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Please read into Planning Board Minutes:

Strafford, NH (Map 19 lot 72)

Dear Planning Board Members,

I am writing to provide a response to the application before the Strafford, NH Planning Board for Map 19 lot 72 request for subdivision and use of our current driveway to access the back lot. As the abutter of this property there was a plan to use this as a shared driveway in a subdivision plan from 2005 but was never utilized and the owner built his own driveway. I want to express my strong opposition to the planning board's consideration of allowing my driveway for the proposed development Map 19 lot 72 based on the following items.

1. Overburdening the Easement: The original easement for Map 19 lot 72 was intended solely for lots 72 and 72-1 rather than for any future subdivided lots. The burden of an increased number of lots should not be placed upon the original easement, as it was not intended to serve multiple lots.
2. Cessation of the purpose of the Easement: Extinguishment is not confined to easements that are created by necessity, in this case, access to their home on lot 72. If an easement is created by necessity ends (in this case lot 72 made their own driveway), then the easement ends along with the necessity.
3. Abandonment of the Easement: An easement is considered to be abandoned when the holder demonstrates a clear intent to cease the easement permanently. While non-use alone is not enough to establish abandonment, it is essential to assess the intention and actions of the holder. In the case of Map 19 Lot 72 it was clearly stated in both deeds that construction and maintenance of a shared driveway are to be evenly distributed between the two parties. The full burden has been placed on 72-1. The easement duties are identically stated in both 19-72-1's deed bk 3247 pg 0581 and the deed for map 19 lot 72 bk 4591 pg 0191.

TOGETHER WITH the right to use that portion of the driveway easement shown on the Plan which is located on Lot 72-1, for access to and egress from the premises conveyed, in common with the owner of Lot 72-1, and SUBJECT TO the right of the owner of Lot 72-1 to use that portion of the driveway easement shown on the Plan which is located on Lot 72, for access to and egress from Lot 72-1. The cost of building and maintenance of said shared driveway shall be divided equally between the owners of Lot 72 and 72-1.

We feel that when lot 72 failed to contribute to the driveway as well as then constructing another driveway for daily use on their property these actions demonstrated a clear act of abandonment.

4. Adherence to Current Building Code: If Map 19 Lot 72 subdivision is to be treated as a new lot, it should be subject to the current building code requirements as a unique and separate lot. It should not be assumed that a new shared driveway with new lot will be approved.
5. Creation of Back Lots: According to the regulations the creation of back lots should only be allowed for properties that were in existence prior to January 1, 2015. This Land would be subdivided in 2023 so not eligible.
6. Undue Hardship on Owner of Lot 72-1: This road was constructed and maintained by Todd Scruton at his personal expense. The Driveway is long and includes 4 culvert pipes that require care. The owner of lot 72 has not contributed to the construction or ongoing maintenance of this driveway as stated in both Deeds.

Enforcing any updated requirements to create a new shared driveway situation could mean updating the driveway to the current Strafford building code for shared driveways. This would impose an undue hardship on the owner of Lot 72-1. The specifications for shared driveways outlined in the code include width and turnaround requirements that may not be feasible or practical for the specific circumstances of Lot 72-1. Under the Strafford building guidelines shared driveways shall be built with a fifteen (15) foot travel bed plus two (2) foot shoulders with the normal underlayment and gravel courses per the Strafford Roadway Cross Section specifications. Shared driveways shall include turnouts as needed but at least every 400 feet under Building Regulations Paragraph 4.1.10. The final home on a shared driveway shall have a

turnaround built to the "Shared Driveway Turnaround Construction Detail". Shared driveways shall have an unobstructed cleared width of not less than 20 ft. (6.1 m.) and a treadway of 12 ft. or greater. Imposing these requirements without considering the unique characteristics of the current situation could create an unfair burden on the owner along with additional wetland impact.

The original wetland crossing was approved under the NH minimum impact wetlands permit in 2005. The square footage to be considered a minimum impact is 3,000sf, of which 2,900 was used. Guidance from that permit (ref. Wetlands permit 2005-00945 sec. 4) states that *"There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback."*

In conclusion, I request that the Planning Board carefully consider these concerns before making any decisions regarding the proposal for Map 19 Lot 72. It is essential to investigate the integrity and transferability of existing easements, adhere to current building code regulations, and maintain consistency in zoning requirements. Furthermore, any decisions made should consider the potential undue hardship on the owner of Lot 72-1 in conjunction with their right to quiet enjoyment.

Thank you for your attention to this matter, and I trust that you will give these concerns the consideration they deserve.

Sincerely,

//Signed//

Kim and Todd Scruton

673 1<sup>st</sup> Crown Point Rd.

Strafford, NH 03884

603-833-0271

603-833-9416



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



WETLANDS AND NON-SITE SPECIFIC PERMIT 2005-00945

Permittee: Todd Scruton,  
19 Francis St  
North Reading, MA 01864  
Project Location: First Crown Point Rd, Strafford  
Strafford Tax Map/Lot No. 19 / 72  
Waterbody: Unnamed Wetland

**NOTE --  
CONDITIONS**

APPROVAL DATE: 07/12/2005

EXPIRATION DATE: 07/12/2010

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

**PERMIT DESCRIPTION:** Impact 2,951 square feet of forested wetland for the installation of four (4) culverts for a common drive to access two (2) single family residential lots as part of a 2-lot subdivision of 28.92 acres.

**THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:**

1. All work shall be in accordance with the following plans by Berry Surveying & Engineering:
  - a.) Proposed Wetland Crossing Plan dated April 18, 2005, as received by the Department on May 10, 2005;
  - b.) Topography Plan dated January 31, 2005 and revised through June 6, 2005, as received by the Department on June 22, 2005.
2. This permit is contingent on approval by the DES Subsurface Systems Bureau.
3. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
4. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
5. Work shall be done during low flow conditions.
6. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
7. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
8. Proper headwalls shall be constructed within seven days of culvert installation.
9. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.

**GENERAL CONDITIONS WHICH APPLY TO ALL DES WETLANDS PERMITS:**

1. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel;
2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
3. The Wetlands Bureau shall be notified upon completion of work;
4. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required (see attached form for status of federal wetlands permit);
5. Transfer of this permit to a new owner shall require notification to and approval by the Department;
6. This permit shall not be extended beyond the current expiration date.
7. This project has been screened for potential impacts to **known** occurrences of rare species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have received only cursory inventories, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species.

APPROVED: \_\_\_\_\_

DES Wetlands Bureau

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

OWNER'S SIGNATURE (required)

CONTRACTOR'S SIGNATURE (required)