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March 20, 2019

**VIA HAND DELIVERY**

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

RECEIVED  
Town of Durham

MAR 20 2019

Planning, Assessing  
and Zoning

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pd. 3/20  
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4997

**Re:** Variance Application to Construct a Deck Addition  
**Applicant/ Owner:** Christopher & Anita Mihok  
**Address:** 11 Cedar Point Road, Durham, NH 03824  
**MBLU:** 12 / 1-25  
**Zone:** Residence C ("RC")

Dear Chairman Sterndale:

The purpose of this letter is to deliver the enclosed materials in support of a variance application to extend an existing deck and construct a covered porch at a single-family residence located at 11 Cedar Point Road in the Town of Durham, New Hampshire (the "Property"). Pursuant to denial of building permit number 18-342 dated August 24, 2018, it is understood that that a variance from the rear yard fifty foot (50') setback is required, pursuant to Article 175, Section 54 of the Durham Zoning Ordinance.

Accordingly, we respectfully request that the Town of Durham Zoning Board of Adjustment (the "ZBA") review the enclosed materials and grant this application at its upcoming meeting on April 2, 2019.

**I. ENCLOSED MATERIALS**

Pursuant to the Town of Durham's Zoning Ordinance ("DZO") and Variance Application (the "Application"), the Applicant respectfully submits one (1) Four Hundred and Six Dollar 00/100 (\$406.00) check made payable to the Town of Durham, New Hampshire, and twelve (12) application packets including the following documents:

1. Variance Application dated March 20, 2019;
2. Abutter's List dated March 20, 2019;
3. Town of Durham, New Hampshire, Tax Map 12A ("Map 12A"); and

4. Variance Plans last revised on March 14, 2019 (the "Plans").

## II. PROJECT NARRATIVE

Christopher and Anita Mihok (collectively the "Applicant") reside in a single-family home located on the landward side of Cedar Point Road in Durham, New Hampshire. As depicted on the enclosed Plans, this home includes a small eastern facing deck screened by a dense thicket of vegetation facing away from the Great Bay Marine Estuary.

The Applicant seeks to extend the deck and construct a covered porch to provide a wraparound deck system (the "Extension") that will provide additional outdoor living area and views of Great Bay. As proposed, the Extension substantially complies with the DZO, except for a de minimus lot line encroachment on the home's northeastern corner totaling under three and one-half feet (3'6") at the largest point of encroachment.

## III. COMPLIANCE WITH THE TOWN OF DURHAM'S ZONING ORDINANCE

The Extension substantially complies with the DZO and conforms to the five variance criteria included on the municipality's Variance Application (provided in bold, below).

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

The Applicant respectfully asserts that the proposed use, i.e., the Extension, represents a reasonable use of the Property. Here, the public interest is served by permitting the orderly development of property in an area where such development has previously occurred, and the extension of an existing deck to create a wrap-around deck system will not alter the essential character of Cedar Point.

### B. **The spirit of the ordinance is observed.**

The Applicant respectfully asserts that the spirit of the ordinance is observed by granting the Application. The Extension represents a suitable use in light of uses currently employed on surrounding properties and encourages the most appropriate use of land in and around Cedar Point.

### C. **Substantial justice is done.**

Substantial justice is done by granting this variance because it allows the Applicant's property to be utilized in a similar fashion to other properties located in and around Cedar Point. This proposal does not burden the public or ecosystem in any way, and substantially benefits the Applicant by providing additional outdoor living space and views of Great Bay.

### D. **The values of surrounding properties are not diminished.**

The Applicant respectfully asserts that all surrounding properties have an associated value that is premised upon the existence of the same type of structures, including decks, located on the Property. Here, the Extension will not affect any abutting neighbor, is supported by multiple abutting neighbors (please see letter from abutter), is consistent with other uses in the near vicinity, and is consistent with existing zoning. Moreover, the Extension likely increases the Property's value and that of abutting neighbors.

**E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**(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.**

As outlined on Map 12A and the Plan-set, the Property is a uniquely shaped corner lot that features a single-family home that is acutely sited against the parcel's northeastern lot setback boundary.

The general purpose of the DZO is to promote the orderly development of property and to protect the health, safety and general welfare of the public. Here, the Applicant seeks to extend an existing deck to provide additional outdoor living space and views of Great Bay. Although this Extension encroaches on the rear lot line setback, the encroachment is de minimus, is located in an area that is heavily screened from abutting parcels and uses by a dense thicket of evergreen vegetation. The grant of this specific variance is supported by the abutting property owner closest to the encroachment. Accordingly, the Applicant respectfully submits that there is no relationship between the general public purpose of the DZO and its application to the relief requested herein.

**(B) The proposed use is a reasonable.**

The proposed use (i.e., the Extension) is reasonable given that extending an existing deck, where such deck minimally encroaches on a heavily screened lot setback boundary, is a reasonable use of residential property, and is consistent with the uses of surrounding Cedar Point properties.

**IV. RELIEF REQUESTED**

The Applicant respectfully requests that the ZBA:

- 1) Grant a variance in accordance with this application; and
- 2) Grant any and all other relief necessary to allow construction of this Deck.

V. CONCLUSION

For the aforementioned reasons, we respectfully request that the Town of Durham Zoning Board of Adjustment (the "ZBA") review the enclosed materials and grant this application at its upcoming meeting on April 2, 2019.

Should you have any questions with respect to the above, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis X. Bruton, III". The signature is fluid and cursive, with a large initial "F" and "B".

Francis X. Bruton, III  
E-mail: [fx@brutonlaw.com](mailto:fx@brutonlaw.com)

FXB/jpl  
Enclosures

cc: Christopher & Anita Mihok  
Mission Wetland & Ecological Services, LLC  
Millennium Engineering



**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 Christopher & Anita Mihok

Address: 11 Cedar Point Road, Durham, NH 03824

201-841-2855 empennage@live.com  
Phone # 603-749-4529 (Atty.) Email: fx@brutonlaw.com (Atty.)

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

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

Location of Property: Same  
(Street & Number)

Tax Map & Lot number Map 12, Lot 1/25

A Variance is requested from Article(s) 175 Section(s) 54 of the Zoning Ordinance to permit:

Covered Porch/ Deck Extension  
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