

Welcome to the
Faculty
Neighborhood

**FAMILIES
LIVE HERE**



Please respect our
property and your town

Parking by Permit ONLY
Sept 1 - May 31 Mon - Fri

This presentation is in regard to my request to widen my driveway, at 15 Garden Lane, to allow for a designated parking space for our authorized accessory apartment.

- My wife and I work as essential employees, in fields requiring us to be on call for emergencies where response time is crucial. Therefore eliminating the time to reposition cars is both necessary and practical.
- This paved parking area will provide a spot for the accessory apartment tenant to park without having to constantly reposition vehicles for us to respond to work efficiently when needed.
- We also have the support of our abutting neighbors to widen the driveway and as of last ZBA meeting, zero objectors.
- As shown on the first slide, on the Faculty Neighborhood sign, this is a family neighborhood and parking on the street is restricted at certain times of the year and no street parking is authorized in winter months. Therefore we require off street parking.

- We have attempted to achieve a permit to widen the driveway with the town since our first site visit on November, 2019.
- I have since received a written warning from the town that no more than 3 registered vehicles are authorized to be parking in my driveway without a variance, stating that I regularly have five vehicles parked in the driveway.
- I have received a written warning not to park in an undeveloped area (the area we are requesting to pave).
- I have been informed that no residents in the Faculty Neighborhood have received a permit to widen their driveway in over 10 years. There are at least two driveways that have been widened in that time within our neighborhood as shown in this presentation.
- I have been informed that driveways are not authorized to be wider than 22 feet per town ordinances.
- This presentation shows that everything listed above not only exists within the Faculty Neighborhood, but make up the majority of the properties within the neighborhood, thus making my driveway request to be in keeping with the current aesthetic of the neighborhood.

Under RSA 674:33, I(b)(1)-(5), a zoning board of adjustment has the power to grant a variance if:

- (1) “The variance will not be contrary to the public interest”
- (2) “The spirit of the ordinance is observed”
- (3) “Substantial justice is done”
- (4) “The values of surrounding properties are not diminished”
- (5) “Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.”

(1) “The variance will not be contrary to the public interest”

(2) “The spirit of the ordinance is observed”

- **PUBLIC INTEREST/ SPIRIT OF THE ORDINANCE**

- In *Perreault et. al. v. Town of New Hampton* (2017-0225), the New Hampshire Supreme Court recently reiterated that:

- **“With Respect To The First And Second Criteria, We Have Recognized That “[T]he Requirement That The Variance Not Be Contrary To The Public Interest Is Related To The Requirement That The Variance Be Consistent With The Spirit Of The Ordinance.”**

- “As the provisions of the ordinance represent a declaration of public interest, any variance would in some measure be contrary thereto.” *Id.* (quotation omitted). Therefore, “[m]ere conflict with the terms of the ordinance is insufficient.” *Id.* **RATHER, TO BE CONTRARY TO THE PUBLIC INTEREST AND INCONSISTENT WITH THE SPIRIT OF THE ORDINANCE, THE VARIANCE MUST UNDULY AND IN A MARKED DEGREE CONFLICT WITH THE ORDINANCE SUCH THAT IT VIOLATES THE ORDINANCE’S BASIC ZONING OBJECTIVES. SEE ID.; NINE A, LLC, 157 N.H. AT 366. “IN DETERMINING WHETHER GRANTING A VARIANCE VIOLATES AN ORDINANCE’S BASIC ZONING OBJECTIVES, WE LOOK TO, AMONG OTHER THINGS, WHETHER IT WOULD ALTER THE ESSENTIAL CHARACTER OF THE LOCALITY OR THREATEN PUBLIC HEALTH, SAFETY OR WELFARE.** Such examples are not exclusive.” *Nine A, LLC, 157 N.H. at 366* (citation omitted).

- Above is the legal argument, simply put, responding to emergencies in a safe and timely fashion is in the interest of the public. The spirit of the ordinance is not to allow for ample college student parking in a family neighborhood, which does not apply here.

(3) “Substantial justice is done”

GRANTING THE VARIANCE WOULD DO SUBSTANTIAL JUSTICE

- On this requirement the New Hampshire Supreme Court has stated:
- **“...the only guiding rule [in determining whether the requirement for substantial justice is satisfied] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.”** Malachy Glen Associates v. Town of Chester, 155 N.H. 102, 109 (2007).
- There is no gain to the general public by denying the requests, and clear loss to the individual(s) if denied.
- Above is the legal argument, the practical stance is that a designated parking space for the accessory apartment allows for any occupant to exit the building, via a motorized vehicle, safely in the case of an emergency.

(4) “The values of surrounding properties are not diminished”

(5) “Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.”

- **IF THE VARIANCE WERE GRANTED THE VALUE OF SURROUNDING PROPERTIES WOULD NOT BE DIMINISHED**

- **UNNECESSARY HARDSHIP**

- “Unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- **(i) 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**

- **(ii) THE PROPOSED USE IS A REASONABLE ONE.**

- **(B) If the criteria in subparagraph (A) 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.” RSA 674:33(l)(b)(5).**

- Above is the legal argument, the following slides prove that, if approved, the proposed driveway would be in keeping with the aesthetic of the neighborhood and denying it creates a hardship to the public in the situation of delayed response to an emergency.

At least, 11 driveways on Garden Lane are wider than 22 feet wide

- 3 Garden Lane: 27 foot wide driveway
- 10 Garden Lane: 26 foot wide driveway
- 11 Garden Lane: 30 foot wide driveway
- 18 Garden Lane: 25 foot wide driveway
- 19 Garden Lane: 22 foot wide driveway
- 23 Garden Lane: 25 foot wide driveway
- 27 Garden Lane: 24 foot wide driveway
- 28 Garden Lane: 40 foot wide driveway
- 30 Garden Lane: 26 foot wide driveway
- 34 Garden Lane: 24 foot wide driveway
- 35 Garden Lane: 23 foot wide driveway

At least, 8 driveways on Mill Pond Road are wider than 22 feet wide

- 34 Mill Pond Road: 24 foot wide driveway and has parking on an undeveloped part of the yard.
- 35 Mill Pond Road: 27 foot wide driveway
- 41 Mill Pond Road: 23 foot wide driveway
- 42 Mill Pond Road: 24 foot wide driveway
- 46 Mill Pond Road: 30 foot wide driveway
- 48 Mill Pond Road: Has parking on an undeveloped part of the yard.
- 51 Mill Pond Road: 27 foot wide driveway
- 52 Mill Pond Road: 27 foot wide driveway

At least, 8 driveways on Oyster River Road are over 22 feet wide

- 27 Oyster River Road: 27 foot wide driveway
- 33 Oyster River Road: 27 foot wide driveway
- 36 Oyster River Road: 22 foot wide driveway
- 40 Oyster River Road: 23 foot wide driveway
- 44 Oyster River Road: 26 foot wide driveway
- 46 Oyster River Road: 27 foot wide driveway
- 48 Oyster River Road: 35 foot wide driveway
- 54 Oyster River Road: 28 foot wide driveway and an abutting 27 foot gravel driveway

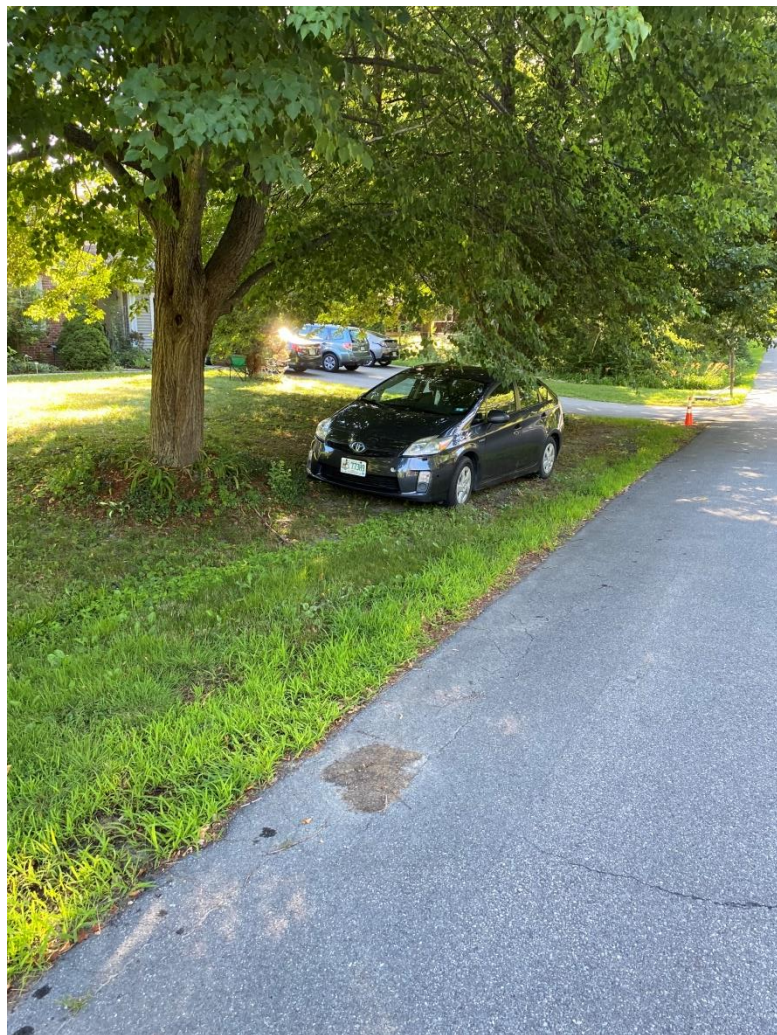
There are many more addresses within the Faculty Neighborhood that have driveways wider than 22 feet, however I did not measure them all. Here are a few more additional examples:

- 16 Thompson Lane: 27 foot wide driveway
- 9 Burnham Road: 27 foot wide driveway
- 9 Faculty Road: 23 foot wide driveway
- 10 Faculty Road: 30 foot wide driveway and has parking on an undeveloped part of the yard.
- 12 Faculty Road: 24 foot wide driveway which is paved up to the existing curb.

14 Valentine Hill Rd.,
four cars parked within front setback.



Parking in undeveloped area.





**54 Oyster River Rd has a
27 foot wide gravel driveway and
an abutting 28 foot paved driveway**

3 Faculty Rd

Durham, New Hampshire

Google

Street View

**3 Car Wide
Driveway**





Oyster River Rd
3 car wide driveway

3 Faculty Rd
Durham, New Hampshire



Street View

**5 or more cars
park in this
driveway regularly**

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**Mill Pond Rd, driveway
wider than 22 ft with
actual painted, designated
parking spaces**

18 Garden Lane
25 foot wide driveway



12 Faculty Road: 24 foot wide driveway, which is paved up to the existing curb; within town ROW.



Regularly parking five cars outside,
sixth car in garage.



10 Garden Lane
26 foot wide driveway
and paved parking within
town ROW



**50 Oyster River Rd
widened driveway
within town ROW**



48 Oyster River Road has widened driveway some time since October, 2012.



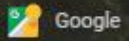
10 Faculty Road has widened their driveway some time since October, 2012 and parks registered vehicles on undeveloped property.





**Faculty Rd
undeveloped
parking**

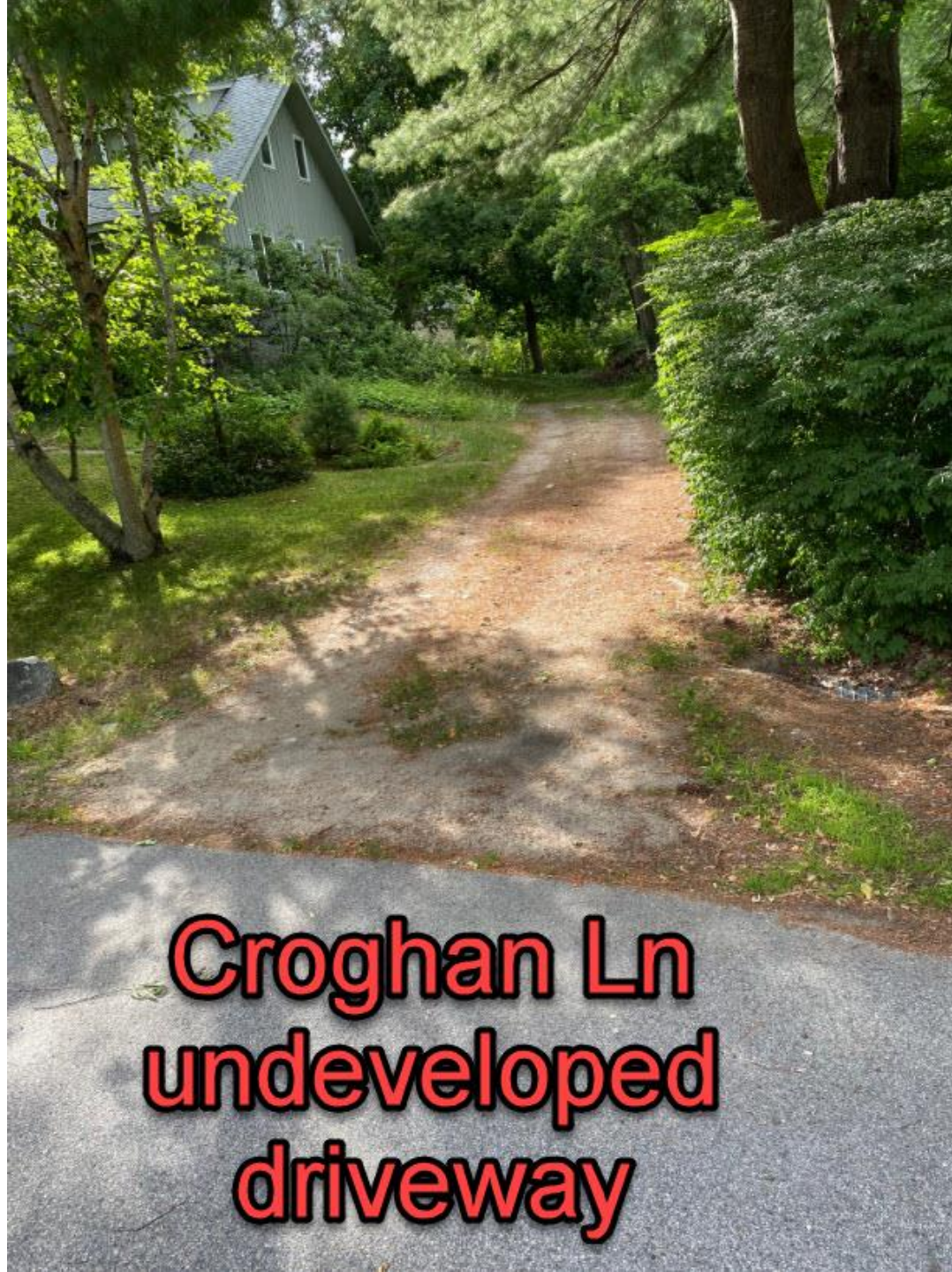
33 Mill Pond Rd
Durham, New Hampshire



Street View

**Parking on
undeveloped
land**





**Croghan Ln
undeveloped
driveway**



**Magrath Rd, parking
on undeveloped land**

48 Mill Pond Road undeveloped parking





**Requesting permit to pave
this parking spot.**