



per 175. 111390

### APPLICATION FOR EQUITABLE WAIVER

TO: BOARD OF ADJUSTMENT  
CITY OF ROCHESTER

Phone No 335-3948

DO NOT WRITE IN THIS SPACE

CASE NO. 2010-25

DATE FILED 8/18/10

ZONING BOARD CLERK *C. Lema*

Name of applicant 119 Flagg Road Development, LLC

Address 35 Third Street; Dover, NH 03820

Owner of property concerned Same  
(If the same as applicant, write "same")

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

Location of property 91 Trinity Circle

Map No. 259 Lot No. 36-32 Zone A

Description of property 98.5' x 155'  
(give length of frontage, side & rear)

Proposed use or existing use affected Foundation is 1-9/16" too close to the front lot line at one corner of the building.

The undersigned hereby requests an equitable waiver to the terms of Article 42.16 ,  
Section Table 2 and asked that said terms be waived to permit a foundation to be 24.87'  
from the front lot line where 25' is required.

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.

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AUG 18 1

Signed *[Signature]* Planning Dept.  
(Applicant)

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

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.

Error was discovered when the applicant hired us to do a Foundation Location Plan.

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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.

The contractor obviously made an error in measurement as evidenced by how close he was to actually meeting the setback (1-9/16").

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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.

An encroachment into the setback of 1-9/16" at one corner of the building will not even be noticed.

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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.

We believe the error is not substantial enough to warrant removing the foundation.

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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.

N/A

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# NORWAY PLAINS ASSOCIATES, INC.

SURVEYORS - ENGINEERS - TRANSPORTATION PLANNERS

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Alton, New Hampshire 03809  
Alton Office (603) 875-3948  
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Rochester, New Hampshire 03866-0249  
Telephone (603) 335-3948  
NH (800) 479-3948  
Fax (603) 332-0098

August 18, 2010

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

**Re: Equitable Waiver - 119 Flagg Road Development, LLC - Map 259, Lot 36-32**

Dear Ralph:

On behalf of 119 Flagg Road Development LLC, we hereby submit application and other information in support of an Equitable Waiver for the above referenced property. The waiver is needed to correct a setback problem that resulted from the placement of a foundation too close to the front lot line (24.87 feet where 25 feet is required).

The applicant feels that despite the fact that only the foundation exists to date, the infraction is so minuscule (about 1-9/16") that it is impossible for to depict the difference between this proposed building and others previously constructed on the same side of the street. The owner and his representatives obviously took steps to meet the setback as evidenced by how close they came to meeting the required distance. Therefore, we feel an Equitable Waiver should apply.

Thank you for your consideration.

Sincerely,

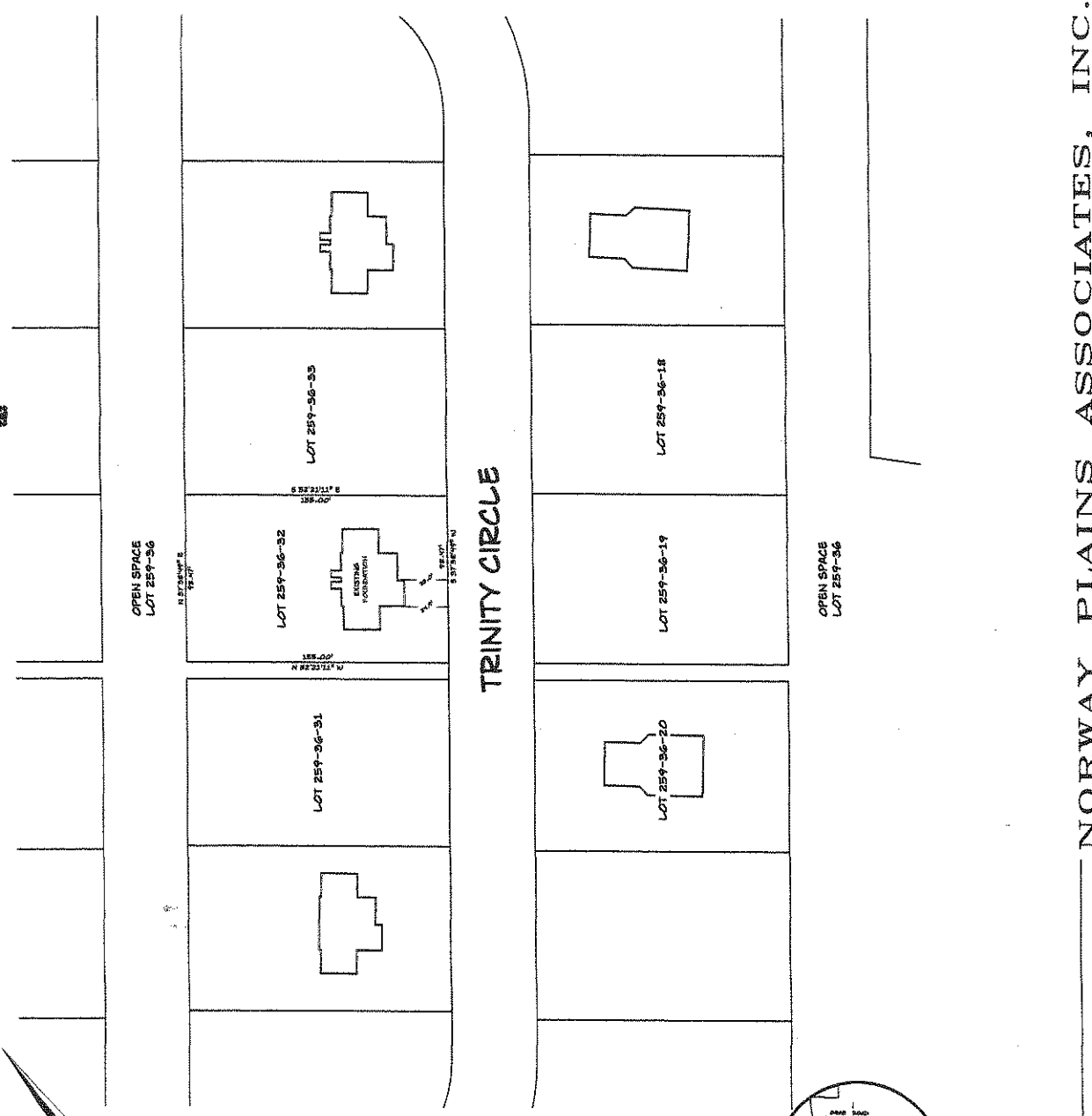
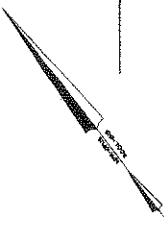
NORWAY PLAINS ASSOCIATES, INC.



By: \_\_\_\_\_  
Arthur H. Nickless, Jr., PLS, President

cc: Bill Goldstein



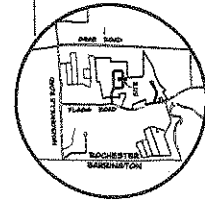
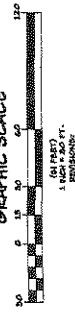


REFERENCE PLANS:  
1. "CLUSTER SUBDIVISION PLANS, PLANNED, ROCHESTER, NH  
FOR THE DEVELOPMENT OF 119 FLAGG ROAD, ROCHESTER,  
NH, 03866, BY NORWAY PLAINS ASSOCIATES, INC.  
DATED JANUARY 2009 BY NORWAY PLAINS ASSOCIATES, INC.  
S.C.E.D., PLANS 19-02, 19-03 & 19-04

TAX MAP 259, LOTS 36-32  
SOURCE OF RECORDS:  
119 FLAGG ROAD DEVELOPMENT, LLC  
25 THIRD STREET, ROCHESTER, NH 03866  
S.C.E.D., BOOK 3544, PAGE 515

ZBA SKETCH  
91 TRINITY CIRCLE  
ROCHESTER  
STRAFFORD COUNTY  
NEW HAMPSHIRE  
FOR 119 FLAGG ROAD  
DEVELOPMENT, LLC

1"=30' AUG. 2010  
GRAPHIC SCALE



PLS NO. 134  
DATE: 08/10/2010  
BOOK NO. 271294-271632  
P. NO. 33 "882"

NORWAY PLAINS ASSOCIATES, INC.

## Unofficial Property Record Card - Rochester, NH

## General Property Data

Parcel ID 0259-0036-0032	Account Number 37567
Prior Parcel ID --	
Property Owner 119 FLAGG ROAD DEVELOPMENT LLC	Property Location 51 TRINITY CIR
	Property Use CPRD
Mailing Address 35 THIRD ST	Most Recent Sale Date 7/2/2007
	Legal Reference 3549-545
City DOVER	Grantor TRINITY CONSERVATION LLC,
Mailing State NH Zip 03820	Sale Price 2,500,001
ParcelZoning A	Land Area 0.350 acres

## Current Property Assessment

Card 1 Value	Building Value 0	Yard Items Value 0	Land Value 58	Total Value 58
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## Building Description

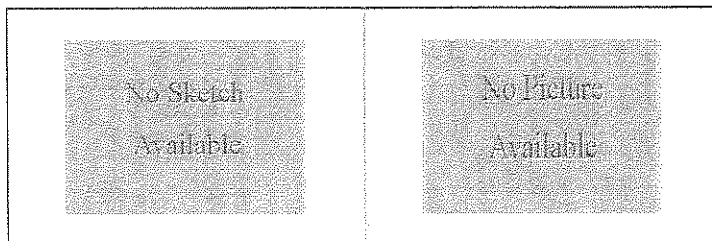
Building Style	Foundation Type	Flooring Type N/A
# of Living Units 0	Frame Type	Basement Floor N/A
Year Built N/A	Roof Structure	Heating Type N/A
Building Grade	Roof Cover	Heating Fuel N/A
Building Condition N/A	Siding	Air Conditioning 0%
Finished Area (SF) N/A	Interior Walls N/A	# of Semi Garages 0
Number Rooms 0	# of Bedrooms 0	# of Full Baths 0
# of 3/4 Baths 0	# of 1/2 Baths 0	# of Other Fixtures 0

## Legal Description

## Narrative Description of Property

This property contains 0.350 acres of land mainly classified as CPRD with a(n) style building, built about N/A, having exterior and roof cover, with 0 unit(s), 0 room(s), 0 bedroom(s), 0 bath(s), 0 half bath(s).

## Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

**ABUTTER LIST**

City of Rochester, NH  
Please Print or Type

**RECEIVED**

AUG 18 2010

Applicant: 119 Flagg Road Development, LLC Phone: 742-5300Project Address: 91 Trinity Circle

List the names and addresses of all parties below. For abutting lot owners, list each owner whose lot adjoins or is directly across the street or a body of water from the subject property. This form may not be completed more than five (5) days prior to the application deadline.

**LEGAL OWNER OF SUBJECT LOT**

Map	Lot	Owner Name	Mailing Address
259	36-32	Same as applicant	35 Third Street; Dover, NH 03820

**ABUTTING LOT OWNERS**

Map	Lot	Owner Name	Mailing Address
259	36-19	Same as applicant/owner	
259	36-31	Same as applicant/owner	
259	36-33	Same as applicant/owner	
259	36	Same as applicant/owner	

**PROFESSIONALS AND EASEMENT HOLDERS.** Engineers, Surveyors, Soil Scientists, and Architects whose seal appears or will appear on the plans (other than any agent submitting this application); holders of conservation, preservation, or agricultural easements; and upstream dam owners/NHDES.

Name of Professional or Easement Holder	Mailing Address
Norway Plains Associates, Inc.	P.O. Box 249; Rochester, NH 03866-0249

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 abutters and other parties in a complete, accurate, and timely manner, in accordance with applicable law. I understand that any error or omission could affect the validity of any approval. The names and address listed on this form were obtained from the City of Rochester, Patriot

Database on this date: 8/18/10, This is page 1 of 1 pages.Applicant or Agent: 