



FOUNDED DECEMBER 15, 1727

CHARTED JANUARY 1, 1991

NEWMARKET ZONING BOARD OF ADJUSTMENT
MONDAY, JUNE 14, 2021
TOWN HALL AUDITORIUM
7:00 PM

AGENDA

- 1. Pledge of Allegiance**
- 2. Review and Approval of Minutes**
 - a. 04/26/21
 - b. 05/03/21
- 3. Regular Business**
 - a. Steven & Melinda Breecker - Public hearing for an application for Special Exception reference Section 32-5(2)(a)) & (b) for horizontal and vertical expansion of an existing legal non-conforming single-family structure and to permit the construction of an addition to the dwelling that would extend into the Shoreland Protection Overlay District and encroach upon the 125 foot primary structure shoreland setback, The property is located at 19 Moody Point Drive, Tax Map R2, Lot 43-1, R1 Zone.
- 4. New/Old Business**
- 5. Adjourn**



Town Hall
186 Main Street
Newmarket, NH 03857

Tel: (603) 659-3617
Fax: (603) 659-8508

Founded December 15, 1727
Chartered January 1, 1991

TOWN OF NEWMARKET, NEW HAMPSHIRE

ATTACHMENTS:

Description	Upload Date	Type
04/26/21	5/18/2021	Backup Material

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DRAFT
NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING

APRIL 26, 2021

MINUTES

Present: Bob Daigle (Chair), Wayne Rosa (Vice Chair), Diane Hardy (Zoning Administrator),
Al Zink

Absent: James Drago, Steven Minutelli – excused

1. Pledge of Allegiance

2. Review and Approval of Minutes Tabled to next meeting.

3. Regular Business

- a. ***Robert Lang/Brian & Diana Leary - There will be a public hearing for an application for a Special Exception, reference Section 32-234, Accessory Apartments, of the Newmarket Zoning Ordinance, requested by Robert Lang/Brian & Diana Leary, to permit a 990 sq. ft. accessory apartment addition to the existing single family home. The property is located at 14 Durell Drive, Tax Map R5, Lot 159, R2 Zone.***

Robert Lang, 20 Portsmouth Ave, Stratham NH, represented the applicants. The ADU is under 1,000 sq. ft. Emmanuel Engineering did a survey for the foundation certification and verified the 30' setback. They would like to build a 990 sq. ft. addition to the back of the house for their parents to live in. Their parents currently live in Texas and they would like to bring them here in order to take care of them. They looked at several ways to build the addition, including lengthwise off the back of the house, but they did not want to block off the neighbors. They have done everything with aesthetics in mind and what was best for the neighborhood.

Bob Daigle went over the eight criteria. He stated the applicants have met all of them.

Bob Daigle opened the public hearing.

Keri Bosworth, 1 Edwin Lane, stated this was not just an accessory dwelling, but there is also a garage. It is going to be over 900 sq. ft. for the ADU and another 730 sq. ft. for the garage. 1,500 sq. ft. in their backyard does not leave a lot of open space for privacy.

1 Robert Lang stated the garage is on the front near Durell Drive, next to the existing garage.
2 Bob Daigle stated that is not what is on the plan. There was some confusion over which plan was
3 current. Mr. Lang clarified which was the correct plan and explained what was shown. He stated
4 he gave the Building Official some plans, but did not submit them to the Zoning Board for the file
5 and record.

6 Joseph Napoletano, 3 Edwin Lane, stated these are small lots in the subdivision. The
7 garage and addition footprint are equivalent to his entire house. He would prefer they go
8 lengthwise. He did not think it aesthetically fits. Mr. Lang stated they felt the placement was
9 the best and they are trying to keep the consistency of the house. Mr. Napoletano stated the
10 abutters at 1 and 3 Langs stated they would prefer the addition be placed the other way. Bob
11 Daigle stated they could not have a common door that way.

12 Bob Daigle stated there were only three members present and there are usually five,
13 which would make a full board. The applicant has the option of waiting for a full board.

14 Diana Leary stated they have lived in the community for 28 years. The neighborhood and
15 neighbors are very important to them. She has talked with the neighbors and have been willing
16 to put up more landscaping for privacy and tried to work with them as best she can. They do
17 care about them.

18 The applicants chose to proceed with three board members.

19 ***Bob Daigle closed the public hearing.***

20 Wayne Rosa stated he looked at the property from his truck and saw where they had
21 staked the corners. He asked where the property line was. Mr. Lang stated it was at the stone
22 wall, 56 feet from the house. It is 36 feet from the addition. He would like this contingent of a
23 better plan of the garage area.

24 **Action**

25 **Motion:** Al Zink made a motion to approve the Special Exception, with
26 the condition that a better site plan is provided that shows the
27 new garage

28 **Second:** Wayne Rosa

29 **Vote:** All in favor – roll call vote

30
31 ***CC 86 Main LLC - There will be a public hearing for an application for a Special Exception,***
32 ***reference Section 32-46(b)(2)(a) and a Variance reference Section 32-86 Residential***
33 ***Density and Table 32-89 Dimensional Table, of the Newmarket Zoning Ordinance,***
34 ***requested by CC 86 Main LLC, to permit the conversion of the second and third (3980 sq.***
35 ***ft.) into six residential units. The building would continue to contain mixed use. A***
36 ***variance from residential density requirements calling for six units per acre is necessary,***
37 ***as this application for six units is on a lot which is approximately .05 acres according to***
38 ***Town records. The property is located at 86 Main Street, Tax Map U2, Lot 51, M2 Zone.***

39 Bob Daigle gave the applicant the option of waiting until a full board was present. The
40 applicant chose to proceed.

1 Attorney Hank Stebbins represented the applicant. He chose to have the hearing, but
2 wanted to reserve the right to postpone the decision. Bob Daigle stated he was not comfortable
3 with that, as members attending the second meeting who are not present now will not hear this
4 testimony or ask questions the way they will tonight. The other members agreed. Attorney
5 Stebbins agreed and stated they would proceed.

6
7 Attorney Stebbins stated they recently submitted a building permit application to
8 renovate the building and they were referred to this Board. The second and third floor were
9 meeting rooms for the Masons. They would like to convert this to six residential units. The zoning
10 permits six per acre. In addition, they submitted a fiscal analysis and market study. The building
11 was built in 1873. It was used for meetings of local Masons. Now it is mostly empty. The first
12 floor is occupied by Crackskull's. The building's upkeep has been neglected. The ordinance says
13 multifamily uses may be permitted in M2 if the ZBA accepts a fiscal impact and market analysis.
14 They had submitted both.

15
16 He went over the criteria for the variance.

17
18 The building is in the M2 zone. Most buildings are on postage stamp lots with multiple
19 units. A variance was recently granted to a neighboring building to expand the number of
20 residential units. This is a historic building in the middle of downtown that is under-cared for.
21 They will not change the exterior. Renovations will be interior with the addition of a sprinkler
22 system.

23
24 This will not be contrary to the public interest. The Master Plan speaks proudly of the
25 downtown revitalization. This proposal is a continuation of that.

26
27 To the second criteria he stated the Master Plan states the ordinance refers to enhancing
28 downtown by providing an appropriate mix of uses, improving its appearance and maintaining
29 its New England character. This project seeks to address many of the Master Plan goals. It also
30 complies with the purpose of the M2 District and the Simplex court decision stating the zoning
31 ordinance must be consistent with the character of the neighborhood. This project would be
32 consistent with the many other properties in downtown.

33
34 To the third criteria he stated the ordinance and Master Plan support their requests.
35 Granting this would comply with the Simplex ruling. The maximum number of units is not
36 reflective of the area. The downtown is filled with buildings that do not comply. Not granting
37 this would be a violation of the NH Constitution. This gives all persons the right to acquire,
38 possess and protect property. You cannot deprive someone of the reasonable use of the
39 property.

40
41 The value of surrounding properties will not be diminished because this is consistent with
42 many buildings downtown. The architecture outside will not change.

43

1 Regarding hardship the building is deteriorating and takes up the whole lot. The parcel is
2 .05 acres. Preservation of historic buildings is a major goal of the Master Plan. This project is an
3 important step in meeting these goals.

4
5 He stated the applicant has concerns about downtown parking and is on the Parking
6 Committee. He owns a number of properties in town and has parking spaces that these tenants
7 can use. He read a section in the Ordinance referencing parking. The Masons held meetings
8 there. The total spaces would come to sixteen spaces for them, which is more than required for
9 these units. The second and third floor meeting spaces would require over 130 spaces.

10
11 ***Bob Daigle opened the public hearing.***

12
13 No one spoke.

14
15 Wayne Rosa stated the building should be saved. He expressed concern about parking.
16 Ben Stebbins stated he owns 100 Main Street that has 26 spaces and 4 are being used. He has
17 more at 4 Chapel Street with 5 spaces. 29 Central Street has parking with 4 spaces. He can also
18 park cars on Railroad Street.

19
20 ***Bob Daigle closed the public hearing.***

21
22 Bob Daigle asked why three units on each floor. Ben Stebbins stated it would have the
23 least impact on downtown and fit the structure.

24
25 Attorney Stebbins stated this would be more affordable and help meet demand.

26
27 Diane Hardy asked what the rental fee would be. Attorney Stebbins stated it would be
28 market rent. Ben Stebbins stated \$900-\$1,200. Diane Hardy wanted to make sure the demand
29 was being met. She stated this requires Planning Board site plan approval and they will address
30 parking.

31
32 Al Zink stated this would be a boon to town.

33
34 Diane Hardy asked if they had looked at RSA 79E which provide tax relief for projects
35 involving adaptive re-use and historic preservation. Ben Stebbins stated he had.

36
37 **Action**

38 **Motion: Al Zink made a motion to grant the Special Exception 32-46**
39 **(b)(2)(a)**
40 **Second: Wayne Rosa**
41 **Vote: All in favor – roll call vote**

42
43 Bob Daigle stated the submittals would be the Findings of Fact.

Action

Motion: Al Zink made a motion to approve the Variance reference Section 32-86 Residential Density and Table 32-9 Dimensional Table of the Newmarket Zoning Ordinance requested by CC86 Main LLC to permit the conversion of the second and third (3980 sq. ft.) into six residential units. The building would continue to contain mixed use and six units per acre is necessary, as this application for six units is on a lot which is approximately .05 acres according to Town records. The property is located at 86 Main Street, Tax Map U2, Lot 51, M2 Zone.

Second: Wayne Rosa

Vote: All in favor - roll call vote

Bob Daigle stated the submittals would be the Findings of Fact.

4. New/Old Business

None.

5. Adjourn

Action

Motion: Al Zink made a motion to adjourn at 8:12 p.m.

Second: Wayne Rosa

Vote: All in favor - roll call vote



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TOWN OF NEWMARKET, NEW HAMPSHIRE

ATTACHMENTS:

Description	Upload Date	Type
05/03/21	5/18/2021	Backup Material

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8 **DRAFT**
9 **NEWMARKET ZONING BOARD OF ADJUSTMENT**

10
11 **MAY 3, 2021**

12
13 **MINUTES**

14
15 Present: Bob Daigle (Chair), Diane Hardy (Zoning Administrator), Wayne Rosa (Vice Chair),
16 Al Zink, James Drago
17

18 **1. Pledge of Allegiance**

19
20 Bob Daigle read a statement regarding the hybrid meeting.

21
22 Bob Daigle stated the Cheney Property Management Corp. application had been
23 withdrawn.
24

25 **2. Review and Approval of Minutes – moved to end of meeting**

26
27 a. 03/08/21
28

29 **Action**

30 **Motion:** James Drago made a motion to approve the minutes

31 **Second:** Al Zink

32 **Vote:** All in favor – roll call vote
33

34 **3. Regular Business**

35
36 *a. There will be a public hearing for an application for a Variance, reference Sec 32-234*
37 *(a) and (b) Special Exception, reference Section 32-234, Accessory Apartments, to*
38 *Permit the addition of an accessory dwelling unit above an attached garage in a single*
39 *family home (to be constructed), requested by Leo Manseau. The property is located*
40 *at 435 Wadleigh Falls Road, Tax Map R6, Lot 4-1, B3 Zone.*
41

42 Leo Manseau presented the application. He read his submittal.
43

1 To Criteria 1, he responded this would enhance the tax base and would not adversely
2 affect surrounding properties.

3
4 To Criterion 2, he stated the B3 zone was created to promote and maintain an extended
5 commercial tax base. Only two commercial uses have been developed there. The ADU would
6 increase the tax base.

7
8 To Criterion 3, this would create a secure and affordable housing arrangement in a tight
9 market. The benefit to the public outweighs any loss.

10
11 To Criterion 4, this would not diminish property values and would increase the tax base.

12
13 To Criterion 5, the B3 zone was created for commercial development, but all of the
14 development created so far on Ash Swamp Road since has been residential. Having no water
15 and sewer utilities, the availability of commercial sites elsewhere and limits on truck traffic have
16 placed an unnecessary hardship on property owners there.

17
18 This affords the owners to have an ADU in their homes like others in Newmarket.

19
20 This lot is surrounded by residential, which makes it difficult to market for commercial
21 and the shape of the lot is not conducive for commercial.

22
23 Bob Daigle gave him the opportunity to continue to a time when they had a five
24 member Board. Mr. Manseau chose to go forward.

25
26 To the Special Exception criteria he responded:

27
28 To Criterion 1, the apartment will be 728 sq. ft.

29
30 To Criterion 2, it is an efficiency apartment.

31
32 To Criterion 3, the main house will be owner occupied.

33
34 To Criterion 4, two spaces in the garage and two in the driveway.

35
36 To Criterion 5, no exterior changes unless they maintain the aesthetic quality of the
37 principal dwelling.

38
39 To Criteria 6, on site well and septic.

40

1 To Criterion 7, the purpose of the B3 zone has not been met and the intent of the
2 Master Plan has not been met. Other variances and special exceptions in the area have been
3 granted.

4
5 To Criterion 8, interior door will be provided.

6
7 ***Bob Daigle opened the public hearing.***

8
9 Bob Daigle stated that the Whitcombs, abutters, submitted a letter of support.

10
11 ***Bob Daigle closed the public hearing.***

12
13 **Action**

14 **Motion:** Al Zink made a motion that the variance be approved for
15 **Section 32-234, Accessory Apartments, to allow the addition of**
16 **an accessory dwelling unit in a single family home in the B3**
17 **Zone, which does not allow residential uses**

18 **Second:** James Drago

19 **Vote:** All in favor – roll call vote
20

21 Bob Daigle stated the application would be the Findings of Fact.

22
23 **Action**

24 **Motion:** James Drago made a motion to grant the Special Exception as
25 **written**

26 **Second:** Al Zink

27 **Vote:** All in favor – roll call vote
28

29 ***b. There will be a public hearing for an application for a Special Exception, reference***
30 ***Section 32-234, Accessory Apartments, to permit a one bedroom accessory apartment,***
31 ***with 525 sq. ft. of finished living space in the basement of the existing single family***
32 ***home, requested by Laurie C. Murray. The property is located at 32 Cedar Street, Tax***
33 ***Map U2, Lot 157, R3 Zone.***

34
35 Laurie Murray chose to proceed with a four member board.

36
37 Criterion 1, the apartment will be 525 sq. ft.

38
39 Criterion 2, one bedroom.

40
41 Criterion 3, owner in primary living space.
42

1 Criterion 4, ample parking for four vehicles.

2
3 Criterion 5, no exterior change.

4
5 Criterion 6, Town water and sewer.

6
7 Criterion 7, ?

8
9 Criteria 8, there will be an interior door.

10
11 She has heard no objection from neighbors.

12
13 ***Bob Daigle opened the public hearing.***

14
15 No comments.

16
17 ***Bob Daigle closed the public hearing.***

18
19 **Action**

20 **Motion: Al Zink made a motion to approve the Special Exception**

21 **Second: James Drago**

22 **Vote: All in favor – roll call vote**

23
24 ***c. There will be a public hearing for an application for an Appeal from Administrative***
25 ***Decision, reference the decision cited by the Zoning Administrator in her letter of March***
26 ***30, 2021, that a building proposed by Cheney Property Management Corp is contrary***
27 ***to Section 32-160(b)(2) and Section 32-46A(b)(2)(e) of the Newmarket Zoning***
28 ***Ordinance, in that no residential units shall be located in the street level space if the***
29 ***project has frontage on Exeter Road, which is inconsistent with the intent of the M2A***
30 ***zoning. This appeal is requested by Cheney Property Management. The property is***
31 ***located at Exeter Road, Tax Map U3/U4, Lots 11, 12. 15, 138-1, M2A Zone.***

32
33 Withdrawn by the applicant.

34
35 **4. New/Old Business**

36
37 **Action**

38 **Motion: James Drago made a motion to keep the Board's officers as is**

39 **Second: Al Zink**

40 **Vote:**

41 **All in favor – roll call vote**

42

1 Diane Hardy mentioned the Spring Conference on May 15 by NHOSI.

2
3
4
5 **5. Adjourn**

6
7 **Action**

8 **Motion:** James Drago made a motion to adjourn at 7:37 p.m.

9 **Second:** Al Zink

10 **Vote:** All in favor – roll call vote

11



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TOWN OF NEWMARKET, NEW HAMPSHIRE

ATTACHMENTS:

Description	Upload Date	Type
Public Notice, Application, Special Exception Response, Plans	5/18/2021	Backup Material
Capron Letter of Support	6/7/2021	Backup Material
Prostkoff Letter of Support	6/7/2021	Backup Material
Damiani Letter of Support	6/9/2021	Backup Material

FOUNDED DECEMBER 15, 1727



CHARTERED JANUARY 1, 1991

TOWN OF NEWMARKET, NEW HAMPSHIRE
OFFICE *of the* ZONING BOARD OF ADJUSTMENT

LEGAL NOTICE

NEWMARKET ZONING BOARD OF ADJUSTMENT

**MONDAY, JUNE 14, 2021
7:00 P.M.**

MEETING HELD IN TOWN HALL AUDITORIUM

There will be a public hearing for an application for Special Exception reference Section 32-5(2)(a)) & (b) for horizontal and vertical expansion of an existing legal non-conforming single-family structure and to permit the construction of an addition to the dwelling that would extend into the Shoreland Protection Overlay District and encroach upon the 125 foot primary structure shoreland setback, requested by Steven & Melinda Brecker. The property is located at 19 Moody Point Drive, Tax Map R2, Lot 43-1, R1 Zone.

pd
170.00
52

**APPLICATION – ZONING BOARD OF ADJUSTMENT
TOWN OF NEWMARKET, NH**

Do not write in
this space

Date filed

5/11/21

Initials scj

Applicant: Steven & Melinda Breecker

Mailing Address: 19 Moody Point Drive, Newmarket NH 03857

Property owner: see above.

Mailing Address: see above.

Telephone: (603) 292 – 5230

Cell Phone: (267) 253 – 6347

Email Address: sbreecker@yahoo.com

Location of Property: 19 Moody Point Drive; Tax Map R2; Lot 43 – 1 (Zone R1) (“Property”).

Description of Property: See Narrative Application, attached. This is a 0.94 acre lot on the Lamprey River off Moody Point Drive. The lot was created by the owners of the Stevens Farm at Moody Point in 1961. A residence was built circa 1963 to 1968. The current building footprint has existed since 1983 as shown on RCRD Plan No. 11,399 and is approved as a 3-bedroom residence.

Proposed use or existing use affected: See Narrative Application, attached. The Breeckers propose to build an addition and convert existing bedrooms to an art study and library, resulting in a 2-bedroom use that will not exceed the approved 3-bedroom septic system.

The following pages contain forms for Appeal from Administrative Decision, Special Exception, Variance, & Equitable Waiver. Please fill out appropriate request sheet. All applications will need completed abutters list.

SECTION 2 APPLICATION FOR SPECIAL EXCEPTION

The undersigned hereby requests a Special Exception as provided in Section 325 (2) of the Newmarket Zoning Ordinance. Please see the Narrative Application submitted herewith.

ABUTTERS LIST

1. List the tax map, lot number, name(s) and mailing address of the **property owner(s), applicant (if different from property owners) and all abutters and any others requiring notification**, as shown in Town records, not more than five days prior to submittal per RSA 676:4, I(b). This may be typed on a separate sheet. Please indicate the date of preparation and sign your name on each sheet.
2. As applicable, list the name, mailing address, daytime phone number, and fax number of the Applicant's Authorized Representative and any surveyor, engineer, architect or soil scientist whose stamp and signature appear in the application materials. Use a separate piece of paper if needed.
3. **Fill out two adhesive mailing labels for EVERY entry on the list. Labels must not exceed 1" tall by 2.75" long in order to fit on the certified mail tags.**
4. **The determination of abutters is the responsibility of the applicant.** This list will not be reviewed for compliance with statutory requirements. Use abutters information available at Town Hall Assessing Office. Do not use information from any other source to determine abutters (online, website, memory, etc.)

Map Lot Owner

Mailing Address

R2.43-1 Steven & Melinda Breecker

19 Moody Point Drive Newmarket, NH. 03857

PROPERTY OWNER-MUST BE INCLUDED PER STATE LAW

APPLICANT, IF DIFFERENT FROM PROPERTY OWNER

Justin Richardson
159 Middle St Portsmouth, N.H. 03801
603-591-1241
justin@nhwaterlaw.com

Alternate Address:
586 Woodbury Ave.
Portsmouth, New Hampshire 03801

AUTHORIZED AGENT, IF APPLICABLE-PER STATE LAW

All abutters (use separate sheet, if necessary). SEE ENCLOSED SHEET

Abutters List

For Breecker Application- Newmarket Zoning Board of Adjustment

Tax Map R2 Lot 43-2
Stephen D. & Alesia M. Damiani
21 Moody Point Drive
Newmarket, NH 03857

Tax Map R2 Lot 42
Melvin E. Prostkoff
17 Moody Point Drive
Newmarket, NH 03857

Tax Map R2 Lot 46
James P. Dexter
8 Moody Point Drive
Newmarket, NH 03857

 5/7/21

Additional Information

For Breecker Application- Newmarket Zoning Board of Adjustment

Surveyor:

Scott Boudreau
2 Beatrice Ln
Newmarket, NH 03857

603-659-3468

scott@boudreauls.net

Wetland Science:

West Environmental
48 Stevens Hill Rd.
Nottingham, NH 03290

Phone: 603-734-4298

Fax: 603-734-4316

mark@westenv.net

5/6/2021

Zoning Board of Adjustment
Town of Newmarket, NH

This is our letter of permission for attorney Justin Richardson to represent us at the zoning board meeting.

Thank you,

A handwritten signature in dark ink, appearing to be 'S. Breecker', with a stylized, cursive script.

Steven Breecker

A handwritten signature in dark ink, appearing to be 'Melinda Breecker', with a stylized, cursive script.

Melinda Breecker

Date of preparation:

5/7/2021

I hereby certify that all information presented on this form is, to the best of my knowledge, correct.



Signature of preparer

CHECKLIST

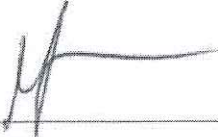
Go over the list and make sure that you have included everything on it **BEFORE** submitting your application.

1. Letter of Violation/Denial - From the Administrative Officer. N/A
2. Plot map – As close to scale as possible showing
 - a. boundaries _____
 - b. setbacks _____
 - c. streets _____
 - d. existing or proposed structures _____
 - e. access roads _____
 - f. abutters _____
3. List of abutters – Every owner of every property, the owner of the property involved in the request, the applicant if different from the property owner, any authorized agent representing the owner or applicant at the meeting, with correct mailing addresses (see instruction sheet for full details). _____
4. Two adhesive mailing labels per every abutter not to exceed 1" tall by 2.75" long.
5. Section number of the ordinance involved. _____

6. Fees. _____

7. Letter of permission from property owner(s) if someone is
representing them at the meeting. _____

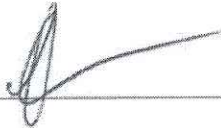
Please sign below for all applications:

Applicant 

Applicant Steven Breecker


Signature

Melinda Breecker
Please Print

Owner 

Owner Steven Breecker


Signature

Melinda Breecker
Please Print

Date 5/7/2021

NEWMARKET ZONING BOARD OF ADJUSTMENT

Steven & Melinda Breecker

19 Moody Point Drive

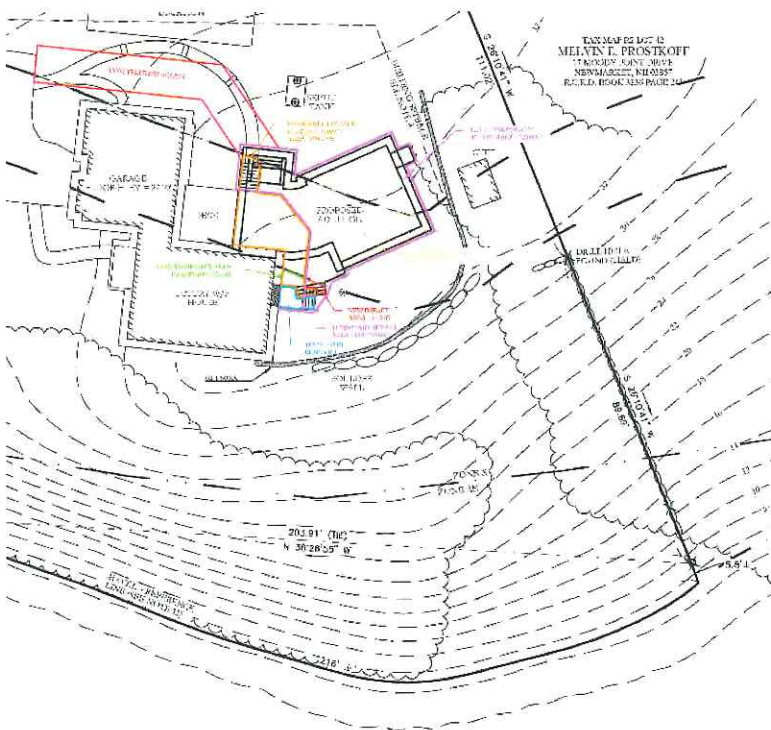
Tax Map R2, Lot 43-1

May 10, 2021

APPLICATION FOR SPECIAL EXCEPTIONS

I. SUMMARY

Steven and Melinda Breecker ("Breeckers") request that the Zoning Board of Adjustment grant a special exception to build an addition to their existing residence located at 19 Moody Point Drive, Tax Map R2, Lot 43-1 ("Property") as allowed by Section 32-5 (2) of the Newmarket Zoning Ordinance. The Property is 40,979 square feet (0.94 acres) and located in the Town's R1 and Shoreland Protection Overlay Districts ("Shoreland District").



The existing residence is located 60 feet from the Lamprey River and has a deck which encroaches 60 sq. ft. into the 100-foot Tidal Buffer Zone. The proposed addition will be set back more than 100 feet from the Lamprey River for a new master bedroom and bathroom. Portions of the existing deck encroaching into the Tidal Buffer Zone will be reduced from 60 square feet to only 14 square feet. Two existing bedrooms will be converted to an art studio and library. As a result, the addition will not exceed the 3-bedroom septic approval.

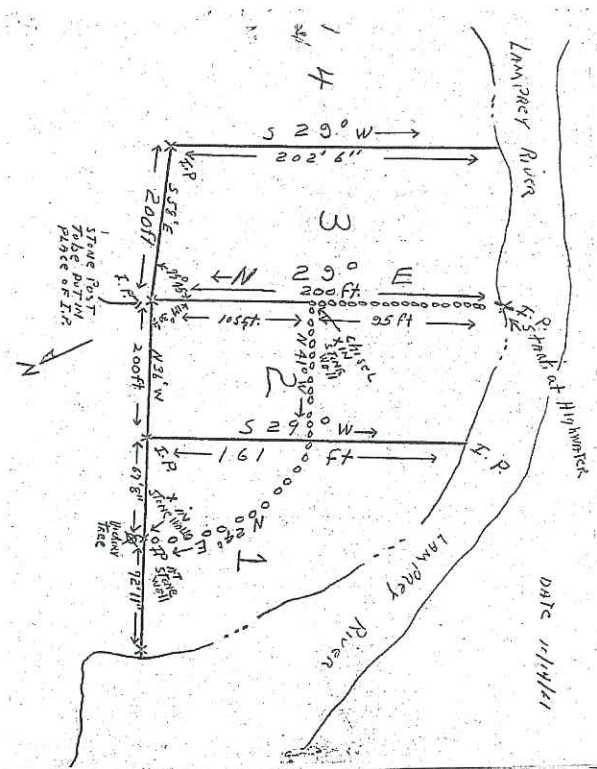
The Property is a nonconforming structure because it lawfully predates the 100 foot tidal buffer and the 125 foot setback from the Highest Observable Tide Line or reference line established in

1996 by the Shoreland Overlay District Section 32-154 (d)(2) of the Town's Zoning Ordinance.

The Property was one of three lots carved out of the Stevens Farm and conveyed by deed to Donald and Elizabeth Howcroft in 1961. In 1968, it was conveyed to Ayres and Beth Chaves in 1968 "with buildings thereon". In 1983, Chaves recorded Plan No. 11,399 showing the original house, garage, porch and porch deck. In 1990, the Property was purchased by Andrew and Christine Weeks who constructed interior renovations and upgraded the septic system. The



wooded buffer area between the River and the stone wall, shown above, will be maintained and not be disturbed. Erosion control measures will be in place prior to construction to prevent any sediments or erosion. The project has received an NHDES wetlands and shorelands permits. On September 20, 2020, the Newmarket Conservation Commission voted to recommend approval.



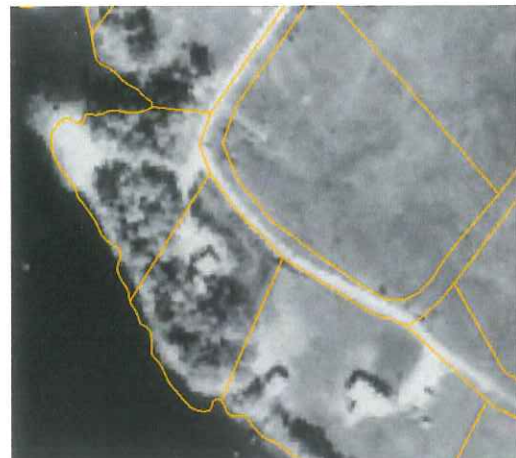
II. HISTORY OF THE SITE

A. Creation of the Breecker Lot in 1961

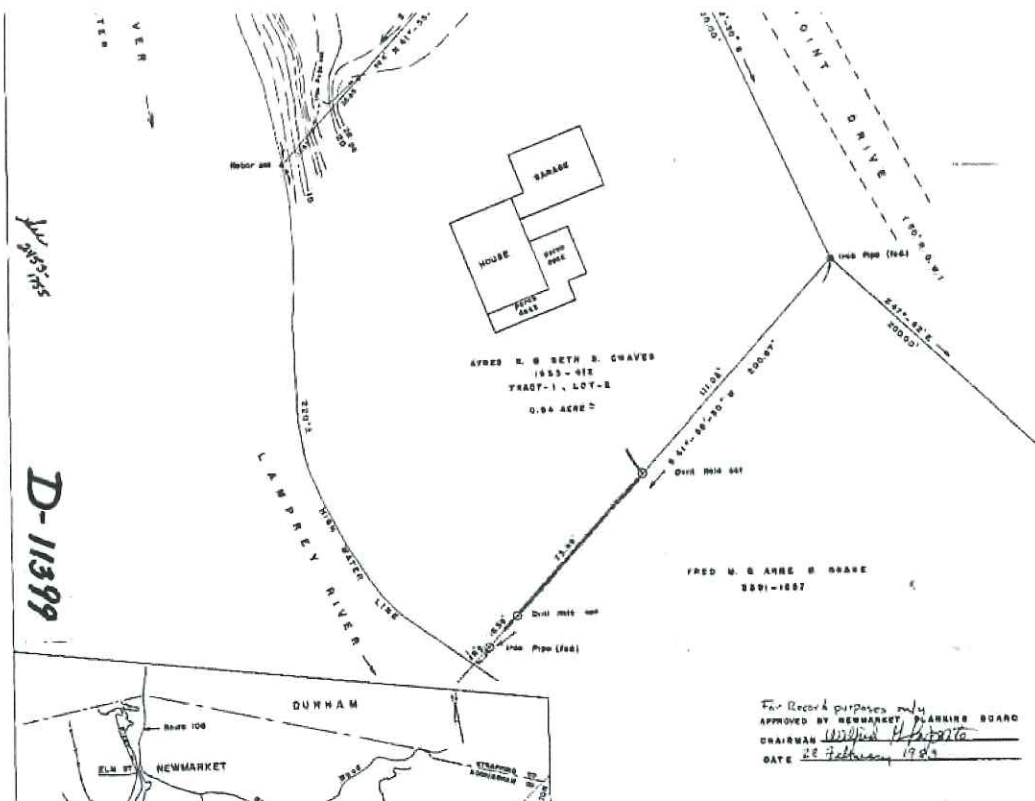
The Breecker Property was originally created by a 1961 deed from Robert Shaw and Arthur Beauchesne to Donald and Elizabeth Howcroft recorded at Book 1619, Page 313 which carved three lots out of the Stevens Farm. The deed included a sketch shown to the left depicting three lots (note the north arrow points down and to the left). The Breecker Property is shown as Lot 2. The following year, 1962, Newmarket voted to authorize its Planning Board to regulate the subdivision of land. Because the lot was created before the Town vote, it was grandfathered and not subject to subdivision approval.

B. Original Building Constructed by Howcroft in 1962 – 1967.

A 2-bedroom residence was likely constructed by the Howcrofts soon thereafter. In 1968, they conveyed the Property to Ayres and Beth Chaves in 1968 “with buildings thereon”.¹ A 1974 air photo shown to the right shows the original building(s) constructed by the Howcrofts prior to 1968.



In 1983, a Boundary Line Agreement was reached between Chaves and Drake and recorded at Book 2453, Page 1755. Chaves and Drake agreed to a common boundary as shown on a survey plan prepared by K.E. Moore and B.G. Staples entitled *Plan of Land Showing Tract 2, Lot 1 and Tract 1, Lot 2, Ayres R. and Beth S. Chaves, Moody Point Drive, Newmarket, New Hampshire* dated February 1983. This Plan is recorded in the Registry as Plan No. 11,399. It is significant because it shows the original house, garage, porch and porch deck on the Chaves property now owned by the Breeckers. The Plan was signed by the Planning Board “For Record Purposes Only”.



¹ Book 1933, Page 412.

C. 1991 Expansion of Residence.

In 1990, the Chaves obtained a building permit for an expansion including approval for a new 3-bedroom septic system. On June 14, 1990, the Chaves sold the property to Andrew and Christine Weeks. On December 11, 1990, the Town's Building Inspector issued a certificate of occupancy for 3-bedroom renovation. The Town's Property Tax Card indicates that the renovations were completed by the Weeks in 1991.² On June 21, 1999, the Weeks conveyed the Property to Richard and Christi Ashley by deed recorded at Book 3401, Page 904.



An aerial photograph above-right shows the Property as it existed in 2005.

On October 14, 2005, the Ashleys sold the Property to John and Martha Waalewyn (Book 4565, Page 2588). The Waalewyns submitted a site plan and an architectural plan for interior renovations which were approved by the Building Inspector on November 22, 2005. A 2010 aerial photograph shows that the footprint is unchanged and matches that shown on the 1983 Chaves Site Plan.

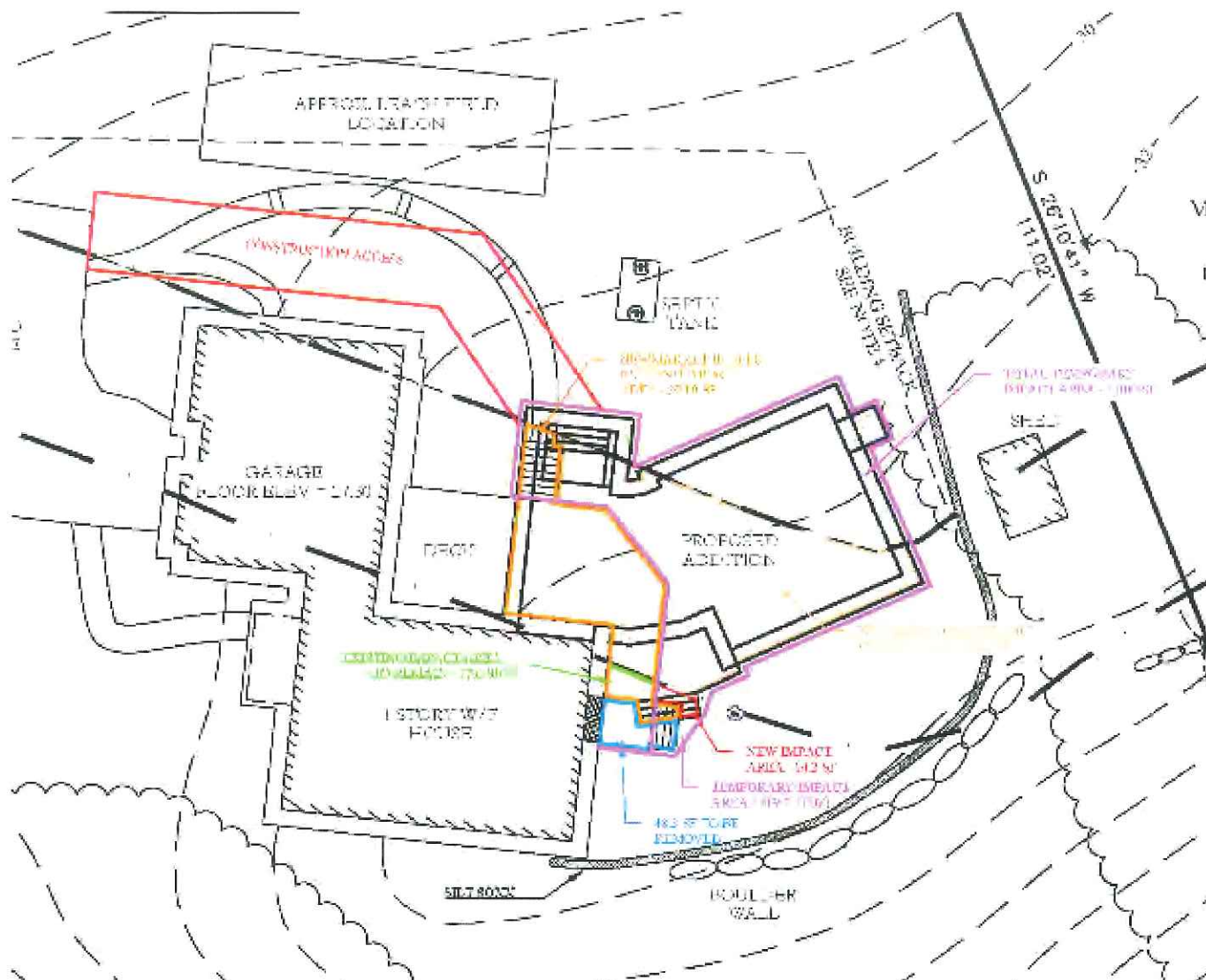


On February 1, 2019, the Waalewyns conveyed the Property to Steven and Melinda Breecker who are the current owners.

² On May 21, 1991, the NHDES issued a Wetlands Permit 91 – 320 building existing docking facilities on the Property. The NHDES permit authorized the Weeks to “[e]xcavate 8,830 sq. ft. of old fill material within 100' of the highest observable tide line to restore the natural grade to the slope [and] [r]ebuild existing 8' x 8' crib for use with a 4'x25' ramp from embankment to crib to a seasonal 4' x 35' ramp to two seasonal 8' x 10' floats”.

III. PROPOSED ADDITION.

The Breeckers propose to construct an addition to their residence as shown on the Site Plan dated September 9, 2020 prepared by Boudreau Land Surveying. As part of the expansion, the Breeckers will add a master bedroom and bathroom. Two existing bedrooms will be converted to an art studio and library, resulting in a 2-bedroom residence that will not exceed the 1991 3-bedroom septic approval.



The addition has received both an NHDES Shoreland Permit (No. 2020-03015) and an NHDES Wetlands Permit (No. 2020-02636) because it involves construction within the Protected Shoreland within 250 feet of the Lamprey River and a small area (134 square feet) within the 100 foot tidal buffer zone. Copies of the approved Plan, NHDES permits and a Photolog prepared by West Environmental have been included to show the proposed area and existing

conditions. On September 20, 2020, the Newmarket Conservation Commission voted to recommend approval.

As shown on the Plans, the existing residence is located approximately 60 feet from the highest observable tide line (HOTL) of the Lamprey River at its closest point. To minimize disturbance within the tidal buffer zone, the Breeckers propose an addition that will be set back more than 100 feet from the Lamprey river except for a small corner of deck and stairs that will be set back 94 feet. The existing section highlighted in blue will be removed to reduce the existing deck area in the tidal buffer zone from the existing 60 square feet to only 14 square feet. The area beyond the existing stone wall to the Lamprey River, shown in the West Environmental Photo Log, will not be disturbed and remain in its natural state.

IV. SPECIAL EXCEPTION CRITERIA (SECTION 32-5)

The Breeckers request that the Zoning Board grant a special exception for an expansion of their existing non-conforming residence. The proposed addition is located partially within the Town's 125 foot shoreland setback zone. The residence is considered a "lawful non-conforming use" because it was constructed prior to 1968 and renovated in 1991, which is prior to the Town's adoption of the Shoreland Protection Overlay District in 1996. *Dartmouth Corporation of Alpha Delta v. Town of Hanover*, 169 N.H. 743, 750-751 (2017).³ Nonconforming uses are protected from subsequent changes to zoning ordinances by RSA 674:19 (2016) and by Part I, Articles 2 and 12 of the New Hampshire Constitution.

Section 32 – 5 of the Newmarket Zoning Ordinance allows for expansions or additions to nonconforming structures provided that the following criteria are met:

(2) *Nonconforming structure.* The following control nonconforming structures:

a. Where an existing structure violates the setback requirements, horizontal expansion of the structure within the setback may be

³ "A nonconforming use is a lawful use existing since prior to the adoption of a zoning ordinance prohibiting such use, and that does not conform to the requirements of the ordinance. *See Town of Salem v. Wickson*, 146 N.H. 328, 330 (2001); *see also Hurley v. Town of Hollis*, 143 N.H. 567, 571 (1999) (explaining that "a zoning ordinance does not apply to structures or uses of the property that existed at the time the ordinance was enacted"). "The right to maintain nonconforming uses is meant to protect property owners from a retrospective application of zoning ordinances, so that property owners may continue using and enjoying their property when their uses were lawful prior to the enactment of a zoning ordinance or amendment thereto." *New London Land Use Assoc. v. New London Zoning Board*, 130 N.H. 510, 516 (1988)."

allowed if granted a special exception by the zoning board of adjustment. The zoning board of adjustment shall grant the special exception only if the following conditions are met:

1. The expanded structure is no closer to the lot line than the existing structure.
2. The expansion is not in the 100-year floodplain.
3. The owner demonstrates that no other expansion, which reasonably fulfills the intended purpose, can be achieved in conformance with this chapter.
4. Sanitary sewage disposal and water supply are provided if needed.
5. The expansion shall not render the lot proportionally less adequate.
6. The expansion does not adversely affect abutting properties, public health, safety or general welfare.

b. Portions of structures within a setback may be enclosed or expanded upwards if granted a special exception by the zoning board of adjustment. The zoning board of adjustment shall grant the special exception only if the following conditions are met:

1. If an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.
2. If an upward expansion, it shall not exceed the maximum height limitations specified in this chapter.
3. No part of the structure is located within the 100-year floodplain.
4. The expansion shall not render the lot proportionally less adequate.

Each of the special exception criteria for a horizontal and vertical expansion under Section 32-5 (2) are met as follows:

1. The expanded structure is no closer to the lot line than the existing structure.

The proposed addition to the Breecker residence complies with all of the lot line setbacks under the Town's Zoning Ordinance which requires 25 foot side and rear setbacks in the Town's R1 Zone. The renovation more than meets all of the lot line setback requirements based on the plans which show the Town's front, rear and side setbacks. The current structure is 60 feet from the River at its closest point. The proposed addition will be set back more than 100 feet from the Lamprey River except for a small corner of deck and stairs that will be set back 94 feet. The area in the Tidal Buffer Zone (highlighted in blue) will be removed to reduce permanent impacts in Tidal Buffer Zone from the existing 60 square feet to only 14 square feet.

2. The expansion is not in the 100-year floodplain.

The entire project is located outside of the 100-year floodplain. The shoreline of the Lamprey River as shown on the survey plans submitted herewith is located at approximately 5 feet above sea level. The residence will be located approximately 32 feet above sea level, well above the 100-year floodplain.

3. The owner demonstrates that no other expansion, which reasonably fulfills the intended purpose, can be achieved in conformance with this chapter.

The existing residence is located along the top of a small hill or ridge line between Moody Point Drive and the Lamprey River. This area is level and drains away from the River. Moving the proposed addition closer to Lamprey River would be contrary to the purposes of the Shoreland Protection District and coastal buffer zones. However, moving the structure further back is not reasonably possible. It would impact and encroach areas around the existing septic system and leach field as shown on the Plans. These areas need to be protected to prevent damage to the system and to maintain sufficient area to replace the system in the future. NHDES rules also require that buildings be setback a certain distance, typically 5 to 15 feet, from septic tanks and leach fields for operational and maintenance reasons. See Env-Wq 1008.04.

By using the proposed location, the addition minimizes the amount of construction, disturbance and site work that will be required within the protected shoreland and avoids impacts to the existing septic system.

4. Sanitary sewage disposal and water supply are provided if needed.

The addition will be connected to the existing septic system and will not exceed its approval as a 3-bedroom system. Water supply will continue to be provided from an existing well shown on the approved plan.

5. The expansion shall not render the lot proportionally less adequate.

The proposed addition will be located 94+ feet from the Lamprey River compared to the existing residence which is approximately 60 feet from the River at its closest point. The addition meets all other dimensional requirements under the Zoning Ordinance.

6. The expansion does not adversely affect abutting properties, public health, safety or general welfare.

The proposed residence will have no impact on abutting properties. All of the required setbacks will be met and the proposed addition will be located approximately 30 feet from the side setback line and over 100 feet from the nearest residence owned by the Prostkoffs. The addition will improve aesthetics in the neighborhood and result in additional revenue for the state, county and local tax districts with no increased costs for services.

7. If an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.

As noted above, the proposed addition will be located over 100 feet from the nearest residence. It will have no impact on neighboring property such as blocking of views, sunlight, views of the water. Vegetation along the shoreland and along the side line setbacks will not be disturbed.

8. If an upward expansion, it shall not exceed the maximum height limitations specified in this chapter.

The proposed addition will be 18.5 feet in height, well below the 35 foot maximum height allowed in the R-1 Zone per the Town's Zoning Ordinance, Section 32-89 (Dimensional Table). The addition will have no impact on any neighboring properties.

V. CONCLUSION

For the reasons set forth herein, the proposed addition meets all of the Special Exception criteria for expansion of a nonconforming structure under Section 32-5 (2). It represents a reasonably sized addition set back from the Lamprey River and carefully designed to avoid and minimize impacts to the protected shoreland areas. It has been approved by both the NHDES Wetlands and Shoreland Programs. On September 20, 2020, the Newmarket Conservation Commission also voted to recommend its approval.

The Breeckers look forward to presenting their application to the Zoning Board and hope it will agree that the addition will have a positive effect on the neighborhood, maintain property values in the area, and benefit the Town's tax base without any adverse impacts to the shoreland buffer zones.

Respectfully submitted,

Steven and Melinda Breecker

By their counsel

NH WATER LAW

Date: 5/10/2021

By:



Justin C. Richardson; NHBA #12148
586 Woodbury Avenue
Portsmouth, New Hampshire 03801
(603) 591-1241
justin@nhwaterlaw.com

Enclosures:

1. Mark West, West Environmental, Photo Log.
2. NHDES Wetlands Permit.
3. NHDES Shoreland Permit.
4. Newmarket Conservation Commission Minutes 9/20/2020.
5. September 9, 2020 Approved Site Plan.
6. November 18, 2020 Approved Shoreland Plans.



1. Looking southeast at the narrow salt marsh along the Lamprey River.



2. Looking south towards the river from the proposed impact area.



3. Looking southeast towards the river along the stonewall 15 feet from the impact area.



4. Looking west at the proposed location of the addition.



5. Looking northwest at the location where the addition is in the TBZ. These stairs will be removed from the TBZ and the area will be landscaped.



6. Looking northwest at the proposed location of the addition. The large oak tree will be saved.



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



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WETLANDS AND NON-SITE SPECIFIC PERMIT 2020-02636

NOTE CONDITIONS

PERMITTEE: STEVEN & MELINDA BREECKER
19 MOODY POINT DR
NEWMARKET NH 03857

PROJECT LOCATION: 19 MOODY POINT DR, NEWMARKET
TAX MAP #R2, LOT #43-1

WATERBODY: LAMPREY RIVER

APPROVAL DATE: NOVEMBER 13, 2020

EXPIRATION DATE: NOVEMBER 13, 2025

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Based upon review of the above referenced application, in accordance with RSA 482-A and RSA 485-A:17, a Wetlands Permit and Non-Site Specific Permit was issued by the New Hampshire Department of Environmental Services (NHDES). This permit shall not be considered valid unless signed as specified below.

PERMIT DESCRIPTION: Impact 134 feet within the previously developed upland tidal buffer zone in order to construct an addition onto an existing primary structure.

THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:

1. All work shall be done in accordance with the plans by Boudreau Land Surveying, dated September 09, 2020, revised through September 28, 2020 and received by the NH Department of Environmental Services (NHDES) on October 13, 2020, per Rule Env-Wt 307.16.
2. No other work shall be done on the subject property pursuant to another expedited permit (EXP) or a statutory permit-by-notification (SPN) for a period of 12 months from the date the EXP was issued unless the property owner submits information, including a plan, to demonstrate that the proposed work is wholly unrelated to and separate from the work already done under the EXP or SPN; and the proposed work and the work already done under the EXP or SPN do not, when combined, constitute a project for which a standard permit is required, per Rule Env-Wt 310.03(a)
3. All development activities associated with any project shall be conducted in compliance with applicable requirements of RSA 483-B and Env-Wq 1400 during and after construction, per Rule Env-Wt 307.07.
4. All work, including management of soil stockpiles, shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using the techniques described in Env-Wq 1505.02, Env-Wq 1505.04, Env-Wq 1506, and Env-Wq 1508; the applicable BMP manual; or a combination thereof, if the BMP manual provides less protection to jurisdictional areas than the provisions of Env-Wq 1500, per Rule Env-Wt 307.03(b).
5. Water quality control measures shall be selected and implemented based on the size and nature of the project and the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to jurisdictional areas, per Rule Env-Wt 307.03(c)(1).
6. The person in charge of construction equipment shall inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands, per Rule Env-Wt 307.03(g)(1).

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

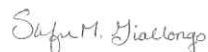
TDD Access: Relay NH 1 (800) 735-2964

7. Equipment shall be staged and refueled outside of jurisdictional areas (unless allowed) per Rule Env-Wt 307.15 and Env-Wt 307.03(h).

GENERAL CONDITIONS THAT APPLY TO ALL NHDES WETLANDS PERMITS:

1. Pursuant to RSA 482-A:12, a copy of the permit shall be posted in a secure manner in a prominent place at the site of the approved project.
2. In accordance with Env-Wt 313.01(a)(5), and as required by RSA 482-A:11, II, work shall not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.
3. In accordance with Env-Wt 314.01, a standard permit shall be signed by the permittee and the principal contractor who will build or install the project prior to start of construction; and will not be valid until signed.
4. In accordance with Env-Wt 314.03(a), the permittee shall notify the department in writing at least one week prior to commencing any work under the permit.
5. In accordance with Env-Wt 314.08(a), the permittee shall file a completed notice of completion of work and certificate of compliance with the department within 10 working days of completing the work authorized by the permit.
6. In accordance with Env-Wt 314.06, transfer of this permit to a new owner shall require notification to and approval by NHDES.
7. In accordance with Env-Wt 307.02, in order to be in compliance with federal requirements, all work in areas under the jurisdiction of the U.S. Army Corps of Engineers (US ACE) shall comply with all conditions of the applicable state general permit (see attached notice).
8. In accordance with Env-Wt 307.06(a) through (c), no activity shall jeopardize the continued existence of a threatened or endangered species, a species proposed for listing as threatened or endangered, or designated or proposed critical habitat under the Federal Endangered Species Act, 16 U.S.C. §1531 et seq.; State Endangered Species Conservation Act, RSA 212-A; or New Hampshire Native Plant Protection Act, RSA 217-A. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel.

APPROVED:



Stefanie M. Giallongo
Land Resources Management, Water Division

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BY SIGNING BELOW, I HEREBY CERTIFY THAT I HAVE FULLY READ THIS PERMIT AND AGREE TO ABIDE BY ALL PERMIT CONDITIONS.

OWNER'S SIGNATURE (required)

CONTRACTOR'S SIGNATURE (required)



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



SHORELAND IMPACT PERMIT 2020-03015

NOTE CONDITIONS

PERMITTEE: MELINDA/STEVEN BREECKER
19 MOODY POINT DR
NEWMARKET NH 03857

PROJECT LOCATION 19 MOODY POINT DR, NEWMARKET
TAX MAP #R2, LOT #43-1

WATERBODY: LAMPREY RIVER

APPROVAL DATE: DECEMBER 22, 2020

EXPIRATION DATE: DECEMBER 22, 2025

Shoreland Permit Application 2020-03015 has been found to meet or exceed the requirements of RSA 483-B as required per RSA 483-B:6, II. The New Hampshire Department of Environmental Services (NHDES) hereby issues this Shoreland Impact Permit with conditions pursuant to RSA 483-B:6, II.

PERMIT DESCRIPTION:

Impact 2,368 square feet of protected shoreland in order to construct an addition onto an existing primary structure.

Impervious Surface Percentage Approved: 17.3%

Natural Woodland Area Required per RSA 483-B:9,V, (b): 5,660 square feet

THE FOLLOWING PROJECT-SPECIFIC CONDITIONS HAVE BEEN APPLIED TO THE PERMIT PURSUANT TO ENV-WQ 1406.15(c):

1. Construction, excavation, and fill impacts shall be limited to those areas identified on plans by Boudreau Land Surveying PLLC, dated November 18, 2020 and received by the NH Department of Environmental Services (NHDES) on November 24, 2020.
2. Orange construction fencing shall be installed at the limits of impact as shown on the approved plans prior to the start of work and shall be maintained throughout the project in order to prevent accidental encroachment into areas in which impacts have not been approved as required per Env-Wq 1406.20 (e).3.
3. Erosion and siltation control measures shall be installed prior to the start of work, be maintained throughout the project, and remain in place until all disturbed surfaces are stabilized.
4. Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.
5. No person undertaking any activity in the protected shoreland shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Wq 1700.
6. Any fill used shall be clean sand, gravel, rock, or other suitable material.
7. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
8. The individual responsible for completion of the work shall utilize techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).

9. This permit shall not be interpreted as acceptance or approval of any impact that will occur within wetlands jurisdiction regulated under RSA 482-A including all wetlands, surface waters and their banks, the tidal-buffer zone, and sand dunes. The owner is responsible for maintaining compliance with RSA 482-A and Administrative Rules Env-Wt 100 - 900 and obtaining any Wetland Impact Permit that may be required prior to construction, excavation or fill that will occur within Wetlands jurisdiction. (See NHDES File #: 2020-02636)
10. This permit shall not preclude NHDES from taking any enforcement or revocation action if NHDES later determines that any of the structures depicted as "existing" on the plans submitted by the applicant were not previously permitted or grandfathered.

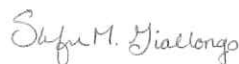
THE FOLLOWING STANDARD PROJECT CONDITIONS SHALL BE MET PURSUANT TO ENV-WQ 1406.20:

1. Erosion and siltation control measures shall be installed prior to the start of work, be maintained throughout the project, and remain in place until all disturbed surfaces are stabilized.
2. Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.
3. No person undertaking any activity in the protected shoreland shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Wq 1700.
4. Any fill used shall be clean sand, gravel, rock, or other suitable material.
5. For any project where mechanized equipment will be used, orange construction fence shall be installed prior to the start of work at the limits of the temporary impact area as shown on the approved plans; be maintained throughout the project; and remain in place until all mechanized equipment has been removed from the site.

ANY INDIVIDUAL CONDUCTING WORK UNDER THIS PERMIT IS ADVISED OF THE FOLLOWING:

1. During construction, a copy of this permit should be posted on site in a prominent location visible to inspecting personnel.
2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others.
3. Pursuant to Env-Wq 1406.21, transfer of this permit to a new owner requires notification to, and approval of, the NHDES.
4. This project has been screened for potential impact to **known** occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or only cursory surveys have been performed, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species. This permit does not authorize in any way the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.

APPROVED:



Stefanie M. Giallongo
Shoreland Specialist, Shoreland Program
Wetlands Bureau, Land Resources Management
Water Division

CONSERVATION COMMISSION

September 10, 2020

7:00 PM

Virtual Meeting

Members Present: Patrick Reynolds (Chair), Melissa Sharples (Vice Chair), Ellen Snyder (Treasurer), David Bell, Cris Blackstone, Sarah Finch (Planning Board Rep), Drew Kiefaber (Alternate), and Jonathan Kiper (Town Council Rep).

Members Absent: Excused member this evening: Sam Kenney.

1. Roll Call**2. Guest Presentation**

Malin Clyde is a Community Volunteer State Specialist with the UNH Extension Service and her areas of interest include volunteers, land and water stewardship, citizen science, and other efforts that create meaningful connections between communities and the natural world. In 2012, Malin and **Ellen Snyder** launched *Nature Groupie- Outdoor Volunteers in New England*, an initiative that employs collaboration and technology to empower generations of outdoor enthusiasts to volunteer for nature in New Hampshire and beyond. The calendar at Nature Groupie is utilized to promote work days on conservation properties where the participants learn by hands on experience combined with training. She has discovered that 50% of those volunteering choose an opportunity outside of their own county. More detailed information and the weekly bulletin may be found at the web site <https://naturegroupie.org/>. She showed many wonderful slides to demonstrate different types of activities and pictures of happy volunteers! They purchased a van this year to transport volunteers to sites a short distance away. There are so many wonderful opportunities available which can be easily passed along to those in the Newmarket community and beyond. **Melissa Sharples** mentioned that there has been some chatter on Facebook about the pretty awful/nasty stuff that has been seen in the mud of the Lamprey River drawdown. **Cris Blackstone** is excited about the help that Newmarket could get from volunteers toward the removal of invasive plants which were mentioned by our speaker last month, Greg Jordan, Forestry Field Agent for Rockingham County and UNH Cooperative Extension. Nature Groupie and the Southeast Land Trust of New Hampshire (SELT) co-sponsor a Stewardship Tool Library at Burley Farms located on North River Rd, just off Rte. 125 in Epping. Everything you need for a work day! <https://www.google.com/maps/place/245+N+River+Rd,+Epping,+NH+03042/@43.0677866,-71.0467065,15z/data=!4m5!3m4!1s0x89e2f25463b9b01d:0x87840f51c4d9d5aa!8m2!3d43.063699!4d-71.0466099>. The Conservation Commission thanked Malin very much for her presentation and wonderful information to get us started on community volunteers in Newmarket. Scott Boudreau, another speaker this evening, is a Girl Scout Master in Newmarket. He has a very active and eager group who would really like to volunteer in Town. The scouts are 11-16 years old. The members was excited to hear this!

3. Public Comments/Permits

Scott Boudreau, Boudreau Land Surveying PLLC, is attending the meeting this evening for Mark West, West Environmental Inc., to discuss an Expedited Minimum Impact Wetlands Permit Application for the property at 19 Moody Point Road. He provided information to all members by email prior to the meeting. The owner of the property, Steven Breecker, is also present at the meeting. The plan and application clearly show that

there will be 14 SF of permanent impact and 120 SF of temporary impact in the 100' tidal buffer zone.

Action

Motion: **Ellen Snyder** made a motion to provide the approval of the ConCom for the Expedited Minimum Impact Wetlands Permit Application for the property located at 19 Moody Point.

Second: **Melissa Sharples**

Vote: Unanimously Approved

Thank you Scott for attending this evening.

4. Approval of the Minutes

August 13, 2020:

Action

Motion: **Ellen Snyder** made a motion to approve the minutes as written for August 13, 2020.

Second: **Cris Blackstone**

Vote: Unanimously Approved

5. Treasurer's Report

Ellen Snyder reported on the most recent account balances. The Conservation Fund has a current balance of \$246,951.59. The Schoppmeyer Park Committee has a balance of \$6,433.45. There were no deposits for current use fees.

6. Committee and Subcommittee Reports

The Chair welcomed **Jonathan Kiper** to the Conservation Commission as Town Council Representative. Welcome Jon!

Town Council: **Jon Kiper** has no report this evening.

Planning Board: **Sarah Finch** has no report this evening.

7. Chairman's Report

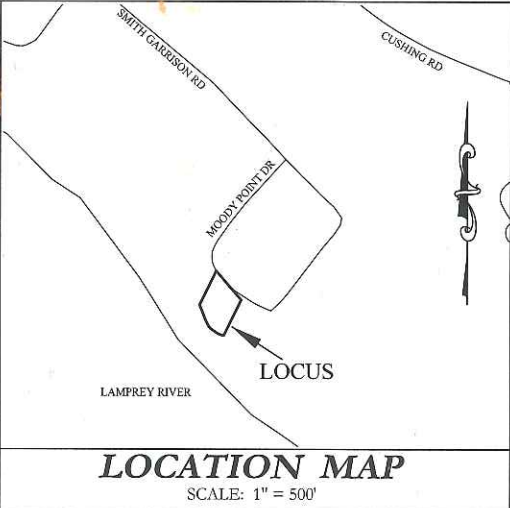
Letter from NHDES: The Chair received a copy of a letter reporting that a property on River Street may be in violation of RSA 483-B, the Shoreland Water Quality Protection Act. A permit is required within the protected shoreland for any new construction or construction that modifies the footprint of existing impervious surfaces, using mechanized equipment to either excavate, remove or form a cavity within the ground and filling any areas with rocks, soil, gravel or sand. The owner has 20 days to respond to NHDES. NHDES will keep us informed of the progress in the investigation.

Annual Photo Exhibit: **Melissa Sharples** and **Cris Blackstone** shared a report on the progress of the annual photo exhibit. They are still accepting photos mostly by email. They were scheduled to meet with two members of the Newmarket Arts & Tourism Commission yesterday, but had some zoon issues. The commission was created by the Town Council and will study, consider and make recommendations to the Town Council and Town Manager, general policies for the arts and tourism in the Town of Newmarket. The Commission will develop and promote programs, forums, and exhibits that highlight the talent and active art related venues currently existing within the Town. **Melissa** spoke with **Helen Sanders**, TC rep on the Commission, yesterday about trying to combine our efforts. One issue discussed was keeping the schedule like last year, i.e. Oct/Nov. **Cris Blackstone** mentioned that we still may wish to make a calendar. Thank you **Melissa** and **Cris**!

8. Old/New Business

Schanda Park Permit: The Chair is in possession of the permit application from Mr. Jerry Collins for storing the pocket for the just upstream of the Town Dock for the winter months. The Chair reached out to Fish &

	Impervious Areas (sq. ft.)		
	Existing Area	Proposed Area	Net Increase
125' Shoreland Buffer (Newmarket)	5083	5819	736
250' Shoreland Buffer (NHDES)	6062	7075	1013



- NOTES:**
- REFERENCE: TAX MAP R2 LOT 43-1
R.C.R.D. BOOK 9978 PAGE 763
 - TOTAL PARCEL AREA: 40,979 SQ. FT. OR 0.94 AC.
 - OWNER OF RECORD: STEVEN & MELINDA BREECKER
19 MOODY POINT DRIVE
NEWMARKET, NH 03857
 - ZONE: R-1
DIMENSIONAL REQUIREMENTS:
MINIMUM LOT AREA 2 acres
MINIMUM FRONTAGE 200 ft.
MINIMUM FRONT SETBACK 40 ft.
MINIMUM SIDE SETBACK 25 ft.
MINIMUM REAR SETBACK 25 ft.
 - PER THE NEWMARKET, NH ZONING REGULATIONS SECTION 32-154(d)(2), THE BUILDING SETBACK FOR PRIMARY STRUCTURES WITHIN THE SHORELAND PROTECTION OVERLAY DISTRICT SHALL BE 125 FEET FROM THE REFERENCE LINE.
 - FIELD SURVEY PERFORMED BY S.D.B. ON 10/11/2019 USING A SPECTRA PRECISION FOCUS ROBOTIC TOTAL STATION. TRAVERSE ADJUSTMENT IS BASED ON THE COMPASS RULE METHOD OF ADJUSTMENT.
 - HORIZONTAL DATUM NAD '83.
 - VERTICAL DATUM IS BASED ON NAVD'88.
 - THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTION.
 - THE SEPTIC SYSTEM SHOWN ON THIS PLAN IS APPROXIMATE ONLY AND IS BASED ON THE FIELD LOCATION OF THE TANK AND SKETCH PROVIDED BY THE LANDOWNER.
 - A PORTION OF THE SURVEYED PREMISES FALLS WITHIN "ZONE AE" OF THE SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD, AS SHOWN ON F.I.R.M. MAP NUMBER 3301SC0235E, EFFECTIVE MAY 17, 2005.
 - THIS LOT FALLS ENTIRELY WITHIN THE NEW HAMPSHIRE SHORELAND PROTECTION OVERLAY DISTRICT FOR THE LAMPREY RIVER. THE REFERENCE LINE SHOWN IS BASED ON VISUAL EVIDENCE OF THE HIGHEST OBSERVABLE TIDE LINE (H.O.T.L.).
- PLAN REFERENCES:**
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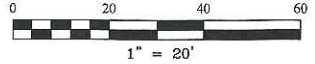
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MAY 11 2021

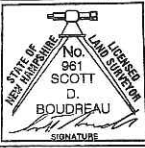
NEWMARKET, NH
PLANNING BOARD

LEGEND

- IRON PIPE/ROD FOUND
- DRILL HOLE FOUND
- CORNER - NOTHING FOUND/SET
- WELL
- BOUNDARY LINE
- ABUTTER LINE
- OVERHEAD WIRES
- RIGHT-OF-WAY
- NH SHORELAND REFERENCE LINE
- EDGE OF PAVEMENT
- F.I.R.M. SPECIAL FLOOD HAZARD BOUNDARY
- BUILDING SETBACK LINE
- STONE WALL
- TREELINE



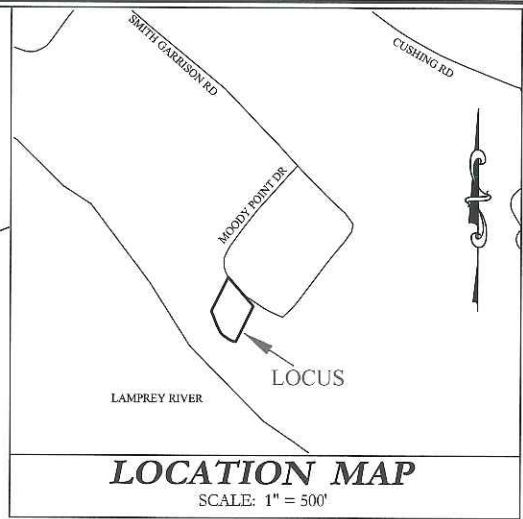
NO.	DATE	DESCRIPTION	BY
1.	9-28-2020	UPDATED ABUTTER INFORMATION	SDB



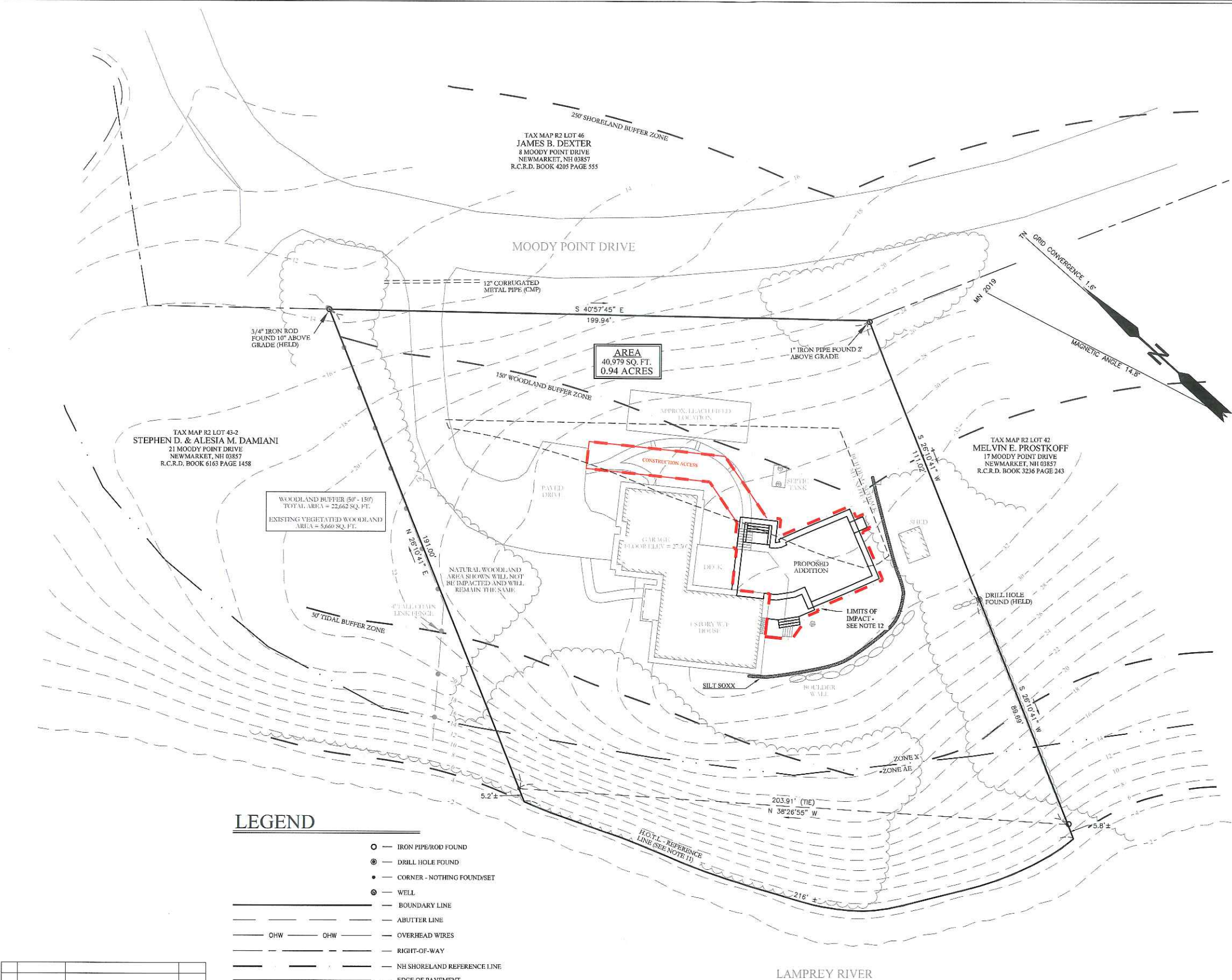
DRAWN BY: SDB	DATE: SEPTEMBER 9, 2020
CHECKED BY: ARB	DRAWING NAME: 19026R2
JOB NAME: 19026	SHEET 1 OF 1

Boudreau Land Surveying P.L.L.C.
SCOTT D. BOUDREAU, L.L.S., #961
2 BEATRICE LANE
NEWMARKET, NH 03857
(603) 659-3468

SITE PLAN
PREPARED FOR
STEVEN & MELINDA BREECKER
(TAX MAP R2 LOT 43-1)
19 MOODY POINT DRIVE
NEWMARKET, NH



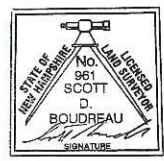
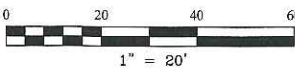
- NOTES:**
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R.C.R.D. BOOK 5978 PAGE 763
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NEWMARKET, NH 03857
 - ZONE: R-1
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MINIMUM FRONTAGE 200 ft.
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MINIMUM SIDE SETBACK 25 ft.
MINIMUM REAR SETBACK 25 ft.
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 - THIS LOT FALLS ENTIRELY WITHIN THE NEW HAMPSHIRE SHORELAND PROTECTION OVERLAY DISTRICT FOR THE LAMPREY RIVER. THE REFERENCE LINE SHOWN IS BASED ON THE HIGHEST OBSERVABLE TIDE LINE (H.O.T.L.).
 - THE LIMITS OF IMPACT SHOWN ARE BASED ON TEMPORARY CONSTRUCTION ACTIVITIES AROUND THE PROPOSED CONSTRUCTION AREA.
- PLAN REFERENCES:**
- PLAN TITLED "PLAN OF LAND SHOWING TRACT-2 LOT-1 AND TRACT-1 LOT-2 AYRES & BETH S. CHAVES" DATED FEB. 1983, PREPARED BY K.E. MOORE & B.G. STAPLES, R.C.R.D. PLAN D-11399.



**POST CONSTRUCTION CONDITIONS
PLAN**
PREPARED FOR
STEVEN & MELINDA BREECKER
(TAX MAP R2 LOT 43-1)
19 MOODY POINT DRIVE
NEWMARKET, NH

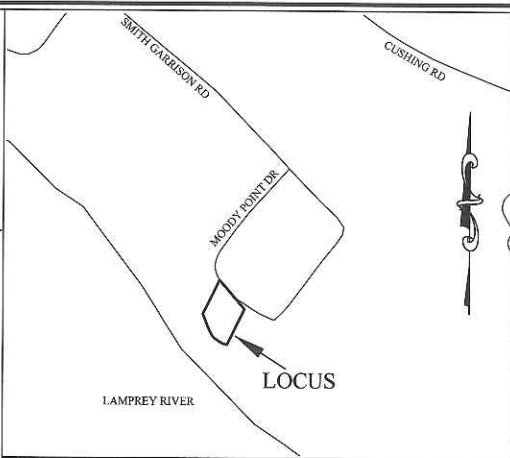
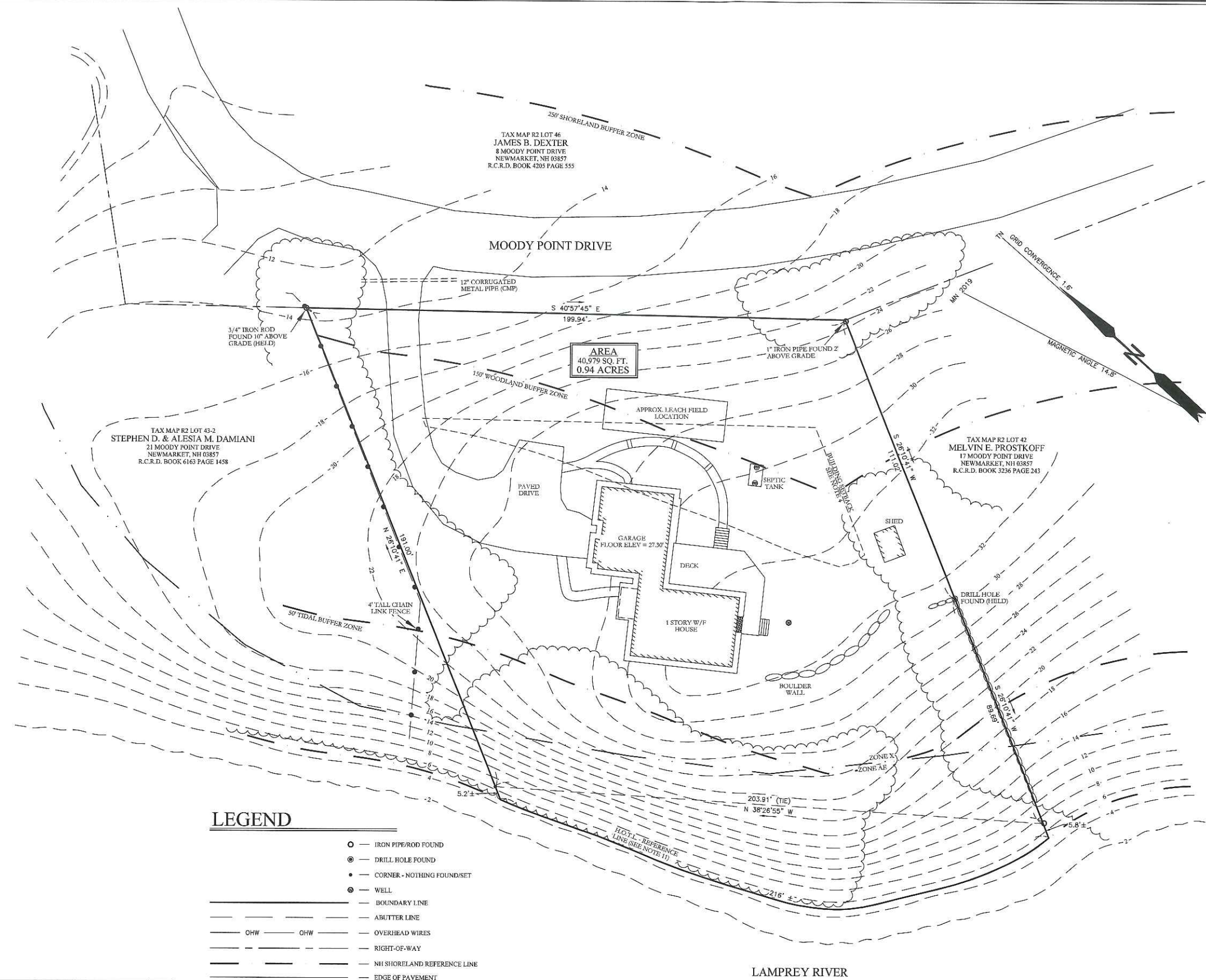
1.	9-28-2020	UPDATED ABUTTER INFORMATION	SDR
NO.	DATE	DESCRIPTION	BY

- LEGEND**
- — IRON PIPE/ROD FOUND
 - ⊙ — DRILL HOLE FOUND
 - — CORNER - NOTHING FOUND/SET
 - ⊙ — WELL
 - — BOUNDARY LINE
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 - OHW — OHW — — OVERHEAD WIRES
 - — RIGHT-OF-WAY
 - — NH SHORELAND REFERENCE LINE
 - — EDGE OF PAVEMENT
 - — F.I.R.M. SPECIAL FLOOD HAZARD BOUNDARY
 - — BUILDING SETBACK LINE
 - — STONE WALL
 - — TREELINE



DRAWN BY: SDR	DATE: NOVEMBER 18, 2020
CHECKED BY: ARB	DRAWING NAME: 19026B1
JOB NAME: 19026	SHEET 2 OF 2

**Boudreau
Land
Surveying P.L.L.C.**
SCOTT D. BOUDREAU, L.L.S. #961
2 BEATRICE LANE
NEWMARKET, NH 03857
(603) 659-3468



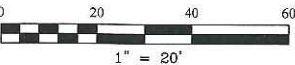
LOCATION MAP
SCALE: 1" = 500'

- NOTES:**
1. REFERENCE: TAX MAP R2 LOT 43-1
R.C.R.D. BOOK 5978 PAGE 763
 2. TOTAL PARCEL AREA: 40,979 SQ. FT. OR 0.94 AC.
 3. OWNER OF RECORD: STEVEN & MELINDA BREECKER
19 MOODY POINT DRIVE
NEWMARKET, NH 03857
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LEGEND

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- — EDGE OF PAVEMENT
- — F.I.R.M. SPECIAL FLOOD HAZARD BOUNDARY
- — BUILDING SETBACK LINE
- — STONE WALL
- — TREELINE

NO.	DATE	DESCRIPTION	BY
1.	9-26-2020	UPDATED ABUTTER INFORMATION	SDB



DRAWN BY: SDB	DATE: NOVEMBER 18, 2020
CHECKED BY: ARB	DRAWING NAME: 19026B1
JOB NAME: 19026	SHEET 1 OF 2

Boudreau Land Surveying, P.L.L.C.
SCOTT D. BOUDREAU, L.L.S. #961
2 BEATRICE LANE
NEWMARKET, NH 03857
(603) 659-3468

PRE-EXISTING CONDITIONS PLAN
PREPARED FOR
STEVEN & MELINDA BREECKER
(TAX MAP R2 LOT 43-1)
19 MOODY POINT DRIVE
NEWMARKET, NH

**7 MOODY POINT DRIVE
NEWMARKET, NH 03857**

June 5, 2021

Via: sjordan@newmarketnh.gov

Newmarket Zoning Board of Adjustment
c/o Susan Jordan, Administrative Secretary
Town Hall
186 Main Street
Newmarket, NH 03857

RE: Application for Special Exception to Permit Construction of Addition
at 19 Moody Point Drive, Newmarket (Melinda and Steven Breecker)

Dear Members of the Zoning Board of Adjustment:

We want you to know that we support the applicants' request for an exception to allow them to extend their existing home. We are not formally abutting neighbors, but our home, at 7 Moody Point Drive, is around the corner and across the road and from the property in question, which we walk past on a daily basis. Having examined the plans for the addition of a master bedroom and other alterations to the Breeckers' home at 19 Moody Point Drive, we believe that it will enhance rather than diminish the value of our and the other neighboring properties.

The Breeckers' home sits well back from Moody Point Drive at the crest of a small hill between the street and the Lamprey River. The enlarged home will be in keeping with other houses in the neighborhood and is entirely proportionate to the size of the property. The property is screened from the street by stands of white fir, birch, and other trees and plants. The planned addition will not adversely affect the impression the house makes on passersby.

All of us in the Moody Point neighborhood recognize the importance of the well-being and sustainability of the Lamprey River. By choosing to add their master bedroom further back from the shoreline than the existing, nonconforming structure, the Breeckers reflect this commitment as well. We believe that the proposed modifications of the home are consistent with public welfare and meet all six criteria for a special exception to the Town's 125' Primary Structure Shoreland Setback Ordinance. We therefore urge you to approve the exception sought by the Breeckers.

We would be pleased to respond to any questions, should further information be needed.

Sincerely,


Alexander M. Capron

MELVIN E. PROSTKOFF
17 MOODY POINT DRIVE
NEWMARKET, NH 03857-1724
HOME: 603-659-0733 --- CELL: 603-781-6903
MPROSTKOFF1@GMAIL.COM

To: Susan C. Jordan – Administrative Secretary
Town of Newmarket – Planning, Zoning & Building Safety
186 Main Street
Newmarket, NH 03857

Ph: 603-659-8501 – Ext 1310 --- Fax: 603-659-8508 --- sjordan@newmarketnh.gov

Re: Steven & Melinda Breecker - 19 Moody Point Dr - Newmarket, NH: Map R2 - Lot 43-1 – R1 Zone
Application For Special Exception to the 125' Primary Structure Shoreland Setback Ordinance
Letter of Support

June 4, 2021

Dear Susan:

I am writing a letter of **unconditional support** for the application of Steven and Melinda Breecker (19 Moody Point Drive – Newmarket, NH) to the Newmarket Zoning Board of Adjustment (ZBA) for a Special Exception to the 125' Primary Structure Shoreland Setback Ordinance, which will be presented at the Mon – 6/14/2021 ZBA Meeting at 7 PM.

As you are aware, I am a **direct abutter** to the Breecker property (Map R2 – Lot 43-1 – R1 Zone).

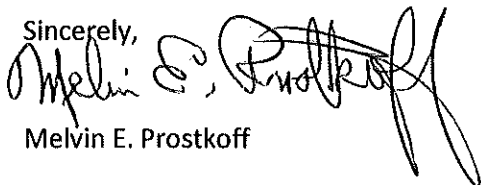
I have reviewed the site plan, elevations and floor plan for the Breecker's proposed construction project. I have reviewed the six criteria that are necessary to be met to be issued the Special Exception to the 125' Primary Structure Shoreland Setback, as well as the Breecker's application to the ZBA. I find that the Breecker's project conforms to all six required criteria.

The Breeckers have been excellent neighbors during the past 2+ years that they have been my abutting neighbors on Moody Point Drive. I strongly believe that their proposed construction project will greatly enhance and improve our neighborhood, and will have no adverse or detrimental impact on abutting properties, public health, safety, or general welfare.

I heartily endorse the Breecker's application, without reservation.

Thank you.

Sincerely,


Melvin E. Prostkoff

To: The Newmarket Zoning Board of Adjustment
Re: The proposed expansion of 19 Moody Point Dr, Newmarket NH

Dear Zoning Board,

My wife and I are writing in reference to the home expansion of Steven and Melinda Brecker. We have reviewed the plans with the Breckers and am supportive of the expansion as we believe that it will bring value to the area without causing harm to our shoreline or wetlands.

Please feel free to contact us with any questions

Kind Regards,

Stephen and Alesia Damiani

RECEIVED

JUN 7 2021

**NEWMARKET, NH
PLANNING BOARD**