

Town of Windham
Zoning Board of Appeals
8 School Road
Windham, ME 04062

March 16, 2023

Subject: Request for Variance of Dimensional Standard
Solar Array Development – Roosevelt Trail GLC Solar, LLC

Dear Members of the Zoning Board of Appeals:

Acorn Engineering, Inc. (Acorn) was retained by Green Lantern Solar to assist in development of a proposed solar array development on a landlocked parcel (Tax Map 21, Lot #3) located off Roosevelt Trail (Route 302). The project is known as Roosevelt Trail GLC Solar, LLC and the Major Site Plan Application and Conditional Use Application (for a small portion of Residential Limited [RL] zoning district) were both approved by the Town of Windham Planning Board by a vote of 4-0 on April 25, 2022.

The purpose of this application to the Zoning Board of Appeals (the Board) is to request a variance from the Town's dimensional standard requirement of 150 feet of public road frontage for development in the Commercial 2 (C-2) zoning district. A completed Application for Appeal to Windham Zoning Board of Appeals is included in **Attachment A**. Given that the subject parcel is landlocked, there would be a practical difficulty to development of the approved project on this parcel if there was strict adherence to the existing dimensional standards.

We have provided eight (8) copies of the application packet, and have provided a check in the amount of \$400 as the application fee.

Permission letters from the property owner (on behalf of Green Lantern Solar) and from Green Lantern Solar (authorizing Acorn to act as its agent) are included in **Attachment B**.

Description of the Lot

The 12.3-acre parcel is primarily located within the C-2 district, with a portion of the rear property lying within the RL zoning district as shown on the Site Plan included as **Attachment C**. The Site Plan shows the following uses of the project, as approved:

- The project was approved with vegetated buffer setbacks from residential abutting properties, which were negotiated through a comprehensive and iterative review process. Approved setbacks from the residential and commercial properties abutting the solar array are shown on the Site Plan.
- The project includes no buildings and no onsite wastewater disposal (septic system).
- The project is located within a fence with a locked gate, both of which are required to ensure the security of the site.
- The project includes a limited paved area for staging of equipment before and during construction and to allow a firetruck to turn around.
- Access to the site will be limited during and after construction of the project.

Access to the Lot

The solar array will be accessed by an existing driveway that serves the residence at #994 Roosevelt Trail. This existing driveway- and the extension that connects to the solar array parcel on Tax Map 21 Lot #3- are located within a 50-foot access easement. Deeds documenting this easement were provided during the planning review process. The driveway to the solar array was designed to accommodate emergency vehicles (as requested by the Town) and construction equipment.

The solar array driveway includes a “hammerhead” turnaround outside the fence to accommodate public safety vehicles, as requested by the Town.

The Windham Planning Board determined that no Traffic Study was required, since the driveway is existing, will be privately maintained, and will be seldom-used with the exception of the homeowner at #994 Roosevelt Trail.

Response to Land Use Ordinance Section 1106.D

The Town of Windham’s Land Use Ordinance (Chapter 120), Section 1100 (Board of Appeals), Subsection 1106 (Variance), Paragraph D (“Variance from Dimensional Standards”) states that the Board may grant a variance from the dimensional standards of the Land Use Ordinance if strict application of the dimensional standards “would cause a practical difficulty” and when seven specific conditions are satisfied.

The property owner and applicant are requesting that the Board approve a variance, waiving the dimensional standard for 150’ of public street frontage. Without approval of this variance, the applicant is unable to develop the project, which has already been determined by the Town to be meet all requirements of the Land Use Ordinance for the zoning districts in which it is located. The waiver of this dimensional standard approved by the Board in October 2021 (ZBA #21-006) has already been attached to the deed for the property.

Attachment D includes narrative to demonstrate that the seven conditions in Section 1106.D would be accurate or satisfied if the requested variance is approved.

Summary

This letter and the attached supporting documents are intended to comply with the “Appeal to Windham Zoning Board of Appeals” Application Checklist and requirements of the Town of Windham’s Land Use Ordinance. We request that the Board consider this request at its April 6, 2023 meeting.

If you have any questions regarding this application or the completeness of the materials, please contact us within the next five days. Questions can be referred to me at (207) 641-7704 and astrause@acorn-engineering.com or Green Lantern Solar’s Director of Development, Geoff Sparrow, PE, at (207) 939-8615 and geoffs@greenlanternsolar.com.

Sincerely,



Aubrey L. Strause, P.E.
Municipal Services Coordinator
Acorn Engineering, Inc.

Copies: Geoff Sparrow, PE (Director of Development, Green Lantern Solar)
 Jon Rioux (Code Enforcement Officer, Town of Windham)
 Amanda Lessard (Planning Director, Town of Windham)

Attachments

- A: Application for Appeal to Windham Zoning Board of Appeals
- B: Permission letters from Property Owner and Green Lantern Solar
- C: Approved Site Plan (4/25/22) for Roosevelt Trail GLC Solar, LLC
- D: Seven Criteria for “Variance from Dimensional Standards”

Attachment A: Application for Appeal to Windham Zoning Board of Appeals

Statement to Town of Windham Board of Appeals

I acknowledge submitting my application to the Board of Appeals and signing this statement that I the undersigned:

State the proposed plan is to scale and reflects the true representation of the proposal requested.

I further understand that if the Board finds that it does not, then the Board has the right to table my application until I have met the requirements.

Applicants Aubrey Strause *Date* March 16, 2023
Signature _____

Aubrey L. Strause, PE
Acorn Engineering, Inc.,
on behalf of Green Lantern Solar /
Roosevelt Trail GLC Solar, LLC

Fee Paid \$400.00 CK # 2195 CASH CHARGE DATE 3/16/23

A location map and a scaled site plan must accompany this application. The site plan must show dimensions of the property, location of all buildings, yards, parking spaces and septic systems, and all existing and proposed setbacks.

An application fee of \$400.00 for residential appeals as well as for non-residential or multi-family is required upon application submission. *If the Code Enforcement Office determines that ordinary and customary expenses associated with review of the development are higher than the \$400.00 fee, then the applicant shall be billed and shall pay to the Town prior to the final approval said expenses, including, but not limited to cost associated with notification of abutters, advertising of public meetings, and all the time dedicated to review of the development.*

NOTE: Applicant or his/her representatives must attend board meetings. If a request is needed to be tabled, the applicant or his/her representative must attend meeting to ask to be tabled. (11/21/91).

The Land Use Ordinance was amended on 2/28/23 to remove this provision.

~~The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six (6) months or substantially completed within one (1) year of the date of the vote by the Board.~~

I CERTIFY THAT THE INFORMATION CONTAINED IN THIS APPLICATION AND IN ITS SUPPLEMENTS IS TRUE AND CORRECT.

Applicant's Signature Aubrey Strause Date March 16, 2023

Aubrey L. Strause, PE
Acorn Engineering, Inc.,
on behalf of Green Lantern Solar /
Roosevelt Trail GLC Solar, LLC

Variance from Dimensional Standards.

The Board of Appeals may grant a variance from the dimensional standards of the Land Use Ordinance when strict application of the Ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

1. The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood.
2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.
3. The practical difficulty is not the result of action taken by the petitioner or a prior owner.
4. No other feasible alternative to a variance is available to the petitioner.
5. The granting of a variance will not unreasonably adversely affect the natural environment; and
6. The property is not located in whole or in part within shoreland areas as described in 30 M.R.S.A. § 435.

7. The dimensional standard for which the variance is granted is limited to ordinance provisions relating to lot area, lot coverage, frontage or setback requirements.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced Sec. 1100 Board of Appeals Land Use Ordinance Town of Windham 11 - 10 setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, 38 M.R.S.A. chapter 3, subchapter 1, article 2-B.

Attachment B: Permission letters from Property Owner and Green Lantern Solar

July 12, 2021

To Whom It May Concern,

As the landowner of Map 21, Lot 3 as identified on an ALTA/NSPS Land Title Survey prepared by Northern Survey Engineering (NORSE), I hereby authorize Acorn Engineering to request an application on behalf of Green Lantern Solar in order to request a variance before the Windham Zoning Board of Appeals for the minimum public street frontage dimensional standard.

TMC Holdings LLC
6 Dominion Road
Windham, ME 04062

Printed: Matthew Wright
Signature: Matthew Wright
Date: 7/12/21

Title: President

December 20th, 2021

RE: Maine Solar Developments: State and Federal Permitting Agent Authorization

To Whom it May Concern:

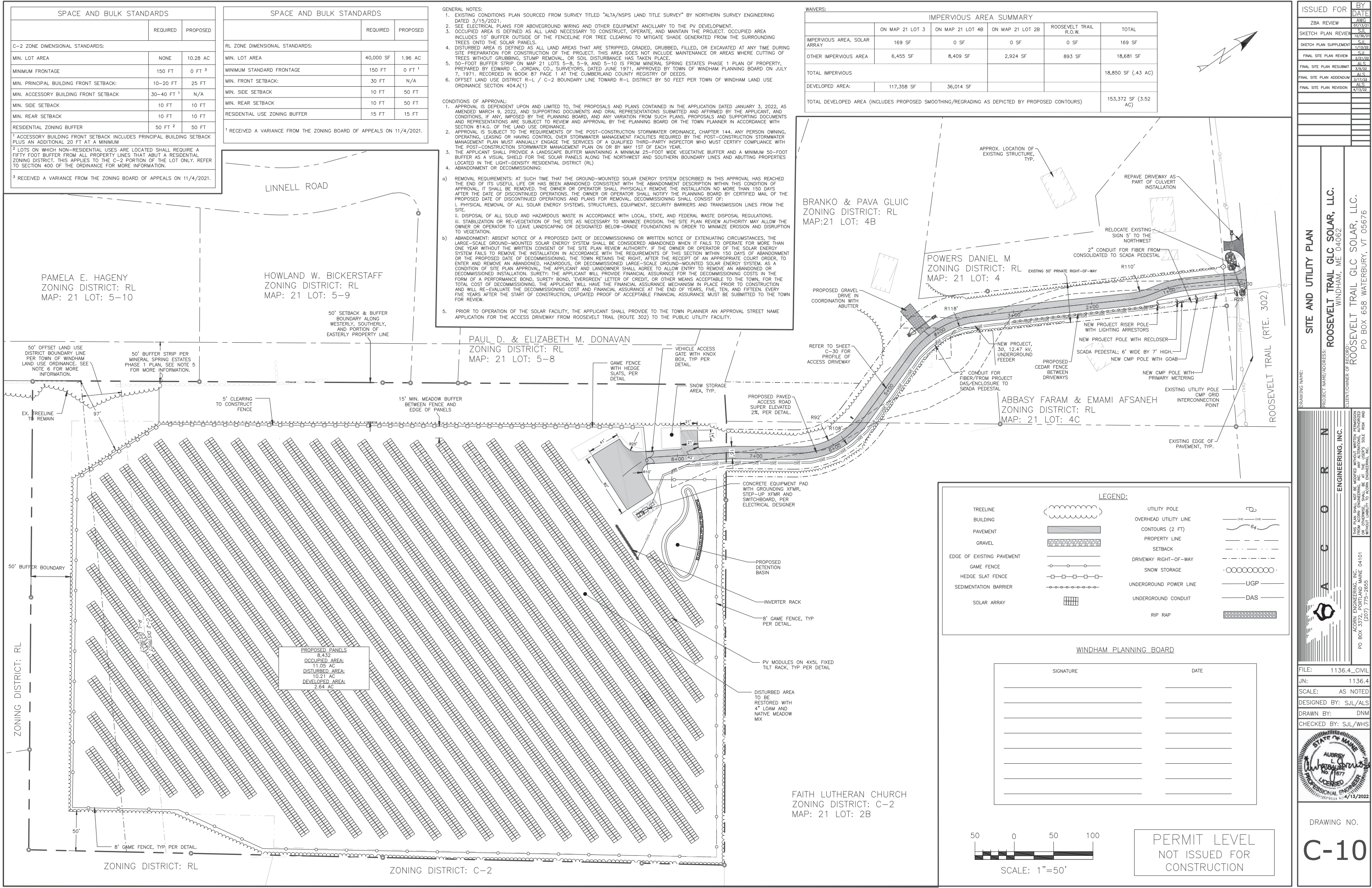
Green Lantern Development, LLC (GLD) and Roosevelt Trail GLC Solar, LLC hereby grant Acorn Engineering the authority to act on their behalf in matters concerning permitting when engaging with Local and State of Maine Authorities. If you have questions regarding this authorization, you can reach me at (207) 939-8615 or via email at GeoffS@GreenLanternSolar.com.

Sincerely,



Geoff Sparrow, P.E.
Director of Development

Attachment C: Approved Site Plan for Roosevelt Trail GLC Solar, LLC



Attachment D: Seven Criteria for “Variance from Dimensional Standards”

The Town of Windham’s Land Use Ordinance (Chapter 120), Section 1100 (Board of Appeals), Subsection 1106 (Variance), Paragraph D (“Variance from Dimensional Standards”) states that the Zoning Board of Appeals (the Board) may grant a variance from the dimensional standards of the Land Use Ordinance if strict application of the dimensional standards “would cause a practical difficulty” and when seven specific conditions are satisfied.

These seven conditions are listed below in bold font, followed by narrative that demonstrates that each condition is satisfied.

- 1. The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood.** This statement is accurate: the requested variance is due to the historic configuration of the specific lot.

Tax Map 21, Lot #3 is located in Zone C-2 (Commercial District II) but is undeveloped. An existing gravel road currently connects the project to Roosevelt Trail (the public road) through adjacent lots that are zoned residential (RL; via an existing right-of-way on Tax Map 21, Lot #4B) and Commercial I (C-1; via an existing easement on Tax Map 21 Lot #2B). The proposed access to the solar project from Roosevelt Trail, for which this variance has been requested, generally follows the footprint of that existing gravel road which also lies within a private right-of-way (ROW) that Green Lantern Solar has rights to in order to access the subject parcel from Roosevelt Trail.

- 2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.** This statement is accurate: approval of the requested variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.

The objective of Commercial zone C-2 is to extend the existing commercial corridor and serve as a buffer between C-1 and RL properties. The proposed solar project serves as such a land use buffer consistent with this objective, as it will provide visual separation from residential properties while being a much lower impact development when compared to other potential commercial uses that generate noise, traffic, and other demands on Town resources.

Further, a solar project developed at this location will negate the risk of other types of projects being developed on the property that *could* change the character of the area or adversely impact the value of abutting properties. Solar developments, by nature, are low-lying, with the top of the arrays less tall than the average single-story house. Furthermore, the existing topography will not be altered, as the panels will be installed to match the contours of the land. Therefore, the solar development is anticipated to seamlessly fit into the parcel, with a perimeter buffer providing screening from abutters.

- 3. The practical difficulty is not the result of action taken by the petitioner or a prior owner.** This statement is accurate: the lack of public road frontage of Tax Map 21, Lot #3 is not the result of any action taken by the applicant, Acorn, the current landowner, or a prior landowner.

Based on tax maps, this lot has historically lacked public road frontage, and has been accessed

from Roosevelt Trail by the existing gravel road through the existing ROW and easement as described in the response to #1, above.

4. **No other feasible alternative to a variance is available to the petitioner.** This statement is accurate: the proposed alignment (through Tax Map 21, Lot #4B and Tax Map #21 Lot #2B) is the only practical way to provide access to this lot from a public road.
5. **The granting of a variance will not unreasonably adversely affect the natural environment.** This statement is accurate: approval of the requested variance will not adversely affect the natural environment. The proposed alignment generally follows the existing gravel road (within the existing private ROW and easement).

Furthermore, the site was surveyed by a professional wetland scientist, and it was determined that no wetlands, vernal pools, or other waterbodies exist on the site. The surface of the development below and around the panels will feature a native meadow mix to slow and infiltrate stormwater while also providing pollinator habitat.

6. **The property is not located in whole or in part within shoreland areas as described in 30 M.R.S.A. § 435.** This statement is accurate: no part of this property is within Shoreland areas as described in 30 MRSA § 435.
7. **The dimensional standard for which the variance is granted is limited to ordinance provisions relating to lot area, lot coverage, frontage or setback requirements.** This statement is accurate: the only dimensional standard for which the variance is requested is related to public road frontage.