



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

Fees paid \$388 101  
 # 2282

RECEIVED  
 Town of Durham  
 OCT 18 2023  
 Planning, Zoning  
 and Assessing

VARIANCE

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

Name of Applicant Milton T., Jr. & Edda M. Martin

Address: 81 Madbury Rd., Durham, NH 03824

Phone # 603-868-3773 (Home) Email: saudym@mfe.com  
603-778-0822 (work) "Same" M

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

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

Location of Property: 83 Madbury Rd, Durham  
 (Street & Number)

Tax Map & Lot number Tax Map 2 lot 1-8 - 105/108

A Variance is requested from Article(s) \_\_\_\_\_ Section(s) \_\_\_\_\_ of the Zoning Ordinance to permit:

erecting a 2 bedroom house on an existing foundation

All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.

Owner Authorization and Signature:

1. I/we do hereby authorize Milton T. Martin to file this application with the Zoning Board of Adjustment, to appear before the Board and to act on my/our behalf.
2. I/we do hereby authorize members of the Zoning Board of Adjustment and/or staff to enter upon the property on the afternoon prior to the Zoning Board meeting for purposes of reviewing this application.
3. To the best of my/our knowledge the information contained in this application is complete and accurate.

Owner's Signature(s): [Signature] Date: 10-18-23

\_\_\_\_\_  
 Date: \_\_\_\_\_

83 Madbury Road, Durham, NH – Garden House

Milton T. “Sandy” Martin, Jr. & Edda M. Martin

81 Madbury Road, Durham, NH 03824

Home 603-868-3773 – [sandym@mfe.com](mailto:sandym@mfe.com)

Work 603-778-0822 – [edda@mfe.com](mailto:edda@mfe.com)

Owners – Same

Address – Same

Location – 83 Madbury Road, Durham, NH 03824

Tax Map 2-Lot 1-8

Item – Sighting for a New Garden House

Statement explaining how the applicant meets each of the five (5)

Statutory requirements for granting a variance.

A. The variance will not be contrary to the public interest.

The new garden house will store service equipment, tools and supplies to maintain the property.

B. We believe the spirit of the ordinance has been observed.

C. We believe that substantial justice will be done by this or any other board action.

D. The values of the surrounding properties shall not be diminished by this action.

E. The literal enforcement of the provisions of the ordinance could lead to an unnecessary hardship. We see no harm to the general public.

General Concepts –

This change would enhance the property at 83 Madbury Road by creating safe and orderly storage of lawn and garden equipment, tools and supplies to maintain the property. The placement of the new garden shed is at the site of the old summer house that stood there for over 50 years and possibly 75 years and on its foundation base approximately 12' X 16' in size backed up to a 3-1/2' stone wall and screened from Madbury Road by a landscaped island with its stone wall.

Over the past 27+ years, we have tried to retain and enhance 81/83 Madbury Road as did Dr. Kickline and his family in their over 55+ years of family residence. As far as we know, we are only the 3<sup>rd</sup> owners of this property in over 100 years of its existence. The property had a

circular driveway that encircled the house. We changed the circular driveway to just in front of the house so we can turn our vehicles and not back on to Madbury Road. A great safety move to access a busy street also a safety factor facing driveways opposite ours. We replaced a single car garage sized for a Model T Ford and an old broken storage shed with a new 3 car garage and carried on the stone retaining walls on both sides of the house in the Kickline tradition.

Our neighbors have worked hard to maintain and improve their properties and the new street and sidewalks can add an additional safety component for the walker, runner and bike rider as well as a smoother ride with the removal of the speed bumps.

We thank you for this opportunity to present our case and we are most pleased to answer any questions.



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**ZONING BOARD OF ADJUSTMENT**  
8 NEWMARKET RD  
DURHAM, NH 03824  
PHONE: 603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

**APPLICATION INSTRUCTIONS**

The Zoning Board of Adjustment (ZBA) meets on the second Tuesday of each month in the Council Meeting Room at the Town Hall.

**FILING OF APPLICATION:** Applications for ZBA are available at the Town Office and on the Town website. The application must be filed at the Town Office at least **20 days prior to a meeting**, along with an application fee. A notice of the meeting will be published in the Foster's Daily Democrat and a similar notice will be sent, by certified mail, to abutters. The filing fees will be used to meet these expenses. If the expenses exceed the filing fees, the applicant will be billed for the difference.

**LIST OF ABUTTERS:** The applicant must prepare a list of all abutting property owners, have it verified at the Town Office, and attach it to your application. If you have any difficulty, consult the Assessor's Office, but **the accuracy of the list is the applicant's responsibility**. An "abutter" means any person whose property adjoins or is directly across the street or stream from the land under consideration. The list of abutters must also include the property owner, applicant (if different), attorneys and any holders of conservation, preservation, or agricultural preservation restrictions in accordance with RSA 676:4 (I) (a) of the New Hampshire Planning and Land Use Regulations.

**PLOT PLAN:** The applicant must provide a plot plan. Plans should show the location and shape of the subject structure in relation to lot lines and required setbacks, in addition to location and identification of abutters. 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.

**PRESENTATION AT MEETING:** The applicant should bring all documentation, which will assist the Board in understanding the proposal. Do not assume that anything submitted to a different Town Board will find its way to the ZBA file. It is necessary that the applicant or his legal representative attend the meeting held for the review and consideration of this petition.

**FEES:**

**Application Fee (choose one):**

Single Family residence:	\$100
Multi-unit residential and nonresidential property:	\$200

**Filing Fees:**

Abutter notices:	\$9 per abutter
Legal notice in newspaper:	\$225



### RSA 674:33 Powers of the Zoning Board of Adjustment:

I(a) The zoning board of adjustment shall have the power to:

- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
- (2) Authorize, upon appeal in specific cases, a **variance** from the terms of the zoning ordinance if:
  - (A) **The variance will not be contrary to the public interest;**
  - (B) **The spirit of the ordinance is observed;**
  - (C) **Substantial justice is done;**
  - (D) **The values of surrounding properties are not diminished; and**
  - (E) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

- (b)(1) For purposes of this subparagraph I(a)(2)(E), "**unnecessary hardship**" means that, owing to special conditions of the property that distinguish it from other properties in the area:
- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
  - (B) The proposed use is a reasonable one.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish 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.

(3) The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

### EXPIRATION PERIOD FOR VARIANCES

Any Variances granted shall be valid if exercised within **2 years** from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.



**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

**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:** MILTON MARTIN JR, EDDA MARTIN, 81 Madbury Road, Durham, NH 03824

**Date of order:** September 19, 2023

**Deadline for application for appeal:** October 20, 2023

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

Building Permit Application number 23-396, for property located at 83 Madbury Road, Durham; Map & Lot 105/108/0/0/0, is DENIED as the proposal does not meet the requirements of the Durham Zoning Ordinance below:

ARTICLE XII.1 USE AND DIMENSIONAL STANDARDS

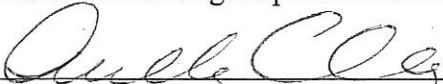
175-54. TABLE OF DIMENSIONS.

Minimum side setback – 10'; Minimum rear setback – 20'

175-53. Table of Land Uses.

ACCESSORY STRUCTURE – A structure that is detached from the principal building; **situated on the same lot as the principal building** and use; incidental, subordinate, and related to the principal building and use; and customarily found as (or reasonably considered to be) an accessory to the type of principal building and use that is situated on the property.

By Durham's Building Inspector/Code Enforcement Officer:

  
\_\_\_\_\_  
Audrey Cline CEO

Martin Jr., Milton T  
81 Madbury Road  
Durham, NH 03824

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81 Madbury Road  
Durham, NH 03824

**Martin Jr., Milton T  
81 Madbury Road  
Durham, NH 03824**

Sean T O'Connell &  
Christa A Williams  
26 Meadow Road  
Durham, NH 03824

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Christa A Williams  
26 Meadow Road  
Durham, NH 03824

**Sean T O'Connell &  
Christa A Williams  
26 Meadow Road  
Durham, NH 03824**

Micah V & Tracey E Adams  
34 Edgewood Road  
Durham, NH 03824

Micah V & Tracey E Adams  
34 Edgewood Road  
Durham, NH 03824

**Micah V & Tracey E Adams  
34 Edgewood Road  
Durham, NH 03824**

Nathan A & Kristina L Jorgensen  
85 Meadow Road  
Durham, NH 03824

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Durham, NH 03824

**Nathan A & Kristina L Jorgensen  
85 Meadow Road  
Durham, NH 03824**

Chad & Jennifer E O'Brien  
84 Madbury Road  
Durham, NH 03824

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84 Madbury Road  
Durham, NH 03824

**Chad & Jennifer E O'Brien  
84 Madbury Road  
Durham, NH 03824**

William A Smiley IV & Divya  
Madhavi Devasher  
86 Madbury Road  
Durham, NH 03824

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Marple Rev. Trust, Katherine A.  
82 Madbury Road  
Durham, NH 03824

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83 Madbury Road, Durham, NH – Garden House

Milton T. “Sandy” Martin, Jr. & Edda M. Martin

81 Madbury Road, Durham, NH 03824

Home 603-868-3773 – [sandym@mfe.com](mailto:sandym@mfe.com)

Work 603-778-0822 – [edda@mfe.com](mailto:edda@mfe.com)

Owners – Same

Address – Same

Location – 83 Madbury Road, Durham, NH 03824

Tax Map 2 Lot 1-8

Item – Sighting for a New Garden House

Statement explaining how the applicant meets each of the five (5)

Statutory requirements for granting a variance.

A. The variance will not be contrary to the public interest.

The new garden house will store service equipment, tools and supplies to maintain the property.

B. We believe the spirit of the ordinance has been observed by bringing life to a tired area of our yard and for a proper use partially screened from view.

C. We believe that substantial justice will be done by this or any other board action. The placement of the new garden house is the site where the old summer house stood for over 50 years and possibly 75 years on its original foundation base approximately 12’ X 16’ in size and backed up to a stone wall 3-1/2’ and screened from Madbury Road by a landscaped island with its stone wall.

D. The values of the surrounding properties shall not be diminished by this action. The work performed at 81/83 Madbury should have increased the values of surrounding properties and maintenance has begun and the Garden House assists the landscaping function.



E. The literal enforcement of the provisions of the ordinance could lead to an unnecessary hardship. We see no harm to the general public. The hardship would be leaving the grounds equipment out under a tarp to the elements. Our service people stated that our equipment under hard cover all sides like in a Garden House.

#### General Concepts –

Over the past 27+ years, we have tried to retain and enhance 81/83 Madbury Road as did Dr. Kickline and his family in their over 55+ years of family residence. As far as we know, we are only the 3<sup>rd</sup> owners of this property in the 100+ years of its existence. The property had a circular driveway that encircled the house. We changed the circular driveway to just in front of the house so we can turn our vehicles and not back on to Madbury Road. A great safety move to access a busy street also a safety factor facing driveways opposite ours. We replaced a single car garage sized for a Model T Ford and an old broken storage shed with a new 3 car garage and carried on the stone retaining walls on both sides of the house in the Kickline tradition.

Our neighbors have worked hard to maintain and improve their properties and the new street and sidewalks can add an additional safety component for the walker, runner and bike rider as well as a smoother ride with the removal of the speed bumps.

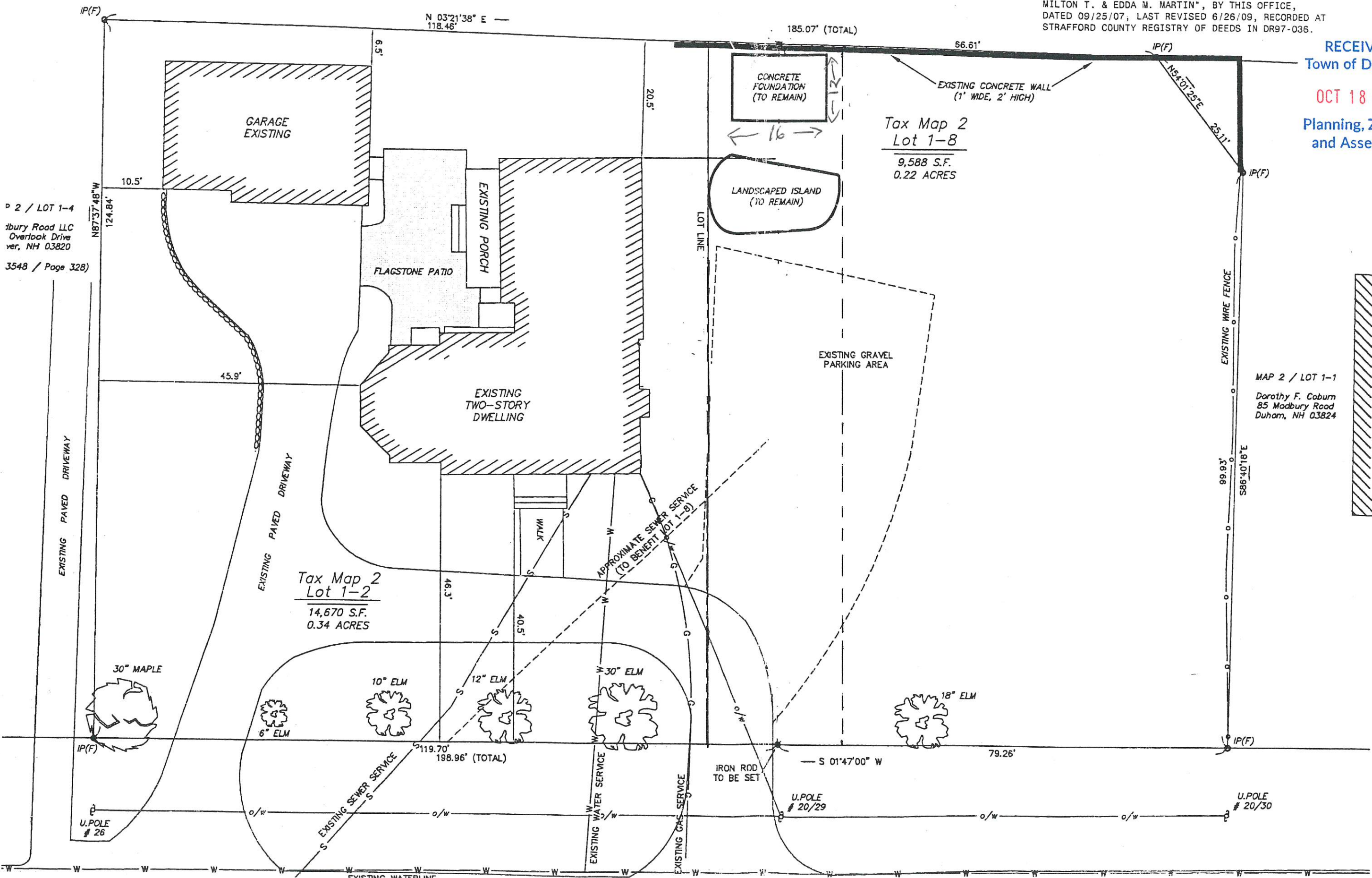
We thank you for this opportunity to present our case and we are most pleased to answer any questions.

MAP 2 / LOT 1-3  
 Brown Living Trust  
 34 Edgewood Road  
 Durham, NH 03824  
 (Book 2070 / Page 99)

PLAN REFERENCES:

- "PLAN OF THE LAND BELONGING TO WILLIAM AND HELEN KICHLIN", SCALE 1" = 30', DATED OCT. 3, 1941
- "TAX MAP 2 / LOT 1-2, 81 MADBURY ROAD, DURHAM, NEW HAMPSHIRE SUBDIVISION PLAN, PREPARED FOR MILTON T. & EDDA M. MARTIN", BY THIS OFFICE, DATED 09/25/07, LAST REVISED 6/26/09, RECORDED AT STRAFFORD COUNTY REGISTRY OF DEEDS IN DR97-036.

RECEIVED  
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 OCT 18 2023  
 Planning, Zoning  
 and Assessing



NOTES:

- THE PURPOSE PROPERTY LI 12.74 FEET UTILITY EAS
- TOTAL LOT A
- DEED REFERE
- OWNER OF RE
- THE PROPERTY
- MINIMUM LOT
- MINIMUM FRO
- MINIMUM SET
- ALL UTILITI
- THE IMPERVI
- A VARIANCE APPROVED ON ONE LOT INT THAT THE RE LESS THAN T ON MARCH 18 JAMES B. CA COMMUNITY D EXEMPT FROM

MAP 2 / LOT 1-1  
 Dorothy F. Coburn  
 85 Madbury Road  
 Durham, NH 03824



NO.	DATE	BY
1		
2		
3		
4		
5		
6		