



Planning & Zoning
Community Development
Conservation Commission
Historic District Commission

PLANNING & DEVELOPMENT DEPARTMENT

City Hall - Second Floor
31 Wakefield Street,
Rochester, New Hampshire 03867-1917
(603) 335-1338 - Fax (603) 335-7585
Web Site: www.rochesternh.net

NOTICE OF PUBLIC HEARING

Dear Abutter:

You are hereby notified of a **Public Hearing** to be held at **7:00 p.m.** on **Wednesday, June 9, 2010** in the City Hall Council Chambers concerning the following:

2010-13 - Application by Robert Forcier, Jr, for an equitable wavier pursuant to RSA 674:33-3 to clarify this is a buildable lot for a single family dwelling.

Location: 144 Chestnut Hill Road
Tax Map 216 Lot 35 Agricultural Zone

You are welcome to attend the public hearing and comment on the proposal. You can also submit comments by letter, fax, or email (caroline.lewis@rochesternh.net). The project application is available for review by the public in the Planning Department, or you can view the entire application on the City's website – www.rochesternh.net. Click on *Boards & Commissions*, then *Zoning Board of Adjustment*, then *Zoning Board Projects*. Look under the map and lot number shown above.

Please feel free to contact this department with any questions or if you have any disability requiring special provisions for your participation.

Office Hours are between 8:00 a.m. to 5:00 p.m. Monday through Friday.

Caroline Lewis, Zoning Secretary
cc: file

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MAY 24 2010

Planning Dept.

APPLICATION FOR EQUITABLE WAIVER

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

Phone No. 335-3948

DO NOT WRITE IN THIS SPACE

CASE NO. 2010-13

DATE FILED 5/24/10

ZONING BOARD CLERK

Name of applicant Robert Forcier, Jr.

Address 107 Ten Rod Road; Rochester, NH 03867

Owner of property concerned Same

(If the same as applicant, write "same")

Address Same

(If the same as applicant, write "same")

Location of property Chestnut Hill Road

Map No. 216

Lot No. 35

Zone A

Description of property 180' F, 188' & 120' S, 215'

(give length of frontage, side & rear)

Proposed use or existing use affected Single-family house lot

The undersigned hereby requests an equitable waiver to the terms of Article 42.17,
Section (a) and asked that said terms be waived to permit an equitable waiver pursuant

to RSA 674:33-3 to clarify this is a buildable lot for a single family home.

The undersigned alleges that the violation occurred by virtue of a good-faith error in calculation
or measurement and thus constitute grounds for a variance.

Signed

(Applicant)

AGENT

MAY 24 2010

Considerations Governing Granting of a Dimensional Equitable Waiver (RSA 674:33-a):

Planning Dept.

1. The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.

Lot was conveyed to the applicant in 2008 as a lot of record.

2. The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

Former owner received two separate tax bills for each lot they owned; Mr. Forcier's builder spoke with the Planning Office at the time of sale and was told the lot was a "grandfathered" lot.

3. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other properties in the area, nor adversely affect any present or permissible future uses of any such property.

Owner proposes to construct a new 3-bedroom home, which is consistent with the zoning and the neighborhood in general.

4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

As stated above, two years have past since the lot was conveyed to the present owner.

5. If all 4 of the above are not proven by the property owner, an equitable waiver may still be granted if the property owner can prove to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has commenced against the violation during that time by the municipality or any person directly affected.

Despite the passage of the ordinance in 1986 that rendered these lots non-conforming, the City has continued to tax this lot as a separate lot for the last 24 years.

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NORWAY PLAINS ASSOCIATES, INC.
SURVEYORS - ENGINEERS - TRANSPORTATION PLANNERS

31 Mooney Street
Alton, New Hampshire 03809
Alton Office (603) 875-3948
E-MAIL: anickless@norwayplains.com
WEB: www.norwayplains.com

2 Continental Boulevard (03867) P. O. Box 249
Rochester, New Hampshire 03866-0249
Telephone (603) 335-3948
NH (800) 479-3948
Fax (603) 332-0098

May 24, 2010

Mr. Ralph Torr, Chair
Zoning Board of Adjustment
Planning, Development & Zoning
31 Wakefield Street
Rochester, NH 03867

Re: Equitable Waiver - Robert Forcier, Jr. - Map 216, Lot 35 - Chestnut Hill Rd.

Dear Ralph:

On behalf of Robert Forcier, Jr., we hereby submit application and supporting data for an Equitable Waiver to the terms of Article 42.17(a). Specifically, we request that the Board of Adjustment clarify that the subject lot is a buildable lot for a single-family home.

The subject property is located on the westerly side of Chestnut Hill Road near its intersection with the Spaulding Turnpike Connector Road. The lot was conveyed to Mr. Forcier by his mother, Hilda Forcier, in February of 2008. Mrs. Forcier and her former husband, Robert, Sr., purchased this lot from Roger Allen in 1983. They had previously purchased Tax Map 216, Lot 36 from Roger Allen in 1970. The two lots have always been maintained as separate parcels.

With the passage of the current zoning ordinance in 1986, these two lots were made non-conforming as neither contains the required lot area of 40,000 s.f. The section of the zoning ordinance cited above states that only those non-conforming lots in separate ownership at the time of the passage of the ordinance could be used for building purposes. Because the Forciers owned both lots, they were not considered in separate ownership despite the fact that they held separate deeds for each lot.

For the last 24 years, however, the city has continued to treat the lots as separate parcels. The Forciers have received separate tax bills and never attempted to combine the parcels as they intended to someday convey the additional lot to their son. Prior to the 1998 conveyance, Mr. Forcier and his builder checked with the Planning Department regarding the status of the lot and were told it was "grandfathered" and therefore buildable. He is now ready to construct his new home and has since learned from the Code Enforcement Officer that he can not, in fact, obtain a building permit due to the terms of 42.17(a).

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May 24, 2010

Forcier Equitable Waiver

Planning Dept.

As outlined on the attached documents, we believe an Equitable Waiver is appropriate given the fact that the lot was conveyed to Mr. Forcier over 2 years ago, which was more than enough time for the City to notice an issue existed relative to the status of lot. Everyone involved (including the City) acted in good faith, but it is Mr. Forcier who is now stuck with a lot that he can not use.

Thank you for your consideration.

Sincerely,

NORWAY PLAINS ASSOCIATES, INC.

By: _____

Arthur H. Nickless, Jr., PLS, President

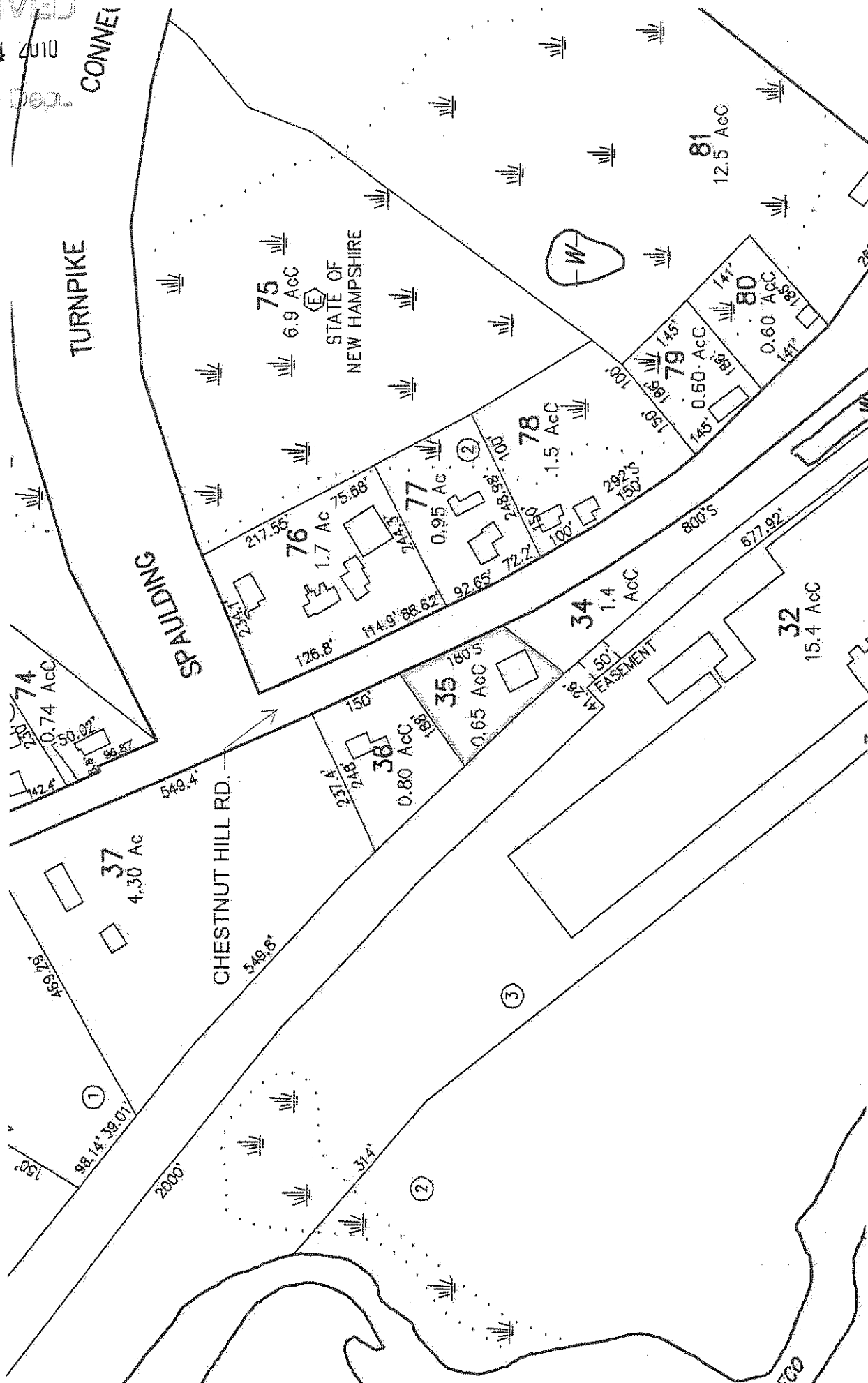
cc: Robert Forcier, Jr.

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MAY 24 2010

Planning Dept.

CONNEI



Melanie Lefebvre, Mark Lefebvre, Dorcen Jones, Karen Laquette, Ann Dupuis, Kathy Morrison

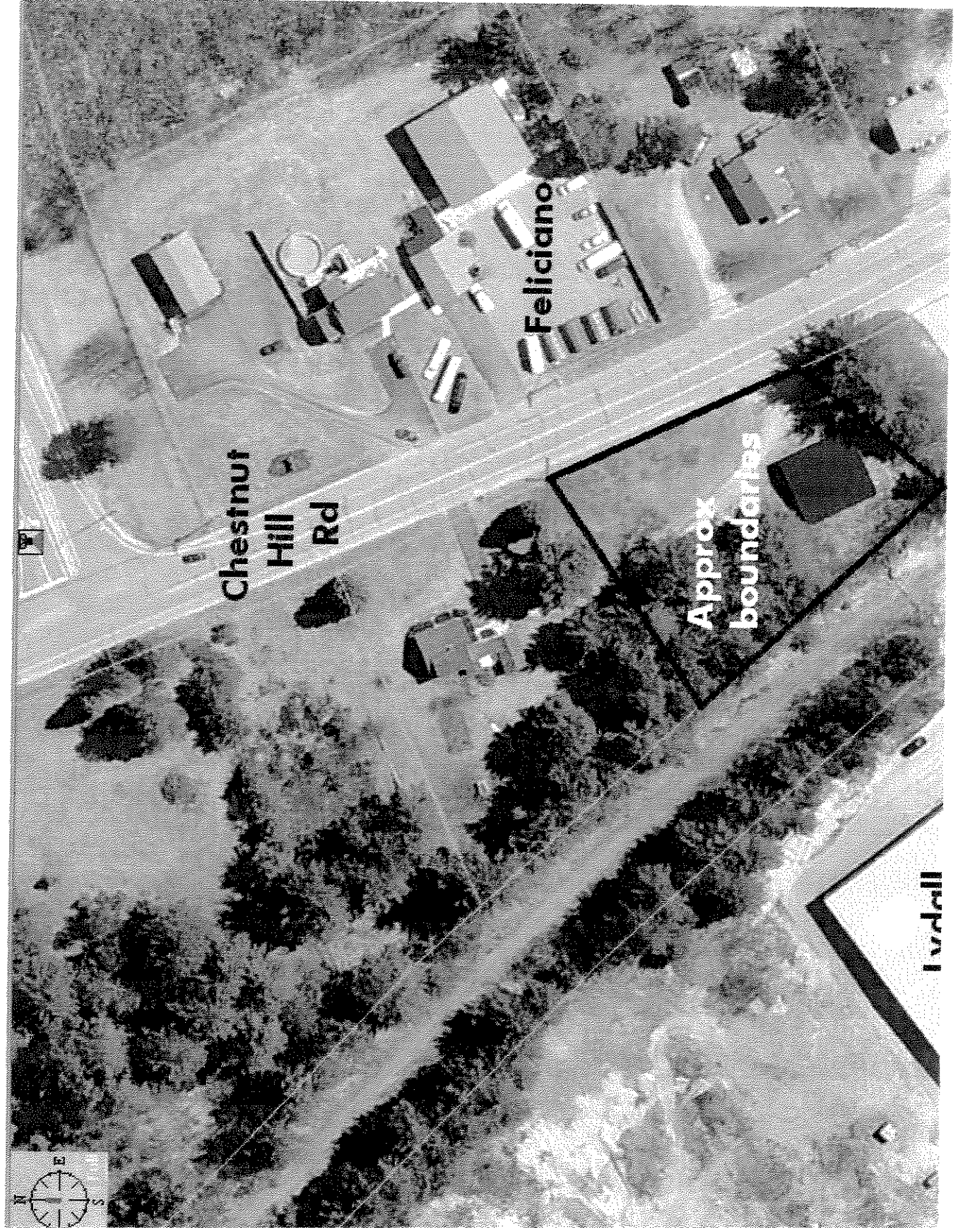
Subject: RE: Address for 0 Chestnut Hill Road

Hi Caroline,

I am sending this out to all the City people who need to make adjustments to their records for this parcel.

The parcel **0216-0035-0000** had been listed as 0 Chestnut Hill Road and will now be assigned the Property / Street Address of **#144 Chestnut Hill Road**. Please adjust any records you may have for this parcel.

-Dennis



2010-13

5/26/2010 8:51 AM

City of Rochester, NH
Abutter List

Applicant: Robert Forcier, Jr.

Phone: (603)-335-3533

Mailing Address: 107 Ten Rod Road

City: Rochester

State: NH Zip: 03867

Project Address: 144 Chestnut Hill Road

(1) List the name and address of each owner whose lot adjoins or is directly across the street or body of water from the Project Lot.

(2) Note: It is the APPLICANT'S RESPONSIBILITY to insure that all legal abutters are notified. This form may not be completed more than 5 days prior to the application deadline.

Map 216	Lot 35	Owner of Project Same as applicant	Mailing Address Same as applicant
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Legal Abutters To Project Lot:

[illegible]

Holders of Conservation/Preservation Easements:

Easement Holder	Mailing Address

I, the undersigned, acknowledge that it is the responsibility of the applicant or his/her agent to fill out this form and mail certified notices to all legal abutters and holders of conservation/preservation easements in a complete, accurate, and timely manner. In accordance with the directions above and applicable law, I understand that any error or omission could affect the validity of any approval. I certify that the names and addresses listed on this form were obtained from the City of Rochester, NH Assessors Database on 05/26/10, and this is page 1 of 1.

Arthur H. Nickless, Jr., L.L.S., Agent