



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

MEMORANDUM

Date: September 9, 2021

To: Town Council

CC: Paul Micali, 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 a Building Permit for a lot without frontage - Ruland Revocable Trust, 312 Baboosic Lake Road**

Please find this memo as a summary of the process that is required for the Ruland Revocable Trust to obtain a building permit for the reconstruction of a single family home on a lot without frontage on a Class V or better roadway (to be accessed from a shared private driveway off Baboosic Lake Road). The proposed home will replace an existing home on the lot, and the applicant recently received relief from the ZBA to allow less than the required side setback for the new structure. It should be noted that residential use of this property has been in existence since 1969.

Attached to this memo are meeting results and staff memos from the Zoning Board and Planning Board which led to the request before the Council.

Background

On July 20, 2021, the Planning Board signed a Voluntary Merger of Lots for 2 parcels on Baboosic Lake (312 and 312B Baboosic Lake Road). The parcel pre and post-merger does not have any frontage on a Town maintained Class V or better roadway and the home on 312 Baboosic Lake Road (constructed in 1969) has historically been accessed through an easement on a private driveway known as "Guter Lane."

In August, the owner, Ruland Revocable Trust, applied for, and was granted a variance to construct a new single family home (which will replace the 1969 house) on the newly merged lot within the side setback. Per the advice of Legal Counsel, the Trust was directed to obtain approval for the issuance of the building permit for the new house in accordance with the requirements of RSA 674:41 (which did not exist at the time the original home was built in 1969). The Planning Board discussed the permit at their September 7 meeting, and has recommended that the Council authorize the issuance of a permit for the construction of the new home, subject to the recording of the waiver of municipal liability required by the statute. Background materials from the applicant's attorney are included in this packet.

The applicant is now preparing to begin construction of the new house on the merged lot, and is appearing before the Council to obtain the authorization, as is the process outlined in RSA 674:41.

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 private road or portion thereof; and
- The municipality neither assumes responsibility for maintenance of said private road 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.

Recommendation

Given the issuance of the variance and the recommendation from the Planning Board on September 7, Community Development Department staff recommends that the Council grant authorization to the Ruland Revocable Trust to obtain a building permit for the reconstruction of a new home on the lot which will continue to be accessed from the private driveway (via the existing access easement) called "Guter Lane" and to also authorize the Council Chair to sign the Notice, Agreement and Release of Municipal Liability and Responsibility, with the following condition:

- 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 any building permits for the proposed new home.

The Board voted 5-0-0 to grant conditional final approval, on a motion made by Barbara Healey and seconded by Lynn Christensen.

7. **Madi Choueiri (applicant) and 480 DW Highway-Choueiri Realty (owner)** - Review for consideration of Final Approval for a waiver of full site plan review to allow for a previously approved, but expired, site plan (under the former regulations) to utilize an existing structure for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046. Case #PB2021-34.

Applicant Madi Choueiri, presented the application.

There was no public comment.

The Board voted 5-0-0 to reinstate the 2016 final approval on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.

8. **Governors Hill Corp (applicant/owner)** – Review for consideration of an amendment to a previously approved Subdivision Plan to consolidate 13 lots into 5 reconfigured lots. The parcels are located on Claire, Level, Louie and Robert Streets and Acre Lane in the R-4 (Residential) and Aquifer Conservation Districts. Tax Map 6D, Lots 065, 075-079, 081, 124 & 125 and Tax Map 7D, Lots 057, 058, 062 & 063. Case #PB2021-35.

Applicant was represented by: Matt Peterson, Keach-Nordstrom Associates.

The Board voted 5-0-0 to accept the application as complete, on a motion made by Barbara Healey and seconded by Nelson Disco.

Public comment was received from Ashley Cardin, 15 Page Drive.

The Board voted 5-0-0 to grant conditional final approval, on a motion made by Lynn Christensen and seconded by Jaimie von Schoen.

9. Discussion/possible action regarding other items of concern

The Board voted 5-0-0 to recommend to the Town Council that a building permit be authorized for 312 Baboosic Lake Road per the requirements of RSA 674:41, on a motion made by Lynn Christensen and seconded by Barbara Healey.

10. Approval of Minutes — August 17, 2021

The Board voted 2-0-3 to approve the minutes of August 17, 2021 as submitted, on a motion made by Lynn Christensen and seconded by Nelson Disco. Barbara Healey, Paul McLaughlin, and Jaimie von Schoen abstained.

11. Adjourn

The Board voted 5-0-0 to adjourn at 9:18 p.m. on a motion made by Barbara Healey and seconded by Jaimie von Schoen.



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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www.merrimacknh.gov

MEMORANDUM

Date: September 2, 2021

To: Robert Best, Chairman, & Members, Planning Board

From: Timothy J. Thompson, AICP, Community Development Director

Subject: **Recommendation to Town Council - Authorization for issuance of a building permit without frontage on a Class V road** – Ruland Revocable Trust, 312 Baboosic Lake Road

Please find this memo as a summary of the process that is required for the Ruland Revocable Trust to obtain a building permit for the reconstruction of a single family home on a lot without frontage on a Class V or better roadway (to be accessed from a shared private driveway off Baboosic Lake Road). The proposed home will replace an existing home on the lot, and the applicant recently received relief from the ZBA to allow less than the required side setback for the new structure. It should be noted that residential use of this property has been in existence since 1969.

Background

In July, the applicant merged two lots together to form one single lot. Neither the previous two lots, nor the newly merged single lot had/has frontage on a Class V or better roadway. In August, staff was made aware of the proposed plan to replace the existing home on newly merged lots owned by the applicant. Staff consulted with legal counsel about the applicability of both current zoning requirements (vs. non-conforming lot standards following merger of the two lots) and the process for obtaining a building permit for the landlocked parcel. Following that conversation, staff determined that the non-conforming lot standards still applied to the merged lots, but that appropriate approvals for the building permit under RSA 674:41 did apply to the new structure proposed to be constructed.

Following the granting of the variance for setback relief by the ZBA on August 25, the Planning Board is now the next step under RSA 674:41 to make a recommendation to the Town Council regarding issuance of the building permit. Staff is recommending that the Board recommend approval of the issuance of the permit for the new house (see recommendation below).

As a refresher, the process from RSA 674:41 for the Council will be as follows after the Planning Board makes a recommendation (for purposes of the statute, staff has been advised that the language "private road" is the same as "private driveway"):

- *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*
- *The municipality neither assumes responsibility for maintenance of said private road 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.*

Recommendation

Given the historic use of the property for residential use dating back to 1969, that access to the property has been via the shared private driveway/road called "Guter Lane," the variance granted by the ZBA to allow the new home to be placed in the side setback, and the various easements and agreements granting the applicants the use of the private driveway/road to access the parcel, staff recommends that **the Planning Board recommend that the Council grant authorization to Ruland Revocable Trust to obtain a building permit for the reconstruction of a single family home on a lot without frontage on a Class V or better roadway**, subject to the recording of the waiver of municipal liability per RSA 674:41.

PANCIOTTO LAW, LLC

Patricia M. Panciocco *
*Admitted in NH & ME

One Club Acre Lane
Bedford, New Hampshire 03110
www.panciocolaw.com

Tel. 603-518-5370
Fax 603-206-5946
E-mail: Pat@panciocolaw.com

August 31, 2021

VIA EMAIL ONLY

Town of Merrimack Planning Board
Attn: Tim Thompson, Community Development Director
6 Baboosic Lake Road
Merrimack, NH 03054

**Re: Approval of Access to 312 Baboosic Lake Road
Lorie F. & Rodd R. Ruland, Trustees of the Lorie F. Ruland Revocable Trust**

Dear Mr. Thompson & Members of the Board:

In support of the Board finding adequate legal access to the property referenced above exists and the Town Council approving the issuance of all required building permits, I enclose the following:

1. Copy of a plan entitled "*Proposed Access Easements Tax Map 6A2 Lot 148, Land of Bristol Hill Trust #7 and Tax Map 6A2 Lots 156-9 & 159 Land of The Paul Family Irrevocable Trust Off of Baboosic Lake Road, Merrimack, New Hampshire*" recorded as Plan 39771 in the Hillsborough County Registry of Deeds;
2. "*Quitclaim Easement Deed for Driveway*" dated May 31, 2018 recorded at Book 9079, Page 1271 in said Registry confirming the easement rights benefitting 312 Baboosic Lake Road as well as the legal agreement between the 2 owners for maintenance; and
3. Photos of Guter Lane taken by my clients.

My understanding is the Town has previously issued a driveway permit for the Bristol Hill Trust #7 property also. My hope is these documents amply confirm and illustrate 312 Baboosic Lake Road has adequate access to support the Planning Board recommending the Town Council recommend building permits be issued to my clients to raze and rebuild the existing home located at 312 Baboosic Lake Road.

Please contact me should you need additional information.

Sincerely yours,

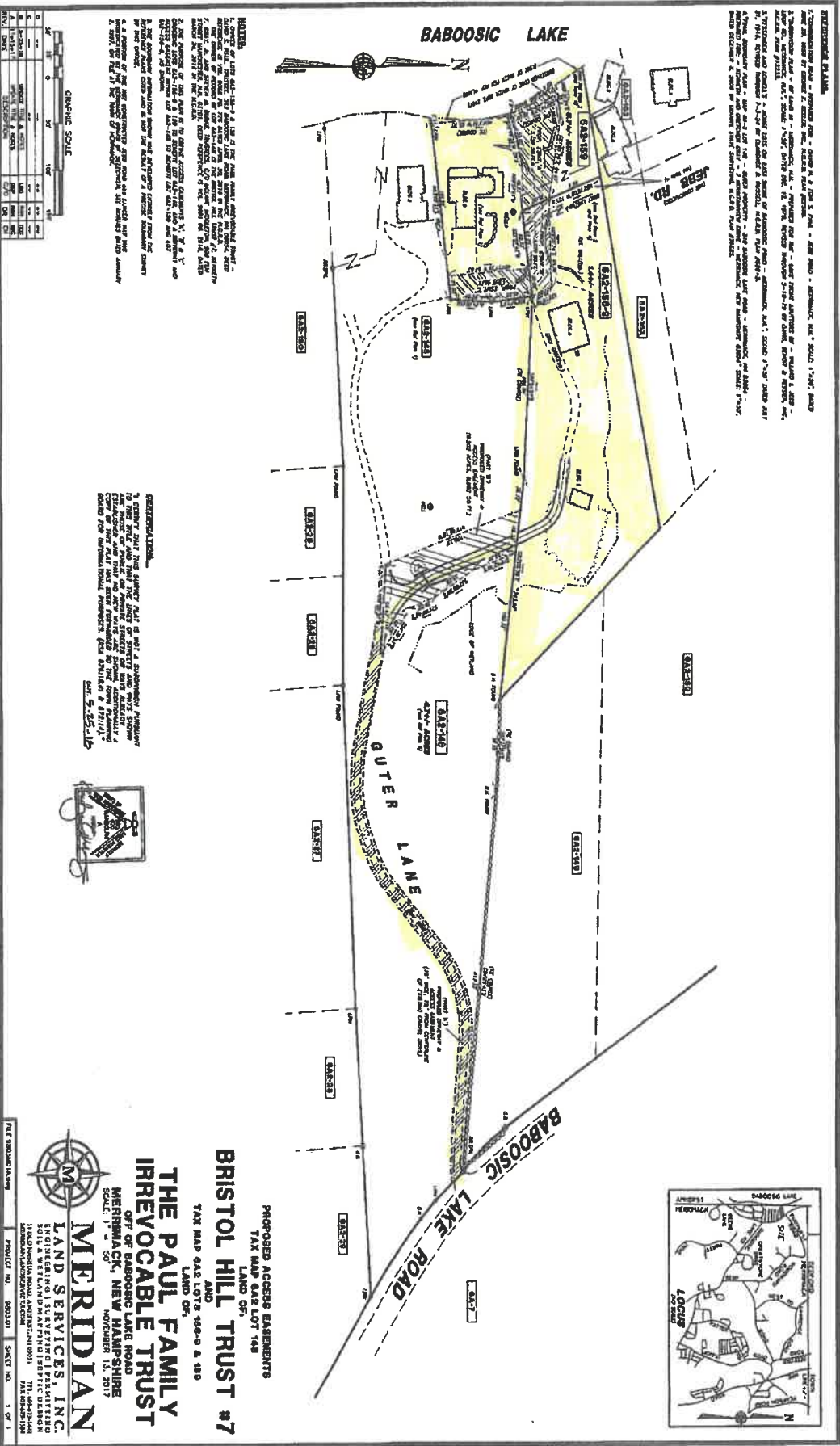
Patricia Panciocco

Patricia M. Panciocco

Enclosures

CC with enclosures: Client, Tom Carr Meridian Land Services, Inc. (TECarr@meridianlandservices.com)

39771



39771 DWG 163



DATE: 11/13/17
DRAWN BY: J. BROWN
CHECKED BY: J. BROWN
SCALE: 1" = 50'

Carmela O'Caughlin



After recording, please return to: *#060*
LBD #84639
McLane Middleton, Professional Association
900 Elm Street
Manchester, NH 03101



QUITCLAIM EASEMENT DEED FOR DRIVEWAY

KENNETH F. GRAY, JR. AND STEVEN M. BURKE AS TRUSTEES OF THE BRISOL HILL TRUST #7, a New Hampshire trust created w/d/t dated March 24, 2018, with an address of c/o McLane Middleton, Professional Association, 900 Elm Street, Manchester, New Hampshire, 03101, (the "Grantors"), being the owners of certain premises commonly known and numbered as 310 Baboosic Lake Road, Merrimack, County of Hillsborough, New Hampshire, 03054, and further known as Tax Map 6A-2, Lot 148, of the Town of Merrimack (the "Gray Lot"),

in consideration for the sum of one-dollar (\$1.00) and the terms and conditions set forth herein, the receipt thereof being hereby acknowledged,

do grant and convey to **DAVID S. PAUL, AS TRUSTEE OF THE PAUL FAMILY IRREVOCABLE TRUST**, a trust created w/d/t dated April 30, 2018 with an address of 312 Baboosic Lake Road, Merrimack, New Hampshire, 03054, (the "Grantee" or "Paul"), as owner of Tax Lot 6A2-156-9 and Tax Lot 6A2-159, of the Town of Merrimack (collectively, the "Paul Lots"), it being understood that the Paul Lots as referenced herein specifically exclude any and all other lots which may be owned by The Paul Family Irrevocable Trust or any other person,

with quitclaim covenants,

a fifteen foot (15') wide traveled way within Part B, as described below, of the easement area over that portion of the Gray Lot extending from the boundary line between the Gray Lot and lot 6A2-156-9 of the Paul Lots, to the present driveway of the Grays, sometimes known as Guter Lane, and extending eastward on Guter Lane to Baboosic Lake Road (the "Easement"). The Easement is shown as "Part A" and "Part B" on a plan entitled "PROPOSED ACCESS EASEMENTS TAX MAP 6A2, Lot 148 LAND OF: BRISTOL HILL TRUST #7 AND TAX MAP 6A2 LOTS 156-9 & 159 LAND OF: THE PAUL FAMILY IRREVOCABLE TRUST OFF OF BABOOSIC LAKE ROAD, MERRIMACK, NEW HAMPSHIRE," scale 1"= 50', dated November 13, 2017, last revised May 25, 2018, by Meridian Land Services, Inc., 31 Old Nashua Road, Amherst, New

Hampshire (the "Plan"), which Plan is to be recorded, as set forth herein, at the Hillsborough County Registry of Deeds, Plan Number 39771.

The Easement shall burden the Gray Lot, as shown on the Plan, and shall be for the sole benefit of the Paul Lots. This agreement shall be binding upon the heirs, successors, assigns, and subsequent title holders to each lot. The Easement shall be appurtenant to the Paul Lots defined herein only, and shall not be an easement in gross.

Use of Easement

The right granted hereunder is the perpetual right, subject to defeasance as set forth herein, to a non-exclusive use for the owner of the Paul Lots for the purposes of a driveway for access to the Paul Lots (the "Driveway"). Use of the Driveway for access to the Paul Lots shall be expressly limited to residential purposes and related recreational activities, regardless of any subsequent change of use of either or both of the Paul Lots.

Construction of New Driveway

For ease of reference and explanation, the Plan divides the Easement area into two segments. The segment identified as Part A, which is shown on the Plan as a portion of the so-called Guter Lane¹, is an existing, established driveway shared by both the Grantors and the Grantee. This segment shall be referred to as the "Part A" or the "Guter Lane Driveway Segment." The second segment is shown on the Plan as Part B. This shall be referred to as "Part B" or the "New Driveway Segment." As of the time of execution of this Easement Deed, the New Driveway Segment has not yet been constructed. Both segments of the Easement area are described on the attached Schedules A and B hereto.

Construction of the New Driveway Segment shall be at the sole cost and expense of Grantee, in accordance with a scope of work and construction plans and details reviewed and approved in writing in advance by the Grantors, before commencement of construction. The New Driveway to be constructed shall be a fifteen (15') foot wide traveled way within the forty (40') foot wide Part B Easement Area. Construction of the New Driveway Segment in the Easement area shall be completed within one year of the date of recording this Easement Deed; provided, however, that once construction begins, it shall be completed within ninety (90) days of the commencement date. Construction shall be performed as promptly and efficiently as possible, so as to minimize inconvenience or interference with the Grays' use of their property. No construction or improvement shall be done so as to inhibit the concurrent use of the Gray Lot and shall at no time impede access over the Guter Lane Driveway Segment. All work shall be performed in a good, workmanlike fashion, as reasonably determined by the Grantor, and in accordance with any and all applicable laws, codes, rules, regulations and ordinances, and with any and all governmental approvals and permits required therefore.

Without limiting the generality of the foregoing, the Grantee agrees that:

¹ The Merrimack Tax Map labels this as a "private road."

1. The width and surface material of the New Driveway Segment shall conform to the same width and material as that used on the Guter Lane Driveway Segment.
2. The Grantee shall install adequate drainage and appurtenant drainage facilities to maintain the New Driveway Segment.
3. The Grantee shall utilize best engineering and construction practices to protect wetlands in the vicinity of the New Driveway Segment.
4. The Grantee shall be afforded a temporary construction easement adjacent to the New Driveway Segment for the duration of the construction of the New Driveway Segment to the minimum extent reasonably necessary to complete the construction.
5. Any valuable materials, such as timber or soil, harvested by Grantee in the construction of the New Driveway Segment shall be owned by the Grantors.
6. The Grantee shall, during construction of the New Driveway Segment, and thereafter, carry such policies of insurance as Grantors may reasonably request for their mutual benefit and protection, and shall provide certificates of such insurance naming Grantor as additional insured prior to commencement of any activity on the Gray Lot.
7. At the conclusion of the construction of the New Driveway Segment, the Grantee shall remove any erosion control devices and loam, grade and seed the areas adjacent to the New Driveway Segment. The parties shall cooperate reasonably together to water and tend the plantings along the New Driveway Segment to ensure their rooting, growth and success.
8. The Grantee shall be responsible for any costs reasonably incurred by the Grantor in reseeded or restoring said area within one year from the completion of construction.

Relinquishment of Prior Rights

Upon completion of the New Driveway Segment, Grantee shall automatically and without further action relinquish and abandon any other rights to utilize the Grantors' property, including but not limited to the portion of Guter Lane to the westerly side of the New Driveway Segment, and shall look solely to this Easement Deed for access to the Paul Lots. Grantee's relinquishment and abandonment of such historical access rights includes any rights previously held in favor of the Grantee's other property. Notwithstanding the foregoing agreement that such rights shall be abandoned, relinquished, and extinguished automatically upon completion of construction of the New Driveway Segment, Grantee agrees to execute and deliver, in proper form for recording, at any time in the future, any other and further instruments as may be reasonably requested by Grantor to affect such purposes.

Maintenance of New Driveway Segment

Maintenance, repairs, replacements, and improvements to the New Driveway Segment shall be the sole responsibility and expense of the Grantee. The Grantee shall keep the New Driveway Segment in good maintenance, order, and repair, free of debris, and in a neat, clean and safe condition. Such maintenance and repair responsibilities will include the proper surfacing and re-surfacing as reasonably necessary from time to time, landscaping as appropriate, removal of snow and ice, and the like, all as reasonably determined and directed by the Grantors. Notwithstanding the forgoing, the Grantors shall not require that the Grantee maintain the New Driveway Segment in any better condition or state of repair as Grantor maintains the Guter Lane Driveway Segment. No parking or storage by Grantee (and anyone claiming through Grantee) of any vehicle, material, or item of any kind shall be permitted on any portion of the Easement granted herein.

Maintenance of Guter Lane Driveway Segment

The costs for maintenance, repairs, replacements, and improvements of the Guter Lane Driveway Segment shall be shared equally by the parties. All decisions and actions regarding the maintenance, improvement, repair, and snow and debris removal related to the Guter Lane Driveway Segment shall be solely made and performed by the Grantors or their designated vendors, and the Grantee agrees to promptly pay its half of all such expenses within thirty (30) days of request therefor.

Dispute Resolution

The parties anticipate that issues will arise in connection with the Easement and work performed under this Easement Deed and agree that they will discuss such issues and work to resolve them without delay. If such discussions do not resolve the disputes or differences, then either party may seek enforcement of the terms of this Easement Deed in a court of competent jurisdiction. The prevailing party shall be entitled to reimbursement of its costs and expenses, including attorneys' fees, by the other party.

Indemnification

Grantee hereby agrees, and affirms by its entrance onto the Gray Lot, to forever indemnify and hold Grantor harmless from each and every claim, cost or expense, including reasonable attorneys' fees, by any party, resulting directly or indirectly from the Grantee's use of the Easement granted herein.

Simultaneously Granted with Boat Ramp Access Easement Deed

This Easement Deed shall be recorded simultaneously with the Boat Ramp Access Easement Deed entered into by the parties on this same day set forth below.

Trustee Certificate

The undersigned trustees, as trustees of the Bristol Hill Trust #7, a trust created u/d/t dated March 24, 2018, have full and absolute power in said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the trustees have said power or are properly exercising said power or to see to the application of any trust asset paid to the trustees for a conveyance thereof. The trust agreement has not been revoked, modified or amended in any manner which would cause the representations contained in this Trustee Certificate to be incorrect.

Executed as of this 29 day of May, 2018.

Kenneth F. Gray, Jr.
Kenneth F. Gray, Jr., trustee of the
Bristol Hill Trust #7

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsboro

The foregoing instrument was subscribed, sworn to and acknowledged before me this 29 day of May, 2018 by Kenneth F. Gray, Jr., Trustee of the Bristol Hill Trust #7, in said capacity on behalf of the trust.

Kaitlyn Branon
Justice of the Peace/Notary Public
Print Name: Kaitlyn Branon
My Commission Expires: 11/16/2021
[seal]

KAITLYN L BRANON
NOTARY PUBLIC
New Hampshire
My Commission Expires Nov. 16, 2021



Executed as of this 31 day of May, 2018.

Steven M. Burke
Steven M. Burke, Trustee of the
Bristol Hill Trust #7

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

31 The foregoing instrument was subscribed, sworn to and acknowledged before me this
day of May, 2018 by Steven M. Burke, Trustee of the Bristol Hill Trust #7, in
said capacity on behalf of the trust.

Julie A. McLean
Justice of the Peace/Notary Public
Print Name:
My Commission Expires: JULIE A. McLEAN, Notary Public
[seal] My Commission Expires March 9, 2021

Executed as of this ___ day of _____, 2018.

David S. Paul, Trustee of
The Paul Family Irrevocable Trust

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was subscribed, sworn to and acknowledged before me this
___ day of _____, 2018 by David S. Paul, Trustee of The Paul Family Irrevocable
Trust, in said capacity on behalf of the trust.

Justice of the Peace/Notary Public
Print Name:
My Commission Expires:
[seal]

Executed as of this _____ day of _____, 2018.

Steven M. Burke, Trustee of the
Bristol Hill Trust #7

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was subscribed, sworn to and acknowledged before me this
____ day of _____, 2018 by Steven M. Burke, Trustee of the Bristol Hill Trust #7, in
said capacity on behalf of the trust.

Justice of the Peace/Notary Public
Print Name:
My Commission Expires:
[seal]

Executed as of this 5 day of JUNE, 2018.

David S. Paul

David S. Paul, Trustee of
The Paul Family Irrevocable Trust

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

The foregoing instrument was subscribed, sworn to and acknowledged before me this
5 day of JUNE, 2018 by David S. Paul, Trustee of The Paul Family Irrevocable
Trust, in said capacity on behalf of the trust.

Virginia M. Longland

Justice of the Peace/Notary Public
Print Name: VIRGINIA LONGLAND
My Commission Expires: 06/07/2022
[seal]



SCHEDULE A
"PART A – GUTER LANE DRIVEWAY SEGMENT"

Description of a Proposed 15 foot wide Driveway and Access Easement (Part 'A')
within Lot 6A2-148

Land of

Bristol Hill Trust #7

To benefit

The Paul Family Irrevocable Trust, Lot 6A2-156-9 and 6A2-159, Baboosic Lake Road
Merrimack, New Hampshire

A certain parcel of land in Merrimack, Hillsborough County, New Hampshire and more particularly described as follows:

Beginning at a point near the northeast corner of said Bristol Hill Trust #7 land on the westerly sideline of Baboosic Lake Road at the centerline of an existing gravel drive known as Guter Lane; thence by said centerline into said Bristol Hill Trust land

1. Westerly, Southwesterly & Westerly about 710 feet to a point at the southwesterly corner of another Proposed Driveway & Access Easement, known as Part 'B'
2. Said 15 foot wide Proposed Driveway and Access Easement (Part 'A') is to be 7½ feet either side of the centerline of the existing gravel driveway known as Guter Lane.

See a Plan entitled, "Proposed Access Easements – Tax Map 6A2 Lot 148 – Land of - Bristol Hill Trust #7 – and – Tax Map 6A2 Lots 156-9 & 159 - Land of: – The Paul Family Irrevocable Trust – off of Baboosic Lake Road - Merrimack, New Hampshire", scale: 1"=50', dated November 13, 2017, last revised May 25, 2018 by Meridian Land Services, Inc., recorded at the Hillsborough County Registry of Deeds as Plan number 39771.

SCHEDULE B
"PART B – NEW DRIVEWAY SEGMENT"

Description of a Proposed Driveway and Access Easement (Part 'B')
within Lot 6A2-148
Land of
Bristol Hill Trust #7
To benefit
The Paul Family Irrevocable Trust, Lot 6A2-156-9 and 6A2-159, Baboosic Lake Road
Merrimack, New Hampshire

A certain parcel of land in Merrimack, Hillsborough County, New Hampshire containing about 8,802 square feet and more particularly described as follows:

Beginning at the northeasterly corner of the within described easement at a point about 677' westerly from the westerly sideline of Baboosic Lake Road at land of said Paul Family Irrevocable Trust, known as Lot 6A2-156-9; thence into said Bristol Hill Trust #7 land, known as Lot 6A2-148

1. South 19°42'10" East – 53.34 feet to a point, and
2. South 32°05'59" East – 55.66 feet to a point, and
3. South 21°07'42" East – 30.02 feet to a point; thence into said Bristol Hill Trust #7 land and partly by Part 'A' proposed access Easement
4. South 54°39'57" East - 62.49 feet to a point, and
5. North 86°00'57" West – 98.47 feet to a point; thence into said Bristol Hill Trust #7 land
6. North 19°46'18" West – 170.33 feet to a point at said other land of said Paul Family Irrevocable Trust known as Lot 6A2-156-9; thence by said Lot 6A2-156-9
7. South 83°05'56" East – 46.32 feet to the point of beginning.

See a Plan entitled, "Proposed Access Easements – Tax Map 6A2 Lot 148 – Land of: - Bristol Hill Trust #7 – and – Tax Map 6A2 Lots 156-9 & 159 - Land of: – The Paul Family Irrevocable Trust – off of Baboosic Lake Road - Merrimack, New Hampshire", scale: 1"=50', dated November 13, 2017, last revised May 25, 2018, by Meridian Land Services, Inc., recorded at the Hillsborough County Registry of Deeds as Plan number 39771.

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Lorie & Rodd Ruland – 312 Baboosic Lake Road – Guter Lane





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

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August 26, 2021

Lorie F. Ruland Revocable Trust
Lori F. and Rodd R. Ruland Trustees
11 Hubbard Road
Amherst, NH 03031

Re: **Patricia M. Panciocco, Esquire (petitioner) and Lori F. and Rodd R. Ruland Trustees of the Lorie F. Ruland Revocable Trust** – Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a house 13.6 feet from the side property line whereas 15 feet is required. The parcel is located at 312 Baboosic Lake Road in the R-2 (Residential) District. Tax Map 6A-2, Lot 159. Case #ZBA 2021-33.

Dear Mr. Ruland:

At the Zoning Board of Adjustment hearing held on August 25, 2021, the Board voted 5-0-0 to grant a Variance under Section 3.05 of the Zoning Ordinance to permit the construction of a house 13.6 feet from the side property line whereas 15 feet is required, subject to the following condition:

1. The petitioner shall obtain approval for issuance of a building permit on a lot without frontage on a Class V or better roadway, per the requirements of RSA 674:41 (recommendation from the Planning Board, permit approval from the Town Council).

For specific details relative to this order or decision, please consult the public minutes of the meeting available at the Community Development Department or online. Per Section 8.04 of the Zoning Ordinance, if this approval is not acted upon within a period of two (2) years from the date of the approval, or as further extended by the Board for good cause, then such approval shall be null and void, provided that no such approval shall expire within 6 months after resolution of a planning application filed in reliance upon the approval granted by the Board. Please refer to Section 8.04 for details regarding actions sufficient to vest or protect your approval (www.merrimacknh.gov).

Please be advised that any person aggrieved by any order or decision of the Zoning Board of Adjustment may apply for a rehearing before the Board within thirty (30) days in accordance with RSA 677:2, or to the NH Housing Appeals Board in accordance with RSA 679:6. No appeal may be taken to the superior court or the NH Housing Appeals Board of any order or decision of the Board unless an application for rehearing is made first, setting forth fully every ground upon which the decision or order complained of is unlawful or unreasonable. If you have any questions, please feel free to call me at (603) 424-3531.

Sincerely,

Casey Wolfe
Assistant Planner

Ec: Patricia M. Panciocco, Esquire, petitioner
Tom Carr, Meridian Land Services
Paul Micali, Town Manager
Becky Thompson, General Government Executive Secretary
Building Department Staff
John Manuele, Fire Marshal
Dawn Tuomala, PE, Deputy Director of Public Works/Town Engineer
Cc: Zoning Board File

1 At the petitioner's request, the Board voted 5-0-0 to continue the public hearing to
2 September 29, 2021, on a motion made by Patrick Dwyer and seconded by Rod Buckley.
3

4 **8. Patricia M. Panciocco, Esquire (petitioner) and Lori F. and Rodd R. Ruland Trustees of the**
5 **Lorie F. Ruland Revocable Trust** – Variance under Section 3.05 of the Zoning Ordinance to
6 permit the construction of a house 13.6 feet from the side property line whereas 15 feet is
7 required. The parcel is located at 312 Baboosic Lake Road in the R-2 (Residential) District. Tax
8 Map 6A-2, Lot 159. Case #ZBA 2021-33.
9

10 Petitioner was represented by Attorney Patricia M. Panciocco, Esq. & Rodd R. Ruland (owner).
11 Ms. Panciocco began by asking the Board if they received the abutter letters and Ms. Wolfe
12 confirmed that they were received and included in the Board's packets. Ms. Panciocco explained
13 that the parcel in question was recently part of a voluntarily lot merger and is a non-conforming
14 lot within the R2 zone. She went on to explain that the lot has no legal frontage but is accessed
15 through a private road off of Baboosic Lake Road. The existing house was built in the sixties and
16 has gone through many renovations. The current owners would like to demolish the house and
17 replace it in the same footprint, which does not comply with the current setbacks. The owners
18 are hoping to minimize the disturbance of the site since it is in the Shoreland Protection area and
19 believe that keeping the same footprint will help. Ms. Panicocco then read through the statutory
20 criteria (outlined below).
21

22 Mrs. Christensen asked if Site plan approval is necessary if the variance is granted. Ms. Wolfe
23 responded that site plan approval is not needed but since this lot has no frontage on a class V
24 road or better, they do need a recommendation from the Planning Board and permit approval
25 from Town Council in accordance with RSA 674:41.
26

27 There was no public comment.
28

29 **The Board voted 5-0-0 to grant the variance, subject to obtaining approval for issuance of**
30 **a building permit on a lot without frontage on a Class V or better roadway, per the**
31 **requirements of RSA 674:41 (recommendation from the Planning Board, permit approval**
32 **from the Town Council), on a motion made by Rod Buckley and seconded by Patrick**
33 **Dwyer.**
34

35 Case #2021-33 Findings of Fact

36 1. Granting the variance would not be contrary to the public interest because:

37
38 The Owners recently merged Lots 6A-2, Lots 156 and 159 to bring their lot size into conformity
39 with the Ordinance. They now wish to remove and rebuild the existing single family home located
40 on their lot but wish to maintain the existing 13.6 southerly side setback. Granting this request is
41 not contrary to the public interest because doing so will allow the dwelling replacement without
42 unnecessary disturbance to mature trees located on the site and the existing topography in
43 addition to being consistent with RSA 674:19.
44

45 2. The spirit of the ordinance is observed because:

46
47 Granting this variance request to maintain the status quo is not contrary to the spirit of the
48 ordinance because the Owners have made their best efforts to bring the lot size into conformity
49 with the Ordinance and wish to avoid the disturbance of mature trees and the existing
50 topography by maintaining the existing setback which is consistent with RSA 674:19 and not be
51 more nonconforming.
52

53 3. Granting the variance would do substantial justice because: 54