

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, August 21, 2025
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior (Chair), Anthony Sillitta (Vice Chair), Nicholas Couturier, Jackson Brown, Nicole Morin (Alternate)

Members Not Present: Rich Onufry, Hilary Hamer (Alternate)

Staff Present: Paul R. Crouser (Zoning Administrator)

Chair Prior called the meeting to order at 7PM.

2. APPROVAL OF MEETING MINUTES OF JUNE 19, 2025

Motion: Brown moved to approve the minutes of June 19, 2025 as submitted. Seconded by Couturier. Vote: U/A

Chair Prior described the first item as a rehearing, that information has been given to the board for review and if members believe an error was made, a rehearing should be granted. He does not believe a rehearing is necessary.

P. Crouser submitted written information and recommendations and was willing to provide any clarifications, summaries or point by point review if board members requested.

3. HEARINGS

A. ZONE-2024-0045R Request for Rehearing of ZONE-2024-0045, Applicant: Sam Hewitt, through counsel, requests a rehearing of the Special Exception granted on June 19, 2025 in which the owner of 9 Maple Street, Tax Map 30, Lot 66, located in Urban Density Multi Residential District (RM-U), was granted a Special Exception through Section 170-12.B, RM-U 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.

This is a subsequent rehearing request pursuant to the approval of matter ZONE-2024-0045, where the Applicant was granted 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, with conditions.

P. Crouser noted between the June meeting when the special exception was granted and now, the Governor signed a bill into law which alters the regulation of parking spaces for residential units- no more than one space per unit. Much of the arguments were based on the parking numbers and location. Though the law doesn't take effect until mid-September, the change cuts the applicant's parking burden in half should the applicant withdraw and resubmit their application at that time.

Planning Department input:

Each factual assertion made within the July 18, 2025 rehearing request was made either explicitly or constructively during the June 19, 2025 hearing, and as such, Staff fails to see any credible basis for the

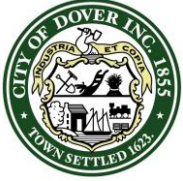
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granting of a rehearing as the Board has previously discussed each claimed argument at length, subsequently moving for and approving the Special Exception. Staff recommends denying the rehearing request.

Motion: Sillitta moved to deny the rehearing request due to no new information being provided and the board did not make a material error in its decision. Couturier seconded.

Board discussion:

Chair Prior agreed with the information provided by P. Crouser in the packet.

Vote: 5-0 with all in favor

B. ZONE-2025-0024 Applicant: Fuss and O'Neill (Owner: Essential Properties, LLC) 851 Central Avenue, Tax Map 38, Lot 6-A, located in the Commercial District (C), requests a Variance from Sections 170-50-C(1) and 170-50-F(1)a, to allow for a monument sign to be located on a property that the business does not itself reside on and allow for more than one monument sign on a property with only one road frontage.

Chair Prior explained the hearing process.

Mr. Brown recused himself from item B. Therefore, there is not a full 5-member board able to vote on this item. The applicant chose to move forward with four voting members.

Rick Lundborn, civil engineer with Fuss and O'Neill presented the item. He described the location and the site. He described the proposal request for signage. The property is unique in that the parcel and business are located on a land-locked parcel in the neighboring town, but the parking lot for it is an abutting lot in Dover. The access to the business is over an easement in the Shaw's Plaza parcel adjacent.

The request is to put the monument sign off Central Ave within the access easement. This will provide advertising on the road and also clarify which entrance to use to access the business.

Mr. Lundborn addressed the variance criteria by reading information provided in the packet. He reiterated with the business located in another town with no access from there or frontage on Central Ave, there isn't anywhere to put a sign without a variance.

Chair Prior read staff's suggested conditions for approval and the applicant indicated no issues with them.

Public Hearing opened:

None

Planning Department input:

This particular case is unique in that the property benefiting from the sought relief is not the property applying for the variance itself which complicates the establishment of a hardship. Dover Gaming, LLC, in Staff's opinion, has sufficiently demonstrated hardship as they own a purely commercial property which lacks any sort of means in which to advertise its use due to the property's physical location. The complication, in this unique case, is that Essential Properties is constructively assuming Dover Gaming's

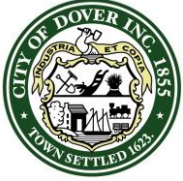
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hardship since Dover Gaming cannot, by itself, remedy their hardship using their own property. Staff feels as though, since there is no alternative relief for the property, denying the variance would constitute a taking, and thus recommends approval of the variance with conditions, which are:

1. The third freestanding sign shall not exceed 60 s.f. in area and shall be subject to sign permit review and associated fees;
2. 851 Central Ave. shall not seek any additional variance for additional freestanding signs or expansions of their area; and
3. The sign shall be considered “non-conforming” and should any current or future use associated with the freestanding sign granted through this variance cease for a period of one (1) year, the sign shall be removed, or a new variance shall be applied for

Sillitta addressed public safety of traffic turning at that location where there is no stoplight.

Motion: Sillitta moved to grant the variance as presented as it meets the criteria with the conditions set forth by staff. Couturier seconded. Vote: 4-0 with all in favor

C. ZONE-2025-0025 Applicant: Matthew Hunt, Back Road, Tax Map M, Lot 105-1, located in the Rural Residential District (R-40), requests a Variance from Section 170-12.B, R-40 Table of Uses, to allow for the location of a garage to be closer to the road than the 40’ setback requirement.

Matt Hunt, 35 New York St, owner presented the item. He described the location and the site. He described the proposal to put a single-family home on the lot. Though the parcel is three acres, much of it is wetlands and buffers. The current design does keep the building out of those areas. Due to the water table, a basement is not feasible so there is no ability for garage, storage etc under the first floor. The garage for the other house on the street is the same distance from the road as being requested on this lot.

Public Hearing opened:

Chair Prior summarized a letter received to the office from an abutter with concerns about using the neighbor’s setbacks as a reason to allow the same for a new home, lack of hardship, and precedence-setting in the zone.

Planning Department input:

In this particular case, while the current setback values were known prior to the owner purchasing this lot, it is evident that the underlying subdivision, which created this parcel in 2013, left little room in terms of avoiding a variance should the parcel be developed in accordance with the neighborhood, which it is now. The parcel is the largest of the three by over 1.5 acres, yet it has the least amount of accessible area in which to develop due to wetland/buffer constraints. Although an alternative to the variance exists, in

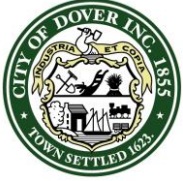
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staff's opinion, the only alternative is so negligible in difference to the variance request that staff does not feel denying the variance is reasonable.

Staff endorses this variance request without conditions.

Motion: Brown moved to grant the variance as presented as it meets the five criteria. Sillitta seconded.

Vote: U/A

D. *ZONE-2025-0028 Bruton & Berube, PLLC, (Owner: Ry Development, LLC) 99 Knox Marsh Road, Tax Map H, Lot 34, located in the Commercial Manufacturing District (CM), requests a Variance from Sections 170-32.(E)(1), 170-32(F)(2)(b)(2), 170-32(F)(2)(b)(2), 170-32(E)(5)(a), to allow the development containing a mixed-use project with two (2) buildings each containing eighty (80) units, for a total of one hundred sixty (160) residential apartment units.

FX Bruton, Bruton and Berube, presented the item. He described the proposal to develop a mixed-use project. He noted the project has been in the works for a long time and also that the Housing committee presented a report last month to City Council and many of their recommendations are items included in this proposal.

The proposal is 100% affordable- all 160 units.

He explained the criteria for RCM overlay (Residential Commercial Mixed-use) and that they will be applying for that with the Planning Board. 20 acres are required- which they have. With that overlay, if all proposed units are HUD restricted, there are no density requirements.

He explained the limitations of the parcel due to wetlands and wildlife. They worked with NH Fish and Game for over a year and they support the current layout proposed which keeps the back area clear for wetlands and wildlife.

The commercial aspect is required and proposed as a 25,000 sq ft building.

He explained criteria for percentage of commercial vs residential per building and the variance request to only have commercial on half the first floor of one of the buildings rather than both. He explained the reasoning and how it relates to grant funding.

Some discussion among the Chair, staff and applicant occurred regarding the variance request clarifying the multi-facets of the request involving commercial.

Mr. Bruton addressed the additional variance requests:

- Front setbacks meet the underlying zone requirements, but the need to be pushed forward is due to the wetlands and wildlife that need to be protected.
- Height proposal will fit in with the area and the requested height is necessary to make the proposal go forward

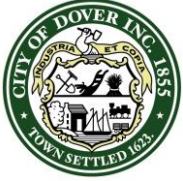
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- Related to HUD rates: they are proposing 60% AMI rather than the more frequently utilized 80%

Mr. Bruton addressed the variance criteria highlighting:

This project promotes the greater welfare of Dover residents, uniqueness of the parcel includes size, location, and wetlands/environmental aspects.

Mr. Bruton addressed comments and questions from the board relating to the full anticipated process/order of construction, conditions proposed by staff, potential third condition that no occupancy permit for second residential building shall be issued until the occupancy permit is issued for the commercial building. Public Hearing opened:

Peggy Morton, 93 Knox Marsh Rd, abutter expressed concerns about water and drainage and the effects of the new development (nearby proposed parking lot) to her property. It is often wet in that area and her basement floods already. She also mentioned other wildlife and disturbance of their habitat, and she's not in favor of so many floors of apartments or additional cars and traffic on that road.

Mr. Bruton addressed public comment noting it is all good information and those items will be addressed at the site plan level. There are regulations that you cannot increase your runoff during development. Parking locations will be reviewed and addressed throughout the process.

Planning Department input:

- 1) There is a demonstrated precedent in the recent past of this Board making concessions regarding a structure or development's overall commercial composition percentage in lieu of affordable housing, or where commercial uses are shown to have historically failed at particular locations. Staff feels the sought relief is reasonable considering the substantial creation of affordable housing;
- 2) As several neighboring properties are in violation of this setback rule, Staff sees no public benefit in keeping the Applicant beholden to this requirement;
- 3) Staff takes no strong stance either way on the height requirement relief; and
- 4) The request to equate LIHTC-regulated housing units to those units which are restricted to the HUD Fair Market Rent Rate is a reasonable request in Staff's eyes, provided certain restrictions are put into effect to ensure the survival of the affordability component which is the basis of the majority of the relief sought in this application.

Staff endorses this variance request with conditions

- 1) After the date of expiration of any of the current owner's (of 99 Knox Marsh Rd.) Land Use Restriction Agreement ("LUMR") with New Hampshire Housing, the owner(s) of record shall either recapitalize through New Hampshire Housing using the 60% AMI figure, or, should the owner(s) of record choose not pursue recapitalization through New Hampshire Housing, all 160 units will automatically be restricted to the applicable HUD Fair Market Rent value in perpetuity.
- 2) Condition one (1) shall be memorialized as a Developer's Agreement with the City of Dover and as a deed restriction to be recorded at the Strafford County Registry of Deeds prior to the

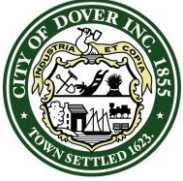
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issuance of any Certificate of Occupancy for any building on 99 Knox Marsh Rd. or Tax Map H, Lot 34.

P. Crouser gave additional information about the construction completion process. All parties clarified and agreed: the second residential building cannot be occupied until the commercial building is between 25%-50% complete, with the Planning Board having discretion to amend that percentage. This language is already in the ordinance and will have to be complied with. Public Hearing closed.

Motion: Sillitta moved to grant the variances as presented as they meet the five criteria with the conditions set forth by staff. Brown seconded. Vote: U/A

4. OTHER BUSINESS

A. ZONING BOARD MEMBER TRAINING

P. Crouser gave a training presentation about Zoning Board of Adjustment rules and procedures. The report will be sent to the board members as it includes hyperlinks to the reference materials. He highlighted topics such as: voting, quorum, recusals (voluntary only), evolution of criteria such as hardship over the years, special exceptions, and appeals of administrative decisions.

5. ADJOURN

Motion: Silitta moved to adjourn at 8:58pm. Couturier seconded. Vote: U/A