

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, December 19, 2024
Meeting Time: 7:00 pm

1. ATTENDANCE

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

Members Absent (Excused): Jackson Brown (Alternate)

Members Absent (Unexcused):

Staff Present: Paul R. Crouser (Zoning Administrator)

Chair Prior called the meeting to order at 7PM and noted only four 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 to another date. Three members will need to vote in favor for a hearing item to pass. In the event of a denial, the applicant cannot use the fact that there wasn't a full board present as reason for rehearing.

2. APPROVAL OF MEETING MINUTES OF NOVEMBER 21, 2024

Motion: Couturier moved to approve the minutes of November 21, 2024 as submitted. Seconded by Onufry. Vote: U/A

The Chair explained the hearing process.

3. HEARINGS

- A. * ZONE-2024-0045 Applicant: Simon D. J. Macalister, 9 Maple Street, Tax Map 30, Lot 66, located in Urban Density Multi Residential District (RM-U), requests a Special Exception through Section 170-12, Conversion to, or creation of Dwelling, 3-4 Family criteria, to allow for the addition of three (3) new dwelling units to an existing single-family dwelling**

The property subject to this variance request is located at 9 Maple St. and resides within the Urban Density Multi Residential (RM-U) District. The property is approximately 0.23 acres and has approximate dimensions of 100' (frontage) x 97', with an existing $\pm 1,275$ s.f. single-family home, with approximately $\frac{3}{4}$ of the lot vacant as open space.

The Applicant requests a Special Exception in order to add-on to the existing home to convert it into a 4 Family Dwelling. Under the RM-U's specific zoning regulations, six criteria must be met in order for any property within the RM-U to create, or convert to, a 3-4 Family Dwelling.

Nicholas Isaak represented the application and explained the reason for the special exception and summarized the plan to comply with the HUD rent rates and addressed the remaining three criteria necessary:

Parking; Side setback; Screening.

The applicant has no issues adhering to the conditions proposed by staff.

Mr. Isaak clarified for the board that the existing structure will remain and be renovated as part of the project.



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Public hearing opened:

Sam Hewitt, 5 Maple St. is concerned about the size and scope of the proposed project as it does not meet the minimum dimensional requirements. The proposal does not match the character of the existing neighborhood. He spoke at length expressing additional concerns relating to the density and size of the project and the criteria the request must meet, which he does not believe has been met.

He provided a petition signed by 28 neighbors who oppose the proposed project.

P. Crouser addressed comments relating to the size and dimensions of the lot, the criteria for special exception and regulations for the non-conforming use section of the zoning ordinance.

He does interpret the regulations to allow this special exception on this lot. He addressed parking regulations.

P. Crouser and Chair Prior discussed next steps if the special exception is approved. The unit count alone does not trigger the project going before TRC, however, once a building permit is pulled, permit review staff will determine if technical review is required. P. Crouser also stated that even if a project does not require TRC review, the TRC can request that an item be subject to full review.

Stacey Ruel, 31 Hough St agreed with everything Mr. Hewitt stated and believes the proposal is too many units on too small of a parcel. Even if they meet the parking requirements, there are some parking issues there. Also, there are children currently playing in the street and she would be concerned to add more children. She moved here to get away from high density areas and is concerned about keeping the character of the neighborhood.

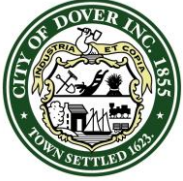
Tim Noonan, potential builder of this project explained that he is aware of storm water and other building codes. He believes the project will enhance the neighborhood.

Jonathan Payne, 2 Maple St. is opposed to the project and agrees with Mr. Hewitt's concerns. He expressed concerns about parking and the driveway not being wide enough for two cars to pass. He has concerns for cars backing into the street which is not allowed, and also the potential number of additional cars on the street.

Kyle Stanley, 4 Maple St. is in opposition to the project due to the proposed units will change the character of the neighborhood and there won't be any open space for the future occupants. There will be additional traffic. With the doors facing the street, people will park on the street, rather than the lot. He mentioned the additional curb/streets cuts required are in opposition to the 5-year moratorium for newly paved roads, which this is one.

Planning Department input: Staff supports this variance request with conditions.

1. A Landscape Plan proving compliance with parking area screening requirements shall be submitted and approved by the Planning Department.; and
2. Proof of deed-restricted HUD Fair Market Rent rates for the three (3) created units shall be recorded at SCRDP and submitted to the Planning Department prior to the issuance of any Certificate of Occupancy.



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Per the applicant's narrative, the property owner is willing to restrict the three (3) newly generated units to the applicable HUD Fair Market Rental rates, eliminating the need to comply with criteria A and E, with the project meeting all other criteria as-presented.

In order to address parking concerns and to confirm the proposal conforms to the parking standard, the board discussed with staff which board or committee in the City would be best to review the proposal for parking compliance.

P. Crouser explained this proposal does not require site review. Technical Review Committee can endorse a project, but does not have approval authority, they only make recommendations. This may or may not be required to go before TRC, a decision which is made once plans are submitted for a building permit.

He further elaborated that the proposed parking spaces meet the 9' minimum stall width for 90 degree parking stalls (even though those standards don't apply to this proposal).

He recommended two options for referring the application to others for review:

1. Send the package to TRC to have them determine if a full review is necessary
2. Directly request TRC review the package

Mr. Hewitt reiterated information from the ordinance relating to the non-conforming lot status for the use, request for special exception and minimum lot size of 10,000sf noting the parcel does not meet the requirements for special exception.

P. Crouser disagreed with the comments and explained his position based on the allowed uses and stricter Special Exception restrictions for this project than other projects permitted by right.

Public hearing closed

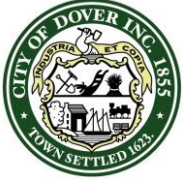
Chair Prior summarized that with the proposed HUD rent rate restrictions, the board will be voting on whether the application meets criteria B, C, and D for special exception.

Motion: Sillitta moved to grant the special exception, as the application meets criteria, with conditions 1 and 2 set by Planning Dept staff, HUD rate restrictions as presented, and a third condition set by ZBA for TRC to review the application for their input. Couturier seconded.

The Chair noted this board reviews hearing items to determine whether certain criteria were met and in this case the criteria were met to approve the request. He supports sending the package to the TRC for review.

Vote: U/A

B. * ZONE-2024-0046 Applicant: Cory Bastianelli, 9 Federal Street, Tax Map 20 Lot 93, located in the Urban Density Multi-Residential District (RM-U), requests a Variance from Section 170-24(C), to allow for an existing detached garage be converted into a two-story accessory dwelling unit.



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The property is approximately 0.25 acres and currently contains a single-family home (approx. 1,634 s.f.) and a single detached garage (approx. 465 s.f.). The applicant seeks a variance request to a single provision of the accessory dwelling unit (“ADU”) regulation within the zoning ordinance, §170-24(C), which states that “...If located in a detached accessory structure, the accessory dwelling unit may be located on either floor of the structure.” The applicant, due to the small size of their detached garage, seeks relief from this provision to permit the ADU to occupy both the first and second floor of the garage.

Corey Bastianelli noted the plan is to convert his detached garage into an apartment, but a single-floor plan only just barely allows for the 400 sf minimum for an ADU. The request is to allow the ADU to include both first and second floors of the garage. The exterior will not change other than adding four windows. He addressed the variance criteria:

- Not contrary to public interest
- Consistent with the spirit of the ordinance by allowing him to utilize and maximize his property and creating additional needed housing in Dover
- Substantial justice is served
- Subject property and surrounding property values should increase after the use change
- Hardship: detached structure already exists. Using only one floor for the ADU does not make fiscal sense nor provide a desirable living unit with only the bare minimum square footage of living space.

The board discussed the requested conditions proposed.

Public hearing opened:

No one spoke

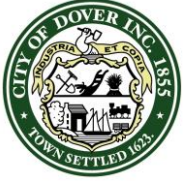
Planning Department input: Staff supports this variance request with conditions.

1. Relief granted in this variance approval shall only apply to the existing detached garage, requiring that any additional accessory structure or major reconstruction of the existing accessory structure meet the current ADU regulations at such time as the potential ADU application is submitted.
2. Compliance with all other ADU regulations as specified in §170-24.

Per the applicant’s variance request submission, they will remain compliant with all other ADU regulations. Additionally, staff notes that the ADU provision in question is one that staff will be asking the Planning Board to review and possibly post a zoning ordinance amendment to. If the Board posts and recommends the amendment, it would then go to City Council for review and possible adoption. The staff proposed amendment would be to eliminate the garage requirement for detached ADUs.

Public hearing closed

Motion: Sillitta moved to grant the variance request with conditions as it meets the criteria. Onufry seconded. Vote: U/A



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- C. * ZONE-2024-0047 Applicant: Guy Chase, 87 Littleworth Road, Tax Map F, Lot 32, located the Rural Density District (R-40), requests a Variance from Section 170-24(F), to allow for the utility power to come directly from the utility power where it is required to have power supplied from the main residence. *This item will be continued to a later meeting date.***

The Vice Chair noted this hearing has been requested to be continued.

Motion: (at the end of the meeting) Couturier moved to continue the item to the January 16, 2025 meeting. Onufry seconded. Vote: U/A

- D. * ZONE-2024-0048 Applicant: Read Family Trust 2023, 7 Browning Drive, Tax Map 21, Lot 99, located in the Medium Density Residential District (R-12), requests a Variance from Section 170-12(B), R-12 Frontage Requirements, to allow for the subdivision which would create one (1) lot with zero frontage, where 100' of frontage is required.**

The applicant ultimately seeks to subdivide the subject lot, creating a single new lot in the rear of the property, leaving both the parent lot and new lot with roughly one half acre each. The proposed new lot, however, would not meet the R-12's frontage requirement of 100', but rather, per the applicant's plan, would provide 0' of frontage, with access to the parcel existing solely through the existing private driveway on the parent parcel.

Phillip E. Read, owner gave history of the property, explained the plans to subdivide the lot and construct a single-family home for his own retirement use. There is only one abutter affected. He plans to have a deeded right of way access to the new lot. There is already a deeded right of way for sewer, water and electricity in place.

The board discussed the various criteria for variance with the applicant.
The applicant addressed the pond on site and whether the property has been surveyed.

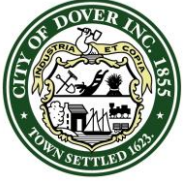
Public hearing opened:

The Chair noted two letters received from abutters in opposition to the variance request.

Paul Cully, 9 Browning, abutter sent a letter and summarized it. He has three concerns with the application:

1. The lot being the largest on the street, but reduced frontage due to the curve.
 - a. The City's public information seems to dispute this
2. Values of property will be enhanced
 - a. The higher density does not increase the value- it decreases it
3. Subdivision will allow a home of similar size to be constructed
 - a. The application does not appear to be restrictive. Seems anything allowed in the R12 could be built there.

Additionally, he is concerned that the driveway would not be 20' as required.



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His final concern is for the swale on that road and how it already fills up with water. The additional runoff from a second home there would make it even worse.

Planning Department input: Staff does not support this request. Historically, this board has, in certain instances, provided relief to dimensional regulations in varying residential districts to permit current owners to subdivide their land when they do not meet, but come close to meeting, current underlying dimensional regulations.

This proposal seeks relief from the R-12 district's frontage requirement in its entirety. Per the applicant's own submitted materials, while their lot is indeed the largest along Browning Drive, nearly every parcel on that street has 95 – 100' of frontage each.

Staff has concerns about setting a precedent of permanently altering the design of subdivisions such as the Browning Drive Subdivision, which, while approved back in 1977, is more or less compliant with current underlying zoning standards. Also, per RSA 674:41, since the proposed new lot does not have access to a public way via a public street, a recognized private street, or otherwise, the owner of the new lot would require Planning Board approval for the issuance of any building permit on the newly proposed lot. As such, staff recommends denying this variance request.

However, should this board decide to grant the variance request, staff recommends it do so with the following conditions:

1. The use on the newly proposed lot shall be restricted to purely residential uses;
2. Any development on the newly proposed lot shall be restricted to a single-family home only, and shall certify as such via a recorded deed restriction at the Strafford County Registry of Deeds, a copy of which shall be provided to the Planning Dept. prior to the issuance of a Certificate of Occupancy; and
3. Compliance with RSA 674:41 would be required to allow a building permit to be issued on a lot with no frontage.

P. Crouser read into the record an email received to the office shortly before the hearing from owners of 1 Pebble Dr and 5 Cobble Hill Dr expressing concerns to the proposal.

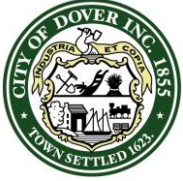
Public hearing closed

Motion: Sillitta moved to deny the variance request as it doesn't meet any of the five criteria for variance. Onufry seconded.

Chair Prior agrees that granting this variance would change the essential character of the neighborhood. It might diminish the neighboring values and there is no apparent hardship.

Sillitta noted the retirement home is a good concept, but having to put in a roadway may be difficult and costly. Perhaps the applicant can achieve his goal by building an ADU over the existing garage.

Vote: U/A



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4. OTHER BUSINESS

P. Crouser addressed board questions about the zoning/ADU potential changes being discussed.

5. ADJOURN

Motion: Couturier moved to adjourn at 8:25pm. Onufry seconded. Vote: U/A