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RETIRED
CHARLES F. TUCKER
NICHOLAS R. AESCHLIMAN

March 20, 2019

Chris Sterndale, Chair
Zoning Board of Adjustment
Town of Durham
8 Newmarket Road
Durham, NH 03824

Re: Variance Application for 21 Winecellar Road
Chris & Dawn Digiammarino

Dear Chair Sterndale and Board Members:

Enclosed please find Application for Variance together with supporting information. Also enclosed is check for filing and abutter notice fees.

The Applicant wishes to reuse the existing agricultural structure, specifically the barn, to host various private gatherings, chiefly, but not exclusively, weddings. Such reuse is allowed but must meet the criteria established in Article XX, Section 175.109.P(2). The applicant meets such criteria except Section 175.109.P(2)(b) which requires that "...activities shall occur completely within the agricultural building...". While almost all activities will take place inside the building, some level of activity will occur outside of the building, such as a wedding ceremony or outdoor grilling which may occur as part of the food service for such gatherings.

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Chris Sterndale, Chair
Zoning Board of Adjustment
March 20, 2019
Page 2

We respectfully request that this matter be placed on the Board's April 9, 2019 agenda. If you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC



Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Chris & Dawn DiGiammarino

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TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT
8 NEWMARKET RD
DURHAM, NH 03824
PHONE: 603/868-8064
www.ci.durham.nh.us

VARIANCE

Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or an approval by the Planning Board.

Name of Applicant Chris & Dawn Digiammarino

Address: 25 Winecellar Road, Durham, NH 03824

Phone # 781-706-0296 Email: chrisd1907@yahoo.com

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

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

Location of Property: 21 Winecellar Road
(Street & Number)

Tax Map & Lot number Map 16, Lot 30

A Variance is requested from Article(s) XX Section(s) 175.109.P(2)(b) of the Zoning Ordinance to permit:

Outdoor activity to support the reuse of an existing agricultural structure.

Introduction

Chris and Dawn DiGiammarino own a parcel of land consisting of approximately 188 acres (identified as Tax Map 16, Lot 30-0 on Exhibit A) located at 21 Winecellar Road, Durham, New Hampshire. The property consists of approximately 180 acres of conservation land and approximately 8 acres of land excluded from conservation land. A barn is located within the land excluded from the conservation land. The barn was previously used in connection with a bison farm under the ownership of the prior owner. See Exhibit A (Plan) and Exhibit B (Durham Building Department documentation regarding construction as a barn).

The DiGiammarinos do not wish to continue to use the property, including the barn, as a bison farm. Instead, they wish to use the barn as a site to host various private gatherings, chiefly, but not exclusively weddings.

The DiGiammarinos do not intend to make changes which will significantly alter the appearance of the exterior, although, at a minimum, an enclosure will be required to be added to house water for sprinklers. As well, interior changes will be minimal and will focus on code requirements such as railings for the stairs.

The property is located in the Rural District and the proposed use, "reuse of existing agricultural building" is an allowed use if it obtains a conditional use permit. In turn, and in addition to the conditional use permit requirements which the DiGiammarinos must meet to satisfy the Planning Board, they must also meet the criteria in Article XX, Section 175.109.P(2), a copy of which is attached as Exhibit C. Among these criteria is the requirement that "...nonresidential activity shall occur completely within the agricultural building and there shall be no outside storage of material, equipment or products." See Article XX, Section 175.109.P(2)(b). The reuse of the barn will not include outdoor storage of materials, equipment or products. However, some level of nonresidential activity will occur outside of the confines of the barn, although the majority of activity will be in the barn. By way of example, if the barn is used for a wedding gathering, the wedding ceremony itself may occur outside the barn, or outdoor grilling may occur as part of the menu for the food to be served inside the barn as part of the reception.

Due to the fact that we do not meet the standard of Article XX, Section 175.109.P(2)(b), we seek variance relief from that

element in order to fully qualify as a conditional use and to enable us to move on to the Planning Board for conditional use review.

FACTS SUPPORTING THE VARIANCE:

1. The variance will not be contrary to the public interest:

This variance criteria is measured by whether the grant of the variance will unduly and to a marked degree, violate the ordinance's basic zoning objectives. In turn, the Board must examine whether granting the variance will alter the essential character of the locality, or whether it will threaten public health, safety or welfare. The variance request is limited solely to whether outdoor activity can occur as part of the nonresidential reuse of the existing barn. Looking at this narrow issue, the basic objective of the zoning ordinance is to allow existing barns and agricultural structures to be reused, but to do so in a way that the nonresidential activity associated with the reuse shall not detract from or upstage the reuse of the building itself or negatively impact nearby properties. Here, the predominant level of activity will occur inside. The barn will be used as a gathering place, and whether it is used for a wedding, a birthday party, an anniversary party, or other occasion, the focus of the event will be gathering everyone inside to socialize, eat, and celebrate whatever the selected occasion might be. Ancillary activity, such as the wedding ceremony itself or the cooking, will be just that, a secondary and ancillary aspect of the activity. Thus, there is no violation of the basic zoning objective. As well, allowing this ancillary degree of outdoor activity, which will support the main activity occurring inside, will not alter the essential character of the locality, nor will it threaten public health safety or welfare because the outdoor activity will occur in the vicinity of the barn, well out of sight of any neighbors, and in the case, for example, of outdoor cooking, it will occur in a manner consistent with any safety precautions required by the Fire Department and the Health Officer. (See Exhibit D, photos of area outside the barn where outdoor activity may occur)

2. The spirit of the ordinance is observed:

Under New Hampshire law, this criteria is virtually identical to the "public interest" criteria previously discussed. In addition, the intent of the ordinance is to enable agricultural structures which may no longer have any active life for an agricultural purpose to be reused in a manner which still enables the owner to make a productive reuse of the building, and which strongly encourages owners to retain the culture and history of barns and other structures by keeping them intact for others to view and/or enjoy. While the requested activity is modest relative to the amount which will occur indoors, it is vital to the overall success of the operation. By granting this variance, the Board will allow the applicant to move forward with a proposal which enable a magnificent piece of architecture to remain intact and to be reused in a productive manner consistent with the spirit of the ordinance.

3. Substantial justice is done:

This test involves a balancing of the interest of the applicants with the interests of the public. If the benefit of granting the variance is outweighed by harm to the public or an individual, then the variance should be denied. Here, granting the variance will provide certainty that the applicant can use space outside the barn for activities necessary to support the inside space of the barn. Granting the variance also allows the applicant to move forward with the next step of the review process which is the conditional use application before the Planning Board. By contrast, the public will suffer no harm from the granting the variance since there will be no visual or other impact to the public from outside activity occurring near the barn.

4. The values of the surrounding properties are not diminished.

Outdoor activity near the barn and which supports the proposed reuse of the barn will not diminish nearby properties. The land area near the barn where the outdoor activity is located is extremely private and well out of viewing distance of surrounding properties. Additionally, the sheer size of the parcel, coupled with the fact that the vast majority is subject to a conservation easement, means that a natural buffer will

exist between any potential impacts of outdoor activity and the surrounding property.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

To prove an unnecessary hardship, an applicant must show the property in question has special circumstances that distinguish it from other properties in the area, that there is no fair and substantial relationship between the purpose of the ordinance and its application to the property in question and finally, that the proposed use is reasonable.

- a. The property does have special circumstances that distinguish it from other properties in the area. The property is very large, a significant portion of it is subject to a conservation easement and thus severely restricted for use. The property contains a barn of approximately 108' x 40' and which is aesthetically and architecturally significant in that it is constructed with hickory and is of post and beam construction. The property is largely surrounded by other properties which are open and/or subject to conservation easements and it is on a dead end road with only one other residence which has no view of the barn or the portion of the property near the barn where the outdoor activity may occur.
- b. Additionally, there is no fair and substantial relationship between the purpose of the ordinance and its application to the property. As described above, the purpose of the ordinance is to allow existing agricultural structures to be productively reused provided that they meet certain criteria and provided that they obtain conditional use approval from the Planning Board. Here, the only criteria not met for conditional use eligibility is the fact that some degree of outdoor activity will be necessitated in order to support the proposed activity to be held inside the reused structure. Given the lack of visibility of the outdoor activity to abutters, given the large size of the property surrounding the barn and the area with outdoor activity and which in turn will dissipate any possible impact from outdoor noise, cooking odors and the like, the strict application of the "no outdoor

activity" portion of the ordinance provides no logical sense as applied here.

- c. Finally, for the reasons set forth above, the proposed use of outdoor activity near the barn is reasonable. The reuse of the interior of the barn for the desired purpose logically requires that there be some element of outdoor activity while it is ancillary to, but necessary for, the optimal reuse of the interior of the barn.

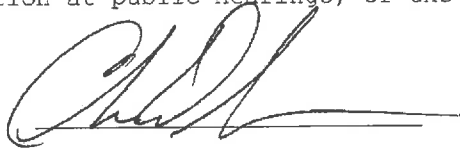
S:\DF-DO\DiGiammarino, Dawn & Chris\variance narrative.docx

LETTER OF AUTHORIZATION

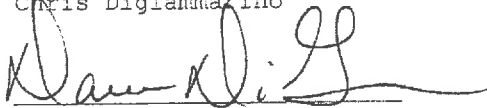
We, Chris & Dawn Digiammarino, owners of property depicted on Tax Map 16, Lots 30 and 30-1, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the Town of Durham and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated:

3/19/19



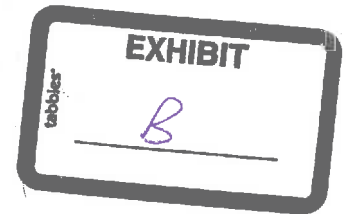
Chris Digiammarino



Dawn Digiammarino



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FAX 603/868-8033
www.ci.durham.nh.us



Certificate of Occupancy

6/9/2005

Barn
Address: 21 Winecellar Rd.
Durham, NH 03824

Permit #: BP2002-88
Map & Lot: 16 30-0

Owner:

Winecellar Farm Inc.
Attn: Jennifer & Craig Reif Winecellar
Durham, NH 03824

Issued: 6/3/2005

By: Thomas Johnson

Signature: 

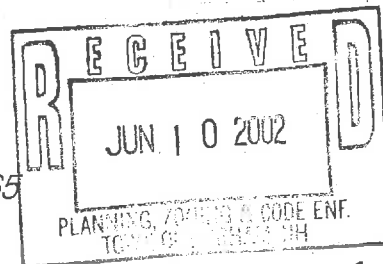
Neither the review of any applications or plans by officials of the Town of Durham, nor any subsequent inspection of the premises, should be relied upon as an assurance of conformity to legal requirements. The applicant shall remain fully responsible for complying with all applicable United States, New Hampshire or Durham laws, ordinances, regulations or conditions.



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Fee \$998.88 pd. 6/10

Plans ☒ Check # 243

Drive Permit _____

APPROVED

6/11/02
MANHATTAN 15' MINIMUM DISTANCE FROM OR WETLANDS.
15' MINIMUM DISTANCE FROM NEWMARKET BROOK

BUILDING PERMIT APPLICATION

Permit Number 02-88

PROJECT LOCATION

Winecellar Road Zoning Dist. L
(Street No. & Name)

Map Number 16 Lot Number 30-00 Lot Dimensions 16.8 acres

OWNER IDENTIFICATION

Owner Winecellar Farm, Inc. Winecellar Rd. 868-1406
(Name) ATTN: JENNIFER (Address) Durham (Phone #)
RIE & CATH

Lessee N/A
(Name) (Address) (Phone #)

Agent
Only N/A
(Name) (Address) (Phone #)

Contractor J. Mason Construction 77 NORTH ROAD, FRANKLIN, NH
(Name) (Address) (Phone #) 03235
(603) 934-2738

Architect or
Engineer N/A
(Name) (Address) (Phone #)





Table 4-1. Requirements for Optional Porkchop Subdivisions

	Minimum area (square feet)	Minimum frontage area (feet)
Porkchop subdivision lots		
Each lot	80,000	50
Average, all lots	120,000	125*

*NOTE: The Planning Board is empowered to reduce the average frontage to not less than one hundred (100) feet in the case of a porkchop subdivision of a nonconforming lot into not more than three (3) lots, provided that the requirement for minimum area is met.

P. ***Reuse of an Existing Agricultural Building.*** Any reuse of an agricultural building for a use other than an agricultural use shall conform to the following standards:

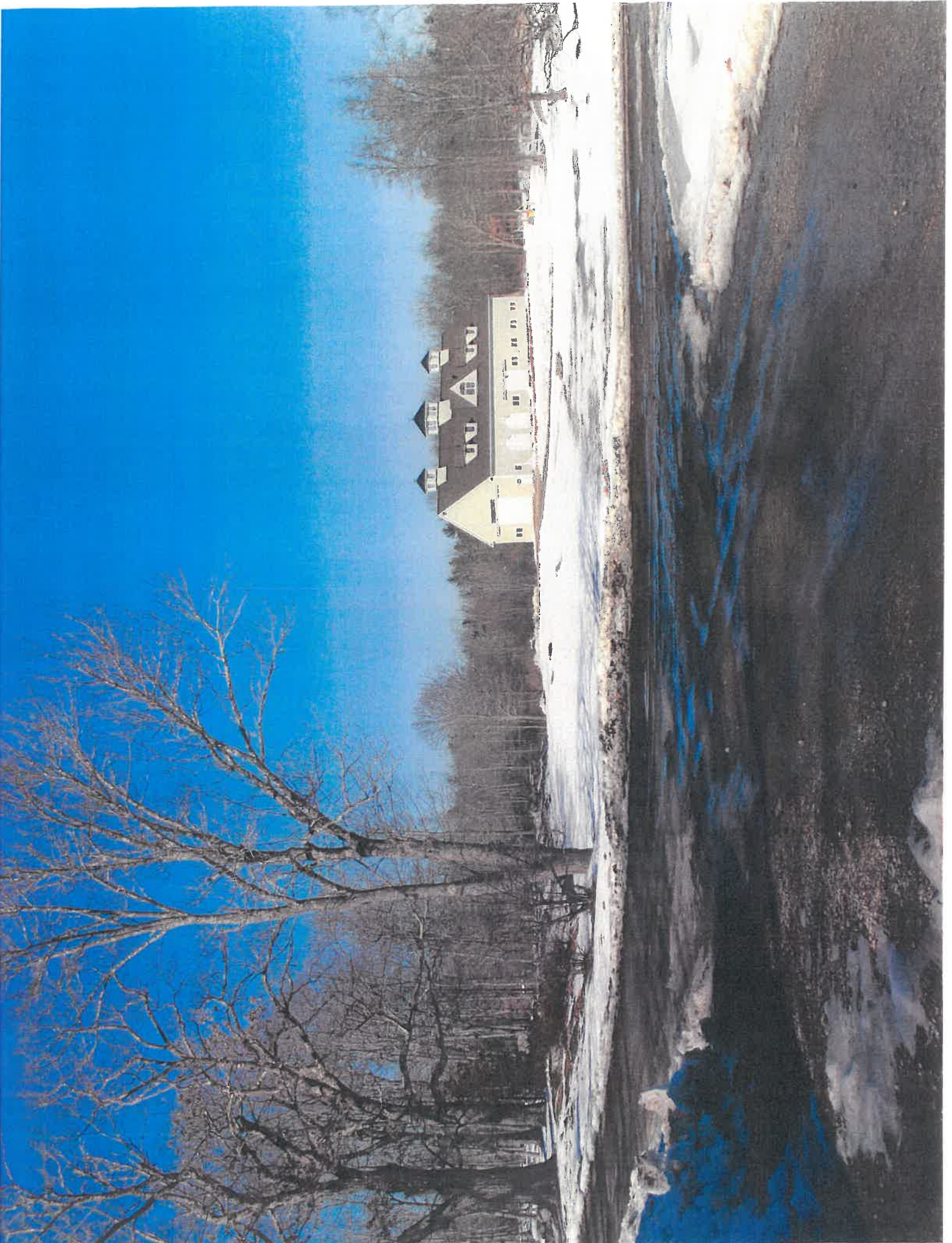
1. Any residential reuse shall conform to the use and dimensional requirements for residential uses for the zone in which it is located.
2. Any nonresidential reuse shall conform to the following standards:
 - a. There shall be no retail sale of goods not otherwise allowed in the zone.
 - b. The nonresidential activity shall occur completely within the agricultural building and there shall be no outside storage of material, equipment, or products.
 - c. The positive aspects of the architectural character of the building shall be maintained.
 - d. Exterior changes to the building shall be limited to minor changes or minor additions needed to provide access or comply with code requirements or which the Planning Board determines will enhance the building's appearance and/or function without adversely impacting its architectural character.

Q. ***Reuse of an Older Single-Family Home for a Low Impact Nonresidential Use.*** Any reuse of an older single-family home or residence shall conform to the following standards:

1. The nonresidential activity shall occur completely within the building and there shall be no outside storage of material, equipment, or products. The nonresidential activity may occupy all of the building or a portion of the building together with a single-family residential use.
2. The architectural character of the building shall be maintained.
3. Exterior changes to the building shall be limited to minor changes or minor additions needed to provide access or comply with code requirements or which the Planning Board determines will enhance the building's appearance and/or function without adversely impacting its architectural character.









**ABUTTERS LIST
FOR
CHRIS & DAWN DIGIAMMARINO
WINECELLAR ROAD
MAP 16, LOTS 30
March 20, 2019**

OWNER OF RECORD/APPLICANT:

TAX MAP 16/LOT 30
Chris & Dawn Digiammarino
25 Winecellar Road
Durham, NH 03824

ABUTTERS:

16/30-2, 16/30-4, 16/30-3, 18/23
Chris & Dawn Digiammarino
25 Winecellar Road
Durham, NH 03824

15/28
Carol Harriman
48 Fifth Street
Dover, NH 03820

16/30-5
Brian & Christine Callahan
10 Winecellar Road
Durham, NH 03824

15/4-39
Michael & Kelly Skubisz
1 Sandy Brook Drive
Durham, NH 03824

16/29-1
John Cowan, Trustee
Stark Revocable Trust
66 Longmarsh Road
Durham, NH 03824

16/29-2
Douglas & Kathleen Morris
74 Longmarsh Road
Durham, NH 03824

16/29-4
Peter & Sarah Cathey
86 Longmarsh Road
Durham, NH 03824

16/29-5
90 Longmarsh, LLC
25 Winecellar Road
Durham, NH 03824

16/28, 19-9, 18-28, 18-22 & 18/20-3
NH Fish & Game
11 Hazen Drive
Concord, NH 03301

16/26-2 & 16/31
Society for Protection of NH Forests
54 Portsmouth Street
Concord, NH 03301

18/27
Town of Durham
8 Newmarket Road
Durham, NH 03824

18/26 & 18-24
Thomas & Lynn Christie
12 Jenkins Court
Durham, NH 03824

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