

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

1. ATTENDANCE

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

Members Absent (Excused): George Reagan (Alternate), Rich Onufry, Nicholas Couturier

Members Absent (Unexcused):

Staff Present: Paul R. Crouser (Zoning Administrator)

The Chair called the meeting to order at 7PM

The Chair noted only three members of the board are present which is a quorum, but applicants will be given the opportunity to move forward with their hearing tonight or postpone for another date. All three members will need to vote in favor for a hearing item to pass.

2. APPROVAL OF MEETING MINUTES OF AUGUST 15, 2024

Motion: Sillitta moved to approve the minutes of August 15, 2024 as submitted. Seconded by Brown. Vote: All in favor

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.

Bob Stowell, Trittech Engineering represented and presented the application. He confirmed the applicant wishes to go forward with the hearing tonight. He explained the variance granted at the July meeting for this property for two single family homes on two lots.

Trittech was hired to perform the survey and handle the subdivision process. He explained the request before the board today relating to encroachment into the setback for deck and stairs and that a 100sq ft structure would be allowed within the setback and they are only encroaching 7' into the 30' setback. Also, the encroachment is in the direction of the other property currently owned by the applicant.

He addressed staff comments and noted hardship is caused by the already existing address which creates the frontage and setbacks in particular locations. The request is reasonable.

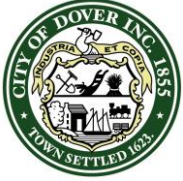
The variance criteria were addressed in writing and the Chair highlighted and addressed some of those items with the applicant.

The Chair explained the hearing process.

He confirmed with the applicant that the condition of approval supplied by staff is satisfactory.

Public Hearing opened

None



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

Planning Department input: Staff does not support this Variance Request. 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.

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.

Public Hearing closed

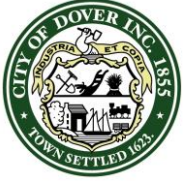
Motion: Sillitta moved to approve the variance request with the condition put forth by staff as it meets the criteria. Brown seconded. Vote: U/A

- 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

Applicant has withdrawn the Variance Application – this item was not heard.

Motion: Brown moved to continue the item to the October 17, 2024 meeting. Sillitta seconded.
Vote: U/A

The Chair confirmed the applicant of item C wishes to go forward with the appeal tonight.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

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.

Administrative Decisions under Appeal:

- 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.

The Chair conferred with staff about the timeline of events and whether the appeal should come now or later in the process since the item is still open and will come back before the board.

Applicant Jeff Sanborn, 30 Silver St clarified they would like to hear the explanation of the administrative decision by the Zoning Administrator that pertains to both the July and August meeting. They were under the assumption that both lots, 35 and 35-1 needed variances for the parking lot.

The Chair asked whether the applicant had the opportunity to read the staff explanation of why the decisions should be upheld. He had not read those comments.

The Chair noted he will open the public hearing and allow the Zoning Administrator to give information on these items to provide clarity. Since the variance is going to be reheard at a future meeting, there will be opportunities for members of the public to come before this and other boards in relation to the item.

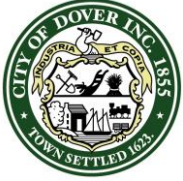
Public hearing opened

P. Crouser explained the justifications for each Administrative Decision addressing:

- No cross-petitions required in this instance as the property is already existing, it's not being created
- Parking on lot 35: not 'grandfathered', also parking is not a use- it is an accessory use, also this parking lot has been in violation of this (non-applicable) HR criteria for some time.
- Vacating the original July variance: 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 outside of court intervention.
- Allowing the parking to expand being an expansion of a non-conforming use: Case law was supplied in writing and highlighted by P. Crouser along with explanations, highlighting that a use permitted by Special Exception, and CUP, which is expanded, is not considered an expansion of a nonconforming use under NH law.

Mr. Sanborn thanked staff for their work and explanations.

Public hearing closed



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

Motion: Sillitta moved to deny the applicant's request to appeal the Zoning Administrator's decisions as no errors were made and to uphold all three (3) administrative decisions. Brown seconded. Vote: U/A

4. OTHER BUSINESS

None

5. ADJOURN

Motion: Sillitta moved to adjourn at 7:45pm. Brown seconded. Vote: U/A