

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Avenue, Dover NH 03820
Meeting Date: **Thursday, September 19, 2024**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF August 15, 2024

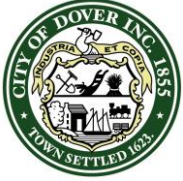
3. HEARINGS

- A. ***ZONE-2024-0036** Applicant: Steven Endsley (Owner: Marc Keith Gagnon), 48 Old Rochester Road, Tax Map D, Lot 9-B, located in the Medium Density Residential District (R-12), requests a Variance from **Section 170-12, R-12 District setback requirements**, to allow for house decks and basement stairs to encroach on the 30' rear setback.
- B. ***ZONE-2024-0037** Applicant: 200 Sixth Street, LLC, 200 Sixth Street, Tax Map E, Lot 70-A, located in Innovative Technology District (IT), requests a Variance from **Section 170-11 Use Regulations and Section 170-12 Innovative Technology (IT) District Table of Use Regs.**, to allow for residential use.
- C. ***ZONE-2024-0038** Appeal of Administrative Decisions, Applicant: Jeff and Maureen Sanborn (Owner: 17-19 Summer Street Properties, LLC) Locust Street (Tax Map 12, Lot 35-1), located in the Heritage Residential District (HR), appeal the following Administrative Decisions pursuant to the variance granted on August 15, 2024, in which the Owner was allowed relief from the HR District's CUP requirement that parking lots shall be at least five (5) feet from a side property line, as prescribed under **Section 170-12, HR District 3-4 Family Dwelling Creation/Conversion CUP criterion C**.
- i. Not requiring cross-petitions for variances for Lots 35 and 35-1;
 - ii. Grandfathering parking on Lot 35 in violation of Heritage District Regulations; and
 - iii. Not requiring the Applicant to vacate the July variance before allowing a new application for a second variance heard by the ZBA on 8/15/24.

4. OTHER BUSINESS

5. ADJOURN

*Indicates that if the application is accepted for discussion, the public hearing will be held the same evening. Note that some hearings will be continued from one meeting to another and some may be postponed. Since this is only a partial description of the proposal and may change, persons with questions or wishing to see the plans are invited to visit the Planning Office, Monday through Thursday from 8:30 am to 5:30 pm and Friday 8:30 am to 4:00 pm or email Dover-Planning@dover.nh.gov. You may also view materials at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>. The public is encouraged to leave comments in advance by emailing Dover-Planning@dover.nh.gov, or mailing written comments to the 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.



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1. ATTENDANCE

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

Members Absent (Excused): George Reagan (Alternate)

Members Absent (Unexcused):

Staff Present: Paul R. Crouser (Zoning Administrator)

The Chair called the meeting to order at 7PM

2. APPROVAL OF MEETING MINUTES OF JULY 18, 2024

Motion: Perry moved to approve the minutes of July 18, 2024 as amended. Seconded by Onufry.

Vote: 5 in favor with Perry abstaining

The Chair explained the hearing process.

3. HEARINGS

- A. * ZONE-2024-0034** Applicant: Boudreau Land Surveying (Owner: Richmond Street Properties, LLC), 17 19 Richmond Street, Tax Map 10, Lot 144, located in the Heritage Residential District (HR), requests a Variance from Section 170-12 HR District 3-4 Family Dwelling Creation, where 4 living units are allowed, to continue having 5 living units.

Scott Boudreau, Boudreau Land Surveying represented and presented the application explaining the current status of the parcel and the proposed plans requested. He could not address questions about the number of existing parking spaces or how many tenants or vehicles currently reside on the property. The owner/ landlord was not present.

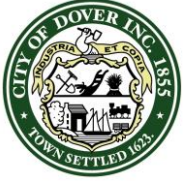
Taylor Buxton, builder addressed the reason for the request to expand the structure and details of the proposal.

Discussion about the parking condition ensued. Staff agreed there is adequate space for the requested parking on site.

Public hearing opened

Lisa Meconi, 14 Richmond expressed concerns about developers not being held accountable for Heritage District restrictions. The street cannot support the added density, and the applicant does not need to request any variance to continue utilizing the property with 5 units.

Lori Holt, 9-13 West Concord St noted she does have adequate parking for her tenants. She expressed concerns about site lines and parking. She suggested the City paint parking lines on the street so there is adequate buffer at the driveways.



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Mike Lavoie, 3 Richmond street agreed with his neighbors that it's already dense and it's not best to expand the restrictions. What's the point of the restrictions, if we don't follow them.

Chair Prior asked about the current dwelling that will be razed- what are the issues.

The applicant representatives addressed the question noting the basement is collapsing and needs structural work before anything else can be done. The existing foundation on the attached structure is also failing and there is little/ no insulation. He further noted they are not proposing any additional units.

Perry asked if the Heritage Commission has heard the project yet. P. Crouser does not believe they have.

Tom Dolbec, 10 (12) Richmond St agrees with the neighbors about the parking issues. Backing in/out is not allowable in the Heritage District, but has to be done at this location. He asked when the fifth dwelling was approved/granted for occupancy. It used to be a garage. When did the other portion change to four units? There are Heritage District restrictions for architecture. Who oversees that those restrictions are met? He also asked if height is allowable to change in the district, as he does not think adding the second proposed floor is allowed. Further discussion occurred with staff addressing setback questions.

Continued discussion with staff and Mike Lavoie, 3 Richmond if the building is razed, does the applicant need to conform to the 4-unit restrictions which include building height, setbacks and parking setbacks. P. Crouser clarified that the portion being razed is attached to an existing 2-story structure, so it is not a change in height to that structure. The Chair further explained the request.

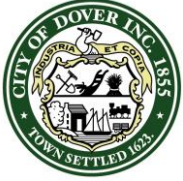
Perry noted he agrees with the resident that this request needs additional scrutiny as they are proposing removal and change to another nonconforming use. He also recommended the Heritage Commission review this proposal and make recommendations to the ZBA prior to the board making any decision.

Onufry noted there is a request to expand the size of the structure which challenges the legal status of the nonconforming piece.

P. Crouser explained his understanding of the Heritage Commission's role is to weigh in on historically valuable structures within the City.

Discussion among the board and staff as to when the 4th and 5th units were added and was it done legally. It will have to be looked up when it became 4 or 5 units, but they have been taxed as having 5 units for a number of years (likely 10+) and if there has been no enforcement by the City to reduce living units in that time, even if it wasn't done legally, it is a moot point.

P. Crouser noted no CUP criteria is under review tonight such as density or setbacks. The only reason the request is before the board is because of the rotting foundation. The applicant could leave it and expand it.



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Planning Department input: Staff neither supports nor opposes this Variance request, however, staff does question the legitimacy of the claim that a literal enforcement of the provisions in the Zoning Ordinance would result in an unnecessary hardship.

While the Applicant is not proposing any increase in density, they are proposing an increase to the addition's footprint by approximately 150 sf. Additionally, the existing structure in question could be completely renovated and remain a legal pre-existing nonconforming use. The Applicant, however, proposes a complete demolition of the existing structure and seeks to rebuild a larger addition in its existing footprint, which triggers current zoning regulations, necessitating the relief sought in this Variance Request.

Staff also wishes to highlight that the existing development on the subject property fails four (4) of the six (6) criteria subject to the approval of newly constructed or converted 3-4 family structures, namely, setback values for the structures and parking areas, screening of parking areas, and a single-family home aesthetic.

Should the Board move to grant the Variance request, staff recommends it do so with the following condition:

1. Vehicle parking for tenants shall exist entirely on-site, as opposed to on-street, at a value of two (2) spaces per dwelling unit, and shall be adequately screened from abutters, the plans for which shall be approved by the Planning Department

It was clarified that there is no specific requirement for parking for residential projects of this scale.

Public hearing closed

Motion: Perry moved to defer the application to the Heritage Commission for their advice whether the application meets their restrictions. Couturier seconded.

The Chair and Sillitta appreciate the motion, but are not sure the Commission's input would affect the request as it's just a change to the foundation.

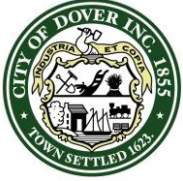
P. Crouser corrected himself that expansion is not allowed.

Vote: 2 in favor with Sillitta, Prior and Onufry opposed.

Motion: Onufry moved to deny the variance request as it does not meet the criteria in full. Hardship is not clear- the project can be completed without the expansion. Value of surrounding properties was not addressed and the ordinance itself is not being observed. Perry seconded.

Staff clarified the applicant can move forward with replacing what exists if the building inspector certifies there is a hazard present.

Vote: U/A



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- B. *ZONE-2024-0035** Applicant: Civilworks New England (Owner: 17-19 Summer Street Properties, LLC), Locust Street, Tax Map 12, Lot 35-1, located in the Heritage Residential District (HR), requests clarification of a previously approved 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.

Steve Haight, CivilWorks represented the applicant and presented the item. This Board previously approved an identical Variance request on July 18, 2024. However, within the Applicant's application and during the Applicant's presentation to this Board, they erroneously referred to the existing structure on 17-19 Summer Street as having three (3) existing dwelling units instead of four (4), the latter of which is the correct figure. The Applicant's intention in this subsequent Variance request is simply to correct the official record.

The Chair confirmed he reviewed the request from the previous meeting and the paperwork and there is this scrivener's error to be corrected and has no substantive weight. Staff confirmed the only way to correct the record is to either re-open the original case, or file a new one.

Public hearing opened

Sara Treacy, 148 Locust st noted residents will lose yard space and will have to share a driveway if this is approved. She gave background on the City creating the Heritage District and its purpose. The structure is too large for the space and can't accommodate the parking needed for the units. Approving this parking CUP request will destroy the feeling and intent of the Heritage District. She requests the variance be denied and a smaller building with enough space for parking without need of a CUP is then proposed.

Mr. Haight addressed public comment noting the CUP will go before the Planning Board, it's not before this board. He gave details of the existing and proposed parking and setback request.

Planning Department input: Staff supports this Variance request without conditions as this Board previously approved an identical Variance Request on July 18, 2024, and no changes to said request have been made aside from correcting the scrivener's error. The applicant meets the parking requirement for number of spaces.

Public hearing closed

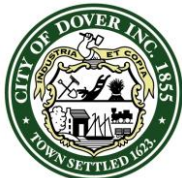
Motion: Perry moved to GRANT the variance as proposed. Sillitta seconded. Vote: U/A

4. OTHER BUSINESS

Perry turned in his resignation from the board at this time. He has really enjoyed his time on the ZBA. The board members stated their appreciation for his wisdom and training.

5. ADJOURN

Motion: Perry moved to adjourn at 8:16pm. Sillitta seconded. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall 288 Central Ave. Dover, NH 03820
Meeting Date: **Thursday, September 19, 2024**
Meeting Time: **7:00 pm**

INTENT: The Applicant requests a Variance for the proposed subdivided lot (lot with existing home) from Section 170-12, R-12-setback requirements to allow for house decks and basement stairs to encroach into the 30' rear setback by approximately 7'.

UNITS PROPOSED: N/A

AGENDA ITEM: 3-A

ZONING DISTRICT: Medium Density Residential District, (R-12)

FILE: ZONE-2024-0036

APPLICANT: Steven Endsley

OWNERS: Estate of Marc Keith Gagnon

LOCATION: 48 Old Rochester Road,
Tax Map D, Lot 9-B

ACREAGE: Parent Lot = 0.46 acres. Future minor subdivision proposes two (2) 10,000 sf. (approximate) lots.

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential, No Change

SURROUNDING LAND USE: Residential and Commercial

PREVIOUS ZBA ACTION: Yes. Variance ZONE-2024-0032 approved on 7/18/2024 to allow for the subdivision of the parent lot into two (2) ten-thousand (10,000) sf. lots, where a minimum lot size of 12,000 sf. is required.

PLANNING BOARD APPROVAL REQ.: Not applicable for this application, but the future Lot Line Adjustment will need Planning Board Approval

ATTACHMENTS: Application, Narrative, Site Plan

STAFF RECOMMENDATION: Staff does not support this Variance Request.

BACKGROUND INFORMATION

The property subject to this Variance request is located at 48 Old Rochester Road. This approximately 20,037 sf. parcel resides within the Medium Density Residential ("R-12") District and currently holds one single-family home.

The Applicant previously obtained variance relief to subdivide the existing parcel into two (2) 10,000 sf. (approximate) lots on 7/18/2024, where the required parcel area in the R-12 is 12,000 sf.

Following the survey of the property to develop the proposed subdivision plan, the Applicant discovered that the existing single-family home was in violation of R-12 rear setback requirements, given the layout of the proposed subdivision, by approximately 7'.

STAFF RECOMMENDATION

Although Staff would argue that the relief sought in this Variance request is minimal and reasonable, given similar setback violations on neighboring parcels near the subject property, Staff cannot support this Variance request for the following reasons:

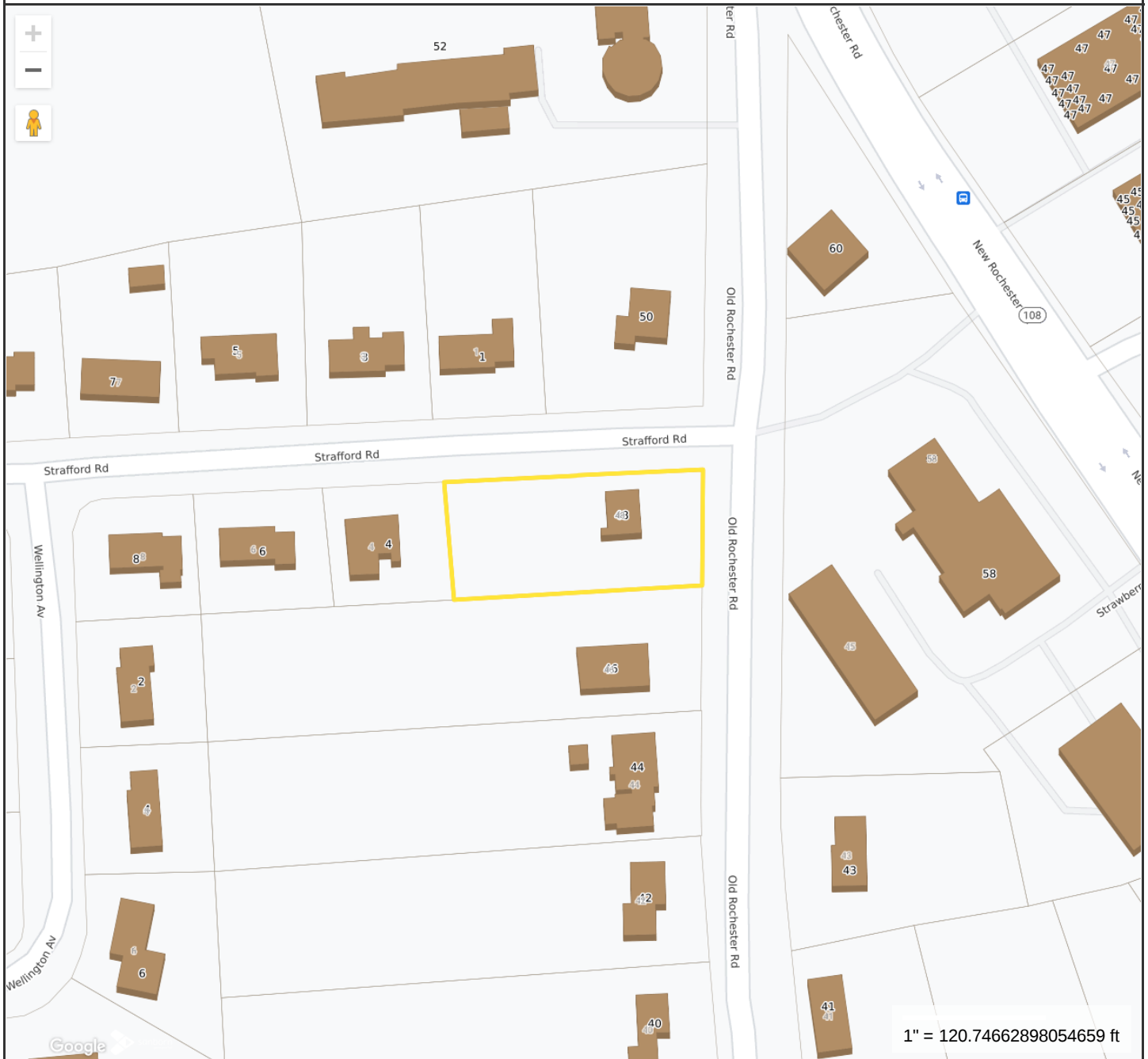
1. The necessity for the relief sought in this Variance request is a result of the Applicant's own voluntary actions;
2. "Hardship", as defined in RSA 674:33 cannot be established because:
 - a. There *does* exist a fair and substantial relationship between the general public purpose of the ordinance provision in question and the specific application of that provision to the property; and
 - b. The property *can* be reasonably used in strict conformance with the ordinance, as detailed below in point 3.
3. §170-41 of the Zoning Ordinance permits existing structures in violation of lot coverage, height, location and setback values to retain their legal non-conforming status, provided "[they] could not be built under the terms of this Chapter...". However, the existing single-family home could easily fit within the R-12's provided setback envelope per the proposed subdivision plan.
4. The existing deck and bulkhead could be removed or relocated, which would eliminate the necessity for the relief sought in this Variance request.

STAFF RECOMMENDATION, CONTINUED

Staff recommends that the Board open the public hearing, accept testimony, and make findings on each of the five Variance criteria. Should the Board move to grant the Variance request, staff recommends it do so with the following condition:

1. No further expansions into the rear setback shall be permitted, regardless of permissions granted in §170-41 of the Zoning Ordinance, Nonconforming Structures, or any future Zoning Ordinance provision which allows for expansions of nonconforming single-family homes.

ZONE-2024-0036 48 OLD ROCHESTER ROAD

**Property Information**

Location 48 OLD ROCHESTER RD
Owner ESTATE OF GAGNON MARC KEITH
Land Use
Zoning Code R-12
Property Id D0009-B00000



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Dover, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 10/30/2023
 Data updated Daily

Print map scale is approximate.
 Critical layout or measurement activities should not be done using this resource.



PERMIT SNAPSHOT REPORT ZONE-2024-0036 FOR CITY OF DOVER, N.H.

Permit Type Zoning	Project:	App Date: 08/21/2024
Work Class: Variance	District: None	Exp Date: NOT AVAILABLE
Status: Fees Paid	Square Feet: 0.00	Completed: NOT COMPLETED
Valuation: \$0.00	Assigned To: Blonigen, Rachel	Approval Expire Date:
Description: To allow for the house decks and basement stairs to impede on the 30' setback on the rear lot line.		

Parcel: D0009-B00000	Main	Address: 48 Old Rochester Rd Dover, 03820	Main	Zone: R-12(Residential - Medium Density)
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Owner Steven Endsley 18 Varney St Lebanon, ME 04027 Business: (603) 834-3351 Mobile: (603) 834-3351	Applicant Steven Endsley 18 Varney St Lebanon, ME 04027 Business: (603) 834-3351 Mobile: (603) 834-3351
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Permit Custom Fields

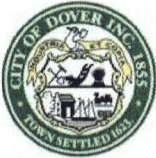
ZoneVariAppealPhDisa No bility	Number of Variances 1 Requested:	ZoneVariPlanDirections
ZoneVariPlanSummary To subdivide the lot and not have part of the other parcel impede on the new property itself.	ZoneVariAppealSect RSA:674:1	ZoneVariAppealSectDe Approve stair impendance tail of 30' setback that does not affect new parcel of land.
What is the parcel zoned? R-12	ZoneVariAppeal1PublicNo other property is Interest affected by the variance.	ZoneVariAppeal2Ordin anceSpirit This is one of the largest in the area and if approved, will still be larger than most lots on its street.
ZoneVariAppeal3Subst The new lot can be antialJustice certified at the Strafford County Registry of Deeds according to the lot survey we paid to have completed by Tritech Engineering.	ZoneVariAppeal4Prope Nothing is changed. rtyValue These stairs have been there for over 25 years.	ZoneVariAppeal5A1Un If disapproved, the new NecHardship lot would not be able to be sold because of the stair encroachment of the opposing lot because it could not be registered at the county.
ZoneVariAppeal5A3Re These stairs are for asonableUse basement access to the house, with the deck stairs along its side. It does not diminish the property in any way, and has been there since the home was built.	ZoneVariAppeal5BNoR The new lot created by easonableUse the previous variance could not be registered because the existing home's setback is infringed on by about 2-3 feet by basement stairwell.	

Attachment File Name	Added On	Added By	Attachment Group	Notes
Permit Snapshot Report.pdf	08/21/2024 12:01	Service, EnerGov		Attached by IO - ATTACH: Initial Permit Snapshot
2024.09.19_ZoningBoardofAdjustment. Agenda.pdf	09/03/2024 16:32	Blonigen, Rachel		ZBA Agenda

Invoice No.	Fee	Fee Amount	Amount Paid
INV-00009158	Planning Creation / Printing of Abutter Labels	\$20.00	\$20.00
	Planning Public Notice in Newspaper	\$120.00	\$120.00
	Planning Certified Mailing to Abutters	\$150.00	\$150.00
	Total for Invoice INV-00009158	\$290.00	\$290.00
NOT INVOICED	Planning Zoning Variance Application Fee	\$200.00	\$0.00
	Total for Invoice NOT INVOICED	\$200.00	\$0.00

PERMIT SNAPSHOT REPORT (ZONE-2024-0036)

Grand Total for Permit				\$490.00	\$290.00	
Submittal Name	Status	Received Date	Due Date	Complete Date	Resubmit	Completed
Planning Permit Application Review v.1	In Review	09/03/2024	10/01/2024		No	No
Item Review Name	Department	Assigned User	Status	Assigned Date	Due Date	Completed Date
Zoning Administrator	Planning	Crouser, Paul	In Review	09/03/2024	10/01/2024	
Workflow Step / Action Name			Action Type	Start Date	End Date	
Review v.1				09/03/2024	16:37	
Confirm application complete v.1			Generic Action		09/03/2024 16:37	
Planning Permit Application Review v.1			Receive Submittal	09/03/2024	0:00	
Zoning Board v.1						
Zoning Board Agenda v.1			Task			
Invoice for Notices v.1			Task			
Send Notices v.1			Task			
Zoning Administrator Creates Staff Recommendations v.1			Task			
Distribute Zoning Board Materials v.1			Task			
Zoning Board Hearing v.1			Hold Hearing			
Zoning Board Decision v.1			Permit Activity			
NOD Sent to Applicant v.1			Create Report			
Final Plan v.1						
Document Archival v.1			Generic Action			
Internal Notification of Permit Completion v.1			Generic Action			
Create/Link to Records v.1						
Create / Link to Permit - Building Major v.1			Create Sub Permit			



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised June 7, 2022]

Office Use Only	Case #:	_____	Date Received:	_____
	Amount Paid:	\$ _____	Time Received:	_____

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Steven Endsley (Probate Exec) Phone # 603-834-3351

Address of Applicant: 18 Varney St Lebanon, ME 04027

E-Mail Address: sendsley@spjce.com

PROPERTY OWNER (if different from applicant): Marc K Gagnon

Address: same Phone # n/a

E-Mail Address: n/a (deceased)

PROPERTY/PARCEL INFORMATION

Address: 48 Old Rochester Road Dover, NH 03820

Brief Directions: corner lot behind Strafford Farms restaurant

Zoning District: R-12 Assessor's Map # D0009 Lot(s) # B0000

TYPE OF APPEAL: (Please check one)

☒ Variance	from Section _____ of the Zoning Ordinance
☐ Physical Disability Variance (RSA 674:33-V)	from Section _____ of the Zoning Ordinance
☐ Special Exception	per Section _____ of the Zoning Ordinance
☐ Appeal of Administrative Decision	regarding Section _____ of the Zoning Ordinance
☐ Equitable Waiver	per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

a variance was approved 8/14/24 to split the parcel in to 2 sections. After survey, the existing house lot shows the houses deck and basement stairs impede on the 30' setback to the rear lot line by a few feet. Request a variance to allow this slight overage on the old house lot, not impeding on the new property itself.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) RSA:674:1 of the Zoning Ordinance to permit:

approve stairs impendence on 30' setback that does not affect new parcel of land.

B. The Five Variance Criteria (as set forth in NH RSA 674:33, I(b))

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

no other property is affected by the variance. Only the stairs are on the opriginal home owners lot.

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

This lot is one of the largest in the area and if approved, will still be larger than most lots on its street.

3. Granting the variance would do substantial justice because:

The new lot can be certified at the Strafford County of deeds according to the lot survey we paid to have completed by Trittech Engineering.

4. The value of surrounding property will not be diminished because:

Nothing is changed. These stairs have been here for over 25 years.

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(i) The following special conditions of the property distinguish it from other properties in the area:

if disapproved, the new lot would not be able to be sold because of the stair encroachment of the opposing lot because it could not be registered at the county.

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

and

(iii) The proposed use is a reasonable one because:

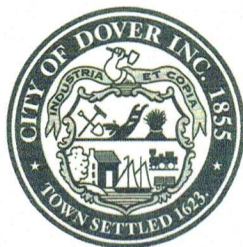
These stairs are for basement access to the house, with the deck stairs along its side. It does not diminish the property in any way, and has been there since the home was built.

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

the new lot created by the previous variance could not be registered because the existing home's setback is infringed on by about 2-3 feet by basement stairwell

DONNA P. BENTON, AICP
Director of Planning and
Community Development
d.benton@dover.nh.gov



288 Central Avenue
Dover, New Hampshire 03820-4169
(603) 516-6008
Fax: (603) 516-6049
www.dover.nh.gov

City of Dover, New Hampshire

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Zoning Board of Adjustment NOTICE OF DECISION

July 22, 2024

Mr. Steven Endsley
18 Varney Street
Lebanon, ME 04027

Re: ZONE-2024-0032 – 48 Old Rochester Road (Tax Map D, Lot 9-B)

Dear Mr. Endsley:

Please be advised that after a public hearing on Thursday, July 18, 2024, the Zoning Board of Adjustment ("ZBA") voted 5-0 to **APPROVE** your request pursuant to **Section 170-12, R-12-specific lot size requirements**. The ZBA found the criteria of the Variances were met, to allow for the subdivision of the parent lot into two (2) ten-thousand (10,000) sf. lots, where a minimum lot size of 12,000 sf. is required

Note: The City Council, any party to the action, or any person directly affected has a right to seek rehearing and thereafter appeal the ZBA's determination by timely following the procedural requirements outlined within New Hampshire statutes. See generally New Hampshire Revised Statutes Annotated, Chapter 677, available at: <https://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LXIV-677.htm>

If you have any questions, please do not hesitate to contact us directly at: (603) 516-6008.

Sincerely,

Paul R. Crouser
Zoning Administrator, Assistant City Planner

Encl.: Donna Benton, AICP
James Maxfield
Michelle Dube
Donna Langley

Director of Planning and Community Development
Building Official
Inspection Services Office Manager
City Assessor

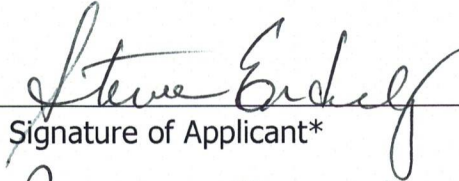
SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.



Signature of Applicant*



Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner: _____ Date: _____

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

7th Circuit - Probate Division - Dover
259 County Farm Road, Suite 203
Dover NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<https://www.courts.nh.gov>

CERTIFICATE OF APPOINTMENT
(Letter of Appointment)

Case Name: **Estate of Marc K. Gagnon**

Case Number: **319-2024-ET-00025**

On April 02, 2024, the following person(s) was/were appointed to administer the estate of Marc K. Gagnon. The named administrator(s) accepted this responsibility.

Administrator(s)

Steven E. Endsley

18 Varney Street
Lebanon ME 04027

Home: 603-834-3351

This document, when signed under seal, certifies that this appointment did occur as stated and remains in effect as dated below.

April 03, 2024

/s/ Cheryll-Ann Andrews
Clerk of Court
State of New Hampshire
Strafford County



ZONE-2024-0036

48 Old Rochester Road

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
40026-000000	46 OLD ROCHESTER RD	OUELLETTE LAWRENCE D JR &	FRENCH NICOLE	46 OLD ROCHESTER RD	DOVER	NH	03820
40027-000000	44 OLD ROCHESTER RD	EMERSON DAVID L &	EMERSON APRIL D	44 OLD ROCHESTER RD	DOVER	NH	03820
40028-000000	42 OLD ROCHESTER RD	BEATS ANDREW S & LISA T TRUSTEES	BEATS ANDREW AND LISA T REVOCABLE LIVING	42 OLD ROCHESTER RD	DOVER	NH	03820
40042-000000	43 OLD ROCHESTER RD	ALLEN PETER J &	ALLEN KATHLEEN C	43 OLD ROCHESTER RD	DOVER	NH	03820
40043-000000	58 NEW ROCHESTER RD	STRAFFORD FARMS RESTAURANT INC		58 NEW ROCHESTER ROAD	DOVER	NH	03820
40044-000000	60 NEW ROCHESTER RD	GSED PROPERTIES LLC		9 ROBIN LANE	PEPPERELL	MA	01463
D0009-000000	50 OLD ROCHESTER RD	BRILLARD RICKY A & MARY S REV LIV TRUST	BRILLARD RICKY A AND MARY S TRUSTEES	167 VARNEY RD	DOVER	NH	03820
D0009-B00001	6 STRAFFORD RD	BRITTON DENNIS		18646 BELLORITA ST	ROWLAND HEIGHTS	CA	91748-3705
D0009-B00002	4 STRAFFORD RD	ASHTEKAR MIKHIL		285B WEBSTER ST	HUDSON	NH	03051-3257
D0009-G00000	5 STRAFFORD RD	WATKINS HANNELORE E TRUSTEE	WATKINS HANNELORE E REVOCABLE TRUST	5 STRAFFORD ROAD	DOVER	NH	03820
D0009-J00000	8 STRAFFORD RD	MICHEL AUDRA L		8 STRAFFORD RD	DOVER	NH	03820
D0010-P00000	3 STRAFFORD RD	KELLEHER DANIEL T TRUSTEE	KELLEHER D AND L REV TRUST	3 STRAFFORD RD	DOVER	NH	03820
D0010-T00000	1 STRAFFORD RD	GAGNON MARK A 52% & RONALD J 30% &	GAGNON TIFFANY 6% & WILLIAM 6% & JACK 6%	1 STRAFFORD RD	DOVER	NH	03820
D0009-B00000	48 OLD ROCHESTER RD	GAGNON MARC KEITH		48 OLD ROCHESTER ROAD	DOVER	NH	03820
		STEVEN ENDSLEY		18 VARNEY STREET	LEBANON	ME	04027

NOTES

- 1.) INTENT: TO SUBDIVIDE DOVER TAX MAP D LOT 9B INTO 2 LOTS, (1 NEW LOT).
- 2.) CURRENT OWNER OF RECORD: ESTATE OF MARC KEITH GAGNON
STEVEN E. ENDOSLEY ADMN.
18 VARNEY ROAD
LEBANON, ME. 04027
- AUTHORIZED SIGNATURE _____
- 3.) THE PARCEL IS SHOWN AS LOT No. 9B, MAP D OF THE CITY OF DOVER TAX ASSESSOR'S MAPS.
- 4.) THE SUBJECT PARCEL CONTAINS 0.469 ACRES OR 20,426 SQ.FT.
- 5.) TITLE REFERENCE FOR THE PROJECT PARCEL IS THE STRAFFORD COUNTY REGISTRY OF DEEDS, BOOK No. 2097, PAGE No. 334
- 6.) REFERENCE PLANS: PLAN OF LAND OF DOROTHY M. WIGGIN DOVER, N.H. C. G. CROUCH 11-5-45 SCDR Po 7, Fo 2, PL 7 RAYMOND G. SWEAT & PERLEY J. COLE MICHAEL ROSHOLT AND OWEN R. BRYSON DOVER, N.H. FREDERICK E. DREW ASSOCIATES OCT 1989 SCDR #37A-116
- 7.) ALL APPLICABLE RIGHT OF WAY, CONSERVATION, SLOPE, CONSTRUCTION, POWER LINE, CROSS TRAVEL, OR OTHER EASEMENTS SHALL BE REFERENCED IN A NOTE.
- 8.) CURRENT ZONING DIMENSIONAL AND DENSITY REQUIREMENTS IN EFFECT ARE AS FOLLOWS:
REQUIRED:
a. ZONING DISTRICT R-12 SUB-DISTRICT b. MINIMUM LOT SIZE: 12,000 SQ.FT. c. MINIMUM LOT FRONTAGE: 100 FT. d. MINIMUM YARD SETBACKS/BUILD TO LINES FRONT 15 FT MIN - 25 FT MAX SIDE 15 FT REAR 30 FT
e. MAXIMUM/MINIMUM LOT COVERAGE 30% f. MINIMUM/MAXIMUM BLDG HEIGHT 35 FT MAX
PROVIDED:
a. ZONING DISTRICT R-12 SUB-DISTRICT b. MINIMUM LOT SIZE: 12,000 SQ.FT. c. MINIMUM LOT FRONTAGE: 100 FT. d. MINIMUM YARD SETBACKS/BUILD TO LINES FRONT 15 FT MIN - 25 FT MAX SIDE 15 FT REAR 30 FT
e. MAXIMUM/MINIMUM LOT COVERAGE 30% f. MINIMUM/MAXIMUM BLDG HEIGHT 35 FT MAX
- THIS PROPERTY FALLS WITHIN THE FOLLOWING ZONING OVERLAY DISTRICTS: NONE
- 9.) ON JULY 18, 2024, (ZONE-2024-0032) THE DOVER ZONING BOARD OF ADJUSTMENT GRANTED A VARIANCE FROM SECTION 170-12 - SPECIFIC LOT SIZE REQUIREMENTS OF THE ZONING ORDINANCE WHICH MANDATES A MINIMUM LOT AREA OF 12,000 SQ.FT. IN ORDER TO SUBDIVIDE THE PARENT LOT INTO (2) TEN-THOUSAND (10,000) S.F. LOTS.
- 10.) PROPERTY LINE INFORMATION HAS BEEN OBTAINED FROM A SURVY PERFORMED BY TRITECH ENGINEERING CORPORATION ON OCTOBER 19, 2017 WITH AN ERROR NOT GREATER THAN 1" IN 10,000.
- 11.) SUBJECT PARCEL IS NOT WITHIN A FEDERALLY DESIGNATED SPECIAL FLOOD HAZARD ZONE (PANEL 0310E, MAP No. 33017C0310E).
- 12.) WETLANDS WERE DELINEATED BY MICHAEL MARIANO, CERTIFIED WETLAND SCIENTIST, CERTIFICATION NUMBER #183, IN ACCORDANCE WITH CHAPTER 170-27.1 OF THE ZONING ORDINANCE IN JULY 2024. NO WETLANDS WERE OBSERVED.
- 13.) AS-BUILT PLANS OF THE SITE SHALL BE SUBMITTED ON PAPER AND IN DIGITAL FORMAT IN PDF AND AUTOCAD DWG, AUTOCAD DXF OR AN ESRI FORMAT TO THE CITY OF DOVER ENGINEER'S OFFICE UPON COMPLETION OF THE PROJECT. AS-BUILT PLANS SHALL BE PREPARED AND CERTIFIED CORRECT BY A L.L.S. OR P.E. DIGITAL FILES SHALL BE GEO-REFERENCED TO NEW HAMPSHIRE STATE PLANE COORDINATES NAD 83 AND SHALL BE EXPRESSED IN FEET.
- 14.) THE INSTALLATION OF ELECTRIC POWER, CABLE TELEVISION AND TELEPHONE LINES SHALL BE UNDERGROUND THROUGHOUT THE SITE FOR WHICH DEVELOPMENT IS PROPOSED.
- 15.) ALL UNITS ARE PROPOSED TO BE SERVED BY MUNICIPAL WATER.
- 16.) ALL CONSTRUCTION SHALL CONFORM WITH THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION (NDOT) "STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION" AND WITH THE CITY OF DOVER COMMUNITY SERVICES REGULATIONS AND STANDARD SPECIFICATION FOR CONSTRUCTION. THE MORE STRINGENT SPECIFICATION SHALL APPLY.
- 17.) ALL EROSION CONTROL NOTES SHALL INCLUDE PROVISIONS FOR CONSTRUCTION SEQUENCING, TEMPORARY EROSION CONTROL MEASURES, AND PERMANENT STANDARDS SUCH AS LOAM SPREAD RATE FOR DISTURBED AREAS, RATES OF LIME, TYPE AND RATES OF FERTILIZER, AND SEED AND MULCH MIXTURE WITH RATES OF APPLICATION.
- 18.) THE LIMITS OF CONSTRUCTION DISTURBANCE THAT ARE LOCATED IN OR WITHIN THE 50 FOOT OF CONSERVATION AND WETLAND DISTRICTS SHALL BE STAKED, FLAGGED AND CLEARLY IDENTIFIED PRIOR TO ANY EARTH DISTURBING ACTIVITY OCCURS.
- 19.) ALL TREATMENT SWALES TO BE CONSTRUCTED SHALL HAVE SOD BOTTOMS.
- 20.) A LETTER OF CREDIT FOR THE COST OF REVEGETATING ALL DISTURBED AREAS ON THE SITE AND APPROVED CONSTRUCTION SIGN SHALL BE IN PLACE PRIOR TO ANY EARTH DISTURBING ACTIVITY.
- 21.) A PRE-CONSTRUCTION CONFERENCE WITH THE DEVELOPER, THE DESIGN ENGINEER, THE EARTHWORK CONTRACTOR AND THE CITY ENGINEER SHALL OCCUR PRIOR TO ANY EARTH DISTURBING ACTIVITY.
- 22.) SITE CONSTRUCTION HOURS SHALL BE LIMITED TO MONDAY-FRIDAY 7AM-6 PM AND SATURDAY 9AM-4PM. HOURS OF CONSTRUCTION MUST BE DOCUMENTED ON A SITE CONSTRUCTION SIGN ALONG WITH THE CONTACT INFORMATION FOR THE GENERAL CONTRACTOR. SAID SIGNAGE MUST BE LOCATED AND APPROVED BY THE CITY ENGINEER OR ASSISTANT CITY MANAGER.
- 23.) BUILDING/MAILING ADDRESSES SHALL BE ASSIGNED BY THE BUILDING OFFICIAL AT THE TIME OF ISSUANCE OF A BUILDING PERMIT.
- 24.) THE PROPOSED USE FOR THE SITE IS SINGLE FAMILY RESIDENTIAL.
- 25.) THE FOLLOWING FEDERAL AND STATE PERMITS HAVE BEEN ISSUED FOR THE SUBJECT PROPERTY: NONE
- 26.) COMMERCIAL VEHICLE ROUTES DURING CONSTRUCTION SHALL CONFORM WITH DOVER CITY CODE OR BE COORDINATED WITH THE COMMUNITY SERVICES DIRECTOR.
- 27.) ANY RETAINING WALL TALLER THAN (4') REQUIRES ISSUANCE OF A BUILDING PERMIT FROM INSPECTION SERVICES.
- 28.) ANY FENCE TALLER THAN (7') REQUIRES ISSUANCE OF A BUILDING PERMIT FROM INSPECTION SERVICES.
- 29.) APPLICANT SHALL COMPLETE LAND USE DEVELOPMENT TRACKING FORM, MOST RECENTLY REVISED VERSION, UTILIZING THE ONLINE POLLUTION TRACKING AND ACCOUNTING PILOT PROJECT (PTAPP) PORTAL: <https://www.unh.edu/unhsc/plapp>
- 30.) THE OWNER SHALL RECORD AT THE STRAFFORD COUNTY REGISTRY OF DEEDS: DOCUMENTATION SUFFICIENT TO PROVIDE NOTICE TO SUCCESSORS IN TITLE THAT THIS PROPERTY IS SUBJECT TO THE REQUIREMENTS AND RESPONSIBILITIES DESCRIBED IN THE APPROVED STORMWATER MANAGEMENT PLAN. THE NOTICE SHALL COMPLY WITH THE APPLICABLE REQUIREMENTS FOR RECORDING CONTAINED IN RSA 477 AND 478. THE NOTICE NEED NOT SET FORTH THE REQUIREMENTS AT LENGTH, SO LONG AS IT IS SUFFICIENT TO PROVIDE NOTICE TO PROSPECTIVE PURCHASERS TO THE REQUIREMENTS FOR MAINTENANCE AND REPORTING.
- 31.) FIRE DEPARTMENT ACCESS ROAD(S) SHALL BE INSTALLED AND MAINTAINED TO SUPPORT THE IMPOSED LOADS OF FIRE APPARATUS IN ALL WEATHER CONDITIONS AT ALL TIMES.
- 32.) NO ROADWAY WITH PRIVATE UTILITY EASEMENTS SHALL BE ACCEPTED AS A PUBLIC ROAD BY THE CITY UNLESS THE EASEMENTS ARE EXPIRING PRIOR TO THE TRANSFER OF LAND TO THE CITY. LICENCE AGREEMENTS FOR ANY AND ALL PRIVATE UTILITIES WITHIN THE RIGHT OF WAY MAY BE GRANTED BY THE CITY UPON ACCEPTANCE OF THE UNENCUMBERED ROADWAY CONSISTENT WITH APPLICABLE STATE LAW.
- 33.) TOPOGRAPHIC SURVEY PERFORMED BY TRITECH ENGINEERING CORPORATION FEBRUARY, 2017 AND ELEVATIONS ARE BASED ON U.S.G.S. DATUM.
- 34.) BASIS OF BEARING: BEARING SYSTEM BASED ON GPS FIELD OBSERVATIONS ON FEBRUARY 31, 2017 USING TOPCON HIPER SR RECEIVERS AND OPUS CORRECTED ON MARCH 13, 2017. DATUM BASED ON NEW HAMPSHIRE STATE PLANE COORDINATES SPC (2800 NH), (NAVD 88). COORDINATES SHOWN ARE DOVER GIS SYSTEM.

TAX MAP D
LOT 10P

D & L KELLEHER REV. TR.
3 STRAFFORD ROAD
DOVER, NH 03820
SCRD 1992-574

TAX MAP D
LOT 10T

CONRAD & MADELEINE GAGNON
1 STRAFFORD ROAD
DOVER, NH 03820
SCRD 1202-741

TAX MAP D
LOT 9

RICKY & MARY BRILLARD RE. LIV. TR.
187 VARNEY ROAD
DOVER, NH 03820
SCRD 3/75-270

STRAFFORD ROAD

TAX MAP D
LOT 9B-1

10,000 SQ.FT.
0.230 ACRES

TAX MAP D
LOT 9B

10,426 SQ.FT.
0.239 ACRES

TAX MAP 40
LOT 43

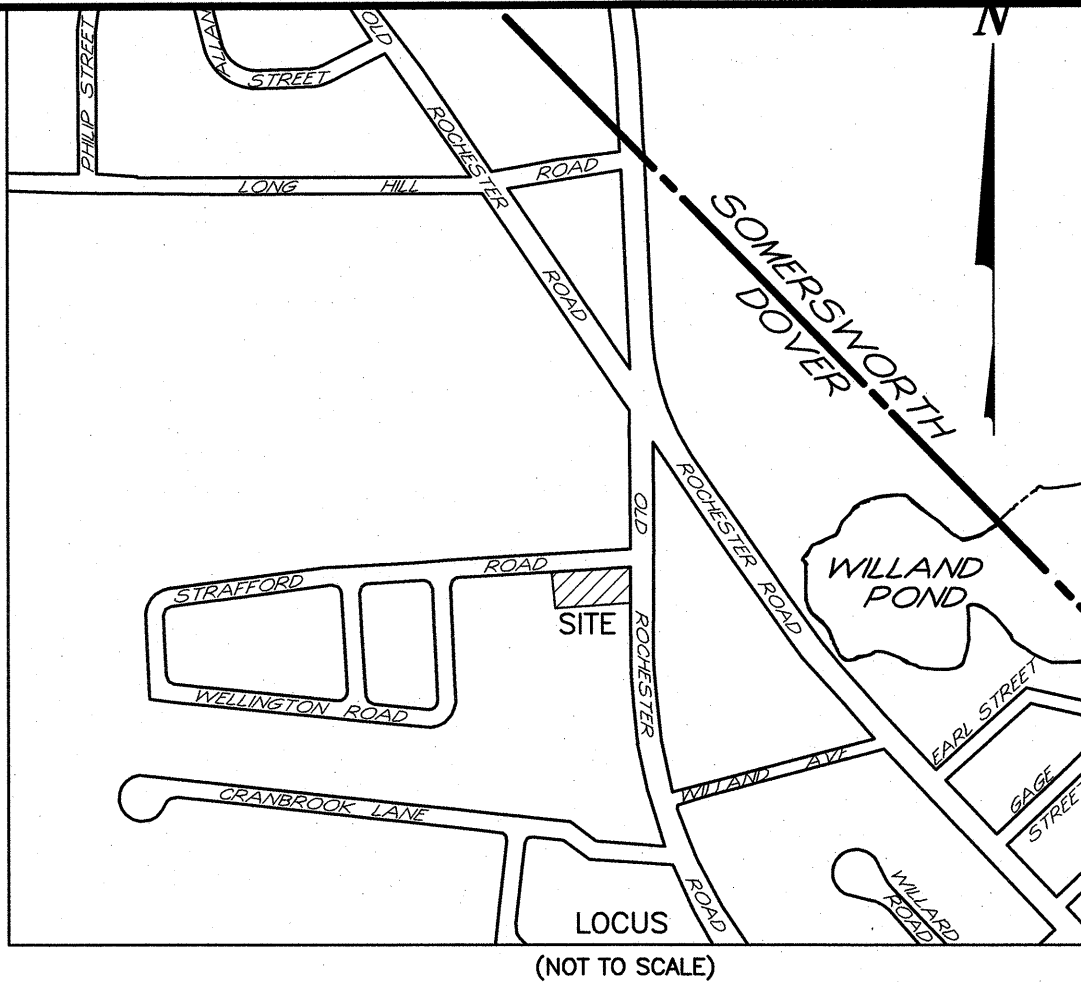
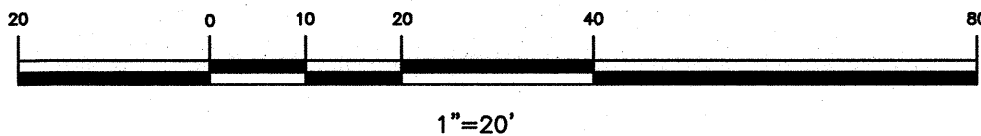
STRAFFORD FARMS
58 NEW ROCHESTER ROAD
DOVER, NH 03820
SCRD 1956-633

TAX MAP 40
LOT 26

QUELLETTE & FRENCH
46 OLD ROCHESTER ROAD
DOVER, N.H.
BK 4536 PAGE 683

LEGEND

- 5/8" REBAR W-ID CAP SET
- UTILITY POLE
- CHAIN LINK FENCE
- STONEWALL
- × BARBED WIRE FENCE
- TREE WITH WIRE
- ☆ FENCE POST
- ⊙ HYDRANT
- W — WATER LINE
- TREE LINE



TRITECH

ENGINEERING CORPORATION

REVISIONS
DATE: DESCRIPTION:

SUBDIVISION PLAN

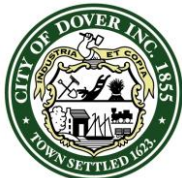
ESTATE OF MARC KEITH GAGNON
STRAFFORD ROAD AND
OLD ROCHESTER ROAD
DOVER, NEW HAMPSHIRE
STRAFFORD COUNTY

JULY 19, 2024 JOB No. 24119
SCALE: 1" = 20'

SHEET No.

6-1

766 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE 03800
TELEPHONE 603.742.8407
FAX 603.742.3630



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall 288 Central Ave. Dover, NH 03820
Meeting Date: **Thursday, September 19, 2024**
Meeting Time: **7:00 pm**

INTENT: ~~The Applicant requests a Variance for each proposed lot from Section 170-11 Use Regulations and Section 170-12 Innovative Technology (IT) District Table of Use Regs., to allow for residential use.~~

UNITS PROPOSED: ~~Eighty-one (81)~~

AGENDA ITEM: ~~3-B~~

ZONING DISTRICT: ~~Innovative Technology District (IT)~~

FILE: ~~ZONE-2024-0037~~

APPLICANT: ~~Two Hundred Sixth Street, LLC~~

OWNERS: ~~Same~~

LOCATION: ~~200 Sixth Street, Tax Map E, Lot 70-A~~

ACREAGE: ~~6.12 acres. No requested change in acreage~~

EXISTING LAND USE: ~~Legal nonconforming Residential (single-family home)~~

PROPOSED LAND USE: ~~Residential and Commercial~~

SURROUNDING LAND USE: ~~Residential, Commercial, and Mixed use~~

PREVIOUS ZBA ACTION: ~~None~~

PLANNING BOARD APPROVAL REQ.: ~~Yes, Site Review approval is needed, a waiver for multiple primary structures is required, and staff is of the opinion that Planning Board approval is also required to permit the sought density.~~

ATTACHMENTS: ~~Application, Narrative, Variance Site Plan~~

STAFF RECOMMENDATION: ~~Staff does not support this Variance Request as presented.~~

BACKGROUND INFORMATION

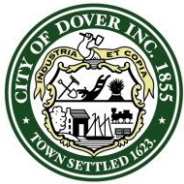
~~The property subject to this Variance request is located at 200 Sixth Street and resides within the Innovative Technology (IT) District. A legal nonconforming single-family home currently exists on the property, as any residential use within the IT District is prohibited.~~

~~The Applicant is proposing three (3) 13,400 sf. multi-family buildings each containing twenty-seven (27) units, and one (1) 6,000 sf. commercial building to serve as a childcare facility.~~

Applicant has withdrawn Variance Application – this item will not be heard at the 9/19/2024 ZBA meeting.

STAFF RECOMMENDATION

N/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall 288 Central Ave. Dover, NH 03820
Meeting Date: **Thursday, September 19, 2024**
Meeting Time: **7:00 pm**

INTENT: The Applicant is appealing three (3) administrative decisions pursuant to ZONE-2024-0028 and ZONE-2024-0035.

UNITS PROPOSED: N/A

AGENDA ITEM: 3-C

ZONING DISTRICT: Heritage Residential (HR)

FILE: ZONE-2024-0038

APPLICANT: Maureen Sanborn

OWNERS: N/A

LOCATION: Pursuant to properties located at: Locust Street (vacant lot). Map 12, Lot 35-1 and 17 Summer Street. Map 12, Lot 35.

ACREAGE: N/A

EXISTING LAND USE: Vacant Lot and Residential

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential, Commercial, and Mixed-use

PREVIOUS ZBA ACTION: Yes, variance (ZONE-2024-0028) granted on 7/18/2024 to allow for the shared parking lot on Lot 12, Map 35-1 to be within five feet (5') of the neighboring parcel, Lot 12, Map 35. An identical variance request (ZONE-2024-0035) was granted on 8/15/2024 to correct a scrivener's error in the previously submitted variance application. The Board also granted a rehearing on ZONE-2024-0035 on 9/10/2024.

PLANNING BOARD APPROVAL REQ.: N/A

ATTACHMENTS: Narrative

STAFF RECOMMENDATION: Staff recommends upholding all three (3) Administrative Decisions

BACKGROUND INFORMATION

The Applicant is appealing the three (3) following administrative decisions pursuant to ZONE-2024-0028 and ZONE-2024-0035:

1. **Not requiring cross-petitions for variances for Lots 35 and 35-1;**
2. **Grandfathering parking on Lot 35 in violation of Heritage District regulations; and**
3. **Not requiring the Applicant to vacate the July variance before allowing a new application for a second variance heard by the ZBA on 8/15/24.**

STAFF RECOMMENDATION

Staff recommends that the Board open the public hearing, accept testimony, and make findings on each of the three (3) Administrative Decision appeals. Staff maintains support of its Administrative Decisions and recommends upholding them as such, the justifications of each being detailed on the following page.

Locust St. Administrative Decision Appeals

1) Not requiring cross-petitions for variances for Lots 35 and 35-1

- a) Applicant does not specify which variances Lot 35 (17 Summer Street) should have applied for. Staff will assume the same variances applied for in ZONE-2024-0028 and ZONE-2024-0035, which is:

Relief from HR District Conditional Use Permit (“CUP”), criterion C, which states that “Parking lots shall be at least five (5) feet from a side property line and ten (10) feet from a front property line.”

- b) 17 Summer Street (Lot 35) however is not “converting [an existing structure] to” or proposing the “creation of” a new 3-4 Family dwelling. It is overtly clear that the CUP criteria detailed on the footnote page of the Heritage Residential (“HR”) District’s Zoning Table can only be triggered if a property owner is creating a new 3-4 Family dwelling, or, converting an existing structure into a 3-4 Family dwelling. As 17 Summer St. is an existing 4 Family dwelling, this Board has no legal authority to apply the CUP standards to existing 3-4 Family dwellings throughout the HR District.

2) Grandfathering parking on Lot 35 in violation of Heritage District regulations

- a) See argument “b)” above.
- b) “Parking” areas which exist solely to serve a residential use do not constitute a new or separate use than that of the residential use in which they serve. Therefore, “parking” in service of a residential dwelling cannot, itself, be grandfathered.
- c) 17 Summer Street (Lot 35) at-present has an existing parking lot on site, in service of the 4-Family dwelling sitting upon it, which is currently, and has been, in violation of the non-applicable HR District Criterion C which states “parking lots must be five (5) feet from a side property line...”.

3) Not requiring the Applicant to vacate the July variance before allowing a new application for a second variance heard by the ZBA on 8/15/24.

- a) Outside of Court intervention, variance relief, as granted by the Zoning Board of Adjustment (“ZBA”), exists in perpetuity and is not dependent on consistent ownership. Once a variance is granted by the ZBA, there is no procedural mechanism available to the ZBA to amend or revoke the variance which has been previously granted and issued.

Supporting Case Law

1. 1808 CORPORATION v. NEW IPSWICH

- a. **Excerpt** - “Next, the Court examined the applicant's contention that the ZBA should apply the doctrine of expansion of nonconforming uses to its plan to expand the use of office space within the building, which was originally permitted by special exception. Valid nonconforming uses are permitted to expand to some extent. The Court pointed out that it has distinguished between nonconforming uses and special exceptions, noting that "the review standard appropriate to the scope of variances or nonconforming uses" does not apply to special exceptions. The Court rejected the applicant's claim, ruling that the doctrine of expansion of nonconforming uses does not apply to uses by special exception.”
 - i. As defined in RSA 674:21, II, and RSA 674:33, IV, one can make the reasonable assertion that Special Exceptions are subject to a higher degree of scrutiny than Conditional Use Permits, being that only the ZBA may issue a Special Exception via the public hearing process, whereas CUPs may be issued administratively by staff with the input from the Planning Board. Therefore, even if we were to subject the Locust St. project to the higher level of scrutiny associated with a Special Exception request, 1808 v. New Ipswich holds that any expansion to something generally referred to as non-conforming, but which is/was permitted by Special Exception, cannot be defined as an “expansion of a non-conforming use”. As the CUP process is less rigorous than the Special Exception process, and since the use of 17 Summer St. is permitted by CUP, the addition of pavement on 17 Summer St. cannot be considered an expansion of a non-conforming use.

2. ANDREW CONFORTI & A. v. CITY OF MANCHESTER / RAY'S STATELINE MARKET v. TOWN OF PELHAM

- a. **Excerpt** - The plaintiff and intervenors next contend that the trial court erred in concluding that holding live performances at the Empire Theater is an expansion of a preexisting, nonconforming use. We "will uphold the decision of the superior court unless that decision is not supported by the evidence or is legally erroneous." Ray's Stateline Market v. Town of Pelham, 140 N.H. 139, 143, 665 A.2d 1068, 1071 (1995) (quotation omitted). A zoning ordinance does not apply to structures or uses of the property that existed at the time the ordinance was enacted. See RSA 674:19 (1986). An ordinance, however, "shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration." Id.
 - i. There is no reasonable argument to be made that a slight expansion of a parking lot would alter the use or structure in “in a manner which is substantially different from the use to which it was put before alteration.”
 - ii. Also, we do not consider “parking lots” or “parking areas” structures of any kind

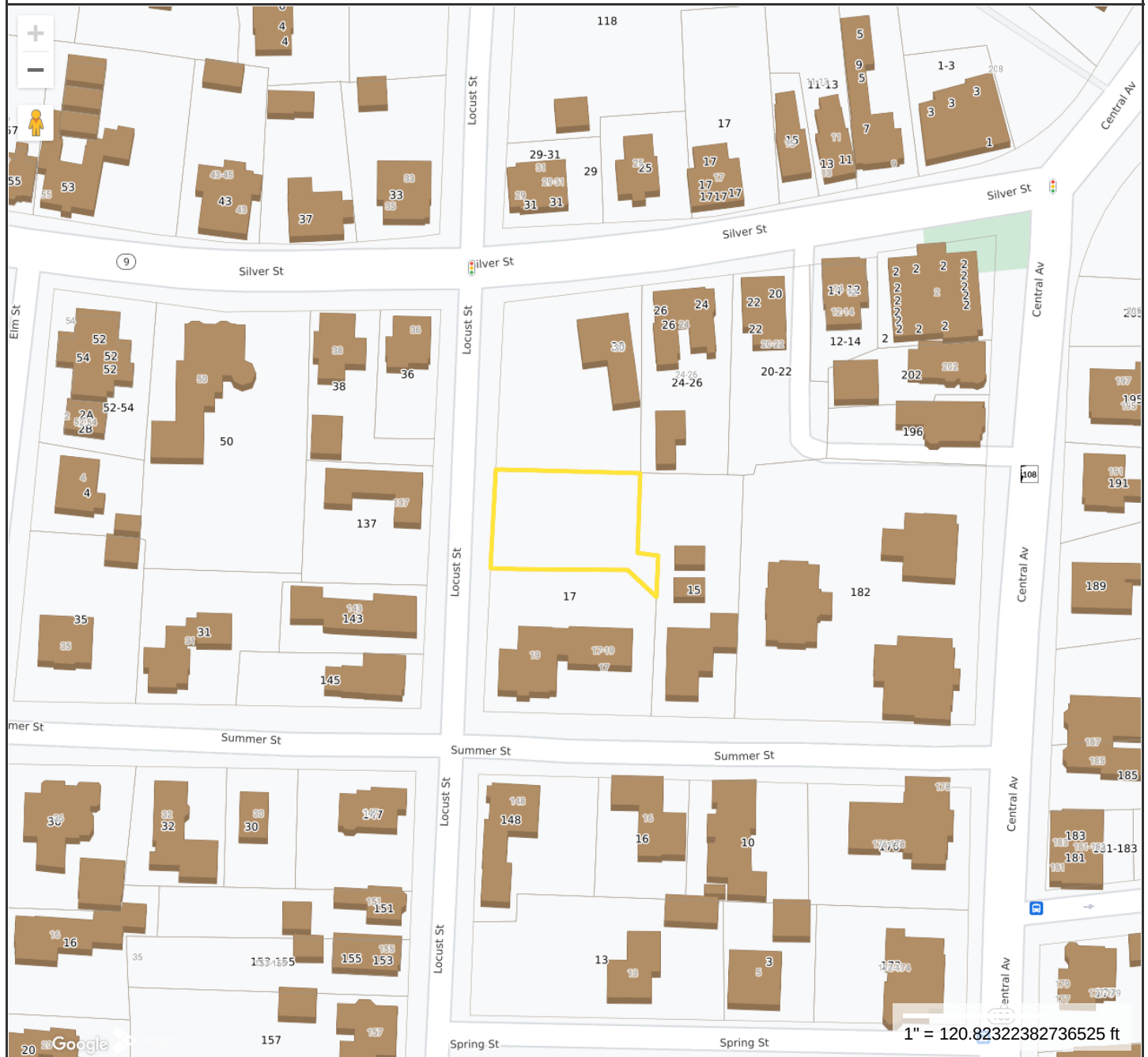
3. NEW LONDON v. LESKIEWICZ (1970)

- a. In deciding whether the particular activity is within the scope of the established or acquired nonconforming use consideration may be given to, among others, the following factors: (1) to what extent does the use in question reflect the nature and purpose of the prevailing nonconforming use; (2) is it merely a different manner of utilizing the same use or does it constitute a use different in character, nature and kind; (3) does this use have a substantially different effect on the neighborhood.
 - i. (1) It doesn't. The nonconformity of the subject property is its setbacks and density (four units). The parking has no bearing on the density or intensity of use at the property. In fact, the opposite is true.

(2) The expansion of the parking lot **pavement** is in no way posing a differing manner of use than what is existing. There is nothing prohibiting the occupants of 17 Summer to park on the unimproved surfaces on the property as it exists currently. The "nature" and "kind" of usage is objectively the same.

(3) No differing impact on the surrounding neighborhood, let alone a "substantial" one. The density is staying the same as is the use of 17 Summer St. Therefore, any assertion that the expansion of parking pavement would have a different effect on the neighborhood is unfounded.
- b. **Excerpt** - "The policy of zoning law is to carefully limit the enlargement and extension of nonconforming uses. The ultimate purpose of zoning regulations contemplates that nonconforming uses should be reduced to conformity as completely and rapidly as possible." *New London Land Use Assoc. v. New London Zoning Board*, 130 N.H. 510, 518, 543 A.2d 1385, 1389 (1988) (citations, quotation, brackets, and ellipses omitted). "The burden of establishing that the use in question is fundamentally the same use *and not a new and impermissible one* is on the party asserting it." *New London v. Leskiewicz*, 110 N.H. 462, 467, 272 A.2d 856, 860 (1970).
 - i. Parking existed on the lot already. Nothing precluded the occupants of 17 Summer from parking across all paved and unpaved surfaces, whether or not they actually did. The parking expansion does not fundamentally alter the existing use of the property or propose a new use.
 - ii. Furthermore, there is no proposed density change, therefore any argument that the use is intensifying is factually meritless.

ZONE-2024-0038 Locust Street

**Property Information**

Location LOCUST ST
Owner 17-19 SUMMER STREET PROPERTIES LLC
Land Use
Zoning Code HR
Property Id 12035-001000



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Dover, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 10/30/2023
 Data updated Daily

Print map scale is approximate.
 Critical layout or measurement activities should not be done using this resource.



PERMIT SNAPSHOT REPORT ZONE-2024-0038 FOR CITY OF DOVER, N.H.

Permit Type	Zoning	Project:		App Date:	09/03/2024
Work Class:	Administrative Appeal	District:	None	Exp Date:	NOT AVAILABLE
Status:	In Review	Square Feet:	0.00	Completed:	NOT COMPLETED
Valuation:	\$0.00	Assigned To:	Blonigen, Rachel	Approval	
Description:	Appeal of Administrative Decision			Expire Date:	

Parcel:	12035-001000	Main	Address:	Locust Street Dover, NH 03820	Main	Zone:	HR(Residential - Heritage)
				Locust St Dover, 03820			

Applicant
Maureen Sanborn
30 SILVER ST
DOVER, 03820

Permit Custom Fields

ZoneAdmnPlanSummarRelief from HR District y CUP requirement that parking lots shall be at least 5 feet from a side property line.	ZoneAdmnAppealSect Section 170-12, HR	ZoneAdmnAppealSect See Narrative Detail
What is the parcel zoned?	HR	

Attachment File Name	Added On	Added By	Attachment Group	Notes
Permit Snapshot Report.pdf	09/03/2024 13:36	Service, EnerGov		Attached by IO - ATTACH: Initial Permit Snapshot

Invoice No.	Fee	Fee Amount	Amount Paid
NOT INVOICED	Planning Zoning Appeal from Admin Decision Fee	\$200.00	\$0.00
Total for Invoice NOT INVOICED		\$200.00	\$0.00
Grand Total for Permit		\$200.00	\$0.00

Submittal Name	Status	Received Date	Due Date	Complete Date	Resubmit	Completed
Planning Permit Application Review v.1	In Review	09/03/2024	10/01/2024		No	No

Item Review Name	Department	Assigned User	Status	Assigned Date	Due Date	Completed Date
Zoning Administrator	Planning	Crouser, Paul	In Review	09/03/2024	10/01/2024	

Workflow Step / Action Name	Action Type	Start Date	End Date
Review v.1		09/03/2024 13:42	
Confirm application complete v.1	Generic Action		09/03/2024 13:42
Planning Permit Application Review v.1	Receive Submittal	09/03/2024 0:00	

Zoning Board v.1

Zoning Board Agenda v.1	Task
Invoice for Notices v.1	Task
Send Notices v.1	Task
Zoning Administrator Creates Staff Recommendations v.1	Task
Distribute Zoning Board Materials v.1	Task
Zoning Board Hearing v.1	Hold Hearing
Zoning Board Decision v.1	Permit Activity

PERMIT SNAPSHOT REPORT (ZONE-2024-0038)

NOD Sent to Applicant v.1	Create Report
Final Plan v.1	
Document Archival v.1	Generic Action
Internal Notification of Permit Completion v.1	Generic Action
Create/Link to Records v.1	
Create / Link to Permit - Building Major v.1	Create Sub Permit

ZONE-2024-0033R
Locust Street

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
09047-000000	33 35 SILVER ST	CALAGUIRO JOSHUA MICHAEL TRUSTEE	CALAGUIRO JOSHUA M REVOCABLE LIV TRUST	33 35 SILVER ST	DOVER	NH	03820
09076-000000	29 31 SILVER ST	TNT SILVER STREET GROUP LLC		10 DURHAM RD	DOVER	NH	03820
09077-000000	25 SILVER ST	WOTTON KATHLEEN D		25 SILVER STREET	DOVER	NH	03820
12021-000000	176 178 CENTRAL AV	HOLGATE LIMITED PARTNERSHIP	HOPKINS WILLIAM F JR TRUSTEE	130 CENTRAL AVE	DOVER	NH	03820
12022-000000	10 SUMMER ST	ALGO OPPORTUNITY ZONE FUND I LLC		8 MERRILL LN	HOLLIS	NH	03049-6594
12023-000000	16 SUMMER ST	LAPPOINT KEVIN &	MAZARAS TIFFANY	16 SUMMER ST	DOVER	NH	03820
12024-000000	148 LOCUST ST	TREACY HILL SARA G REVOCABLE TRUST	TREACY HILL SARA G TRUSTEE	148 LOCUST STREET	DOVER	NH	03820
12025-000000	182 CENTRAL AV	WOODMAN ANNIE E INSTITUTE		PO BOX 1916	DOVER	NH	03821-1916
12026-000000	196 CENTRAL AV	CENTRAL AVE OWNER LLC	C/O CONDOR PROPERTY MANAGEMENT	PO BOX 571	GREENLAND	NH	03840
12027-000000	202 CENTRAL AV	CENTRAL AVE OWNER LLC	C/O CONDOR PROPERTY MANAGEMENT	PO BOX 571	GREENLAND	NH	03840
12030-000000	12 14 SILVER ST	ALLEN TYLER D		14 SILVER ST	DOVER	NH	03820
12030-000001	12 SILVER ST	ALLEN TYLER D		14 SILVER ST	DOVER	NH	03820
12030-000002	14 SILVER ST	ALLEN TYLER D		14 SILVER ST	DOVER	NH	03820
12031-000000	20 22 SILVER ST	20-22 SILVER ST LLC		862 FRANKLIN PIERCE HWY	BARRINGTON	NH	03825
12032-000000	24 26 SILVER ST	CURTIS SHANNON		24 26 SILVER ST	DOVER	NH	03820
12033-000000	30 SILVER ST	SANBORN JEFFREY MARTIN &	SANBORN MAUREEN	30 SILVER ST	DOVER	NH	03820
12035-000000	17 19 SUMMER ST	17-19 SUMMER STREET PROPERTIES LLC		71 LAFAYETTE RD	HAMPTON FALLS	NH	03844
12036-000000	15 SUMMER ST	WOODMAN ANNIE E INSTITUTE		PO BOX 1916	DOVER	NH	03821-1916
12037-000000	143 LOCUST ST	AL HOJERRY KEENAN & BASHITI ALIA	BASHITI ALAA	143 LOCUST STREET	DOVER	NH	03820
12038-000000	137 LOCUST ST	KUZIOMKO FROST VIRGINIA J &	KUZIOMKO HENRY C	310 DOVER POINT RD	DOVER	NH	03820-4666
12039-000000	36 SILVER ST	DUGDALE MARY &	SWIDER KEITH	36 SILVER ST	DOVER	NH	03820
12040-000000	38 SILVER ST	STENDER SARAH	STENDER NEIL	38 SILVER ST	DOVER	NH	03820
12041-000000	50 SILVER ST	BREWITT DARCY D		50 SILVER ST	DOVER	NH	03820-3950
12045-000000	31 SUMMER ST	WINTERS GARY & LOIS TRUSTEES	WINTERS FAMILY TRUST	31 SUMMER ST	DOVER	NH	03820
12046-000000	145 LOCUST ST	SUSSLIN RYAN	MASSON GABRIELLE ANNA	145 LOCUST ST UNIT 1	DOVER	NH	03820
12071-000000	147 LOCUST ST	O BRIEN EDMUND J JR		147 LOCUST STREET	DOVER	NH	03820
12035-001000	LOCUST ST	17-19 SUMMER STREET PROPERTIES LLC		71 LAFAYETTE RD	HAMPTON FALLS	NH	03844

August 23, 2024

Donna Benton

Planning Department

288 Central Avenue

Dover, NH 03820

Re: Zoning Variance 17-19 Summer St; Motion for Rehearing + Appeal of Administrative Decisions

Dear Donna:

My husband and I are direct abutters to the Development Parcels 35 and 35-1 and object to the Variance granted by the Zoning Board of Adjustment on Thursday August 15, 2024. We seek a rehearing before the ZBA for the following reasons:

1. **Faulty Notice.** The Notice for the 8/15/24 meeting was faulty because it contained references to both Paragraphs C and D of the relevant Zoning provision causing confusion as to the purpose of the meeting. This notice error was noted by a ZBA member during the 8/15 meeting.
2. **Lack of evidence regarding the 5 criteria for zoning variances.** The oral presentation of the proponent of the development plan on 8/15/24 failed to address the 5 criteria for granting of a variance.
3. **Improper voting on the variance by ZBA members.** ZBA members did not assess the evidence of the 5 criteria because no evidence was presented. None of the ZBA members stated they read the written materials to support their affirmative votes, except for one member. One voting member stated he was only voting in the affirmative because the variance passed at a previous meeting, a meeting at which that member was not present.
4. **Lack of findings regarding the 5 criteria.** No specific ZBA findings occurred regarding the 5 criteria to support the affirmative vote.
5. **Duplicative application for a variance.** A variance was granted by the ZBA at the July meeting. The second application was heard by the ZBA on August 15th without the applicants voiding the previous variance. The Applicant was allowed to "take 2 bites at the apple", when only one bite is permitted.
6. **Failure to require Applicant to vacate the July variance prior to filing the August variance.**

7. **Failure to require cross applications for variances for both Lot 35 and Lot 35-1.** The Applicant was allowed to only file a variance request for Lot 35-1 when in fact a companion application for a variance for Lot 35 was needed.

8. **Failure of the Applicant to explain the error in sufficient detail to allow the ZBA to make a finding of the nature of the error.** The representative of the Applicant who appeared at the August 15, 2024 hearing was not present at the July hearing. None of the representatives of the Applicant who appeared at the July hearing were in attendance at the August hearing to explain the error. The ZBA had no basis to assess the nature of the error except the assertion the error was a scrivener error. Facts were necessary, but no facts were presented.

9. **The ZBA did not make a finding on the nature of the error.** The error was a material error affecting the number of parking spaces and the extent of the Open Space on the development parcels.

10. **Failure of the members of ZBA to address their quasi-judicial roles and whether they were able to separate the July and August hearings to afford abutters a fair and impartial panel of ZBA members for the August hearing.** All ZBA members voted in the affirmative at the August hearing and made no inquiry whether they were individually able to start to start from scratch and assess the evidence with an open mind.

In addition, we seek an **Appeal of Administrative Decisions**, and separate hearing as aggrieved abutters, for administrative decisions as follows:

- A. Not requiring cross-petitions for variances for Lots 35 and 35-1,
- B. Grandfathering parking on Lot 35 in violation of Heritage District regulations and
- C. Not requiring the Applicant to vacate the July variance before allowing a new application for a second variance heard by the ZBA on 8/15/24.

Sincerely,

Maureen Sanborn

*We will be away from September 1 through the 10th.
Iceland- sorry for any inconvenience.*