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SENIOR COUNSEL  
MICHAEL J. DONAHUE

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Town of Durham

APR 24 2019

Planning, Assessing  
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April 24, 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.

As was stated in the variance application request of March 20, 2019, the Applicant seeks to obtain conditional use approval from the Planning Board to allow an existing barn, which is no longer used for any farm purpose, to be reused. In order to be able to move forward to the Planning Board, the Applicant also needs relief from the portion of Article XX of the ordinance which requires that the barn be constructed prior to 1934.

We respectfully request that this matter be placed on the Board's May 14, 2019 agenda along with the variance request of March 20, 2019 and we recommend that, as part of its proceedings, that the Board conduct a site walk of the property.

DONAHUE, TUCKER & CIANDELLA, PLLC  
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833-4924  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

Chris Sterndale, Chair  
Zoning Board of Adjustment  
April 24, 2019  
Page 2

If you have any questions do not hesitate to contact me.

Very truly yours,  
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in cursive script, reading "Sharon Cuddy Somers".

Sharon Cuddy Somers  
SCS/sac  
Enclosures

cc: Chris & Dawn DiGiammarino

S:\DF-DO\DiGiammarino, Dawn & Chris\ZBA\Admin Appeal & Further Variance\2019 04 24 zba  
letter.docx



**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 \*\* of the Zoning Ordinance to permit:

Reuse of an existing agricultural structure where the structure is built after 1934.

\*\*and Article II, Section 175-7 wherein relief is required from the definition of existing agricultural building

**Variance for "Existing" Agricultural Building**  
Variance from Article XX, Section 175-109(P) and  
Article II, Section 175-7,  
Definition of Existing Agricultural Building

**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 Plan and Durham Building Department documentation regarding construction as a barn which were attached as Exhibits A and B to the March 20, 2019 variance application.

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, a copy of which is attached as Exhibit C. Among these criteria is the requirement determined by the Zoning Administrator that the agricultural structure be in existence in 1934, the year the Zoning Ordinance was adopted. The building was permitted in 2003 and, therefore, does not meet the age criteria of the ordinance as determined by the Zoning Administrator.

Due to the fact that we do not meet the standard of Article XX, Section 175.109.P and Article II, Section 175-7, 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 need for this variance stems from the fact that an administrative decision was made that the term "existing" agricultural structure means that the structure had to be in existence in 1934 when the zoning ordinance itself was first adopted. If the barn was not in existence at that time, then the Zoning Administrator indicates that the barn is not eligible to proceed under the provisions of Article XX and obtain a Conditional Use Permit. Since the barn in question was not in existence in 1934, the Applicant must seek variance relief for this criteria within Article XX, Section 175-109(P).

To determine the basic objective of this provision of the ordinance, it is helpful to examine the history and context of the relevant ordinance. In 2004, Durham adopted a substantially reworked zoning ordinance to be in conformance with the 2000 Master Plan. It is our understanding that, with the exception of periodic amendments on discrete subjects, that the 2004 rewrite was likely the most recent statement of zoning policy in Durham.

For purposes of the 21 Winecellar Road application, there were several provisions which were amended in 2004. These amendments are as follows:

- Article XVII, Rural District purpose was amended to indicate that the purpose is "...to preserve the rural character of the areas of Durham that have historically been rural...and all development will be carried out with the objective of preserving the natural and scenic environment of the district.

- Conditional use approvals were authorized in the rural district including those pertaining to the reuse of existing agricultural structures.
- The definition of farm buildings, existing was changed to strike the words "for purposes of this chapter, Includes" and added the words "any building or structure."

A review of the Planning Board and Town Council minutes on file from July 2003, when the first Planning Board public hearing occurred for the zoning rewrite, up to May 10, 2004 when the Town Council voted to approve the 2004 zoning rewrite, shows that there is no discussion about the need for agricultural buildings to be in existence in 1934 in order to avail themselves of the ability to reuse a barn or agricultural structure. By contrast, there is significant discussion about the conditional use process and the pros and cons of doing same as compared with variances and there is significant discussion about the desire to retain a rural feel in the rural district, while not allowing some agricultural uses, such as roadside farm stands to become obtrusive and cause issues such as traffic congestion.

Assuming, for the sake of argument, that an Applicant's eligibility for Article XX, Section 175-109(P) is intended to be based on barns of a certain age, then it is reasonable to assume that the intent of encouraging reuse of agricultural structures is based on a desire to save examples of structures with aesthetic and/or architectural value together with providing a means to create a second life for a building which might otherwise be demolished.

This barn, while permitted in 2003, is historically compatible with a barn which could have been constructed a century before in this locality. Of particular note are the aesthetic similarities between this barn and the barn constructed at the University of New Hampshire in Durham, New Hampshire in 1893 and 1895. See Exhibit A, photos of barns existing in Durham prior to 1934, excerpts from Images of America, Durham, A Century of Photographs, William E. Ross and Thomas E. House, 1996. See also Exhibit B, excerpts from Field Guide to New England Barns and Farm Buildings, Thomas Durant Visser, 1997, depicting barns similar to that of the Applicant's. See also photos of subject barn which were attached as Exhibit D to application for variance from Article XX, Section 175-109.P(2)(b) filed on March 20, 2019. As well, this barn is constructed in a post and beam style with hickory, and thus contains construction materials and styles which are arguably similar to those found pre 1934 rather



than in barns of more recent vintage. These facts taken together indicate that the barn at 21 Winecellar Road should be viewed as functionally similar to one that which would have been constructed prior to 1934.

Keeping in mind the narrow issue of this variance, granting relief will not change the essential character of the locality which includes abutting properties consisting of large tracts of conservation land.

Finally, there will be no threat to public health safety or welfare from the reuse of a barn that was not built prior to 1934. As indicated in the companion variance request, the barn is out of sight of the only other property owner on Winecellar Road and is completely out of sight of other properties along Longmarsh Road.

## **2. The spirit and intent 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. In this instance, the barn looks and feels like a barn constructed many years ago, and in the absence of legislative history which mandates a contrary result, it is reasonable for the Board to find that the facts related to this barn justify treatment as if it were constructed prior to 1934. 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 allow the applicant to proceed with a conditional use permit application before the Planning Board.

By contrast, neither the public nor any individual will suffer harm from the granting the variance since there will be no visual or other impact to the public from reuse of this specific barn simply because it was constructed after 1934.

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

The reuse of this barn which was not constructed prior to 1934 will not, in and of itself, diminish values of surrounding properties. If anything, keeping an aesthetically pleasing barn intact will benefit the value of neighboring properties. Moreover, as it noted in the report of Peter Stanhope, the proposed use of the barn as a wedding, or similar, venue, assuming that it receives conditional approval from the Planning Board, will not diminish property values.

**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. As discussed above, the barn is, from an aesthetic standpoint, similar to ones which were constructed much earlier in time. Also, the property is very large, a significant portion of it is subject to a conservation easement and thus severely restricted for use. 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. There is no fair and substantial relationship between the purpose of the ordinance and its application to the property. As described above, the exact purpose of requiring that only barns which existed prior to 1934 be eligible for the reuse provisions of Article XX is not apparent from the official legislative history contained in



the Planning Board and Town Council minutes of the 2004 zoning rewrite. With that said, a reasonable assumption of the purpose is that the Town wants to prevent architecturally or historically valuable agricultural structures from being demolished due to disrepair and due to the lack of need for continued use in an agricultural context. Here, but for the fact that the barn in question was permitted in 2003 rather than 50 or 100 years earlier it would definitely fall into the category of structures worth preserving due to the quality of the work and due to its aesthetic value compared to perhaps more modern agricultural structures. Given the lack of visibility of the barn to abutters and given the overall size of the property, a strict application of the ordinance prohibiting eligibility for the conditional use application process provides no logical sense as applied to the facts of this case.

- c. Finally, for the reasons set forth above, the proposed relief is reasonable. The Applicant merely seeks relief from the application of a strict rule barring eligibility for further relief based upon the age of the building. Given the apparent intent of the ordinance, given the similarity which this barn appears to have relative to pre-1934 barns, and given the scrutiny which the proposal will undergo before the Planning Board with the conditional use application, the Applicant's request is reasonable.



**TOWN OF DURHAM**  
8 NEWMARKET RD  
DURHAM, NH 03824-2898

**AUDREY CLINE**  
Zoning Administrator  
Code Enforcement Officer  
Health Officer

TEL: (603) 868-8064  
acline@ci.durham.nh.us

### Supplemental Decision or Order of the Building Inspector/Code Enforcement Officer

*175-12. Administrative Appeals.*

*Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in his/her interpretation of the Ordinance, it shall modify or reverse the decision accordingly.*

*175.19. Powers and Duties*

*B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.*

**Applicant:** Chris & Dawn Digiammarino, 25 Winecellar Road, Durham NH 03824

**Location:** 21 Winecellar Road; Map & Lot 16/30

**Date of supplemental order:** April 12, 2019

**Deadline for application for appeal of supplemental order:** May 10, 2019

**Decision or Order of the Building Inspector/Code Enforcement Officer:**

Your application letter submitted March 20, 2019, is **DENIED** due to noncompliance with the Durham Zoning Ordinance below:

*Article II, 175-7. Definitions.*

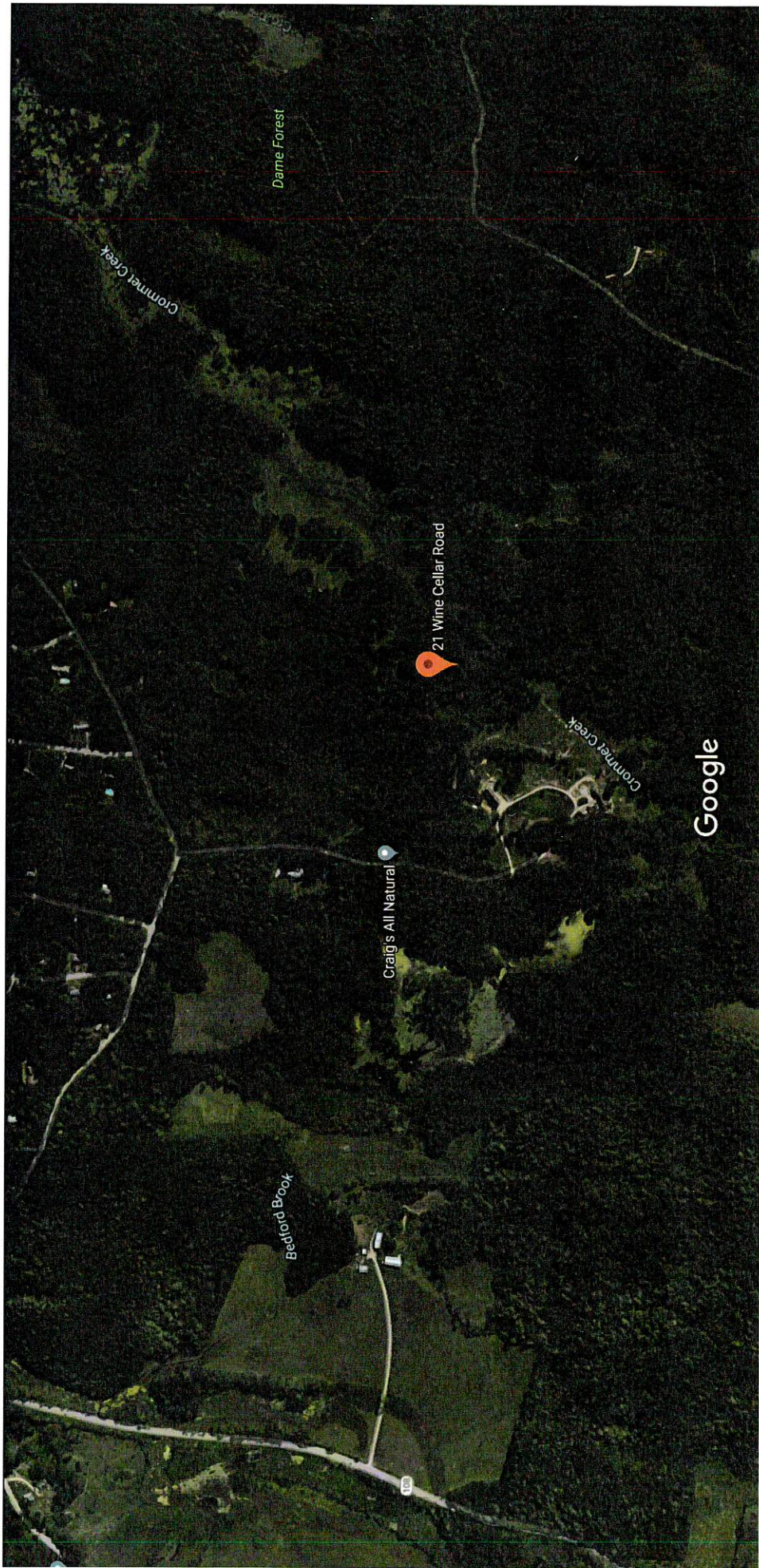
*AGRICULTURAL BUILDING, EXISTING – Any building or structure constructed prior to the adoption of this chapter and designed, used or adapted for agricultural purposes. See Article XX*

The term “chapter” refers to **Chapter 175 Zoning**, and hence agricultural buildings meeting the definition of Agricultural Building, Existing, shall have been in existence prior to the adoption of Durham’s Zoning Ordinance.

By Durham Building Inspector/Code Enforcement Officer:

  
Audrey Cline CEO





Imagery ©2019 Google, Map data ©2019 Google 500 ft

**ABUTTERS LIST  
FOR  
CHRIS & DAWN DIGIAMMARINO  
WINECELLAR ROAD  
MAP 16, LOTS 30  
April 22, 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

16/4-39  
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

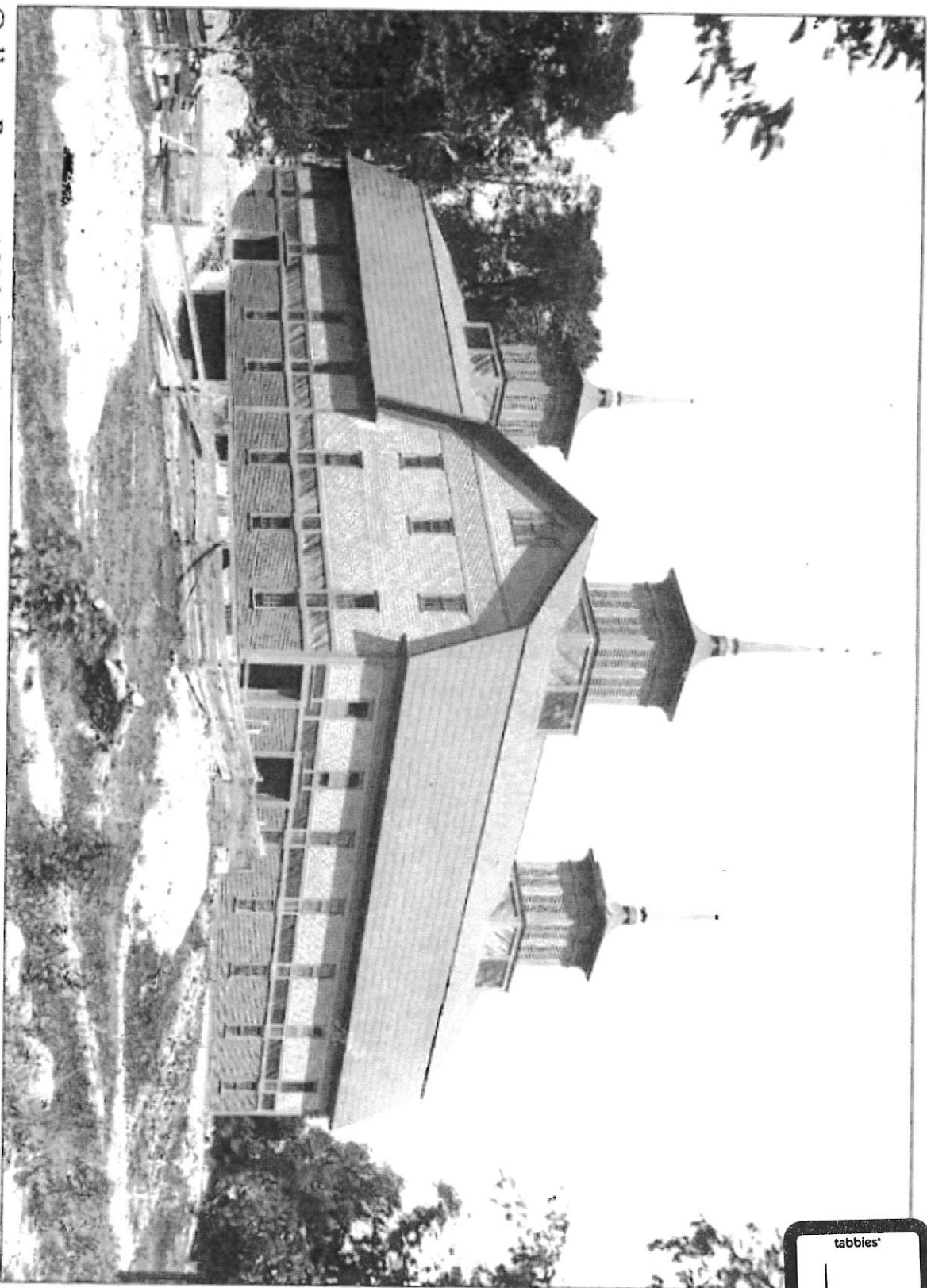
16/26-2 & 16/31  
Society for Protection of NH Forests  
54 Portsmouth Street  
Concord, NH 03301

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

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

**ATTORNEYS**

Sharon Cuddy Somers, Esq.  
Donahue, Tucker & Ciandella  
PO Box 630  
Exeter, NH 03833



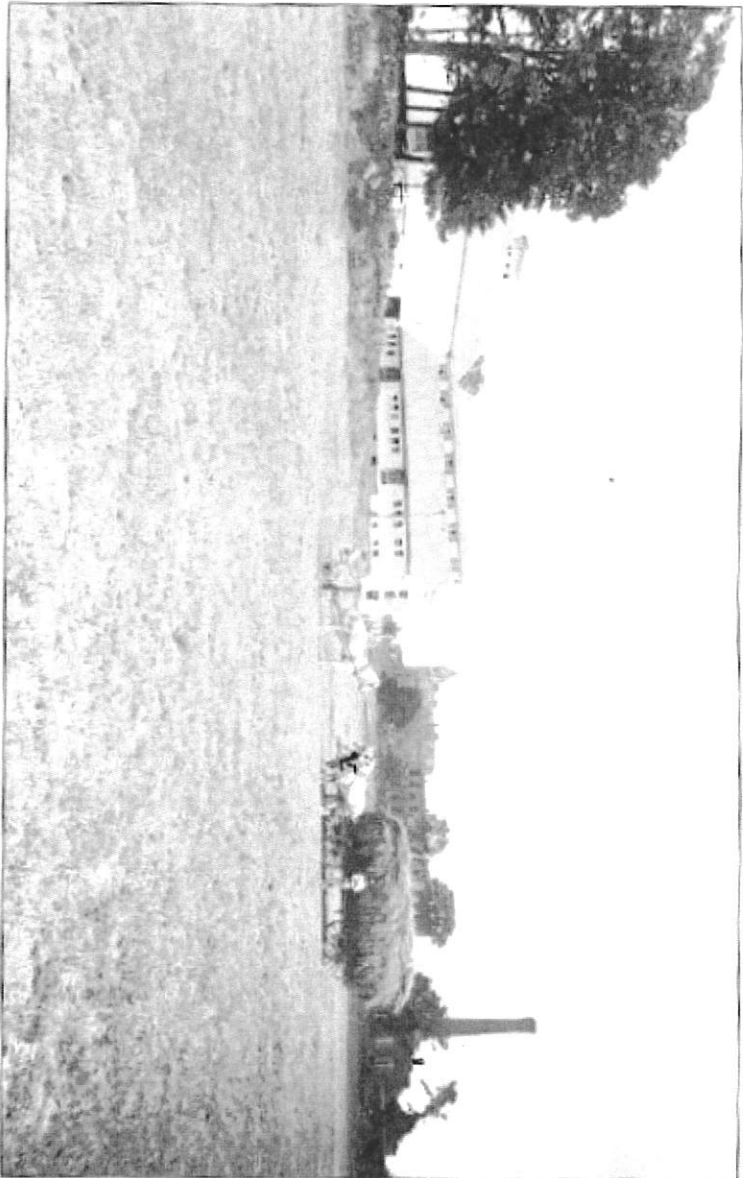
College Barn, c. 1893. The first commencement exercises on the Durham campus were held in this building. Enthusiastic about the move to Durham, the Class of 1892 held their commencement in the partially completed College Barn, even though they had never taken classes on the new campus.

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EXHIBIT

A





Haying behind the new College Barn, c. 1895. Thompson Hall can be seen in the background.

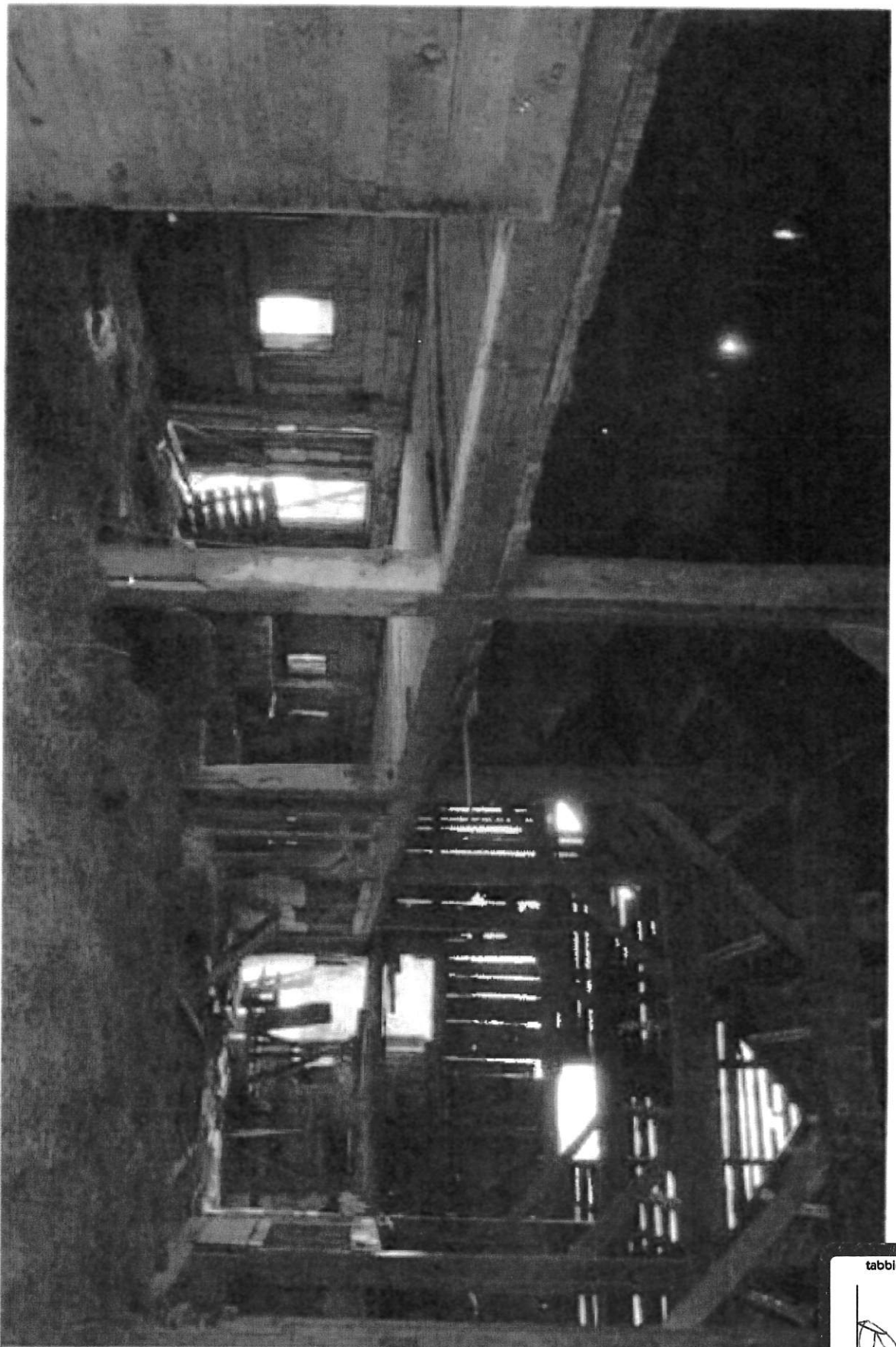


Fig. 2-31. View inside a circa 1840 gable-front bank barn in Rumney, New Hampshire, showing the stable area on the east side (*left*) and the hayloft above. (Demolished 1994.)

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EXHIBIT

B

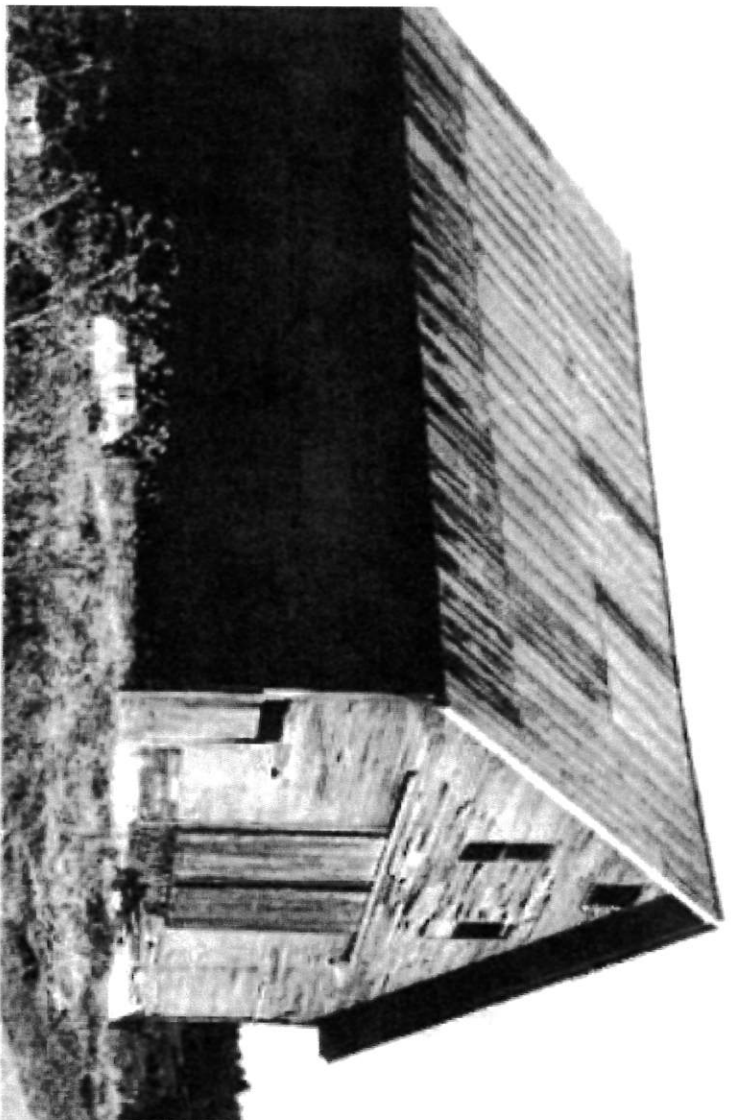


Fig. 2-32. Gable-front bank barn, circa 1870, Kent's Corner, Vermont. The shift from boxed cornices to raking eaves on farm buildings coincided with transition from the Greek Revival to the Gothic Revival style of domestic architecture during the mid-nineteenth century.

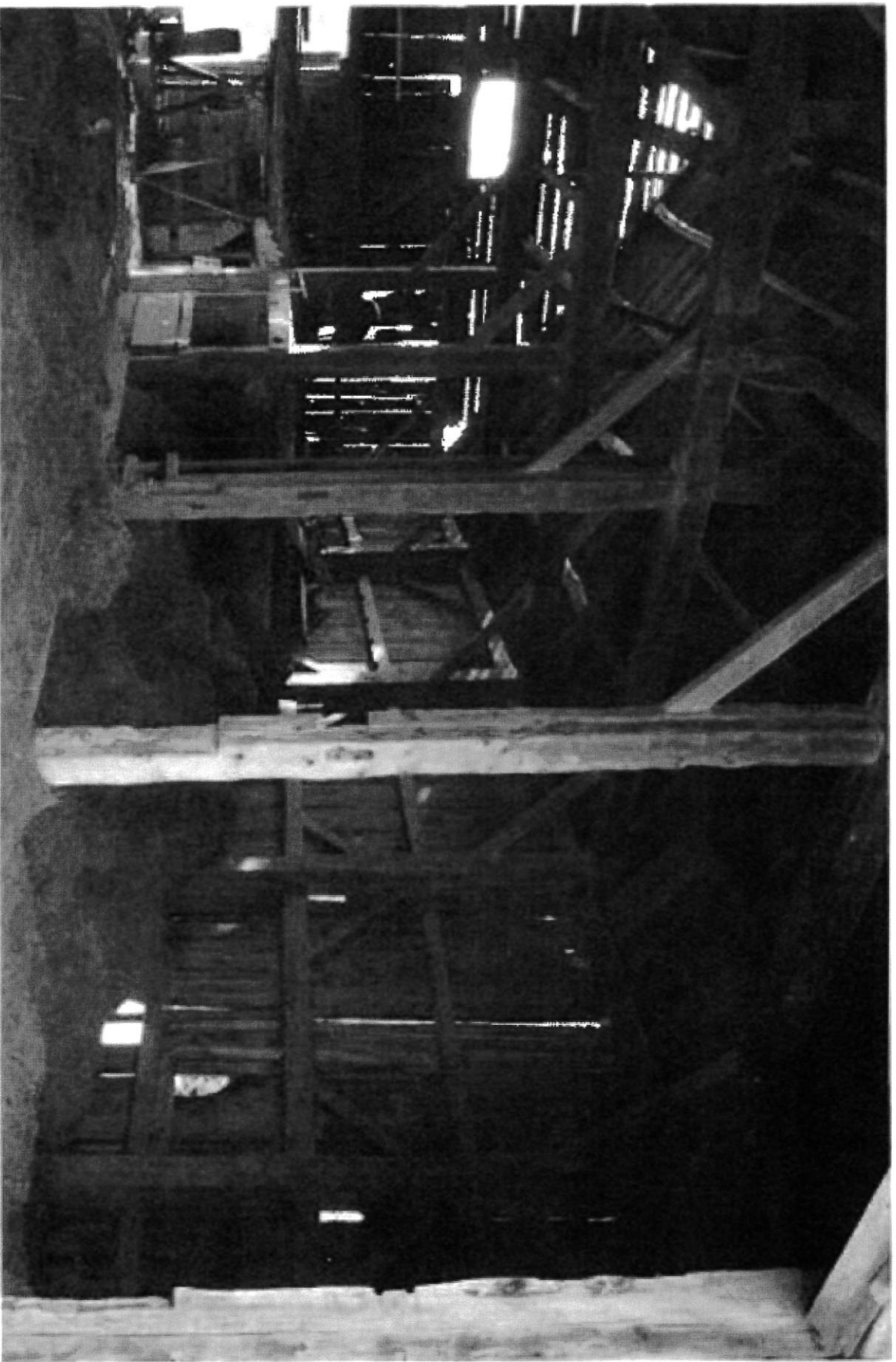


Fig. 2-33. The west side (*right*) of this circa 1840 gable-front bank barn would be filled to the rafters with hay. Note the purlin frame roof of this New Hampshire barn.



Fig. 2-35. Gable-front bank barn with board-and-batten siding and a cow stable ell at the right, circa 1870, Brookfield, Vermont.



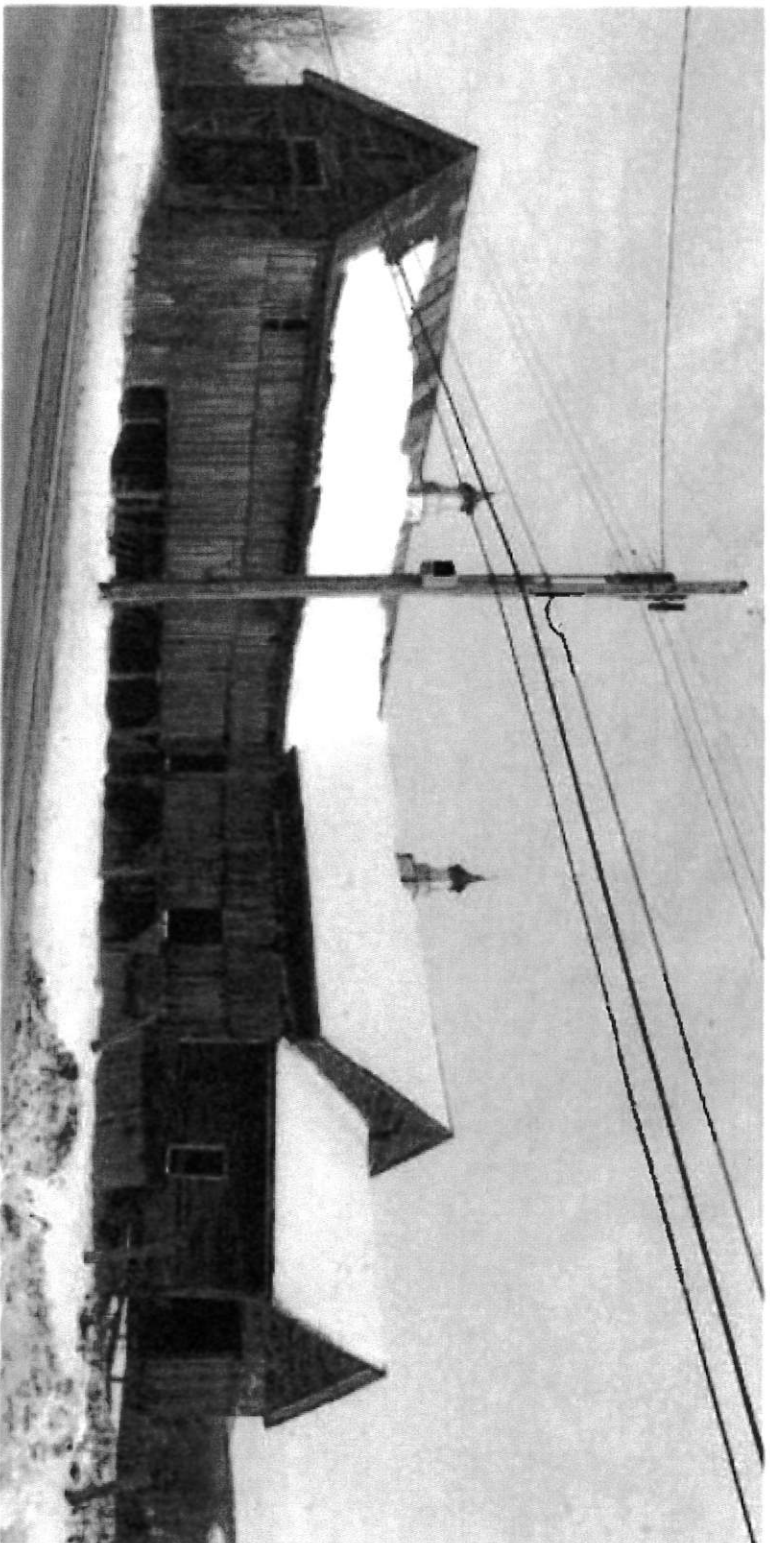


Fig. 2-36. With an open basement story facing the barnyard, this late-nineteenth-century ell-shaped barn in Bradford, Vermont, is constructed of three sections, with earthen ramps leading to the two main entrances.



Fig. 2-38. With an extended gable that encloses the high-drive ramp, this large high-drive bank barn was built circa 1890 in Waitsfield, Vermont. The small dormer marks an interior silo.

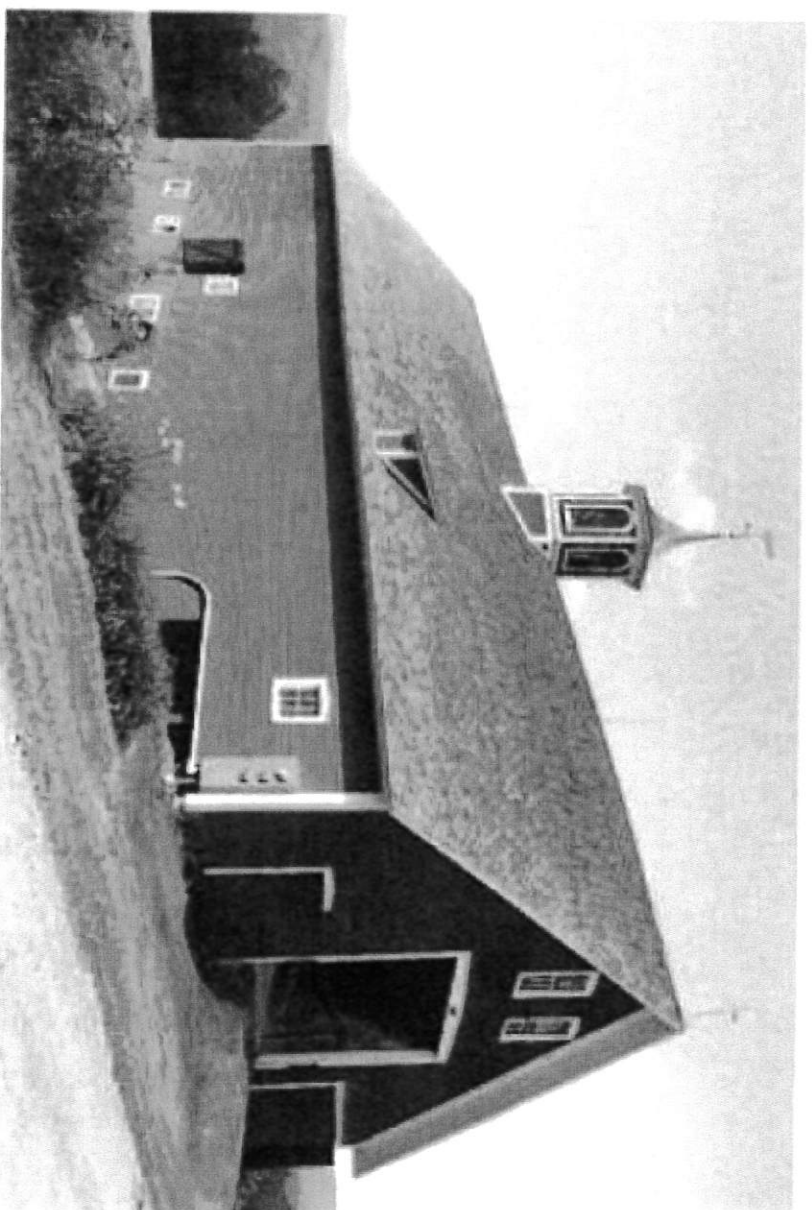


Fig. 2-43. A steep hillside provides easy access to the hayloft in this 1906 high-drive dairy barn in Cambridge, Vermont. Note the detached milk house at the right.



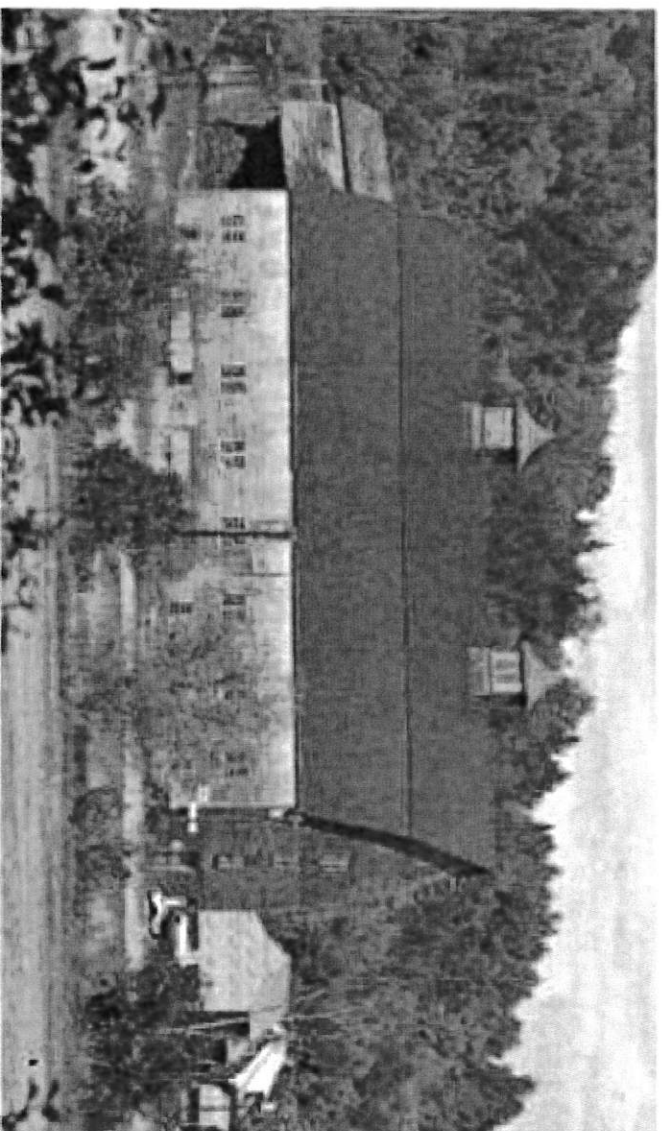


Fig. 2-52. Covered high-drive dairy barn with a gambrel roof and twin cupolas, circa 1900, Marshfield, Vermont.

Fig. 2-70. Early  
ground-level stable  
barn with poured con-  
crete walls on first  
story, circa 1920,  
Charlotte, Vermont.

