

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, July 18, 2024
Meeting Time: 7:00 pm

1. ATTENDANCE

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

Members Absent (Excused): George Reagan (Alternate), Otis Perry

Members Absent (Unexcused):

Staff Present: Paul R. Crouser (Zoning Administrator)

The Chair called the meeting to order at 7 PM

2. APPROVAL OF MEETING MINUTES OF JUNE 20, 2024

Motion: Onufry moved to approve the minutes of June 20, 2024. Seconded by Brown.

Vote: 3 in favor and 2 abstentions

The Chair explained the hearing process.

3. HEARINGS

- A. * ZONE-2024-0028** Applicant: 17-19 Summer Street Properties, LLC, Locust Street, Tax Map 12, Lot 35-1, located in the Heritage Residential District (HR), requests a Variance from Section 170-12, HR District 3-4 Family Dwelling Creation/Conversion CUP criterion D, where parking lots are required to be at least five (5) feet from a side property line

Chair Prior noted though it states criterion D in the agenda, it should have read criterion C.

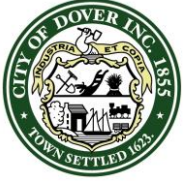
Attorney John Lyons, Lyons Law, presented the application explaining the unique circumstances for the ownership of the separate, abutting lots by the same owner. The proposal is for a 2400 sf residential building with four 2-bedroom units which is allowed in the zone. As the applicant owns the abutting lot, access is already in place. He further described the parking proposal. Cross-easements for each property were suggested by TRC and have been signed and are ready for recording at the registry.

He addressed the variance criteria by highlighting the materials already provided:

- Meets zoning; no threat to public health and safety; parking and traffic details; reduced impervious material
- Consistent with spirit of the ordinance
- The project will facilitate the reasonable use of both lots with access and parking. Better use than vacant lot.
- Consistent with parcels/uses in the neighborhood. Development of the vacant lot may benefit the abutters
- The City approved a subdivision; this client has purchased both lots; which allows this unique circumstance for the development with shared parking and easements. As the two lots are owned by a common ownership, the literal enforcement of the 5' setback would be a detriment to the City as it interferes with the shared access, parking and EV spaces. The proposed use is a reasonable one and allowed.

Public hearing opened

Maureen Sanborn, 30 Silver St, abutter asked the board to deny the variance request due to the applicant failing to make a case on all five criteria. She noted the corner lot has 4 units, not 3 and has not filed a variance for that lot to build a parking lot 5' from the boundary.



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She addressed the criteria noting the Heritage district addresses open space and architecture. By putting the parking lot on the corner lot, it will bring that lot's open space down to nearly zero which is important in this district. She noted the development plan is too dense- too many units. She notes a 2-unit building with open space is the appropriate use of the lot. Single family homes and duplexes are the majority of the neighborhood. The only other 4-unit parcel is owned by the applicant and now he wants to add another 4-unit.

Sara Treacy, 148 Locust st is opposed to the parking variance request as the hardship can be avoided by building a smaller footprint and complying with Heritage requirement of 5' setback. She noted 17-19 Summer St has four units and described the parking in place there. She addressed some additional parking and traffic concerns as well as uses in the neighborhood.

Gary Winters, 31 Summer St is opposed to the variance request as there is not enough open space in the area already, and another project done on the corner of Silver st and Belknap was similar and the parking lot has turned into a dump. He doesn't want that to occur at this location.

Attorney Lyons addressed public comment:

- The tree is right in the middle of the lot, so even if the proposal was for two units, it will need to come down.
- Some of the concerns go to the Planning Board, they are not Zoning Board issues
- This project has gone before TRC multiple times and is a three-unit that is being recommended for approval by staff
- This proposal puts all of the parking between both lots owned by the applicant rather than being visible.

Planning Department input: P. Crouser noted the concerns about appearance and density are not addressed by this board, but will be addressed at the Planning Board stage. He commented on the parking regulations and open space calculations.

As the parking lot serves the parcel whose boundary line it encroaches on, and since ownership is shared between both the vacant lot and 17- 19 Summer St., staff recommends granting this Variance request without any imposed conditions.

Public hearing closed

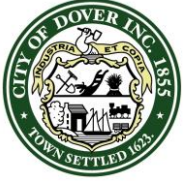
The Chair noted his support of granting the variance regarding the five foot setback and encouraged the public with concerns to continue to follow the process and address their issues at the next phase.

Motion: Brown moved to GRANT the variance as presented. Sillitta seconded. Vote: U/A

- B. *ZONE-2024-0031** Applicant: Mike Leary (Owner: Cocheco Mills Holdings, LLC), 100 and 51 Main Street, Tax Map 3, Lot 63 and Tax Map 2 Lot 37-A, located in Central Business District-General (CBD-G), requests a Variance from Section 170-12, General Central Business District-specific sign regulations, to install more than two (2) wall signs, whose area is greater than the permitted 40 sf. maximum.

Mike Leary, Sundance Signs represented the applicant and presented the item. He explained the purpose is to define the entrances to the buildings which hold several uses on a busy street.

He addressed the five criteria:



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- Benefits to the public by granting the variance
- Spirit of the ordinance fits size and style and signage proposal is adequately placed to identify entrances
- Substantial justice will be done enhancing public safety and there's no benefit to the public in denying the variance.
- No diminution of properties will occur by granting the variance. There are no residences in close proximity other than those on the property.
- He highlighted the size and scope of the building and noted the increased safety with the proposed signage.

Public hearing opened
No one spoke

Planning Department input: Staff recommends approval of this variance request without conditions. There is only one other property within the City which shares similar characteristics to the two properties in question – The Washington Street Mills located at 1 Washington Street. Due to the sheer size of the subject properties, Staff does not see the proposed variance request adversely affecting abutters or Dover's downtown area, nor does Staff feel that this request is in opposition to the spirit of the CBD-G's signage regulations.

Public hearing closed

Motion: Onufry moved to GRANT the variance as proposed as it's an improvement over the current signage. Discussion occurred to clarify the applicant must comply as proposed and designed. Sillitta seconded. Vote: U/A

- C. *ZONE-2024-0032** Applicant: Steven Endsley (Owner: Marc Keith Gagnon), 48 Old Rochester Road, Tax Map D, Lot 9-B, located in Medium Density Residential District (R-12), requests a Variance for each proposed lot from Section 170-12, R-12-specific lot size requirements which mandates a minimum lot area of 12,000 sf. in order to subdivide the parent lot into two (2) ten-thousand (10,000) sf. lots.

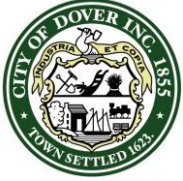
Steven Endsley, probate officer, represented the applicant and presented the item. He explained the proposed subdivision of land and the characteristics of the neighborhood. Selling off that portion will allow someone to build a home and join the neighborhood.

Chair Prior addressed the criteria with the applicant discussing the lot location on two streets of frontage and the other lots are similar lot sized to what is proposed. They further discussed the frontage and safety of access being on the other road.

Public hearing opened
No one spoke

Planning Department input: Staff recommends approval of this variance request without conditions. The vast majority of residential lots within the vicinity are non-conforming due to their size, and in fact, the majority are of similar size to the Applicant's proposed individual lot size of 10,000 sf. As the Applicant's proposed lot sizes are commensurate with surrounding residential properties, Staff feels as though this Variance request is reasonable in nature and will not negatively affect any abutter.

Public hearing closed



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Motion: Couturier moved to GRANT the variance as proposed. Sillitta seconded. Vote: U/A

D. *ZONE-2024-0033 Applicant: ALX Construction & Development, LLC (Owner: 239 Knox Marsh Realty, LLC), 239 Knox Marsh Road, Tax Map H, Lot 37-A, located in Commercial District (C), requests a Variance from Section 170-12, Commercial District (C), Footnote #3 and the district's building height maximum, to permit the 1/3rd requirement for commercial space to be located entirely within one (1) building with the proposed 2/3rds residential use to be in two (2) separate buildings, and to permit the three buildings within the C district to be greater than 40' in height.

Christopher Berry, Berry Survey and Engineering represented the applicant and presented the item.

He gave history of the property and details of the previous approved proposal. When the previous proposal was granted, the parcel was in an industrial zone. The parcel is now in a commercial zone with permitted density changes having taken place as well.

The request tonight is to place all of the commercial use within one building and the residential uses in their own, separate buildings.

The other request is for additional height allowance. 40' is required in the zone and they are requesting 44' to the peak of the structure. They could build a 40' flat-roofed structure, but the applicant and Planning staff prefer a gable-style roof therefore the additional 4' is requested.

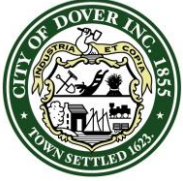
The uses proposed are all permitted uses- there are no requests relating to use or density for the Zoning Board's consideration tonight.

Construction has begun under the previous Planning Board approvals. If the requests are granted, they will move forward to review and approval processes for the revised plans.

Chair Prior noted the suggested conditions of approval set by Planning staff and Mr. Berry noted the applicant is accepting of those conditions.

Mr. Berry addressed the criteria for the separation of uses by structure:

- Public interest ensures diverse uses here and the proposal matches the spirit and intent of the ordinance as the ratios are met.
- Character of the neighborhood matches and the buildings will match each other therefore passers by will not be able to tell which is commercial vs residential. All buildings will look as residential as possible
 - He noted all units will be HUD rate housing rental
- Again, the buildings are the same. There is gain to the applicant to have the uses separated by building and have the commercial units in one structure.
- Surrounding properties will not be diminished as all uses they are proposing are allowed on the site. How they are divided up by placement will not have an effect on values of others
- Special conditions include the location of the site on a main highway and in a secondary groundwater recharge zone. They propose the underground parking to enable less ground coverage. Other conditions include size and shape of the lot and recent change to the zoning- change to permitted uses. It is the only undeveloped parcel in the area. There is a hardship to the applicant if these uses aren't allowed to be consolidated as proposed.



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Mr. Berry addressed the criteria for the height request:

- Building height is realistic to the zone and are centered in the parcel rather than close to the property lines.
- Choosing a style of building fitting to the most appropriate user which is the residential users across the street. Rooflines and architectural style are chosen to fit in. They are not choosing to mimic the industrial buildings in the neighborhood.
- The gain to the applicant is also a gain to Dover and the surrounding neighborhood. Applicant's opinion is that a more traditional and colonial look benefits all.
- The 4' height difference would be difficult to measure a diminution of value when structures are not near the property line
- Special conditions include it is one of the last undeveloped parcels in the zone and surrounded by various uses. Denial of the variance would require the applicant to revise the architectural style which would be loss to the neighborhood. The 4-5' difference is not discernible to the eye. Many abutting structures to the east are far taller.

Chair Prior asked if the applicant would be agreeable to a third condition that the residences be subject to the HUD restricted rental rates. Mr. Berry agreed the applicant will agree to that as it was within his presentation.

Mr. Berry elaborated on the height request which is essentially based on aesthetics.

Chair Prior stated what is before the board tonight is the two variances for the concentration of uses and for the height. There is nothing before the board tonight about the number of units or density. That will be reviewed by the Technical Review Committee and then go before the Planning Board for review. He asked anyone who speaks to this item speak specifically to the items before the board tonight, and not to the portions of the plan for future review by other committees and boards.

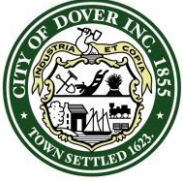
Public hearing opened

Elise Elliott, 251 Knox Marsh Rd asked what happens if the height is granted, then the units are not approved at a later time.

Chair Prior and P. Crouser noted depending on the changes that are needed to the plan, the variance may be rendered obsolete and the applicant may need to come back with a new plan. Discussion continued.

Ms. Elliott noted she represents 9 of the 16 units at 251 Knox Marsh who oppose the proposal. They do have density concerns. They did not have issues with the previous plan, but do now as the single family homes are gone and the units are greatly increased. Concerns expressed about parking and traffic for the entire building of commercial use. Neighbors are concerned about traffic, noise, loitering etc. She has other concerns she will bring to the Planning Board when appropriate. The height will affect the neighborhood as the lot has already been cleared for a previous plan so there is no buffer and the new structures will look right into the abutting yards.

_____, is concerned about the increased density, fear of the hotel use not working out and it being turned into residential use, support structure required for the parking structure below and units above on such a marshy soil and potential damage to neighboring land and structures. He noted their home shakes when a train or plane passes and since construction has begun there is frequent shaking and plumbing and cracking issues. His child stays with grandparents because construction is too disturbing. He questioned the commercial/ residential percentages and what the logic is behind the rule so he can understand it and the potential concerns.



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Chair Prior and P. Crouser addressed the question.

The public comment continued with concerns about 24-hour usage of the commercial unit rather than a typical commercial unit with work hours. The height of the proposed request can only increase the need for more construction and stability which is affecting the abutters with the shaking and damage. Further concerns expressed about the large pile of dirt on his property line and wind carrying debris, future rezoning changes, water table/ soils impacts, is the lodging needed in the area, what proof that real estate values will not be diminished. He asked about the zoning changes that have occurred.

Chair Prior and P. Crouser addressed concerns as applicable.

Public comment continued noting opposition to the height request and the separation of uses by building.

____, Knox Marsh condominiums is concerned about the extra four feet and wondered if that is a direct correlation to the parking proposed. He questioned if the parking underneath is what is needed to support the number of units. Is that what the height is for? Discussion ensued.

Mr. Berry addressed public comment:

- Building height
- Garage has no bearing on the variance request
 - Garage and three stories can all be built within the regulations
- Number of buildings on site
 - Improved site plan details
- Potential future plans/ subdivision/ ownership
- Purpose of mixed use regulations
- Architectural style
- No activity for the past month. Work has been completed until the next approvals go through
- Structural/ soil stability- geotechnical analysis of the soils has been completed and sent out to engineers to determine proper measures for construction

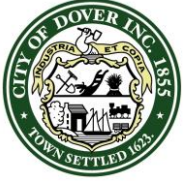
Mr Berry answered questions of the board

- Hours of construction

Planning Department input: Staff recommends approval of this variance request with two conditions. While two of the three buildings fail the 1/3rd commercial requirement, the Applicant's project as a whole fulfills the commercial requirement in the aggregate, as one (1) of the three (3) equal-sized buildings will be entirely commercial in use. Regarding the relief for maximum building height, Staff greatly values adherence to neighborhood-specific architectural standards, and does not object to the negligible increase in building height in exchange for more aesthetically-pleasing architecture.

Staff recommends that the Board grant the Variance request with the following conditions:

1. All three (3) buildings, in combination, must maintain the same, or greater, percentage of commercial use ($\geq 1/3$ rd) in perpetuity. Otherwise, an additional variance(s) would be required.
2. The commercial building (inn) be under construction (meaning Building Permits issued, foundation poured, walls being framed, etc.) prior to the Building Permits being issued for the residential buildings.



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P. Crouser further noted this project has the support of the office of business development for the commercial uses to be within the same structure for equal visibility and access. Also, Planning staff is firm in desiring the aesthetically pleasing look of the architecture proposed and agrees it's worth the minimal 5' height difference.

He also read into the record an email sent to the board by Caitlin and Rory Wilke of 568 Sixth St in opposition to the variance requests.

Public hearing closed

Chair Prior noted the applicant appears to have met all of the criteria. The applicant agreed to the 2 conditions proposed by staff and a 3rd condition suggested by the Chair that the residential units be restricted to the HUD rental rates.

Motion: Sillitta moved to GRANT both variance requests with the three (3) conditions suggested as the applicant has met the criteria. Onufry seconded. Vote: U/A

4. OTHER BUSINESS

None

5. ADJOURN

Motion: Couturier moved to adjourn at 9:07pm. Brown seconded. Vote: U/A