

**LONDONDERRY ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053**

MINUTES FROM 05/15/19 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Suzanne Brunelle, member; Brendan O'Brien, alternate member and Mitch Feig, alternate member. Also, in attendance were Brad Anderson, Code Enforcement Officer; Laura Gandia, Associate Planner; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures. Chairman Dunn appointed both B. O'Brien and M. Feig as voting members tonight.

I. APPROVAL OF MINUTES

M. Feig made a motion to accept the April 17, 2019, minutes as presented.

The motion was seconded by B. O'Brien

The motion was granted, 3-0-1, with N. Dunn abstaining.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

A. Request for a variance from the terms of a special exception for a home occupation under LZO 5.12.G to allow exterior storage one additional vehicle associated with the home occupation, 300 Nashua Road, Map 2 Lot 26, Zoned C-II and RTE 102 POD, Ernest & Doreen Evans (Owners and Applicants)

B. O'Brien read the case into the record noting the previous zoning cases. Jonathan Boutin, Esq., from Boutin & Altieri, P.L.L.C., 1 Buttrick Road, Londonderry, NH addressed the Board. J. Boutin provided the Board with a supplemental document (Exhibit 1) at the start of the case, noting that there is reference to two vehicles, but the other vehicle is going to be stored in the garage or off-site, and the variance request is only for one vehicle. He reviewed the background of the case stating that this is a single family home in the C-II District and Route 102 Overlay District, which is in a very commercial area directly across from the Londonderry Flea Market. He said that the applicant is requesting a variance to the Section 5.12.G of the home occupation criteria regarding exterior storage at the site. He said that the applicant runs a cab company for which 95% of the business is from a medical service provider out of Connecticut

to provide service for patients who do not have a ride to their medical appointments. He stated that the variance request is for a tow truck that would be for a cab that breaks down to be stored on the property. He noted that no taxi cabs will be stored on site.

He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not alter the essential character of the neighborhood nor would it threaten the public health, safety or welfare.
- (2) The spirit of the ordinance is observed: because the essential character would not be altered nor would it threaten the public health, safety or welfare.
- (3) Substantial justice is done: there is neither a loss nor gain to the general public for granting the variance, but there would be a loss to the applicant.
- (4) Values of surrounding properties are not diminished: because the existing properties are commercial in nature and this variance request will not decrease any property values.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as it is the only residential property in this C-II Zone and Route 102 Overlay District and the property has no immediate abutters. He stated that the proposed use is a reasonable one.

Chairman Dunn asked if the Board had any questions. S. Brunelle asked what kind of vehicle the applicant is requesting. J. Boutin stated it was a flatbed tow truck to be used to get a taxi that was broken down. S. Brunelle asked if any other vehicles would be stored on site. J. Boutin stated they would not. N. Dunn asked if there was reason the tow truck was not stored at an off-site location. J. Boutin said that there was no off-site location to store the tow truck, as the other taxis are all kept at the drivers residences. N. Dunn asked for clarification from Brad Anderson regarding the zoning. B. Anderson said that this would be allowed in a C-II Zone, but this was a non-conforming residence in a C-II and Route 102 District Overlay Zone.

Chairman Dunn asked for public input.

Robert Medeiros, 37 Quarry Road, addressed the Board stating he was not opposed, but rather just had questions. R. Medeiros asked what the dimensions of the structure would be and where it would reside on the property. N. Dunn stated that there is no addition to the property, but rather just a tow truck parked somewhere on the property. R. Medeiros said that there are several unregistered vehicles on the property currently and asked if there was ordinance regarding this.

Brian Wells, Quarry Road, addressed the Board stating he was not necessarily opposed, but rather just had questions. B. Wells said that it is not clear as there are already several vehicles stored outside on the property already and asked for clarification on a garage at the property. N. Dunn stated that there is a garage on the property, but there was not enough room for another vehicle in that garage.

Chairman Dunn brought it back to the Board. B. Anderson said that someone can have one unregistered vehicle on their property per the ordinance. J. Boutin explained that there are several registered vehicle on site and one unregistered vehicle on site. He said that the tow truck will be stored next to the garage between the garage and Route 102.

The Board closed public input and began its deliberation.

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property as it is the only residential property in the C-II Zone and Route 102 District Overlay Zone and it has no immediate abutters. The proposed use is a reasonable one.

B. O'Brien made a motion to grant a request for a variance from the terms of a special exception for a home occupation under LZO 5.12.G to allow exterior storage of one additional vehicle associated with the home occupation, 300 Nashua Road, Map 2 Lot 26, Zoned C-II and RTE 102 POD, Ernest & Doreen Evans (Owners and Applicants) with the following condition:

- 1. The vehicle is limited to one flatbed tow truck with a 20 foot flatbed trailer.**

S. Brunelle seconded the motion.

The motion was granted, 3-1-0. The applicant's request for a variance was granted.

B. CASE NO. 5/15/19-2: Request for a special exception under LZO 5.12 for a home occupation for a taxi cab business, 300 Nashua Road, Map 2 Lot 26, Zoned C-II and RTE 102 POD, Ernest & Doreen Evans (Owners and Applicants)

B. O'Brien read the case into the record noting previous zoning cases. Jonathan Boutin, Esq., from Boutin & Altieri, P.L.L.C., 1 Buttrick Road, Londonderry, NH addressed the Board. J. Boutin explained that since the Board granted the above variance request, the applicant meets all the other requirements for the special exception. He reviewed the special exception criteria with the Board noting that there will be no exterior storage, only immediate family members will be employed, there will be no sign or sign request, no increase in traffic generated by the home occupation and no customer parking.

Chairman Dunn asked if the Board had any questions. M. Feig asked about the percentage of the home occupation. J. Boutin said that the house is over 1000 SF, so it would be less than 10%, and the requirement is for less than 25%. B. O'Brien asked if the other drivers are independent contractors. J. Boutin said that the other drivers do not come to this house at all and their paychecks are mailed to their home addresses. M. Feig asked for clarification on the employees working at this site part of the special exception home occupation checklist, asking if more employees could be employed elsewhere, but just not at this site. B. Anderson read from Section 5.12.2.E stating "only members of the occupant's immediate family residing on the property may be employed," noting his interpretation of that is that the employees, if they are living at this residence, need to be immediate family, so if they have employees outside of that residence that is fine.

Chairman Dunn asked for public input.

Robert Medeiros, 37 Quarry Road, addressed the Board, stating he was not opposed but just had some questions. He asked if there would be taxis stored on site, any signs or taxi stand. He also asked if there was a limit to the number of registered vehicles someone could have on their property in Londonderry. B. Anderson said that there is no limit to the number of registered vehicles someone may have on site in Londonderry. J. Boutin said that there will be no taxis, taxi stand or sign on the site. The Board clarified with the applicant that there may be one taxi stored in the garage.

The Board closed public input and began its deliberation. The Board read through the special exception home occupation checklist noting that the applicant complies with all the conditions.

S. Brunelle made a motion in CASE NO. 5/15/19-2 to grant a special exception under LZO 5.12 for a home occupation for a taxi cab business, 300 Nashua Road, Map 2 Lot 26, Zoned C-II and RTE 102 POD, Ernest & Doreen Evans (Owners and Applicants)

B. O'Brien seconded the motion.

The motion was granted, 4-0-0. The applicant's request for a special exception was granted.

C. CASE NO. 5/15/19-3: Request for two variances from LZO 5.14.B to allow a six feet fence in the front yard where only four feet are allowed and to allow that six feet fence to encroach 34.5 feet into the 40 feet front setback, Two Lonchester Way, Map 11 Lot 1, Zoned AR-1, Zachary Martineau and Gina Rauch (Owners & Applicants)

B. O'Brien read the case into the record noting no previous cases. Gina Rauch, Two Lonchester Way, addressed the Board. G. Rauch told the Board that she brought pictures (Exhibit 2) with her for them to review while she presented. She said that the fence they are looking to build will come in off the front right hand side of the property approximately 37 feet, noting it will actually be 13.5 feet instead of 5.5 feet from the property line. She said that the fence will go across 120 feet. She noted that John Trottier, P.E., Assistant Director of Public Works and Engineering (DPW) did come out to the property, but did not write an official letter.

She then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not threaten the health, safety or welfare of the general public or alter the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because it will not threaten the health, safety or welfare of the general public.
- (3) Substantial justice is done: because the loss to the applicant would be more than any gain to the general public.
- (4) Values of surrounding properties are not diminished: because it will not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as they have frontage on Trolley St as well as Litchfield Road, as well as wetlands that make the land unusable. She stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. S. Brunelle asked what a specific part of the land is on her property. G. Rauch said it is an easement as there are power lines that go through that area. She said that Trolley Street is a Manchester road and the only piece that is in Londonderry on this road is there driveway. She noted that they have also spoken to the city of Manchester and they are okay with the fence as long as it was okay with Londonderry. M. Feig asked why they wanted six feet when they could have four feet in the front yard. G. Rauch said that they do not have a backyard, so looking for privacy of the backyard in a front yard. M. Feig asked why not put a fence in the side yard. G. Rauch said that it would not allow for a big enough area of yard for them. M. Feig asked if she had a picture of what the fence would look like. G. Rauch said she did not have any pictures with her and described it as a typical white vinyl fence.

Chairman Dunn asked for public input and there was none.

Chairman Dunn brought it back to the Board for questions. N. Dunn asked what the land behind their property is. G. Rauch said the land is common land from the Sandy Brook subdivision. N. Dunn asked for clarification on the borders of the property are. L. Gandia reviewed the map with N. Dunn. M. Feig asked if all abutters were notified. L. Gandia stated that the applicant provided the abutter list for the Manchester and Londonderry residents and those abutters received notice.

The Board closed public input and began its deliberations. N. Dunn asked if the applicant would be before the Board if the request for a four foot fence. B. Anderson said the four foot fence can be within the 40 foot setback requirement. The Board discussed their concerns without having the property surveyed and not knowing the exact location of the property line and the exact amount of encroachment that is being requested as well as the ability of the Department of Public Works to weigh in on certification of sight distance and possible obstruction with this information. S. Brunelle and M. Feig said that they would feel more comfortable having the input from the DPW. N. Dunn suggested that the Board could also go through with the case and give appropriate language to include the findings of the DPW.

B. O'Brien made a motion to continue CASE NO. 5/15/19-3 for a request for two variances from LZO 5.14.B to allow a six feet fence in the front yard where only four feet are allowed and to allow that six feet fence to encroach 34.5 feet into the 40 feet front setback, Two Lonchester Way, Map 11 Lot 1, Zoned AR-1, Zachary Martineau and Gina Rauch (Owners & Applicants) until June 19, 2019, to allow the applicant to obtain a sight distance profile from a licensed land surveyor or a registered professional engineer depicting the location of the property line and fence who certifies the proper sight distance as established by Londonderry Department of Public Works and that the fence location be reviewed and approved by the Department of Public Works.

M. Feig seconded the motion.

The motion was granted, 4-0-0. The case is continued until June 19, 2019.

D. CASE NO. 5/15/19-4: Request for two variances two variances from LZO 5.14.B to allow a six feet fence in the front yard where only four feet are allowed and to allow that six feet fence to encroach 35 feet into the 40 feet front setback, Two Sandy Brook Lane, Map 14 Lot 2-1, Zoned AR-1, David and Hope Scarpino (Owners & Applicants)

B. O'Brien read the case into the record noting no previous zoning cases. B. O'Brien read a letter (Exhibit 3) from J. Trottier into the record. D. Scarpino, Two Sandy Brook Lane, addressed the Board. He passed out a map from a surveying company (Exhibit 4) to the Board for their review. He also had a letter (Exhibit 5) from Eversource regarding the easement. He said that he is looking to have a fence 25 feet into the setback on Litchfield Road and 35 feet into the 40 foot setback on Sandy Brook Lane.

He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not threaten the health, safety or welfare of the general public or alter the essential character of the neighborhood.
- (2) The spirit of the ordinance is observed: because the fence will not impede the line of sight in any way.
- (3) Substantial justice is done: because the loss to the applicant would be more than any gain to the general public.
- (4) Values of surrounding properties are not diminished: because it will not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique because it is a corner lot with the yard in direct line of sight of Litchfield Road and Sandy Brook Lane. He stated that the proposed use is a reasonable one.

Chairman Dunn asked if the Board had any questions. S. Brunelle asked if the fence was going to run along the front of the house. D. Scarpino said that it was not, the majority would be along Litchfield Road and part of it on Sandy Brook Lane. M. Feig asked why they want a six foot fence when a four foot fence is allowed. D. Scarpino stated the six feet was for privacy. S. Brunelle asked what type of fence the applicant was proposing. D. Scarpino said it would be a white, vinyl fence.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began its deliberation from LZO 5.14.B to allow that six feet fence to encroach 35 feet into the 40 feet front setback:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as it is a corner lot where the applicant has two setbacks to contend with and no direct abutters. The proposed use is a reasonable one.

The Board closed public input and began its deliberation from LZO 5.14.B to allow a six feet fence in the front yard where only four feet are allowed:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as it is a corner lot where the applicant has two setbacks to contend with and no direct abutters. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 5/15/19-4 to grant a request for two variances two variances from LZO 5.14.B to allow a six feet fence in the front yard where only four feet are allowed and to allow that six feet fence to encroach 25 feet into the Litchfield

Road setback and into 35 feet into the 40 feet front setback, Two Sandy Brook Lane, Map 14 Lot 2-1, Zoned AR-1, David and Hope Scarpino (Owners & Applicants) with the following condition:

1. The fence will be approximately 44 feet long along Sandy Brook Lane and 128 feet long along Litchfield Road and no closer than the distances in Exhibit 3.

S. Brunelle seconded the motion.

The motion was granted 4-0-0. The applicant's request for two variances were granted.

E. CASE NO. 5/15/19-5: Request for a variance from LZO 7.5.C.1 to allow a 20 feet sign where only 10 feet are allowed, One Garden Lane, Map 10 Lot 54-2, Zoned C-II, Black Dog Car Wash Rt. 108, LLC (Owner & Applicant)

B. O'Brien read the case into the record noting no previous zoning cases. Mike Leary, from Sundance Sign Company, 89 Oak Street, Dover, NH, addressed the Board. M. Leary said that they came to the height they are seeking for this variance based on the current signage down on Nashua Road. He noted that there are several free standing signs in that area within 300 yards of the building that all encroach on the 18 to 20 foot height.

He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because it will not alter the essential character of the neighborhood and allow the business to be more easily identified.
- (2) The spirit of the ordinance is observed: because the sign will promote the business and encourage economic development.
- (3) Substantial justice is done: because the loss to the applicant would be more than any gain to the general public.
- (4) Values of surrounding properties are not diminished: because it will not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as the sign location is blocked by topography from Michels Way and Nashua Road. He stated that the proposed use is a reasonable one.

Chairman Dunn asked if the Board had any questions. B. O'Brien asked if the sign would be illuminated. M. Leary stated the sign is illuminated and the business is a 24-hour business and would run throughout

the night. M. Feig asked if there was an existing free standing sign the company had. M. Leary said this was the first free standing sign for this building.

Chairman Dunn asked for public input and there was none.

The Board closed public input and began its deliberation:

- (1) The variance would not be contrary to the public interest: because it would not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it would not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant is greater than any gain to the public.
- (4) Values of the property would not be diminished: because it would not alter the essential character of the neighborhood.
- (5) There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as the sign is blocked by topography. The proposed use is a reasonable one.

B. O'Brien made a motion in CASE NO. 5/15/19-5 to grant a request for a variance from LZO 7.5.C.1 to allow a 20 feet sign where only 10 feet are allowed, One Garden Lane, Map 10 Lot 54-2, Zoned C-II, Black Dog Car Wash Rt. 108, LLC (Owner & Applicant):

M. Feig seconded the motion.

The motion was granted 3-1-0. The applicant's request for a variance was granted.

- II. **Other business:** Chairman Dunn reviewed an email he received a notice from Kirby Brown, Town Manager's Executive Assistant stating that you cannot forward your Londonderry email to personal phones, as it is against RSA 91:A.


Adjournment:

M. Feig made a motion to adjourn at 9:50 p.m.

B. O'Brien seconded the motion.

The motion was granted, 4-0-0. The meeting adjourned at 9:50 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY JT, SECONDED BY ED, 4-0-0.

Ex. 1
5/15/19-1

**SUPPLEMENT TO VARIANCE APPLICATION
OF ERNEST AND DOREEN EVANS ON MAY 15, 2019**

FACTUAL BACKGROUND

This variance application relates to a home occupation business that the Evans seek to operate from their home on 300 Nashua Road. The property is within the C-II and Route 102 overlay district. The business is called D+E Taxi. It differs from most taxicab companies in that nearly all its work is provided for a medical services company in Connecticut which contracts with D+E to provide transportation to medical appointments for individuals without transportation. The variance being sought today is a variance from section 5.12.2 G which prohibits the exterior storage of equipment. D+E Taxi has one cab onsite and one tow truck. The Evans do not have another location to store these vehicles and there is not adequate interior storage to store the tow truck.

MEMORANDUM OF LAW

1. Granting the variance will not be contrary to the public interest

This element of the legal test does not require a showing that the proposed variance is in the public interest. Rather, this element of the test requires that an applicant demonstrate that the proposed variance is not contrary to the public interest by answering the questions below. The “not contrary to public interest” criterion and the “spirit of the ordinance is observed” criterion are to be considered together because “[t]he requirement that the variance not be contrary to the public interest is related to the requirement that [it] . . . be consistent with the spirit of the ordinance.” Farrar v. City of Keene, 158 N.H. 684, 691 (2009). As such, the proper method of determining whether granting a variance would be contrary to the public interest and would be consistent with the spirit of the ordinance is to examine the applicable ordinance and see whether granting the variance would “unduly, and in a marked degree”¹ conflict with the ordinance such

¹ Mere conflict with the terms of the ordinance is insufficient. See id.

that it violates the ordinance’s “basic zoning objectives.” Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 581 (2005). In determining whether a variance would violate the ordinance’s “basic zoning objectives,” courts look at whether it would “alter the essential character of the locality” or “threaten the public health, safety, and welfare.” Id.

a. *Would it alter the essential character of the locality?*

No, the request would not alter the essential character of the locality because the site is located in a commercial zone, near power lines to the east, is across the street from a flea market and gravel operation, and is located on State Route 102 which is a commercial corridor in the Town. The property is also in near proximity to Reeds Ferry Shed, Bobcat Company, Hudson Quarry, and United Rentals which are large scale commercial or industrial operations.

There are also no customers or other employees that come to the location. All work other than bookkeeping and telephone calls are done offsite. Allowing the Evans to park a cab and a tow truck on the property will not alter the character of the locality.

b. *Would it threaten the public health, safety, and welfare?*

No, the storage of 2 vehicles, do not pose any safety hazard to the public. There is no increase in traffic, if one of the Evans needed to respond to a work call, they would be leaving the site anyway, and leaving in a work vehicle poses no additional risk or traffic at the site.

2. The spirit of the ordinance is observed

The applicant reiterates its assertions as to the “not contrary to the public interest” criterion as the New Hampshire Supreme Court has ruled they are relevant to the analysis required under the “spirit of the ordinance” criterion. The proposed variance is consistent with the spirit of the ordinance, which is a commercial zone. The purpose of the home occupation requirements are not to make operating a business more difficult and expensive, such as by requiring a site plan, but rather to create a path for home owners to operate businesses from their homes. The minor variance request, seeking the outdoor storage of two vehicles is consistent with the ordinance, especially given the zone and location of the property.

3. Substantial justice is done

The New Hampshire Supreme Court has held that “any loss to applicant that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007). Here, there is no gain to the general public by denying the variance, nor is there any negative impact to the general public, or any individual, by approving the variance. The proposed use is consistent with the zone in which the property resides, the character of the neighborhood, and poses no danger to the health, welfare, and safety of the Town’s citizens. If the variance is denied however, there would be a significant loss to the applicant. The Evans would not be able to use the property to its potential and could be forced to relocate the current operations or lose the business.

4. The value of surrounding properties are not diminished

As to the “values of surrounding properties are not diminished” criterion, an applicant’s demonstration that no diminishment of surrounding property value will occur, combined with the ZBA’s own knowledge, expertise, and experience, is sufficient. Harborside Associates, L.P. v Parade Residence Hotel, LLC, 162 N.H. 508, 519-520 (2011). The proposed use is in keeping with the existing use of the site. No improvements are proposed which would adversely affect the value of nearby properties, or in fact even allowed under the code. Moreover, the storage of two vehicles, which are registered, inspected, and kept in good working order and appearance, has no negative impact to the surrounding properties. Further, the operation of the business from that location is imperceptible to the surrounding properties and has no impact on valuation.

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

While the language on Londonderry’s variance application form mirrors that of RSA 674:33, I, as to the “unnecessary hardship” prong of the five-part variance test, this state’s highest court has found that applicants for a variance may satisfy the “unnecessary hardship” criterion “by proof that: (1) a zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the

public or private rights of others.” Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731-732 (2001).

The third prong of the unnecessary hardship test requires a finding that the proposed variance is not contrary to the public interest and is consistent with the spirit of the ordinance, as discussed above. Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005).

The other two prongs of the unnecessary hardship test can be met as follows:

- a. *The zoning restriction as applied to the Evans property interferes with the Evans’ reasonable use of the property, considering the unique setting of the property in its environment.*

New Hampshire courts have found that a number of non-dispositive factors are encompassed within this prong. Farrar v. City of Keene, 158 N.H. 684, 689 (2009). First, “whether the zoning restriction as applied interferes with a landowner's reasonable use of the property.” *Id.* Next, “whether the hardship is a result of the unique setting of the property.” *Id.* at 81. Finally, “whether the landowner's proposed use would alter the essential character of the neighborhood.” *Id.*

The Evans meets the first factor – interference with reasonable use -- there is no requirement for Evans to show that the property can be used as a business only if no vehicles are stored on site; that is the purpose of the variance. They must only show that the proposed use is “reasonable.” The Evans’ use of the property, and the relief sought for this variance application, is reasonable, especially considering the properties location on State Route 102, the property’s commercial and industrial neighbors, and the fact that no other impacts to the property or neighborhood are created by the granting of this variance. If the variance is not granted, then the Evans will not be able to satisfy its contractual obligations or to use the land to its fullest potential as home offices for D&E Taxi. Also, without this variance and pending special exception, Mr. Evans is unable to register and therefore use the tow truck in an emergency. They also have no other location from which to operate.

The Evans can also demonstrate its application meets the second factor - the unique setting of the property. As far as the Evans can tell, their property is the only residence in the C-II zone and 102 Overlay District. The property was also developed in such a way as to not have any existing structures for the interior storage of vehicles, which would be allowed under the

code. The commercial and industrial neighborhood, proximity of power lines, and its location on a busy commercial corridor make this a very unique property and suitable for the relief sought by the variance. There are also no immediate abutters to the property. It is surrounded by a vacant commercial lot and the power lines.

b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property

The Town's zoning ordinance states that as its general purpose that:

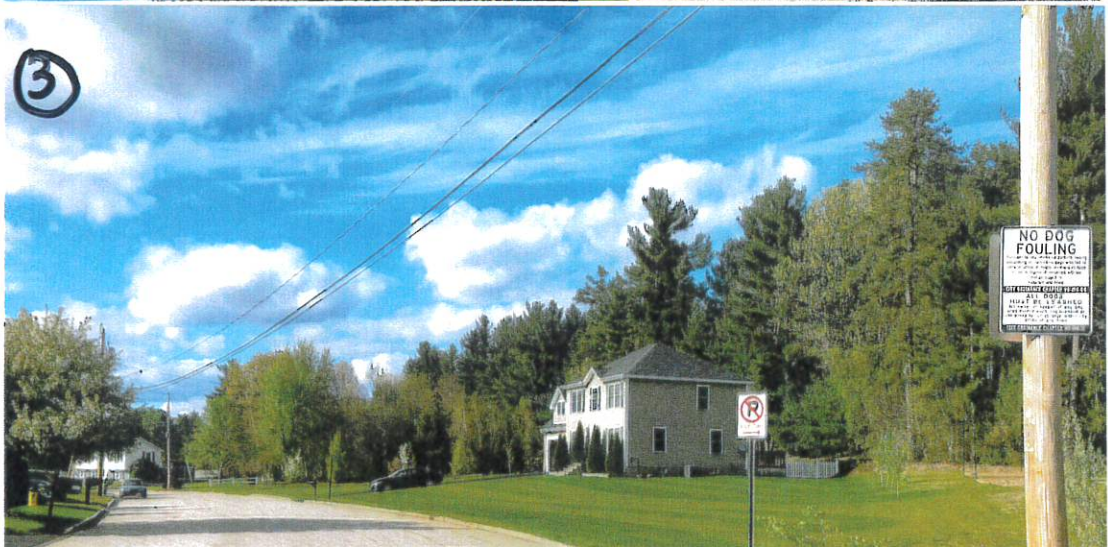
It is the intention of the Planning Board and the Zoning Board to guide the future growth and development of the Town in accordance with a Master Plan which represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and modes of living, and future requirements; and considering such conditions, trends and requirements, both within the Town and in relationship to areas outside thereof.

Londonderry Zoning Code section 1.1.3 Purpose. As discussed above, the approved use of the property promotes the intentions set forth in the general purpose of the ordinance by guiding the growth and development in the Town by allowing this non-obtrusive small business to store two vehicles and operate in a commercial corridor, fostering the beneficial relationship between the Town and its residential, small business owners, and recognizing the most beneficial and convenient relationships among the various areas of the Town by allowing this variance at a property on the busy State Route 102 corridor.

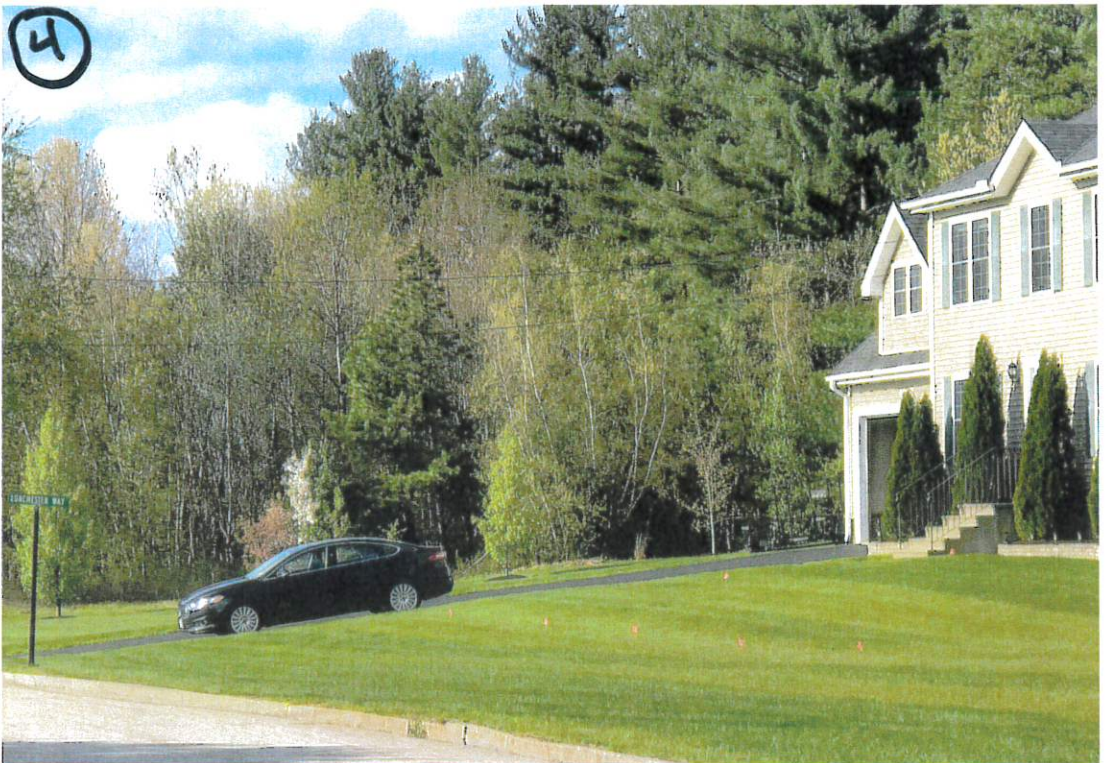
CONCLUSION

The Evans request, for all of the reasons set forth above, and in the application, that the Board of Adjustment grant the variance requested so that the Evans may obtain the special exception to operate D+E Taxi from the location.

Ex. 2



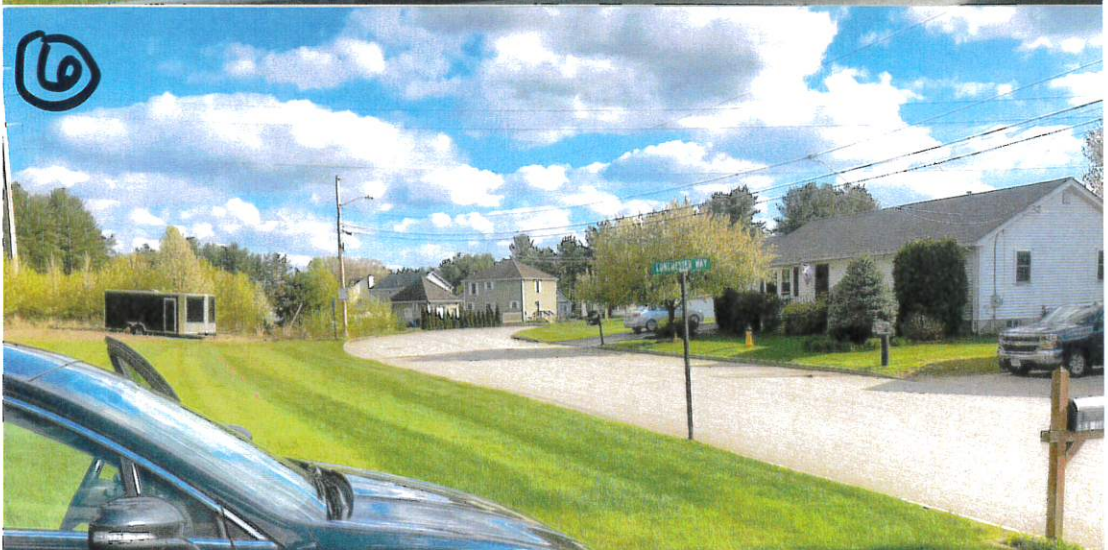
4



5



6



30'

54'

5'

13'





Exhibit 3



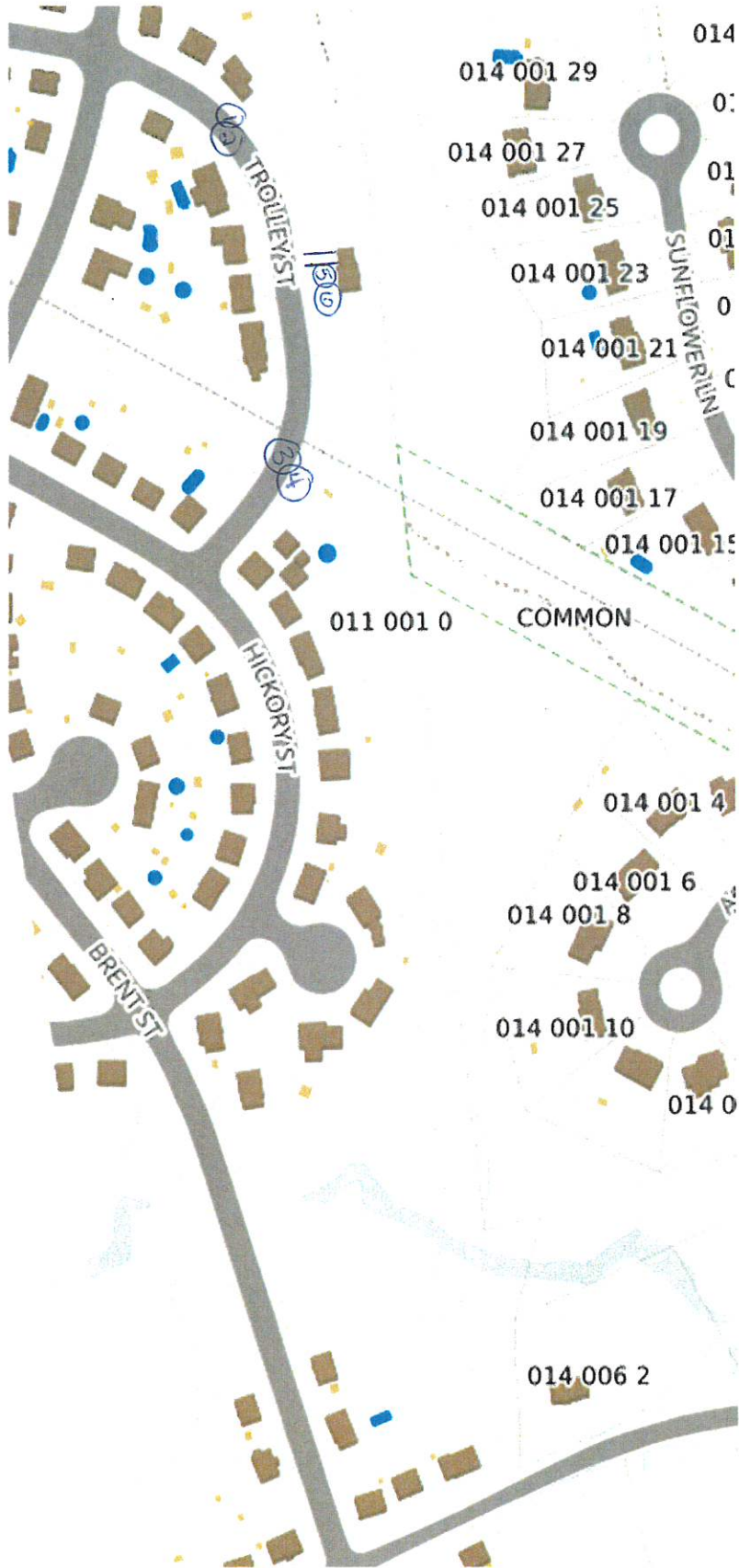


Exhibit 4

Exhibit 3



TOWN OF LONDONDERRY
Public Works & Engineering Department
268B Mammoth Road
Londonderry, NH 03053
603-432-1100 ext. 193
Fax: 603-432-1128

May 15, 2019

Town of Londonderry
Zoning Board of Adjustment
268B Mammoth Road
Londonderry, NH 03053
Phone 603-432-1100 x-112
Fax 603-432-1128

Re: Area Variance Application
David and Hope Scarpino
2 Sandy Brook Lane
Tax Map 14, Lot 2-1

Dear Board Members:

The Town of Londonderry Department of Public Works and Engineering (DPW&E), has received a sight distance plan dated May 13, 2019 as prepared by Eric C. Mitchell and Assoc., Inc. Furthermore, I met with Mr. David Scarpino, who informed me that his intention was to install the proposed 6-foot fence 15-feet off the Litchfield Road property line and 5-feet off the Sandy Brook Lane property line.

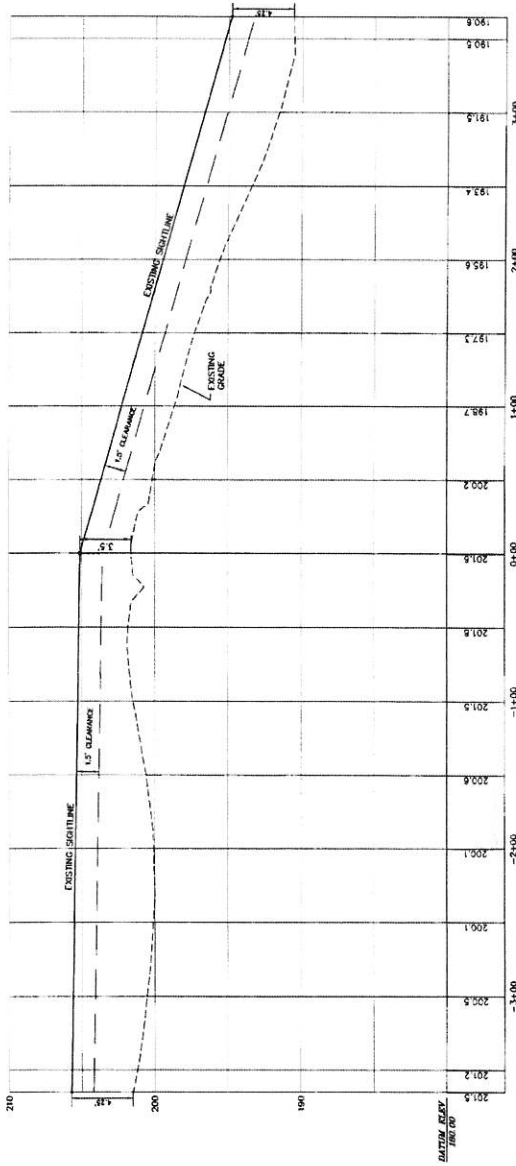
If the installation of the fence were to occur as discussed with Mr. Scarpino, the fence will not obstruct, impede or otherwise interfere with the existing sight distances (easterly direction) at the Sandy Brook Lane / Litchfield Road intersection or the driveway sight distances onto Sandy Brook Lane.

Feel free to contact us at 603-432-1100 x-130, if you have any questions.

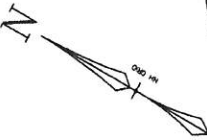
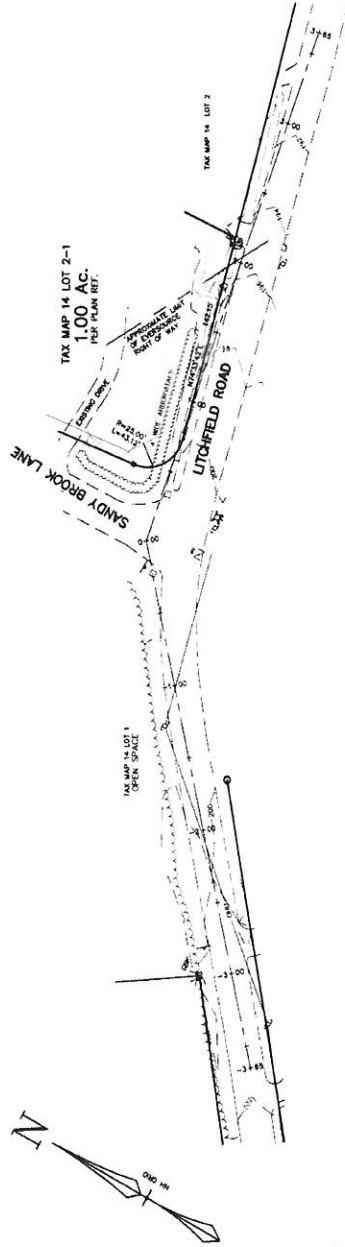
Sincerely,

John R. Trottier, PE
Assistant Director of Public Works
& Engineering

Exhibit 4



EXISTING SANDY BROOK LANE / LITCHFIELD ROAD INTERSECTION

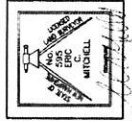


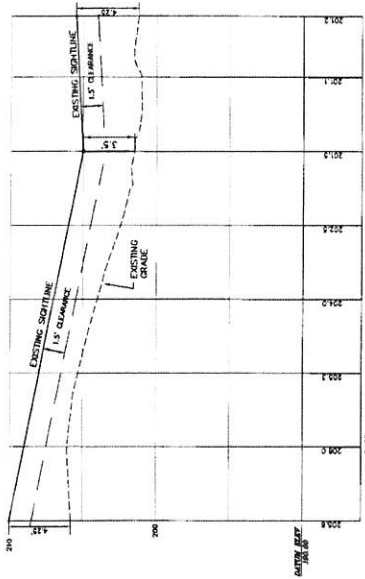
REV.	DATE	DESCRIPTION	BY

I HEREBY CERTIFY THAT THE EXISTING ROADWAY INTERSECTION MEETS ALL SEASON SAFE SIGHT DISTANCE AS REQUIRED BY THE TOWN OF LONDONDERRY.

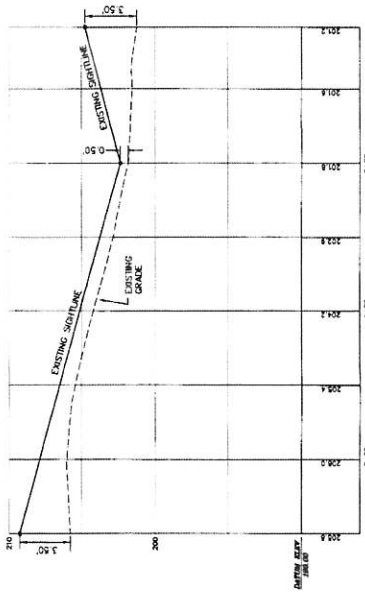
ERIC C. MITCHELL ILS #685 DATE 5/13/19

EXISTING ROADWAY INTERSECTION
SIGHT DISTANCE PLAN & PROFILE
TAX MAP 14 LOT 2-1
2 SANDY BROOK LANE
LONDONDERRY, NH
OWNER:
DAVID JR. & HOPE SCARPINO
2 SANDY BROOK LANE, LONDONDERRY, NH 03053
MAY 13, 2019
SCALE: 1" = 40'
PREPARED BY:
ERIC C. MITCHELL & ASSOC. INC.
PLANNING - SURVEYING - ENVIRONMENTAL
P.O. BOX 1128, 106 Pk. (Rt. 102) 67-119
SHEET 2 OF 2

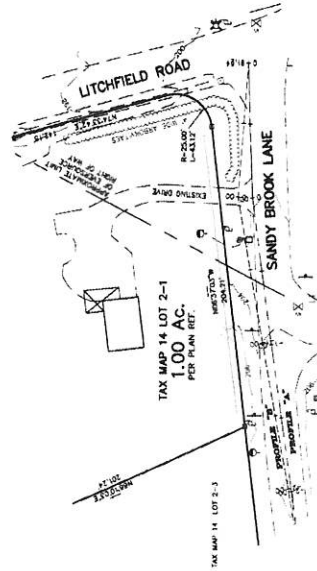
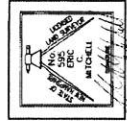




EXISTING DRIVE PROFILE "B"



EXISTING DRIVE PROFILE "A"



I HEREBY CERTIFY THAT THE EXISTING DRIVEWAY MEETS ALL SEASON SAFE SIGHT DISTANCE AS REQUIRED BY THE TOWN OF LONDONDERRY.

ERIC C MITCHELL 115 #895 DATE 5/13/19

EXISTING DRIVEWAY SIGHT DISTANCE PLAN & PROFILE

TAX MAP 14 • LOT 2-1
2 SANDY BROOK LANE
LONDONDERRY, NH

OWNER:
DAVID JR. & HOPE SCARPINO
2 SANDY BROOK LANE, LONDONDERRY, NH 03053

MAY 13, 2019
SCALE: 1" = 40'
100 FEET

PREPARED BY: ERIC C. MITCHELL
ASSOC. INC.
PLANNING - SURVEYING - ENVIRONMENTAL
P.O. BOX 10298, 106 SO. ROCKY RD., EDFORD N.H. 03110-0298

SHEET 1 OF 2 REV. 1066 03/03/2018 11:16:05 550729 1/20 100 1/2-21

REV.	DATE	DESCRIPTION	BY

Ex. 5

----- Forwarded message -----

From: Maille, Russell B <russell.maille@eversource.com>
Date: Thu, Apr 18, 2019, 12:36 PM
Subject: RE: fence question
To: Hope Scarpino <hopelarsen48@gmail.com>

That wouldn't seem to me to be an issue for us. Some people surround their entire properties with fences and block off the entire right of way.

Thank you.

Russ

From: Hope Scarpino <hopelarsen48@gmail.com>
Sent: Thursday, April 18, 2019 11:54 AM
To: Maille, Russell B <russell.maille@eversource.com>
Subject: Re: fence question

EVERSOURCE IT NOTICE – EXTERNAL EMAIL SENDER ** Don't be quick to click! ******

Do not click on links or attachments if sender is unknown or if the email is unexpected from someone you know, and never provide a user ID or password. Report suspicious emails by selecting 'Report Phishing' or forwarding to SPAMFEEDBACK@EVERSOURCE.COM for analysis by our cyber security team.

Hello,

Our fence will be vinyl and not fully enclosed. I just want to be sure I am understanding your email. Since the land is still very open and there is full access to the easement (red line in picture attached), then the fence (blue line in picture) will not cause any issues for Eversource.

Thank you!

Hope Scarpino

On Thu, Apr 18, 2019, 10:38 AM Maille, Russell B <russell.maille@eversource.com> wrote:

Hello Hope

I got your inquiry about your fence proposal. The fence should not prevent us from entering the easement on your property. If you want us to access from a certain approach into the easement, you should either leave a 14 foot wide open section in the fence at that place, or install a gate in that location that opens to 14 feet that we can install our padlock on. Access restriction is the perennial problem for us when fences are built.

Our preference is that the fence be built out of a nonconductive material like wood or vinyl.

Let me know if you have any other questions.

Thank you

Russell Maille

Right of Way Specialist

Eversource

780 North Commercial Street

PO Box 330

Manchester, NH 03105-0330

P 603 634-2477

F 603 634-2511

russell.maille@eversource.com

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