



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: McConnell Center, 61 Locust St., Room 306, Dover, NH 03820
Meeting Date: **Thursday, September 15, 2022**
Meeting Time: **7:00 pm**

1. Attendance

Members Present: Chris Prior (Chair), Anthony Sillitta, James Burdin (Alternate), Otis Perry (Vice Chair)

Members Absent (Excused): Casey Conley (Alternate), George Reagan, Nick Couturier, Rich Onufry (Alternate)

Members Absent (Unexcused): None

Staff Present: Natasha Kypfer (Zoning Administrator/Assistant City Planner)

The Chair called the meeting to order at 7:00 PM.

Motion: Chair Prior moved to add approval of the meeting minutes of July 21, 2022 to the agenda. O. Perry seconded. Vote: U/A

Motion: O. Perry moved to approve the minutes of July 21st as amended. J. Burdin seconded. Vote: U/A

2. Old Business

- A. Z22-07R, a Motion for Rehearing of Z22-07, by 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), related to the application of Dana R. and Sherri L. Brown, 126 Emerald Lane, (Tax Map F, Lot 15-48), located in the Rural Residential (R-40) Zoning District, who requested an Equitable Waiver of Dimensional Requirements from Section 170-12(B) of the Zoning Ordinance to allow the completion of a 24' x 32' garage on the southwest corner of the subject property approximately 11-12' from the side and rear property lines, where 20' is required. The equitable waiver was granted by the Board on July 21, 2022.

Chair Prior noted that there is a quorum present, but he asked the applicant if they would like to move forward this evening or defer to the next meeting where more board members may be present.

Applicant Sarah Brunt confirmed the option to move forward with the case this evening.

The board received the application/request in a packet prior to the meeting. No presentation was to be heard at the meeting. The board discussed the request and whether there was new evidence presented or a procedural error which entitles the applicant to a rehearing.

Motion: O. Perry moved to grant the request for a rehearing. There was no second to the motion.

Motion: J. Burdin moved to deny the request for a rehearing. A. Sillitta seconded.

O. Perry noted he was not present at the meeting when the board granted the equitable waiver but watched most of that meeting. He did not agree with the majority of the Board that the requirement for "substantial completion" had been met.



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J. Burdin noted in his review of the submission he looked for errors of process rather than disagreement with decision. He summarized the topics of the 24 points on the request. The assertion that the board did not cite any legal standard for the definition of substantial completion is the only point that he associates with a process issue. The board heard testimony on two legal standards. His conclusion based on those testimonies and his understanding, was neither of those were applicable legal standards. There have been few legal precedents for challenges to equitable waivers. It's not that legal standard wasn't cited, it's that there is no applicable legal standard. Therefore, he wasn't persuaded the board made any error of process.

Regarding substantial completion, J. Burdin states the error was in issuing a permit for this project and having the foundation pass inspection which is not a process error.

He gave some thoughts on his original and subsequent opinions regarding diminution of value.

The fourth criteria: noncompliance vs the benefit to the public is not necessarily linked to the third criteria: diminution of value.

Lastly, J. Burdin states the assumption that this board does not have the authority to grant relief was discussed at a previous meeting and it was his understanding all parties agreed this assumption is incorrect.

O. Perry noted the criteria does not only apply to procedural matters. It also applies to the reasonableness of the decision which he believes was not.

J. Burdin confirmed he believes it was a reasonable decision.

Chair Prior believes the decision made by the board on July 21st was both reasonable and legal.

Vote: 3-1 with Perry opposed

3. Other Business

None

4. Adjourn

Motion: O. Perry moved to adjourn at 7:20 pm. A. Sillitta seconded. Vote: U/A



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