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Town of Durham
MAR 24 2014
Planning, Assessing
and Zoning

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15
Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

Appeal for Applicant

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: JOHN H FARACU, MANAGER
COUNTY LINE HOLDINGS, LLC

Address: 8 LITTLE JOHN RD. DURHAM Phone # 603 534 9536

Owner of Property Concerned: SAME
(If same as above, write "Same")

Address: _____
(If same as above, write "Same")

Location of Property: EDGEWOOD AND EMERSON ROAD
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines
and other pertinent descriptive information) MAP 1, LOT 15-0

TOTAL 14.01 ACRES FRONTAGE ON EDGEWOOD EMERSON
AND U.S. ROUTE 4 - SEE ATTACHED PLAN

**Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section.
This application is not acceptable unless all required statements have been made.
Additional information may be supplied on separate sheets if the space provided is
inadequate.**

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: DETERMINATION BY
MICHAEL BEHRENDT, DPANO.E.P. Number N/A Date 3/14/2014

Article 175 Section 107-D of the Zoning Ordinance in question.

EXEMPTION CRITERIA FOR CONSERVATION
SUBDIVISIONS

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: _____

AND

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

1. No decrease in value of surrounding properties would be suffered;
2. Granting the variance would not be contrary to the public interest;
3. Denial of the variance would result in unnecessary hardship to the owner seeking it;
4. By granting the variance substantial justice would be done;
5. The use must not be contrary to the spirit and intent of the ordinance.

A Variance is requested from Article 175 Section 107-D of the Zoning Ordinance to permit THE SUBDIVISION SHOWN ON ATTACHED

PLAN BY DAVID VINCENT DATED 2/3/2014 TO
BE DEVELOPED AS AN EXEMPT SUBDIVISION
UNDER THE CONSERVATION SUBDIVISION PROVISION.

Please SEE ATTACHED
LETTER

Facts supporting this request:

1. No decrease in value of surrounding properties would be suffered because:

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

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(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:

a. 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:

and

b. the proposed use is a reasonable one because:

Or

3(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

4. By granting the variance substantial justice would be done because:

5. The use will not be contrary to the spirit and intent of the ordinance because:

John H. Farrell, Manager
County Line Holdings, LLC
8 Little John Road
Durham, NH 03824

March 24, 2014

Zoning Board of Adjustment
Town of Durham
15 Newmarket Road
Durham, NH 03824-2898

RE: Proposal for Limited Subdivision of Tax Map 1, Lot 15-0
Appeal of Administrative Decision and
Zoning Variance

Dear Members of the Zoning Board:

I recently met with the Director of Planning and Community Development (the Director) to discuss a plan for a limited development of the 14 acres property which is the subject of this appeal. This limited development plan, which would allow no more than four single family homes on the property, was chosen over more aggressive options which could have included more than twenty dwelling units. The plan is based on the results of wetland and soils analysis conducted in 2012 by Gove Environmental Services, the same as would have been required for a large scale conservation subdivision development of the property.

In order to mitigate the impact of development of the property on the neighborhood, the need for municipal services, and to minimize storm water runoff, establish forested buffer zones along Route 4 and the property's perimeter, as well as to provide other conservation benefits by limiting further development on the property in perpetuity, is our intention to develop the property subject to the following restrictions, all of which are to be made permanent restrictions on the property. These conditions were described in general to the Director during talks regarding the property's development, and they are assumed to be made conditions of any decision in the matter:

- The property shall be limited to four single family house lots (one of which presently exists) by planning board conditions, deed restrictions and/or easements to provide a perpetual limit on future development of the property. No further development of any of the lots shall be permitted.
- Proposed Lots 15-1, 15-2 and 15-3 shall be accessed by a shared driveway from the Class V public right of way portion of Edgewood Road. This shared driveway shall utilize a single crossing of the narrowest portion of the wetland as shown on the attached plan. No further wetland impact shall be allowed for these three lots. With the exception of the driveway and related construction required for access, clearing and building activities on these lots shall be limited to the building

envelope areas shown on the plan, with the remainder being set aside as forested open space in which only selective cutting shall be allowed.

- The remaining portion of the original Lot 15-0 shall have access from Emerson Road as shown on the plan, but such access shall be reduced to forty feet in width to preclude construction of a municipal roadway.
- The remaining portion of Lot 15-0 shall be restricted to further subdivision, and its use shall be limited to a single family residential use. Wetland impact on this portion of the property shall be limited to a single crossing to provide access to uplands in the center of the property. No more than five acres of this property shall be cleared or developed, with the remainder being set aside as forested open space in which only selective cutting shall be allowed.
- Buffer zones shall be established along the perimeter of the property in which no building shall be allowed, except as required for access to the property as described and limited above. The buffer zones shall prohibit removal of trees and vegetation to provide a visual buffer. This zone shall be for a width of 75 feet from the property lines along in all cases, except for the zone between Lots 15-1,2 and 3 and U.S. Route 4, in which case it shall be fifty feet in width.

These conditions meet or exceed the requirements of the Conservation Subdivision sections of the Ordinance.

Grounds for Appeal from Administrative Decision

Section 175-107 D provides that creation of three or fewer lots is exempt from the terms of the Conservation Subdivision. Likewise, creation of any number of lots greater than ten acres is exempt. The spirit is clearly to allow minor subdivisions and large lots to be exempt.

Subsection D. 3. Particularly applies to the proposal outlined above. In this case the subdivision consists of only three lots which meet the other requirements. This section allows that a three lot subdivision may include remaining or additional land and still be exempt from the requirements if any future development of the additional land is made subject to the application of the rules governing Conservation Subdivisions. It specifically allows that such exemption is valid and should be allowed provided "no additional lots will be created that are not part of a conservation subdivision." Since a condition of this limited development is that the remaining land shall not be further subdivided or developed beyond a single family use, no additional development or development is possible in this case, and the condition regarding the additional land is clearly met.

The section further requires that a Long Range Development Plan shall be in place with respect to the remaining land subject to the requirements of Subsection N. of the Ordinance. Subsection N. requires the long range plan when there is potential for future

subdivision or development of the parcel, which is precluded in this case by the conditions of the exempt subdivision described above, rendering the specifics of the section moot in this example.

Moreover, the purpose of the Conservation Subdivision Ordinance as outlined in Article 175-107 A is voluntarily met by the proposed plan and conditions, and the specific requirements for open space, maximum density, buffer zones are exceeded.

In summary, while the language of the exemption sections of the Conservation Subdivision Ordinance could be improved for clarity, the intent is clear. Lots of over ten acres in size are considered large enough to be exempt from the Ordinance; small subdivisions of up to three lots are clearly exempt, and additional land may remain after such a three lot exempt subdivision provided that any further subdivision or development must comply with the requirements of the Ordinance under subsection N. If such additional land is not to be further developed, then this condition does not apply.

We respectfully request that you reverse the Director's decision in light of these facts and the proposed conditions of the proposed development since both the spirit and the letter of the Ordinance have been shown to be met.

Grounds for Variance (Contingent Upon Results of Administrative Appeal)

In the event that the Zoning Board of Adjustment finds in favor of the Director in the above appeal, I request that the following arguments in favor of a variance from the strict application of the terms of 175-107 D. be considered to allow three small lots to be created as shown, and to limit the remaining lot to single family residential use, prohibited from further subdivision without the need to engage in the full Conservation Subdivision process.

The basis of the variance request is that all of the proposed conditions of the subdivision and future use of the property described above shall be imposed, and the variance request shall be considered in that light. Note that relief is being sought only from the complex and time consuming process of Conservation Subdivision, and not for any area or use it prescribes, that all conditions of the Ordinance other than the process are met or exceeded, and that the primary need for the variance results from a lack of clarity in the wording of the ordinance.

No decrease in value of surrounding properties would be suffered as a result of the variance since the requirements for lot density, buffer zones and open space are met or exceeded, the proposal would permanently limit development of the property to less than its density potential under the Ordinance, and the variance request pertains primarily to the subdivision process rather than the potential use of the property. All proposed uses and densities are in compliance with or exceed the requirements of the Ordinance.

Granting the variance would not be contrary to the public interest because the resulting development will provide protection to visual buffers and the environment that exceeds

the minimum standards. The Conservation Subdivision purpose, deemed to be in the public interest, shall be met or exceeded by the proposal. No use that is not expressly permitted will be allowed by the variance. No relief shall be granted to minimum lot sizes or other lot area considerations; all lots meet or exceed minimum area standards by significant margins.

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 the exemption from the process of the Conservation Subdivision Ordinance is justified because all of the conditions of the exemption section and the Ordinance itself are already met by the proposed conditions; and the proposed use is a reasonable one because it meets and/or exceeds all provisions of the section from which exemption is sought. The special conditions of the property are that its owner wishes to undertake a development which is less than that permitted in order to protect the character of the neighborhood, exceed minimum standards for conservation and protect the scenic view as seen from U.S. Route 4 by implementing a limited development and is imposing permanent conditions on the property to ensure that these goals are met.

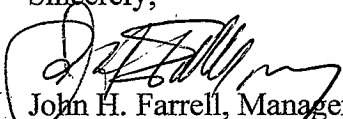
By granting the variance substantial justice would be done because the resulting development will meet and/or exceed the purpose and intent of the ordinance, impose conditions on the property which require that these goals are met in perpetuity, and that the proposal will result in increased protection of neighboring properties and limits of negative impact to water quality and the natural environment when compared to a larger scale development which would otherwise be permitted with application of the Conservation Subdivision provisions. Further, since the purpose and goals of the ordinance are met or exceeded by the proposal, it is just that the lack of clarity in the Ordinance be resolved in order to allow a plan which is otherwise acceptable and advantageous to the community.

The use will not be contrary to the spirit and intent of the ordinance because the proposal meets and/or exceeds all requirements. Even in the case of the primary question of process, the Ordinance clearly contemplates that exemptions should be made for large lots over ten acres and for the creation of three or fewer small lots. This case is further strengthened by the fact that the large lot shall not be further developed.

Therefore, I respectfully request that a variance be granted subject to the proposed conditions outlined above and any other conditions which the Zoning Board should determine to be reasonable.

Thank you in advance for your consideration of these proposals.

Sincerely,


John H. Farrell, Manager
County Line Holdings, LLC