



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, May 18, 2023
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior (Chair), Otis Perry (Vice Chair), Nick Couturier, Rich Onufry
Members Absent (Excused): Anthony Sillitta, George Reagan (Alternate), Sarah Tatarczuk (Alternate)
Members Absent (Unexcused): None
Staff Present: Natasha Kypfer (Zoning Administrator/Assistant City Planner);
Donna Benton (Director of Planning and Community Development)

The Chair called the meeting to order at 7:07PM.

2. APPROVAL OF MEETING MINUTES OF APRIL 20, 2023

Motion: Perry moved to approve the minutes of April 20, 2023 as amended. Seconded by Couturier. Vote: U/A

3. HEARINGS

- A. *ZONE-2023-0018 Owner: Ian Joseph Campbell, LLC, 887 Central Avenue (Tax Map 38, Lot 9-A), located in the Commercial (C) Zoning District requests a Variance from Section 170-21.D.(b).(iii.) of the Zoning Ordinance, to allow for the installation of a ground mounted solar arrays up to a height maximum of 40', whereas 20' is allowed.

Motion: Perry moved to continue the hearing to the June 15th meeting. Seconded by Onufry. Vote: U/A

Chair Prior stated that for Items B. and C. the applications and neighbors basically mirror each other, therefore he explains that he understands the applicants would like to have them heard at the same time, which is fine. He continued on to note that when the vote takes place to evaluate the Variance criteria, that will be done separately. The Chair continues by explaining the ZBA hearing process; also notes that while there is a quorum present, it is not a full board. Chair Prior clarifies the applicants have been told this but wish to proceed with the board members present and hearing tonight.

- B. *ZONE-2023-0023 Owner: Alexandra Martin & Shawn Kelly, 7 Middlebrook Road (Tax Map K, Lot 43), located in the Medium Density Residential (R-12) Zoning District, requests a Variance from Chapter 170-11.A. of the Zoning Ordinance, to allow for the use of the property as a private dog park.
- C. *ZONE-2023-0024 Owner: Elizabeth Demosthenes Rodgers, 9 Middlebrook Road (Tax Map K, Lot 44), located in the Medium Density Residential (R-12) Zoning District, requests a Variance from Chapter 170-11.A. of the Zoning Ordinance, to allow for the use of the property as a private dog park.

Liz Rodgers and Alix Martin, representing 9 Middlebrook Road and 7 Middlebrook Road respectively, presented their case, and reviewed their need for the Variance request. They gave background of how this idea came to be, how they added the shared fence around their adjoining rear yards, and how they carried out operations over the winter for about seven weeks by utilizing the *SniffSpot* website, prior to learning that approval from the Planning Department was necessary.

Ms. Rodgers and Ms. Martin together addressed the five criteria noting the primary use of their property's remains residential, i.e. their homes. They explained they have received overwhelming support from their neighbors making it clear it is not contrary to the public interest.



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Ms. Martin states the Variance will not change the character of the neighborhood. There will be no changes to the property and minimal to no impact on the traffic, and substantially lower traffic or impact when compared to other permitted uses, like a park for humans or daycare for humans. There is no proposal for a kennel or boarding.

Next, Ms. Martin shares that the granting of the Variance would do substantial justice, largely because it meets an unmet for Dover and other local dog owners. Per the City Clerk's office, there are over 4,500 registered dogs in Dover but there is only the one dedicated public dog park. The applicants share that traditional dog parks can be unsafe for some dogs who are nervous, or smaller, or have physical challenges. Overall, there is no threat of harm to the general public that they can see that would outweighs the benefit to them as the property owners.

Ms. Martin speaks to the value of surrounding properties will not be diminished. It is their home, and they will keep it maintained. There is a provided trash bin available for dog waste, and the property owner monitors the area for dog waste post visits.

Finally, Ms. Martin shares that this is a unique situation as the properties are abutting, which allows for the yards to be fenced together. There is no fair and substantial relationship between the general purpose of the ordinance and the application, mainly because there is no permit that exists that covers the use of their proposal. Ultimately, prohibiting them from renting their yards only because it is not explicitly listed as a permitted use, they believe has no fair and substantial relationship to the purpose of regulating the use in the zone.

Last not least, Ms. Martin shares that the proposed use is a reasonable because it provides a resource for the community in keeping with the character of the medium-density neighborhood. Everything from the street will look as it does today and the activity of the visitors is indistinguishable from the use of their yards as homeowners.

The applicants are happy to accept the conditions set forth by the Planning Department.

Ms. Rodgers shared some statistics about the petition and the reviews they have received through the *SniffSpot* website.

Chair Prior reads aloud each of the four staff suggested conditions and clarifies whether the applicants are in support of them.

Chair Prior asks if there is any signage currently existing or whether any is planned. Ms. Rodgers states she has made one (one square foot in area), that they would like to post it on the fence to let know people where to enter. Chair Prior noted they may need a permit for the sign, and may add an additional condition that would put a sign restriction in place, consistent with the Customary Home Occupation (CHO) threshold on signage. The Chair also asks whether they would be okay with a condition limiting the maximum number of dogs allowed at one time (the four listed below); the applicants agreed.

1. *The use be approved jointly for Lots 43 and 44 and is scheduled for one booking user at a time, with a gap of time between users.*
2. *In the event one of the property owners sell, or no longer want to participate in the use, a new proposal will be required to come before the Technical Review Committee (TRC).*
3. *The hours of operation would be no earlier than 8am and no later than 6pm and no site lighting will be added.*
4. *Waste is collected and disposed of properly.*

Onufry asks the applicants about *SniffSpot* and their connection to it.



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Public Hearing opened.

Katie Nelson, 214 Dover Point Rd, who owns *Pet Suds*, which is a mobile dog grooming business. Ms. Nelson states she is not actually in opposition, but just has some questions. She asks if the Variance requires signatures of the abutters and if denied, would the City consider adding another dog park or dog play area. She would not be in favor of this Variance (if it were in her neighborhood), but as she is not a direct abutter she is not opposed. She is glad to know she would be notified as an abutter if any of her neighbors wanted to do the same thing.

In response to Ms. Nelson's questions, Chair Prior confirmed that abutters are notified of a public meeting, so they can come to the meeting and speak if they wish, but that their signatures are not required. Also noted that it is not under this Board's purview to make decisions about adding additional dog parks in the City, but suggested to bring concerns to the Planning Department.

Planning Department recommendation: Zoning Administrator Kypfer noted the subject properties are along Middlebrook Road, within a residential neighborhood, near the intersection of where Stark Avenue and Dover Point Road meet. At such point that Stark and Dover Point bisect, is a small sphere of Commercial zoning, as well as another small strip further along Dover Point Road. This information provides context as to the proximity of the residential area to other zoning districts and the existing Commercial zoning corridor. As the use of a private dog park has not been contemplated by the Zoning Ordinance, it is up to the Board to consider if the Variance standards have been met to necessitate the requested relief. As noted by the applicants, the vast majority of abutters on their street, along Middlebrook Road and adjoining Applevale Drive, have provided support and documentation of it via petitions. The Planning Department has only received one letter in opposition to the Variance request, which was included in the packets. Staff does support the Variance request. If the Board grants the Variance, staff recommends the four subsequent conditions previously read aloud.

In closing, Zoning Administrator Kypfer clarified the earlier question about CHO-allowed signage, reading from §170-18.F. which states: "No advertising on the premises other than a small no-illuminated SIGN not to exceed two (2) square feet in area and carrying only the occupant's name and his occupation." She continued by underscoring that this application is not for a CHO, and noted that there are sign restrictions within residential areas; ultimately the request would have to be reviewed through the sign application process.

Chair Prior commented that the opposition letter in the packet lacked a signature and corresponding resident address. In reply, Zoning Administrator Kypfer explained that it was sent via an email to the Planning Department, and that while the author is known, it is unclear where in Dover they reside.

Perry inquired with the Planning Department as to whether this approval would also grant approval for the proposal as a CHO, and Zoning Administrator Kypfer clarified it does not. She explained that while the applicants did originally apply for a CHO, the permits were denied. Following this, the applicants each submitted an Appeal of an Administrative Determination, which were then later withdrawn, explaining that this brings us to the Variance case before the Board now. Perry states, if the applications are approved, that the decision should say: We are not establishing a precedent for a CHO.

Based on a question from Chair Prior, Zoning Administrator Kypfer clarified for the Board the distinction between appearing before the ZBA with this request of a private dog park, versus a short-term rental, like an Airbnb. She stated that in Dover the Zoning Ordinance is silent on short-term rentals, in terms of residential



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use, but this use is pertaining to the dogs utilizing the applicant's rear property yard as a "private dog park" through the *SniffSpot*, however, the primary use (as the applicants attested) of their residence is them being occupied and being lived in by the property owners.

Perry asked why the applicants would need to come to TRC rather than ZBA if they decide to split the partnership. Donna Benton, Director of Planning and Community Development addressed the question at the podium, noting the Zoning Administrator sits on the TRC and could provide feedback as to whether the proposed change would necessitate coming back to the ZBA for additional approvals. Some discussion on this topic continued as to whether coming to TRC would be necessary, which Vice Chair Perry stated he did not understand.

Perry asked an additional question of Director Benton; he asked whether the intent or implication of the City's suggested recommendations (conditions) is that if one of the applicant's decides to stop participation, sell, and move away, that the Variance will still exist, in other words, meaning that a new land owner could move in and carry out the use, so long as it was in collaboration with their neighbor and that there is no way the ZBA can separate the Variance from the land; Director Benton stated this was correct.

Public Hearing was closed.

7 Middlebrook Road Motion: Perry moved to GRANT the Variance based upon the representations made by the applicant and the testimony provided and subject to the conditions below. Prior seconded the motion and discussed the proposed subsequent conditions which were confirmed as follows:

1. Dog owners will make a reservation in advance, during the hours that have been established, for the private use of the space; only one dog owner with their dog(s) will access the yard at a time; and, a thirty-minute buffer on either side of the appointment will be maintained so that dog owners and their dogs will not encounter other clients.
2. In the event one of the property owners sells, or no longer wants to participate in the use, a written explanation will be provided to the Planning Department.
3. The hours of operation will be no earlier than 8am and no later than 6pm, and no site lighting will be added.
4. Waste will be collected and disposed of properly.
5. A limit of four dogs be accommodated at one time.
6. No reservation will be longer than one hour in duration.
7. If the applicant wishes to have a sign, they will go through the approval process for a sign permit.

This Variance does not create a customary home occupation for private dog parks. Vote: U/A

9 Middlebrook Road Motion: Perry moved to GRANT the Variance based upon the representations made by the applicant and the testimony provided with the same subsequent conditions, as itemized for the previous case of 7 Middlebrook Road. Onufry seconded. Vote: U/A

4. OTHER BUSINESS

None

5. ADJOURN

Motion: Perry moved to adjourn at 8:01 pm. Couturier seconded. Vote: U/A