

FRANCIS X. BRUTON, III  
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OF COUNSEL  
JAMES H. SCHULTE

# Bruton & Berube, PLLC

ATTORNEYS AT LAW

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[www.brutonlaw.com](http://www.brutonlaw.com)

May 4, 2016

**VIA HAND DELIVERED**

Marcia Gasses  
Planner and Land Use Administrator  
Town of Barrington  
Land Use Department  
P.O. Box 660  
333 Calef Hwy  
Barrington, NH 03825

**RE: John and Linda Svenson & Garth and Elizabeth Svenson  
Map 235, Lots 1, 2, & 3  
9 & 19 Christmas Lane, Barrington, NH**

Dear Ms. Gasses:

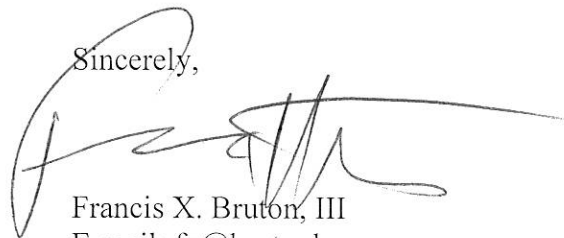
Enclosed please find an original and seven (7) copies of a revised application for variance relative to the above referenced properties together with two (2) full size copies of the associated revised plan set, one (1) letter size copy of the plan set, and four (4) sets of labels for all abutters.

We understand that Ken Berry of Berry Surveying & Engineering has already provided these plans to you electronically.

We also understand that the abutters list previously submitted has already been updated to reflect Mark and Sherry Rowell as the current owners of Map 239, Lot 3, as opposed to Helen K. Lawson Henderson.

We look forward to working with the Town and the Zoning Board of Adjustment regarding this project.

Sincerely,



Francis X. Bruton, III  
E-mail: [fx@brutonlaw.com](mailto:fx@brutonlaw.com)

FXB/mas  
Enclosures

cc: John and Linda Svenson  
Garth and Elizabeth Svenson  
Berry Surveying & Engineering

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- 9. Context or Locus Map (Show Surrounding Zoning Districts)
- 10. Existing Conditions Site Plan or Recorded Subdivision Plan to include well and septic location (may be found at Strafford County Registry of Deeds).
- 11. Existing Conditions Photo Exhibit (*See instruction page for submitting photos*)  
Up to four photos may be shown per 8 1/2" X 11" page size
  - a. Show all existing structures on site
- 12. List of Certified Abutters (Include Applicant and all licensed professionals, i.e., engineer, architect, land surveyor, or soil scientist, whose seals are affixed to the plan, as well as any holder of a conservation or agricultural easement)
- 13. Mailing Labels (4 sets)

**PART II – REQUIRED PLANS AND RELATED DATA**  
*All Graphics and Plans Shall be to Scale and Dimensioned*

- 1. Site Plan - ***Drawn and Stamped by Registered Land Surveyor***
  - a. 24" X 36" – 2 Copies
  - b. 11' X 17" – 6 Copy
  - c. 8 1/2 " X 11" – 1 Copy
- Not Applicable** 2. Elevations: Show all sides of building and indicate building heights
  - a. 24" X 36" – 2 Copies
  - b. 11' X 17" – 6 Copy
  - c. 8 1/2 " X 11" – 1 Copy
- Not Applicable** 3. Floor Plans
  - a. 24" X 36" – 2 Copies
  - b. 11' X 17" – 6 Copy
  - c. 8 1/2 " X 11" – 1 Copy
- 4. All drawings and any revised drawings must be submitted in PDF format
- 5. OTHER: \_\_\_\_\_
- 6. Your Appointment Date and Time for Submitting the Complete Application is:

4/27/2016

Barbara Aruene  
Staff Signature

5/4/2016  
Date

**Land Use Department**  
**Town of Barrington; 137 Ramsdell Lane; Barrington, NH 03825**  
[planner.cbrowders@barrington.nh.gov](mailto:planner.cbrowders@barrington.nh.gov) Phone: 603.664.5798

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PART III – PROJECT DESCRIPTION/VARIANCE DETAILS

Case No. 239-21 235-1,2,3-TC-16-Variance

Project Name John & Linda Svenson and Garth & Elizabeth Svenson and 1962 Real Estate, LLC

Location Address 9 & 19 Christmas Lane and 625 Franklin Pierce Highway, Barrington, NH

Map and Lot Map 235, Lots 1, 2 & 3 and Map 239, Lot 2

Zoning District (Include Overlay District if Applicable) Town Center (TC)

Property Details:

- Single Family Residential
- Multifamily Residential
- Manufactured Housing
- Commercial
- Mixed Use
- Agricultural
- Other

Use: commercial, residential and open space

Number of Buildings: N/A Height: N/A

Setbacks: Front \_\_\_\_\_ Back \_\_\_\_\_ Side \_\_\_\_\_ Side \_\_\_\_\_

Description of Request

Cite the Section of the Zoning Ordinance you are requesting a Variance or Special Exemption for. If this is an Appeal from an Administrative Enforcement Order, Planning Board Decision, or Zoning Board of Adjustment Decision, please attach pertinent documentation:

Article 16.3.2 (2) and Article 16.5.2

Project Narrative: *(Please type and attach a separate sheet of paper)*

See attached.

Barrington Zoning Ordinance Requirements:

See attached.

Request: *(You may type and attach a separate sheet of paper)*

See attached.

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**PART IV – If this is a JUSTIFICATION FOR VARIANCE**

The Zoning Board of Adjustment may not authorize a zoning ordinance variation unless ALL of the following criteria are met. Please provide evidence that the requested Variance complies by addressing the issues below.

1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

**See attached.**

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2. Granting the variance would be consistent with the spirit of the Ordinance.

**See attached.**

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3. Granting the variance will not result in diminution of surrounding property values.

**See attached.**

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4. Granting of the variance would do substantial justice.

**See attached.**

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5. Granting of the variance would not be contrary to the public interest.

**See attached.**

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**PART V – If this is a JUSTIFICATION FOR SPECIAL EXCEPTION**

Please provide evidence that the requested Special Exemption complies by addressing the issues below.

**Not Applicable**

1. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas, or other access ways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or unsightly outdoor storage of equipment, vehicles, or other materials.
- 
- 

2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.
- 
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3. No creation of a traffic safety hazard or substantial traffic congestion will result in the vicinity of the proposed development.



4. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection, and schools.

5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site that would result in the loss of significant habitat or flood control protection.

In addition to the guiding principles specified above, the ZBA may condition the granting of a special exception upon more stringent standards if the Board determines that such conditions are necessary to protect the health and welfare of the town and its residents. Such conditions may include the following and should be addressed in the Narrative:

- 1. Front, side, or rear yards in excess of the minimum requirements of this Ordinance.
- 2. Screening of the premises from the street or adjacent property by walls, fences, or other devices.
- 3. Limitations on the size of buildings and other structures more stringent than minimum or maximum requirements of this Ordinance.
- 4. Limitations on the number of occupants and methods and times of operation.
- 5. Regulation of the design and location of access drives, sidewalks, and other traffic features.
- 6. Location and amount of parking and loading spaces in excess of existing standards.
- 7. Regulation of the number, size, and lighting of signs in excess of existing standards.

<b>John P. Svenson</b> <i>John P. Svenson</i> 5/3/16	<b>Garth Svenson</b> <i>Garth Svenson</i> 5/3/16	<b>1962-Real Estate, LLC</b> <i>[Signature]</i>
<b>Linda Svenson</b> <i>Linda Svenson</i> 5/3/16	<b>Elizabeth Svenson</b> <i>em svenson</i> 5/3/16	<b>By: Holy Rosary Regional Credit Union,</b> <b>Its Duly Authorized Member</b> <b>By: Brian Hughes, President &amp; CEO</b> 5-3-16
Signature of Applicant		Date
<b>John P. Svenson</b> <i>John P. Svenson</i> 5/3/16	<b>Garth Svenson</b> <i>em svenson</i> 5/2/16	<b>1962-Real Estate, LLC</b> <i>[Signature]</i>
<b>Linda Svenson</b> <i>Linda P. Svenson</i> 5/3/16	<b>Elizabeth Svenson</b>	<b>By: Holy Rosary Regional Credit Union,</b> <b>Its Duly Authorized Member</b> <b>By: Brian Hughes, President &amp; CEO</b> 5-3-16
Signature of Owner		Date

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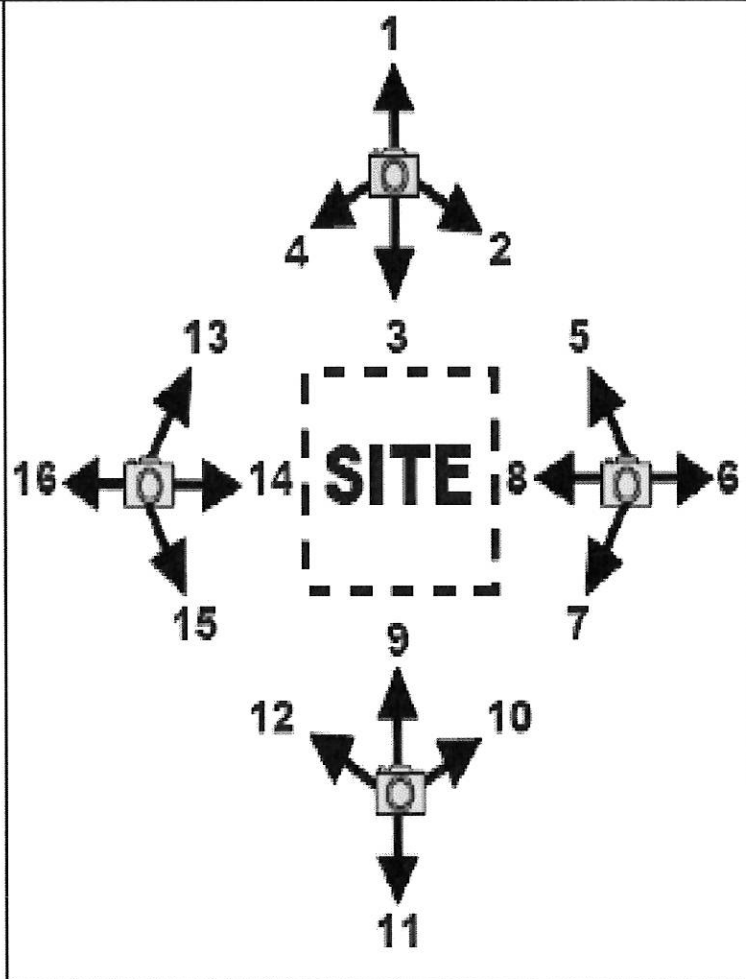
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## SITE / CONTEXT PHOTOS

Using Guidelines Below

Provide color photographs showing the site and surrounding buildings/properties in order to provide staff, boards and commissions with a visual impression of the current site conditions.

1. Photos are to be taken looking toward the site and adjacent to the site.
2. Photos should show adjacent improvements and existing on-site conditions.
3. Number the photographs according to view.



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**John & Linda Svenson  
9 Christmas Lane  
Map 235, Lot 1 & lot 3**

**Garth & Elizabeth Svenson  
19 Christmas Lane  
Map 235, Lot 2**

**1962 Real Estate, LLC  
40 Wakefield Street  
Rochester, NH 03866**

## **APPLICATION FOR VARIANCES**

### **Introduction**

The property subject to this application is depicted on the Town of Barrington tax maps at Map 235, Lots 1, 2, & 3 and Map 239, Lot 2. Lot 1 & 3 on Map 235 are owned by John and Linda Svenson. Lot 2 on Map 235 is owned by Garth & Elizabeth Svenson. Lot 2 of Map 239 is owned by 1962 Real Estate, LLC. The plan of development includes adjusting certain lot lines amongst the lots, with approximately 2.1 acres being transferred from Map 235, Lot 2 to Map 235, Lots 1 & 3. Also, a portion of land will be added from Map 235, Lot 1 to Map 239, Lot 2, with a certain portion of land added from Map 239, Lot 2 to Map 235, Lot 1, as depicted on the enclosed plans. Thus, although the owners of Lot 2 are referenced herein as Applicants, the development plan, after the referenced lot line adjustment, will relate to only the adjusted Map 235, Lot 1 & 2 and Map 239, Lot 2. Reference to the “**Property**” herein shall mean reference to the adjusted Map 235, Lots 1 & 3 and Map 239, Lot 2. Please note that the lot lines set forth on the plans submitted herein contain conceptual measurements, as the plans are not yet subject to a formal survey. To the extent the variances requested herein are granted, the ratios discussed herein are approximate and may be changed to a small degree upon survey.

The Property will be comprised of approximately 37.50 acres. To the extent the variances set forth herein are granted, the Property will be subject to certain lot line adjustments for the commercial lots, and then Map 235, Lots 1 & 2 will be consolidated and subdivided into a commercial subdivision and subsequent resident subdivision with all of the lots configured in accordance with the Conceptual PUD plan submitted herein.

The Property is located in the Town Center (TC) zoning district. Pursuant to Article 3.3.6 of the Barrington Zoning Ordinance, certain non-residential uses are permitted as a matter of right if designed in accordance with the Table of Dimensional Requirements. Thus, to the extent the Applicants desire to locate only non-residential uses on the Property, the Property may be subdivided in accordance with the plan entitled, “Commercial Conceptual Subdivision Detail.” The Applicants have repeatedly been advised by real estate professional and developers that the creation of what would amount to an industrial park is unsuited for the location and non-marketable. The other alternative is to provide for residential uses pursuant to the Planned Unit Development (PUD) regulations set forth in Article 16 of the Barrington Zoning Ordinance.

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Article 16 of the Barrington Zoning Ordinance regulates PUDs. The purpose of a PUD is to offer an alternative approach that provides a neighborhood environment. The standards are intended to provide the Town with a flexible alternative that facilitate high quality design and encourage a mixed use of land, where developers can also provide land for civic and open spaces.

Based upon Article 16.3.2 of the Barrington Zoning Ordinance, which utilized a net density calculation of residential density, the 37.5 acres that comprise the Property would yield 10 house lots. The specific calculation requires first, that only 25% of the total land be allowed for residential use, resulting in 9.38 acres [37.5 acres X 0.25 = 9.38 acres]. Further, the number of permitted residential house lots is 10 [(43,560 X 8.69 Acres = 408,375)/ 40,000 = 10.21]. When calculating this net density, the regulations specify a denominator of 40,000 sq. ft. per lot; however, pursuant to Article 16.3.2 (2), the regulations also permit a minimum residential house lot of 10,000 sq. ft. the Applicant proposes to use a minimum lot size of approximately 16,250 sq. ft., and that this lot size be used to calculate net density. If so permitted, the net density of the project would permit 25 house lots within the roughly 37 acres. It is believed that in order to foster the goals of the Town Center concept, there must be more than 10 permissible residential lots, and that given the size of the parcel and its location away from NH Route 125 (Calef highway), that locating 25 residential lots within the roughly 37 acres is in line with the intent behind the Town Center concept, and is reasonable. Thus, the first variance is a request for relief from Article 16.3.2 (2) to permit the net density for a single family dwelling to be based upon 16,250 sq. ft., rather than 40,000 sq. ft.

Article 16.5.2 of the Barrington Zoning Ordinance requires that the commercial component of a PUD be at least fifty (50%) of the total development tract. The Applicants' development plan provides for a commercial component of approximately 26.5%<sup>1</sup> At the same time, and in order to promote the concept of civic / open space use within the development plan, and based upon the unique characteristics of the parcels and its location from NH Route 125, the Applicants have provided for a civic / open space component of approximately 42.1%, where 10% is required. In this instance, the Applicants have provided for a commercial component in the areas closest to Route 9 and Route 125. In addition, the Applicant has provided open space through the proposed development plan. Part of the open space has been designated as a "Proposed Playground Area" that will be dedicated to use by the Town should it desire to construct a public (civic) playground. In addition, the plan will provide for public trails. Part of the plan will include a deed restriction on land currently owned by an Applicant (depicted as parcel C4) to provide that the parcel shall only be used for commercial purposes upon any sale of the parcel. Thus, the second variance is a request for relief from Article 16.5.2 to permit the commercial component of the PUD development plan to be 26.5% of the total development tract.

For the reasons set forth herein, the Applicants respectfully submit that the grant of the variances is reasonable and can be supported by the following evidence:

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<sup>1</sup> Part of the plan will include a deed restriction on land currently owned by an Applicant (depicted as parcel C4) to provide that the parcel shall only be used for commercial purposes upon any sale of the parcel.

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## Variance Requirements:

### **1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.**

As one can see from the enclosed plans, the Property is unique in this case as, although it is located in the Town Center District, the land is off-set from NH Route 125, without direct access to Route 125. Most of the property zoned Town Center is located along NH Route 125, with access to the road, or is comprised of wider and larger parcels of land. The net density calculation only allows for 10 house lots and limited commercial lots that could be utilized. As a result, however, the open and civic space far exceeds the 10% requirement. In addition, the Property is narrow enough that the proposed commercial uses are limited if they are to be located adjacent to NH Route 9 for access to customers and Barrington residents. The general purpose of the ordinance is to promote orderly development and to protect the health, safety and general welfare of the public.

The general purpose of the Town Center District is to provide for a mixed use of commercial, residential and civic/open space. The Applicants' development plan is an example of such a mixed use concept, given the constraints upon the land as described above. In this instance, the Applicant seeks to locate a single-family residence in the area that is also suitable, per the purposes of the specific zone, for two-family and multifamily dwellings. As such, the purpose of the ordinance and the purposes of the specific restrictions as to net density for the residential lots and as to the required commercial component will be preserved given the design set forth in the Applicants' development plan. Thus, the Applicants respectfully submit that there is no relationship between the general public purpose of the ordinance, and the specific application of the net density requirement and required commercial component, given the proposed uses submitted by the Applicants.

The proposed use is reasonable as it provides for the location of more than ten (10) single-family residences within the Property and provides for as much of a commercial component as is possible given the location and constraints of the Property, while providing an abundant amount of open/civic space within the Property, making the use reasonable considering the special conditions of the property.

### **2. Granting the variance would be consistent with the spirit of the Ordinance.**

The Applicant respectfully submits that if the variances are granted, the spirit of the ordinance would be observed as the use in question is suitable, considering configuration of the lot and the location of the property to NH Route 125. The spirit of the zone is to foster a mixed use of residential, commercial, civic and open space. Given the constraints of the property, the Applicants have<sup>78</sup> proposed the only reasonable plan that can accomplish the mixed use goal, and provide a vibrant area within the Town, all consistent with the intent of the Town Center zone.

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To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance, such that it violates the ordinance's basic zoning objectives. It is respectfully submitted, that given the reasons set forth above, the granting of the variances will promote the ordinance's basic zoning objectives as envisioned by the Town Center District.

**3. Granting the variances will not result in diminution of surrounding property values.**

It is respectfully submitted that all of the surrounding properties have a value associated with them that is premised upon the existence of the same type of structure to be located upon the Applicants' property. In this instance, the location of the commercial uses along or near NH Route 9, with a mix of residential and civic uses further away from NH Route 9 will have no negative affect upon any abutter with respect to its property, as the use will be consistent with other uses in the near vicinity, and consistent with the intent of the existing zoning.

**4. Granting the variances will do substantial justice.**

The grant of the variances would due substantial justice as it would allow the Applicants' property to be utilized in a similar fashion to other properties located within the area, by allowing the location of commercial used adjacent to NH Route 9, while providing a cluster of residential uses, where such use exceeds the required minimum lot size of 10,000 sq. ft. by approximately 50% or more (lot sizes will range from approximately 15,000 sq. ft. to 17,000 sq. ft.

This test considers whether the benefit to the Applicants outweighs the burden to the public. In this instance, given the proposed development plan, there will be no burden to the public whatsoever. Accordingly, the benefit to the Applicants would exceed the burden to the public, thus resulting in substantial justice being done.

**5. Granting of the variance would not be contrary to the public interest.**

The Applicant respectfully submits that the proposed use represents a reasonable use of the Property in question. By permitting the use, the public interest is served by permitting orderly development in an area where such development has already occurred. In this instance, the Property is unique in terms of its location, and lack of proximity to NH Route 125. It is understood that the basic intent of the Town Center zoning is to create a mixed use of commercial and residential uses. In the first instance, the net density calculation allows for only 10 houses within approximately 37 acres. This limited amount of housing will not create the desired effect of having residential uses co-mingle with commercial and civic uses. In order for the Applicants to design a project that represents a PUD, more residential units are required. In addition, the location of the single-family residence as depicted on the Plan represents a context sensitive design considering the sounding properties within the area. Given the shape and location of the Property, and given the surrounding commercial properties located adjacent to the Property, the Applicants submit that requiring 50% commercial use within the Property will not

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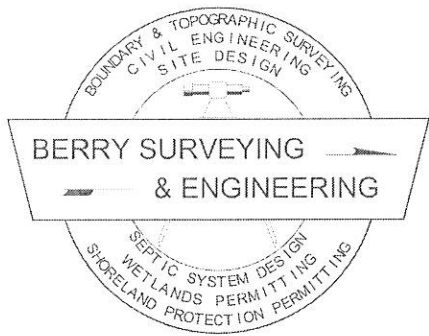
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accommodate the desired residential or civic/open space uses that are provided in the Applicants' proposal. As such, the proposed use will not be contrary to the public interest, as the use will not "alter the essential character of the locality." Granting the variance will permit the use of the lot as intended and consistent with the purposes of the Town Center zone.

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## **BERRY SURVEYING & ENGINEERING**

335 Second Crown Point Road

Barrington, NH 03825

Phone: (603) 332-2863

Fax: (603) 335-4623

[www.BerrySurveying.Com](http://www.BerrySurveying.Com)

April 21, 2016

### **Abutters List**

#### **Owners of Record**

##### **Tax Map 235, Lot 001**

John & Linda Svenson  
PO Box 10  
Barrington, NH 03825

##### **Tax Map 235, Lot 002**

Garth & Elizabeth Svenson  
PO Box 10  
Barrington, NH 03825  
*Book 3366, Page 451*

##### **Tax Map 235, Lot 003**

John & Linda Svenson  
PO Box 10  
Barrington, NH 03825

##### **Tax Map 239, Lot 002**

1962 Real Estate LLC  
40 Wakefield St.  
Rochester, NH 03866  
*Book 4266, Page 115*

#### **Abutters**

##### **Tax Map 234, Lots 057**

Marla L & Mark J Lemos  
Marla L Lemos Rev Tr  
1164 Ocean Blvd  
Rye, NH 03870  
*Book 4218, Page 912*

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**Tax Map 235, Lot 004**

Kimberly Boyer  
PO Box 387  
Barrington, NH 03825-0387

**Tax Map 235, Lot 005**

Barrington Pines LLC  
PO Box 60  
Ctr Strafford, NH 03815

**Tax Map 235, Lot 006**

CANUSA Properties LLC  
428 Calef Hwy  
Barrington, NH 03825  
*Book 2695, Page 546*

**Tax Map 235, Lot 007**

Frisbie Foundation  
11 Whitehall Rd  
Rochester, NH 03867

**Tax Map 235, Lot 008**

Barrington Pines LLC  
PO Box 60  
Ctr Strafford, NH 03815

**Tax Map 235, Lot 009**

Barrington Pines LLC  
PO Box 60  
Ctr Strafford, NH 03815

**Tax Map 235, Lot 010**

Barrington Pines  
PO Box 60  
Ctr Strafford, NH 03815



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**BERRY SURVEYING & ENGINEERING**  
335 Second Crown Pt. Rd., Barrington, NH 03825  
(603) 332-2863 / (603) 335-4623 FAX  
[www.BerrySurveying.Com](http://www.BerrySurveying.Com)

**Tax Map 235, Lot 011**

Eric M Stevenson  
7 Prescott Ln  
Hampton Falls, NH 03844  
*Book 4103, Page 666*

**Tax Map 235, Lot 012**

AIDA LLC  
11 Whitehorse Dr  
Rye, NH 03870  
*Book 3235, Page 283*

**Tax Map 238, Lot 001**

Bernard F & Susan D Bennett  
611 Franklin Pierce Hwy  
Barrington, NH 03825  
*Book 3954, Page 119*

**Tax Map 238, Lot 002**

Cobb-Horton Ent Inc  
Melinda Morgan  
5 Nute Rd  
Dover, NH 03820  
*Book 4087, Page 979*

**Tax Map 238, Lot 003**

Linda L C Svenson  
PO Box 10  
Barrington, NH 03825  
*Book 4022, Page 576*

**Tax Map 238, Lot 051**

614 FPH Real Estate LLC  
PO Box 57  
Barrington, NH 03825  
*Book 4255, Page 396*

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335 Second Crown Pt. Rd., Barrington, NH 03825  
(603) 332-2863 / (603) 335-4623 FAX  
[www.BerrySurveying.Com](http://www.BerrySurveying.Com)

**Tax Map 239, Lot 001**

Peter & Sarah Ward  
643 Franklin Pierce Hwy  
Barrington, NH 03825-3826

**Tax Map 239, Lot 001-001**

David & Glenda Henderson  
Und Int Liv Rev Tr ½  
1273 Winged Foot Ln  
Denver, NC 28037-6520

**Tax Map 239, Lot 003**

Mark K. and Sherry B. Rowell  
624 Franklin Pierce Highway  
Barrington, NH 03825

**Tax Map 239, Lot 004**

Joshua R Dijoseph  
Jessica Sutton  
17 Belle Ln  
Lee, NH 03861  
*Book 3366, Page 305*

**Tax Map 239, Lot 007**

Town Center Properties  
270 Gulf Rd  
Dover, NH 03820

**Professionals**

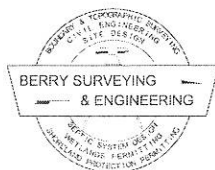
Kenneth A. Berry PE LLS  
Christopher R. Berry, Project Manager  
Berry Surveying & Engineering  
335 Second Crown Point Road  
Barrington, NH 03825

Francis X. Bruton, III, Esquire  
Bruton & Berube, PLLC  
798 Central Ave  
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