

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Avenue, Dover NH 03820
Meeting Date: **Thursday, September 21, 2023**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF AUGUST 17, 2023

3. HEARINGS

- A. ***ZONE-2023-0042** Applicant/Owner: Miles Cook, Deepwater Frontiers LLC, Back Road (Tax Map M, Lot 104), located in the Rural Residential (R-40) Zoning District, requests an appeal of a July 13, 2023 administrative decision regarding the placement of a storage container under **Section 170-12(B) of the Zoning Ordinance**. The Zoning Administrator determined that the storage container needs to comply with setback requirements, or be moved to a location that complies with setbacks.

4. OTHER BUSINESS

5. ADJOURN

*Indicates that if the application is accepted for discussion, the public hearing will be held the same evening. Note that some hearings will be continued from one meeting to another and some may be postponed. Since this is only a partial description of the proposal and may change, persons with questions or wishing to see the plans are invited to visit the Planning Office, Monday through Thursday from 8:30 am to 5:30 pm and Friday 8:30 am to 4:00 pm or email Dover-Planning@dover.nh.gov. You may also view materials at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>. The public is encouraged to leave comments in advance by emailing Dover-Planning@dover.nh.gov, or mailing written comments to the Zoning Board of Adjustment, Dover City Hall, 288 Central Ave., Dover, NH 03820. Messages must be received no later than 4 p.m. the day of the meeting and should identify the name and Dover address of the person leaving the message or providing the comment.



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, August 17, 2023
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chis Prior (Chair), Otis Perry (Vice Chair), Rich Onufry, Anthony Sillitta, Nicholas Couturier, and Sarah Tatarczuk (Alternate)

Members Absent (Excused): George Reagan (Alternate)

Members Absent (Unexcused): None

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

The Chair called the meeting to order at 7 PM.

2. APPROVAL OF MEETING MINUTES OF JULY 20, 2023

Motion: Perry moved to approve the minutes of July 20, 2023. Seconded by Couturier. Vote: 5-0 with Tatarczuk abstaining.

The Chair explained the hearing process and with five regular members present, the alternate may ask questions, but will not be voting. There was a request to hear item B prior to item A.

Motion: Perry moved to hear item 23-0037 after item 23-0039. Seconded by Onufry. Vote: all in favor

3. HEARINGS

B * ZONE-2023-0039 Owners: Goodridge Lyndon E. & Dorothy A. Trustees, The Lyndon E. Goodridge Revocable Trust, The Dorothy A. Goodridge Revocable Trust, 35 Julia Drive (Tax Map M, Lot 4-39), located in the Innovative Technology (IT) Zoning District requests a Variance from **Section 170-12.B. of the Zoning Ordinance**, to allow for a rear setback of 20'±, whereas 50' is required.

Beth Mennuli, 35 Julia Dr and daughter of the applicants presented the item and reviewed the need for the Variance request. They met with the HOA and received unanimous approval to replace the existing patio with a deck that sits above ground on level with the access door. There are woods directly behind and no one will see the deck unless they go into the back yard. This deck will eliminate having to use stairs as was needed to use the patio.

Chair Prior asked questions of the applicant relating to the criteria, which she answered. She confirmed the deck will be level with the rear sliding door to access it.

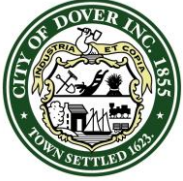
Public Hearing opened.

Public Comment: None

Planning Department recommendation: Zoning Administrator Kypfer noted staff supports the granting of the Variance request, based upon: The applicant is seeking to create an elevated, attached deck (16' x 20') at the rear of the home, replacing the existing patio. Thereby allowing for easy access and navigability from the rear door, at the same elevation-level. The applicant's home is at the back of the Thornwood Commons property line, furthest South, where trees serve as a landscaping buffer between the abutting properties along Constitution Way. Furthermore, the Thornwood Commons HOA supports the proposed deck.

If the Board grants the variance, staff recommends one condition:

- 1) The encroachment be limited to the proposed area of the rear setback, with no further encroachment granted without a new application.



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Perry asked the applicant if they will be obtaining a building permit and installing railings around the deck. She responded affirmatively to both.

Public Hearing was closed.

Motion: Perry moved to GRANT the Variance with the staff recommended condition noting the criteria have been met. Couturier seconded. Vote: U/A

- A. *ZONE-2023-0037** Owners: Dover Development, LLC, 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Commercial (C) Zoning District requests a Variance from **Section 170-11. of the Zoning Ordinance**, to allow for the residential ratio required under Footnote 3 where 2/3rd is the maximum to be exceeded, 17% commercial/ 83% residential is proposed via three buildings.

Attorney F.X. Bruton, of Bruton & Berube PLLC, presented the case, and reviewed the need for the Variance request.

Mr. Bruton gave some history of the project and explained that the applicant has worked with the abutter and agreed to additional buffering and worked with staff to figure out what type of development they would prefer on the site.

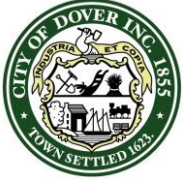
As housing is in such high demand and low vacancy, the developer is proposing attainable housing that fits between new, luxury apartments and section 8 housing. Originally 64 units were planned, but the proposal tonight is for 48 units. 14 units are allowed with current density, so the request is for 34 units to be attainable. Those units will require TDR approvals following the variance.

Mr. Bruton clarified that the buildings would not be mixed-use, but the project itself is mixed-use. The two residential buildings, 3-stories each, would be in the back of the property and have 24 units in each. The building in the front would contain 7000+ sq ft of commercial space in two stories. The allowed ratio for mixed-use is 2/3 residential to 1/3 commercial. The proposal is for 83% residential and 17% commercial, which is the reason for the request for variance.

Mr. Bruton mentioned a request from the Office of Business Development of Dover. If the variance is granted for the proposed ratio, and not all of the requested TDR units are granted, the total sq ft of commercial space might be reduced to maintain the ratio to match the number of residential units granted. The request is for the 2-story commercial building to be 7,354 sq ft, regardless of how many residential units are granted. The applicant is amenable to this request as they are planning for that in the proposal.

There are several commercial properties in the neighborhood as well as residential, so the proposal fits right in. He addressed the criteria as follows:

- There is no negative consequences based on the use of this site. An abutter has requested to keep the tree buffer and add some fencing which the applicant has agreed to. By granting the relief, the public is served by separating the uses on the lot front/back.
- They are consistent with the spirit of the ordinance with this mixed-use proposal. The proposal promotes the zoning objectives regarding attainable housing along with public health, safety and welfare.
- There is no negative aspect to the project with respect to the general public.
- The proposed use will not have a negative effect on the value of surrounding properties.



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- The lot is unique. It is larger than most in that area and it's uniquely situated next to the dog park which will give recreational opportunities to the residents. It is also shaped in a way that enhances the proposal for commercial in the front and residential in the back. It would be an unnecessary hardship for the applicant to deny the density ratio or to require the commercial space to be in the back of the lot.

Mr. Perry noted he hasn't heard the term attainable housing and asked how they will be restricting the additional units granted. Will it be written in the deeds? Will particular funding be used for this type of housing?

Mr. Bruton noted it will be a condition of approval. Some discussion occurred with Perry noting the language of the condition is vague. Discussion also of NHHFA guidelines and rental limits are set each year which is 80% of the market value which includes heat, hot water, electricity. The applicant would have no issue if the condition is rewritten to include those specifics.

Ms. Tatarczuk asked how the applicant decided the number of market-rate units vs attainable units.

Mr. Bruton explained the process to determine these was based on the units allowed without relief and the result after subtracting from the proposed amount. He noted all of the units will be the same (one-bedroom units) and the 2023 attainable housing rents which include utilities is \$1775.

Robert Baldwin, Dover Development, LLC explained that even though \$1775 still seems high for a one-bedroom, it is right in the middle between government supported housing and some of the luxury apartments going for \$2200-\$3000 each. He explained this housing is best for those folks just starting out in the workforce making less, or those who are in a line of work that makes \$40-\$60K a year and need to live within 30 minutes of their Dover job. The units will all be the same. This is only the first hurdle for the project- to receive the residential/commercial ratio. It will still go through TDR and Planning Board review.

Public Hearing opened.

Public Comment:

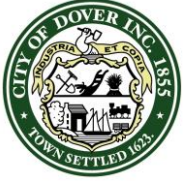
Jackson Browne, 55 New York Street, is in favor of the project. He is a renter in Dover and he explained what it is like to be a renter in Dover which is unaffordable. People he knows double up living in apartments which reduces quality of life and is in violation of life safety.

Jocelyn Toffic, lives in the Cochecho Mills and is a business owner at 1 Washington Street, is in opposition to the project, and gave statements about the attainable housing. The market prices are price gouging right now, so 80% of that is still not attainable. She broke down a local first-year fire fighter's salary to demonstrate how much of it would go towards paying for one of these units. She spoke about Chinburg which is where she lives, and she pays less than that with more amenities.

Tori Bamford, 18 Wellington Avenue, is in favor of the project. Though it will not solve the affordable housing problem in Dover, it is a step in the right direction. As a college graduate who just started her first salaried job, she is unable to afford to live in Dover on her own.

Ian Jones, 1 Third Street, is in favor of the project. He agrees with other statements that this development will not solve the housing issues, but will help. In the two years he has lived in Dover his rent has gone up six and eight percent a year, though his income has not increased.

Hayden Waldon, is currently not living in Dover as he was priced out, and noted he is in favor of the project.



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Ben Kramer, lives in Newmarket, is in favor of the project. He works in Dover and would like to move here. He currently lives with his partner along with two other roommates. Would like to not need the roommates, but there is no affordable housing for people in his age and wage bracket.

N. Kypfer mentioned on the record the two pieces of public comments received via email, sent to Planning: The first, from James Burdin, from the Office of Business Development Coordinator requesting the condition of approval mentioned by Mr. Bruton regarding the size of the commercial space remaining the same even if not all the residential units are approved.

The second, from Kaiulani Anderson-Andrei, 17 Broadway, provided a letter expressing their concerns with affordable housing in Dover, by detailing their experience with renting in the community.

Planning Department recommendation: Zoning Administrator Kypfer noted staff does not support or oppose the granting of the Variance request. The sole request tonight for the ZBA to consider is germane solely to the residential ratio. If approved, this proposal will go forward first for TDR review to the Planning Board and, subsequently, before them again for Site Plan approval. The applicant is seeking to reimagine the entire site, proposing that the commercial components are together and closer to the major roadway, while the residential is situated behind. Previous approvals had residential use in the rear and mixed-use in the front near Old Rochester Road. The applicant recognizes the relief being sought and, therefore, is offering the public benefit of attainable housing units.

If the Board grants the Variance, staff recommends the following subsequent conditions:

- 1) This approval does not grant additional density, the applicants will need to seek it through the TDR process before the Technical Review Committee and Planning Board.
- 2) The proposal would include HUD-restricted Fair Market Rate rents for any additional units.

Public Hearing was closed.

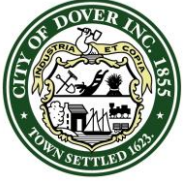
Motion: Perry moved to GRANT the Variance, clarifying the approve pertains singularly to the ratio between commercial and residential for the development subject to three conditions related to the following:

- Planning approvals noted by staff
- Square footage of floorspace related to commercial cannot be reduced if the residential unit quantity changes, per Office of Business Development
- Subject to an agreement with Planning Board and the applicant about the procedures required to become a resident of one of these units and the management/ enforcement to make sure the units go to individuals and families who qualify

Prior seconded the motion.

Mr. Bruton explained the 80% chart that is published by NH housing is what was used and is what will be followed by the applicant for the project.

N. Kypfer explained there will be a deed restriction as part of the Planning Board approval process and subsequent conditions, as well, part of the TDR process relies on a corresponding fee level and restrictions associated, unless the units are HUD-rated.



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Perry further explained the national and state processes for determining the fair market rents and then the 80% rents annually.

Discussion continued on the third condition and Tatarczuk suggested wording of the motion:

“The 34 attainable units be rented in perpetuity to income-qualified households earning at or below 80% of Area Median Income under annual HUD Fair Market Rate 80% rent limits as published by New Hampshire Finance Authority.”

Chair Prior rereads the motion and conditions prior to a vote.

Perry moved and Prior seconded to grant the Variance for the structuring of residential to commercial ratio as 83% to 17%, with conditions:

- 1) This approval does not grant additional density, the applicants will need to seek it through the TDR process before the Technical Review Committee and Planning Board.
- 2) The proposed two-story commercial building totaling 7,354 sq ft be the minimum commitment by the applicant if the residential floor area is further reduced by the Planning Board.
- 3) The 34 attainable units be rented in perpetuity to income-qualified households earning at or below 80% of Area Median Income under annual HUD Fair Market Rate 80% rent limits as published by New Hampshire Finance Authority.

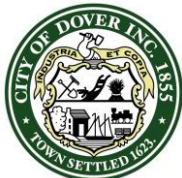
Vote: U/A

4. OTHER BUSINESS

N. Kypfer noted the September 21st meeting will require a quorum as there will be an item on the agenda that is an Appeal of an Administrative Determination, which needs to be heard within 45 days of receipt per state statute, and will need a full board in attendance.

5. ADJOURN

Motion: Perry moved to adjourn at 8:28 pm. Sillitta seconded. Vote: U/A



CITY OF DOVER

Zoning Board of Adjustment – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, September 21, 2023
Meeting Time:	7:00 pm

INTENT: The Applicants (Miles Cook of Deepwater Frontiers LLC) requests an appeal of a July 13, 2023 administrative decision regarding the placement of a storage container on the subject property under **Section 170-12(B) of the Zoning Ordinance**. The Zoning Administrator determined that the storage container needs to comply with setback requirements, or be moved to a location that complies with setbacks.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: R-40

FILE: ZONE-2023-0042

APPLICANT/APPELLANT: Miles Cook, Deepwater Frontiers LLC

LOCATION: Back Road (Tax Map M, Lot 104)

ACREAGE: 26.02± ac.

EXISTING LAND USE: Vacant with a (1) storage container (52' x 8' x 10')

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application; Staff Memo with Exhibits, including Zoning Administrator Determination dated 7/13/2023; Public Comment

STAFF RECOMMENDATION:
Deny the location of storage container and affirm staff.

BACKGROUND INFORMATION

Per state law (*See* RSA 676:5) and § 170-52.C(1)(a), **Powers and Duties** of the Zoning Ordinance, one of the powers of the Zoning Board of Adjustment is: “To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made [by the Zoning Administrator] in the enforcement of this Chapter (interpretation of ordinance).” *See also* §170-52.C(2), **Interpretation of Chapter**.

Mr. Miles Cook appeals the Zoning Administrator’s determination, dated July 13, 2023, germane to the placement of a storage container on his property. Please see the determination letter attached, as *Exhibit A*. Preceding this and necessitating the need for a formal determination to be made, was the submission of a *Code Enforcement Complaint Form* by a direct abutter, the property owners at 278 Middle Road, submitted to the Planning Department on May 16, 2023. Following its submittal, a formal investigation was carried out by the Zoning Administrator, as detailed in *Exhibit A*.

The subject property is located in a more rural area of the City that is primarily residential in nature and the parcel itself is currently vacant, save for the aforementioned storage container, 52’ length by 8’ width by 10’ height. The entire eastern property line of the parcel fronts on the confluence of the Cochecho River and Piscataqua River. The lot is 26.02± acres and is a “flag-style” lot, with an approximately 4,000 square foot access stripe, which is 20-feet-wide.

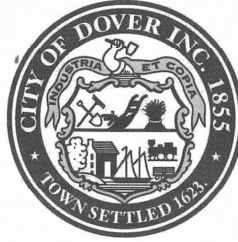
Staff’s interpretation is that the storage container’s placement does not meet the accessory structure setback requirements, regardless of the fact that the property does not have a principal structure on it (i.e. thus, the storage container is not an “accessory” use), and even giving the benefit of doubt on that issue, the storage container exceeds the 200 square foot threshold over which the structure must meet setbacks.

STAFF RECOMMENDATION

Staff recommends that the Board open the public hearing, accept testimony, and make findings. Staff recommends that the Board review relevant language within the Dover Code, in particular the applicable definitions (*See* § 170-6.B.).

The sole issue of this case is whether the placement of the storage container is in conformity with the intent of the Zoning Ordinance, and whether the determination made by the Zoning Administrator in her July 13, 2023 letter is to be upheld.

DONNA P. BENTON, AICP
Director of Planning and
Community Development
d.benton@dover.nh.gov



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City of Dover, New Hampshire

July 13, 2023

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

VIA CERTIFIED MAIL – RETURN RECEIPT and FIRST-CLASS MAIL

Deepwater Frontiers LLC
C/O Miles Cook
22 Isaac Lucas Circle
Dover, NH 03820

Re: Storage Container at Back Road (Tax Map M, Lot 104)

Dear Mr. Cook:

This letter serves to document, following a formal complaint, the placement of a storage container along the roadway access strip of your property at Back Road, Tax Map M, Lot 104. After completing a site visit from the right-of-way and abutting parcel on the morning of Friday, May 18, 2023, discussing the matter with you over the telephone on July 6, 2023, and researching and reviewing the merits of the complaint request, in concert with other City staff, and to ultimately make a determination as to whether the portable storage container is in violation of the Zoning Ordinance.

First, a review of the relevant provisions of the City's zoning ordinance is critical to making my determination. The zoning ordinance requires that "[a]ll BUILDINGS or STRUCTURES . . . shall be in conformity with the provisions of this Chapter." Dover Code § 170-5. The threshold issue, then, is whether the storage container in question is a "structure" or "building" within the meaning of the zoning ordinance. It would seem that the storage container is not a "building" at least at this time, as the definition of "building" requires that the item be "permanently affixed on the land." See Dover Code § 170-6.

However, the definition of "structure" broadly applies to anything with a "framework of support." See Dover Code § 170-6. It is my understanding that, while the storage container lacks a wooden framework of support, it still has metal framing and supporting its rigid shape. Moreover, Dover's zoning ordinance does not distinguish between temporary and permanent "structures". Additionally, City staff in the past have considered storage containers like yours to be "structures" that must meet dimensional requirements and setbacks, and have also considered storage sheds (of sufficient size) to also fall within setback requirements. Finally, you stated that you are using the storage container temporarily (without an established timeline) to house equipment; we have received information that recreational equipment also appears to be stored in the container, and that you have received a permit for and installed electrical wiring in connection with the current use of the storage container, identical to how a shed or outbuilding is used for storage. Collectively, these all indicate that the storage container is, in my view, a "structure" within the meaning of Dover Code chapter 170 just the same as a prefabricated storage shed. See also *Town of Wakefield v. McMullin*, 2010 N.H. LEXIS 171 (January 28, 2010) (non-precedential order) (concluding commercial box trailers were structures given circumstances of that case); *Storms v. Eaton*, 131 N.H. 50 (1988) ("If . . . town is correct in claiming that the snow deflector can reasonably be used as a motor vehicle shelter, the structure is a 'building' subject to the [zoning ordinance]").

Next, it is necessary to consider the zoning ordinance's definition of "Accessory Structure", which is set forth below:

ACCESSORY STRUCTURE means a STRUCTURE with a minimum FLOOR AREA of two hundred (200) square feet which exists on the same LOT and within the same zoning district as the PRINCIPAL BUILDING and which shall be customarily incident and subordinate to the PRINCIPAL BUILDING subject to the provisions of Chapter 170-10 E.

Putting aside that your property does not have another structure on it, as in a principal building, (meaning the storage container is arguably not an "accessory" use), and even giving the benefit of doubt on that issue, the storage container on your property exceeds the 200 square foot threshold over which the structure must meet setbacks.

I have already reviewed dimensions of the container provided in connection with the formal complaint, which appear to be accurate based on my observations (52' length by 8' width by 10' height). Consistent with those dimensions and with photographs I have reviewed, the storage container located on your lot is over 200 square feet, meaning it must at least meet the setbacks for an accessory structure (generally 10 feet in a residential zone, with exceptions). The storage container's placement on your property does not meet the accessory structure setback requirement, as the strip of land where the container is located is only twenty feet wide. You will need to either move the storage container to a location that complies with the setback, or seek a variance from the Zoning Board of Adjustment to allow a structure within the setback. Understanding that it will probably take you some time to identify a solution, therefore I do not plan to take any enforcement action for a period of ninety days from the date of this letter, so that you have time to come into compliance. Please contact me at your earliest convenience by telephone at (603) 516-6008, or by email at n.kypfer@dover.nh.gov in order to convey your plan for compliance, including if you would like to apply for a variance.

In closing, this letter serves as my formal administrative determination. I would call your attention to your potential appeal rights. You may have the ability to appeal my determinations concerning the City of Dover's zoning ordinance to the Zoning Board of Adjustment (ZBA) pursuant to the RSA 676:5. Be aware that the ZBA imposes a 30-day filing requirement per its Rules of Procedure, Article V. - Procedures:

B. Appeals. Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely.

For clarification, I express no opinion on the lack of a building permit for the storage container. The City's Building Official enforces applicable building and related codes, and my role is limited to reviewing compliance with the zoning ordinance. I have copied the Building Official on this letter and he may be contacting you separately with any concerns.

Thank you for your attention to this matter.

Sincerely,



Natasha M. Kypfer
Zoning Administrator, Assistant City Planner

EC: Donna Benton, AICP
Jordan Chambers
James Maxfield
Joshua Wyatt

Director of Planning and Community Development (via email)
Engineering Technician (via email)
Building Official (via email)
City Attorney (via email)



PERMIT SNAPSHOT REPORT ZONE-2023-0042 FOR CITY OF DOVER, N.H.

Permit Type Zoning	Project:	App Date: 09/05/2023
Work Class: Administrative Appeal	District: None	Exp Date: NOT AVAILABLE
Status: Fees Paid	Square Feet: 0.00	Completed: NOT COMPLETED
Valuation: \$0.00	Assigned To: Blonigen, Rachel	Approval
Description: Appeal of a July 13, 2023 administrative decision regarding a storage container		Expire Date:

Parcel: M0104-000000 Main	Address: Back Rd Dover, 03820 Main	Zone: R-40(Residential - Rural)
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Applicant
Sean T O'Connell
Business: (603) 749-5000

Permit Custom Fields

ZoneAdmnPlanSummarapeal of a July 13, 2023
y administrative decision
regarding a storage
container under Section
170-5, 170-6. of the
Zoning Ordinance

ZoneAdmnAppealSect Section 170

ZoneAdmnAppealSect By way of background,
Detail Deepwater's property
consists of a 20' wide
driveway access that
runs approximately 2000'
feet from Back Road to a
point in the Property
where the lot widens
considerably. At the point
the property widens
another approximately
2000' driveway will need
to
be constructed to access
any structure. My client
has built access on the
20' section of the
roadway
up to the first of four (4)
wetlands crossings that
require NH DES approval
prior to any
construction or
disturbance to those
areas. Deepwater's
storage container is
placed at that first
wetlands crossing and is
used by Deepwater to
store materials related to
road engineering,
surveying and
construction as well as
an all-terrain vehicle also
used for those purposes
given the
long distances my client
and their experts need to
travel.
Ms. Kypfer concludes that
the storage container is
not a "building" as defined
by City of
Dover Zoning Ordinances
§ 170-5 and § 170-6 as

the container is not "permanently affixed on the land". Ms. Kypfer goes on to conclude that the storage container is a "Structure" as defined by City of Dover Zoning Ordinance §170-6 as it contains a "framework of support" and she notes that the storage container is metal and has a rigid shape. Ms. Kypfer goes on to note that the City of Dover does not differentiate between temporary or permanent structures, apparently for the purpose of refuting any argument from Deepwater that the container is designed for temporary use associated with design, engineering, surveying and construction of a very long and complicated driveway. Deepwater contends that Ms. Kypfer's conclusions regarding City of Dover Zoning Codes are in error given the totality of the facts. The fact here is that this container exists only where it is because it is adjacent to a wetland crossing and cannot be moved until NHDES issues permits. It is also true that NHDES will only issue permits for the entire property, not just for this particular crossing leaving the project in a waiting period until those permits are issued. Deepwater's position is that notions of permanent or temporary uses are inapplicable to any analysis of this storage unit under Dover Zoning Ordinances. This container is almost purely analogous to construction trailers which are placed in work zones around the City of Dover and other municipalities regularly and without

issue or complaint. In fact, if this storage unit had wheels, we are doubtful we would have received Ms. Kypfer's letter. Deepwater needs this for matters related only to the construction of the road and must move it as soon as construction resumes post permits as the storage unit is 8' wide and the roadway access is only 20' wide. Deepwater is sensitive to the complaints of one abutter who has objected to the container but counters, again, that this is not a "structure" within the purposes or intent of City of Dover Zoning Ordinance § 1705- or § 170-6 and instead is related to construction only and is not and will not be related to the occupancy of this Property once the construction is complete. Moreover, the notion that anything with a "framework of support" implicates a "Structure" is impossibly overbroad and ill defined. Indeed, most anything existing on the land of any Dover resident would have some "framework or support". This would apply to vehicles, tents, trailers and other items that also are not contemplated by the relevant ordinances. A statute in New Hampshire is impermissibly and unconstitutionally vague if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits... or [if] it authorizes or even encourages arbitrary and discriminatory enforcement. State v. MacElman, 154 H.H. 304 (2006). Here Deepwater placed this container on its land fully believing that it was not in danger or violating any

City ordinance given its temporary nature, connection only related to design, permitting and construction and given that similar

PERMIT SNAPSHOT REPORT (ZONE-2023-0042)

What is the parcel zoned? R-40

Attachment File Name	Added On	Added By	Attachment Group	Notes
Permit Snapshot Report.pdf	09/05/2023 10:07	Service, EnerGov		Attached by IO - ATTACH: Initial Permit Snapshot
2023.09.21_ZoningBoardofAdjustment.Agenda.pdf	09/08/2023 8:56	Blonigen, Rachel		
ZONE-2023-0042 Back Rd Abutter Notice.pdf	09/08/2023 8:56	Blonigen, Rachel		

Invoice No.	Fee	Fee Amount	Amount Paid
INV-00004921	Planning Zoning Appeal from Admin Decision Fee	\$200.00	\$200.00
Total for Invoice INV-00004921		\$200.00	\$200.00
INV-00004933	Planning Certified Mailing to Abutters	\$110.00	\$110.00
	Planning Certified Mailing to Application Contacts	\$20.00	\$20.00
	Planning Public Notice in Newspaper	\$120.00	\$120.00
	Planning Creation / Printing of Abutter Labels	\$10.00	\$10.00
Total for Invoice INV-00004933		\$260.00	\$260.00
Grand Total for Permit		\$460.00	\$460.00

Hearing Type	Location	Scheduled Date	Status	Subject
Zoning Board Hearing v.1	Council Chambers	09/21/2023	Scheduled	Appeal

Submittal Name	Status	Received Date	Due Date	Complete Date	Resubmit	Completed
Planning Permit Application Review v.1	Approved	09/05/2023	10/03/2023	09/08/2023	No	Yes

Item Review Name	Department	Assigned User	Status	Assigned Date	Due Date	Completed Date
Zoning Administrator	Planning	Kypfer, Natasha	Approved	09/05/2023	10/03/2023	09/08/2023

Workflow Step / Action Name	Action Type	Start Date	End Date
Review v.1		09/05/2023 10:18	09/08/2023 8:50
Confirm application complete v.1	Generic Action		09/05/2023 10:18
Planning Permit Application Review v.1	Receive Submittal	09/05/2023 0:00	09/08/2023 8:50
Zoning Board v.1		09/08/2023 8:50	
Zoning Board Agenda v.1	Task	09/08/2023 8:50	09/08/2023 8:51
Invoice for Notices v.1	Task	09/08/2023 8:50	09/08/2023 8:51
Send Notices v.1	Task	09/08/2023 8:51	09/08/2023 8:51
Zoning Administrator Creates Staff Recommendations v.1	Task	09/08/2023 8:51	09/08/2023 10:32
Distribute Zoning Board Materials v.1	Task	09/08/2023 10:32	09/18/2023 14:05
Zoning Board Hearing v.1	Hold Hearing	09/18/2023 14:05	
Zoning Board Decision v.1	Permit Activity		
NOD Sent to Applicant v.1	Create Report		
Final Plan v.1			
Plans uploaded to Treeno v.1	Generic Action		
Property Info Group v.1	Generic Action		
Create/Link to Records v.1			
Create / Link to Permit - Building Complex v.1	Create Sub Permit		

353 Central Ave, Suite 200
P.O. Box 977 | Dover, NH 03821

Office 603-749-5000
Fax 603-749-1838

Sean T. O'Connell
Attorney at Law

August 11, 2023

City of Dover
Zoning Board of Adjustment
288 Central Avenue
Dover, NH 03820

RECEIVED
Planning Office

AUG 11 2023

Dover, New Hampshire

Re: Appeal of Administrative Decision

Dear City of Dover Zoning Board of Adjustment:

Please accept this Appeal of Administrative Decision on behalf of our client Deepwater Frontiers, LLC ("Deepwater") pursuant to N.H. Rev. Stat. Ann §676:5. Deepwater received an administrative decision from Zoning Administrator and Assistant City Planner Natash M. Kypfer ("Ms. Kypfer") dated July 13, 2023 regarding a temporary storage container Deepwater placed on its property at Back Road, Tax Map M, Lot 104 (the "Property").

By way of background, Deepwater's property consists of a 20' wide driveway access that runs approximately 2000' feet from Back Road to a point in the Property where the lot widens considerably. At the point the property widens another approximately 2000' driveway will need to be constructed to access any structure. My client has built access on the 20' section of the roadway up to the first of four (4) wetlands crossings that require NH DES approval prior to any construction or disturbance to those areas. Deepwater's storage container is placed at that first wetlands crossing and is used by Deepwater to store materials related to road engineering, surveying and construction as well as an all-terrain vehicle also used for those purposes given the long distances my client and their experts need to travel.

Ms. Kypfer concludes that the storage container is not a "building" as defined by City of Dover Zoning Ordinances §170-5 and §170-6 as the container is not "permanently affixed on the land". Ms. Kypfer goes on to conclude that the storage container is a "Structure" as defined by City of Dover Zoning Ordinance §170-6 as it contains a "framework of support" and she notes that the storage container is metal and has a rigid shape. Ms. Kypfer goes on to note that the City of Dover does not differentiate between temporary or permanent structures, apparently for the purpose of refuting any argument from Deepwater that the container is designed for temporary use associated with design, engineering, surveying and construction of a very long and complicated driveway.

Deepwater contends that Ms. Kypfer's conclusions regarding City of Dover Zoning Codes are in error given the totality of the facts. The fact here is that this container exists only where it is because it is adjacent to a wetland crossing and cannot be moved until NHDES issues permits. It is also true that NHDES will only issue permits for the entire property, not just for this particular crossing leaving the project in a waiting period until those permits are issued.

Deepwater's position is that notions of permanent or temporary uses are inapplicable to any analysis of this storage unit under Dover Zoning Ordinances. This container is almost purely analogous to construction trailers which are placed in work zones around the City of Dover and other municipalities regularly and without issue or complaint. In fact, if this storage unit had wheels, we are doubtful we would have received Ms. Kypfer's letter. Deepwater needs this for matters related only to the construction of the road and must move it as soon as construction resumes post permits as the storage unit is 8' wide and the roadway access is only 20' wide.

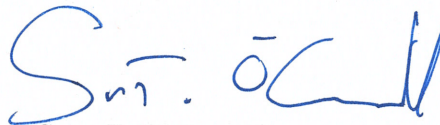
Deepwater is sensitive to the complaints of one abutter who has objected to the container but counters, again, that this is not a "structure" within the purposes or intent of City of Dover Zoning Ordinance §1705- or §170-6 and instead is related to construction only and is not and will not be related to the occupancy of this Property once the construction is complete.

Moreover, the notion that anything with a "framework of support" implicates a "Structure" is impossibly overbroad and ill defined. Indeed, most anything existing on the land of any Dover resident would have some "framework or support". This would apply to vehicles, tents, trailers and other items that also are not contemplated by the relevant ordinances.

A statute in New Hampshire is impermissibly and unconstitutionally vague if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits... or [if] it authorizes or even encourages arbitrary and discriminatory enforcement. State v. MacElman, 154 H.H. 304 (2006). Here Deepwater placed this container on its land fully believing that it was not in danger or violating any City ordinance given its temporary nature, connection only related to design, permitting and construction and given that similar temporary construction storage containers appear at jobsites around the City of Dover regularly and without apparent enforcement action by City officials. As other development sites regularly contain "structures" with "framework[s] of support" without apparent issue the fact that my client's has somehow become an issue clearly shows that enforcement is arbitrary and discriminatory.

In short, Deepwater seeks only to place a temporary construction related container on its very unique property for a period only long enough to gain permits that would allow it to be fully removed from its current location. Defining this temporary construction related container as a "structure" within the meaning of City of Dover Zoning Code §170;5 and 170-6 is an impermissible interpretation of the Zoning Code and this board should overrule Ms. Kypfer's decision and allow the container to remain for all the reasons stated herein.

Sincerely,



Sean T. O'Connell

soconnell@shaheengordon.com

STO/glm

ZONE-2023-0042**BACK ROAD**

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
M0091-000000	286 MIDDLE RD	STRANGE EDWARD S		286 MIDDLE RD	DOVER	NH	03820
M0091-A00000	290 292 MIDDLE RD	TOWNSQUARE MEDIA PORTSMOUTH LLC		PO BOX 576	DOVER	NH	03821-0576
M0091-B00000	278 MIDDLE RD	MCKENNA JAMES F & JOANNE E TRUSTEES	MCKENNA JAMES AND JOANNE REVOCABLE LIVIN	278 MIDDLE ROAD	DOVER	NH	03820
M0091-C00000	MIDDLE RD	WATERSIDE LAND HOLDINGS LLC	C/O SUMMIT LAND DEVELOPMENT LLC	340 CENTRAL AVE STE 202	DOVER	NH	03820
M0092-A00000	BACK RD	LANGS PATRICIA		10 HAWTHORN ROAD	DOVER	NH	03820
M0092-B00000	CULLEN BAY RD	CULLEN BAY HOMEOWNERS ASSC	C/O MICHELLE TROCHALAKIS TREASURER	7 CULLEN BAY RD	DOVER	NH	03820
M0092-H00000	CULLEN BAY RD	HEBERT MARIE V TRUSTEE	HEBERT MARIE V REVOCABLE TRUST	6 CULLEN BAY RD	DOVER	NH	03820
M0102-000000	277 MIDDLE RD	DRISCOLL BRENDAN C		277 MIDDLE RD	DOVER	NH	03820
M0102-001000	268 MIDDLE RD	MINEROWICZ EDWARD & MARCIA TRUSTEES	THE RED ISLAND TRUST	268 MIDDLE RD	DOVER	NH	03820
M0102-012000	HAYDEN DR	CATHERINEBERG CONDOMINIUM UNIT OWNERS AS		38 BEECHWOOD DR	STRAFFORD	NH	03884
M0102-012DRV	HAYDEN DR	100 BROWNING LLC		38 BEECHWOOD DR	STRAFFORD	NH	03884
M0104-000000	BACK RD	DEEPWATER FRONTIERS LLC		22 ISAAC CIRCLE	DOVER	NH	03820
		SEAN O'CONNELL	SHAHEEN & GORDON ATTORNEYS AT LAW	P.O. BOX 977	DOVER	NH	03821

"Structure on Middle Road "

From: vasco marques (vascobeth@yahoo.com)

To: bethmarques10@yahoo.com

Date: Sunday, September 17, 2023, 01:59 PM EDT

Vasco and Beth Marques
6 Hayden Dr
Dover , NH 03820

To whom it may concern ,

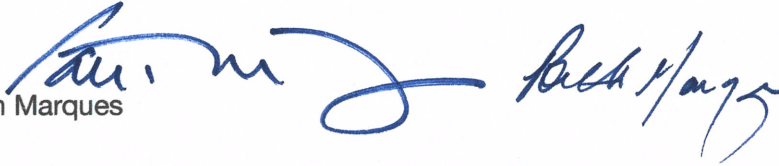
We are in support of our neighbor Jim Mckenna.

We agree that the structure placed near his home is unsightly and illegal ; it should be removed as soon as possible

Thank you for your attention to this matter

Respectfully

Vasco and Beth Marques

Handwritten signatures of Vasco and Beth Marques in blue ink. The signature on the left is 'Vasco' and the signature on the right is 'Beth Marques'.