



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:

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

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.

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- 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.
- 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.

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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. 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.

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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.

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