

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, April 20, 2023**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Otis Perry (Vice Chair), George Reagan (Alternate), Nick Couturier, Rich Onufry

Members Absent (Excused): Anthony Sillitta, Sarah Tatarczuk (Alternate)

Members Absent (Unexcused): None

Staff Present: Natasha Kypfer (Zoning Administrator/Assistant City Planner), Chris Parker (Deputy City Manager representing Business Development)

The Chair called the meeting to order at 7 PM.

2. APPROVAL OF MEETING MINUTES OF FEBRUARY 16, 2023

Motion: Perry moved to approve the minutes of February 16, 2023. Seconded by Onufry. Vote: All in favor with Reagan abstaining

The Chair explained the ZBA hearing process.

3. HEARINGS

- A. *ZONE-2023-0002 Owner: Littleworth LLC, 16 Storage Drive (Tax Map H, Lot 29-A-3), located in the Commercial Manufacturing (CM) Zoning District requests a Variance from **Chapter 170-12.A. of the Zoning Ordinance**, to allow for an expansion in hours of operation of an existing self-service storage facility.

Attorney Josh Lanzetta, Bruton and Berube, representing 16 Storage Drive presented the case, and reviewed the need for the Variance request. He thanked staff for their help and apologized for adding supplemental materials to the application today, which included materials to follow along with tonight's presentation, as well as letters of support for the variance and an appraisal report from when the property was previously sold.

Attorney Lanzetta gave a digital presentation which included aerial photos and maps of the site, the operating hours of other storage facilities in the City and their locations, and decibel readings done at various locations at the site. *Staff was provided a copy of the PowerPoint the following day, which is now part of the public record.*

The request for expanded hours is very small- three hours each day in the morning. Currently the facility opens at 9am and the request is to open at 6am M-F, and 7am on Sat and Sun (which presently opens at 10am). Many of the potential clients wish to store their tools and be able to pick them up before the workday which is not possible with a 9am access time.

He addressed health, safety, morals and general welfare in regards to the restricted hours.

This property is across from a residential zone which is why the hours have been treated differently.

He addressed the variance criteria as follows:

The first three criteria are looked at together by the courts. There is no negative impact to the public. The spirit of the ordinance is directed by health safety and welfare which is not affected by the proposed change.

Substantial justice is not served with this storage facility being held to restrictions that are not on other storage facilities in the same zone. There are residential abutters, but most of the area is commercial/industrial.



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, April 20, 2023**
Meeting Time: **7:00 pm**

Furthermore, this business has no negative effects on traffic or noise to the area. He provided an appraisal report showing the value of the property and allowing the clients earlier access to the property brings more value.

Hardship deals with the reasonableness of the request. It is not reasonable to restrict this property in this way especially when others are not restricted.

The board asked some questions of the applicant.

Mr. Lanzetta confirmed he found the business hours for the other facilities online and does not know if all those were approved through ZBA process or if it's an enforcement issue. One of them was granted a variance for expanded hours.

Chair Prior noted there is specific language in the ordinance itemizing the approved hours for storage facilities, under the CUP criteria on the CM zoning table.

Chair Prior, Vice Chair Perry, and Attorney Lanzetta discussed how the expanded hours will affect or disburse the traffic pattern of the clients on site.

Vice Chair Perry commented that the clients use the storage units in various ways which were not all accounted for in the sound study. For example, someone could be working on their unit with the radio blaring on site.

In response to a question, Attorney Lanzetta confirmed for Onufry that the hardship is that the regulation is inconsistent on this item across other properties of the same use within the same zone.

Reagan asked if any of the abutters in favor of the variance request are residential abutters. Mr. Lanzetta could not confirm at the time.

Public Hearing opened.

Christopher Parker, Deputy City Manager representing the Office of Business Development encouraged the board to deny the request and explained the context around the comparable self-storage storage facilities listed by the applicant and noted the differences between those and the applicant's property and how and when they were approved.

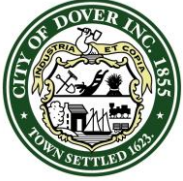
He further explained why the ordinance exists the way it does. The regulations governing self-storage facilities were determined by the Planning Board after much consideration in an effort to be reasonable to the property owner and the abutters.

Dover classifies contractor storage as light industry, not self-storage which this property has not received approval for. They would need to receive those approvals if that is the intention of their use.

He does not believe the applicant has met the criteria. This request is for convenience, rather than hardship.

He also addressed traffic, the criteria which granted this facility, noted the hours were determined by the applicant, and noted a previous code infraction which has already occurred regarding hours of operation.

Planning Department recommendation: Zoning Administrator Kypfer asked the applicant to email her the additional materials shown tonight to add to the public record. She noted that previously a zoning violation was sent out in November due to non-adherence to the hours of operation restrictions which predicated this variance request. Furthermore, this facility uses exterior access to the units rather than interior and for that reason, coupled with its proximity to residential abutters, staff does not support the granting of the Variance request.



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, April 20, 2023
Meeting Time:	7:00 pm

Attorney Lanzetta answered board questions and addressed public comment:

- 12 and 14 Littleworth are direct abutters
- The applicant feels they are losing business due to the restricted hours
- He reiterated the purpose of the variance is it is unreasonable to apply these restrictions to this property where it sits in a commercial zone. It is not affecting anything that the ordinance is drafted to prevent.
 - Disparate treatment
 - Property uniquely sits abutting a residential zone
 - The restrictions are severely limiting
- The software that opens the entrance gate can be specified to limit access and those specifications can be provided to the City.

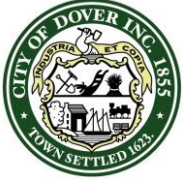
Public Hearing was closed.

Chair Prior commented that regardless of the zone, the Planning Department and Planning Board took care in developing specific restricted hours for the facility prior to its approval (via the CUP process). True hardship does not seem evident if these units are being used to store items as approved. The request for variance does not meet the spirit of the ordinance and so he would not be in favor of granting the variance.

Motion: Perry moved to DENY the Variance based upon the comments the Chair has made and the fact that he agrees. Onufry seconded the motion based on the lack of evidence of a hardship. Vote: U/A

- B. ~~*ZONE-2023-0011~~ Owner: Elizabeth Demosthenes Rodgers, 9 Middlebrook Road (Tax Map K, Lot 44), located in the Medium-Density Residential (R-12) Zoning District, request an appeal of a February 17, 2023 administrative decision regarding a Customary Home Occupation under **Section 170-18. of the Zoning Ordinance**. The Zoning Administrator determined that a private dog park does not constitute an allowable Customary Home Occupation. **WITHDRAWN****
- C. ~~*ZONE-2023-0012~~ Owner: Alexandra Martin & Shawn Kelly, 7 Middlebrook Road (Tax Map K, Lot 43), located in the Medium-Density Residential (R-12) Zoning District, request an appeal of a February 17, 2023 administrative decision regarding a Customary Home Occupation under **Section 170-18 of the Zoning Ordinance**. The Zoning Administrator determined that a private dog park does not constitute an allowable Customary Home Occupation. **WITHDRAWN****
- D. *ZONE-2023-0014** Owner: Eugene A. & Donna L. Sgrignuoli, 22 Sun Hawk Lane (Tax Map E, Lot 65-A), located in the Low-Density Residential (R-20) Zoning District requests a Variance, from **Chapter 170-12.B. of the Zoning Ordinance**, to allow re-subdivision of the subject parcel (Tax Map E, Lot 65-A) through a lot line adjustment, resulting in the creation of a new lot which lacks the required frontage minimum of 125'.

Christopher Berry, Berry Survey and Engineering, representing 22 Sun Hawk Lane presented the case, and reviewed their need for the Variance request due to the requirement that when a lot line is adjusted, it reinstitutes the date in which that lot has been created and any non-conforming portion of that lot needs to comply moving forward. The current lot does not have any frontage on a Class V road or better (it is accessed by a Class VI road) and after the lot line adjustment, it still will not have the required frontage. There will be no change, however, the variance is needed to continue with the new, proposed parcel in its current non-conforming state.



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, April 20, 2023
Meeting Time: 7:00 pm

He addressed the five criteria for variance noting the hardship is that it presently has no frontage. There is only one other parcel in the area with that status, and no other parcel in that area with a similar size that has no adequate frontage. Further explaining that, the two abutters wish to adjust the lot line between them and there is no revision that could take place on the subject parcel that would not create a non-conformance under the zoning ordinance. Granting the variance would be consistent with the spirit and intent of the ordinance which is to allow safe access and uniformity. None of this will change on this parcel if the variance is granted. No property values will be reduced by the proposed change. The lot line is to be altered so a residential home can be rebuilt on a different part of the lot. Granting the variance will do substantial justice. There will be no benefit to the applicant that outweighs any impropriety to abutting land owners, interested parties or the underlying zone.

Mr. Berry clarified for Onufry, in relation to his earlier question, while the existing home is to be demo-ed, there is a proposal for a future duplex home. They also discussed the Community Recreation Effort noted on the plan (relative to the other lot's proposed potential OSS development).

Public Hearing opened. – No one spoke.

Planning Department recommendation: Zoning Administrator Kypfer noted staff supports the granting of the Variance request, based upon the information given that the existing lot does not currently contain frontage and that this fact will not change with the adjustment. The proposed LLA does not materially change the features of the lot.

Chair Prior confirmed with Zoning Administrator Kypfer whether she was aware of the proposed future use of the abutting lot – a proposed Open Space Subdivision - and whether that changes the department recommendation; she replied that she was aware and it does not.

Public Hearing was closed.

Motion: Couturier moved to GRANT the Variance based upon the representations made by the applicant and the testimony provided, the Chair noted that the applicant did a good job addressing the five criteria. Perry seconded. Vote: U/A

4. OTHER BUSINESS

Zoning Administrator Kypfer mentioned:

- There is a training on Saturday, 4/29/23 provided by OSI, their Spring 2023 Planning and Zoning Conference, which can be attended live online, or recordings can be watched later.

5. ADJOURN

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