

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, September 21, 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); Donna Benton (Planning Director)

The Chair called the meeting to order at 7:00 PM.

2. APPROVAL OF MEETING MINUTES OF AUGUST 17, 2023

Motion: Perry moved to approve the minutes of August 17, 2023. Seconded by Couturier. Vote: U/A

The Chair explained the hearing process and meeting procedures.

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.

Attorney William Baker, of Shaheen & Gordon, P.A., represented the applicant and presented the item.

He noted the applicant understands the abutter's concerns, wants to be a good neighbor, and ultimately come to a favorable outcome for all parties.

Attorney Baker states that the issue is:

The difference of opinion with staff interpretation as to the type of structure, as defined by City ordinance, which is vague and led to discriminatory enforcement.

The trailer on this site in question is similar to construction trailers used elsewhere and is there to aid in the building of the driveway. The intent is to ultimately move the trailer further back along the property, and utilize its contents to help develop the property. Presently, it is set at the first wetland crossing, while waiting for issuance of a permit from DES to cross the wetland to begin further development. Attorney Baker stressed that its placement is temporary – not permanent. The trailer houses the equipment needed to do the work.

Attorney Baker continues, stating that the applicant does not believe the trailer meets the criteria of a building which, therefore, needs to meet setback requirements.

Having a “framework of support” is vague language; for instance, humans and cars have a “framework of support”.

He continued by noting he has several photos of similar construction trailers found around the City for which, he attests that no setbacks are required. These photos are handed out for the Board to review. Attorney Baker continues stating that these photos show the discretionary and potentially discriminatory nature of the interpretation and enforcement of the Zoning Ordinance.

Attorney Baker answered questions from the Board, responding:

- The photos distributed to the Board, described as depicting storage containers not adhering to setbacks, cannot be confirmed for certain to not be in compliance with required setbacks.
- The DES permits have not yet been submitted, as the project is still in the surveying process.
- The timeline for the permitting process and restrictions about construction at certain times of year or length of time for active permits was not able to be answered by Attorney Baker.
- The trailer in question does not have wheels on it.



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- The trailer has been in place for two or three months.
- The trailer was set in place prior to submission of the DES permit, knowing the wetland could not be crossed, made sense in order to access the rest of the property. There was already a rough driveway area in place up to that point in the accessway.
- In response to whether the permitting process has begun with the City for the driveway or future buildings:
 - Mr. Miles Cook, Manager of Deepwater Frontiers LLC and owner of the subject property approached the podium and stated: the equipment in the trailer is for surveying the 26 acres of land; they've walked the land with DES and are aware of the areas requiring more in-depth surveying along with the four wetlands crossings. The equipment makes the surveyor's job easier by having it nearby since they have so much land to survey. It is quite a large project which is taking time and resources, and they are experiencing delays.
 - Mr. Cook confirms that, yes, the driveway permit has been received.
- There is electricity and a generator inside the unit.
- It is locked up when not in use.
- In response to whether the applicant is open to a condition of approval to limit the timeframe the trailer can be on site, for example, nine months:
 - Possibly, with the option to provide updates to Staff and the Board, and provide for an extension, as needed.

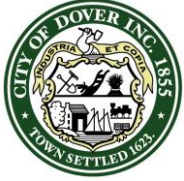
Public Hearing opened.

Public Comment:

Jim McKenna, 278 Middle Road, made several comments:

- Many development projects have come through and none have this shipping container on site.
- Mr. Cook is head of an HOA that protects the rights of his neighborhood by maintaining setbacks and stopping construction on an adjacent parcel.
- Mr. McKenna has stood up for the applicant's driveway and not fought to maintain setbacks for it.
- The adjacent lot has an unpermitted fire pit.
- Mr. McKenna has defended the applicant's rights and wants to defend his own rights and be sure the applicant follows the codes.
- Mr. McKenna has had conversations with staff about the issue and urges staff to enforce the codes.
- He researched the definition of 'structure' and relayed that definition.
- He discussed the City's definition of structure being "a framework of support".
- Contents of the container are not what the applicant claims; there are personal items in there.
- The structure has been there for four months and neighbors have been living with loud noises coming from there including diamond cutting of large doors and stripping of furniture. It's a large echo chamber.
- He discussed the term 'accessory structure'.
- Three options he proposes for consideration:
 - Move the container to the applicant's own driveway and bring it back when the road is done.
 - Move the container to one of the applicant's various business locations.
 - Go to another abutter to ask if he can park it on their property until the DES permits have come through.
- Wetlands permits can take varying lengths of time to obtain and then the building process takes more time on top of that.
- He asked for the Board to order the container to be moved and a monetary fee of \$1000 a day penalty.
- He will appeal if the decision does not go in favor of him and his neighbors.
- He thanked the Board and City staff.

Edward Minerowicz, 268 Middle Road, is in favor of upholding the Zoning Administrator's decision. He believes the storage container does fit the City's definition of a structure. He checked the DES website and, as the applicant's representative stated,



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there is no wetlands permit filed yet for that property. It takes several months to get a surveyor out there and get it surveyed, apply for the permit and have it reviewed and approved – possibly up to a year for the whole process. He prefers the container be moved. Another option may be to apply for a temporary wetland crossing permit and use swamp mats to move the container further into the property.

Bradley Amari, 51 Tuttle Lane, commented that he initially noticed the storage container because it looks like it is sitting right on the wetlands. This item is a shipping container, not a trailer. If there was a development plan on file with the City, he would understand the purpose of the container to support the construction. He referenced a Dover document, a “wet soils PDF” which shows this property has more wetlands on it than almost any other in the area. That area is a water shed and should go through proper permitting through the City and DES. He encouraged the applicant to start the permitting process with the City. He described some issues with the term ‘wetlands crossing’ and how the applicant is using it. He suggests they could store the container on a trailer and store it on other property’s owned by the applicant. He agrees with Dover staff’s interpretation of the code. He also noted surveyors generally prefer to keep their equipment with them and also to walk the property they are surveying. He himself is attempting to have his land surveyed and there was a three-month lead in time before they started, and due to the rain, there have been months of delays. He expects the applicant’s project will take years.

Gary Mamigonian, 291 Middle Road, agrees with the comments that have been made. The container is a structure. Additionally, s 53’ structure is not needed to house surveying equipment. It needs to go, and the proper permits need to be filed.

JoAnn McKenna, 278 Middle Road, loves her home and neighborhood and has been there 49 years. Everyone takes care of their property, and this structure should not be there. Neighbors have approached her and do not know what [the storage container] is for, as well as recognizing it is situated right by her property. She agrees with staff that there should be adherence to setbacks.

Staff summarized four emails which were received to the office from:

- Vasco and Beth Marques of 6 Hayden Drive, received on 9-17-2023
- Jane and Kent Howard of 262 Middle Road, received on 9-20-2023
- Brendan Driscoll, 277 Middle Road, received on 9-21-2023
- Deputy City Manager Christopher G. Parker, received on 9-21-2023

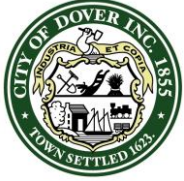
Planning Department recommendation: Zoning Administrator Kypfer gave some background information noting a formal code complaint was submitted in May by the abutter, Mr. Jim McKenna, which is what predicated the need to make a formal Administrative Determination. The property is a “flag-style” lot, just over 26 acres, and with an approximately 4000’ access strip (20’ wide), leading to the larger portion of the lot which has frontage on the waterway. State Statute (NH RSA) and the City of Dover’s Zoning Ordinance, are the context under which this case has been reviewed and is where the definition for structure originates.

The City of Dover’s Planning Department seeks to bring about compliance through cooperation, and multiple solutions were presented to the applicant in writing and during a meeting. These included: moving the container to an area in which it is possible for it to adhere to setbacks; electing to proceed with a relief mechanism before the ZBA such as a Variance application; by providing an enforcement delay period of 90 days; and, lastly, the appeal process – which is where we sit today.

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 her (as the Zoning Administrator) in her July 13, 2023 letter is to be upheld. Staff recommends the Board deny the location of the storage container and affirm the Zoning Administrator’s interpretation.

Zoning Administrator Kypfer followed up by addressing some of the comments made tonight:

First, the historical context in which storage containers have been previously reviewed in the City of Dover, by way of Deputy City Managers Parker’s letter, which highlights past practices, as well as what is in the best interest of this community. Next, Attorney Baker had mentioned discriminatory enforcement and while the staff is limited, she explained the process that an investigation must



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begin once a formal complaint has been filed. Third, she explained her understanding of the timeline: the issue was first presented in the second week of May, which is approximately 4.5 months ago. Lastly, Zoning Administrator Kypfer, stated that she had received information from an abutter, as well as the She stated that she had also received information from an abutter indicating that recreation ATV vehicles were stored in the subject container and used periodically, including for the purposes of the surveying team to conduct pre-site work, and recreationally.

Planning Director Benton stated Zoning Administrator Kypfer accurately described an overview of the letter and the process. Planning Staff does not believe that this is discriminatory enforcement issue. There is a procedure that is in place and needs to be followed, which often takes longer than abutters (complainants) would prefer.

Attorney Baker is given the opportunity for rebuttal and notes the item in question is “a temporary structure” which will not remain in place permanently. The purpose of enforcement of the regulations is to ensure setbacks of permanent structures. As this structure is temporary, the setbacks should not be applicable.

Additional public comment is allowed by Jim McKenna, 278 Middle Road, who states he has heard from a neighbor that there are more wetland crossings. He also clarified linear feet based on language in the deed. The storage container is halting the process, rather than helping it. Temporary wetlands crossing permits could be sought by those who need to use them, and they could potentially bring ATVs with them when they come to work on the site.

Public Hearing was closed.

Motion: Sillitta moved to deny the appeal and uphold the Zoning Administrator’s decision. Sillitta states, based on the sole issue of this case, which 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. The item/storage container does not qualify as a principal building per the Zoning Ordinance, this seems to be agreed to by all parties involved. This leaves this item/storage container to be defined as a “structure” per the definitions as outlined in the existing City ordinances. For these reasons, I believe the appeal does not meet the standard for the decision to be overturned.

Perry seconded.

Chair Prior agreed and mentioned there are relief mechanisms available if this was an active construction site with permits in place.

Vote: U/A

4. OTHER BUSINESS

Chair Prior noted that Zoning Administrator Natasha Kypfer will be leaving the City of Dover for a new position with the City of Portland, and thanked her for the time and attention she has given the Board.

5. ADJOURN

Motion: Perry moved to adjourn at 8:26 pm. Sillitta seconded. Vote: U/A