



# Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

Office of Community Planning and Development

**To:** Simsbury Zoning Board of Appeals

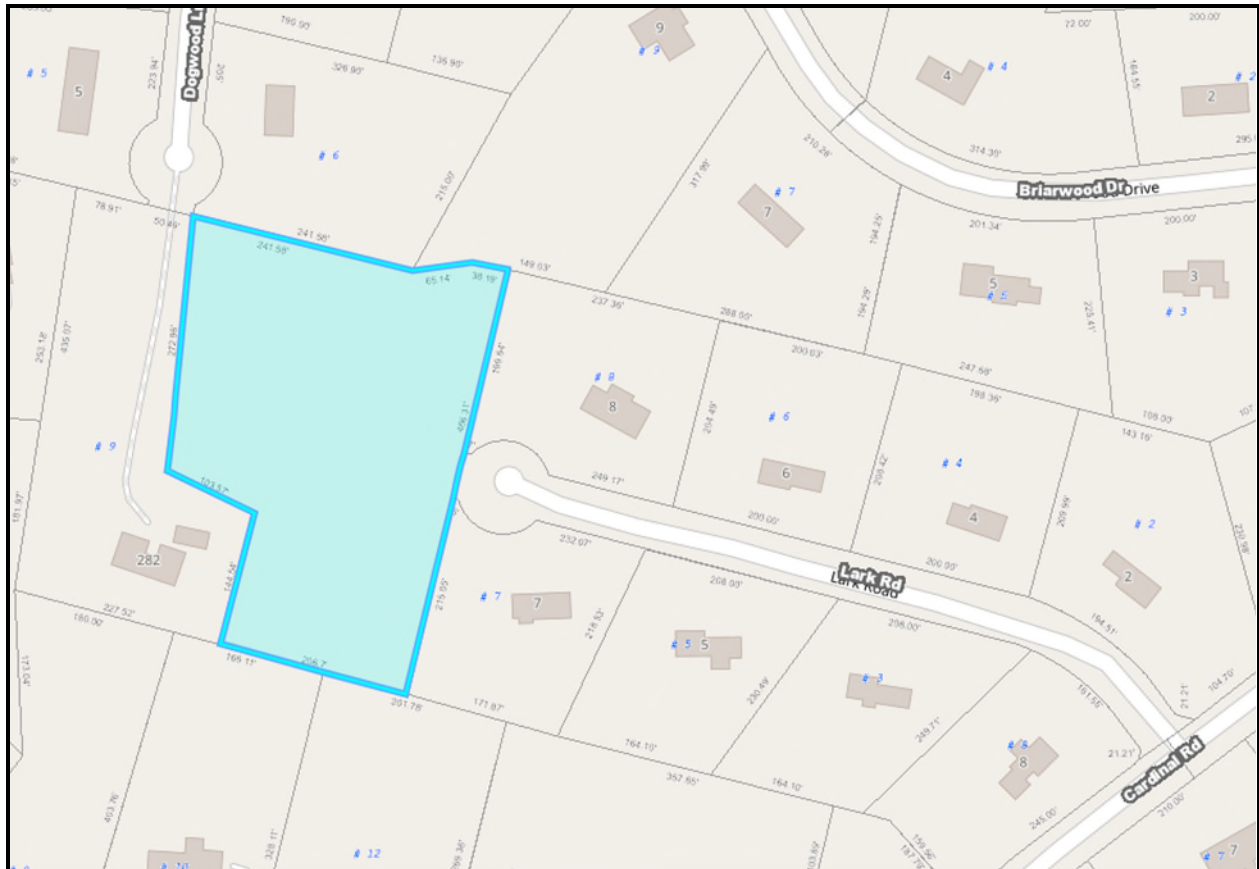
**From:** George K. McGregor, AICP, Planning & Community Development Director

**Date:** May 22, 2024

**RE: Application ZBA #24-03** of Timothy Martin Applicant/Owner; for a variance from Section 3.9 of the Simsbury Zoning Regulations to reduce the required lot frontage by  $\pm 150'$  from 200' to 50', associated with the construction of a single-family home on the undeveloped lot at the end of Lark Road sometimes referred to as 0 Lark Road (Assessor's Map D03 Block 208 Lot 003A) Unique ID 31022401, Simsbury, CT 06070, zone R-40.

## Summary of Request:

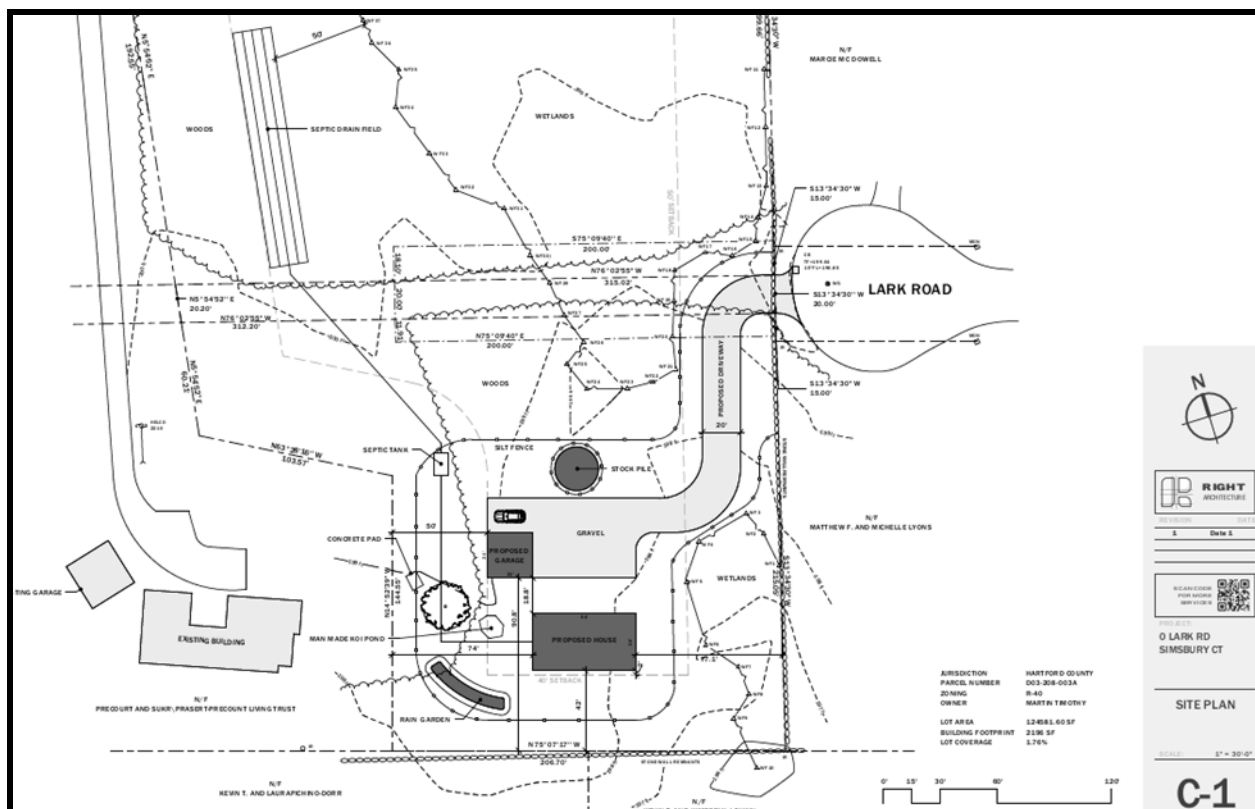
The Applicant is the owner of a 2.861-acre parcel located at the terminus of Lark Rd. in Simsbury, Connecticut. Lark Rd. extends approximately 802 linear feet from Cardinal Rd. and hosts eight single-family lots constructed circa 1967<sup>1</sup>. The Applicant's parcel lies at westernmost point of Lark Rd. which terminates as a cul-de-sac at the Applicant's property:



<sup>1</sup> Construction dates derived from Town Property Cards

The physical cul-de-sac does not extend to the Applicant's property but it appears that the Town right-of-way extends to the property line with a frontage length of fifty (50) feet. The property is zoned R-40 (Residential). According to Section 3.9 (Dimensional Requirements) of the Town Zoning Regulations, the minimum frontage requirement for this zone is two-hundred (200) feet on an approved public street. Thus, the Applicant has requested a one-hundred-fifty (150) foot variance from this dimensional requirement.

The Applicant describes in the Zoning Board of Appeals application form the specific hardship justifying the request: "Without the variance I am unable to use the property in its prescribed use as a single-family home site".<sup>2</sup> The Applicant has provided a site layout (undated; received by Town Staff via email on 5/2/24) for the proposed single-family home:



## Background

Mr. Martin and Dauntless Construction, LLC originally acquired a 4.58 parcel in 2011<sup>3</sup>. The parcel formerly known as 9 Dogwood Lane and identifiable in Town Clerk records as far back as 1900, contained a single-family home with access to Dogwood Lane. In 2012, Dauntless recorded a free-split with the Town Clerk's Office, creating a Parcel A (1.72 acres with house) and a new Parcel B (2.86 acres), the subject of this variance application. This map recordation is known as #3976 in the Town Clerk records<sup>4</sup>. The free-split was recorded with the Simsbury Town Clerk on February 24, 2012 without demonstrating the required frontage<sup>5</sup>.

In early 2015, after acquiring the Parcel B from Dauntless LLC, Mr. Martin accelerated his plan to construct a home on the property. Staff informed the Applicant at the time that there were zoning issues

<sup>2</sup> Zoning Board of Appeals Application Form dated 4/20/24 (stamped received April 23, 2024)

<sup>3</sup> Mr. Martin was the only member of Dauntless Construction, LLC, see quitclaim deed/deed book 884 page 29

<sup>4</sup> Map 3976 is attached to the Staff Report

<sup>5</sup> A Staff letter in September 2011 raised this issue with the Applicant

and potential environmental issues on site (there are wetlands present)<sup>6</sup>. Staff concluded that it could not sign a zoning permit for a new home due to the failure of the Parcel B lot to meet minimum frontage requirements.

On or about April 1, 2015 Mr. Martin filed an appeal of the Zoning Administrator's decision to deny a zoning permit for the single-family home. On or about August 4, 2015, Mr. Martin filed a variance request for a one-hundred fifty (150) foot variance from the required two-hundred (200) foot minimum frontage requirement. The Zoning Board of Appeals upheld the position of Town Staff in the former (May 22, 2015); the ZBA failed to approved the Applicant's variance in the latter (August 26, 2015).

The Applicant appealed the variance decision by the ZBA to State Superior Court where the Court upheld the ZBA's decision.

### **Other Items**

The Applicant is not prohibited from filing a new Zoning Board of Appeals variance request. Mr. Martin has a right to file a new variance application and is due a fundamentally fair process. Although Staff decided it necessary by way of background and relevant facts to detail the property's history, the ZBA should review the application as it would any other and apply the variance Criteria found in Section 16.C of the Zoning Regulations.

In the event a variance is granted:

There are wetlands on the property, as shown on the site plan submission from the Applicant. A wetland permit from the Inland Wetlands Agency will be required prior to the issuance of any building permit, if applicable.

Approval from the Farmington Valley Health District for the septic and drain field will also be required prior to the issuance of a building permit.

There may be other permits required not contemplated in this report.

### **Criteria for Variance Review:**

Pursuant to Section 16.C, Variances, a variance from the terms of these regulations shall not be granted by the Board of Appeals unless and until the Board shall make a written finding in its minutes as to all of the following:

- Criterion 1.* That special conditions and circumstances exist that are peculiar to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the area;
- Criterion 2.* That these special circumstances relate to the condition of the land or parcel;
- Criterion 3.* That the special conditions and circumstances are not related to the circumstances of the applicant and have not resulted from the actions of the applicant or the predecessor in title;
- Criterion 4.* That the special circumstances constitute an exceptional difficulty or unusual hardship not of the applicant's making and are not solely a financial detriment;
- Criterion 5.* That literal interpretation of the provisions of these Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district;

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<sup>6</sup> Staff Member Correspondence March 4 and April 6, 2015

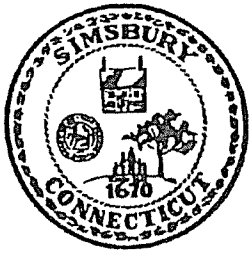
- Criterion 6.* That granting the variance requested will not confer upon the applicant any special privilege or use that is denied by these Regulations to other lands, structures, or buildings in the same district:
- Criterion 7.* That these circumstances justify the granting of the variance;
- Criterion 8.* That the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building, or structure; and
- Criterion 9.* That the granting of the variance will be in harmony with the general purpose and intent of these Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

### **DRAFT Motion(s)**

Draft Motions will be provided separately to the Board.

### **Attachments**

1. Letter to Tim Martin from Staff Member Howard Beach, September 23, 2011
2. Letter to Tim Martin from Staff Member Glidden, March 4, 2015
3. Letter to Tim Martin from Staff Member Glidden, April 6, 2015
4. Recorded Free-Split Map #3976, dated January 12, 2012, recorded February 24, 2012.
5. Quitclaim Deed to Parcel B Notarized February 26, 2015.



# Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

*Howard Beach*

*Conservation / Inland Wetlands    Zoning Compliance Officer    Planning Analyst*

September 23, 2011

Tom Martin  
1609 Hopmeadow Street  
Simsbury, Ct. 06070


Dear Tom:

I have reviewed the deeds you presented with reference to the property at 9 Dogwood Lane in Simsbury. The deeds indicate that the property today is the same size and configuration as it was in 1941. The Town of Simsbury adopted Subdivision Regulations in 1946 which were modified and re-approved in March of 1954. Since the lot at 9 Dogwood Lane has not been subdivided since the inception of Subdivision Regulations, it is entitled to one "free split".

The fact that the property is eligible for a free split does not however qualify the newly created parcel as a building lot. The meet that requirement you will have to meet the following requirements:

1. A map must be filed with the Town Clerk showing the proposed lot configuration.
2. The new lot must have the required 200-feet of frontage on an "approved road".
3. The new lot must be at least 40,000square feet in size
4. The Farmington Valley Health District will have to verify that the site can provide proper septic capacity for a single family home, an capacity for a well, unless you obtain permission from Aquarion Water Company to tie into their water line across your property.
5. A letter from the Water Pollution Control Authority will be required releasing you from the requirement of connecting to the sewer system, as this property is within the sewer service district.

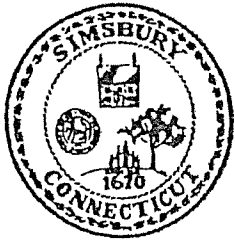
Should you have any questions, please feel free to contact me at (860) 658-3240, or by e-mail at [hbeach@simsbury-ct.gov](mailto:hbeach@simsbury-ct.gov) .

Sincerely,  
  
Howard Beach  
Zoning Compliance Officer

Telephone (860) 658-3240  
Facsimile (860) 658-3205

[www.simsbury-ct.gov](http://www.simsbury-ct.gov)

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8:30 - 4:30 Tuesday through Friday



# Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

**Certified Mail # 7013 2250 001 6452**

March 4, 2015

Dauntless Construction  
Attn: Tim Martin  
9 Dogwood Lane  
Simsbury, Connecticut 06070

Re: Application for residence off Lark Road

Dear Mr. Martin:

My office received your building permit application for the construction of a new single family residence. I am writing to inform you that the application cannot be approved at this time. I have outlined my concerns below.

## Zoning

I have reviewed a division plan aka Map Number 3976 filed on the Land Records for the Town of Simsbury. After carefully reviewing the map, it appears that proposed lot does not meet frontage requirements for the zoning district. Your property is located within a R-40 zoning district and the required frontage along a public road is 200 feet in said district. It is unclear whether the portion of the lot closest to Lark Road has any frontage greater than 50 feet (see attached copy). You cannot create a substandard lot. In order to develop the "parcel", you need to bring it into compliance with the Zoning Regulations.

I would recommend you review Article 7 C 8 and see whether the lot could be developed under the rear lot provision (see attached copy). Please carefully review, if the lot qualifies as a rear lot, a special exception will be required to legalize the division and potential development.

After the lot is brought into compliance with design standards for the zoning district, the legal description for the property needs to be updated. The legal description needs to reflect any division or changes that occur, the current description does not.

## Wetlands

The Town of Simsbury Inland Wetland and Watercourse Official Map do not depict inland wetland soils present within the subject parcel. However state soil mapping and test pit data (dated 4/29/2013), indicate that inland wetland soils are present (see attached correspondence). According to the Town of Simsbury Inland Wetland and Watercourse Regulations Section 2, said portions of the parcel would be considered "Regulated Area":

*"Any Wetland as defined in these regulations and as shown on the "Official Inland Wetlands and Watercourse Map for the Town of Simsbury, Ct" it should be noted that some wetland boundaries may vary from the official or may not have been depicted. In such cases, the actual character of the soils determines whether the area is subject to the regulations. See Section 11 for boundary disputes.*

This means development activities require approval by the Conservation Commission. In order to apply for an approval, I would recommend that a soil scientist investigate the soils of the parcel and delineate the extent of inland wetland soils. After which, your site plan will need to be updated to reflect the extent of inland wetland soils present as it relates to the proximity of any development.

If you feel that your property is not subject to the definition of "Regulated Activity", please review Section 11 of the Inland Wetland and Watercourse Regulations as it relates to boundary disputes. A soil scientist should document the dispute and certify that the area of development does not fall within the Conservation Commission's jurisdiction.

## Site Development Details

I am concerned with the grading plan. The plans fail to provide first floor elevation for the proposed home. The plan illustrates, upwards of 3.5 ft of fill being imported to accommodate the construction. This extent of filling and grading has potential to alter existing drainage patterns. This was brought to your attention in 2014 (see attached correspondence). I would ask that your engineer look into ways to lessen the grading and potential for drainage problems from this development.

The site plan indicates that a rain garden will be constructed adjacent to the driveway. Additional details concerning the feature's construction and intended sizing need to be provided. Will this area be planted? If so please provide detail concerning quantities and species of proposed plantings.

A survey class A2 accuracy is required as part of the site plan submission. The plan submitted is not a survey drawn by a licensed surveyor. You are required to provide a survey certifying that proposed residence's location will conform to zoning setbacks.

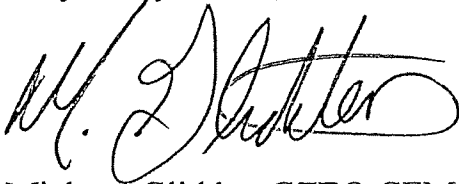
Finally, any professional drawings submitted need to have a live signature and seal from the professional whom prepared the document. I cannot accept copies. Please provide original drawings with submission.

As a side note, I observed that you are actively marketing the "parcel" off Lark Road for sale. The marketing of a lot for sale which was created without the benefit of approval by the Town is considered to be a violation of 8-25 of Connecticut General State Statutes. A violation of this statute subjects any person, firm, or corporation of a fine of \$500.00 per lot advertised. I request that you discontinue marketing this lot for sale until such time that issues relating to legality are resolved.

Please contact me within thirty (30) days of issuance of this correspondence with a plan for compliance. I can be reached either at (860) 658 3252 or [mglidden@simsbury-ct.gov](mailto:mglidden@simsbury-ct.gov). After thirty (30) days, the application will be denied if you fail to provide a plan for compliance.

Thank you for your cooperation in this matter.

Very Truly Yours,

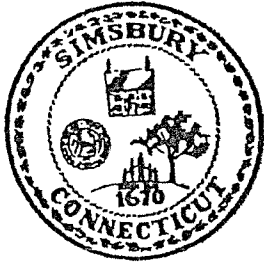


Michael Glidden CZEO CFM  
Code Compliance Officer

cc: Lisa Heavner, First Selectman  
Thomas Cooke, Director of Administrative Services  
Hiram Peck AICP, Director of Planning  
Bob DeCrescenzo Esq. Town Attorney  
Henry Miga, Building Official  
Jeff Shea, Town Engineer  
Subject File

Note: Appeals to reverse any order, requirement, or decision of the official charged with the enforcement of the Simsbury Zoning Regulations must be taken within 30 days after said ruling was officially issued. Forms to file an appeal can be picked up at the office of the Simsbury Land Use Department. Failure to file an appeal may result in the waiver of certain defenses should the Town of Simsbury pursue a civil action in Superior Court.





# Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

Office of Community Planning and Development

**Certified Mail # 7013 2250 0001 6452 0840**

April 6, 2015

Dauntless Construction  
Attn: Tim Martin  
9 Dogwood Lane  
Simsbury, Connecticut 06070

Re: Application for Residential Construction off Lark Road

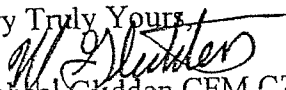
Dear Mr. Martin:

On March 4, 2015, I reviewed your application for a zoning permit and issued a written letter of review (see attached correspondence dated 3/4/2015). The review letter outlined several issues which needed to be resolved for issuance of zoning compliance. I requested that the items be addressed within thirty (30) days of issuance of the review letter. To date, my office has not received sufficient documentation to determine zoning compliance. Thus they have not been adequately addressed.

I am writing you to inform you that zoning compliance cannot be granted for the requested permit at this time. Therefore your application is hereby denied. Please consider this letter to serve as a formal notice of denial.

Please contact me if you have any questions or concerns regarding this matter. I can be reached at (860) 658 3252 or [mglidden@simsbury-ct.gov](mailto:mglidden@simsbury-ct.gov). Thank you for your cooperation in this matter.

Very Truly Yours,

  
Michael Glidden CFM CZEO  
Code Compliance Officer

Cc: Hiram Peck AICP, Director of Planning  
Lisa Heavner, First Selectman  
Bob DeCrescenzo Esq. Town Attorney  
Henry Miga, Building Official  
Thomas Cooke, Director of Administrative Services  
Subject File

Note: Appeals to reverse any order, requirement, or decision of the official charged with the enforcement of the Simsbury Zoning Regulations must be taken within **30 days** after such ruling was officially issued. Forms to make an appeal can be picked up at the Simsbury Land Use Department. Failure to file an appeal may result in the waiver of certain defenses should the Town of Simsbury pursue a civil action in Superior Court.

Telephone (860) 658-3245  
Facsimile (860) 658-3205

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8:30 - 1:00 Friday



THIS PLAN IS SUBJECT TO THE RECORDING ACT AND THE RECORDING ACT IS SUBJECT TO THE RECORDING ACT. THE RECORDING ACT IS SUBJECT TO THE RECORDING ACT. THE RECORDING ACT IS SUBJECT TO THE RECORDING ACT.

STEPHEN S. COTTON, L.L.C.  
 DATE: 11/1/12  
 License No. 17243



- 1/1) BROWN/WHITE PLAIN (UNDEVELOPED) WATER - SMOOKY CREEK - SHEET 1-108 - JAN 1951, REV. FEB 25 1960 - UNIVERSITY OF CONN. 6  
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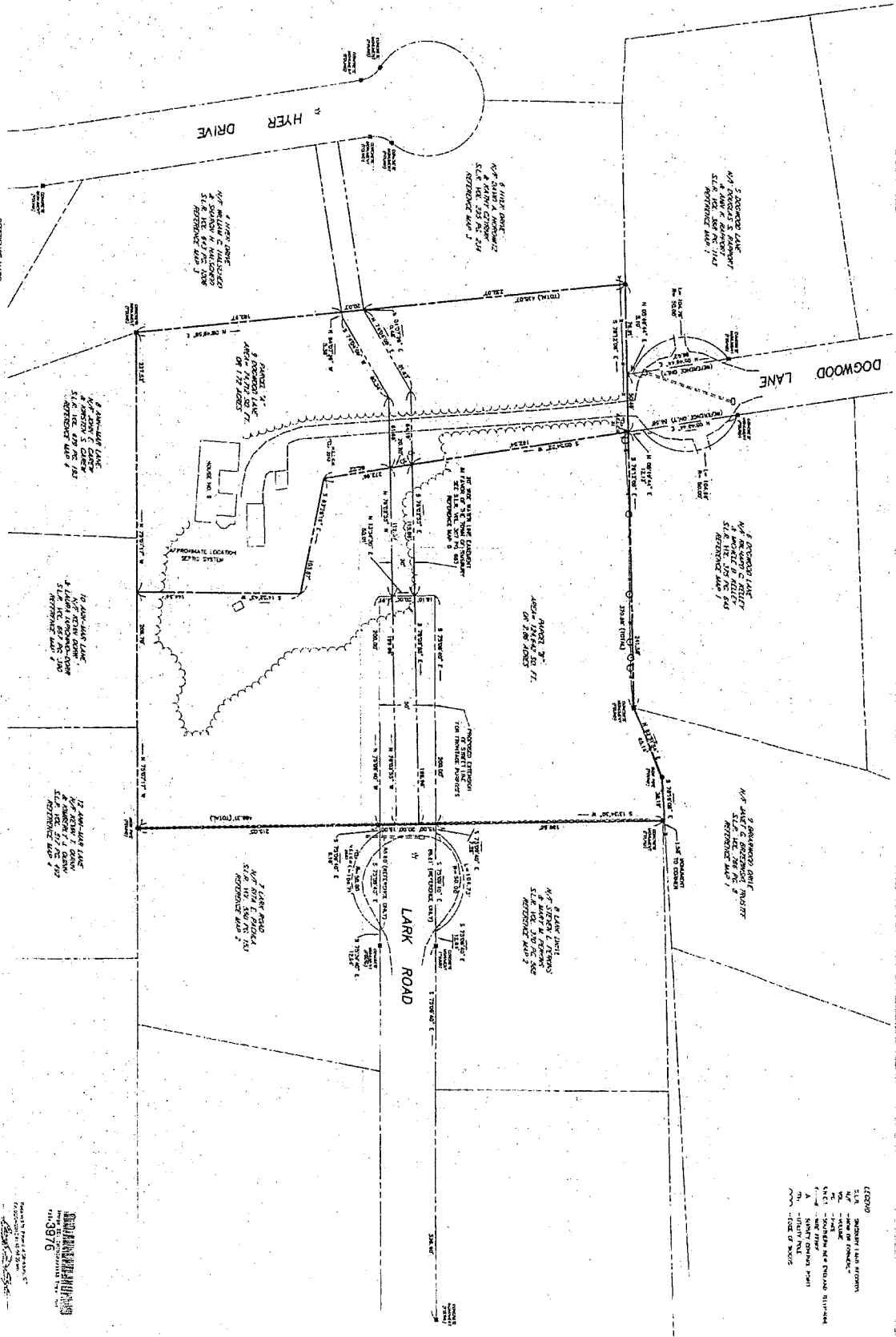


DIVISION PLAN  
 PREPARED FOR  
 TIM MARTIN  
 9 DOGWOOD LANE  
 SUDBURY ~ CONNECTICUT  
 ZONE R-40

HENRY C. COTTON & ASSOCIATES LAND SURVEYORS & CONSULTANTS 140 NORTH DAVENPORT ROAD SUDBURY, CONNECTICUT 06353	
DATE: 11/1/12	DATE: JANUARY 14, 2013
ORDERED BY: S.S.C.	DATE: 11/1/12
SCALE: AS SHOWN	DATE: 11/1/12

3976

11/1/12



**Prepared By:**

Timothy Martin  
9 Dogwood Ln  
Simsbury, Connecticut 06070



Doc ID: 001783110003 Type: LAN

BK **884** PG **29-31**

**After Recording Return To:**

Timothy Martin  
9 Dogwood Ln  
Simsbury, Connecticut 06070

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**QUITCLAIM DEED**

On February 24, 2015 THE GRANTOR(S),

- Dauntless Construction LLC, Timothy Martin, Sole Member,

for and in consideration of: One Dollar (\$1.00) and/or other good and valuable consideration conveys, releases and quitclaims to the GRANTEE(S):

- Timothy Martin, a single person, residing at 9 Dogwood Ln, Simsbury, Hartford County, Connecticut 06070

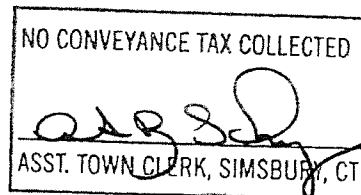
the following described real estate, situated in Simsbury, in the County of Hartford, State of Connecticut:

Legal Description: SEE ATTACHED LEGAL DESCRIPTION

Grantor does hereby convey, release and quitclaim all of the Grantor's rights, title, and interest in and to the above described property and premises to the Grantee(s), and to the Grantee(s) heirs and assigns forever, so that neither Grantor(s) nor Grantor's heirs, legal representatives or assigns shall have, claim or demand any right or title to the property, premises, or appurtenances, or any part thereof.

This is a transfer between LLC and its member

Tax Parcel Number: D03208003A



Book: 884 Page: 29 Seq: 1

**Grantor Signatures:**

DATED: 2/26/2015

[Handwritten Signature]

Timothy Martin, Sole Member, on behalf of Dauntless Construction LLC

**In Witness Whereof,**

Joan E. Nagy  
Witness

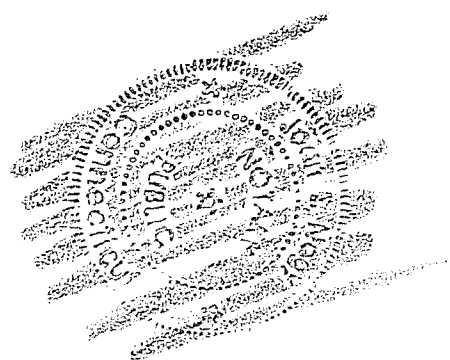
Janice K. Crowe  
Witness

Joan E. Nagy  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Janice K. Crowe  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF CONNECTICUT, COUNTY OF HARTFORD, ss: Simsbury

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of February, 2015, by Timothy Martin, Sole Member, on behalf of Dauntless Construction LLC.



Joan E. Nagy  
Signature of person taking acknowledgment

Notary Public  
Title or rank

\_\_\_\_\_  
Serial number, if any

**Joan E. Nagy**  
**Notary Public**  
**Connecticut**  
**My Commission Expires January 31, 2019**

Deed Description AS PER MAP #  
3976 FILED IN THE TOWN OF SIMSBURY

A certain parcel of land shown as "Parcel B" on a map entitled "Division Plan Prepared for Tim Martin", 9 Dogwood Lane, Simsbury, Conn. Dated: January 18, 2012. Scale: 1"=40', Prepared by Henry C. Cotton & Associates. More particularly described as follows.

Beginning at a point which is S 05°-49'-44" W, a distance of 98.70' Feet from a concrete monument on the Easterly Street Line of Dogwood Lane as shown on said map. Point is the Northwesterly corner of subject parcel.

Thence running S 76°-12'-06" E, a distance of 241.58' Feet, to a Concrete Monument.

Thence running N 82°-51'-54" E, a distance of 65.14' Feet, to an Iron Pipe.

Thence running S 78°-19'-06" E, a distance of 38.19' Feet, to a point which is shown on said map being 1.58' Feet from a Concrete Monument.

Thence running S 13°-34'-30" W, a distance of 466.31' Feet, to an Iron Pipe.

Thence running N 75°-07'-17" W, a distance of 206.70' Feet, to a point.

Thence running N 14°-52'-43" E, a distance of 144.54' Feet, to a point.

Thence running N 63°-28'-16" W, a distance of 103.57' Feet, to a point.

Thence running N 05°-54'-52" E, a distance of 272.96' Feet, to the point and place of Beginning.

Parcel is subject to a 20 foot wide Water Line Easement in favor of The Town of Simsbury as shown on said map and filed in a deed in Simsbury Land Records, Vol. 307, Pg. 683.

Received for Record at Simsbury, CT  
On 02/26/2015 At 10:59:52 am

  
Carolyn D. Kelly, Town Clerk