DEVINE MILLIMET

ATTORNEYS AT LAW

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November 17, 2026

Town of Warner
Zoning Board of Adjustment
Five East Main Street
P.O. Box 269
Warner, NH 03278

RE: Kearsarge Mountain Road – Map 31 Lot 48, Zoned R-2 (the "Property")
Request for a Variance from Article XV Section A.2

Dear Zoning Board of Adjustment members:

Please be advised that I represent Syndey Boyer, owner and applicant (the "Applicant"), of the Property with her request for a variance from Article XV Section A.2 to allow a one-family detached dwelling on a non-conforming lot with no frontage. The Property, a 24.7 acre parcel, enjoys a right-of-way ("ROW")granted to it by the Warner School District and/or Miriam E. Savory which was relocated in 2001 as shown on Pan No. 16516 recorded in the Merrimack County Registry of Deeds. Per the Plan, the ROW is 430.15 ft in length from Kearsarge Mountain Road to the subject Property and no obstructions (such as playground equipment or the like) was shown to encroach into the ROW. Additionally, only one exceedingly small corner of the school building appears to be at its closest point 15-20 feet from the ROW while the furthest distance appears to be over 230 feet away.

The ROW is already in use by the Applicant with various vehicles traversing the 430 ft ROW to enter and exit the Property.

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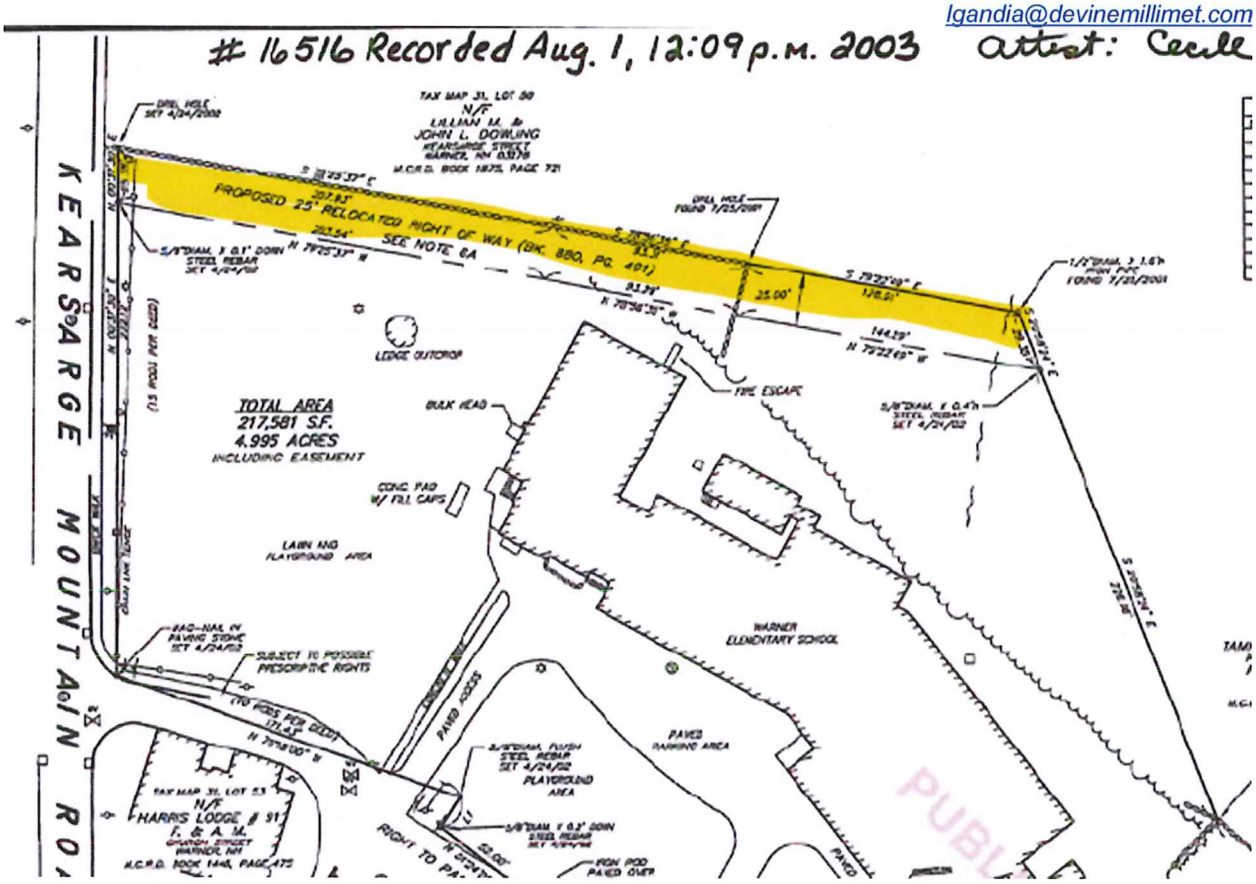

Per the Town of Warner's Zoning Ordinance, the Property is considered a non-conforming lot under Article XV Section A.2 which provides:

ARTICLE XV
Non-Conforming Use

[Amended March 2024]

In accordance with Article IV, General Provisions, F., no permit for the erection, exterior alteration, moving or repair of any building shall be issued until an application has been made for the certificate of zoning compliance, and the certificate shall be issued in conformity with the provisions of this ordinance.

A. Non-Conforming Lots:

1. Any lot with less buildable area or frontage than required in the district, which is lawfully established, recorded, and taxed as a Lot of Record before the enactment or amendment of this ordinance, shall be deemed a non-conforming lot.
2. Such lots may only be built on, for residential purposes, if (a) the owner of the lot owns no contiguous land, (b) it has at least 80% of the required frontage for the district, (c) the lot is able to sustain a state-approved waste disposal system or connect to municipal sewage and (d) any proposed construction is able to meet the district's applicable setback requirements.

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The Applicant is proposing to construct a one-family detached dwelling which is permitted by right in the R-3 zoning district per TABLE 1 Use Regulations; however, due to the Property's non-conforming status, a variance is required.

Prior to the filing of this application and throughout these proceedings which now span several months, the Applicant, through counsel, was in contact with the school district and its attorney, Peter Bronstein, to discuss the use of the right-of-way. The Applicant has proposed the following conditions to address the School District's concerns:

1. The Applicant will prepare and sign a Waiver of Liability with the School District.
2. The use of heavy equipment and machinery to construct the single-family home shall not occur when school is in session (during school hours, i.e. Monday through Friday from 6:00 AM through 6:00 PM).
3. The School District commencing twelve months after completion of paving of the right of way by the applicant shall share in any maintenance and repairs costs for the portion of the right of way jointly used.
4. As per the recorded document, the right of way is to be shared at all times and neither the Applicant nor the School District may obstruct the same for any reason.
5. The Applicant shall install permanent fencing along the right of way from just above the bus route driveway to the corner of the school building.
6. The right of way shall be improved / paved in such a manner as to not require any change of the existing bus route.

In addition to these conditions, the Applicant has the burden of demonstrating that the request meets the five criteria as set forth in RSA 674:33.

RSA 674:33 Powers of Zoning Board of Adjustment. – provides:

I. (a) The zoning board of adjustment shall have the power to:
(2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;
(B) The spirit of the ordinance is observed;
(C) Substantial justice is done;

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(D) The values of surrounding properties are not diminished; and
(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
(b)(1) For purposes of subparagraph I(a)(2)(E), " unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
(B) The proposed use is a reasonable one.
2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

A variance is a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the board of adjustment on appeal. "Variances are included in a zoning ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated." *Sprague v. Acworth*, 120 N.H. 641 (1980).

1. ***The variance will not be contrary to the public interest.***

For the variance to be contrary to the public interest, it *must unduly and to a marked degree violate the basic zoning objectives* of the zoning ordinance. Would the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public? The Property enjoys a 25-foot right-of-way ('ROW") over 14 Church Street which provides direct access to Church Street and Kearsarge Mountain Road and does not threaten the health, safety and welfare of the public. The ROW will be utilized by one single family residence located on 24 acres. The neighborhood is zoned for this use and said use is a primary use in the neighborhood. The addition of one single family home on a tucked away lot (not visible from the street) will not alter the character of the neighborhood. *See* Exhibit 1- letter from Shannon Mounsey, Real Estate Salesperson, Real 603.

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The proposed right-of-way encompasses approximately 130 feet in length of the Property's boundary line bordering the school district with an additional 25 ft along the rear lot line of the school district. The Applicant has agreed to pave the right-way. The Applicant also provided to the ZBA a driveway exhibit and letter from Higginson Land Services addressing concerns previously raised. *See* Exhibit 2 – Higgins Land Services letter. This paving will allow access for emergency vehicles.

An additional benefit to the public is that no new curb cut will be created. The Property will utilize the existing access point with the school district. There will be no overcrowding of the roadway.

2. The spirit of the ordinance is observed.

In *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 NH 102 (2007), the supreme court stated that "[t]he requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance. . . . [T]o be contrary to the public interest... the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality... Another approach to [determine] whether granting the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare." (Internal citations and quotations omitted).

As stated above, the granting of the variance would not threaten the health, safety and welfare of the public nor would it alter the character of the neighborhood. Also, the granting of the variance would not violate the ordinance's basic objectives, as the granting would allow one single family home utilizing a pre-existing ROW providing access to Church Street and Kearsarge Mountain Road. The ROW is approximately 428 feet in length, and the structure will be placed on the lot in accordance with the Town's dimensional requirements thereby causing no harm and observing the spirit of the ordinance.

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The granting of the variance will allow a single family home that will utilize an existing curb cut. The house is set back hundreds of feet from the road and provides an orderly and safe distance between properties.

3. ***Substantial justice is done.***

In satisfying this criterion, the only guiding rule is that ***any*** loss to the individual that is not outweighed by a gain to the general public is an injustice. The loss to the Applicant, of not having any reasonable use of her Property, is a great injustice and is certainly not outweighed by any benefit to the public. Without this variance, the Applicant has no viable use of her Property. The legal standard is that **any** loss – not that she can utilize her Property for another use – the standard is clear. The Applicant suffers a loss by not being able to utilize her Property for a single family home – a use that is permitted by right in the R-II district regardless of whether she can use it for harvesting timber (which requires heavy equipment and machinery).

4. ***The values of surrounding properties are not diminished.***

There is no diminution in the values of surrounding properties. The granting of the variance would permit one single family home on 24 acres which meets all other dimensional requirements in the R-2 district. See letter from Shannon Mounsey, Resal estate salesperson which states "adding a home on Map 31 Lot 48 in the Town of Warner, utilizing the existing right of way will not result in a diminution of property values of the surrounding properties..."

5. ***Literal enforcement of the provisions of the ordinance would result in unnecessary hardship***: "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
   (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
   (B) The proposed use is a reasonable one.

The special conditions of the Property include it being one of the largest landlocked properties in the neighborhood with a right-of-way onto Kearsarge Mountain Road/Church

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Street. The Property, oddly shaped, is also encumbered by a utility easement bisecting midway through it.

Literal enforcement of the provisions of the ordinance on this Property would result in an unnecessary hardship as there is no fair and substantial relationship between the general public purpose of the ordinance and the specific application of it on the Property as the Property enjoys a ROW 25 feet in width and 428 feet long as its access to Church Street and/or Kearsarge Mountain Road. Proposed to be built on the Property is a single family dwelling which will be positioned in accordance with all dimension requirements of the Town's zoning ordinance.

Without the granting of this variance, the Applicant is denied any meaningful use of her Property.

The proposed use of a single-family residence in the R-3 district where such use is allowed as a matter of right is a reasonable one.

2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use.

Denying the variance due to the special conditions described herein, denies the Applicant any reasonable use of the Property as the Property cannot be used reasonably used without it. The Property is considered a non-conforming lot whose use is prohibited by the terms of Section A.2 . The Applicant is proposing the construction of a structure for residential purposes which is prohibited by Section A.2. The Applicant cannot meet those criteria, and the granting of the variance is necessary for this use or any other reasonable use.

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The Applicant's application materials previously submitted, her Motion to Reopen the Public Hearing and Request for a Rehearing are incorporated hereto as if fully stated herein.

We believe we successfully demonstrated compliance with all five variance criteria and ask that the ZBA consider the granting of our variance application.

Thank you.

Sincerely,

Laura J. Gandia

Laura J. Gandia

/LJG
Enclosure
CC: Sydney Boyer

EXHIBIT 1

REAL 603

NH HOME & LIFESTYLE GROUP

November 17, 2026

To Whom It May Concern,

I am a licensed New Hampshire real estate salesperson with REAL Broker NH, and part of the Real 603 NH Home & Lifestyle Group, working primarily in central New Hampshire, including Warner. I have reviewed the proposal to build a single-family home on Map 31 Lot 48, accessed by the existing right of way.

Based on my knowledge, experience, and expertise, it is my opinion that adding a home on Map 31 Lot 48 in the Town of Warner, utilizing the existing right of way, will not result in a diminution of property values of the surrounding properties. The proposal is a single-family home in a neighborhood of single-family homes on rural lots, so the character of the area is unchanged. A newly built home adds a strong recent sale to the neighborhood's comparable data, which tends to support, not reduce, surrounding values.

This letter is a market opinion and is not an appraisal of value. I am available to attend the hearing and answer any questions from the Board.

Respectfully submitted,

Shannon Mounsey, real estate salesperson

Real 603 - 48 Pleasant Street Concord, NH 03301 - shannon@real603.com

EXHIBIT 2

HIGGINSON LAND SERVICES

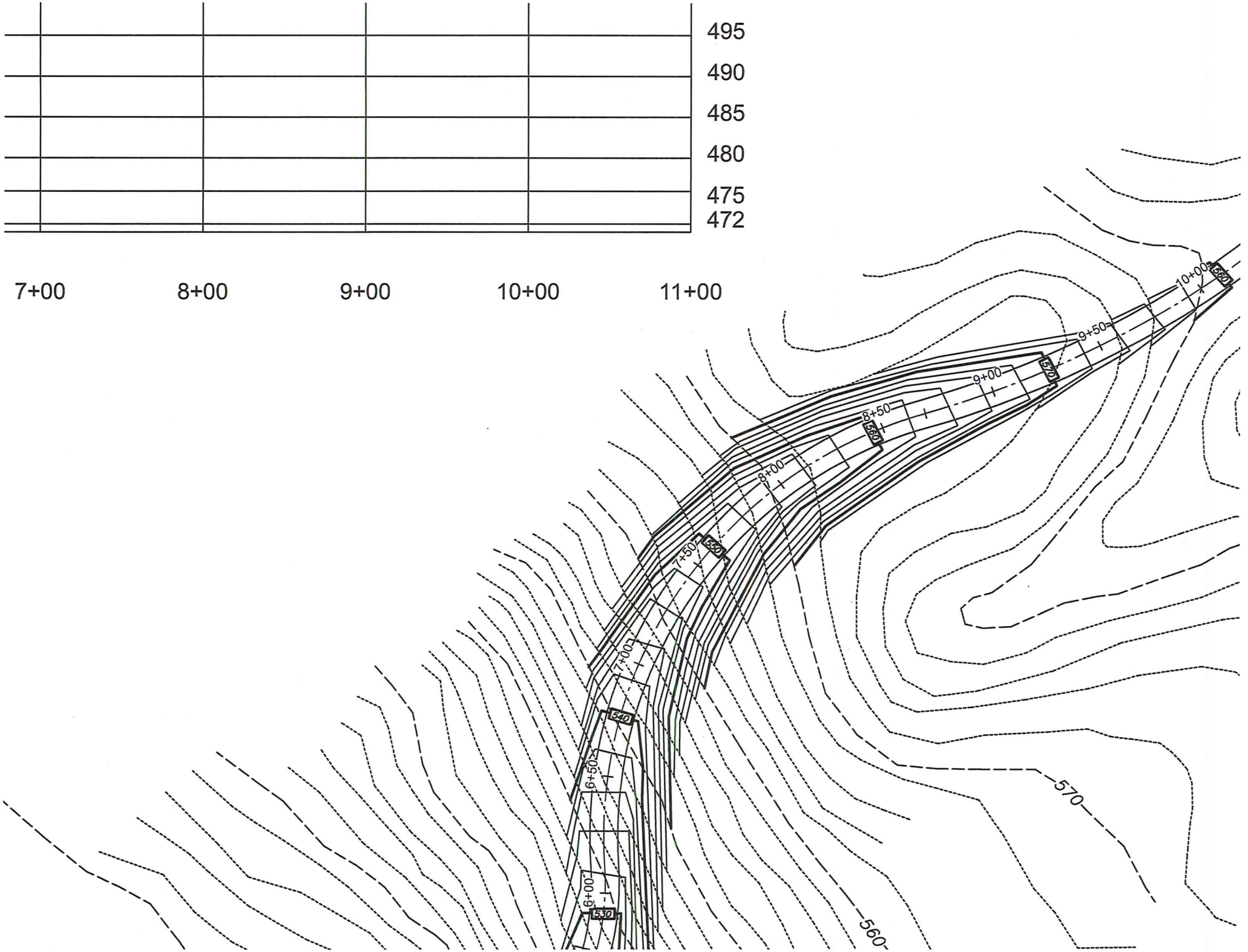
LAND SURVEYING ▲ PERMITTING ▲ SEPTIC DESIGNS

Sydney Boyer
Kearsarge Mountain Road
Tax Map 31 Lot 48
Warner, NH

The attached Driveway Exhibit depicts a proposed location of the driveway leading from Kearsarge Mountain Road to a building site on Tax Map 31 Lot 48. Tax Map 31 Lot 48 is quite large and there are multiple roots the driveway could take, similarly there are multiple adequate building sites on the lot. This Exhibit is not to identify the only access to the building site, but instead to demonstrate one option.

The drive way has a -2.5% pitch from the edge of Kearsarge Mountain Road to allow for water to drain back on site instead of onto the road. From there it transitions to 2.5%, 5%, 10% to allow for a smooth transition to the 12% grade that is constant to the build site.

(603) 660-6412 dbhigginson@yahoo.com 76 Patterson Hill Road / Henniker NH 03242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