

TOWN OF MILFORD

Office of Community Development
Planning • Zoning • Building Safety • Code Enforcement • Health
Economic Development • Active Projects



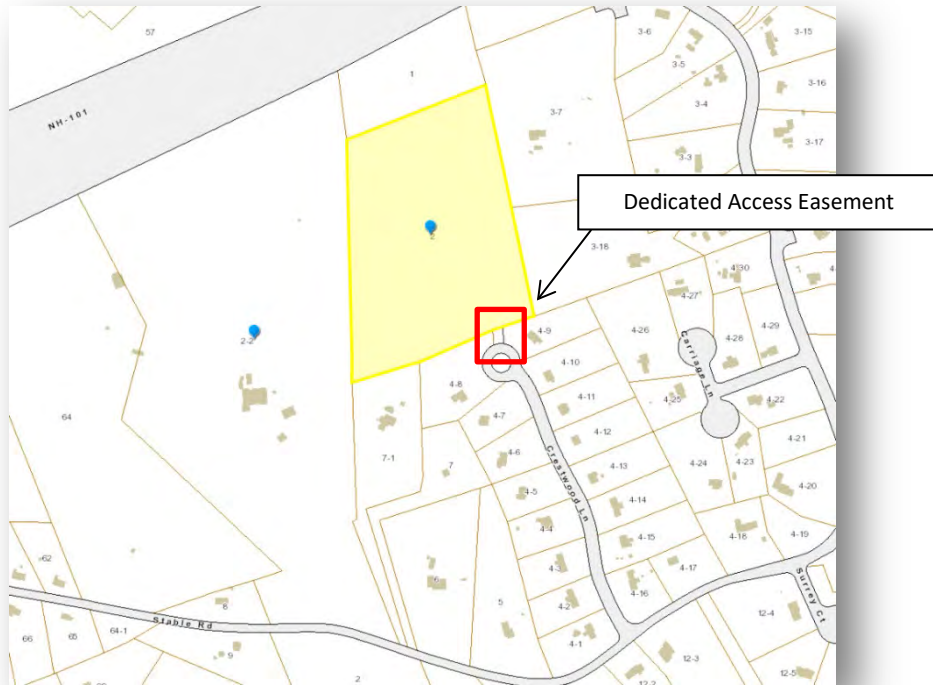
Administrative Review

Date: June 23, 2020
To: Jason Plourde, Chair, Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Case #2020-13: Glenn & Patricia Wright for the property located at Tax Map 49 Lot 2, 0 Crestwood Lane - Variance Application**

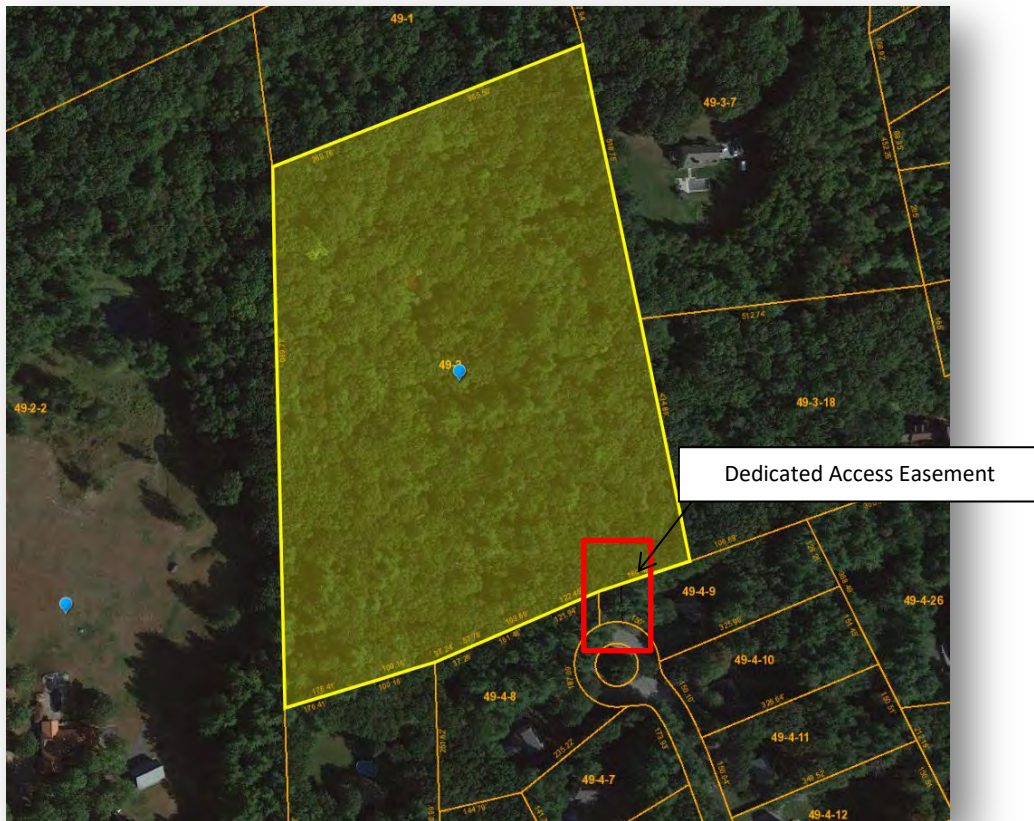
The applicant is before the Board of Adjustment seeking a VARIANCE from the Milford Zoning Ordinance, , Article V, Section 5.04.4.A to permit the construction of a single-family residence on a lot of record with less than the minimum required frontage (200') on a principle route of access on a Class V road or better in the Residential 'R' district. In reviewing the files for this property, I offer the following comments:

1. Existing Conditions:
 - a. The subject property is approximately 15 acres of undeveloped land with no linear frontage on a Class V roadway or better. The property
 - b. Access to the property is by way of dedicated access easement across Tax Map 49, Lot 4-9, 51 Crestwood Lane. (See HCRD Book 8634 Page 1567)
2. The applicant is seeking to build a single-family residence on the 15 acre parcel with no legal frontage. The dedicated access easement providing access to subject property does not qualify a frontage. Lot will be serviced by private well and septic.
3. The premises conforms to all site and dimension requirements of the Zoning Ordinance with the exception that the subject property does not contain the required 200 linear feet of frontage on a Class V or better required under Section 5.04.4.A. The proposed single-family use on a two (2) acre minimum lot is permitted in Residential 'R' Zone. However, due to the lack of sufficient frontage defined as: "That continuous portion of a lot bordering on a road(s) from which access can be taken, that meets the minimum requirements of the underlying zoning district.", a Variance would be required.
4. This is a reapplication of two previous Variance requests 2012-21(granted 10/4/12) and 2014-02 (granted 2/6/14) providing relief from Article V, Section 5.04.4.A to permit the construction of a single-family residence on a lot of record with less than the minimum required frontage (200') on a principle route of access on a Class V road or better in the Residential 'R' district. Both Variances expired as no work was performed on site within a year after the approval was granted (the 1 year expiration date was recently modified to 2 years). Minutes and decision from both cases have been included.
5. Recommend that the applicant further explain the extent and terms of the recorded easement.
6. In addition, should the Board of Adjustment grant the Variance Request, the applicant will be required to follow two additional steps in compliance with NH RSA 674:41 prior to the property owner being able to obtain a building permit.
 - a. Review and comment by the Planning Board provided to the local governing body (Board of Selectmen) on the matter of issuance of building permit for the subject lot, and,
 - b. The Board of Selectmen votes to authorize the issuance of a building permit.

Tax Map Subject Property:



Aerial Photo of Subject Property:





ZBA Application
MILFORD ZONING BOARD OF ADJUSTMENT
GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS

Date Received: **TOWN OF MILFORD RECEIVED**
 Case Number:
 Application Number: **JUN 01 2020** *2020-13*
 Hearing Date: *7/7/20*
 Decision Date: **ZBA Office**
 Decision: *2020 0794*

PROPERTY INFORMATION

Street Address: **Crestwood Lane**
 Tax Map / Parcel #: **49-2** Lot Size: **15 acres**

PROPERTY CURRENTLY USED AS

Wooded lot

If the application involves multiple lots with different owners, attach additional copies of this page.

PROPERTY OWNER

Name: **Lena M Nguyen**
 Address: **11 Meadowsweet Road**
 City/State/Zip: **Shrewsbury, MA 01545-6604**
 Phone: ()
 Email:

The applicant is the person who is making this proposal on behalf of themselves, the owner or a third party. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, an engineer or lawyer, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.

APPLICANT/REPRESENTATIVE

SAME AS OWNER
 Name: **Glenn & Patricia Wright**
 Address: **86 Abbot Hill Acres**
 City/State/Zip: **Wilton, NH 03086-5929**
 Email: **wright_12@comcast.net**
 Phone: () **554-5386** Cell: () **554-5396**

The undersigned property owner(s) hereby authorize(s) the filing of this application and agree to comply with all code requirements applicable to this application.

Glenn B Wright Patricia A Wright **June 1, 2020**
 Property Owner's signature Date:

Zoning District (check one):

- Residence A
- Residence B Residence R
- Commercial
- Limited Commercial
- Industrial
- Integrated Commercial-Industrial
- Integrated Commercial-Industrial-2

Overlay District (check any that apply):

- West Elm Street Overlay
- Nashua/Elm Street Overlay
- Commerce & Community Overlay
- Open Space & Conservation
- Wetlands Conservation
- Groundwater Protection
- Floodplain Management

APPLICATION FEES

Application Fee:	\$75.00
Abutters Fee: \$4 x <u>13</u>	\$48.00
Amount received:	\$ <u>123.00</u>
Date Received:	
Check <u>147</u> Cash _____	

THE FEES ASSOCIATED WITH THIS APPLICATION DO NOT APPLY TO ANY OTHER FEES REQUIRED FOR APPROVAL OF THIS PROJECT. PLANNING, IMPACT, BUILDING AND OTHER FEES MAY APPLY.



ZBA Application - Variance
MILFORD ZONING BOARD OF ADJUSTMENT

Date Received: 6-1-20
 Case Number: 2020-13
 Application #: _____
 Date Complete: _____
 Hearing Date: 7-2-20
 Decision Date: _____
 Decision: _____

PROPERTY INFORMATION
Street Address: Crestwood Lane
Tax Map / Parcel #: 49-2
<i>A Variance is a use which is not permitted by the Zoning Ordinance. Approval from the Zoning Board of Adjustment is required to allow any use or deviation from the Zoning Ordinance. Please work with the Zoning Administrator to make sure your application is complete and you know what will be required of you at the hearing.</i>
What section of the Zoning Ordinance are you asking to be varied? Article <u>V</u> Section <u>5.4.4.A</u>
Describe the variance you are requesting under the above section of the Ordinance. To permit the construction of a single-family dwelling on a lot of record with less than the required frontage (200') on a principle route of access on a Class V or better roadway.

General Criteria Section 10.01

Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I

- Granting the Variance would not be contrary to the public interest because:
 Would not interfere with the current use of the public way of Crestwood Lane. It would confirm with the zone use of a single-family dwelling.
- If the Variance were granted, the spirit of the ordinance would be observed because:
 The single-family dwelling use is not contrarily to the spirit and intent of the ordinance and promotes orderly growth and the appropriate use of the land.
- Granting the Variance would do substantial justice because:
 Allows to buyers of this property to use in a reasonable and permitted manner with no negative impact on abutters or surrounding neighborhood.
- Granting the Variance would not diminish the value of surrounding properties because:
 The addition of a single family home contiguous to the residential subdivision is by definition compatible with other uses in its District as a permitted use and will not diminish the values of the surrounding properties.
- Unnecessary Hardship:
This section is the central portion of your argument and is the critical factor that the Zoning Board of Adjustment will need to determine what is unique to your property and not generally applicable to other properties in the area or in town.



ZBA Application - Variance

MILFORD ZONING BOARD OF ADJUSTMENT

A. Owing to special conditions of the property that distinguish it from other properties in the area; denial of the Variance would result in unnecessary hardship because:

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 because :

This property is different from the others in its immediate area because it is an undeveloped parcel adjacent to an existing subdivision with granted access rights through the subdivision.

AND The density and open space will remain the same. There will be no impact on preserving light, air and open space.

ii. The proposed use is a reasonable one because:

This use is reasonable for this site because it is an allowed use in the Residential R zone

(B) Explain how, if the criteria in paragraph (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 ordinance requires road frontage for all uses denying this reasonable use creates an unnecessary hardship because under no circumstances can the property be used as permitted.

(C) Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized **physical disability** to reside in or regularly use the premises, provided that:

1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:

It would be in harmony because this use is allowed in the subject zone and the public interest sought to be maintained would not be impaired by the granting of the variance.

In addition, Variances may have extra criteria that must be met. This includes, but is not limited to:

6.03.5 Floodplain Management: The criteria for evaluation is listed in 6.03.5:B General Conditions and the applicable conditions are listed in 6.03.5:C. If your project is covered by this regulation, include your answers to the required criteria as specified in the referenced Section of the Milford Zoning Ordinance as an attachment under Section 3 C. of this application.

ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition.

- A. A plan of the property and all buildings, drawn to scale, is required.
- B. A Building Permit Application as needed (to be determined by the building official.)
- C. Additional explanations, justification, abutters' statements, letters, etc.



ZBA Application – Variance

MILFORD ZONING BOARD OF ADJUSTMENT

Please read the following information that is designed to help you understand the unique nature of a Variance petition.

Town of Milford Zoning Ordinance can be found at:

[http://planning.milfordnh.info/DOCUMENTS/ZONING%20ORDINANCE%20MASTER%20\(2011\).pdf](http://planning.milfordnh.info/DOCUMENTS/ZONING%20ORDINANCE%20MASTER%20(2011).pdf)

NH RSAs, Chapters 672-677 can be found at:

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LXIV.htm>

VARIANCE: A variance is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often, this determination is a denial of a building permit. A copy of the determination must be attached to your application.

For a variance to be legally granted, you must show that your proposed use meets all five (5) of the following conditions:

- a. Granting the Variance would not be contrary to the public interest.

A variance would be considered contrary to the public interest if it unduly and to a marked degree violated the basic zoning objectives of the Zoning Ordinance. Will the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

- b. Granting the Variance would observe the spirit of the ordinance.

This requires that the effect of the variance be evaluated in light of the goals of the zoning ordinance.

- c. Substantial justice would be done by granting the Variance.

Substantial justice is done when any loss to the individual is not outweighed by a gain to the general public.

- d. Granting the Variance would not diminish the value of surrounding property.

The applicant, to convince the Zoning Board must explain that granting the variance will not decrease the value of surrounding property.

- e. Denial of the Variance would result in an unnecessary hardship.

The first requirement is that there are special conditions or characteristics applying to the property (such as, but not limited to, exceptional narrowness, shallowness, or shape of the property, or exceptional topographical conditions), that distinguish it from other properties in the area. Because of these special conditions, 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 finally, the proposed use must be a reasonable one. You must explain what makes the property unique and why a "hardship" would be created if the terms of the ordinance were strictly applied.

In lieu of a claim of unnecessary hardship, the Variance may be granted when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that any Variance sought shall be in harmony with the general purpose and intent of the zoning ordinance and the Variance shall survive only so long as the particular person or persons have a continuing need to use the premises. To meet this criterion, explain the accommodations that are necessary and identify the person or persons and provide evidence of their disability.



Seth R. Kallman
Uptha Creek Corp
Po Box 152
Harrisville NH, 03450
(603) 562-8124
tookriver@gmail.com

Uptha Creek Corp

May 20, 2020

Test pit report,
42-2 Crestwood Lane Milford NH

This test pit was requested by the buyer, Glen and Patti Wright. We met on site w Sturdy Thomas and his excavator, 8:00 am May 19, 2020. We dug a pit just below the proposed house site,

Per USDA soils mapping the soil type is Canton fine sandy loam. A very favorable soil for development and septic systems.

The pit was 50" deep. We encountered the seasonal high-water table at 38". The pit is a reasonable place to design and build a septic system. The land around the test pit also appears suitable for septic disposal as well

Seth Kallman
NM Des septic design permit # 1331 and installer #2459



Previously Granted

Town of Milford
ZONING BOARD OF ADJUSTMENT



October 5, 2012

Thomas Lorden
60 Stable Rd.
Milford, NH 03055

ZBA Case #2012-21

Town Hall
1 Union Square
Milford, NH 03055-4240
(603) 249-0620
Fax (603) 673-2273
www.milford.nh.gov
TDD Access:
Relay NH 1-800-735-2964

You are hereby notified that a motion to grant a variance for Case #2012-21, Thomas Lorden, owner of Map 49, Lot 2, off Stable Rd, in the Residence "R" district, from Article V, Section 5.04.4:A, to permit a single family residence on a lot with no frontage on a Class V or better road, was unanimously approved on October 4, 2012 as the request met all the criteria for a variance.

In accordance with NH RSA 677:2, application for a rehearing in this matter must be received by the Board of Adjustment prior to close of business (4:30 p.m.) on November 5, 2012.

In accordance with Article X, Section 10.060, this variance is subject to expiration, if within one (1) year after the granting of a variance or special exception by the Board of Adjustment, none of the work required by a building permit covered by the variance or special exception has been executed, then such variance or special exception shall become null and void except in any case where legal proceedings relative to the variance or special exception shall have caused an undue delay in the execution of the required building permit. Only one, six-month extension may be granted for any variance or special exception. The applicant may apply for the extension at a regularly scheduled Zoning Board meeting.

Sincerely,

Mindy Lavallee
Office of Community Development

CC: Dana MacAllister, Building Inspection/Code Enforcement/Zoning

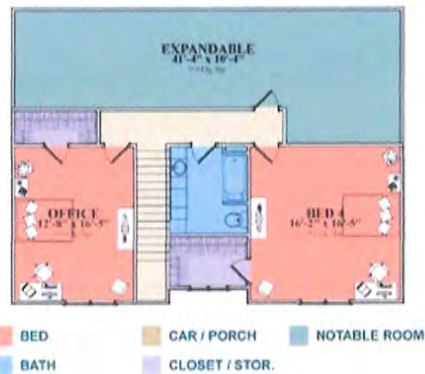
Glenn & Patricia Wright

Proposed 3100 sq. ft home to be designed and built upon purchase of 49-2 Crestwood Lane



Glenn & Patricia Wright

Proposed 3100 sq. ft home to be designed and built upon purchase of 49-2 Crestwood Lane



Samela O. Coughlin

C/H
I-CHIP
HIA259097

Please return to:
Thomas H. Lorden
60 Stable Road
Milford, NH 03055



DEED OF EASEMENT

Phillip P. Fichera and Karen R. Fichera, husband and wife, whose mailing address is 51 Crestwood Lane, Milford, NH 030555,

FOR CONSIDERATION PAID with WARRANTY COVENANTS, grant to:

Thomas H. Lorden, whose mailing address is 60 Stable Road, Milford, NH 03055,

An easement over land of the grantors, said land being situated on Crestwood Lane, in the Town of Milford, in the County of Hillsborough and State of New Hampshire, under the following terms and conditions:

1. Location: The easement shall be fifty (50) feet in width and is bounded and described as follows:

Beginning at a point on Crestwood Lane, at the common boundary of Lot 6-18-8 and Lot 6-18-9; thence

1. North 03 degrees 44' 36" West 52.41 feet to a point; thence
2. By stonewall North 86 degrees 15' 24" East 50.00 feet to a point; thence
3. South 03 degrees 44' 36" East to a point on Crestwood Lane; thence
4. In a curve along Crestwood Lane in a westerly direction to the point of beginning.

See plan recorded in the Hillsborough County Registry of Deeds as Plan #19793.

2. Use of Easement: The grantee shall have the exclusive right to use the easement for purposes of ingress and egress and for the installation of a driveway to be paved or not at the grantee's discretion and for the installation of utilities, including, but not limited to, water, sewer, electric, telephone, cable and other lines or facilities.

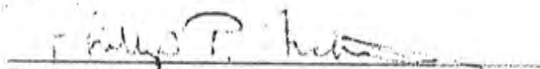
3. Obligations of The Grantee: The grantee shall be responsible for any maintenance of the driveway constructed within the easement and maintenance of any and all utilities.

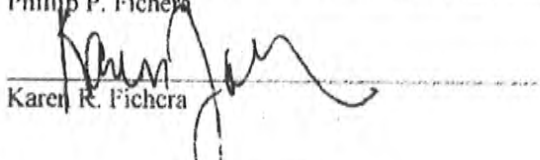
4. Benefitted Estate: The land benefitted by this easement is land of the grantee as described in deed of Charles L. Hildreth which deed is dated October 23, 2006, and recorded in the Hillsborough County Registry of Deeds at Book 7763, Page 2567.

5. Burdened Estate: The land burdened by this easement is land of the grantors, namely Lot 6-18-9 on plan recorded at the Hillsborough County Registry of Deeds as Plan #19793 as described in deed of Gregory M. Cole which deed is dated April 24, 2001, and recorded in the Hillsborough County Registry of Deeds at Book 6401, Page 1891.

6. Binding Effect: The benefits and rights granted under this deed shall inure to the benefit of the grantee, his heirs and assigns.

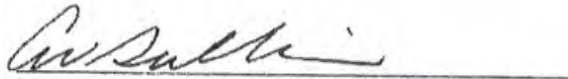
Dated: January 4, 2014


Phillip P. Fichera


Karen R. Fichera
January 4, 2014

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Personally appeared Phillip P. Fichera and Karen R. Fichera, known to me or satisfactorily proven to be the persons whose name are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.


Notary Public

C. WILSON SULLIVAN
Notary Public - New Hampshire
My Commission Expires February 6, 2018

