



**TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT**

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

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Town of Durham

AUG 08 2023

Planning, Zoning
and Assessing

Fees Paid 8/11/23
\$388 # 1388

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 Brian Miles & Erin Sigel

Address: 89 Packers Falls Road

Phone # 603-312-6423 Email: selimnairb@gmail.com

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

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

Location of Property: 89 Packers Falls Road
(Street & Number)

Tax Map & Lot number 236-14

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

Building Permit Application number 23-294: Build garden shed forward of front façade of house.

Please see attached statement for explanation of five (5) statutory requirements.

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.

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PLANNING BOARD

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.

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PLANNING BOARD
10/14/14
10:14 AM

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VARIANCE CRITERIA GUIDELINES

<p>Statutory Requirements (RSA 674:33, I(b)) <i>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</i></p>	<p>Explanation</p>
<p>1. The variance is not contrary to the public interest.</p>	<p>The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”</p>
<p>2. The spirit of the ordinance is observed.</p>	<p>As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.</p>
<p>3. Substantial justice is done.</p>	<p>The benefit to the applicant should not be outweighed by harm to the general public.</p>
<p>4. The values of surrounding properties are not diminished.</p>	<p>Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.</p>
<p>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways:</p> <p>First is to show that because of special condition of the property that distinguish it from other properties in the area:</p> <p>(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and</p> <p>(b) The proposed use is a reasonable one.</p> <p><i>Alternatively</i>, unnecessary hardship exists 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.</p>	<p>The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area.</p> <p>(a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a “fair and substantial” way.</p> <p>(b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.</p> <p><i>Alternatively</i>, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.</p>

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AUG 08 2023

Planning, Zoning
and Assessing

To: Town of Durham Zoning Board of Adjustment
From: Brian Miles & Erin Sigel
Date: August 7, 2023
Subject: Variance for construction of garden shed at 89 Packers Falls Road

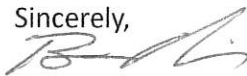
To Whom It May Concern,

We request a variance from Article XX, section B for the construction of a garden shed forward of the front façade of our house (as applied for in denied Building Permit Application no. 23-294). The location of the proposed garden shed is show in exhibit A (titled "Area view of proposed shed site / 89 Packers Falls Road) in relation to neighboring properties, private access road, and the nearest public road (Packers Falls Road). Exhibit B (titled "Detail view of proposed shed site / 89 Packers Falls Road) shows the site of the proposed shed adjacent to our garden and setback approximately 35 feet from our property line. As illustrated by the ground elevation contours depicted on both maps, the existing garden (and proposed adjacent shed) is sited on the only more-or-less level land on our property. The topography of the sides and back of our property (behind the front façade of the house) do not lend themselves to the construction of the proposed shed and any such site would be impractically distant from the garden the shed would serve.

We believe that the proposed project meets the five (5) statutory requirements (RSA 674:33, I(b)) for granting a variance as described in the following sub-sections.

Thank you for your time and consideration.

Sincerely,



Brian Miles



Erin Sigel

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

We understand the purpose of Article XX, section B (6) ("the building shall not be located forward of the front façade of the house") of The Durham Zoning Ordinance to be the avoidance of potentially unsightly or unsafe nuisance accessory buildings that can be viewed from public roads, especially those on parcels zoned Residence A and B. The proposed garden shed will not be visible from a public road, and it will be in keeping with the rural character of the neighborhood. Further, the site of the proposed shed is located to the left of the front façade of the house and is nine (9) to 15 feet below the grade of the house. As such, the proposed shed will be unobtrusive; it will not obstruct the view of the house from the driveway.

B. The spirit of the ordinance is observed

Given that the proposed garden shed will not be visible from a public road and would uphold the rural character of the neighborhood, we believe that granting a variance in this case will not impinge on future enforcement of Article XX, section B (6) of The Durham Zoning Ordinance to prohibit nuisance accessory buildings visible from public roads.

C. Substantial justice is done

Granting the variance in question will allow construction of the garden shed adjacent to our garden. We do not believe granting of the variance or construction of the proposed shed would lead to any harm to the general public or neighboring property owners.

D. The values of surrounding properties are not diminished

We believe the proposed shed will be in accord with the rural character of the neighborhood and will not differ in character or quality from accessory buildings of neighboring properties and environs. Therefore, we believe that the values of surrounding properties will not be diminished by the construction of the proposed garden shed or by the granting of the variance.

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

Given that the frontage of the parcel and front façade of our house is a private road, and that there is a wooded buffer between the site of the proposed shed and said private road, we believe there is no fair and substantial relationship between the general public purposes of the prohibition on siting accessory buildings forward of the front façade of houses in general, and the siting of the proposed shed at 89 Packers Falls Road. If this variance is not granted, we would face the hardship of not being able to have a building to store garden tools and supplies in close proximity to our garden. Further, given the topography of our property, this is the only reasonable site for a garden and garden shed. Therefore, the variance is necessary to enable reasonable use of our property.

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and Assessing



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: MILES, BRIAN C & SIGEL, ERIN M, 89 PACKERS FALLS ROAD, DURHAM, NH 03824

Date of order: July 20, 2023

Deadline for application for appeal: August 21, 2023

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

Building Permit Application number 23-294, for property located at 89 Packers Falls Road, is DENIED as the proposal does not meet the requirements of the Durham Zoning Ordinances below:

ARTICLE XX STANDARDS FOR SPECIFIC USES

175-109. Compliance Required.

B. Accessory Buildings for Single-Family Use. The following standards apply to buildings that are accessory to single-family use, not including garages and accessory apartments.

6. The building shall not be located forward of the front façade of the house.

By Durham's Building Inspector/Code Enforcement Officer:



Audrey Cline CEO

Exhibit A: Area view of proposed shed site 89 Packers Falls Road

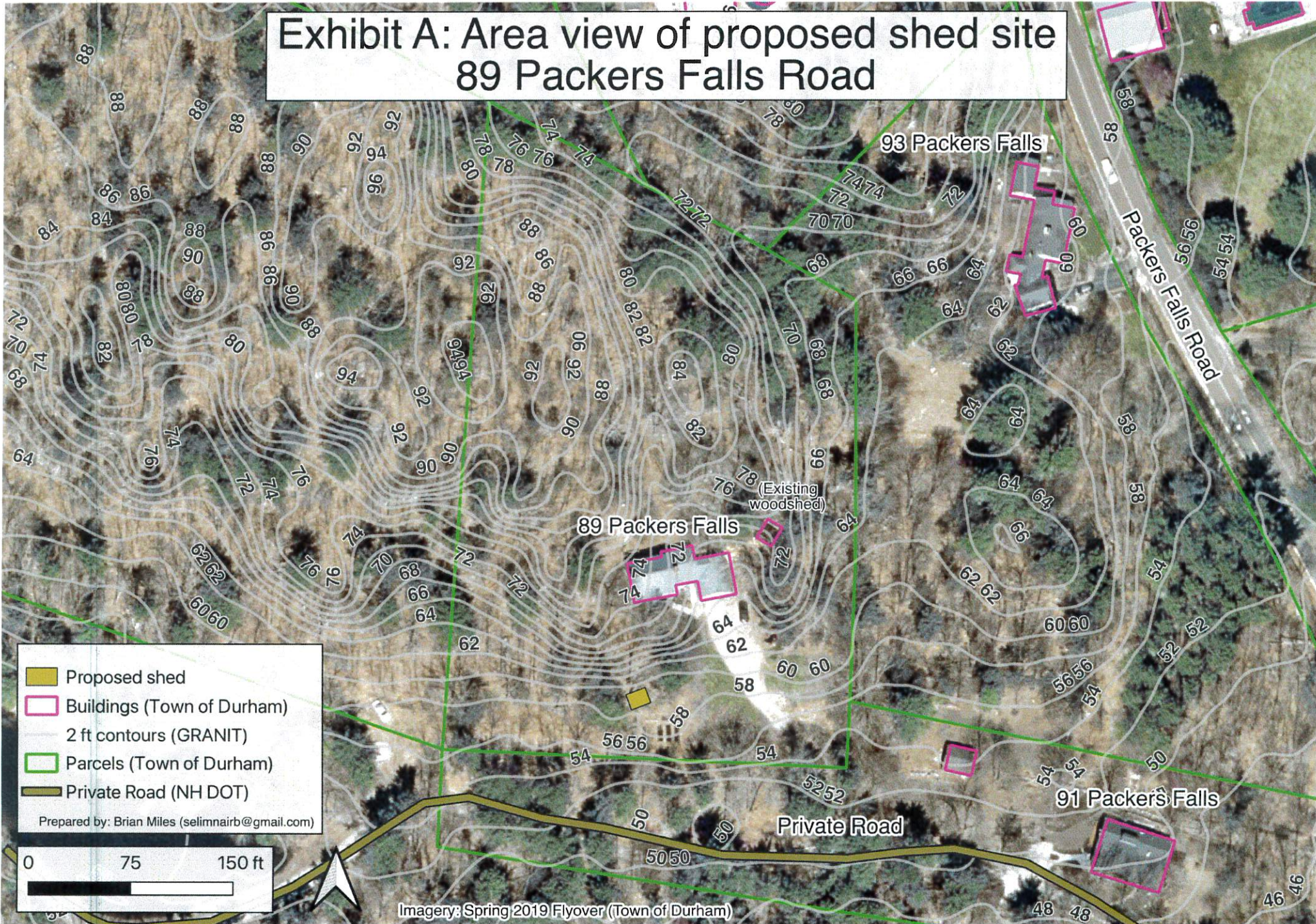


Exhibit B: Detail view of proposed shed site 89 Packers Falls Road



Proposed shed

2 ft contours (GRANIT)

Parcels (Town of Durham)

Spring 2019 Flyover (Town of Durham)

Prepared by: Brian Miles (selimnairb@gmail.com)

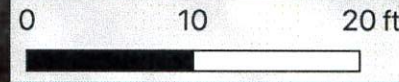


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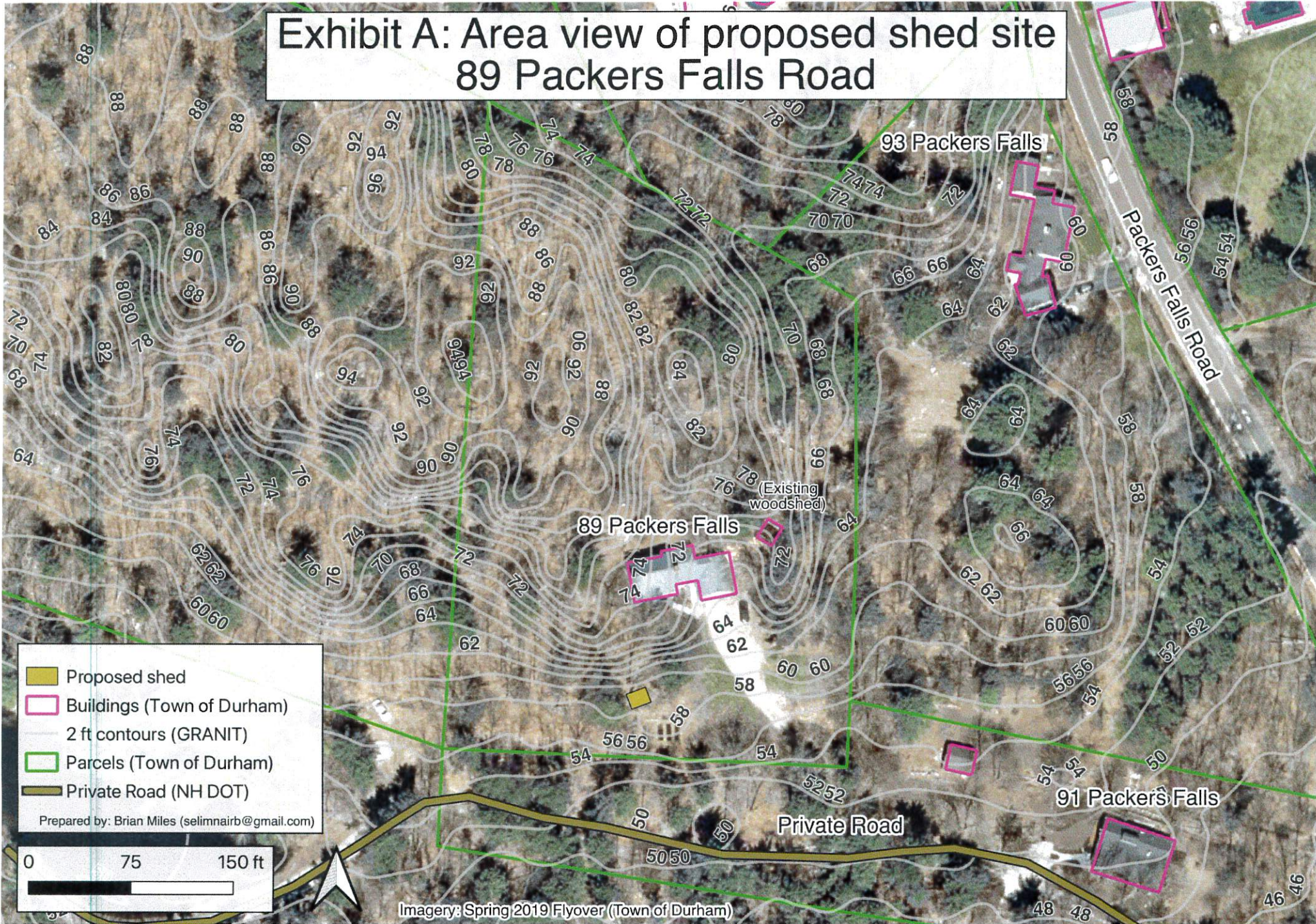


Exhibit B: Detail view of proposed shed site 89 Packers Falls Road



- Proposed shed
- 2 ft contours (GRANIT)
- Parcels (Town of Durham)

Spring 2019 Flyover (Town of Durham)
Prepared by: Brian Miles (selimnairb@gmail.com)

