

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

RECEIVED  
Town of Durham

**Appeal for Applicant**

NOV 18 2015

State of New Hampshire

Strafford, SS  
Planning, Assessing  
and Zoning

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

\$ 242 pd.

Name of Applicant: Gael & Laurel Ulrich

11/18

Address: #34 R PRENTISS ST. Phone # (617) 441-3074  
CAMBRIDGE, MA 02140

Check #  
787

Email: gaelulrich@gmail.com

Owner of Property Concerned: SAME

(If same as above, write "Same")

Address: SAME

(If same as above, write "Same")

Location of Property: #15 FOSS FARM 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) TM 6 LOT 1-11, HAVING FRONTAGE

ON BOTH FOSS FARM RD & RYANWAY, CONTAINING 0.85 ACRES,

BEING A LOT OF RECORD SINCE PRIOR TO 1976

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: \_\_\_\_\_

Number \_\_\_\_\_ Date \_\_\_\_\_

Article \_\_\_\_\_ Section \_\_\_\_\_ of the Zoning Ordinance in question.

\_\_\_\_\_

\_\_\_\_\_

**SECTION 2: APPLICATION FOR SPECIAL EXCEPTION**

\*\*Any Special Exceptions 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.\*\*

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: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SECTION 4: APPLICATION FOR A VARIANCE**

**STANDARD OF REVIEW:** 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.

\*\*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.\*\*

A Variance is requested from Article \_\_\_\_\_ Section \_\_\_\_\_ of the Zoning Ordinance to permit THE CONSTRUCTION OF A RESIDENTIAL

DWELLING AND ITS ASSOCIATED SEPTIC SYSTEM

ON AN UNDEVELOPED LOT OF RECORD

**SEE ATTACHMENT**

## SECTION 4: APPLICATION FOR A VARIANCE

**STANDARD OF REVIEW:** 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.

**\*\*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.\*\***

This application is for two Variance is requests from, Article XIII Section 175-59(A)(2)(d) and Article XXIV Section 175-139 of the Zoning Ordinance in order to permit the construction of 4 bedroom residential dwelling on the pre-existing non-conforming lot of record, identified as Tax Map 6 Lot 1-11 and having a physical location of #15 Foss Farm Road.

The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally grated. Pleas answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

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

The proposed residential use is consistent with how this neighborhood is currently developed. Other than the water tower located on the opposite side of Foss Farm Road, this entire neighborhood is residential. It is our belief that keeping the use consistent with that of the majority of the neighborhood prevents any chance for the decrease in value of the surrounding properties.

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

The public interest in this application of the zoning ordinance is in the protection of the spirit and intent of the ordinance itself. The spirit of the ordinance is to allow responsible development of the town and the intent is to protect the wetlands in doing so. This lot was created prior to the inception of the Zoning Ordinance and the restrictive features, as defined in the current ordinance, were not considered at that time. It is the intent of the applicant to develop this lot in a manner that best protects the wetlands, as reflected in the layout of the plot plan here attached. It is for these reasons that granting the variance would not be contrary to the public interest.

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(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.

The subject parcel is hindered by a number of hardships that make a variance necessary to enable a reasonable use or development of the lot

According to the tax card, the lot is 0.85 acres, which equates to 37,026 sq ft, which is nearly 3,000 sq ft smaller than the minimum size building lot for the RB zoning district. The lot was created prior to the inception of the zoning ordinance and is therefore considered preexisting and non-conforming. Not only is it small in overall size, but the 37,026 sq ft includes the areas of poorly drained soils located within it, and when considering today's minimum standards of 40,000 sq ft the areas considered to be poorly drained cannot count when calculating minimum lot sizing.

The fact that the subject parcel contains poorly drained soils is limiting, but once wetland setbacks are applied to a building and septic system developable envelope, the lot is deemed unbuildable. Although, it is not a condition of the property, we would like to mention another circumstance regarding the history of this lot. The current owner bought this subject lot in the 70's when he was living in a dwelling on the abutting lot. At that time, there was a current septic system design, approved by the state, which permitted the construction of a house and septic system on this lot. This layout location is shown on attached plot plan. That septic design, which was acquired from the town building files, notes "some low areas near road that have seasonal water to be filled." These areas were never filled, but rather left in their natural state and the years of seasonal runoff water, mainly generated by the improper grading created by the construction of Foss Farm Road and Ryan Way, compounded by the fact that the area was never filled, the wetlands have undoubtedly increased in size over time, which creates a special condition that severely limits this property and justifies a variance.

It is never the intent of any zoning ordinance to take away the right of reasonable use and enjoyment of one's property and considering that, we respectfully request that the Zoning Board of Adjustment grant relief from the cited zoning articles to allow for a reasonable development of the subject parcel as shown on attached plan.

4. By granting the variance substantial justice would be done because: It would allow for the development of a building lot that has been taxed as such nearly 40 years, to be developed in a manner similar to that of the surrounding neighborhood.

5. The use will not be contrary to the spirit and intent of the ordinance because: The residential use is permitted with the RB zoning district and therefore is not contrary to the spirit and intent of the ordinance.