

**Kirsten J. Allen**  
*Attorney at Law*

June 26, 2023

*Via Email ([landuse@strafford.org](mailto:landuse@strafford.org)) and hand delivered (in triplicate) to:*

Strafford Planning Board  
Attn: Blair Haney, Town Contract Planner  
Planning & Zoning Office.  
150 Wakefield St # 12  
Rochester, NH 03867

**Re: David P. and Susan E. Barry, 2-lot subdivision, 8 Isaac Berry Road and  
Second Crown Point Road (Tax Map 18, Lot 28-6)  
Case Number 23-003 SUB**

Dear Mr. Haney and Planning Board Members:

This Firm represents the Applicant relative to the above-referenced subdivision application. The purpose of this letter is to address the Planning Board's concerns, as outlined in the May 4, 2023 Planning Board Meeting Minutes and submit, in accordance with "Option 1" outlined therein, the following:

1. Waiver to 75-foot minimum lot width requirement (*see* Sec. II, below)
2. Town Road Agent's proposal for improvements to 160' of Isaac Berry Road (attached hereto as Exhibit A); and
3. Request for Conditional approval upon completion of improvement Isaac Berry Road (*see* Sec. III, below)

#### **I. BACKGROUND**

David P. and Susan E. Barry are seeking Planning Board (hereinafter, the "Board") approval for the proposed 2-lot subdivision of 8 Isaac Berry Road and Second Crown Point Road (Tax Map 18, Lot 28-6). On review of their application, Town staff (on information and belief, Town Contract Planner Blair Haney) made the following comments:

1. Lot configuration appears irregular and non-conforming with Regulation 2.6.2. Staff notes that lot lines partially follow existing stonewalls and at no point is either lot less than 75' wide.

At the meeting on the subdivision application, held May 4, 2023, the Board expressed the following concerns with the proposed subdivision:

- Creating a "dog leg" lot to satisfy lot frontage requirement on a Class V road.

- Lot 28-6 dog leg does not meet the 75-foot minimum lot width<sup>1</sup>.
- Driveway access from a Class VI road, which requires Board of Selectman approval.
- Residential access from Class VI road exceeds maximum of three.
- Need for a recorded Class VI road maintenance agreement and release of liability.

The Board then suggested “two ways for the applicant to address the above concerns”:

1. Retain current plan, request waiver to 75-foot minimum lot width, and improve Isaac Berry Road to town standards from Second Crown Point Road to the first driveway as determined by the Town Road Agent.
2. Modify current plan lot lines to eliminate the Lot 28-6 dog leg and reduce the size of Lot 28-6-1, request a Zoning Board of Adjustment lot size Variance, and improve Isaac Berry Road to town standards from Second Crown Point Road to the first driveway as determined by the Town Road Agent.

This letter and materials are submitted in accordance with the first option to address the Board’s concerns. Except for the approval of driveway access from the Class VI Road, which requires Board of Selectmen approval<sup>2</sup>, Option 1 resolves each of the listed concerns.

## II. WAIVER REQUEST

The Applicant respectfully requests the following waiver from the Town of Strafford Subdivision Regulations:

### **2.6.2 Lot Configuration**

Lots shall be conventional in layout. Contrived or non-conventional layout (ie “dog legs”, connecting strips, et.) shall not be acceptable. No part of the lot shall be less than 75 feet in width. At least 60% of the minimum buildable portion of the land shall be contiguous.

As a preliminary matter, the Board, in its May 4, 2023 meeting minutes, states the Lot 28-6 dog leg does not meet the 75-foot minimum lot width. By way of clarification, the

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<sup>1</sup> Note, this conclusion is inconsistent with that of the staff review finding that “at no point is either lot less than 75’wide”.

<sup>2</sup> Under RSA 674:41(l)(c), Boards of Selectmen have discretion to authorize issuance of building permits on Class VI roads “*after review and comment by the Planning Board*” (italics added). The Applicant is prepared to improve the Class VI Road, as laid out in Option 1, seek approval of all building off of the Class VI Road with the Planning Board pursuant to RSA 674:41, and execute the required Notice of Limits of Municipal Responsibility and Liability (“Notice”) A draft Notice is attached as **Exhibit B**.

bulk of the “dog leg” (the rectangular portion running from proposed lot 28-6 to Second Crown Point Road) has a minimum width of 76-feet; the only portion of the “dog leg” which falls below the required 75 feet minimum width is the acute-angled portion, which runs along Second Crown Point Road for approximately 99 feet. Nearly all corners, especially acute angles (those less than 90 degrees) will fall below the 75-foot minimum width as approaching the vertex of the angle.

More substantively, the Applicant began the subdivision process with only approximately 395’ of frontage on Second Crown Point Road. On November 17, 2022, the Board of Adjustment granted the applicant’s variance to Article 1.4.1 Section A (Agricultural-Residential District, Land Requirements, Frontage) passing the following resolution:

Resolved: To approve a Variance to Article 1.4.1.A of the Zoning and Land Use Ordinances that would allow the creation of a new lot by subdivision without the required frontage on Second Crown Point Road. One or both of the lots created by subdivision may have less than the required frontage (200’). How the existing approximately 395’ of frontage is divided between the two proposed lots will be at the discretion of the Planning Board and the applicant’s representative during the subdivision process. In no case shall either lot have less than 190’ of frontage.

The Applicant, through their surveyor, contrived of the “dog leg” in this instance not in a land grab to create the maximum number of buildable lots in a large development (the type of action 2.6.2 serves to prohibit) but, in fact to comply with the spirit and intent of Town regulations to the greatest extent possible. Specifically, the proposed plan complies with 2.6.1 (F), requiring subdivisions to be “laid out in harmony with the topography of the land and with the natural and manmade features”. 2.6.1 (F) goes on to require that “Stone walls shall be used to the greatest extent possible as boundaries”. Here, as noted in the staff review of the application, the proposed subdivision follows existing stonewalls.

Strict conformity to the regulations would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulations. As noted in the May 4, 2023 meeting, the proposed subdivision is not a large commercial development, but a 2-lot subdivision between immediate family members. David P. and Susan E. Barry seek to create proposed lot 28-6-1 for their son, Christopher Barry, to move into with his young son, who he plans to raise near his grandparents. Christopher has placed a deposit on manufactured housing for the proposed development and will be unduly burdened if he is unable to build his home in the proposed lot.

As detailed above, due to the familiar nature of the subdivision (from parent to child)

and the existing conditions of the land (including the granted variance and the topographical conditions, including the boundaries tracing the existing stonewalls), the waiver will properly carry out the spirit and intent of the regulations. Pursuant to 2.8.1 D, the Board may, at its discretion, waive or modify any part of these Regulations, other than those regulations required by state law or town ordinances. Accordingly, the Applicant respectfully requests a waiver of the Lot configuration Requirements laid out in 2.6.2.

### III. REQUEST FOR CONDITIONAL APPROVAL PURSUANT TO 2.6.16

Pursuant to 2.6.5, F “Existing streets deemed by the Board to be inadequate access for a proposed development shall be upgraded by the developer.” Consistent with the foregoing, the Board has directed the Applicant to improve Isaac Berry Road to Town standards from Second Crown Point Road to the first driveway as determined by the Town Road Agent. A photograph of the Town Road Agent’s proposed improvements is attached hereto as **Exhibit A**.

The Applicant stands ready to make the proposed changes and respectfully requests the Board grant conditional approval of their application, pursuant to 2.6.16, with completion of the improvements to Isaac Berry Road, in accordance with Exhibit A, as a condition precedent to the signature and recording until the of plat.

### IV. CONCLUSION

For the reasons cited above, the Applicant respectfully requests that the Strafford Planning Board:

- A. GRANT the Applicant’s request for a Waiver of the requirements of 2.6.2 pursuant to 2.8.1 D; and
- B. GRANT the Applicant’s request for Conditional Approval pursuant to 2.6.16.

Very truly yours,

*/s/ Kirsten J. Allen*

Kirsten J. Allen  
[kallen@shaheengordon.com](mailto:kallen@shaheengordon.com)

KJA/sp  
Enclosures  
cc: Client  
Bevan Timm, LLS

## EXHIBIT A

**ROAD AGENT**

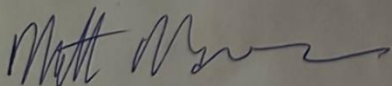
**6-20-2023**

**Strafford Planning Board**

Dear sirs, in regards to the Isaac Berry RD upgrade for the Berry subdivision, after looking at the condition of the road with Dave on June 12, I have asked that they add 4-6 loads of 1 ½ processed gravel be spread from the intersection of the Isaac Berry rd past their existing driveway, 16ft wide. Which will require one row of small hemlock trees to be cut and removed for proper width.

Sincerely,

**TOWN OF STRAFFORD**



Matthew Messenger

## **EXHIBIT B**

TOWN OF STRAFFORD  
PO BOX 23  
CENTER STRAFFORD, NH 03815

**CLASS VI ROAD**

NOTICE OF LIMITS OF MUNICIPAL  
RESPONSIBILITY AND LIABILITY

**NOW COMES** CHRIS BARRY, Hereinafter Referred to as OWNER,  
Land Owner (s) Land Owner (s)  
of ISAAC BERRY ROAD, County of Strafford, State of New Hampshire and Town of  
Road Name (specify extension i.e.: Dr., St., Lane, etc.)  
Strafford, hereinafter referred to as TOWN, a Municipal Corporation Existing Under the laws of  
the State of New Hampshire and Agree as Follows:

**WHEREAS** OWNER, Being the Owner(s) of Record of Certain Real Property  
Land Owner (s)  
On ISAAC BERRY ROAD, as Stated in the Deed Recorded at Book \_\_\_\_\_ Page \_\_\_\_\_,  
Road Name (specify extension i.e.: Dr., St., Lane, etc.)  
at the Strafford County Registry of Deeds, Map \_\_\_\_\_ Lot 26-6-1 Plot \_\_\_\_\_ Unit \_\_\_\_\_.

**WHEREAS** the Relevant Portion of Said ISAAC BERRY ROAD Upon Which  
Road Name (specify extension i.e.: Dr., St., Lane, etc.)  
the OWNER'S Real Property Fronts is a Class VI Highway as Classified by New  
Land Owner (s)  
Hampshire Revised Statutes Annotated 229:5.

**WHEREAS** the Town has Agreed to Issue a Building Permit in Accordance with Permitting  
Procedures on Said Real Property Upon the Filing of the Within Notice and Recording at the Strafford  
County Registry of Deeds, Pursuant to New Hampshire Revised Statutes Annotated 674:41.

**NOW THEREFORE** the OWNER Acknowledges and Agrees on Behalf  
Land Owner (s)  
of Themselves, Their Heirs, Legal Representatives, Successors and Assigns as Follows:

1. The TOWN Shall Allow OWNER to Construct a Residence  
Land Owner (s)  
Pursuant to Building Permit by the TOWN on the Property on ISAAC BERRY ROAD.  
Road Name (specify extension i.e.: Dr., St., Lane, etc.)
2. The TOWN Neither Assumes Responsibility for Maintenance, Including Snow Plowing, nor  
Liability for any Damages Resulting From the Use of ISAAC BERRY ROAD.  
Road Name (specify extension i.e.: Dr., St., Lane, etc.)

3. OWNER Acknowledges that the TOWN Shall not be Responsible for  
 Land Owner (s)  
 Maintaining Access to the Subject Property and do Hereby Forever Release and Discharge the  
 TOWN, its Officers, Agents and Employees From the Obligation of Maintaining \_\_\_\_\_  
 Road Name (specify  
ISAAC BERRY ROAD Road and From any Claim of Any Nature, Whether in Tort or Otherwise  
 extension, i.e.: Dr., St., Lane, etc.)  
 Which the Owners Might Have Against the TOWN for Any Loss or Damage, Including Those  
 Incurred through Failure to Provide Municipal Services, Including Police, Fire and Ambulance  
 Services, Arising out of the Condition of the Roadway from the Point Wherein \_\_\_\_\_  
 Road Name (specify  
ISAAC BERRY ROAD Road is a Class VI Highway.  
 extension i.e.: Dr., St., Lane, etc.)

4. That OWNER Assumes Responsibility for Transporting any Children  
 Land Owner (s)  
 To the Nearest Regular School Bus Stop.

5. That OWNER Agrees That he Shall be Responsible for Maintaining Access  
 Land Owner (s)  
 Over ISAAC BERRY ROAD at a Minimum Width of 20 Feet. Any Maintenance or  
 Road Name (specify extension i.e.: Dr., St., Lane, etc.)  
 Repair of ISAAC BERRY ROAD is to be Undertaken by OWNER  
 Road Name (specify extension i.e.: Dr., St., Lane, etc.) Land Owner (s)  
 At Their Own Expense and Shall Take Place Only After Permission is Granted by the Board of  
 Selectmen or Road Agent, Pursuant to New Hampshire Revised Statutes Annotated 236:9  
 Through 13.

6. The Owner(s) Agree to Stipulate and Pass This Agreement at any Transfer of This Property.

**DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ YEAR \_\_\_\_\_**

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Land Owner (s)

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Selectman, Town of Strafford, NH

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Selectman, Town of Strafford, NH

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Selectman, Town of Strafford, NH