

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, November 16, 2023**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Otis Perry (Vice Chair), Nicholas Couturier, Anthony Sillitta, Rich Onufry, and Jackson Brown (Alternate)

Members Absent (Excused): George Reagan (Alternate) and Sarah Tatarczuk (Alternate)

Members Absent (Unexcused): None

Staff Present: Thomas Clark (Acting Zoning Administrator) and Donna Benton (Director of Planning and Community Development)

The Chair called the meeting to order at 7 PM.

2. APPROVAL OF MEETING MINUTES OF OCTOBER 19, 2023

Motion: Onufry moved to approve the minutes of October 19, 2023. Seconded by Couturier. Vote: U/A

The Chair explained the hearing process and meeting procedures.

3. HEARINGS

A. *ZONE-2023-0045 Applicant: Bruton & Berube, PLLC (Owners: Laurie S. Anderson and Andrew R. & Holly Welsh Smith), 13 & 11 Hawthorn Road, Tax Map 17, Lots 132 & 131) located in the Medium Density Residential District (R-12), request a Variance from Section 170-12.(B) of the Zoning Ordinance, to allow for a reduction in minimum lot area in order to facilitate a lot line adjustment of shared property lines. The zoning district requires a minimum of 12,000 sq. ft.; if relief is granted, post adjustment Lot 131 will be 11,079± sq. ft. and Lot 132 will be 11,710± sq. ft.

Attorney Josh Lanzetta, presented the case and reviewed the position of the appellant with regard to their Variance request.

He explained the context of the variance request was originally a property line dispute which was surveyed, there was a lawsuit, mediation with a professional, and a settlement. Part of the settlement is an order from Superior Court that the parties complete a lot line adjustment. However, the court cannot provide the zoning relief which is why the item is before the ZBA for the variance and the final step will be going before the Planning Board.

He explained the details of the lot line adjustment.

Using City GIS for research it became clear that most homes in this neighborhood do not meet the 12,000 sf minimum. It is reasonable to make this change to the lot line to make peace, harmony, and closer equity to area lot sizes. He submitted 10 letters of support from other residents in the neighborhood.

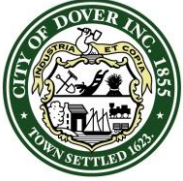
He reviewed the variance criteria supporting the variance. Addressing the hardship, he noted that the sf minimum is there for uniformity and the lot line actually brings one lot more compliant with square footage and setbacks.

Public Hearing opened

Public Comment:

None

Planning Department recommendation: Zoning Administrator states the request is to have a Variance granted to allow for less than the required minimum lot area should a lot line adjustment occur. Staff supports the granting of the Variance request, based upon: The applicants' coming to a solution, that the general intent of the zoning ordinance is still met, and it's not contrary to the public interest. One of the lots is already under the required minimum and the change is minimal.



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

1) The applicant submit a Lot Line Adjustment Plan and necessary application materials to the City to be reviewed by the Planning Board.

Public Hearing closed

Motion: O. Perry moved to grant the variance with the condition provided by staff. A.Sillitta seconded.

Vote: U/A

B. *ZONE-2023-0046 Applicant: Boudreau Land Surveying (Owners: Bridget Broderick), 26 Nye Lane, Tax Map E, Lot 49-6, located in the Low-Density Residential District (R-20), request a Variance from Section 170-12 of the Zoning Ordinance, to allow construction of a covered porch, and steps to be constructed approximately 14.6' from the side lot line, where 20' is required.

Scott Boudreau, Boudreau Land Surveying represented the applicant and presented the item. The project is converting a single-family home to a two-family home. Plans for the addition were provided. The request for variance is for encroachment into the 20' setback by the proposed covered porch and stairs.

He addressed the hardship noting a detached structure would only need 10' setbacks, but 20' is required as this is an attached addition.

He confirmed for the board that the parcel is a very unique shape which is why variance is the relief mechanism being sought.

R.Onufry asked about the undeveloped lot and if there is access. The owner's husband Joel clarified that the undeveloped property is in the process of being developed into approx. 26 townhomes. According to the plans, that abutting area will be open space and there is no access between properties due to topography and a stream.

Public Hearing opened

Public Comment:

None

Planning Department recommendation: Zoning Administrator states the request is to have a Variance granted to allow for construction of a covered porch and steps for an ADU to be approximately 14.6' from the side lot line whereas 20' is required. Staff does not support or oppose the granting of the Variance request.

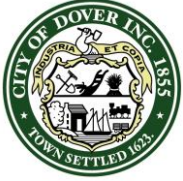
If the Board grants the variance, staff recommends one condition:

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

Public Hearing closed

Motion: N. Couturier found moved to grant the variance with the condition provided by staff. Perry seconded.

Vote: U/A



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C. *ZONE-2023-0047 Applicant: Spectrum Signs and Graphics (Owners: Central Avenue Management, LLC), 118 Central Avenue, Tax Map 15, Lot 113, located in the Gateway District (G), request a Variance from Section 170-32.G. of the Zoning Ordinance, to allow for an increase in sign size for an approximate 53 s.f. wall sign and an approximate 69.4 s.f. free standing sign where the total sign area allowed is 24' in the Gateway District.

Nick Jarvis, Spectrum Signs and FX Bruton, Bruton and Berube represented the applicant and presented the item. Mr. Jarvis explained the request and details of the proposed sign. Square footage and illumination are both in question here.

Size: the regulated 24' is a hardship restriction to the applicant as they are 300' off the road and a sign that size would not be seen sufficiently. The previous occupant received a variance for a very large awning which was visible with occupant's branding and was illuminated. What is being proposed is seven times smaller than that awning.

What is in place for the standing sign is what the applicant wants to continue to use. This would just be a change to the name of the tenant for that sign.

Mr. Bruton spoke as representative to the owner. He spoke about the freestanding sign and the variance given for it previously. The request is to keep it the same or add 5' depending how you read the variance. The owner removed about 400sf of existing signage that was allowed by variance. This is one of the largest parcels in the Gateway district which is allowed 24sf signage per tenant. If there were four tenants on this lot, there would be almost 100sf of allowed signage.

Discussion occurred about the calculations for the square footage of the free-standing sign. Mr. Jarvis explained his process for the calculations.

Public Hearing opened

Public Comment:

Email read from Linda Merullo.

Planning Department recommendation: Zoning Administrator states the request is to have a Variance granted regarding the signs being over the 24 s.f. allowed. Staff does not support or oppose the granting of the Variance request, based upon: There have been previous Variances granted and changes to the zone, but the signs did come down when the unit was vacant for over a year and could be considered OBSOLETE. Staff understands the request is to use what was there. He addressed the letter submitted and clarified this would not establish a precedent and the City would not have to allow this for every property.

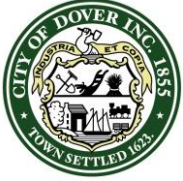
The Chair agreed and clarified each property is unique and the ZBA hears each case separately and makes decisions accordingly.

Public hearing closed

Motion: R. Onufry moved to grant the variance for both signs according to the size stated in the request (53 s.f. wall sign and 69.4 s.f. free standing sign).

N. Couturier seconded. The Chair noted he is in support as it's reasonable given the distance and details explained.

Vote: U/A



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D. *ZONE-2023-0048 Applicant: Anthony Sallèse (Owners: Dana & Susan J Wirkala), 7 Ham Street, Tax Map 27, Lot 16, located in Urban Density Multi Residential District (RM-U), request a Special Exception from Section 170-52.C.3 of the Zoning Ordinance, to allow for the conversion from two (2) living units to four (4) living units.

Owner, Anthony Sallèse presented the item. He recently purchased the property which is a two-family home consisting of two 4-bedroom units. The proposal is to create four 2-bedroom units. Two of the proposed units will be restricted to HUD fair market rent rates.

There are other 4-unit properties in the neighborhood that sit on similar sized lots or even smaller lots. All four units would be renovated and meet code restrictions.

The Chair reviewed the proposed conditions with the applicant, and he was amenable. He confirmed no changes are proposed to the parking area.

Public Hearing opened.

Public Comment:

FX Bruton, Bruton and Berube representing an adjacent property confirmed support of the request and agrees it is an appropriate use for that parcel. Winter parking has been an issue if people spill over into their lot. He would like “no parking at 601 Central Ave” written into the lease.

Planning Department recommendation: Zoning Administrator states the request is to have a Special Exception granted. Staff does not support or oppose the granting of the Special Exception request, based upon: The applicant has indicated two of the four units will be deed restricted to HUD Fair Market rental rates which means criteria A and E do not need to be met. Therefore, the applicant meets the rest of the criteria in the staff's opinion.

If the Board grants the Special Exception, staff recommends two conditions:

- 1) The applicant submit a recorded deed restriction that two of the units be restricted to the HUD Fair Market Rate rent set each year.
- 2) The applicant add bushes or other screening between parking space and Park St.

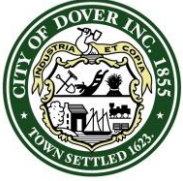
Public hearing closed

Motion: O. Perry moved to grant the special condition with the two conditions provided by staff. A. Sillitta seconded.

Vote: U/A

E. *ZONE-2023-0049 Applicant: Shaheen & Gordon, PA (Owners: Deepwater Frontiers, LLC), Back Road, Tax Map M, Lot 104, located in the Rural Residential District (R-40), request a Variance from Section 170-12(B) of the Zoning Ordinance, to allow for a storage container to remain on the parcel within the setback temporarily due to the unique natures of the property.

Attorney William Baker represented the applicant and presented the item. Owner Miles Cook was present. Mr. Baker explained the uniqueness of the property's shape, the existence of a storage container currently at the first of four wetland crossings of the narrow strip at the front of the lot, and the variance request of the setback requirements due to the necessity of the placement of the storage container.



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He addressed the five criteria.

Contrary to the Public interest: NH courts adopted two approaches in the past. Character/ public health, safety and welfare will not be affected. Discussed rural neighborhood and noted the storage of materials to road engineering, surveying and construction and an access vehicle falls within the purpose of the ordinance. There are wetlands to protect on this property and heavy equipment should not cross these wetlands prior to having the necessary structure and permits that allow for it. Prior to receiving those permits, the property needs to be surveyed and keeping that surveying equipment on site allows for that. Developing a single-family home is consistent with the rural residential zoning. No threat to public health and public welfare. This will benefit the public by preserving the aesthetic beauty while allowing for the development of single-family housing.

Spirit of the ordinance: Boards have held that it must be unduly and violate the basic zoning objectives by altering character of neighborhood and affecting the health, safety, and welfare of the public. The character of the neighborhood will not be altered. There is no other place to put the container. The owner wishes to move the container as soon as possible, but it is necessary to have this equipment stored onsite to move the project forward. This is a benign storage container, locked up, and does not affect the health, safety and welfare. There is no benefit to keeping this storage container in place once the lot is developed further back on the property.

Substantial justice: NH Supreme court's guiding rule is that any loss to the individual is not outweighed by the gain to the general public is an injustice. This is a unique property and the survey equipment is needed to be able to survey and access the back portions of the property to prepare it for future use. Denying the variance will delay further development of this parcel. Having a storage container on site to help develop the property is developing is consistent with zoning ordinance.

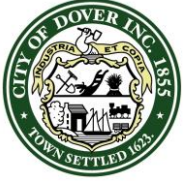
The value of surrounding properties is not diminished: NH Courts have held that the ZBA can consider noise, traffic, aesthetics and intensity of use. Having a storage container will reduce noise and traffic because instead of having to haul in equipment, it's all there. He discussed the size of the container which is necessary to store the equipment necessary. If this is denied and the applicant brings in multiple smaller containers, the aesthetic is not improved.

Hardship: Several conditions make the property unique include the flag-style lot with 20' wide, 2,000' deep driveway with 4 wetlands crossings and very wet area. Owner is taking care that the wetlands aren't disturbed, and environmental and zoning restrictions are followed. The container is there by necessity. NHDES only issues permits for the entire property, so it is not possible to receive a partial permit for the front portion and then move the container back while the next permit is being sought. Next step at this point is to meet with Engineers and NHDES to design wetlands crossing. Owner is in the process of getting permits.

Board members asked some questions of the applicant.

Chair Prior asked about the status of applying for permits. He also asked if surveys are completed and meetings with variance individuals. The applicant clarified that the entire parcel has not yet been surveyed.

O. Perry noted that Variances go with the land and are not temporary. He asked about timeframe and how long "temporary" would be. The applicant noted the Variance would be needed for one year and if longer they would re-apply for another Variance.



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Chair Prior asked if a permit has been applied to the state yet which was answered it has not been. Chair Prior asked what needs to happen next for the permitting and if a date was set for a meeting. Prior to submitting the permit application, there will need to be a meeting with DES to determine what is necessary to manufacture the wetland crossings. There is not date confirmed for a meeting.

A. Silletta asked about a list of what was inside the container of the contents. There wasn't a list or photo available. A. Silletta discussed the size of the container and asked why the applicant won't use smaller containers that meet the zoning ordinance.

Discussed that aesthetics wouldn't be an item to discuss if the container conformed to zoning. He also asked how the single container is beneficial to others and pointed out there is a way to conform to zoning.

Chair Prior asked about the storage container being for sale on the internet as was sent to the ZBA in a letter. The applicant noted it was to hedge bets in case the Variance was not granted. The size was not essential but having storage onsite was essential.

N. Couturier asked how long it has been there. Answered since May.

R. Onufry asked about the timeframe of permitting, relocating the container, vs. completion of the house. Answered that the hope is that the storage container can be moved further back in about a year.

Staff was asked about an exact date and the answer was April/May timeframe by staff.

- If size is making the container non-conforming, why not have smaller containers which can conform?
 - That is likely what will happen if needed
- Is the container for sale and if so, why is it so critical to the process to require a variance?
 - The container is owned by the property owner. It is for sale in case the variance is not granted, it will be sold and different storage units will be used.
- The container has been in place since May

Public Hearing opened.

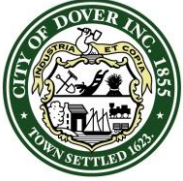
Public Comment:

Edward Minerowicz, 268 Middle Rd is across the street from the subject property. The existing character of the neighborhood is affected by this storage container in the middle of single-family homes and wooded surroundings. The storage unit has been there for six months and has not had surveying equipment inside. It does not seem necessary for the development of the site. Most surveyors want to walk the property to do their work and keep their own equipment with them. The McKennas live right next door to the storage unit. It is practically in their back yard and is a disturbance to them and other neighbors.

Letter from Mr. Jim McKenna, 278 Middle Road.

Email from Mr. Gary Mamigonian of 297 Middle Rd.

Planning Department recommendation: D. Benton states the request is to have a Variance granted. Staff does not support or oppose the granting of the Variance request. Staff is unaware of any other cases where a time restriction has been used for variance. Variances run with the land. Zoning ordinance does not address storage containers which is why staff has treated this as an accessory structure and held it to the restrictions for those. No permits have yet been



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applied for from DES though the unit has been in place 6+ months and the neighbors do believe the container alters the character of the neighborhood. Other options could be sought such as temporary easement from a neighbor, or up to two 200sf units rather than one large one.

The applicant is seeking to allow the storage container to stay in place for an undetermined amount of time and the exact use and purpose is unclear. While it's not written on the memo, staff would recommend one condition if the Board grants the Variance request.

- 1) Plant plants to help screen the storage container from the street and abutter.

R.Onufry asked about the 200 s.f. threshold for structures.

Public Hearing closed

Motion: O. Perry moved to deny the variance request based on the information presented tonight and in the materials submitted; he found that the hardship criteria was not met as multiple storage containers is an option; character of the neighborhood has been affected by putting an industrial building in the middle of a residential neighborhood; no zoning regulations allow for a temporary variance; container appears to be stored in place and appears for sale. A. Sillitta seconded. Vote: 4-1 with R. Onufry opposed.

4. OTHER BUSINESS

None

5. ADJOURN

Motion: O.Perry moved to adjourn at 8:20 pm. Couturier seconded. Vote: U/A