



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820
Meeting Date: Thursday, April 21, 2022
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior (Chair), James Burdin (Alternate), Rich Onufry (Alternate), Anthony Sillitta, Nick Couturier, George Reagan

Members Absent (Excused): Otis Perry (Vice Chair), Casey Conley (Alternate)

Members Absent (Unexcused):

Staff Present: Donna Benton (Director of Planning and Community Development) and Joshua Wyatt (City Attorney)

The Chair called the meeting to order at 7 PM and noted J. Burdin will be a voting member for tonight's case.

2. APPROVAL OF MEETING MINUTES OF MARCH 17, 2022

Motion: R. Onufry moved to approve the minutes of March 17, 2022 as submitted. Seconded by N. Couturier. Vote: All in favor with A. Sillitta and G. Reagan abstaining.

The Chair explained the process regarding tonight's case which is an appeal against an administrative decision. He clarified the decision to be discussed and appealed tonight relates to only 10% lot coverage within an open space subdivision regulation.

3. HEARINGS

- A. *Z22-05 Applicants Garry & Marcia Lane (of 130 Emerald Lane; Tax Map F, Lot 15-47) and Benjamin & Sarah Brunt (of 96 Emerald Lane; Tax Map F, Lot 15-27) appeal a March 1, 2022 administrative decision regarding lot coverage under Section 170-12(B) of the Zoning Ordinance relative to an under-construction garage at 126 Emerald Lane (Tax Map F, Lot 15-48), and property owners Dana & Sherri Brown, located in the Rural Residential (R-40) Zoning District. The Zoning Administrator determined that within an Open Space Subdivision, the 10% lot coverage requirement of the underlying zoning district does not apply.

D. Benton explained the basis for the administrative decision and the events leading to hearing this case tonight.

Garry Lane, 130 Emerald Lane represented his and Marcia Lane, Benjamin & Sarah Brunt's appeal of an administrative decision.

He read an opening statement which was provided to the board members to follow along if they chose. He explained why the applicants believe the decision is unlawful.

J. Burdin asked a few clarifying questions of Mr. Lane which he answered with his opinions regarding setback dimensions.

J. Burdin suggested the zoning ordinance was adopted under one ordinance and the subdivision restrictions adopted under another, so does the ZBA have the authority to make a decision in this case?

Chair Prior asked if the HOA has set any protective covenants on the property. Mr. Lane explained that, though he wishes they had done that, it has not been done so far though they are trying.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: **Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820**
Meeting Date: **Thursday, April 21, 2022**
Meeting Time: **7:00 pm**

Marcia Lane, applicant, 130 Emerald Lane, gave background information about the subdivision, and the negative impacts of the decision.

Sarah Brunt, applicant, 96 Emerald Ln, gave background information about the garage construction under review and addressed 20' setbacks and 10% lot coverage.

Public hearing open

Caryn Crego, 141 Emerald Ln noted precedent has already been set in the neighborhood as there are pools and decks that add to coverage. The garage does not set precedent. She is in favor of the Planning Department's decision.

Katie Giroux, 112 Emerald Ln has a view of the garage from her home. She asked the board to consider: how would a reasonable person interpret the regulations?

Leon Lapierre, 159 Emerald Ln, President of the HOA explained the position the HOA takes on this matter. He supports a review of the R-40 subdivision zoning regulations and is in favor of a chart being developed for it.

Mr. Lane responded to the precedence comment.

Chair Prior asked D. Benton to list definable features that determine lot coverage She responded: decks, principle buildings, any roofed areas.

D. Benton gave Planning Department input. She responded to several points that have been mentioned:

- RSA 674-16 is an enabling statute, so it prescribes the level of design for the ordinance, not it's content. It enables the percentage of the lot which may be occupied-it does not require restriction.
- RSA 674-16 also enables the innovative land use controls of RSA 674-21 which were not included in tonight's testimony. It also includes cluster development- which this is and is synonymous with an Open Space subdivision. The City is not required to prescribe a restriction merely because the statute enables a restriction. The absence of the lot coverage requirement - City has zero setbacks in other areas of the city.
- There are protections for this district including life safety and building codes which determine size and placement of buildings, lot size and frontage, buffers and conservation districts are protected
- 10% lot coverage would be for the individual lots- not the total subdivision which includes open space and roadways
- Open space is not all for the humans, it's also for the environment and wildlife. There is a 50% uplands requirement for open space areas which means at most per development only 50% could be wetlands in the open space area.
- Zoning info is note 7 on the approved subdivision plan which includes R-40 as typically required but also open space dimensional requirements
- The setbacks do regulate the lot coverage as well
- Any zoning amendment would have a public hearing during a public meeting first at Planning Board then at City Council.

J. Burdin asked some questions of D. Benton regarding if the open space regulations were adopted pursuant to



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: **Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820**
Meeting Date: **Thursday, April 21, 2022**
Meeting Time: **7:00 pm**

RSA 674.21- was it explicit? And does the ZBA have the authority to hear appeals on the matter since it's subdivision regulations which is decided at Planning Board.

Board members agreed the subdivision regulations need to be reviewed to confirm if RSA 674-21 is referenced.

J. Burdin had questions regarding what the ZBA is permitted to consider and what exactly they are meant to focus their determination on for this case.

The Board took a recess to examine the subdivision regulations before proceeding.

D. Benton answered some of the board questions that had been asked earlier:

- There are some parts of the innovative land zoning which cannot be appealed to the ZBA. These are determinations made by the Planning Board, not the ZBA such as conditional use permits. The ZBA is fully within their jurisdiction to make a determination in this case.

Public Hearing was closed.

Motion: A. Sillitta moved to continue the application to the next meeting to allow the ZBA to discuss with City staff whether the ZBA has the authority to determine this application, or whether it is a civil or legal matter.

The board discussed and determined which questions they would like staff/ City Attorney to address.

J. Burdin seconded the motion.

Chair Prior noted he has received enough information from the parties and would feel comfortable making a determination this evening.

Chair Prior reopened the public hearing.

Vote: 5-1 with Chair Prior opposed.

The application was continued until the May 19, 2022 ZBA meeting.

4. OTHER BUSINESS

None

5. ADJOURN

Motion: A. Sillitta moved to adjourn at 9:09 pm. N. Couturier seconded. Vote: U/A