

# City of Rochester, New Hampshire

## Zoning Board of Adjustment

### **Variance Application**

TO:	<b>BOARD</b>	OF	ADJ	UST	ME	NT
	CITY O	F R	CHE	:ST	FR	

DO NOT WRITE IN THIS SPACE	
CASE NO. 7-23-28 32-23-	29
DATE FILED 7/19/23	
C91	
ZONING BOARD CLERK	

Applicant: Ralph W. Torr
E-mail: Torrhomeimprovements@gmail.com Phone: 603-234-5594, 603-332-7700
Applicant Address: 283 Chestnut Hill Rd Rochester, NH 03867-5107
Property Owner (if different):same
Property Owner Address:same
Variance Address:52 Little Falls Bridge Road Rochester, NH
Map Lot and Block No: Map 209, Lot 15
Description of Property: Long and Narrow Parcel adjacent to Little Falls Bridge
and the Cocheco River.  Proposed use or existing use affected: Construction of new home within the front setback  and within 75' of Cocheco River.
The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section Chapter 275, Table 19-A front setback in the AG
and asks that said terms be waived to permit
to permit an existing structure within the front
setback and river buffer.
The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. I understand that while
presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.
Signed:Date:Date:

Authorized Agent. Berry Surveying & Engineering Christopher R. Berry Sr. Project Manager 335 Second Crown Point Road Barrington, NH 03825 crberry@metorcast.net 603-781-3403



# City of Rochester, New Hampshire

# Zoning Board of Adjustment

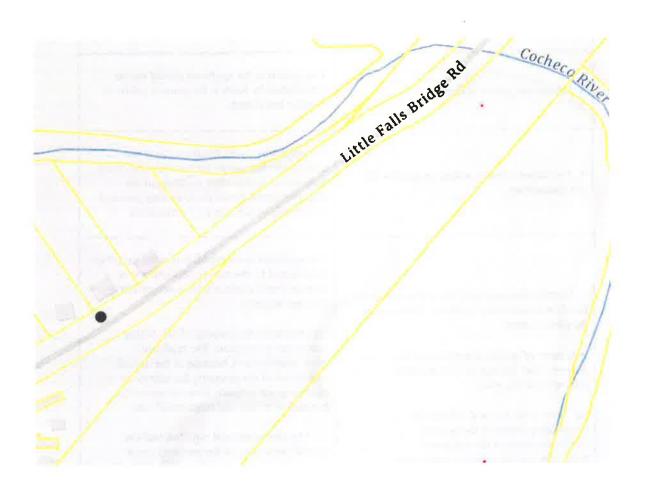
### **Variance Criteria**

1) Granting the variance would not be contrary to the public interest because:  See Narrative
2) If the variance were granted, the spirit of the ordinance would be observed because:  See Narrative
3) Granting the variance would do substantial justice because: See Narrative
4.) If the variance were granted, the values of the surrounding properties would not be diminished because:  See Narrative
5.) Unnecessary Hardship:  a. Owning to special <i>conditions of the property that distinguish it from other properties in the area</i> denial of the variance would result in an unnecessary hardship because:  i. No fair and substantial relationship exists between the general public purposes of the ordinan provision and the specific application of that provision to the property because:  See Narrative
And: ii. The proposed use is a reasonable one because:
b. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owning to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.



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City of Rochester Zoning Board

Attention: Shanna Saunders, Director of Planning & Development

33 Wakefield Street Rochester, NH 03867,

Re:

Ralph W. Torr revocable Trust of 2000

Ralph W. Torr, Trustee 52 Little Falls Bridge Road Tax Map 209, Lot 15 Variance Request

Ms. Saunders

On behalf of our client, Ralph W. Torr, Berry Surveying & Engineering (BS&E) is submitting a Variance to the Zoning Board of Adjustment for the existing constructed structure to remain in the current location which sits within the Front Setback to Little Falls Bridge Road as defined in Chapter 275, Attachment 6, Table 19-A and also sits within the 75' Buffer to the Cocheco River as defined in Chapter 275-12.3 Buffer Defined within the Conservation Overlay District (COD)

### Background and General Narrative:

The existing site is commonly known as 52 Little Falls Bridge Road, Tax Map 209, Lot 15. The site is located in the Agricultural Zone (AG) which requires a 20' front setback to the road right of way, 20' rear setback and 10' sideline setback. The site is serviced by an onsite effluent disposals system (EDA) and municipal water. The minimum lot area requirement is 30,000 Square Feet (Sq.Ft.) and requires 150' of frontage. The parcel contains 22,400 Sq.Ft., of land area and has 306.17' of frontage on Little Falls Bridge Road. The parcel is also located within the Conservation Overlay District whereas it has approximately 502' of frontage along the Cocheco River.

The parcel is a remnant of a much larger estate that was subdivided by prior land owners along Little Falls Bridge Road. The last sale from the original parcel was transferred to Public Service (PSNH) and is now shown as Tax Map 209, Lot 16 and included land along the river, Little Falls Bridge Road and created the eastern boundary of the final parcel sold to Mr. Torr. The western boundary was created when what is now shown as Tax Map 209, Lot 14 was subdivided by prior owners. It is important to note that these subdivisions and transactions were completed prior to the City of Rochester Zoning Ordinance, and therefore the remaining parcel now owned by Mr. Torr was also created well before the underlying ordinances.

Little Falls Bridge Road travels between what is now NH Route 11 and Chestnut Hill Road. Unknown to most, the road was originally laid out on October 22, 1804. Since that time there were additional "Widening & Straitening" actions by the Town prior to the incorporation as a City. It is likely the widening and straitening actions were in an effort to ensure the layout of the road was around the constructed product. Each description of the road on the west side of the River is defined as 4 rods wide which is 66'. The road on the east side of the River may have a narrower width. With the various widening and straitening actions it is presumed the right of way is located 33' from the centerline of the road in this instance. As can be seen from the survey, the abutting lots in the westerly direction on Little Falls Bridge Road did not consider the width of the right of way when subdividing and building. The proximity of the homes is much closer to the physical roadway than the now known right of way would imply. There is survey evidence on the abutting parcel to the west that indicates the former land surveyor of the lot also did not consider the road as 4 rods wide when placing the granite bounds at the front of the lot. This is important when zoning requirements are applied to jurisdictional boundaries that are not readily and commonly known.

Over the last year there was a new structure that was placed on the existing lot. Formerly there was a concrete pad onsite which originally was intended for a home to be placed. The new home was placed on the former pad, and the pad was extended in the easterly direction to accommodate the new home being placed. The extension places the structure 18.81' from the actual surveyed right of way, which is now known to be 4 rods wide. As noted above the perception of the right of way would have placed the structure in conformance with the front setback. The request is to allow the structure to persist in the current location which is 18.81' from the surveyed right of way line.

As noted above the parcel has a northern boundary that is the Cocheco River. In this location the river is converging towards Little Falls Bridge Road, which creates a narrowing affect on the parcels shape. The parcel starts with a depth of 148.57' on the western boundary and narrows to a perpendicular depth of only 31' to the River. When considering the 75' buffer requirement within the COD, nearly the entire parcel falls within 75' of the ordinary high-water mark and therefore there is no place for construction or expansion that would comply with the ordinance. The structure, as placed on the lot, is located 41.99' from the River, and therefore requires a variance.

<u>Variance Criteria for Chapter 275</u>, Attachment 6, Table 19-A to permit the single-family home to remain within the front setback to Little Falls Bridge Road

1) Granting the variance would not be contrary to the public interest because:

The public interest in zoning requirements pertaining to setbacks is in the creation of uniformity within a zone and neighborhood. Though the parcel is located within the AG Zone which requires a 20' front setback from the right of way, none of the closest parcels have maintained the same requirement. In fact, the subject parcel is



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more conforming with the zoning requirements than the two closest homes on the street.

- 2) If the variance were granted, the spirit of the ordinance would be observed because: If the variance were granted, the spirit of the ordinance would be observed. The spirit and intent in this case is to ensure there is adequate room between the structures built in the zone and the physical road. This allows for future expansion of the roadway infrastructure over time if needed and allows for tillage space around the structure for the owners and occupants. The spirit is similar to public interest in that space and bulk standards are developed to promote a harmony in use, design and placement. In this case, when compared to others on the street, the spirit and intent is observed with the structure on the subject parcel being further from the right of way and physical roadway than many of the abutting homes.
- 3) Granting the variance would do substantial justice because:

  Substantial justice in this case is achieved by allowing the single-family home to be constructed / remain on a lot. This structure is well suited for a lot with an obscure length to width ratio. The gain to the applicant is the productive use of an existing parcel of land. In this case there is no loss to the ordinance or general public by allowing the structure to remain 18.81' from a right of way line that is wider than is currently being occupied. The change from the required 20' to the requested 18.81' is not a perceptible amount to those traveling along Little Falls Bridge Road, given the speed or travel and surrounding structures.
- 4) If the variance were granted, the values of the surrounding properties would not be diminished because:
  If the variance were granted, the values of the surrounding properties would not be diminished because the use on the property is congruent with others in the area.
  Re-development of the parcel with a permitted use in the zone poses no burden on abutting parcels that would cause devaluation. Additionally the structure is largely more in conformance than those which surround it.
- 5) Unnecessary Hardship:
  - a. Owning the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because:
    - i. 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 because:



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The special condition of this parcel is the shape of the land between the rivers edge and the now know right of way line. Though all of the abutting parcels and those in the area contain the same right of way constraints discovered during the recent survey, the use and perception of where that right of way is on the abutting parcel now makes this parcel special. The physical boundary has always remained but the use and perception indicate that the location was always assumed to be in a different location. This persisted not only in the minds of the residents and lay people but clearly in the minds of practitioners hired for the purposes of providing land surveying support in the past on those same abutting lots. Due to the relationship between the shape of the parcel and the front right of way line with abutting parcels there is no fair and substantial relationship with the underlying zoning requirement for a 20' separation off the actual right of way line.

The denial of the variance would cause an unnecessary hardship to the owner in that the structure would potentially need to be shortened to a point that would reduce the habitable space to an unobtainable degree. The special feature of this parcel and the known location of the right of way line creates inequity between this parcel and those that abut it and have been built on. The abutting homes were constructed of a certain size given their placement adjacent to the right of way. The applicant is proposing an equally modest size home on the parcel. A denial based on this in equity will cause a hardship to the applicant and is unnecessary with the granting of a modest variance request.

ii. The proposed use is a reasonable one because:

The proposed use is a reasonable one because it allows for the development of the parcel of in more conformance with the zoning requirements than the abutting parcels. It places an existing lot of record into productive use for the land owner and does not impede the health, safety or welfare of the general public by being 18.81' from the right of way line where 20' is required.

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



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As noted above, given the special nature of the parcel's size, shape, creation, now known boundary limits, and context with abutting land owners existing uses, the denial of this variance will cause an unnecessary hardship to the applicant. The denial would remove the ability for the land owner to build a reasonably sized home on a parcel of land that was created prior to zoning. The construction is reasonable for the neighborhood and the strict adherence to the required front setback would require the structure to be reduced in size to an unreasonable size for the modern needs within a single family home.

<u>Variance Criteria for Chapter 275-12.3</u> Buffer Defined within the Conservation Overlay District (COD) to allow the single-family home to remain within the 75' setback to Cocheco River

- 1) Granting the variance would not be contrary to the public interest because:

  The public interest in environmental overlay districts such as the City of Rochester COD, is to ensure that development on existing lots of record take place in the most reasonable and responsible way practical given the means and methods available at the time. In this case the home is constructed on a concrete slab at the top of slope that runs parallel with the River. Given the constraints between the river and the road the home is placed as central to the building area as possible. The home is also placed along the contour which limits the disturbance on the ground and within the land area located with the COD.
- 2) If the variance were granted, the spirit of the ordinance would be observed because: If the variance were granted, the spirit of the ordinance would be observed. The spirit and intent in this case is to ensure there is adequate as much room as practical between the River and the structure. There is no place on the lot where the structure would comply with the with COD and so it was placed in the corner of the lot that is furthest from the River at all points while maintaining room for the EDA in the same corner. The EDA is also required to be as far from the River as possible and the south west corner is the best position.
- 3) Granting the variance would do substantial justice because:

  Substantial justice in this case is achieved by allowing the single-family home to be constructed / remain on a lot as it exists today. Given the angle of the structure on the lot there are no placements that are substantially superior to where it is placed now. There is no detriment to ordinance or the public by allowing the structure to remain in the current position where there is no place on the lot that is substantially better. The gain to the applicant in this case by allowing the use of the land far exceeds the potential detriment.



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4) If the variance were granted, the values of the surrounding properties would not be diminished because:

If the variance were granted, the values of the surrounding properties would not be diminished because the use on the property is congruent with others in the area. All other lots have the same River as a rear boundary with varying distances and depths of the lots to the river. This lot happens to have the least amount of depth of all abutting parcels.

- 5) Unnecessary Hardship:
  - a. Owning the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because:
    - i. 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 because:

The special condition of this parcel is the shape of the land between the river's edge and the now know right of way line and the angle which the river approaches the road. This special condition sets the parcel nearly completely within the COD district. In an instance where compliance is not possible the best practical location is then reviewed. The structure is located 41.99' from the edge which is as far as practical on this lot. With this lot being completely within the COD there is no fair and substantial relationship between being 75' from the River's edge and 41.99' from the River's edge if it is the best placement on the lot.

The denial of the variance would cause an unnecessary hardship to the owner in that the structure would not be permitted to be built on the lot. This strips the owner of property rights and is unnecessary if a variance were granted.

ii. The proposed use is a reasonable one because:

The proposed use is a reasonable one because it allows for the development of the existing lot of record in the COD in the most practical position possible.

b. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owning to the special conditions of the property that distinguish it from other properties in the area, the



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property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use for it.

The entire property is located within the COD and therefore cannot be reasonably used in strict conformance with the 75' buffer standard. The variance is then necessary to enable any use on the property. Denial of the variance will render the property un-buildable which is an unnecessary hardship to the applicant.

We hope the board finds this project is worthy of a variance and approves the request. Thank you all for your time and attention this matter.

Respectfully submitted,

BERRY SURVEYING & ENGINEERING

Christopher R. Berry, SIT Principal, President





view of the rear of the structure along

the shoreline. As can be seen, with the slope, there is no practical way of knowing the distances to the river.

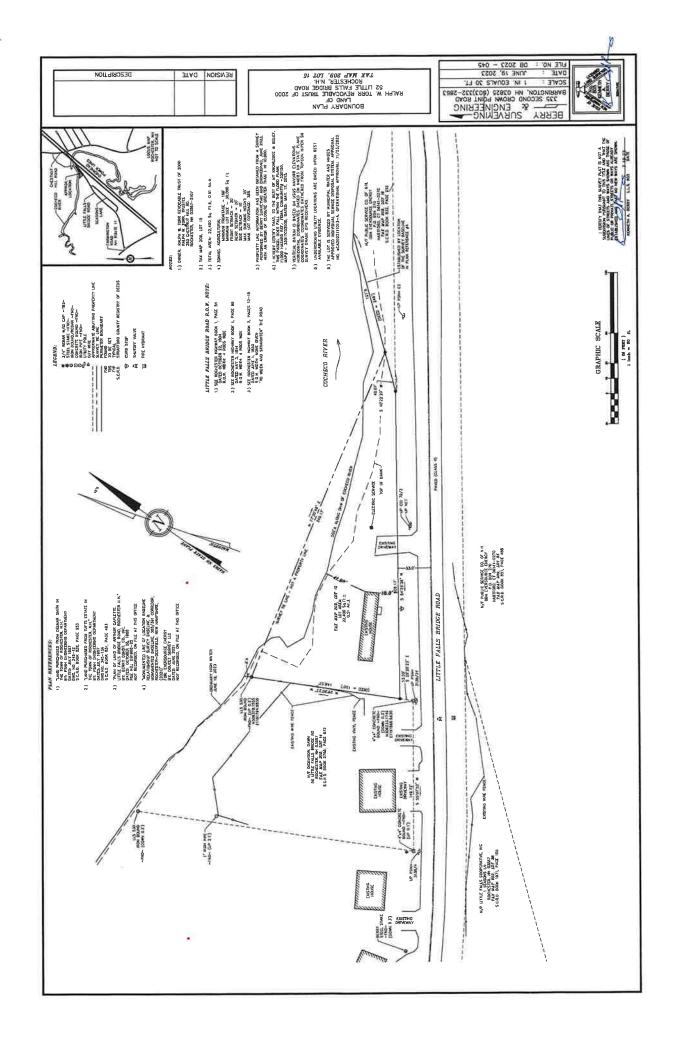


The existing structure from the street.

In the distance can be seen the abutting structure forward of this one. The view on-site is that this structure is parallel with Little Falls Bridge Road.



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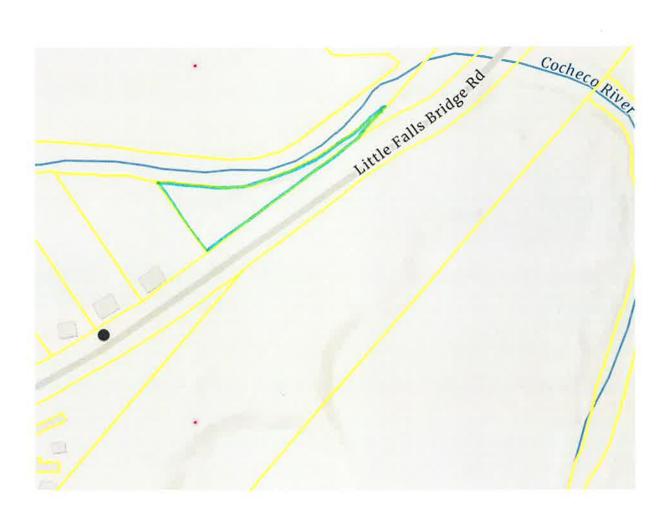
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# ZONING

275 Attachment 6

# City of Rochester

Table 19-A Dimensional Standards - Residential Districts [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

		Lots			Setbacks	ıcks				Other			Standards, Notes and References
			Minimum								Minimum	Maximum	
	Minimum Lot Area	Minimum Frontage	Lot Area/ Dwelling Unit	Minimum Front	Maximum	Minimum Side	Minimum Rear	Maximum Building	Maximum	Maximum Number of	Building Height	Building Height	A "" means there is no dimensional standard
Residential Districts	(square feet)	(feet)	(square feet)	(feet)	(feet)	(leet)	(teet)	Footprint	Lot Coverage	Stories	(leet)	(teet)	for this item
Residential-1 (R1)													
Single-family	10,000	100	1	10		10	20	30%	35%			35	See Article 19, Dimensional Standards
All other uses	10,000	100	-	01		10	20	30%	35%			35	
Residential-2 (R2)													
Single-family	000'9	09	)	10		<b>&gt;</b> 0	20	30%	35%			35	See Article 19, Dimensional Standards
Two-family	000"6	80	1	10		89	20	30%	45%			35	See Article 19, Dimensional Standards
Three- and four-family	12,000 and 15,000	80	1	15		01	25	30%	%09			35	See Article 19, Dimensional Standards
Five- or more family	30,000	100	5,000 or 7,500	15		10	25	30%	%09			35	See Article 19, Dimensional Standards
All other uses	000'6	80	1	10		00	20	30%	35%			35	
Neighborhood Mixed Use (NMU)													
All uses	000'9	09	7	ĺ	25	S	20		%06	3	20	20	See Article 19, Dimensional Standards
Agricultural (AG)													
Single-family, conventional subdivision, municipul water and sewer	20,000	150		20		10	20	30%	35%			35	Scc Article 19, Dimensional Standards
Single-family, conventional subdivision, municipal water or sewer	30,000	150	Æ	20		01	20	30%	35%			35	See Article 19, Dimensional Standards
Single-family, conventional subdivision, neither municipal water nor sewer	45,000	150	1	20		10	20	30%	35%			35	See Article 19, Dimonsional Standards
Two-family	150% of single	150	1	20		10	20	30%	40%			1	See Article 19, Dimensional Standards
Single-family dwelling conservation subdivision	000'9	09	-	20		10	20		35%			35	Sec Article 33, Conservation Subdivisions
All other uses	45,000	150	5,000 or 7,500	20		10	20		40%			35	

NOTES:
Note 1: For lots that adjoin a residential district, the side seback on the side adjoining the residential district shall be the larger of the required side seback in the subject commercial zone or the adjoining residential zone.
Note 2: For lots without both water and sewer, 10,000 square feet of lot area is required per additional dwelling unit beyond one.

### Article 12Conservation Overlay District (COD)

### 275-12.3Buffer defined.

In all cases the more restrictive buffer shall be used.

### **Buffer Location**

- 75 feet Cocheco River, Salmon Falls River and Isinglass River from the ordinary high-water mark of the river
- 50 feet Named streams and surface water from the ordinary high-water mark listed in Table I below!!!
- 50 feet Edge of jurisdictional wetland consisting of very poorly drained soils<sup>1</sup>
- 50 feet Edge of jurisdictional wetland consisting of poorly drained soils<sup>1</sup>
- 50 feet Vernal pools<sup>2</sup>

### Notes:

- 1. The precise location of a wetland boundary in any particular case must be determined by on-site inspection wetland scientist.
- 2. Vernal pools that shall be identified by a New Hampshire certified wetland scientist and may be subject t Commission.

### [1]

Editor's Note: Table I is included at the end of this article.





## 52 Little Falls Bridge Road

City of Rochester, NH 1 inch = 60 Feet



180

www.cai-tech.com

July 24, 2023



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

Property Location 52 LITTLE FLS BR RD Vision ID 6908	LS BR RD			Parcel ID		001	2/ 0000/	_		<i>.</i> 0,	Card# 1 Sec# 1	of 1-1	Account # Bldg # 1	nt# 6908 1	Ω	Land Use 1300 Print Date 6/5/2	Land Use 1300 Print Date 6/5/2023 12:49:26 PM	9:26 PM
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			BUIL	<b>BUILDING NOTES</b>	OTES									AP	APPRAISED VALUE	LUE SUM	SUMMARY	
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Land Use 1300 Print Date 6/5/2023 12:49:26 PM		4-1	
Account # 6908 Bldg # 1		68 68	
Card # 1 of 1 Sec # 1 of 1			Undepreciated Value 75,038
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ion 52 LITTLE FLS BR RD 908	CONSTRUCTION DETAIL	Cd C	Description L/B Onty Dim 1 CONC SLABS L 1 1 E BUILL  IST FLOOR  Til Gross Liv / Lease Area
Property Location Vision ID 6908	CO	Style Grade Stories Units Frame Foundation Exterior Wall 1 Roof Structure Roof Cover View Interior/Exterio % Heated Heat Type AC Percent Bedrooms Full Bath(s) Haf Bath(s) Extra Fixture(s Kitchen(s) Extra Fixture(s Kitchen(s) Extra Kitchen() Total Rooms Fireplace(s)	Code Desc 40 CONC Code 15



**Abutters List** 

335 Second Crown Point Road Barrington, NH 03825 Phone: (603) 332-2863 Fax: (603) 335-4623

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July 19, 2023

### Owner of Record

Tax Map 209, Lot 15

Ralph W Torr Rev Tst Ralph W Torr Tstee 283 Chestnut Hill Rd Rochester, NH 03867 Book 4784, Page 903

### **Abutters**

Tax Map 209, Lot 14

Dawn Dickinson 50 Little Falls Bridge Rd Rochester, NH 03867 Book 2766, Page 672

Tax Map 209, Lot 16

Public Service of NH Eversource Energy PO Box 270 Hartford, CT 06141-0270

Tax Map 209, Lot 17

Kathleen Kelley Torr Robert J Torr 214 Blackwater Rd Dover, NH 03820-8711 Book 4742, Page 877

Tax Map 209, Lot 35

Public Service of NH Eversource Energy PO Box 270 Hartford, CT 06141-0270

### Tax Map 209, Lot 36

Little Falls Cooperative Inc 1 Seasons Ln Rochester, NH 03867 Book 1971, Page 105

#### **Professionals**

Kenneth A. Berry PE LLS
Christopher R. Berry, Project Manager
Berry Surveying & Engineering
335 Second Crown Point Road
Barrington, NH 03825



### **BERRY SURVEYING & ENGINEERING**

