



**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 denied an approval by the Planning Board.**

Name of Applicant Thomas J. Daly and Erin L. Daly, Trustees of the Thomas J. Daly Revocable Trust, and Erin L. Daly and Thomas J. Daly, Trustees of the Erin L. Daly Revocable Trust

Address: 5 Jasper Lane, Nashua, NH 03063

Phone # (603) 361 - 5033

Email: tjd@q7.io

Owner of Property Concerned Same

(If same as above, write "Same")

Address: Same

(If same as above, write "Same")

Location of Property: 190 Piscataqua Road

(Street & Number)

Tax Map & Lot number Map 12, Lot 7

A Variance is requested from Article(s) XIII Section(s) 175-62 & 175-59(A)(2)(d) of the Zoning Ordinance to permit:

See attached.

**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. (See page 3 for guidance.) 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.**

**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  
ZONING BOARD OF ADJUSTMENT**

8 Newmarket Road, Durham, New Hampshire 03824

Phone: (603) 868-6475      Fax: (603) 868-1858

**ATTACHMENT TO  
APPLICATION FOR VARIANCE**

**Property Location:**                    190 Piscataqua Road, Durham, New Hampshire 03824  
Tax Map 12, Lot 7

**Owners'/Applicants' Name:**        Thomas J. Daly and Erin L. Daly, Trustees of the  
Thomas J. Daly Revocable Trust

Erin L. Daly and Thomas J. Daly, Trustees of the  
Erin L. Daly Revocable Trust

**Owners'/Applicants' Telephone:**    (603) 361-5033

**Owners'/Applicants' Address:**        5 Jasper Lane, Nashua, New Hampshire 03063

**Applicants' Representative:**         Suzanne Brunelle, Esq.  
Devine, Millimet & Branch, Professional Association  
111 Amherst Street, Manchester, New Hampshire 03101

**Type of Appeal:**                        VARIANCE

**INTRODUCTION**

Thomas J. Daly and Erin L. Daly, Trustees of the Thomas J. Daly Revocable Trust, and Erin L. Daly and Thomas J. Daly, Trustees of the Erin L. Daly Revocable Trust (jointly, the "Applicant") is the current owner of Tax Map 12, Lot 7 located at 190 Piscataqua Road (the "190 Piscataqua"). The Applicant is also under contract to purchase a portion of the abutting property currently known as 194 Piscataqua Road (the "Purchase"). The Purchase requires that the parties involved obtain a variance for the owners of 194 Piscataqua Road, which variance was approved by this Zoning Board of Adjustment on November 10, 2020, the appeal period for which has now expired. The Purchase also calls for a lot line adjustment, which was approved by the Town of Durham Planning Board on January 13, 2021, the appeal period for which has recently expired. The Purchase and related lot line adjustment will increase the acreage of the 190 Piscataqua to a total of 5.17 acres and the Applicant anticipates that the Purchase will be completed prior to the hearing on this matter, scheduled for March 16, 2021.

The Applicant submits this Application for Variance seeking variances from the below described articles of the Durham Zoning Ordinance (the "Ordinance"). 190 Piscataqua is located in the Residence Coastal Zoning District (the "RC Zone") and partially in the Wetland

Conservation Overlay District (“WCOD”) and the Shoreland Protection Overlay District (“SPOD”). The additional acreage to be obtained by the Purchase is largely wooded, with significantly uneven land that would require extensive clearing and blasting to make the land level and buildable (the “Purchase Land”) is also located in the RC Zone. 190 Piscataqua and the Purchase Land are hereinafter referred to as the Property. The Property’s location in the WCOD, SPOD, and the extensive wooded and uneven portions of the Purchase Land thus only allow for approximately six thousand six hundred sixty-five (6,665) square feet of buildable, conforming land. Currently the Property contains a main house, three additional outbuildings, and two aging septic fields, all of which are nonconforming structures. The total footprint of nonconforming structures currently on the Property is four thousand four hundred ninety-nine (4,499) square feet.

The Applicant intends to remove all of the existing nonconforming structures and build a single-family new home in their stead, which will reduce the size of the nonconforming footprint by approximately seven hundred sixty-four (764) square feet. Attached hereto are copies of three plans of prepared for Tom & Erin Daly by Terrain Planning & Design LLC, (i) the plan numbered EX-01 depicts the existing structures and is titled “Existing Conditions Plan” (“Plan EX-01”), attached hereto as Exhibit A, (ii) the plan numbered “L-01” depicts both the existing structures and the proposed changes to the Property and is titled “Conceptual Site Plan” (“Plan L-01”) attached hereto as Exhibit B, and (iii) the plan numbered “L-02” depicts the proposed changes to the Property and is titled, “Proposed Structures” (individually, “Plan L-02” and together with Plan L-01, the “Plan”) attached hereto as Exhibit C. Also attached to this application is a letter dated February 5, 2021 from Thomas E. Sokoloski describing the wetlands study conducting on the Property by TES Environmental Consultants, LLC (the “Wetlands Report”) attached hereto as Exhibit D.

On February 5, 2021, the Applicant met with the Conservation Commission (the “Commission”) at the Property for a site walk and to discuss the proposed plans and possible impact on the wetlands and shoreline. The Applicant met with the Commission again on February 22, 2021, at which meeting the consensus was that the nature of the wetlands area on the Property is such that the potential impact of placing the new house within the buffer zone does not raise many concerns, whereas the potential impact of placing the new house within the SPOD carries great weight. As a result of this discussion, the Applicant decided to alter the original plans and place the proposed house closer to the wetlands to ensure that proposed house sits entirely outside of the SPOD.

The Applicant has also received input on the proposed project from the Town Planner, Michael Behrendt and with the Town’s Code Enforcement Officer, Audrey Cline. On January 24, 2021, the Applicant submitted Building Permit Application number 21-29, which was denied in the attached “Decision or Order of the Building Inspector/Code Enforcement Officer” dated February 18, 2021, which indicated that the Applicant will require two (2) variances in order to proceed with the proposed building plan. Specifically, the Applicant will need variances from:

1. Ordinance 175-62 prohibiting any uses in the WCOD that are not explicitly identified in Ordinances 175-60 or 175-61; and

2. Ordinance 175-59(A)(2)(d) requiring an upland buffer strip of 100 feet from the reference line of adjacent wetlands.

These variances are reasonable, as the Property is unique due to the size, shape, slope and natural conditions. For example, out of the Property's 5.17 acres, only six thousand six hundred sixty-five (6,665) square feet, less than ten percent (<10%) of the Property, excluding the Purchase Land, is truly buildable without violating the Ordinance (the "Buildable Area"). The hardship for building on the Property is also demonstrated by the competing setbacks demanded of the general Ordinance requirements, WCOD requirements, and SPOD requirements, all of which cause the Buildable Area to be not only small, but also an unusual, triangular shape.

Finally, the design proposed by the Applicant includes several improvements to the Property. The Applicant plans to remove the existing house, guesthouse, barn, shed, two septic systems, and two thousand eight hundred (2,800) square feet of existing impervious gravel driveway within the wetlands buffer. The proposed plans also call for a new, permeable driveway, the addition of native plantings to the shorefront and wetlands buffer, and the removal of invasive species. These proposed enhancements to the Property will reduce the size of the existing, nonconforming footprint, minimize the encroachments in all set back areas, and utilize best management practices for storm water control, strengthening the effectiveness of the wetlands buffer.

**APPLICANT'S REQUEST FOR VARIANCE –**  
**FACTS SUPPORTING THE REQUEST**

**Ordinance 175-62 (page 98)**

**Prohibiting any uses in the WCOD that are not explicitly identified as permitted or conditional uses in Ordinances 175-60 and 175-61.**

**1. Granting the variance would not be contrary to public interest.**

A variance request is contrary to the public interest when it unduly, and in a marked degree, violates the Ordinance's basic objectives. In order to determine whether a variance would violate the basic zoning objectives, it is appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten the public health, safety, or welfare. It is respectfully submitted that the essential character of the locality will not be changed or altered by granting the variance, and will not be contrary to the public interest.

TES Environmental Consultants, LLC ("TES") assessed the wetlands on the Property on September 24, 2019. In the Wetlands Report, TES determined that the wetlands drained partly onto an abutting parcel via sheet flow (no well-defined channel) and partly onto the Property via a narrow intermittently-flowing channel. According to TES, the wetlands on the Property are almost entirely forested and are best described as a "forested swamp", with poorly drained mineral soils. Nothing in the report from TES indicated any presence of wildlife habitats, vernal pools, or animals or vegetation in need of preservation. The wetland area is dry the majority of the year, and is only present due to runoff from a neighboring farm.

The variance requested relates to the prohibition against any use of land within the WCOD that is not explicitly identified in Ordinances 175-60 and 175-61, neither of which include the construction of single-family homes. The Applicant intends to remove the existing house and outbuildings on the Property, and replace them with a single-family residence, a permitted use in the RC Zone. The proposed Plan will in no way encroach upon any wetlands, however, the unusual shape and limitations of the Property are such that encroachment upon the WCOD cannot be avoided. However, the new house will be set as far back from the wetlands as feasible. At its closest point, the proposed positioning places the house within thirty-seven feet, three inches (37' 3") of the wetlands. **Please see Plan L-02 where all encroachments into the WCOD are marked in yellow.** In comparison, some of the existing structures on the Property sit as close as more than thirty-six feet (36') from the wetlands, all of which will be removed under the proposed Plan.

Given the Property's remote location, the proposed encroachment will not be visible to the general public. The proposed location of the house is set far back from the road, is a significant distance from the view of the abutting properties, and is hidden by tree lines on multiple sides. Additionally, the slope down to Little Bay and the existing vegetation along the shoreline should further prevent the home from being easily viewed from the water. The proposed construction and the resulting house have been carefully planned in such a manner as to minimize any impacts on the environment that would adversely affect the public interest. There is no reason to expect that locating the house as demonstrated on the Plan will negatively impact the public or alter the character of the neighborhood. Instead, the proposed project will actually support the public interest by building the new house entirely outside of the SPOD, by removing all of the structures

currently encroaching upon the SPOD, removing invasive species currently taking up residence within the wetlands, and removing two aging septic systems from the Property.

**2. If the variance is granted, the spirit of the Ordinance would be observed.**

The Applicant respectfully submits that if the variance is granted, the spirit of the Ordinance would be observed. Ordinance Article XIII states that the purpose of the WCOD is to protect the quality and functioning of wetlands by managing the use of the wetland and adjacent buffer to protect water quality, minimizing flooding, protecting wildlife, maintaining stream flow and groundwater recharge, and conserving natural beauty. The Applicant respectfully submits that these purposes will be maintained and supported by the granting of the requested variance. The wetland area on the Property solely functions as a runoff for the neighboring farm, as further described in a letter from John Leland, dated February 8, 2021, describing the history of the Property, attached hereto as Exhibit E. The wetland area does not include any protected wildlife, habitats, or vernal pools in need of protection. Further, the proposed house will encroach into the buffer only, and will still be over thirty-five feet (35') away from the actual wetland area. No structures will be placed in the wetland area itself. The construction process will follow appropriate guidelines and best practices and there is no reason to believe that the presence of the proposed house will negatively impact the quality or functioning of the wetlands, nor do we believe that it will result in any changes to the Property that will impact the water quality, wildlife, water flow, or the existing natural beauty.

**3. Granting of the variance would do substantial justice.**

The New Hampshire Supreme Court has often held that injustice occurs when any loss to the individual is not outweighed by a gain to the general public. The public has little, if anything, to gain by a denial of this request, whereas the loss to the Applicant would be great. The wetland area at issue merely exists due to runoff from neighboring farmland, is dry the majority of the year, and does not house any wildlife or vegetation that require protection. The proposed project will improve, instead of harm the WCOD, as the Applicant plans involve the removal of invasive species and the removal of two thousand eight hundred (2,800) square feet of existing, impervious gravel driveway that currently sits in the WCOD. Denial of the requested variance will prevent the Applicant from making the most effective use of the Property. The permitted uses under Ordinance 175-60 are largely focused on environmental protection activities, such as removal of dead trees and planting certain vegetation. The only other permitted uses are related to creating temporary crossings, installing piers or docks, private wells, nature trails, and grading necessary for construction occurring outside of the WCOD. Under Ordinance 175-61, a conditional use permit may be granted for the purpose of installing roadways, driveways, commercial agriculture, non-residential buildings, accessory buildings, and outdoor recreation facilities that do not require construction. However, the RC Zone does not permit the majority of non-residential uses. If the building of a single-family home is not permitted on the Property, there are not many other options for the Applicant to make sufficient use of the land.

Further, the unusual shape and limitations of the Property are such that encroachment into the WCOD cannot be avoided. The required setbacks under the WCOD and the SPOD prevent any reasonable use of the Property within the confines of the Ordinance, with the Buildable Area making up less than ten percent (<10%) of the Property. By granting the variance, substantial justice will be done and the Applicant will be able to improve the functioning of the Property in a

manner that is consistent with the Ordinance and that minimizes impact to the wetlands, while ensuring that the new home, though crossing into the WCOD, will take up a smaller area of the land within the WCOD than the existing structures.

**4. If the variance is granted, the values of surrounding properties would not be diminished.**

The Applicant respectfully submits that the value of surrounding properties will not be negatively impacted by the proposed improvements to the Property. Granting this variance will allow the Property to be utilized in a manner supported by the RC Zone, without disturbing the neighborhood. The Buildable Area is set far back from the road, is hidden by tree lines on multiple sides, and has no neighbors in sight. The proposed house will not be visible to any passersby, nor to any neighboring lots. The incline of the Property, the existing vegetation along the shoreline, and the location of the new house being set even further back from the shore than the existing structures should further prevent the home from being easily viewed from the water. There is no reason to believe that permitting the Applicant to build the house shown on the Plan will have any negative impact upon surrounding property values.

**5. Unnecessary Hardship**

**A. Owing to special conditions of the property that distinguish it from other properties in the area:**

The Property is unique due to the size, shape, slope, and natural conditions. Consequently, the Buildable Area makes up less than ten percent (<10%) of the Property. Further, the Buildable Area is an unusual triangular shape, further limiting the design of any structure to be placed thereon without violating the Ordinance setback requirements or crossing into the WCOD. Please see Plan L-01 (Exhibit B) and Plan L-02 (Exhibit C) where the current Buildable Area is marked in red. After extensive review and discussions with the Commission, serious concerns were raised about any encroachments into the SPOD. The proposed location of the new house was chosen with care. All encroachments into the SPOD will be removed, and no portion of the proposed new house will cross into the SPOD. Although there will be encroachments into the WCOD, the wetlands, as noted in the Wetlands Report, only exist due to runoff from a neighboring farm and do not contain habitats or species in need of protection. The Applicant's proposal is the optimal combination of protecting the wetlands, protecting the shoreline, abiding by the general setback requirements, following the spirit and goals of the Ordinance, and making the best possible use of the Property, while also reducing the size of the current nonconforming footprint.

**B. Denial of the variance would result in unnecessary hardship because:**

**i. No fair and substantial relationship exists between the general purposes of the Ordinance provision and the specific application of that provision on the Property:**

The general purpose of the Ordinance is to protect the public health, safety, convenience, and general welfare of the residents of the Town of Durham. No fair and substantial relationship exists between the stated general purpose and the denial of the Applicant's plan. Denial of the requested variance will do nothing to contribute to the public's health or safety. The wetlands at issue exist only to assist runoff from a neighboring farm, do not house any protected vegetation or wildlife, and remain dry the majority of the year. The Applicant has consulted with the Commission, reviewed the Wetlands Report, and thus designed the Plan in such a way to make the



most efficient use of the Property while protecting the environment, abiding by the Ordinance, and minimizing impact to the wetlands. The Applicant's plans will remove the impervious gravel driveway and build a new driveway with a permeable surface. The Applicant also intends to remove invasive species and install new native species along the shoreline and the wetlands buffer. By taking these steps, and by preparing the Plan to incorporate the concerns of the Commission, and for the reasons set forth above, the Applicant respectfully submits that the general purposes of the Ordinance will actually be served by the granting of the variance. By granting the requested variance, the Applicant will be able to use the lot efficiently and economically, while minimizing negative impacts to the existing wetlands and actively reducing the footprint of nonconforming structures in the WCOD, improving the permeability of the land, and improving the quality of vegetation on the Property.

**ii. The proposed use is a reasonable one:**

The proposed use of the Property as a single-family residence is reasonable and is an allowed use within the RC Zone. The proposed design and location of the house is the best possible option to abide by the Ordinance and ensure maximum setbacks from the reference line of the WCOD while removing all encroachments into the SPOD. The proposed use will allow for an economic use of the Property without significant adverse impact upon the environment, and, in some areas, improvements to the environment by the removal of invasive species and the addition of native vegetation, all while removing other structures on the Property that make up a larger footprint within the WCOD than the proposed construction, resulting in an efficient use of the Property consistent with the surrounding area.

**APPLICANT'S REQUEST FOR VARIANCE –**  
**FACTS SUPPORTING THE REQUEST**

**Ordinance 175-59(A)(2)(d) (page 95)**

**Requiring an upland buffer strip of 100 feet from the reference line of adjacent wetlands.**

**1. Granting the variance would not be contrary to public interest.**

A variance request is contrary to the public interest when it unduly, and in a marked degree, violates the Ordinance's basic objectives. In order to determine whether a variance would violate the basic zoning objectives, it is appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten the public health, safety, or welfare. It is respectfully submitted that the essential character of the locality will not be changed or altered by granting the variance, and will not be contrary to the public interest.

TES Environmental Consultants, LLC ("TES") assessed the wetlands on the Property on September 24, 2019. In the Wetlands Report, TES determined that the wetlands drained partly onto an abutting parcel via sheet flow (no well-defined channel) and partly onto the Property via a narrow intermittently flowing channel. According to TES, the wetlands on the Property are almost entirely forested and are best described as a "forested swamp", with poorly drained mineral soils. Nothing in the report from TES indicated any presence of wildlife habitats, vernal pools, or animals or vegetation in need of preservation. The wetland area is dry the majority of the year, and is only present due to runoff from a neighboring farm.

The variance requested relates to the required one hundred foot (100') upland buffer strip between the reference line of identified wetlands and any structures built on an existing lot within the WCOD. The proposed Plan will in no way encroach upon any wetlands, however, the unusual shape and limitations of the Property are such that encroachment upon the buffer cannot be avoided. At its closest point, the proposed positioning places the house thirty-seven feet, three inches (37' 3") from the edge of the wetlands, resulting in an encroachment of sixty-two feet, nine inches (62' 9") into the one hundred foot (100) buffer. **Please see Plan L-02 where all proposed encroachments into the WCOD are marked in yellow.** In comparison, some of the existing structures on the Property encroach into the buffer by sixty-four feet (64') (see Plan EX-01/Exhibit A), all of which will be removed under the proposed Plan (see Plan L-02/Exhibit C).

Given the Property's remote location, the proposed encroachment will not be visible to the general public. The proposed location of the house is set far back from the road, is a significant distance from the view of the abutting properties, and is hidden by tree lines on multiple sides. Additionally, the slope down to Little Bay and the existing vegetation along the shoreline should further prevent the home from being easily viewed from the water. The proposed construction and house have been carefully planned in such a manner as to minimize any impacts on the environment that would adversely affect the public interest. There is no reason to expect that locating the house as demonstrated on the Plan will negatively impact the public or alter the character of the neighborhood. Instead, the proposed project will actually support the public interest by building the new house entirely outside of the SPOD, by removing all of the structures currently encroaching upon the SPOD, removing invasive species currently taking up residence within the wetlands, and removing two aging septic systems from the Property.

**2. If the variance is granted, the spirit of the Ordinance would be observed.**

The Applicant respectfully submits that if the variance is granted, the spirit of the Ordinance would be observed. Ordinance Article XIII states that the purpose of the WCOD is to protect the quality and functioning of wetlands by managing the use of the wetland and adjacent buffer to protect water quality, minimizing flooding, protecting wildlife, maintaining stream flow and groundwater recharge, and conserving natural beauty. The Applicant respectfully submits that these purposes will be maintained and supported by the granting of the requested variance. The wetland area on the Property solely functions as a runoff for the neighboring farm, as further described in the attached letter from John Leland, dated February 8, 2021, describing the history of the Property, attached hereto as Exhibit E. The wetland area does not include any protected wildlife, habitats, or vernal pools in need of protection. Further, the proposed house will encroach into the buffer only, and will still be over thirty-five feet (35') away from the actual wetland area. No structures will be placed in the wetland area itself. The construction process will follow appropriate guidelines and best practices and there is no reason to believe that the presence of the proposed house will negatively impact the quality or functioning of the wetlands, nor to believe that it will result in any changes to the Property that will impact the water quality, wildlife, water flow, or the existing natural beauty.

**3. Granting of the variance would do substantial justice.**

The New Hampshire Supreme Court has often held that injustice occurs when any loss to the individual is not outweighed by a gain to the general public. The public has little, if anything, to gain by a denial of this request, whereas the loss to the Applicant would be great. The wetland area at issue merely exists due to runoff from neighboring farmland, is dry the majority of the year, and does not house any wildlife or vegetation that require protection. The proposed project will improve, instead of harm the WCOD, as the Applicant plans involve the removal of invasive species and the removal of two thousand eight hundred (2,800) square feet of existing, impervious gravel driveway that currently sits in the WCOD. Denial of the requested variance will prevent the Applicant from making the most effective use of the Property, as the required setbacks under the WCOD and the SPOD prevent any reasonable use of the Property within the confines of the Ordinance, with the Buildable Area making up less than ten percent (<10%) of the Property. By granting the variance, substantial justice will be done and the Applicant will be able to improve the functioning of the Property in a manner that is consistent with the Ordinance and that minimizes impact to the wetlands, while ensuring that the new home, though it encroaches into the wetland buffer, will take up a smaller area of the land within the buffer than the existing structures.

**4. If the variance is granted, the values of surrounding properties would not be diminished.**

The Applicant respectfully submits that the value of surrounding properties will not be negatively impacted by the proposed improvements to the Property. Granting this variance will allow the Property to be utilized in a manner supported by the RC Zone, without disturbing the neighborhood. The Buildable Area is set far back from the road, is hidden by tree lines on multiple sides, and has no neighbors in sight. The proposed house will not be visible to any passersby, nor to any neighboring lots. The incline of the Property, as well as the existing vegetation along the shoreline, and the location of the new house being set even further back from the shore than the existing structures should further prevent the home from being easily viewed from the water. There

is no reason to believe that permitting the Applicant to build the house shown on the Plan will have any negative impact upon surrounding property values.

**5. Unnecessary Hardship**

**A. Owing to special conditions of the property that distinguish it from other properties in the area:**

The Property is unique due to the size, shape, slope, and natural conditions. Consequently, the Buildable Area makes up less than ten percent (<10%) of the Property. Further, the Buildable Area is an unusual triangular shape, further limiting the design of any structure to be placed thereon without violating the Ordinance setback requirements. Please see Plan L-01 (Exhibit B) and Plan L-02 (Exhibit C) where the current Buildable Area is marked in red. After extensive review and discussions with the Commission, serious concerns were raised about any encroachments into the SPOD. The proposed location of the new house was chosen with care. All encroachments into the SPOD will be removed, and no portion of the proposed new house will cross into the SPOD. Although there will be encroachments into the WCOD, the wetlands, as noted in the Wetlands Report, only exist due to runoff from a neighboring farm and do not contain habitats or species in need of protection. The Applicant's proposal is the optimal combination of protecting the wetlands, protecting the shoreline, abiding by the general setback requirements, following the spirit and goals of the Ordinance, and making the best possible use of the Property, while also reducing the size of the current nonconforming footprint.

**B. Denial of the variance would result in unnecessary hardship because:**

**i. No fair and substantial relationship exists between the general purposes of the Ordinance provision and the specific application of that provision on the Property:**

The general purpose of the Ordinance is to protect the public health, safety, convenience, and general welfare of the residents of the Town of Durham. No fair and substantial relationship exists between the stated general purpose and the denial of the Applicant's plan. Denial of the requested variance will do nothing to contribute to the public's health or safety. The wetlands at issue exist only to assist runoff from a neighboring farm, do not house any protected vegetation or wildlife, and remain dry the majority of the year. The Applicant has consulted with the Commission, reviewed the Wetlands Report, and thus designed the Plan in such a way to make the most efficient use of the Property while protecting the environment, abiding by the Ordinance, and minimizing impact to the wetlands. The Applicant's plans will remove the impervious gravel driveway and build a new driveway with a permeable surface. The Applicant also intends to remove invasive species and install new native species along the shoreline and the wetlands buffer. By taking these steps, and by preparing the Plan to incorporate the concerns of the Commission, and for the reasons set forth above, the Applicant respectfully submits that the general purposes of the Ordinance will actually be served by the granting of the variance. By granting the requested variance, the Applicant will be able to use the lot efficiently and economically, while minimizing negative impacts to the existing wetlands and actively reducing the footprint of nonconforming structures in the wetland buffer, improving the permeability of the land, and improving the quality of vegetation on the Property.

**ii. The proposed use is a reasonable one:**

The proposed use of the Property as a single-family residence is reasonable and is an allowed use within the RC Zone. The proposed design and location of the house is the best possible option to abide by the Ordinance and ensure maximum setbacks from the reference line of the WCOD while removing all encroachments into the SPOD. The proposed use will allow for an economic use of the Property without significant adverse impact upon the environment, and, in some areas, improvements to the environment by the removal of invasive species and the addition of native vegetation, all while removing other structures on the Property that encroach on these setbacks in excess of the proposed construction, resulting in an efficient use of the Property consistent with the surrounding area.