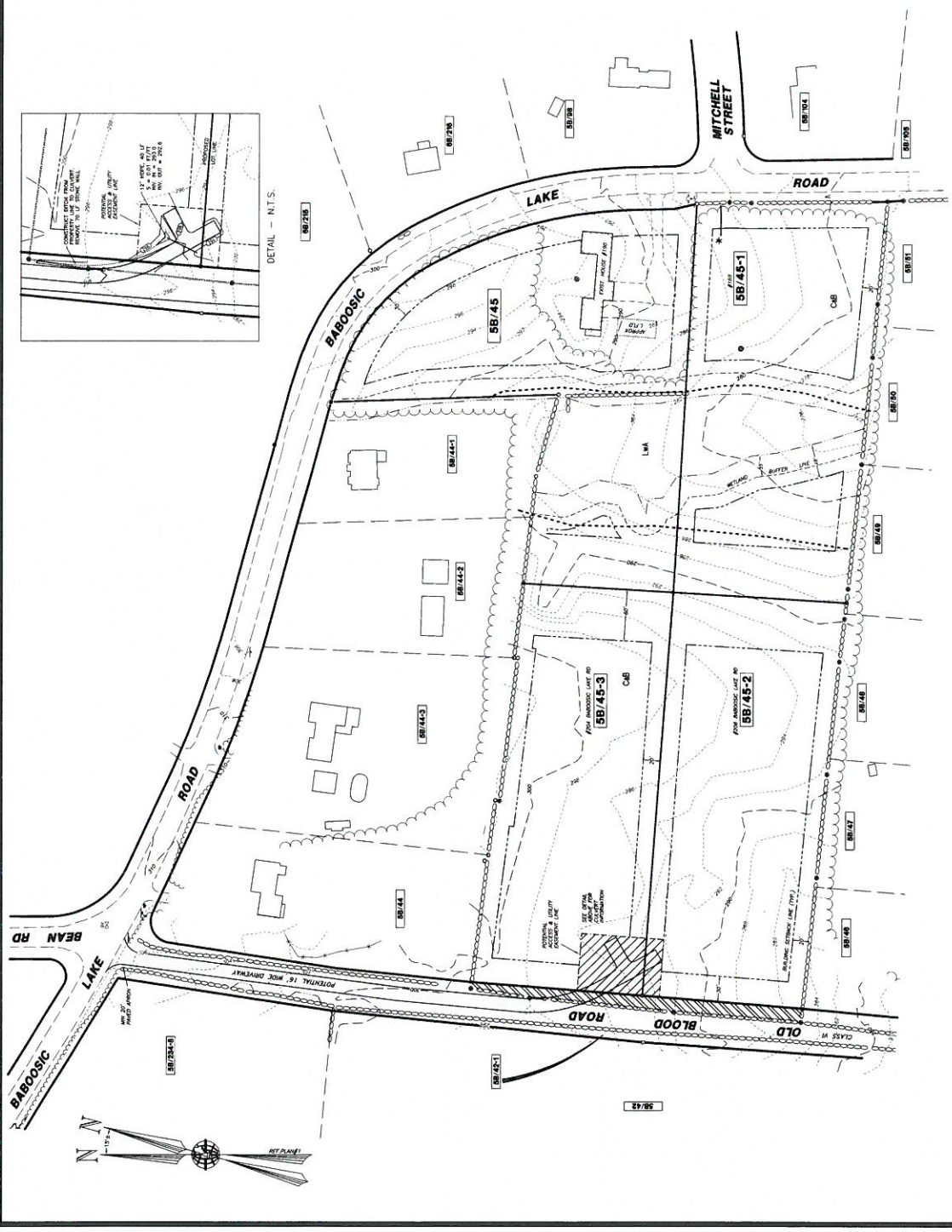
- PROPOSED RIGHT-OF-WAY LINE
- PROPOSED BOUNDARY LINE
- BOUNDARY LINE
- ABUTTING LOT LINE
- BUILDING SETBACK LINE
- EDGE OF PAVED ROAD
- EDGE OF GRAVEL ROAD
- EDGE OF WETLANDS
- 10' CONTOUR INTERVAL
- 2' CONTOUR INTERVAL
- LIMIT OF SCS SOILS
- PROPOSED EASEMENT LINE
- STONE WALL
- EXISTING TREE LINE
- IRON PIPE FOUND
- GRANITE BOUND FOUND
- L.P.W./D.M. TO BE SET
- GRANITE BOUND TO BE SET
- UTILITY POLE AND GUY WIRE
- WATER GATE
- HYDRANT
- TEST PIT
- EXISTING LOT NUMBER
- PROPOSED STREET NUMBER
- EXISTING BUILDING
- 4000 SF.
- SEPTIC RESERVE AREA
- PREFERRED DRAINAGE LOC.

**TOPOGRAPHIC PLAN**  
 LAND OF,  
**NORTH VIEW HOMES**  
**AND DEVELOPMENT, INC.**  
 TAX MAP 5B LOT 45  
 MERRIMACK, NEW HAMPSHIRE  
 MARCH 29, 2016  
 SCALE: 1" = 60'



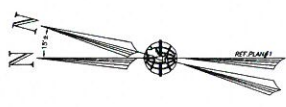
**MERIDIAN**  
 LAND SERVICES, INC.  
 ENGINEERING | SURVEYING | PERMITTING  
 SOIL & WETLAND MAPPING | SEPTIC DESIGN  
 150 WASHINGTON STREET, SUITE 200  
 MERRIMACK, NH 03001 FAX: 603-732-1848  
 MERIDIANLANDSERVICES.COM

PROJECT NO.: 5625.00 SHEET NO.: 2 OF 2



REV.	DATE	DESCRIPTION	C/D	DR	OK
D					
C	5/12/16	CONDITIONS OF APPROVAL			
B		REVISIONS			
A					

GRAPHIC SCALE  
 0 20 40 60 80 100'



# TITLE LXIV PLANNING AND ZONING

## CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

### Regulation of Subdivision of Land

#### Section 674:41

##### **674:41 Erection of Buildings on Streets; Appeals. –**

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time; or

(b) Corresponds in its location and lines with:

(1) A street shown on the official map; or

(2) A street on a subdivision plat approved by the planning board; or

(3) A street on a street plat made by and adopted by the planning board; or

(4) A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in RSA 674:40; or

(c) Is a class VI highway, provided that:

(1) The local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or

(d) Is a private road, provided that:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of



the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or

(e) Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street.

II. Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674, or, in municipalities in which no board of adjustment exists, to the local legislative body, or to a board of appeals, whichever is appropriate, in accordance with RSA 674:14 and 674:15, including the requirement for a public hearing. In a municipality which does not require building permits, direct application may be made to the zoning board of adjustment, or the local legislative body, or the board of appeals for permission to erect the building. In passing on such appeal or application, the board of adjustment, local legislative body, or board of appeals may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. Any such decision made in this connection by a board of adjustment, local legislative body, or by a board of appeals pursuant to this section and RSA 674:14 and 674:15 shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.

II-a. Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675, first submitted to the planning board for its approval and:

(a) If approved by the board, approved by a majority of those present and voting at a regular or special meeting of the local legislative body; or

(b) If disapproved by the planning board, approved by not less than 2/3 of those present and voting at a regular or special meeting of the local legislative body.

III. This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section. For purposes of paragraph I, "the street giving access to the lot" means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e).

IV. In addition to the requirements for the erection of buildings in paragraph I and notwithstanding the exceptions provided in paragraph II, the planning board for a county in which there are located unincorporated towns or unorganized places shall require every building which is erected on leased land located within an unincorporated town or unorganized place to

have a building permit. A building permit shall be required under this paragraph regardless of the proximity of the building to any street or highway. The county shall, by resolution, authorize the planning board to issue building permits under this paragraph.

**Source.** 1983, 447:1. 1988, 131:2, 3. 1989, 266:20. 1995, 291:10. 1998, 344:6. 2002, 270:1, 5. 2004, 154:1, 2. 2005, 226:1, 2, eff. Sept. 3, 2005.