

APPLICATION FOR A VARIANCE
ZONING BOARD OF ADJUSTMENT | BRADFORD, NH 03221

APPLICATION RECEIVED DATE: _____

CASE NO. _____

NAME OF APPLICANT: David A. Carignan

MAILING ADDRESS:
37 Flat Rock Road
Windham, NH 03087

TELEPHONE NUMBER: (603) 386-1251

PROPERTY OWNER: Same
(If same as applicant, enter "same")

LOCATION OF PROPERTY: 244 Breezy Hill Road

TAX MAP NUMBER: 18 LOT NUMBER: 013

Variance: If you want to do something which does not conform to Bradford's Zoning Ordinances you can demonstrate that there are special circumstances of the property that distinguish it from other properties similarly zoned, and may apply for a variance.

Complete the following sections with as much information as possible. Initial and date each page; sign and date the application in the spaces provided. This application will not be considered unless all required statements have been made. The applicant bears the burden of proof for a variance.

THE ZONING BOARD WILL NOT ACCEPT INCOMPLETE OR LATE APPLICATIONS

Additional information may be supplied on separate sheets if the space provided is inadequate. Applications shall be acceptable only when presented to the Clerk of the Board at the beginning of any regularly scheduled meeting. ONE ORIGINAL AND SIX (6) COPIES OF THE COMPLETED APPLICATION SHALL BE PRESENTED TO THE CLERK. If you have any questions and/or require assistance, attend a regularly scheduled Zoning Board of Adjustment meeting for consultation.

Applicant is fully responsible for researching and knowing all laws which may be applicable and affect the outcome of the Board's decision on the application request. It is important that you read and understand Attachment 1 of this application. The applicant, or an authorized agent or attorney, must appear at the Public Hearing for the Board to take action on the application. The application will be terminated or tabled for failure to appear at a scheduled meeting. If an agent or attorney is designated to represent this application, the applicant must submit a signed Letter of Authorization.

Pay close attention when making the Abutter's List. An abutter is any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. **YOU ARE RESPONSIBLE FOR OBTAINING THE CORRECT OWNER AND MAILING INFORMATION FOR THIS LIST FROM THE TOWN TAX OFFICE AS OTHER SOURCES MAY NOT BE ACCURATE OR UP TO DATE.** This information is necessary to properly notify all interested parties with certified notices. Failure to provide complete or correct information on abutters will result in the application being returned and may delay the scheduling of your hearing.

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Attach a copy of any Administrative Decision, if applicable; for example a denied Building Permit.

APPLICATION FEES

All fees shall be paid before a public hearing can be noticed.

ADMINISTRATIVE & NEWSPAPER NOTICE

Check made out to Town of Bradford/ZBA: **\$70.00**

REQUIRED NOTICES (include Applicant, Abutters, Engineers, Easement Holders, etc.)

Check made out to Postmaster, Bradford, NH: 7 AT \$ 6.85 EACH SUBTOTAL: \$ 47.95

TOTAL FEES: \$ 117.95

ZBA USE ONLY. Comments have been solicited from the Selectmen __, Conservation Commission __,
Road Agent __, Police Chief __, Fire Chief __, and Planning Board __ as appropriate.

DATE: _____


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New Hampshire state law requires that a number of Variance Criteria be considered before granting a variance. In order for a variance to be granted, each of these criteria must be carefully and thoroughly considered by the Zoning Board.

(1), (4), and (5)

A variance is requested from Article 3, Section ___ of the Town of Bradford Zoning Ordinance.

What is proposed? Attach sketches, plot plans, pictures, construction plans, or other relevant documentation that explain the proposed use. Include copies of any prior applications concerning the property.

The applicant proposes to tear down the existing dwelling on the subject property and replace with a 2- bedroom, around 2600 square foot single-family home on and/or about the location of the existing dwelling. The existing dwelling on the property is not in any condition to be restored or refurbished, as advised to the property owner/applicant by a construction expert. As shown in the pictures attached hereto as Exhibit A, the back of the existing dwelling is significantly bowing, indicating structural weaknesses in the subject property that are likely to affect not only the walls/sides of the dwelling but also the roof. In addition, the property owners have had other professionals to the property who have advised them that the current dwelling may have inadequate plumbing and/or other internal issues that could not be reasonably fixed by renovation. Based on the recommendations of these professionals, the applicant therefore seeks to tear down the insufficient existing structure, and build an entirely new single-family home that complies with current codes and requirements for safety and construction. A proposed plan for the location and size of the proposed single-family home (including all setbacks associated with the proposed single-family home) is included hereto as Exhibit B.

Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. Attach survey plan, plot plan, etc.

The subject property is owned by David and Julie Carignan by virtue of Warranty Deed dated September 26, 2019 and recorded in the Merrimack County Registry of Deeds at Book 3648, Page 496.

The property is a 0.7-acre parcel of land located in the rural residential zone. The property is a waterfront parcel abutting Lake Massasecum. The subject property has frontage of about 250 feet along Breezy Hill Road. The subject property has about 160 feet, more or less, of frontage on Lake Massasecum.

The property has unique topographical features by its nature. The subject property is steeply sloped, with the existing dwelling sitting some eight (8') feet below the grade of Breezy Hill Road. The subject property is relatively flat at the area proposed by the applicant as the building site of the proposed single-family property. The subject property is steeply sloped from the back of the proposed single-family dwelling to the lake shore, as illustrated and depicted in attached Exhibits A, B, and C. The subject property is unique in its surroundings as no surrounding lots have the same steep topography and land features as the subject lot. Please see attached addendum for additional information.

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The Zoning Board must determine that the variance request satisfies the following 5 criteria. ***Please note that all criteria must be satisfied in order for a variance to be granted.*** Please provide a written response along with any other supporting documentation for each of the following criteria. ***Use a full page for each criteria.*** Attach additional pages if necessary. Failure to satisfactorily prove any single criteria will result in denial of the application.

Please use one page per criteria. Please explain how and/or why:

- 1. The variance will not be contrary to the public interest because;**
For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. For instance:
Will the proposal alter the essential character of the neighborhood?
Will it threaten the public's health, safety or welfare?
- 2. If the variance were granted, the spirit of the Bradford Zoning Ordinance would be observed because;**
It is in the public's interest to uphold the spirit of the ordinance, this criteria is often linked to the first.
Explain how the request will uphold the spirit and goals of the town's zoning laws.
- 3. The proposal would result in substantial justice being done because;**
It must be demonstrated that any loss suffered by the general public would be so minimal that it is outweighed by the gain to the applicant. A test for this would be to demonstrate that the proposal is consistent with current uses in the area.
- 4. If the variance were granted, the value of surrounding properties will not be diminished because;**
Meeting this condition seems fairly obvious, but there are many factors that can influence property values. It must be demonstrated that the proposal will have no negative impact on the value of neighboring properties.
- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship:**
 - a) Explain any special conditions of this property that distinguish it from other properties in the area.
 - b) Explain how this property is different in a meaningful way from other properties in the area.
 - c) Explain how this property is burdened more severely than others by the zoning restrictions.
 - d) Given the special conditions of this property, explain how the proposed use is a reasonable one.

The Applicant has the burden of proof. Applicants should be prepared to present information pertinent to the variance being requested. To obtain a legally granted variance, you must demonstrate/prove that the proposal satisfies **all five** of the variance criteria.

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Certification:

I hereby certify that;

I have read and understand the instructions for completing the application for a variance.

I have completed this application as completely and fully as possible.

I have attached all evidence including sketches that I intend to discuss at the Public Hearing on this application.

I understand that if this application is incomplete, it will be returned within a reasonable time following its submission and that this may delay the scheduling of the Public Hearing.

I understand that I must appear in person at the Public Hearing to present and discuss this application. If I cannot appear in person, I will notify the Chair of the ZBA, in writing, designating the individual who will appear for me.

The ZBA has permission to enter this property in order to conduct scheduled site walks upon reasonable prior notice.

My application for a variance and supporting information is honest and truthful to the best of my knowledge.

Applicant signature: _____

Date: 4-21-20

Excerpt from NH Zoning Law – Variances Section 674:33 Powers of Zoning Board of Adjustment

I. The zoning board of adjustment shall have the power to:

... Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance 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; and

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

(A) For purposes of this subparagraph, "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.

The definition of "unnecessary hardship" set forth in subparagraph (5) 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.

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COMPLETE THIS FORM AND ATTACH TO APPLICATION

APPLICANT NAME: David Carignan		
DATE:	Case Number:	Map/Lot No. 18-013
ABUTTERS LIST		
FULL NAME AND ADDRESS FROM CURRENT TAX BLOTTER		
TAX MAP/LOT NO.	NAME	MAILING ADDRESS
18-014	David and Cindy Nunnally	2 Bacon Road Bradford, NH 03221
07-005	Michael Lowry	251 Breezy Hill Road Bradford, NH 03221
18-012	Michael Lowry	251 Breezy Hill Road Bradford, NH 03221
18-013 (applicant)	David and Julie Carignan	37 Flat Rock Road Windham, NH 03087
	Elizabeth J. Nolin, Esq. Nolin Law, PLLC	P.O. Box 87 Nottingham, NH 03290
	Dan Higginson Higginson Land Services	76 Patterson Hill Road Henniker, NH 03242
	Town of Bradford Selectmen's Office	P.O. Box 436 Bradford, NH 03221

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1.) Granting the Variance will not be Contrary to the Public Interest

The first step in analyzing whether a variance is contrary to the public interest is to examine the applicable zoning Ordinance.¹ To be contrary to the public interest, the variance must unduly, and in a marked degree, conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives.² One way to determine whether granting a variance would violate basic zoning objectives is to evaluate whether it would alter the essential character of the locality.³ Another approach to determining whether the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare.⁴

In this case, the proposed variance is not contrary to the public interest because it does not unduly conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. In other words, the proposed development of a single family, two-bedroom dwelling on the subject property is not contrary to the public interest because the proposed development is consistent with the zoning of the subject property; is consistent with the essential character of the surrounding locality; and the proposed development in no way threatens the public health, safety, or welfare.

a.) The proposed use would not alter the essential character of the locality.

The subject property lies within the rural residential, as indicated on the property tax card and the Town of Bradford zoning maps. The proposed two-bedroom, single family home is appropriate for such a zone. Further, the proposed improvements are consistent with other existing residential uses in the surrounding rural residential zone, particularly when considering the proposed size of the dwelling.

The locality surrounding the subject property consists of other smaller lots improved with single- family residences. The surrounding lots are improved with dwellings of varying sizes, but are typically two to four bedrooms in size, multi- story, with decks, porches, or similar features. The proposed structure is consistent with surrounding dwellings in terms of size, features, height, exterior appearance, and is generally appropriate for the lot size upon which it shall be constructed. For convenience, drawings of the proposed single-family home are attached hereto as Exhibit C.

As the proposed dwelling is consistent with the essential character of the surrounding properties and general surrounding locality, the proposed use would not alter the essential character of the locality.

b.) Granting the Variance does not threaten the public health, safety, or welfare.

The proposed improvements do not threaten the public health, safety, or welfare.

¹ Chester, 152 N.H. at 581.

² Chester, 152 N.H. at 581.

³ Chester, 152 N.H. at 581; Harrington v. Town of Warner, 152 N.H. 74, 78 (2005); Harborside Associates, LP v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011).

⁴ Chester, 152 N.H. at 581; Harborside, 162 N.H. at 515.

The proposed development shall exclusively include the construction of a single family, two-bedroom dwelling with deck. There are no public health, safety, or welfare concerns associated with this proposed development as there is no use of chemicals, hazardous materials or waste products, or the like.

All construction of the proposed dwelling shall be done in accordance with New Hampshire standards, laws, and regulations, and therefore shall impose no public health, safety, or welfare concerns.

As the proposed construction is standard construction of a small, single family dwelling, the granting of this variance shall in no way threaten the public health, safety, or welfare. Further, as the proposed development would not alter the essential character of the locality, granting the variance would not be contrary to the public interest.

2.) Granting the Variance Will Observe the Spirit of the Ordinance

The 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."⁵ "The public interests are protected by standards which prohibit the granting of a variance inconsistent with the purpose and intent of the ordinance, which require that variances be consistent with the spirit of the ordinance, or which permit only variances that are in the public interest."⁶

In this case, the spirit of the Ordinance is observed in the granting of the variance because the proposed use is consistent with other uses in the subject property's rural residential zone and in keeping with the essential character of the neighborhood. Additionally, it does not pose threat to the public health, safety, or welfare. For these reasons, granting the variance will observe the spirit of the Ordinance.

⁵ *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 580 (2005).

⁶ *Id.* at 581, 883 A.2d 1034 (quotation omitted). *Nine A, LLC v Town of Chesterfield*, 157 NH 361, 366 (2008).

3.) By Granting the Variance, Substantial Justice is Done.

Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.⁷ In other words, if the general public would realize no appreciable gain from a denial of the variance, that would be an injustice.⁸

In this case, the general public does not realize any appreciable gain from the denial of this variance. The proposed development is appropriate for the subject property's rural residential zone and the area's present and existing uses. Additionally, the proposed development poses no health, safety, or wellness threats to the general public. In fact, the general public would receive a benefit through the approval of this variance request because the construction of the proposed improvements on the subject property will increase the subject property's value and subsequent real estate taxes. For these reasons, the general public would realize no appreciable gain from denying this variance application.

In contrast, the applicant would realize significant loss from the denial of the variance application. The approval of this variance request shall permit the applicant to replace the existing single-family dwelling, which is physically deteriorating as illustrated in the pictures attached hereto as Exhibit A. As such, the applicant will be able to the enjoy and use the subject lot in a livable, safe, and reasonable dwelling. As the subject property is a lakefront property, and the location where the applicants intend to retire to as a primary residence, the ability of the applicant to enjoy the property with the proposed improvement is a significant benefit to the property owner.

For these reasons, substantial justice is done if the variance is granted because the applicant will be able to fully utilize, lease, and enjoy the subject property in a reasonable manner, and the general public will realize no appreciable loss as a result.

⁷ *Malachy*, 155 N.H. at 109; *Harborside*, 162 N.H. at 515.

⁸ *Lone Pine Hunters' Club*, 149 N.H. at 670; *Malachy*, 155 NH at 109.

4.) Granting the Variance Will Not Diminish the Values of Surrounding Properties.

Surrounding property values will not diminish as a result of the variance because the proposed improvements are consistent with other dwellings and improvements in the area. Additionally, the proposed residential improvements are consistent with other uses in the area in terms of size, location on the lot, exterior appearance, and types of improvement.

No noise, traffic, or environmental issues need be considered in this matter due to the inherently residential nature of the proposed improvements. The proposed dwelling shall not be unreasonably close to and/or burdensome to abutters, as the proposed structure satisfies all side setbacks.

For these reasons, the granting of the variance will not diminish the values of surrounding properties.

5.) Special Conditions Exist Such That Literal Enforcement of the Ordinance Results in Unnecessary Hardship.

Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship to the applicant because, owing to special conditions of the subject property that distinguish it from other properties in the area, the subject property cannot be reasonably used in strict conformance with the Ordinance.

The subject property is a unique lot in its surroundings, consisting of 0.7 acres with varied and steep topographical features. The northeastern portion of the lot—where the existing dwelling and proposed single-family home is located—sits about eight (8') feet below the height of Breezy Hill Road. This portion of the lot is relatively flat and even in the footprint of the proposed home. However, as illustrated on the plan attached hereto as Exhibit B and further illustrated in the pictures attached as Exhibit A and drawings in Exhibit C, the lot steeply drops at the precise location where the back of the existing dwelling is located. Additionally, a significant portion of the subject property on the southwestern portion of the lot is poorly drained wetland.

The subject property has unique dimensions. The existing dwelling and proposed dwelling are and shall be constructed on the eastern portion of the lot ("Buildable Portion"). The eastern boundary line of the subject property measures about ninety (90') feet in length. The location of the existing and proposed dwellings are the only possible locations for structures on the lot given the topographical features of the lot.

The ordinance requires the following requirements, for which the applicant seeks a variance: 1.) 75' setback from the shoreline; 2.) 50' setback of a dwelling from any road; and 3.) maximum height of thirty-five (35) feet. Given the unique topographical features of the subject property, there is no way the property owners can construct a reasonable dwelling in strict conformance with these ordinance requirements.

It should first be noted that the eastern portion of the lot—the only possible place for any dwelling to be located—is ninety (90') feet in depth. It is mathematically impossible to observe the shoreline setback and road setback requirements in these dimensions, as the combined setback requirements require the lot have at least one hundred and twenty-five (125') feet to dedicate to setbacks alone. Mathematically, this leaves no area for a dwelling in the Buildable Portion of the lot. For this reason alone, variances are necessary to construct any dwelling on the property.

In addition to this mathematical impossibility, the property owners require variances to the shoreline setback requirement and road setback requirement as neither setback can be satisfied, even if the other is not considered. The steep slope of the topography at the eastern portion of the subject property leading to the shore of Lake Massasecum dictates the extent to which a structure may be placed on the eastern portion of the lot. In other words, it is unreasonable to place a structure on any portion of this steeply-sloped topography. This steep

topography extends more than seventy-five (75') from the shore of Lake Massasecum. Therefore, it is unreasonable and unfeasible for the property owner to construct a dwelling in compliance with the seventy-five (75') foot setback from the shore of Lake Massasecum.

As the beginning of the steep slope dictates how close to Lake Massasecum the proposed structure may be built, the property owners—in order to accommodate the reasonable size of the proposed home—must shift the home closer to Breezy Hill Road than permitted by the ordinance in order to place any reasonably sized dwelling on the Buildable Portion. The dimensions of the reasonably-sized proposed dwelling require that, in order to observe the steep topography of the eastern portion of the lot, the dwelling be located (at its closest) about six (6) feet from the edge of Breezy Hill Road. As this is closer to Breezy Hill Road than the required fifty (50') under the ordinance, a variance is sought for this provision.

Similarly, due to the topography of the subject lot, the proposed multi-story dwelling must be higher than the permitted thirty-five (35') feet in height to bring the proposed dwelling to a reasonable height to be accessed by Breezy Hill Road and usable given the southeastern sharp topography. The proposed dwelling shall be approximately forty (40') feet in height from the lowest point (located at the beginning of the “drop” of the southeastern slope) to the highest pitch of the roof. As this is greater than the thirty-five (35') feet permitted under the Ordinance, a variance is requested for the height of the structure. Please see building plans attached as Exhibit C for pictorial depictions.

The proposed improvements to the subject property is reasonable, as it is reasonable for a property owner to wish to improve a residentially zoned lot with a two-bedroom, single family home that is consistent with other homes in the surrounding locality.

In light of these facts, it is clear the subject property cannot be reasonably used in strict conformity with the Ordinance. There is no buildable area on the subject lot to accommodate any dwelling that complies with the setback requirements of the ordinance in mathematical terms. It would be an unreasonable burden to require the property owners comply with all setback requirements because that would require the property owners to, in fact, construct no reasonable dwelling on the property at all. This is therefore an unreasonable burden to place on any subject property owner, particularly when taking into account the surrounding properties, dwellings, and placements of those dwellings on surrounding properties. The burden arises directly from the nature and dimension of the subject property; and as such, it would be unreasonable to require the applicant to strictly comply with the permitted uses under the Ordinance.

For these reasons, special conditions exist on the subject property such that strict observation and literal enforcement of the Ordinance result in unnecessary hardship on the applicant.

EXHIBIT A

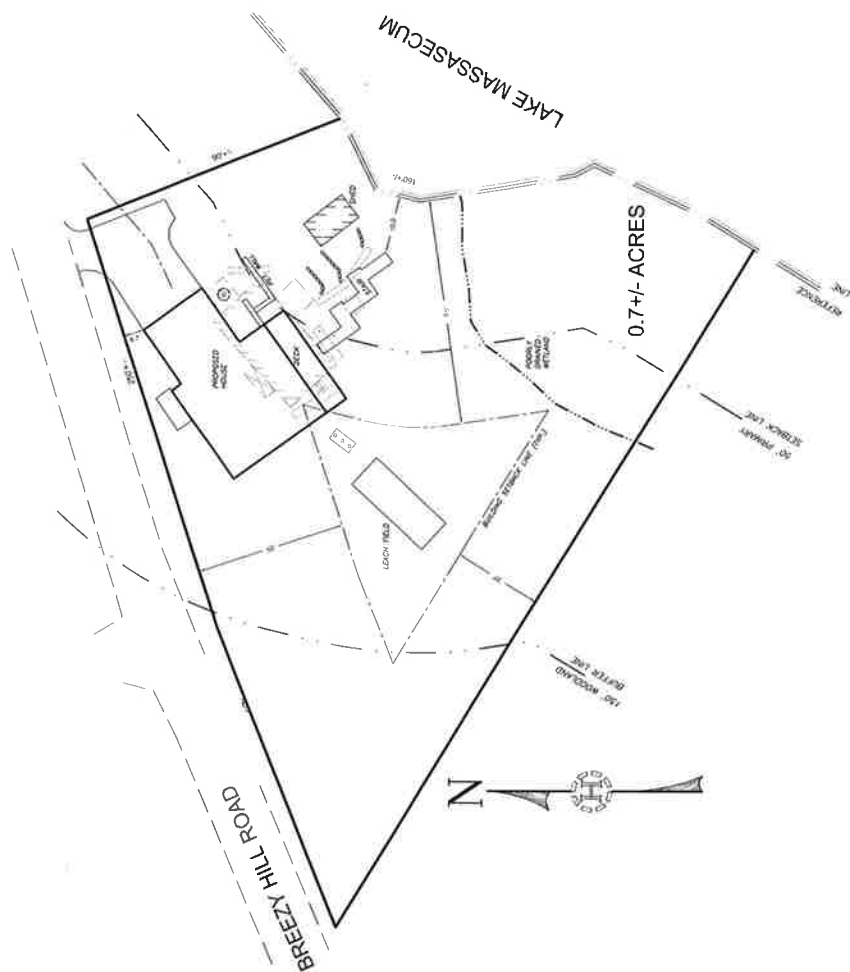
LOCUS MAP
MAP 18 LANE



- LEGEND:
- EXISTING FOOTPRINT
 - EXISTING DRIVE
 - EXISTING WETLANDS
 - CONTOUR
 - BUILDING SETBACK LINE
 - FOUNDATION MARK LINE
 - PROPOSED CONDUIT
 - TEMPORARY BENCH MARK
 - TEMP MARK
 - WELL
 - ELECTRIC UTILITY POLE
 - PHOTO LOCATION AND DIRECTION

NOTES:

1. THE SCOPE OF THIS PLAN IS TO SUBMIT THE PROPOSED IMPROVEMENTS ON TAX MAP 18 LOT 13 FOR THE PURPOSE OF OBTAINING BUILDING SETBACK RELIEF FROM THE TOWN OF BRADFORD. THE ZONING BOARD OF ADJUSTMENT.
2. THE OWNER OF RECORD OF TAX MAP 18 LOT 13 ARE DAVID A. CARIGNAN JR. AND JULIE A. CARIGNAN. 37 FLOT ROCK ROAD (BRADFORD) IN TOWN OF BRADFORD, BRADFORD COUNTY, MARYLAND.
3. TAX MAP 18 LOT 13 LIES WITHIN THE RURAL RESIDENTIAL ZONE. MINIMUM BUILDING SETBACKS ARE: 50 FEET FRONT, 30 FEET SIDE & REAR AND 15 TO LAKE MASSASECUM.



0.7 +/- ACRES

ZONING BOARD OF ADJUSTMENT EXHIBIT
PREPARED FOR:
DAVID CARIGNAN
244 BREEZY HILL ROAD
TAX MAP 18 LOT 13
BRADFORD, NEW HAMPSHIRE

DATE	DESCRIPTION

SCALE: 1" = 40 FT

DATE: 06/14/13

HIGGINSON LAND SERVICES
1440 LAKE MASS. RD. BRADFORD, NH 03304
PHONE: 603-882-4477 FAX: 603-882-4478

DATE: 06/14/13

EXHIBIT B





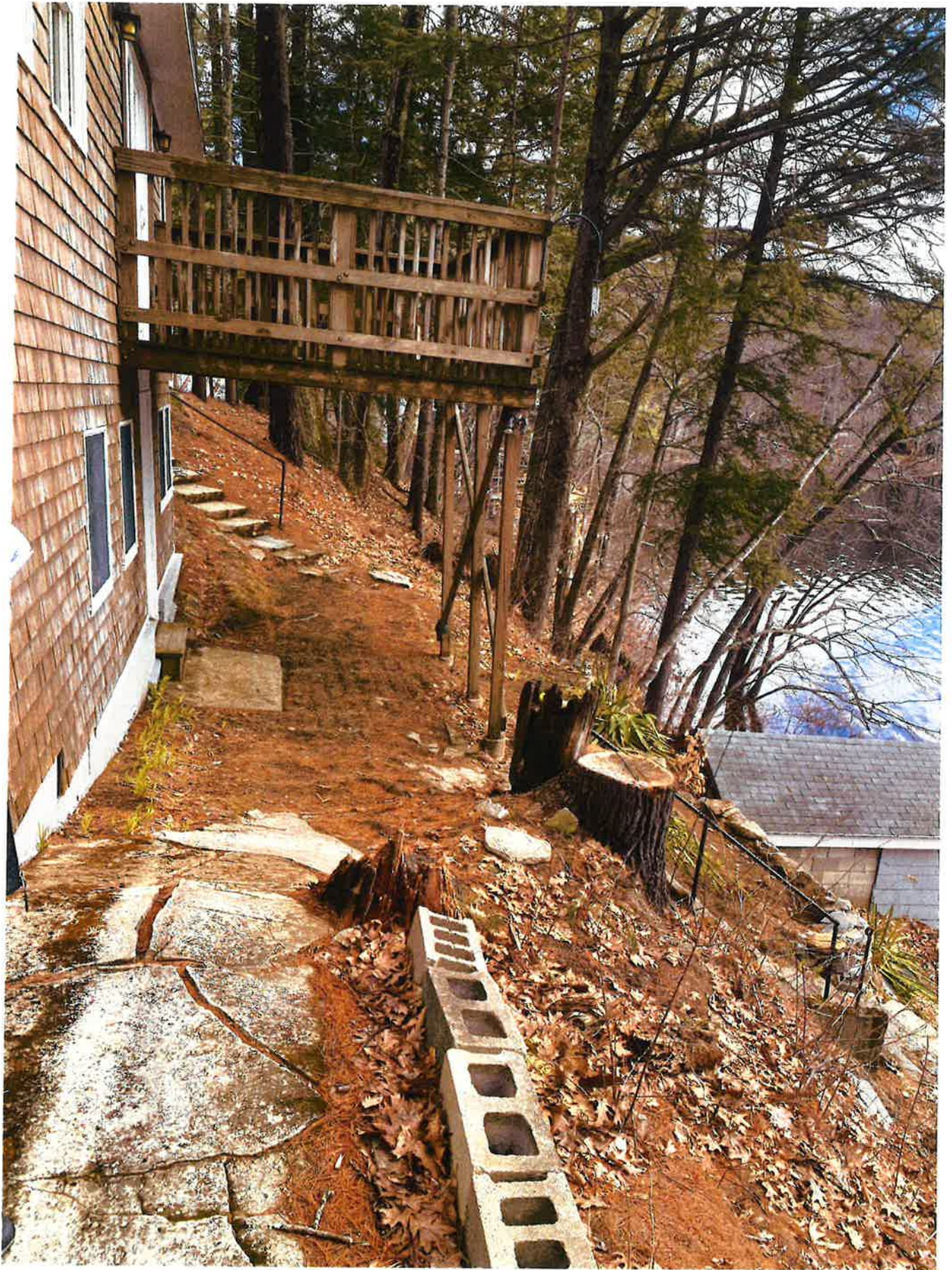


EXHIBIT C

Agent Authorization

The below-signed hereby appoints the following persons to file applications, plans, and/or any documents on my behalf; inspect records; negotiate and execute documents, settlements, and/or similar agreements regarding substantive and/or procedural matters with the municipality and/or any municipal board and/or department; represent me at meetings and/or hearings, public or otherwise, with and/or before the municipality, any board and/or department of the municipality, or any other venue of competent jurisdiction; and/or conduct any reasonable or necessary activity before and/or with the municipality and/or any municipal board and/or department regarding any real estate and/or property interest I may have located in Bradford, Merrimack County, New Hampshire.

Elizabeth J. Nolin, Esq.
Alfano Law Office, PLLC
Dan Higginson
Higginson Land Services

Dated: Apr. 24, 2020

David Carignan
Print name: David Carignan