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October 24, 2016

City of Rochester
Zoning Board of Adjustment
31 Wakefield Street
Rochester, NH 03867

**RE: Application of Donald and Bonnie Toy for a Variance to Table 18-A and
Chapter 42.30.C.1**

To: Members of the Zoning Board of Adjustment:

I enclose herewith the Applicants Response to Rochester City Council's Motion
for Rehearing relative to the above-referenced matter.

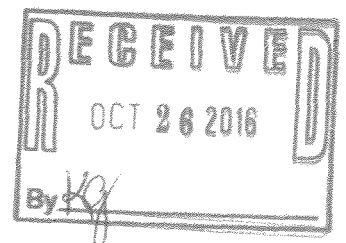
Very truly yours,



Donald F. Whittum

DFW/jmc
Enclosure

cc: Terence O'Rourke, Esq.
Donald and Bonnie Toy



**CITY OF ROCHESTER
ZONING BOARD OF ADJUSTMENT**

RESPONSE TO ROCHESTER CITY COUNCIL'S MOTION FOR REHEARING

The sole issue raised by the Motion for Rehearing is the issue of whether or not the Applicant has established a hardship such as to meet the requirement of RSA 674:33 I (b) (5) which provides as follows:

(5) Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) no fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) the proposed use is a reasonable one.

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

LEGAL ANALYSIS

The provision of the ordinance requiring a variance in this case is the provision which prohibits the expansion of existing mobile home parks. It is not clear how the provision is in furtherance of the stated goals of the Rochester Zoning Ordinance: (1) to encourage the provision of high quality housing for all income levels, (2) to foster economic development and provide opportunity for business growth, (3) to recognize and respect the rights of property and business owners, and (4) to prevent overcrowding of land while at the same time promoting compact development and patterns. It is also unclear how the provision reflects the general purpose of Chapter 43 of the Ordinance to provide healthful, safe, pleasant and attractive residential atmosphere for the occupants of manufactured housing parks "while at the same time being compatible with existing and anticipated future development in the surrounding area."

That having been said we believe that the following establish its unique character and distinguish it from other properties in the area:

1. The parcel is a 22 acre lot, in the agricultural zone, which consists of 74.35 feet of frontage on the Old Dover Road. The lot does not contain the minimum frontage of 150 feet required in the agricultural zone for building or development.



2. The lot, presently vacant, abuts an existing manufactured housing park to the west and Amazon Campground to the north.
3. Amazon Campground presently has a 20' wide water, sewer and storm drain easement which extends northeasterly from Old Dover Road along the westerly border of the lot for the entire length of the property, thereby reducing frontage and developability of the lot.
4. There are intermittent wetlands and uplands on the property which limit its permissible density and developability.
5. The proposed use is a reasonable use given the acreage of the parcel, the small amount of frontage, and the uses made of the abutting properties.

Further, it should be noted that RSA 674:32 specifically provides that "municipalities permitting manufactured housing parks, shall afford realistic opportunities for the development and expansion of manufactured and manufactured housing parks. In order to provide such realistic opportunities, lot size and overall density requirements for manufactured housing parks shall be reasonable."

Because of the limitations posed by the narrow frontage, abutting parks, the water, sewer, and drainage easement, the presence of wetlands and uplands we believe the proposed use of this 22 acre parcel is reasonable and that it meets the uniqueness requirements for a finding of hardship. The land cannot be used for any purpose without a variance from this board and the most reasonable use is to merge it into the abutting lot of the applicant.

Respectfully submitted

DONALD AND BONNIE TOY
By and through their attorney

Dated: October 24th, 2016



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Certificate of Service

I hereby certify that a copy of the foregoing Response has been mailed this date to Terence O'Rourke, Esq., Attorney for City of Rochester City Council.

Donald F. Whittum

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