

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, January 21, 2021
Meeting Time: 7:00 pm

The Chair called the meeting to order at 7:00 pm and noted certain members of the Zoning Board of Adjustment are participating in this meeting remotely. As the Chair of the Zoning Board of Adjustment he declared, per NH RSA 91-A:2, III (b), an “emergency” within the meaning of that statute and waive the requirement that a quorum be physically present at the meeting. Remote members will identify their location and any person present with them at that location. All votes will be by roll call.

The City of Dover has taken extra steps to ensure the physical location of this meeting conforms with all safety provisions during the pandemic, including social distancing, face coverings, and frequently sanitized facilities. Although qualified members of the public can participate in the meeting by speaking at the physical location, the public is encouraged to leave comments in advance by calling 516-MEET (6338), emailing DoverPlanning@dover.nh.gov, or mailing written comments to 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

1. ATTENDANCE

Members Present: Chris Prior (Chair), Nick Couturier, Rich Onufry (Alternate), Anthony Sillitta, George Reagan
The following Board members called into the meeting: Otis Perry (Vice Chair), James Burdin (Alternate),
Members Absent (Excused): Casey Conley (Alternate)

Staff Present: Christopher Parker (Assistant City Manager)

2. APPROVAL OF MEETING MINUTES OF JANUARY 21, 2021

Motion: N. Couturier moved to approve the minutes of January 21, 2021 as amended. Seconded by A. Sillitta. Vote: C.Prior -yes, N.Couturier-yes, O.Perry-yes, G.Reagan-yes, A. Sillitta-yes, J.Burdin-yes, R.Onufry-yes

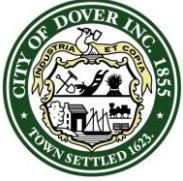
3. HEARINGS

Chair Prior explained the hearing process.

- A.** Z21-03 Owner/Applicant Sebring Holdings, LLC., Dover Point Road (Tax Map K, Lot 26), located in the Medium Density Residential (R-12) Zoning District, requests a variance from Sections 170-12.B, 170-5 (D) and 170-11 (D) to construct and operate a professional/medical office within a residential district with a distance of 64.5 feet from a residential structure, where 150' is required and 77.8' from the front yard property line, where a 25' build to line is required.

Attorney FX Bruton, Bruton and Berube representing the owner of the property presented the case. The applicant had discussions with the abutter and a fence was agreed upon as a buffer. The applicant has worked with Dover staff to make the area safer. The proposal includes a shared driveway. The lot is unique. It shares a 30' access way with the abutter. They would create a medical building and a shared driveway and not use the shared access way- leaving that for the abutter's use. The shared driveway would reduce the access points on Dover Point Rd.

In order to create the shared driveway, the building needs to be pushed back, for which they need a variance. Mr. Bruton reviewed how the plan meets the five criteria. This is a low-impact commercial use. He described the other commercial properties in the neighborhood and how that creates a unique location.



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The board noted staff has requested some conditions. The applicant has no issues with the conditions proposed.

Public hearing open - No one spoke.

Christopher Parker said the Planning Department supports granting the variance. This area is a mixture of uses and the request is reasonable when reviewed in the context of the roadway. There are three zones that converge in the area of this lot and while it is zoned single family residential that is not the nature of the roadway. There are non-residential uses allowed – an assembly hall, school, day care, which would have similar if not more impact on the abutters and this one with limited hours on weekends would fit that level of impact. Regarding the setbacks, the front setback meets the spirit and intent and the lot in question is unique in width and the proposed setback is reasonable. Staff suggests three conditions:

- 1) The property shall be served by a single, shared driveway with Map K lot 19C.
- 2) The applicant shall relinquish any rights to the shared driveway over Map K lot 26-1
- 3) The Site Plan submitted shall include an 8' tall fence and landscaped buffer between the proposed structure and Map K lot 26-1, and landscaping along the frontage of Dover Point road to shield the cars from the abutters across the street.

Public hearing was closed.

G. Reagan commented that the request is reasonable.

Motion: G. Reagan moved to grant the variance with the conditions as noted by staff. N. Couturier seconded.
Vote: C.Prior -yes, N.Couturier-yes, O.Perry-yes, G.Reagan-yes, A. Sillitta-yes,

B. Z21-04 Owner/Applicant Diamond Capital, Inc., Gulf Road (Tax Map N, Lot 2-A-2), located in the Rural Residential (R-40) Zoning District, requests a variance from the definition of “lot” per Section 170-6 of the Zoning Ordinance, to permit the construction of two principal buildings (two single family dwellings) on one lot, where the definition of “lot” does not permit the placement of more than one principal building on a lot

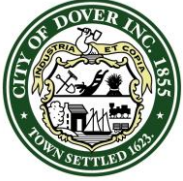
N. Couturier recused himself from the case and the Chair noted R. Onufry will sit for the case.

Attorney FX Bruton, Bruton and Berube representing the owner of the property presented the case. The parcel is five acres and relatively square. There is a significant buffer around the parcel. A portion was cut by the previous owner. An access point was created that goes to an open field. The owners would like to build two single-family homes on the lot – one for themselves and one for their parents. There is enough room for septic on the lot. They propose a shared access to the homes.

The lot could have an ADU, except it would have to be on the second floor which wouldn't work for the parents for this forever home.

They are not proposing a subdivision. They will also not condominiumize the properties. They are proposing two single-family homes and are willing to deed restrict to that along with no commercial uses. They will also agree that no future ADU will go on the property.

Mr. Bruton highlighted the five criteria which was presented in depth in the application.



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Mr. White, White Appraisal addressed the diminution of value criterion by highlighting the document he had submitted to the board.

Mr. Bruton clarified though the applicant is a business, it will be conveyed to the owners for their personal residence.

Mr. Bruton clarified for Chair Prior that the size of both proposed dwellings will be 2500 sq. ft. to satisfy the deed restriction.

Public hearing open

Cecile Savage, 21 Atlantic Ave, is the parent of the applicant and would move into one of the homes. She explained her son grew up in Dover and has now sold their home in Mass. to relocate to live next door to their parents for the rest of their lives.

Attorney Christopher Wyskiel represents the Comstock family at 410 Gulf Rd who oppose the variance. He had submitted some documents earlier this week and brought copies with him for the board members. The ADU on the Comstock's property is deed restricted from future condominiums. He showed pictures of the Comstock's home showing the entrance to the home and ADU.

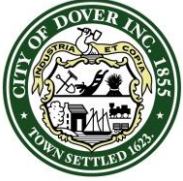
He looks at the neighborhood not as the whole zone, but the three homes that were part of the original subdivision. The original subdivision intent was that only one primary home would be on each lot. ADUs are different than primary homes. They are meant to be smaller and if detached, then on the second floor. The abutters are not opposed to the family living there in separate units, but they want the regulations to be followed for a legal ADU rather than a second home.

FX Bruton noted they are not relying on the deed restriction for the hardship. He does not agree that the covenant only allows for one single-family home on the parcel.

Christopher Parker noted the Planning Department does not oppose granting the variance, as it is not in conflict with the spirit and intent of the R-40 district, which seeks 1 unit per roughly acre of land. 2 units on 5 acres is consistent with that, and staff believes that the average person passing by the lot will not question its consistency with the zone. The zone precludes two principal buildings and he read from the ordinance. The board should look at if the request is reasonable.

If the Board agrees with the applicant's request, staff recommends the following conditions:

- 1) The property shall be served by a single, shared driveway with Map K lot 19C.
- 2) NHDES well and subsurface disposal system permit approvals shall be submitted to the Zoning Administrator for review in regard to this variance approval.
- 3) A covenant shall be submitted to the City and recorded at the Registry of Deeds noting that the property shall not be subject to a declaration of condominium and must be conveyed as one property with two units in perpetuity.
- 4) A covenant shall be submitted to the City and recorded at the Registry of Deeds noting that neither single family home shall be permitted to have an accessory dwelling unit.
- 5) A covenant shall be submitted to the City and recorded at the Registry of Deeds noting that the two structures shall be single family residential homes, in perpetuity and shall not have any customary home occupation.



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R. Onufry asked if in the future, any allowable use could go into these units. Yes, unless they want to restrict that.

Public hearing was closed.

Chair Prior will not support granting the variance as he does not believe the criteria have been met.

J. Burdin noted the testimony on the applicant's behalf is compelling regarding density, diminution of value, and impact to the character of the neighborhood.

Chair Prior noted the character of the neighborhood is proposing to change compared to the original covenants in the deed.

G. Reagan noted it's a reasonable request and the zone would allow for more homes on that lot, but the deed is restricting that from occurring. There is confusion among Dover zoning and the deed language restrictions.

R. Onufry agreed with G. Reagan. He is concerned though about a future use on the site. There may need to be restrictions built in to keep the character of the neighborhood. The board discussed this, and the 5th condition was added.

Motion: R. Onufry moved to grant the variance with the conditions as noted by staff. O. Perry seconded.

Vote: C.Prior -no, O.Perry-yes, G.Reagan-yes, A. Sillitta-yes, R.Onufry-yes

The variance was granted 4-1 with C. Prior opposed.

The board took a five-minute recess.

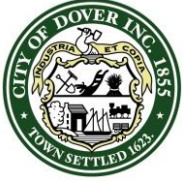
C. Z21-05 Owner Gloria Michaud and Applicant Colbea Enterprises, LLC, 45 Knox Marsh Road (Tax Map H, Lot 32), located in the Commercial Manufacturing (CM) Zoning District, requests a Special Exception as per Section 170-11.C and Section 170-52 (3) to permit a vehicle refueling and recharging station in the CM Zoning District.

Chair Prior noted the voting member in place of N. Couturier will be J. Burdin for this case.

Attorney FX Bruton, Bruton and Berube representing the owner of the property presented the case. This is a gas station proposal at the location he described. It will have six gas dispensers with 12 places to refill. There will be a canopy and a convenience store. There will also be an electric charging station on site. The relief sought is a special exception for the use.

Mr. Bruton addressed the requirements for special exception highlighting that the use will be beneficial to the public, there will be no traffic or pedestrian safety issues due to the proposal, and the minimum lot frontage and coverage and green space all meet the standards as do their sign measurements. Technically, there is a conservation area on site, and they will go before the Planning Board for a CUP which will be needed to move the proposal forward if granted tonight.

Mr. White, White Appraisal presented why there will be no diminution of value to abutting properties.



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O. Perry wondered how many electric vehicle charging stations there will be. The Dover regulations require one and that is what they are proposing.

A. Sillitta asked for more information about where the entry point will be since it is a tricky location. DOT and the Planning Board will have input, but there will likely be two access points.

Public hearing open. No one spoke.

Christopher Parker stated the Planning Department noted that the Board should not consider site plan aspects of the plan, such as traffic, access or the need for the Conditional Use Permits for steep slope removal or Wetlands and Wetlands Buffer encroachment. A Special Exception is used for uses that are allowed if criteria are met. Staff agrees that the applicant can seek the Exception here and that the condition they are asking for has merit, as it is in line with the general allowances for relief in the Zoning Ordinance. Furthermore, while staff does agree that an approval should be conditioned upon the Planning Board granting the Conditional Use Permit to remove the steep slope, neither staff nor the ZBA is in a position to review the criteria for that Conditional Use Permit and that approval is not pre-ordained. If the CUP is not issued, the applicant would need to reconsider its plan. If the Board agrees with the applicant's request, staff recommends the following conditions:

- 1) The Special Exception criteria are only met, if a Conditional Use Permit is approved to remove the steep slope, absent that Permit, the special exception shall be null and void

Public hearing was closed.

Motion: O. Perry moved to grant the special exception with the conditions as noted by staff. A. Sillitta seconded. Vote: C.Prior -yes, O.Perry-yes, G.Reagan-yes, A. Sillitta-yes, J.Burdin-yes

4. OTHER BUSINESS

O. Perry noted some audio issues during the meeting for the members on the remote call.

He also commented there's been a complaint about a particular property, and he asked C. Parker for an update. C. Parker updated the board on the status of the situation.

5. ADJOURN

Motion: O. Perry moved to adjourn at 9:37pm. A. Sillitta seconded.
Vote: C.Prior -yes, O.Perry-yes, G.Reagan-yes, A. Sillitta-yes, R.Onufry-yes