

STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2025- _____

Hillary Hamer and Merlin Mason, Plaintiffs

v.

City of Dover, Defendant

5 Sherman Street, LLC, Intervenor

PLAINTIFF'S NOTICE OF APPEAL

**APPEAL PURSUANT TO
SUPREME COURT RULE 10**

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A. Names of the Parties and Counsel.

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B. Questions Presented for Review.

- 1.) Did the City of Dover Planning Board and the Housing Appeals Board err in its interpretation of the plain meaning of the provision found at City of Dover Zoning Ordinance “Transfer of Development Rights” § 170.29 G “Residential Performance Standards” (7) requiring a 30-foot no-cut, no-disturbance on the perimeter of the property in finding it was only applicable to TDR applications treated as subdivisions?
- 2.) Did the City of Dover Planning Board and the Housing Appeals Board err in its interpretation of the plain meaning of the provisions found at City of Dover Zoning Ordinance “Transfer of Development Rights” § 170.29 G (3), which proscribes two methods for transfer of development rights, one involving a density formula which is treated as a subdivision, and one based on underlying zoning which is treated as a site plan, by allowing the developer to use the first method deploying the formula but treating the application as a site plan?
- 3.) Was Hamer and Mason’s HAB appeal of the City of Dover’s decision to grant the TDR application to construct four additional single family detached housing on a 1.2 acre lot in the Medium Density Residential District commenced, prolonged, required, or defended without any reasonable basis in the facts provable by evidence or any reasonable claim in the law as it is, or as it might arguably be held to be, justifying the award of attorneys’ fees?

C. Statement of the Case.

On August 15, 2024, 5 Sherman Street LLC/Robert Baldwin filed a site plan application with the City of Dover seeking to redevelop a single-family residence on a 1.19 acre lot into nine units of housing, including two duplex units and five single-family dwellings. Addendum at 76-77; Certified Record 11-12. The lot in question has a street address of 103 Court Street, Dover, New Hampshire, and is demarcated as Map 19 Lot 8 in the City of Dover Tax Map. The property is in the Medium Density Residential (R-12) District. The Developer sought to utilize Dover's Transfer of Development Rights zoning provisions, which allows the purchase of lots and the transfer of development rights from those lots to other lots, along with waiver of density restrictions in the transferee lot.

City of Dover Zoning Ordinance "Transfer of Development Rights" § 170.29 G (3) sets forth two methods for transfer of development rights. Addendum at 31. § 170.29 G (3)(a) "Single-Family Detached Method" calls for the computation of base density using a formula at (3)(a)[1], and then a calculation of bonus density at (3)(a)[2]. According to § 170.29 G (3)(a)[6], plans using this method "shall be considered a subdivision application." In contrast, § 170.29 G (3)(b) "Single-family, two-family, three-family, and four or more method" articulates an alternative method. Using this method, "[i]n mixed-use or multifamily zones, the base density shall be derived from the underlying zoning, and not through a formula." § 170.29 G (3)(b)[1][a]. This language tracks the language in the zoning ordinance for multifamily zones § 170.29 B.:

(d) Suburban Density Multi-Residential District (RM-SU) The purpose of this residential district is to provide an environment suitable for a variety of

moderate-density housing types, *including single-family, two-family, three- to four-family and multifamily dwellings*. These districts are suburban neighborhoods located along major roadways outside of the center of the City. The homes in this district are almost all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, elementary schools, high schools, and child-care facilities.

(e) Urban Density Multi-Residential District (RM-U). The purpose of this residential district is to provide an environment suitable for a variety of moderate/high-density housing types, *including single-family, two-family, and three- to four-family dwellings*. These districts are urban neighborhoods located close to the downtown area and contain many historic homes that are built close to the sidewalks and streets. The homes in this district are all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, funeral parlors, elementary schools, high schools, and child-care facilities. [Emphasis supplied.]

Addendum at 25. Further, § 170.29 G (3)(b) provides no method for calculation of base density in non-mixed use and non-multifamily zones, entailing it is not an option in those zoning districts. This is consistent with the description of the residential districts, for example, medium density residential:

Medium-Density Residential District (R-12). The purpose of this residential district is to *provide for conventional single-family neighborhoods on lots not less than 12,000*

square feet. The homes in this district are almost all served by municipal sewer and water. Many of the neighborhoods surrounding the elementary schools are in this district and have a sidewalk system that is conducive to children walking to school. The development of parcels with at least five acres can be done as open space subdivisions. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools, colleges and child-care facilities. § 170.29 B (c) [Emphasis supplied.]

Id. The non-multifamily districts make no reference to the availability of “single-family, two-family, three-family, and four or more” in the district. Under the zoning regulations, applications utilizing the second method are treated as site plans, unless otherwise determined by the Director of Planning and Community Development. § 170.29 G (3)(b)[4].

The Applicant’s plan submission, and all revised plans, calculated the base density of the lot using the method at § 170.29 G (3) (a)[1], and the application was not in a multifamily or mixed use district which would permit calculation of the base density utilizing § 170.29 G (3)(b)[1][a]. Addendum at 77, 87; Certified Record at 187, 644.

On September 5, 2024, technical review minutes noted one unit was within the rear setback, and recommended redesign to meet visual buffer requirements by reducing the common area or the unit count. Addendum at 78-80; Certified Record at 249-251. The Applicant’s response to technical review comments regarding the setback requirement on September 12, 2024 noted:

“The property is approximately 135 feet wide and strict compliance with the 30-foot perimeter buffer would leave development of the property limited.” Addendum at 81; Certified Record at 264. A third review on September 26, 2024, reiterated those concerns for a third time, noting “still too many units and not enough buffer area.” Addendum at 82-84; Certified Record at 325-7. The Technical Review Committee further noted “many structures/areas of disturbance are within the TDR 30’ no-cut-no-disturb area/still do not appear to have a visual buffer in place. If requesting a waiver, data suggestions above would also be important for evaluating waiver.” Addendum at 83; Certified Record at 326.

On October 24, 2024, the applicant submitted a revised plan calling for one duplex and four single family dwellings (in addition to the existing dwelling) for a total of seven (7) units. On November 14, 2024, City of Dover Technical Review noted “Thank you for revising the design to provide more buffer with the exception of the pavement.” Addendum at 86; Certified Record at 554. The Planning Board Staff Memo of December 10, 2025 stated “[t]he application meets all provisions of the TDR Ordinance, with exception of the required 30’ buffer which the applicant seeks partial relief from.” Addendum at 88-89; Certified Record at 666; 691. On December 10, 2024, the City of Dover Planning Board voted to accept the revised plan and opened a public hearing on the application. Addendum at 130. Public testimony on the project was extensive and universally negative. Addendum at 130-131; Certified Record at 740-741. Further, Hamer and Mason contended that the application, employing the base density formula § 170.29 G (3)(a)[1] should be treated as a subdivision application pursuant to § 170.29 G (3)(a)[6]. Addendum at 90-107, 130; Certified Record at 715-732, 740. The

Planning Board proposed a site walk on January 11, 2025. The public hearing on the application was continued until January 28, 2025.

On January 21, 2025, the Applicant submitted a new, revised site plan which removed the proposed duplex and limited the proposal to the construction of four (4) additional single-family units. On January 28, 2025, the Planning Board voted to approve the TDR application but tabled the site application due to the last-minute change. Addendum at 143-146; Certified Record at 816-819. At this hearing, the Planning Department apparently changed its opinion on the buffer requirement, finding the application to be a site plan, not a subdivision, and therefore not subject to the buffer requirement. Addendum at 145; Certified Record 818. The Planning Board adopted the Planning Department's novel interpretation that the 30' buffer requirement did not apply because the application was a site plan, presumably pursuant to § 170.29 G (3)(b)[4], not a subdivision, and ignored the fact that § 170.29 G (3)(b) provided no means of calculating base density outside of a multifamily or mixed use district. Addendum at 146; Certified Record at 819. This determination also contradicted the prior comments of the City of Dover's own Technical Review Committee on December 10, 2024. Addendum at 88-89; Certified Record at 666; 691.

On February 27, 2025, Attorney Scott Hogan on behalf of Hilary Hamer and Merlin Mason, direct abutters, filed an appeal of the Planning Board Decision to grant the TDR to the application with the Housing Appeals Board. Issues presented to the Housing Appeals Board in the Appeal Application included: i.) the failure of the proposed development to comply with the 30' no cut, no disturb buffer, ii.) argument that the application should have been treated as

a subdivision, not a site plan, iii.) substantive errors of the Planning Board in considering the requirements for grant of a TDR, and iv.) procedural errors related to the last minute changes to the site plan which were never the subject of a vote by the Planning Board, nor made available to the Appellants prior to the January 28, 2025 hearing. Last, the appeal argued that the proposal was unreasonable and failed to protect abutters rights both with respect to the use and marketability of their property.

On May 2, 2025, the City of Dover filed an Answer with the Housing Appeals Board in response to the appeal of Hamer. On May 27, 2025, Hamer and Mason, the City of Dover and the Intervenor, 5 Sherman Street, LLC, filed memoranda with the Housing Appeals Board. On June 3, 2025, the Housing Appeals Board held a merits hearing on the Appeal. On August 5, 2025, the Housing Appeals Board issued an Order denying the appeal. With respect to the 30-foot buffer requirement in the TDR ordinance, the HAB stated:

Regarding the Appellant's claim that a 30-foot buffer is required, the ordinance is clear that such buffer is required for subdivisions, but not for site plans. . .

Addendum at 39. The provision of the City of Dover Zoning Ordinance "Transfer of Development Rights" § 170.29 G "Residential Performance Standards" (7) referenced by the HAB states:

(7) A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**

Addendum at 36. With respect to the arguments that the TDR required a subdivision application, not a site plan given the

methodology used by the Applicant in computing the base density and bonus density, the HAB stated:

While RSA 672:14, I clearly includes condominiums in its definition of “subdivision,” the Dover City Code explicitly excludes them in § 157-60:

The division of the lot, tract or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, or building development. It includes resubdivision, and when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. A condominium conveyance, per RSA 356-8, shall not require Planning Board approval.

Addendum at 39. The HAB invoked its powers pursuant to RSA 679:5 to award attorneys’ fees, indicating:

This includes the authority to award attorneys’ fees in a case in which the action is “commenced, prolonged, required, or defended without any reasonable basis in the facts provable by evidence or any reasonable claim in the law as it is, or as it might arguably be held to be.” Kennan v. Fearon, 130 N.H. 494, 502, 543 A.2d 1379 (1988). The HAB notes that the Certified Record shows that the Appellants’ participation in this case is based on strong resentment of the Project. . . in light of this, the HAB fails to see how any of the claims raised by the Appellants have any reasonable basis in fact or law. . . City of Dover’s request for Attorneys’ Fees is hereby granted to include 50% of the fees incurred in this case.

Addendum at 42. On September 4, 2025, Hamer and Mason filed a Motion for Reconsideration and/or Clarification with the Housing Appeals Board, as well as an Objection to Affidavit of Fees.

Addendum at 52-57, 58-63. On September 10, 2025, the Housing Appeals Board suspended its decision on the merits to consider the motion and objections. Addendum at 74. On September 11, 2025, the Town filed an Objection to the Motion for Reconsideration.

Addendum at 66-71. On October 30, 2025, the HAB issued an Order summarily denying the Motion for Reconsideration and/or Clarification, and this Appeal followed. Addendum at 75.

D. Jurisdictional basis for the appeal.

This appeal is brought consistent with the provisions of RSA 679:15 and RSA 541.

E. A Substantial Basis Exists For a Difference of Opinion on the Questions.

This case involves the interpretation of City of Dover's zoning ordinance governing the transfer of development rights for residential developments. Dover Zoning Ordinance "Transfer of Development Rights" § 170.29 G "Residential Performance Standards" provides for two alternative *methods* for transfer of development rights at § 170.29 G (3), for single-family detached housing as a subdivision plan and for multifamily development as a site plan. The "Single-Family Detached Method" at § 170.29 G (3)(a) calls for the computation of base density using a formula at (3)(a)[1], and then a calculation of bonus density at (3)(a)[2]. According to § 170.29 G (3)(a)[6], plans using this method "shall be considered a subdivision application." This was in fact the method used by the

applicant to compute base density and the bonus density from the transfer of development rights. Addendum at 77, 87; Certified Record at 187, 644. In contrast, § 170.29 G (3)(b) “Single-family, two-family, three-family, and four or more method” articulates an alternative method. Using this method, “[i]n mixed-use or multifamily zones, the base density shall be derived from the underlying zoning, and not through a formula.” § 170.29 G (3)(b)[1][a]. There are no provisions under this method for calculation of base density outside a mixed use or multifamily zoning district. § 170.29 G (3)(b)[1]. Under this second method, the application is treated as a site plan application. § 170.29 G (3)(b)[4]. The applicant was not able to use this second method because the property was not in a multifamily or mixed use zone, and the provisions contain no alternative means of calculating base density. Notwithstanding the apparent use of the first method at (3)(a)[1], the Planning Board and the HAB determined that the application was a site plan pursuant to § 170.29 G (3)(b)[4], and not a subdivision application pursuant to § 170.29 G (3)(a)[6].

There is a substantial basis for a difference of opinion on this issue as rules of construction do not ordinarily call for the adding words that the drafters did not see fit to include. Here, the Planning Board in effect read into § 170.29 G (3)(b)[1] a nonexistent default density formula identical to § 170.29 G (3)(a)[1], and approved the TDR as a site plan application on the basis of a “ghost” density formula, when it is in fact evident that § 170.29 G (3)(a) is itself the default method when the applicant is not in a mixed use or multifamily district, and the result is a subdivision application pursuant to § 170.29 G (3)(a)[6].

In addition, regardless of whether the application should have been treated as a subdivision or a site plan, City of Dover Zoning Ordinance § 170.29 G (7) requires:

(7) A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer. [Amended 7-22-2020 by Ord. No. 2020.07.08-007]

Rather than adopting the plain meaning of § 170.29 G (7), the Planning Board (as the HAB) added words to the ordinance limiting it to single-family detached projects treated as subdivision plans under the transfer of development rights ordinance § 170.29 G (3)(a), rather than as a general residential performance standard. In other words, the Planning Board created a “Condominium/Housing Association” loophole from the visual buffer requirement, wherein an exemption is made from the normal requirements so long as the resulting parcel is owned in common, despite the form of ownership having no rational relationship to the proposed use of the land. For example, in this case, the Applicant would not be able to obtain approvals for their plan if instead of a housing association they sought to subdivide and sell off individual parcels due to the buffer requirements, even though *the use of the land* would be identical. There is no rational basis for the City of Dover to misinterpret their zoning ordinance to incentivize and coerce developers into pursuing a scheme for the collectivization of ownership.

There is a substantial basis for a difference of opinion on this issue as rules of construction do not ordinarily call for the adding words that the drafters did not see fit to include. “Moreover, we will not guess what the drafters of the ordinance might have intended, or

add words that they did not see fit to include.” Harrington v. Town of Warner, 152 N.H. 74, 79 (2005). This issue is of general importance both specifically to this application, and generally in the City of Dover because the Condominium/Housing Association loophole from the buffer requirement is resulting in ultra-dense housing in low and medium density neighborhoods, whereas the requirement would necessitate moderated density as well as a visual buffer to neighbors. It would also remove an incentive against individual ownership of property in favor of collectivization.

Last, and most important, Hamer and Mason pursued an appeal of the decision of the City of Dover Planning Board in good faith. There is a clear, reasonable claim in law that the Applicant should be seeking a subdivision application pursuant to § 170.29 G (3)(a)[6] when the Applicant utilized the formula at § 170.29 G (3)(a)[1] to compute the base density. There is a clear reasonable claim in law that the project is subject to the 30’ no cut, no disturbance buffer at § 170.29 G (7). In fact, this was the position of the City of Dover’s own Technical Review Committee up to and including December 10, 2024. Addendum at 89; Certified Record at 691. Further, the fact that Hamer and Mason expressed animosity to a proposal to take a single-family residence neighboring them on a 1.2 acre lot and convert it into five single-family dwellings is not a basis to award attorneys’ fees. Hamer and Mason own property in the so-called Medium Density Residential District, and the proposed project is not consistent with the density restrictions in that district in the absence of recourse to the TDR provisions. Hamer and Mason pay taxes to the City, and are entitled to concerns about both their quality of life and the future marketability of their property as a result of this project. Further, their position on the applicability of

the 30' buffer accords with the position of the City of Dover Technical Review Committee up to and including December 10, 2024. There is a substantial basis for a difference of opinion on whether the HAB's award of attorneys' fees to the City of Dover is unlawful.

F. Acceptance of the appeal would protect a party from substantial and irreparable injury.

Acceptance of this Appeal would protect Hamer and Mason from having to unjustly pay attorneys' fees to the City of Dover when they in fact brought an appeal of the Planning Board in good faith. In addition, in finding that Hamer and Mason's appeal was brought in bad faith, the HAB has in effect found that Attorney Hogan, an experienced and respected practitioner of land use law, brought a frivolous appeal against the City of Dover Planning Board. This constitutes an attack on Attorney Hogan's professional reputation.

G. The Case presents the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.

The City of Dover has adopted a zoning provision, transfer of development rights, which is being used selectively and substantially to increase housing densities in neighborhoods where such densities would typically not be permitted. In an ordinance which already provides for extraordinary densities, the City of Dover Planning Board has, in effect, created a loophole for projects involving collective ownership from even the minimal restrictions contained in the Transfer of Development Rights Ordinance. This loophole is without justification, has no rational basis in planning or zoning, and

discourages private ownership of property, and is contrary to the lawful administration of justice and local land use regulations.

In addition, the appeal presents an opportunity to address the regulations of attorneys. In this matter, Scott Hogan, Esq., on the behalf of abutters brought an appeal of a Planning Board Decision to the Housing Appeals Board raising legal issues regarding the interpretation of City of Dover's zoning ordinance and its application to this matter. The position taken by the abutters regarding the 30' buffer requirement is consistent with the former position of the City of Dover's Planning Staff Memo. Addendum at 88.

Notwithstanding, the Housing Appeals Board determined that the appeal was not brought in good faith, lacked any legal merit, and awarded attorneys' fees. If attorneys and clients are going to be subject to sanctions of attorneys' fees to a municipality for making straightforward legal arguments over the interpretation of zoning provisions, especially when those *same interpretations* have been employed by the City previously in its own treatment of this very application, this Court needs to provide some kind of clarity regarding what kinds of textual arguments are verboten and subject to sanction.

H. Statement of Issue Preservation.

Every issue in this appeal has been presented to the Housing Appeals Board by properly filed pleading. All issues with the exception of the HAB award of attorneys' fees have been presented to the City of Dover Planning Board. Hamer and Mason raised the issue that the application should be treated as a subdivision and subject to the 30' no cut / no disturbance buffer requirement at multiple times before the Planning Board, individually, and later

through counsel. Addendum at 90-122, 130, 144; Certified Record at 715-732, 740, 774-788, 797-800, 817. These issues were presented to the Housing Appeals Board in Notice of Appeal ¶¶ 13-22, 32; Appellant's Memorandum of Law at 5-7; and Appellants' Motion for Reconsideration ¶¶ 12-18. With respect to the award of attorneys' fees by the HAB, this issue was addressed in Appellants' Motion for Reconsideration ¶¶ 21-24 and Appellants' Objection to Affidavit of Fees ¶¶ 1-12.

I. Conclusion

WHEREFORE the Plaintiffs request based on the above-stated reasons that this Honorable Court:

- A. Accept the Plaintiff's Rule 10 Appeal;
- B. Direct the HAB to forward the Certified Record to this Court;
- C. Schedule the submission of briefs and oral arguments in this case;
- D. Such other and further relief as is equitable and just.

Dated: November 14, 2025

Respectfully Submitted,

Hillary Hamer
Merlin Mason, Plaintiffs

By their Attorneys:
Hockensmith & Dowd, P.C.

By: /s/Kelly E. Dowd
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CERTIFICATION OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal was forwarded this day via first class mail to Attorney for the City of Dover, Laura Spector-Morgan, Esq., of Mitchell Municipal Group, P.A., 25 Beacon Street East Laconia, NH 03246, Attorney for the Intervenor, John K. Bosen. Esq., of Donahue, Tucker & Ciandella, PLLC, 111 Maplewood Ave., Suite D, Portsmouth, NH 03801, the Housing Appeals Board Attn: Clerk at Johnson Hall, 107 Pleasant Street, Concord NH 03301 and Office of the Attorney General, Attn: Civil Law Bureau, 1 Granite Place South, Concord NH 03301.

Dated: November 14, 2025 By: /s/Kelly E. Dowd
Kelly E. Dowd (#14890)

STATE OF NEW HAMPSHIRE
SUPREME COURT

Hillary Hamer and Merlin Mason, Plaintiff

v.

City of Dover, Defendant

5 Sherman Street, LLC, Intervenor

PLAINTIFF'S ADDENDUM

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ARTICLE III
Districts and District Boundaries

§ 170-7. Establishment of districts. [Amended 8-22-2018 by Ord. No. 2018.08.08-009; 7-22-2020 by Ord. No. 2020.07.08-006; 7-22-2020 by Ord. No. 2020.07.08-007]

A. Districts. The City of Dover is hereby divided into the following districts:

(1) Residential.

R-40	Rural Residential District
R-20	Low-Density Residential District
R-12	Medium-Density Residential District
RM-SU	Suburban Density Multi-Residential District
RM-U	Urban Density Multi-Residential District
HR	Heritage Residential District

(2) Nonresidential.

C	Commercial District
CM	Commercial Manufacturing
IT	Innovative Technology

(3) Mixed-use.

G	Gateway
H	Hospital
LBW	Little Bay Waterfront District
O	Office District
CBD	Central Business District
CWD	Cochecho Waterfront District

(4) Overriding.

CD	Conservation District
URD	Urban Renewal District
RRD	Riverfront Residential Overlay District
GWP	Groundwater Protection District
HWD	Hazardous Waste Landfill District
RCM	Residential-Commercial Mixed-Use

SRD	Scenic Road Overlay District
TDR	Transfer of Development Rights
TEL	Telecommunications Facilities
WPD	Wetland Protection District

B. District purpose statements.

- (1) Residential districts. The residential districts are intended to provide a wide range of residential units to provide the citizens of Dover with a balance of housing choices, with varying housing types, densities and costs. The goal is to preserve and create City neighborhoods that are safe and promote harmonious development.
 - (a) Rural Residential District (R-40). The purpose of this residential district is to provide for conventional single-family neighborhoods in the more rural areas of the City. These areas have larger lot sizes (one or more acres) and the homes are most likely served by on-site septic systems and wells, but there are some portions of the district that have municipal sewer and water. New subdivisions are designed as open space developments with reduced lot sizes allowed in return for the permanent preservation of open space. Agriculture and farming are promoted in this district. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, hospitals, elementary schools, high schools and child-care facilities.
 - (b) Low-Density Residential District (R-20). The purpose of this residential district is to provide for conventional single-family neighborhoods on lots not less than 20,000 square feet. The homes in this district are likely served by municipal sewer and water, but there are some areas that still have on-site septic systems and wells. These districts are located near major roadways. The development of parcels with at least 15 acres can be done as open space subdivisions. Agriculture and farming are promoted in this district. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools and child-care facilities.
 - (c) Medium-Density Residential District (R-12). The purpose of this residential district is to provide for conventional single-family neighborhoods on lots not less than 12,000 square feet. The homes in this district are almost all served by municipal sewer and water. Many of the neighborhoods surrounding the elementary schools are in this district and have a sidewalk system that is conducive to children walking to school. The development of parcels with at least five acres can be done as open space subdivisions. Some nonresidential uses that are compatible with single-family homes are permitted, including churches, elementary schools, high schools, colleges and child-care facilities.
 - (d) Suburban Density Multi-Residential District (RM-SU) The purpose of this residential district is to provide an environment suitable for a variety of moderate-density housing types, including single-family, two-family, three- to four-family and multifamily dwellings. These districts are suburban neighborhoods located

along major roadways outside of the center of the City. The homes in this district are almost all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, elementary schools, high schools, and child-care facilities.

- (e) Urban Density Multi-Residential District (RM-U). The purpose of this residential district is to provide an environment suitable for a variety of moderate/high-density housing types, including single-family, two-family, and three- to four-family dwellings. These districts are urban neighborhoods located close to the downtown area and contain many historic homes that are built close to the sidewalks and streets. The homes in this district are all served by municipal sewer and water. Some nonresidential uses that are compatible with residences are permitted, including churches, funeral parlors, elementary schools, high schools, and child-care facilities.

- (f) Heritage Residential District (HR).

[1] These primarily residential neighborhoods surrounding the Silver Street area exhibit a rare collection of interesting architecture. While primarily Victorian and characterized by wide porches, bay windows, steep roofs, and intricate and involved woodwork, there are noteworthy Colonial buildings as well. In both instances, their original occupants were likely community leaders, whether early tavern keepers, or later senior managers and foremen from the mill facilities that lined the Cochecho River, as well as other community professionals.

[2] The common theme through all of these designs is both the massing and the placement of these structures in a manner that is compatible with what had gone before. It is the intent that in this district, new construction, replacement construction, and new additions should continue that tradition of compatibility with the existing neighborhood.

- (2) Nonresidential districts. The nonresidential districts are intended to provide suitable areas for commercial, service, retail, office and industrial developments, to provide employment opportunities for citizens of Dover and the region, to enhance property values, and expand the tax base. Development that uses land efficiently and has high quality design is encouraged.

- (a) Commercial District (C). The purpose of this business district is to provide an environment that encourages efficient and attractive automobile-oriented commercial development along major highways outside of the downtown. The minimum lot size of 20,000 square feet encourages moderately sized commercial uses. The district provides economic development opportunities for a mix of land uses, including retail sales, personal services, restaurants, automobile sales, hotels, offices, banks, and theaters. Other commercial uses and multifamily dwellings are allowed by special exception.

- (b) Commercial Manufacturing District (CM). The purpose of this industrial district is to provide appropriate locations for manufacturing, assembly, fabrication,

packaging, distribution, storage, warehousing, wholesaling and shipping activities that expand the economic base of the City and provide employment opportunities. This area is the location of one of the first industrial parks in the City, located off Littleworth Road and Knox Marsh Road in a more rural area. The smaller minimum lot size of 20,000 square feet also encourages business uses such as publishing, hotels, vehicle refueling/recharging stations, restaurants, car sales, offices, and personal services.

- (c) Innovative Technology (IT). The purpose of this district is to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, laboratory, testing facility, warehousing, wholesaling, publishing and shipping activities that expand the economic base of the City and provide employment opportunities. These areas are located along major collector roads away from the downtown area. The newer business parks are located in this district. The minimum lot size in this district is two acres, which encourages larger assembling and manufacturing users.
- (3) Mixed-use districts. The mixed-use districts are intended to provide suitable areas for a mixture of urban neighborhoods containing residential, commercial, service, retail, and office uses. The mixed-use development is intended to create a sense of community between the mixed uses and facilitate the economical and efficient use of land. The districts are intended to provide housing and employment opportunities for citizens of Dover and the region, to enhance property values, and expand the tax base. Development that uses land efficiently and has high-quality design is encouraged.
- (a) Gateway (G). The purpose of this district is to mark a transition point where you move from the less developed area (the highway, the rural landscape, etc.) to a more formal, densely developed urban core (multistory buildings, civic buildings, etc.). In Dover the primary Gateways (e.g., Central Avenue north and south of the downtown core, Broadway, and Portland Avenue) are generally dominated by commercial activity, with buildings of a lower height than those located downtown. Some residual residential activity occurs occasionally as stand-alone buildings, but frequently residential activity is located above ground-floor commercial uses. A modest distance between the building and the street exists, with a fair amount of landscaping.
 - (b) Hospital (H). The purpose of the Hospital District is to provide appropriate locations for hospitals and medical offices associated with a hospital. This district also encourages other health care services and various housing facilities providing levels of service for older persons. Single- and two-family residential uses are permitted along with commercial uses such as offices, banks, funeral parlors, assembly halls, and schools.
 - (c) Little Bay Waterfront District (LBW). The purpose of this mixed-use district is to provide locations for a mixture of residential and commercial uses on the waterfront parcels along a portion of the shores of the Little Bay. The small minimum lot size encourages a mix of various-sized commercial uses, with water-related uses, such as marinas, specifically permitted. Single- and two-family homes

are allowed in recognition of the historically residential use of the area. Three- or four-family dwellings are allowed only as part of a mixed-use building. Businesses that take advantage of the unique location along Little Bay are encouraged.

- (d) Office District (O). The purpose of this Office District is to provide appropriate locations for a mixture of residential and office uses along higher-volume streets. The remaining large historic homes are no longer suitable for single-family residential due to the high traffic. This district is a transition area between the more commercial areas and the urban residential areas on the side streets. Residential uses up to four dwelling units per structure are permitted, along with commercial uses such as offices, banks, funeral parlors, churches, schools, hospitals, nursing homes and congregate-care facilities. The density for residential uses is about eight units per acre, and in new buildings, residential is only allowed on the second floor or higher.
- (e) Central Business District (CBD). The purpose of this district is to provide the appropriate locations for context-sensitive zoning. The form-based code in this district is intended to foster a vital main street both for itself and for its adjacent neighborhoods through a lively mix of uses, with shop fronts, sidewalk cafes, and other commercial uses at street level, overlooked by canopy shade trees, upper-story residences and offices. The district has an increased emphasis on the form and placement of structures and a decreased emphasis on the function(s) contained within them.
- (f) Cochecho Waterfront District (CWD). The purpose of this mixed-use district is to provide appropriate locations for a mixture of residential and commercial uses on the waterfront parcels along the downtown portion of the Cochecho River. This district has very flexible dimensional requirements, with no minimum lot size, frontage or setback requirements and a density of 43 dwelling units per acre. Several water-related land uses are permitted in the district, including marinas, waterborne passenger transportation facilities and water-related education and resource centers. The architecture of the waterfront areas should encourage the development of marine-, history- or tourism-related land uses and activities, which take advantage of the unique characteristics of the waterfront as well as its central location and proximity to historic areas.
- (4) Overriding districts. The purpose of the overriding districts is to provide an additional layer of land use regulation or protection in certain sensitive areas of the City. The requirements of these overlay districts are in addition to the underlying zoning districts. Most of the districts are intended to protect environmentally sensitive areas. For specific purpose statements, review the text of each overriding district.¹

§ 170-8. Zoning Map. [Amended 12-26-2016 by Ord. No. 2016.10.12-014; 9-11-2019 by Ord. No. 2019.08.28-012]

A. The location and boundaries of the zoning districts are hereby established as shown on a map

1. Editor's Note: See Art. VIII, Overriding Districts.

titled "Zoning Map of the City of Dover, New Hampshire," dated September 11, 2019, which accompanies and is hereby declared to be part of this chapter.²

- B. For the purposes of the delineation of the Central Business District (CBD), the location and boundaries of sub-districts are hereby established as shown on a map titled "Regulating Plan for the CBD Zone," dated September 11, 2019, which accompanies and is hereby declared to be part of this chapter.³

§ 170-9. Amendments to Zoning Map.

Any change in the location of boundaries of a zoning district hereafter made through the amendment of this chapter shall be noted on the Zoning Map.

§ 170-10. Interpretation of district boundaries.

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as a street, railroad, watercourse or other body of water shall be construed to be the center or middle thereof.
- B. Boundaries indicated as following approximately or parallel to a street, railroad, watercourse or other body of water shall be construed to be parallel thereto and at such distance therefrom as shown on the Zoning Map.
- C. Where a dimensioned boundary coincides within 10 feet or less with a lot line, the boundary shall be construed to be the lot line.
- D. Where a boundary is indicated as intersecting the center line of a street, railroad, watercourse or other body of water, it shall be construed to intersect at right angles to said center line or, in the case of a curved center line, at right angles to the tangent of the curve at the point of intersection.
- E. Where a district boundary divides one lot and more than 50% of the area of such lot lies in the less restricted district, the regulations prescribed by this chapter for the less restricted district may apply to the remainder of said lot up to a distance of not more than 50 feet from the district boundary. In no case, however, shall such extension of the less restricted district be permitted closer than 100 feet to any street line in the more restricted district.

2. Editor's Note: The Zoning Map is included as an attachment to this chapter.

3. Editor's Note: The Regulating Plan for the CBD Zone is on file in the office of the Planning and Community Development Department, where it may be examined during regular business hours.

§ 170-29. Transfer of development rights.

- A. Authority. By the authority granted under RSA 674:21, this section creates overlay district(s) for the purpose of transferring development rights (TDR) within said districts.
- B. Purpose and intent. Within the City of Dover, there are certain lands that possess significant conservation features, including but not limited to unsuitable development areas, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic view sheds, historic landmarks, and linkages to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of special protection. The City of Dover, furthermore, has a limited supply of land suitable for development. The purpose of this overriding district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition. Additionally, it is recognized that the City of Dover has an Open Lands Committee and Conservation Commission which is active in protecting and preserving open space. **[Amended 10-13-2021 by Ord. No. 2021.09.08-006]**
- C. Applicability. Upon request by an applicant for development approval and at the discretion of the Planning Board, the provisions of this section may apply to the district(s) defined in Subsection D below.
- D. Districts defined. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009; 9-11-2019 by Ord. No. 2019.08.28-012]**
 - (1) The Industrial TDR District is hereby determined to be any IT or CM Zoning District as shown on the Zoning Map for the City of Dover, New Hampshire, adopted September 11, 2019. The "sending area" is defined to be open space and related setbacks as defined by the City of Dover Wetland Protection District, § 170-28, which are located in any IT or CM Zoning District. The "receiving area" is defined to be all remaining land in be any IT or CM Zoning District. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
 - (2) The Residential TDR District is hereby determined to be residential districts noted or displayed on the Zoning Map for the City of Dover, New Hampshire, adopted September 11, 2019. The "sending area" is defined to be any land preserved by the City of Dover through conservation programs in the R-40 or R-20 residential zoning districts. The "receiving area" is defined to be all non-R-40 or -R-20 zoning districts east of the Spaulding Turnpike which allow residential development.
 - (a) If the units created are purchased, the receiving area may be any zoning district that allows residential development.
- E. Procedural requirements.
 - (1) At the discretion of the Planning Board, an applicant for development approval within the receiving area of the defined Industrial TDR district may apply the performance standards specified in Subsection F below in return for the acquisition of land or development rights from the sending area within the same TDR district. The performance standards for the Residential TDR district are outlined in Subsection G

below.

- (2) A certified boundary survey of the associated land in the sending area shall be submitted as a supplement to the site plan or subdivision plan for development within the receiving area. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009]**
- (3) The owner of the subject open space within the sending area of the TDR district shall sign all application materials as a co-applicant of the development application. For residential application, proof of an agreement to sell development rights must be provided by the Conservation Commission.
- (4) A sketch plan estimating layout of the development site and identifying the open space associated with the plan may be submitted to the Planning Board for review at a regularly scheduled meeting. The Planning Board, within 30 days of its review of the sketch plan, shall determine if waivers will be granted as allowed in Subsections F and G below. Waivers shall be reviewed using the same criteria as are used for site plan waivers. Following this decision, a final application is prepared. The final application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009; 7-22-2020 by Ord. No. 2020.07.08-007; 8-9-2023 by Ord. No. 2023.07.12-008]**
 - (a) The determination of whether a proposed TDR project requires a sketch plan review shall be made by the Director of Planning and Community Development based on initial discussions with the applicant. The determination, made in writing, shall be made prior to the submittal of any plans and shall specify the Director's reasoning, including a review of known conditions, including: traffic, existing layout/topography, environmental. This determination shall be included in the staff report to the Board. If the applicant does not agree with the Director's determination, they may appeal the decision to the Board at its next meeting.
 - (b) If the sketch plan requires an environmental conditional use permit to develop homes, the applicant must appear before the Conservation Commission for review and endorsement prior to the Planning Board's review.
- (5) A perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated open space within the sending area. Said easement or covenant may allow for the continuance of existing residential and agricultural activities, and may allow for utility and access crossings in accordance with Subsection H below. The designation of the land protection agency to hold the easement shall be approved by the Planning Board.

F. Industrial performance standards.

- (1) Land within a sending area, when surveyed, approved by the Planning Board and preserved by easement or covenant as specified in Subsection E, above, may be counted for the open space requirement for a development site in a receiving area. The amount of land preserved in a sending area shall equal or exceed the open space requirement for the development site, but in no case be less than one acre. Notwithstanding,

development sites within the IT and CM Zoning Districts shall maintain open space or landscaped area on at least 10% of the site. The design of the development site shall locate the open space or landscaped area to maximize the aesthetic value of the site. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**

- (2) The minimum lot size requirement may be waived by the Planning Board for land subjected to the transfer of development rights.
- (3) The minimum frontage requirement may be waived by the Planning Board for land subjected to the transfer of development rights, provided that paved access to all developed areas suitable for emergency vehicles is approved by the Planning Board.
- (4) Setbacks for parking, paved areas, and buildings may be waived by the Planning Board and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, buildings shall be at least 150 feet from residential structures that exist on the date of enactment of the IT and CM Zoning Districts, and 75 feet from the lot line of a disagreeing residential abutter. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (5) The developer shall record covenants that address architectural considerations for structures, signage and lighting that are designed to promote the highest possible aesthetic quality of the development site.
- (6) A landscaping plan shall be submitted with a development application that depicts landscaping or open space around the perimeter of the site, near the proposed buildings, and within the parking lot that promotes the highest possible aesthetic quality of the development.

G. Residential performance standards. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009]**

- (1) Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve open space within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development and coordinated with the Conservation Commission. This cost shall become the value at which development rights may be purchased.
- (2) Proceeds from the purchase of development rights shall be placed into the Conservation Fund to be used to purchase future property or easements, or monitor easements, and not into the general fund.
- (3) A residential transfer of development rights applicant may pursue one of the following methods for transferring development rights.
 - (a) Single-family detached method.

[1] An applicant shall develop a baseline yield for the lot to be developed through the following formula: **[Amended 10-13-2021 by Ord. No. 2021.09.08-006]**

[a] The square footage of the parent lot minus unsuitable areas is the base lot size.

- [b] The base lot size is then reduced by 15% to account for roadway; this creates the net area.
- [c] The net area is then multiplied by a factor determined by the amount of unsuitable development area over the parent lot. This is the developable area.

Percentage of Parcel That Is Unsuitable Development Area	Factor
0% to < 10%	0.85
10% to < 20%	0.8
20% to < 30%	0.75
30%	0.7

- [d] The developable area is then divided by the minimum lot size, and the whole number value is the base number, with no rounding.
 - [i] This base number is not required to be restricted by the requirements in Subsection G(3)(a)[3], unless the formula defined in Subsection G[2][a] is utilized. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- [e] The development plan shall be laid out in a design that meets the requirements for block length and cul-de-sac length. **[Added 7-22-2020 by Ord. No. 2020.07.08-007]**
- [2] The transfer shall equate to one of the following calculations: **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
 - [a] For construction of units no larger than 600 square feet of total living area, including the base calculated units, there shall be no density limit. The monthly cost of said units shall conform to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority, and there shall be no TDR fee collected for said unit(s).
 - [b] For construction of units no larger than 1,000 square feet of total living area, two units per development right purchased shall be allowed.
 - [c] For construction of units no larger than 1,400 square feet of total living area, one unit per development right purchased shall be allowed. The unit count shall be the whole number value and not rounded up.
 - [i] Total living area shall mean the size of the home (in square feet) based upon the exterior dimensions, excluding unconditioned spaces.
- [3] The units created through the transfer must be: **[Amended 7-22-2020 by Ord.**

No. 2020.07.08-007]

- [a] Limited to the square footage originally constructed.
- [4] A note shall be placed on the approved plan, and any building permit shall note the adherence to this section of the Code.
- [5] A note shall be placed in the property/unit deed citing the restrictions listed above.
- [6] The plan shall be considered a subdivision application. Prior to submission, a determination by the Director of Planning and Community Development shall be made whether to follow the minor or major subdivision regulations. **[Added 7-22-2020 by Ord. No. 2020.07.08-007]**
- (b) Single-family, two-family, three-family, and four or more method. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
 - [1] The transfer may be through the purchase of development rights, as described in Subsection G(1), or through the protection of land via a permanent conservation easement as per Subsection E(5).
 - [a] In mixed-use or multifamily zones, the base density shall be derived from the underlying zoning, and not through a formula.
 - [b] If the additional unit(s) resulting from TDR is restricted so that the rent of said unit(s) conforms to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority, there shall be no fee collected for said unit(s).
 - [2] The transfer shall equate to one unit per acre preserved or purchased. If the end result is a village-themed residential/nonresidential project, whereby 35% of the square footage being created is nonresidential, the transfer shall equate to one unit per 2,500 square feet preserved or purchased.
 - [3] Any development approved by the Planning Board after July 1, 2020, which will create a manufacturing or assembly facility over 40,000 square feet may create and transfer one unit per 2,000 square feet of building approved, above the 40,000 square foot base. The transfer shall not be completed prior to the issuance of the certificate of occupancy for the additional space. **[Amended 10-13-2021 by Ord. No. 2021.09.08-006]**
 - [a] If the units are to be placed upon the same lot, the layout must be shown on the site plan for the development.
 - [4] The plan shall be treated as a site plan application, unless otherwise determined by the Director of Planning and Community Development, prior to final submission.
- (4) Regardless of the method utilized, the minimum lot size requirement may be waived by the Planning Board for land subjected to the transfer of development rights.

- (5) Regardless of the method utilized, the setbacks shall be: **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**

Minimum Building Setbacks for Subdivision Lots		
Abutting a Street	Abutting a Side Lot Line	Abutting a Rear Lot Line
20 feet	10 feet	30 feet

- (6) Regardless of the method utilized, the minimum frontage requirement may be waived by the Planning Board, to no less than 40 feet. Paved access to all developed areas shall be suitable for emergency vehicles. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (7) A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (8) Regardless of the method utilized, any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity meets the following criteria and a narrative is submitted indicating how those criteria are met: **[Amended 7-22-2020 by Ord. No. 2020.07.08-007; 8-9-2023 by Ord. No. 2023.07.12-008]**
- (a) Is consistent with the Master Plan.
 - (b) Is compatible with the land uses on neighboring lots (e.g., a multifamily building fits in within a single-family neighborhood). The applicant shall provide in their narrative an explanation of their neighborhood analysis.
 - (c) Is created on property served by public water and sanitary sewer.
 - (d) Any relief sought should not be caused by the additional density.¹

1. Editor's Note: Original § 170-27.2H of the 2013 Code, Conditional uses, which immediately followed this subsection, was repealed 8-22-2018 by Ord. No. 2018.08.08-009.

THE STATE OF NEW HAMPSHIRE HOUSING APPEALS BOARD

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Case Name: Hilary Hamer and Merlin Mason v. City of Dover
Case Number: 2025-006-PBA

Board Members Presiding:

David J. Rogers, Esquire, Chairman
Edward L. Rogers, Professional Engineer, Licensed Land Surveyor, Member

ORDER

This Order follows an appeal filed with the Housing Appeals Board ("HAB") by Hilary Hamer and Merlin Mason ("Appellants") relative to a decision of the City of Dover ("City") Planning Board to approve a site plan including Transfer of Development Rights ("TDR") for 5 Sherman Street, LLC ("Intervenor").

FACTS

The Appellants own certain property located at 91 Court Street, also known as map 19 lot 9A in the R-12 zoning district. On August 15, 2024, the Intervenor submitted an application for a major site plan for nine (9) units utilizing the City's TDR ordinance for the property known as 103 Court Street, map 19, lot 9, lying easterly of and abutting Appellant's property (the "Project"). (Certified Record ("CR") at p. 001).

The Intervenor met with the City's Technical Review Committee ("TRC") on August 29, 2024, September 5, 2024 (CR 261), September 26, 2024 (CR 325), and again on November 14, 2024 (CR 554), making revisions to the plans and addressing the committee's comments.

On December 10, 2024, the Planning Board held a hearing for the Project which had been reduced from nine (9) units to seven (7) units. (CR 739). At this hearing, the Appellants, together with other residents of Court Street and members of the public, raised concerns about the Project. The Appellants sent an email to the Planning Board with details of their concerns. (CR 693). The Planning Board scheduled a site walk for January 11, 2025 and continued the hearing for the Project to January 28, 2025. (CR 742). On January 21, 2025, the Intervenor submitted revised plans to the Planning Board, reflecting comments from the December 10th

hearing. (CR 753).

On January 28, 2025, the Planning Board met to continue the hearing on the Project. (CR 815). The Appellants attended the meeting, continued to express concerns, and submitted a letter for the record detailing their concerns. (CR 774). The Planning Board voted 5-1 to approve the TDR for the Project with six (6) conditions. (CR 818).

On February 27, 2025, the Appellants filed this appeal with the Housing Appeals Board (“HAB”). A prehearing conference was held on May 13, 2025 and the hearing on the merits was held on June 3, 2025. This decision follows.

LEGAL STANDARD OF REVIEW

The legal standards for review of a Planning Board decision under RSA 677:15 are well established. “The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.” RSA 677:15, V; Durant v. Town of Dunbarton, 121 N.H. 352, 357 (1981). The burden of establishing that a determination of a Planning Board was unlawful or unreasonable lies with the appealing party. K & P, Inc. v. Town of Plaistow, 133 N.H. 283, 292 (1990). See also, RSA 679:9.

DISCUSSION

The Appellants raise multiple points on appeal. First, the Appellants argue that three (3) members of the Planning Board failed to meet the standard under RSA 673:14 (Disqualification of Member), regarding conflicts, the “juror standard,” and prejudgment. The Appellants allege that prejudged, prejudiced opinions were presented well before the vote.

Second, the Appellants contend that the proposal was erroneously allowed as a TDR application and a Site Plan application when, in fact, the application should have been treated as a subdivision.

In addition, the Appellants argue that the application does not comply with City TDR Code 170-29-G-7, which defines the requirement for a perimeter buffer on the property.

The Appellants also imply that HAB Board Member Edward Rogers pre-judged the application, claiming that he stated in the prehearing conference that “there’s a lot we don’t need” in the Certified Record. (Appellants’ Memorandum of Law at p. 4).

The Appellants also claim that the Intervenor has defaulted because it did not file an Answer or a Joinder to the City's Answer and, therefore, per Superior Court Rule 15, they should be defaulted.

The Appellants also argue that the Planning Board failed to establish that the application met the TDR requirements under 170-29-G-8-a, b and d regarding consistency with the Master Plan, narrative of neighborhood analysis, and relief not to be related to additional density, respectively.

Finally, the Appellants argue that there were substantive procedural errors with a completely revised last minute plan between the Planning Board meeting of December 10, 2024 and the continuance on January 28, 2025.

The City and the Intervenor argue that allegations of bias on Planning Board members must be raised at the earliest possible time. Since there is no indication in the record that the Appellants raised the concern of board member bias, it has not been preserved on appeal.

The City and Intervenor additionally put forth that the Planning Board correctly interpreted the Project to be a site plan and not a subdivision, per the City's TDR Code, §170-29. (City's Memorandum of Law at p. 7, Intervenor's Memorandum of Law at p. 9).

ANALYSIS

While RSA 672:14, I clearly includes condominiums in its definition of "subdivision", the Dover City Code explicitly excludes them in §157-60:

The division of the lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. A condominium conveyance, per RSA 356-8, shall not require Planning Board approval.

The City of Dover "may, through adoption of an ordinance, choose to exercise less power than that granted by the state legislature." Dearborn v. Town of Milford, 120 N.H. 82, 84 (1980). Regarding the Appellants' claim that a 30-foot buffer is required, the ordinance is clear that such buffer is required for subdivisions, but not for site plans. Although other municipalities define subdivision differently and RSA 672:14 (I) includes condominiums in its definition of subdivision, for the sake of the procedures of the City of Dover, condominiums

are clearly not included, as noted in Dover City Code §157-60. Whether it was intended that site plans be treated differently than subdivisions is not a matter for this board to decide, as the Dover City Code is clear and unambiguous.

Regarding the Appellants' claim that the Planning Board failed to establish that the Project was consistent with the Master Plan as required by the Zoning Ordinance in 170-29-G-8-a, we find that there is ample information in the Certified Record upon which the Planning Board could have concluded that the project was consistent with the Master Plan, including:

Staff and the Chair addressed TDR regulations and the TRC and Planning Board process in relation to this request...

Specifically, the lot is served by water and sewer, and the Master Plan supports housing diversity and encourages creating housing in walkable neighborhoods which encourage community engagement. Regarding the requested density, it is in line with neighboring land uses and development. The proposal is for single-family homes, and there are single- and two-family homes in the immediate area. Currently, the parcel has a single unit, and by right, the unit could be converted to a two-family dwelling unit. The applicant is proposing five total residential units, or an increase of four units. On the adjacent parcel at 109 Court Street, that and the three lots that were created from it, all meet the zoning to allow two-family units. These four lots equate to a similar-sized area, (1.5 acres), and with no Planning Board review, eight units could be constructed by right where one unit exists today. In regards to TDR buffers, as 170-29.G(7) states, "A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer," and the proposal is not indicating to subdivide or add new lot lines, staff's interpretation has been that the buffer is not required. However, staff has continually asked the applicant to add more green space and screening as possible and to ensure the 25' setback from the cemetery has been met. This revised plan meets those requests.

(CR 741, 818).

Regarding the Appellants' arguments that the Planning Board failed to establish that the application met the TDR requirements under 170-29-G-8-b, narrative of neighborhood analysis, the Appellants claim that the Planning Board's Notice of Decision is evidence of this failure as the Planning Board stated in its Notice of Decision a condition that "[t]he applicant provide a revised narrative including the latest TDR request." (CR 818). We disagree. Requesting a revised narrative as a condition of approval is reasonably expected to coincide with the revision of the plans as the Intervenor reduced the Project from nine (9) units to seven (7) units, then to five (5) units.

Turning to the Appellants' arguments that the Planning Board failed to establish that the application met the TDR requirements under 170-29-G-8-d, that relief is not to be related to additional density. As already noted, no relief for the 30-foot buffer was granted, as it was not required for a site plan - only for a subdivision. Even if one were to argue that the 30-foot buffer is required, we find no evidence in the record that the Project's lack of a 30-foot buffer is due to additional density.

The Appellants' aspersion that HAB Board Member Edward Rogers pre-judged the application willfully ignores the context of his remarks at the prehearing conference. The only materials available to the HAB at the time of the conference were the Complaint and the Certified Record. The Certified Record was in an unacceptable format as it lacked page numbers and a table of contents, and, at over 1,000 pages, we perceived it might be difficult for the City to correct it in time for the filing of memoranda of law prior to the merits hearing. Since none of the filings to date had suggested in any way that stormwater analysis was germane to the merits of the case, and with over 350 pages of the Certified Record devoted to stormwater analysis, Board Member Rogers asked if any of the parties would object to excluding it from the revised record. With the Appellants' objection, it was agreed to leave the stormwater materials in the Certified Record. The suggestion that this action amounts to pre-judging the application consequently holds no water.

The Appellants' claim of bias on the part of three (3) Planning Board Members was not raised at the earliest possible time and is, therefore, not properly preserved for this appeal. Although the Appellants stated in their letter of January 28, 2025 that "[t]here is strong evidence of prejudgment for this TDR project with a consistent strategy of rationalizing this project for acceptance before the full evidence is heard," (CR 774), no request was made for any members to recuse themselves in a timely manner.

To the extent that the Intervenor may have defaulted by not filing an Answer, the instant case remains for the HAB to decide, regardless of the Intervenor's legal status. Further, Superior Court Rule 15 contemplates an Intervenor that is distinct, definitionally, from an Intervenor before the HAB. Specifically, an Intervenor is defined under Hab Rule 102.14, and such status is automatic upon filing of an Appearance by the Intervenor or its representative. In the Superior Court, such status is only granted by the Superior Court upon filing of an Appearance and a pleading that explains their reason for seeking such status.

Only then may the court grant Intervenor status after review of the pleadings. Because the methodology for becoming an Intervenor before the HAB is prescribed by our statute, and duly applies in this case, the Appellants' proposed default of the Intervenor pursuant to Superior Court Rule 15 is misplaced. See, RSA 679:5, IV.

As to the Appellants' claim of procedural errors due to the omission in the Planning Board's motion to continue the time and place of the January 28, 2025 hearing, the Appellants were present and participated in the hearing. (CR 817). According to RSA 676:4, IV, procedural defects of this nature are not cause for reversal unless they "...create serious impairment of opportunity for notice and participation."

The revision of the application from seven (7) units to five (5) units during this time period is not unusual and certainly not illegal. Rather, it is the very intention of the public hearing process that an applicant may revise their plans in response to planning board and public feedback. Furthermore, the Appellants' letter to the Planning Board dated January 28, 2025, (CR 774), indicates that they were aware of revised plans provided to the City on January 21, 2025. As such, these project revisions did not hamper the Appellants' opportunity for participation.

Regarding the City's request for attorney's fees, the HAB is vested under RSA 679:5, II with "...the power to award all remedies available to the superior courts in similar cases...." This includes the authority to award attorney's fees in a case in which the action is "commenced, prolonged, required or defended without any reasonable basis in the facts provable by evidence, or any reasonable claim in the law as it is, or as it might arguably be held to be." Keenan v. Fearon, 130 N.H. 494, 502, 543 A.2d 1379 (1988). The HAB notes that the Certified Record shows that the Appellants' participation in this case is based on a strong resentment of the Project, making such statements as, "[n]o one asked what we want here," and

I also want unrestricted neighbors. I want neighbors who can make a house their own, put in a swing set, plant a garden, decorate for Christmas – not a row of identical permanently restricted units crammed next to each other under a high-cost homeowners association. Let's provide actual sustainable real housing for neighbors.

(CR 778). The Appellants' complaints about the Project have failed to identify any action that the Planning Board took that was illegal or unreasonable. In light of this, the HAB fails to see how any of the claims raised by the Appellants have any reasonable basis in fact or law.

ORDER

Based on the foregoing, upon a balancing of the probabilities, the Housing Appeals Board ORDERS as follows:

1. The decision of the City of Dover Planning Board approving the Intervenor's TDR application is AFFIRMED, consistent with this Order. The Appellants' Planning Board appeal at issue in this case is DENIED;
2. The City of Dover's request for Attorney's fees is hereby granted to include 50% of the fees incurred in this case. An Affidavit of Fees shall be submitted by the City, on or before August 18, 2025 for consideration by the Housing Appeals Board. Any objection to the Affidavit of Fees shall be submitted by the Appellants within ten (10) days of the City's submission; and
3. The parties' requests for findings of fact and rulings of law which are consistent with this Order are APPROVED; the balance are DENIED.

**HOUSING APPEALS BOARD
ALL MEMBERS CONCURRED
SO ORDERED:**

Elizabeth Menard

Elizabeth M. Menard, Clerk

Date: August 5, 2025

STATE OF NEW HAMPSHIRE

HOUSING APPEALS BOARD

HILARY HAMER & MERLIN MASON

v.

CITY OF DOVER, NEW HAMPSHIRE
CITY OF DOVER PLANNING BOARD

Case Number 2025-006-PBA

APPELLANTS' REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COME the above-named Appellants, Hilary Hamer and Merlin Mason ("Abutters" or "Appellants"), by and through their attorney, The Law Office of Scott E. Hogan, and submit their Requests for Findings of Fact and Rulings of Law in the above-referenced matter.¹

REQUESTS FOR FINDINGS OF FACT

1. The two versions of the proposal at 103 Court St presented to the Planning Board included only duplexes and single-family homes. (See CR pages 666 and 762.)
2. Relief from the "30' buffer" is a checkbox item under the Transfer of Development Rights portion of Dover's Development application form, without specification of site plan or subdivision project type. (See CR page 004.)
3. All project documents up to and including files prepared for the December 10th, 2024 Planning Board meeting included notes about relief from the thirty-foot buffer requirement at 103 Court St including Application documents, Technical Review Committee minutes, City Snapshot report, abutter notices and the Staff Memo provided to the Planning Board. (See CR pages 001, 011, 203, 210, 249, 252, 261, 264, 325, 328, 330, 333, 336, 337, 556, 624, 677, 689, 691.)
4. Emails with City Staff and specific quotes from Technical Review Committee meetings submitted by abutter Hilary Hamer affirm the thirty-foot buffer applying at 103 Court St. (See CR pages 782-786.)

¹ At the May 13, 2025 Prehearing Conference the Board granted the Appellants' request to exceed 15 Requests.

5. Past TDR projects in Dover have applied the thirty-foot buffer or were granted relief from the buffer by vote of the Planning board regardless of subdivision or site plan project type. (See CR page 726-728, 791, 795).

6. Planning Board members Kyle Pimental and Ken Mavrogeorge said during deliberations on January 28th, 2025 that the thirty-foot buffer should apply to both TDR site plans and TDR subdivisions.

Kyle Pimental: *“I think that the comments that have been raised in terms of whether or not the 30 foot buffer should be applied to a site plan versus subdivision. To me, I think I agree that they should be treated the same. I feel like this is almost kind of like a loophole, that the way in which this is defined is causing some ambiguity here. Where this is being treated differently.”* (Video recording minute 45:40)

Ken Mavrogeorge: *“...I do think it needs to be clarified and I would be in favor of them being treated the same.”* (Video recording minute 47:40).

7. The first statement that the thirty-foot buffer “did not apply” to 103 Court St appears in the Applicant’s January 21, 2025 application letter, citing Planning Department staff. (CR page 755.)

8. Abutter Hilary Hamer submitted written comments prior to the January 28th, 2025 Planning Board meeting citing NH RSA 500-A:12 ‘juror standard’ as not being met. Objections to prejudgment were also raised in the written letter of Attorney Scott Hogan on behalf of abutters Hilary Hamer and Merlin Mason prior to the January 28th, 2025 meeting. (See CR pages 775-776, 799.)

9. Notice to abutters by Certified Mail was only provided for the December 10th, 2024 Planning Board meeting. (See CR pages 679-681.)

10. Minutes for December 10th, 2024 Planning Board meeting reflect scheduling of the site walk on January 11th, 2025 and no further Planning Board meeting. (See CR page 742.)

11. Minutes for the January 11th, 2025 site walk include no mention of subsequent Planning Board meeting. (See CR page 752.)

12. Applicant material was filed on January 21st, 2025 seven days prior to the Planning Board meeting on January 28th, 2025 containing a different 5-unit plan. (See CR pages 755-758.)

13. There are only 4 pages submitted by the Applicant describing the 5-unit plan voted on by the Planning Board on January 28th, 2025. All prior material refers to a different plan involving more housing units. (See CR pages 755-758.)

14. Members who attended both January 28th and December 10th Planning Board meetings and not the January 11th Site Walk included Chair Gina Cruikshank and Kyle Pimental. (See CR pages 733, 752 and 814.)

15. Members who attended both January 11th site walk and January 28th Planning Board meeting but not December 10th Planning Board meeting included Fergus Cullen. (See CR pages 733, 752 and 814.)

16. Members who attended all three 103 Court St discussions including December 10th and January 28th meetings and the January 11th site walk included Ken Mavrogeorge, Melina Gambino, and Doug Glennon. (See CR pages 733, 752 and 814.)

REQUESTS FOR CONCLUSIONS OF LAW

1. NH State Law RSA 672:14 defines subdivisions to include condominium conveyance:

RSA 672:14 Subdivision. –

I. "Subdivision" means the division of the lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

II. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this title.

III. The grant of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be construed as a subdivision under this title, and shall not be deemed to create any new division of land for any other purpose.

IV. The rent, lease, development, or grant of an easement to a person for the purpose of placing and maintaining a wireless communications facility shall not be construed as a subdivision under this title, and shall not be deemed to create any new division of land for any other purpose. For purposes of this paragraph, "wireless communications facilities" means any towers, poles, antennas, or other unstaffed structure of less than 500 square feet intended for use in connection with licensed transmission or receipt of radio or television signals, or any other licensed spectrum-based transmissions or receptions. This paragraph shall not be deemed to affect other local zoning, site plan, or regulatory authority over wireless communications facilities.

2. City of Dover's definition of subdivision does not exclude condominiums, only states that Planning Board approval is not required for condominiums:

§157-60 Definitions:

Subdivision: The division of the lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. A condominium conveyance, per RSA 356-B, shall not require Planning Board approval.

MAJOR: A division of a lot, tract or parcel of land into four or more separate parcels, or a subdivision which required new streets, the extension of municipal facilities or the creation of any public improvements (See Article II.)

MINOR: A division or redivision of a lot, tract or parcel of land into three or fewer parcels within a four-year time period, provided that there shall be no extension of streets or other significant improvements required; or any subdivision that, in the judgement of the Planning Board, will present no significant engineering and/or planning difficulties. (See Article III.)

3. NH State Law RSA 674:43 defines the Planning Board's power to review site plans for nonresidential uses or for multi-family units defined as containing more than 2 dwelling units:

RSA 674:43 Power to Review Site Plans. [emphasis added]–

I. A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or resubdivision of the site.

4. City of Dover defines multi-family buildings differently from NH as including more than four dwelling units:

§170-6 Word usage and definitions:

DWELLING, MULTIFAMILY – A dwelling containing more than four dwelling units.

5. City of Dover Medium Density Residential (R-12) District does not allow multi-family buildings. (See Zoning Table, or CR page 952.)

6. City of Dover defines site development plan as nonresidential, multifamily or manufactured homes:

§170-6 Word usage and definitions [emphasis added]:

SITE DEVELOPMENT PLAN — Professionally rendered drawings which delineate a proposed nonresidential, multifamily or manufactured home development. Said plan shall include property lines, location of buildings, means of ingress and egress, access to off-site parking and all provisions as outlined in this chapter and Chapter 153, Site Review Regulations, of the Code of the City of Dover. (CR page 846)

7. City of Dover definition of a lot indicates that multiple buildings can be placed on one lot for nonresidential, multifamily developments or open space subdivisions:

§170-6 Word usage and definitions [emphasis added]:

LOT — A parcel of land which fronts on and has ingress and egress by means of a public vehicular right-of-way and is occupied by, or is intended to be occupied by, one principal building and its accessory buildings or uses customarily incidental to it, together with such open spaces and yards as are required by this chapter. More than one principal building may be placed on a lot located in the Central Business or Gateway District. More than one principal building may also be placed on a lot in all other districts with Planning Board approval for nonresidential developments, multifamily dwelling developments, and open space subdivisions. [Amended 7-22-2020 by Ord. No. 2020.07.08-007] (CR page 841)

8. “Parent” is used to indicate the entirety of the TDR lot under the base density formula and under the buffer requirement, §170-29-G-3-a-1-a and §170-29-G(7). (CR pages 908 and 911.)
9. NH State Law RSA 673:14 describes disqualification standards for Planning Board members to follow the juror standards set by RSA 500-A:12 Examination standard for a juror:

RSA 500-A:12 Examination. [emphasis added] –

I. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:

- (a) Expects to gain or lose upon the disposition of the case;*
- (b) Is related to either party;*
- (c) Has advised or assisted either party;*
- (d) Has directly or indirectly given his opinion or has formed an opinion;*
- (e) Is employed by or employs any party in the case;*

- (f) *Is prejudiced to any degree regarding the case; or*
- (g) *Employs any of the counsel appearing in the case in any action then pending in the court.*

II. If it appears that any juror is not indifferent, he shall be set aside on that trial.

10. NH State Law RSA 676:4 describes the requirements for Planning Board procedures including requiring a specified regulation of what constitutes a complete application and notice requirements:

RSA 676:4 Board's Procedures on Plats [emphasis added] –

(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). An application shall not be considered incomplete solely because it is dependent upon the submission of an application to or the issuance of permits or approvals from other state or federal governmental bodies; however, the planning board may condition approval upon the receipt of such permits or approvals in accordance with subparagraph (i). The applicant shall file the application with the board or its agent at least 21 days prior to the meeting at which the application will be accepted, provided that the planning board may specify a shorter period of time in its rules of procedure. The application shall include the names and addresses of the applicant, all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or county records for unincorporated towns or unorganized places not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board. The application shall also include the name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board.

....

(d)(1) Notice to the applicant, holders of conservation, preservation, or agricultural preservation restrictions, abutters, and the public shall be given as follows: The planning board shall notify the abutters, the applicant, holders of conservation, preservation, or agricultural preservation restrictions, and every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board by verified mail, as defined in RSA 21:53, of the date upon which the application will be formally submitted to the board. Notice shall be mailed at least 10 days prior to submission. Notice to the general public shall also be given at the same time by posting or publication

as required by the subdivision regulations. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal. For any public hearing on the application, the same notice as required for notice of submission of the application shall be given. If notice of public hearing has been included in the notice of submission or any prior notice, additional notice of that hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session was made known at the prior hearing. All costs of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the planning board to terminate further consideration and to disapprove the plat without a public hearing.

11. City of Dover Planning Board requirements for a completed application is described in §153-6 Application Requirements:

§153-6 Application Requirements [emphasis added] –

B. A completed application sufficient to invoke jurisdiction of the Planning Board (or, for minor site plans, the Technical Review Committee) shall include the following elements:

- (1) A completed application form, available at the Department of Planning and Community Development office and through the online portal.*
- (2) A completed site review checkoff list.*
- (3) A written narrative description of the proposed project, addressing its purpose, scope of operation, and impact on the immediate area of influence and the City in general (traffic, schools, utilities, land use compatibility, aesthetics, land and water resources, etc.).*
- (4) Ground/aerial photographs of the site and immediate area.*
- (5) Four copies of the site development plan as more fully described in Article IV of this chapter. Transmit a pdf of the site development plan via e-mail to dover-planning@doover.nh.gov. (Note: Only three copies of the preliminary plan need to be submitted initially for review by the Technical Review Committee. However, the applicant shall check with the Planning Department about number of copies that will be required for submission of the complete application to the Planning Board.)*
- (6) A list of owners, applicants, and professionals involved in the application. Additionally a fee for the City to create a list of abutting property owners that lie within 200 feet of the subject parcel. Information shall include name, mailing address, and Dover Tax Map and lot numbers for the applicant to review. The City will prepare verified mailings.*
- (7) A fee of an amount to be determined in accordance with the fee schedule contained in § 153-18 of this chapter.*

C. The applicant shall file the application with the Planning Board office at least 21 days

prior to the Planning Board meeting, at which time the application will be accepted and a public hearing held.

(1) The applicant and abutters shall be notified of said public hearing by verified mail, with return receipt requested, stating the time, date and place of such hearing. Notice will be mailed at least 10 days prior to the date of the meeting, by the city.

(2) Such public hearing shall be advertised in a newspaper of general distribution not less than 10 days prior to the said meeting.

Respectfully submitted,
Hilary Hamer and Merlin Mason

By their attorney,
THE LAW OFFICE OF SCOTT E. HOGAN

DATE: May 27, 2025

/s/ Scott E. Hogan/, Esq.

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STATE OF NEW HAMPSHIRE

HOUSING APPEALS BOARD

HILARY HAMER & MERLIN MASON

v.

CITY OF DOVER, NEW HAMPSHIRE

CITY OF DOVER PLANNING BOARD

Case Number 2025-006-PBA

APPELLANTS' MOTION FOR RECONSIDERATION AND CLARIFICATION

NOW COME the above-named Appellants, Hilary Hamer and Merlin Mason, by and through their attorney, The Law Office of Scott E. Hogan, and respectfully move the Housing Appeals Board (HAB) to reconsider and clarify its Order dated August 5, 2025.

Standard of Review

1. HAB 201.32 (Motions for Rehearing, Reconsideration or Clarification) states:

“Rehearing motions shall state with specificity all points of law or fact the moving party contends the board overlooked, misapprehended, or requires clarification.” HAB 201.32(b).

“Rehearing motions shall only be granted, pursuant to RSA 541:3, upon a showing that the board overlooked or misapprehended the facts or the law and such error affected the board's decision. Rehearing motions shall not be granted for harmless errors that, if corrected, would not change the board's decision.” HAB 201.32(e).

2. HAB 201.31 (Requests for Findings of Fact and Rulings of Law and Legal Memoranda and Decisions/Orders) states:

“Following the hearing, the board shall issue a decision or order with sufficient specificity to allow the parties to understand its basis.” HAB 201.31(d). (Emphasis added).

Presiding HAB Members

3. Appellants initially note that two of the three HAB members participated in the issuance of this Order, with one of the participating members being Member Rogers. Following the Prehearing Conference the Appellants raised an issue in their Memorandum of Law noting a possible appearance of pre-judgment regarding a statement by Member Rogers. (See Appellants' Memorandum, pp. 3-4).
4. In raising the issue Appellants made it clear that were not alleging any direct conflict, or asking for Member Roger's recusal. (see e.g.: "The Appellants note this issue not to allege any "impropriety or lack of impartiality" on any member of this HAB, but in response to comments made by a Board member at the Prehearing Conference while discussing issues regarding the Certified Record in this matter." Id. P.4)
5. In its Answer the City then characterized that statement as allegations, and the HAB Order, including Member Rogers stated, "The Appellants also imply that HAB Board Member Edward Rogers pre-judged the application...". Order p.3. And: "The Appellants' *aspersion* that HAB Board Member Edward Rogers pre-judged the application willfully ignores the context of his remarks at the prehearing conference." Id, p.5. (Emphasis added).
6. The HAB should clarify that at no time did the Appellants argue that Member Rogers had any direct conflict of interest, but did argue that comments suggesting that parts of the Certified Record weren't 'needed' did create an appearance of pre-judgment, as the record supports, and as argued in previous filings.

Appellants' Requests for Findings of Fact and Rulings of Law

7. HAB 201.31 (Requests for Findings of Fact and Rulings of Law and Legal Memoranda and Decisions/Orders) includes:

“(b) Requests for findings and rulings shall consist of separately numbered paragraphs with only one finding or ruling per paragraph. Unless specifically allowed by the board, parties shall be limited to a combined total of 15 requests for findings of fact or rulings of law. Requests that contain multiple findings or rulings shall be marked "neither granted nor denied."¹

and

“(d) Following the hearing, the board shall issue a decision or order *with sufficient specificity to allow the parties to understand its basis.*” (Emphasis added).

8. On May 27, 2025 Appellants submitted 16 Requests for Findings of Fact and 11 Requests for Rulings of Law.
9. The HAB’s August 5 Order did not address, grant, or deny any of the 27 individual Requests, but instead in its conclusory final statement stated:
- “The parties’ requests for findings of fact and rulings of law which are consistent with this Order are APPROVED; the balance are DENIED.” Order, p.6, ¶3.
10. Clearly this ‘decision’ does not have “sufficient specificity to allow the parties to understand its basis”, per HAB 201.31(d), as no party could interpret what that vague language means as applied to the Appellants specific Requests as to Findings of Fact and separately Rulings of Law.
11. Appellants move the HAB to clarify its Order in this respect.

¹At the Prehearing Conference Counsel for the Appellants requested and was granted permission to exceed the limit of 15 Requests.

Residential TDR proposals in Dover are Subdivisions, not Site Plans

12. As has been argued, Dover’s TDR provisions make it clear that residential TDR’s are subdivisions, not site plans:

“**The plan shall be considered a subdivision application.** Prior to submission, a determination by the Director of Planning and Community Development shall be made whether to follow the minor or major subdivision regulations”. TDR 170-29-G(3)a.6).”

13. There is no language that authorizes the Director to determine that a residential TDR can otherwise be a site plan.

14. Despite this, this development proposal for this property consists of a TDR application and a Site Review application.

15. The HAB and the City argue:

“While RSA 672:14, I clearly includes condominiums in its definition of “subdivision”, the Dover City Code explicitly excludes them in §157-60: The division of the lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. *A condominium conveyance, per RSA 356-8, shall not require Planning Board approval.*

The City of Dover “may, through adoption of an ordinance, choose to exercise less power than that granted by the state legislature.” *Dearborn v. Town of Milford*, 120 N.H. 82, 84 (1980).” (Emphasis added). Order, p.3

16. While the City may “choose to exercise less power than that granted by the state legislature”, it may not choose to change the statutory definition provided in RSA 672:14,

I.

17. Given that the project is clearly a residential TDR development, and thus subject to the Planning Board’s subdivision regulations, which also require the mandatory 30 foot perimeter buffer, to protect existing abutting home-owners’ daily use, enjoyment, value,

and future marketability of their properties, given the level of density proposed in this TDR application.

18. It's otherwise not "clear" that §157-60 "excludes them", as the reference there is to a "condominium conveyance", not an original review and approval of a condominium TDR application in the first instance.

The City's Improper Notice Did Not Give Any Notice to the Public as Required

19. In its Order the HAB stated:

"Board's motion to continue the time and place of the January 28, 2025 hearing, the Appellants were present and participated in the hearing. (CR 817). According to RSA 676:4, IV, procedural defects of this nature are not cause for reversal unless they "...create serious impairment of opportunity for notice and participation." Order, p.6.

20. The HAB fails to recognize that the City's notice obligation is both to the abutting property owners *as well as to the public*. As acknowledged here, no such notice was provided to the public, which had actively participated in the review process throughout. This is reversible error.

Grant of Attorneys Fees

21. In its Order the HAB stated:

"The HAB notes that the Certified Record shows that the Appellants' participation in this case is based on a strong resentment of the Project...". Order, p.6

22. As is the right of every existing property-owner tax-payer, the Appellants have fully and in good faith participated in both the municipal review processes before the City and the appellate process with this Board. The arguments and the 'findings' of the parties and this

Board are without any basis in fact or law, and are otherwise without any basis to support the actual award of fees, or the Board's "50%" conclusion.

23. The Appellants hereby incorporate by reference the arguments made in their August 21, 2025 "Objection to Affidavit of Fees".

24. The Appellants move this Board to clarify its Order as to its basis for awarding fees, and its "50%" rationale, supported with legal and factual citations.

Conclusion

25. For all of the reasons stated above, the Appellants respectfully request this Board to reconsider and clarify its August 5, 2025 Order.

WHEREFORE, the Appellants pray that the Board will:

- A. Grant this Motion for Reconsideration and Clarification; and
- B. Grant such other relief as may be just and equitable.

Respectfully submitted,
Hilary Hamer and Merlin Mason

By their attorney,
THE LAW OFFICE OF SCOTT E. HOGAN

DATE: September 4, 2025

/s/ Scott E. Hogan/, Esq.

Scott E. Hogan, Esq.
P.O. Box 57
Lyndeborough, NH 03082
603-969-1183
hoganlaw@comcast.net
Bar ID #: 10542

STATE OF NEW HAMPSHIRE

HOUSING APPEALS BOARD

HILARY HAMER & MERLIN MASON

v.

CITY OF DOVER, NEW HAMPSHIRE
CITY OF DOVER PLANNING BOARD

Case Number 2025-006-PBA

APPELLANTS' OBJECTION TO AFFIDAVIT OF FEES

NOW COME the above-named Appellants, Hilary Hamer and Merlin Mason, by and through their attorney, The Law Office of Scott E. Hogan, and submit their Objection to the City's August 11, 2025 Affidavit of Fees, pursuant to the HAB's August 5, 2025 Order¹.

Recent History

1. The City filed its Answer to this Appeal on May 2, 2025. In its Answer the City admitted various allegations of law and fact, and then City counsel requested that all of the City's attorneys fees be awarded, as the Appeal "lacks any basis in law or fact". City Answer, p.8, Request C.
2. In its Hearing Memorandum the City then modified its request for all of its fees, laying out four bases, and then stating that the Board:

"...should award the City of Dover a portion of its attorneys' fees and costs incurred in defending this matter, as all but one of the claims raised by the petitioners lack any reasonable basis in New Hampshire law". p.13, ¶III.

¹ The Appellants file this Objection within 10 days of the City's Affidavit of Fees, per the HAB's August 5 Order. They will also be filing a full Motion for Reconsideration of that Order within the HAB's deadline, which will also include arguments regarding the HAB's award of 50% of the City's attorneys fees.

3. The City did not specify what “portion” of its fees should be awarded, and did not specify which “one” of the “petitioners’ claims” had merit.
4. In its August 5, 2025 Order the HAB similarly did not specify what the basis was for then awarding “50%” of the City’s fees.

Standard of Review

5. The City is correct in acknowledging:

“The City is well aware that an award of attorneys' to a prevailing party is an exception to the general rule in New Hampshire that each party pay their own counsel fees, and also understands the well founded policy reasons for that general rule. See, e.g., Harkeem v. Adams, 117 N.H. 687, 618-19 (1977).” Hearing Memorandum, p.12, ¶D.

6. Statutory authority is also clear on this point:

“Costs and attorney's fees *shall not be allowed against the party appealing from the decision of a local land use board unless it shall appear to the court that said party acted in bad faith or with malice in appealing to court*”. RSA 677:20,II (Emphasis added).

7. And, the case cited by counsel for the City itself is clear on this point, where the New Hampshire Supreme Court stated:

“Where litigation *is instituted or unnecessarily prolonged through a party’s oppressive, vexatious, arbitrary, capricious or bad faith conduct*, an award of attorneys’ fees to his opponent is within the court’s power. St. Germain v. Adams, 117 N.H. 659, 662 (1977).” Keenan v. Fearon, 130 N.H. 494, 502 (1988). (Emphasis added).

8. Counsel for the City’s *request is without any basis in fact or law to support the high allegations of the Appellants’ “bad faith”, “malice”, “oppressive, vexatious, arbitrary,*

capricious or bad faith conduct” necessary to either allege or sustain such baseless and potentially libelous claims.²

9. Similarly the HAB’s Order unlawfully granted “50%” of such fees without any explanation and without any basis in fact or law.
10. The Appellants are exercising their protected rights to preserve their daily use, enjoyment, value, and future marketability of their property. There is no basis that could be alleged or conceived or found to support any of the City’s allegations of bad faith, as somehow supported by the HAB’s recent Order.
11. And as the City and the HAB’s allegations and findings reference both the Appellants directly, and their under-signed counsel, under-signed counsel would direct the parties’ attention to the attached letter A.
12. As to the specifics of the Affidavit of Fees, the Appellants have no basis to contest any aspect of counsel’s accounting of time. As stated above, they do have basis to contest the actual request itself, and the HAB’s award of 50% fees, with no factual or legal basis of support, as will be submitted in their Motion for Reconsideration and Clarification.

² It should be noted, as will be argued in Appellants’ Motion for Reconsideration and Clarification, that counsel for the Dover Planning Board in this matter has also been counsel for the same Planning Board, defending the same Board’s previous denial of the often-referenced TDR proposal of Planning Board member Cullen, which is still pending before this HAB. In representing the Planning Board in that nearly identical matter, counsel for the City made no such allegations or request for fees.

Respectfully submitted,
Hilary Hamer and Merlin Mason

By their attorney,
THE LAW OFFICE OF SCOTT E. HOGAN

DATE: August 21, 2025

/s/ Scott E. Hogan/, Esq.

Scott E. Hogan, Esq.
P.O. Box 57
Lyndeborough, NH 03082
603-969-1183
hoganlaw@comcast.net
Bar ID #: 10542

Peter J. Loughlin

ATTORNEY AT LAW

LEONARD COTTON HOUSE • STRAWBERRY BANKE
144 WASHINGTON STREET
P.O. BOX 1111
PORTSMOUTH, NH 03802-1111

TELEPHONE 603-431-6466
FAX 603-436-4079

E-MAIL
peter.loughlin@pjllaw.com

April 4, 2017

To Whom It May Concern:

Re: Scott Hogan, Esq.

This letter is being written on behalf of Scott Hogan. Scott and I both focus our practices on municipal law and, as a result, I have had a good deal of contact with Scott over the more than 15 years that I have known him. I have attended Continuing Legal Education seminars where Scott has presented and have appeared on panels dealing with municipal law topics with Scott.

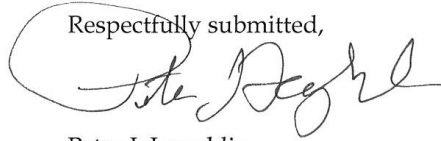
Most of my contact with Scott has come when he has been opposing counsel. Over the years, I have represented a number of different municipalities and private landowners in litigation in the Superior and Supreme Courts. On a number of occasions, Scott has represented abutters' groups who were challenging decisions of land use boards I was representing, or challenging approvals granted to my landowner clients. In every instance, Scott is prepared and tenacious in representing his clients' interests. At the same time, he is always fair and reasonable and always completely candid and honest. When Scott gives his word on any matter, you can be assured that he will keep that word.

Frequently, I have recommended Scott to individuals who have called me looking for legal representation in land use matters. I know that Scott will be fair and honest with the clients and do an excellent job on their behalf. I have recommended Scott even when I realized he could end up on the opposite side of a case since I know that, while he will fight very hard for his clients, the fight will focus on relevant issues and he will not waste the time and money of his clients or mine or the time of the Court on issues that are irrelevant or brought in bad faith or in a vexatious manner.

April 4, 2017
Page 2

In short, Scott is an honest, bright, competent, thoughtful individual. I can recommend him for any position where integrity, honesty, analytical and public speaking skills and a strong work ethic are important.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. Loughlin", written over a large, loopy circular flourish.

Peter J. Loughlin

PJL/dea

MITCHELL MUNICIPAL GROUP, P.A.

ATTORNEYS AT LAW
25 BEACON STREET EAST
LACONIA, NEW HAMPSHIRE 03246
www.mitchellmunicipalgroup.com

LAURA A. SPECTOR-MORGAN
JOSEPH H. DRISCOLL, IV
CHRISTOPHER W. PERRY

TELEPHONE (603) 524-3885

September 10, 2025

VIA E-MAIL AND HAND DELIVERY (September 11, 2025)

Elizabeth Menard, Clerk
NH Housing Appeals Board
Johnson Hall, Room 201
107 Pleasant Street
Concord, NH 03301

Re: Hilary Hamer and Merlin Manson v. City of Dover-Planning Board
Case No. 2025-006-PBA

Dear Clerk Menard:

I enclose for filing in the above captioned matter an original and three copies of the *City of Dover's Objection to Appellants' Motion for Reconsideration and Clarification*.

Thank you for your attention to this matter and please do not hesitate to contact me with any questions or concerns regarding the enclosed.

Sincerely,


Laura A. Spector-Morgan
laura@mitchellmunigroup.com

Enc.

cc: Jennifer Perez, Esquire, w/enc., via e-mail only
Scott E. Hogan, Esquire, w/enc. via e-mail only
John K. Bosen, Esquire, w/enc. via e-mail only

THE STATE OF NEW HAMPSHIRE
HOUSING APPEALS BOARD

Hilary Hamer and Merlin Mason

v.

City of Dover

Case No. 2025-006-PBA

**CITY OF DOVER'S OBJECTION TO APPELLANTS' MOTION FOR
RECONSIDERATION AND CLARIFICATION**

NOW COMES the City of Dover, by and through its attorneys, Mitchell Municipal Group, P.A., and, in objecting to *Appellants' Motion for Reconsideration and Clarification*, states as follows:

1. Appellants continue their pattern of asserting irrelevant, factually baseless, and legally incorrect arguments in their *Motion for Reconsideration and Clarification*, and therefore, this *Motion* must be denied.

2. Appellants' first request asks this Board to clarify that Appellants never argued that Member Rogers had any direct conflict of interest, but instead that they argued that his comments regarding the Certified Record created an appearance of prejudgment.

3. As an initial matter, this issue was hardly central to any of this Board's findings, particularly on the merits of this appeal (though it may have been relevant to the award of attorneys' fees) and is completely unnecessary to raise in a motion for clarification.

4. Even if it were necessary to raise it at this point, the *Motion* provides incorrect information regarding the City's actions on Appellants' allegations on this issue, the City

having never made any characterization of Appellants' statements in its *Answer* (which was filed before the allegation was made in Appellants *Memorandum of Law*).

5. But more importantly, why did Appellants include a section entitled "Impartiality of HAB Members" in their *Memorandum of Law* if not to cast aspersion on Member Rogers impartiality or to use this issue later to try to attack this Board's decision?

6. There is nothing for this Board to clarify regarding the issue of Member Rogers' pre-judgment of this application. Its order is perfectly clear. The allegation that he pre-judged the application, or that there was any appearance that he pre-judged the application, "holds no water." Appellants' request for relief regarding this issue must be denied.

7. Appellants next allege that this Board erred by not specifically granting or denying their requests for findings of fact and rulings of law, and argue that by failing to do so, the Board's decision fails to provide sufficient specificity to allow the parties to understand its basis.

8. There is nothing in this Board's rules which require it to specifically grant or deny a party's requested findings of fact or rulings of law, and certainly, it is customary for superior court judges to issue orders using language identical to that used by the Board in this case.

9. Moreover, the Supreme Court has previously addressed, and rejected, an argument nearly identical to this one. In the case of Harrington v. Town of Warner, 152 N.H. 74 (2005), the abutters argued that the trial court failed to provide an adequate basis for its decision "because the court failed to rule on the proposed findings and

rulings and failed to address critical legal and factual issues in its narrative order.” See id. at 85. The Supreme Court disagreed, holding:

The trial court's order sets forth both sufficient findings of fact and essential rulings of law to support the ultimate decision. Although the trial court did not rule on the abutters' proposed findings and rulings, "the trial judge . . . need not respond expressly to every specific request filed by a party." Accordingly, the trial court did not fail to provide an adequate basis for appellate review of its decision.

Id. at 86. (internal citations and quotations omitted).

10. Likewise, here, this Board issued a seven page narrative Order addressing each claim raised by Appellants and explaining why, based on the Certified Record, those claims failed under examination. There is nothing for this Board to “clarify” in its Order in this respect.

11. Next, Appellants reiterate their failed argument that the application was required to be treated as a subdivision, instead of a site plan, and that doing otherwise, ignores the statutory definition set forth in RSA 672:14. Although they do not specifically so state, they apparently wish for this Board to reconsider its decision on this issue. They present no basis for doing so.

12. As the City has already stated several times, Section 170-29-G(3)a.6 of the Dover Zoning Ordinance applies to residential transfer of development rights projects that contain only single family homes. As originally submitted, the project at issue in this appeal involved 5 single family homes and two duplex structures, for a total of 9 units. That type of development is governed by Section 170-29-G(3)b, which requires that the plan be treated as a site plan application, unless otherwise determined by the Director of Planning and Community Development, prior to final submission.

13. Moreover, because the project was proposed to be a condominium, and because the City of Dover does not include condominium conveyance in its definition of subdivision, see Dover City Code §157-60, neither subdivision approval nor a 30 foot buffer was required for the condominium conveyance. See Bussiere v. Roberge, 142 N.H. 905, 909 (1999)(*quoting* Dearborn v. Town of Milford, 120 N.H. 82, 84 (1980)). The Board's finding on this issue was correct, and need not be reconsidered.

14. As to the Planning Board's alleged defective notice of the January 28, 2025 hearing, Appellants ask this Board to find that that notice was defective not as to the Appellants, but as to the public at large, and therefore (presumably) to reconsider its decision that any notice deficiency was not a basis for reversal because Appellants' ability to participate was not harmed by the alleged deficiency.

15. Of course, Appellants have no standing to raise it because they were not injured by it. See, e.g., Malnati v. State, 148 N.H. 94, 98 (2002)("Here, the plaintiffs suffered no injury due to the alleged deficiency in the notice procedure because they had actual notice. They therefore lack standing to challenge the notice provisions of RSA 228:60-a, V."). This argument therefore presents no basis for reconsideration either.

16. And finally, Appellants return to their favorite topic—attorneys fees—asking the Board to clarify, but not reconsider, its decision awarding the City 50% of the attorneys' fees it expended in defending, this matter, and arguing that despite the fact that they presented nothing but arguments, all but one of which were, clearly without any legal or factual merit, that they should not be required to reimburse the City for its attorneys' fees because they have the right to participate in the municipal review

process.

17. Appellants do have the right to participate in the municipal review process, and to raise legitimate concerns regarding that process, and any application that is submitted to a land use board. What they do not have the right to do is what they have done here—to stand up and make claims without presenting any facts, expert reports, or actual legal theory which supports their position that an application should be denied; and then to bring an appeal which has accomplished nothing beyond increasing the time and expense that the developer has been forced to expend to exercise *its* right to use its property in conformance with the law, and, by necessity, also required the City's taxpayers to incur attorneys' fees to defend.

18. The Board's award of 50% of its attorneys' fees to the City was a recognition of the Appellants' actions in this appeal, such as raising new claims for the first time in their *Memorandum of Law*; making vague claims regarding Member Rogers' alleged prejudgment of the case but not actually requesting his recusal; and attempting to use their *Objection to Affidavit of Fees* not as an opportunity to actually object to those fees (which they did not) but instead as yet another opportunity to argue that fees should never have been awarded in the first place.

19. This appeal was brought without a reasonable claim in New Hampshire law as it is or as it might arguably be held to be, and without a reasonable basis in the facts for the vast majority of the claims made in the appeal.¹

¹Undersigned counsel has the utmost respect for Attorney Peter Loughlin. However, attaching a 2017 letter of recommendation from Attorney Loughlin to their *Objection to Affidavit of Fees* does not lend any additional credence to the arguments made therein.

20. Likewise, there is no reasonable claim in New Hampshire law or a reasonable basis in the facts for any of the arguments made in *Appellants' Motion for Reconsideration and Clarification*, nor have Appellants identified any issue that this Board has overlooked or misapprehended. The Motion must therefore be denied.

WHEREFORE, the City of Dover respectfully requests that this Honorable Board:

- A. Deny *Appellants' Motion for Reconsideration and Clarification*; and
- B. Grant such other and further relief as the Court deems just and necessary.

Respectfully submitted,

CITY OF DOVER

By Its Attorneys

MITCHELL MUNICIPAL GROUP, P.A.

Date: September 10, 2025

By:



Laura Spector-Morgan, Bar No. 13790
25 Beacon Street East
Laconia, New Hampshire 03246
(603) 524-3885
laura@mittchellmunigroup.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via electronic mail to Jennifer Perez, Esquire, John K. Bosen, Esquire, and Scott E. Hogan, Esquire.

Date: September 10, 2025


Laura Spector-Morgan

STATE OF NEW HAMPSHIRE

HOUSING APPEALS BOARD

HILARY HAMER & MERLIN MASON

v.

**CITY OF DOVER, NEW HAMPSHIRE,
THE CITY PLANNING BOARD and
5 SHERMAN STREET, LLC, AS INTERVENOR**

Case No. 2025-006-PBA

JOINDER OF INTERVENOR IN OBJECTION OF CITY OF DOVER

NOW COMES, the Intervenor, 5 Sherman Street, LLC, by and through its undersigned representative, and hereby joins in the Objection submitted by the City of Dover to the New Hampshire Housing Appeals Board in the above-captioned matter.

The Intervenor concurs with and adopts the factual representations, legal arguments, and relief sought in the City of Dover's Objection, and respectfully requests that the Housing Appeals Board give full consideration to the concerns raised therein.

Respectfully submitted,

5 SHERMAN STREET, LLC

By its attorneys,
DONAHUE, TUCKER & CIANDELLA, PLLC

Dated: September 11, 2025

By: /s/ John K. Bosen

John K. Bosen, NH Bar #8129
111 Maplewood Ave, Suite D
Portsmouth, NH 03801
(603) 778-0686 ext. 2578
Jbosen@dtclawyers.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joinder of Intervenor in Objection of City of Dover has, on this date, been provided to Jennifer Perez, Esq., Scott E. Hogan, counsel for the Appellant, and Laura Spector-Morgan, Esq., counsel for the City of Dover, via email.

Dated: September 11, 2025

By: /s/ John K. Bosen

THE STATE OF NEW HAMPSHIRE HOUSING APPEALS BOARD

Governor Gallen State Office Park
Johnson Hall, 107 Pleasant Street
Concord, New Hampshire 03301
Telephone: (603) 271-1198
TTY/TDD Relay: (800) 735-2964
Visit us at <https://hab.nh.gov>



Case Name: Hilary Hamer and Merlin Mason v. City of Dover
Case Number: 2025-006-PBA

Board Members Presiding:

David J. Rogers, Esquire, Chairman
Edward L. Rogers, Professional Engineer, Licensed Land Surveyor, Member

INTERIM ORDER

On September 4, 2025, Hilary Hamer and Merlin Mason ("Appellants") filed their Motion for Reconsideration and Clarification in the above-captioned matter. Consistent with RSA 541:5, and until further Orders are issued, the Housing Appeals Board SUSPENDS its August 5, 2025 decision on the merits of subject appeal (Order No. 2025-069) to allow it time to conduct a full and complete review of the arguments contained in Appellants' rehearing motion and any Objections that may be filed thereto.

**HOUSING APPEALS BOARD
ALL MEMBERS CONCURRED
SO ORDERED.**

A handwritten signature in blue ink that reads "Elizabeth Menard".

Elizabeth M. Menard, Clerk

Date: September 10, 2025

THE STATE OF NEW HAMPSHIRE HOUSING APPEALS BOARD

Governor Allen State Office Park
Johnson Hall, 107 Pleasant Street
Concord, New Hampshire 03301
Telephone: (603) 271-1198
TTY/TDD Relay: (800) 735-2964
Visit us at <https://hab.nh.gov>



Case Name: Hilary Hamer and Merlin Mason v. City of Dover
Case Number: 2025-006-PBA

ORDER

On September 4, 2025, Hilary Hamer and Merlin Mason ("Appellants") filed a rehearing motion in connection with the Housing Appeals Board's ("HAB") Decision of August 5, 2025 (Order No. 2025-069) issued in the above-captioned matter. On September 10 2025, the City of Dover filed its Objection to such motion. After review and due consideration of these arguments, the Housing Appeals Board RULES AS FOLLOWS:

The HAB will only grant a rehearing motion "upon a showing that the board overlooked or misapprehended the facts or the law and such error affected the board's decision." See Administrative Rule Hab 201.32(e). Nothing in the Appellants' rehearing motion identifies any facts as contained within the Certified Record or law that the HAB overlooked or misapprehended that affected the decision in the instant matter.

In light of the foregoing, the Housing Appeals Board hereby DENIES the Appellants' September 4, 2025 Appellants' Motion for Reconsideration and Clarification.

**HOUSING APPEALS BOARD
ALL MEMBERS CONCURRED
SO ORDERED.**

Elizabeth Menard

Elizabeth M. Menard, Clerk

Date: October 30, 2025

August 15, 2024

Donna Benton, AICP
Director of Planning & Community Development
City of Dover, Planning Department
288 Central Avenue
Dover, New Hampshire 03820

Subject: Site Review & TDR Proposal
103 Court Street
Dover Tax Map 19 Lot 8
103 Court Street
Dover, New Hampshire
Job No. 24101

Dear Donna:

Project Narrative

On behalf of our client, 5 Sherman Street LLC, we are submitting this Application for Transfer Development Rights (TDR) and Site Review Application for the development of 103 Court Street. The property is shown as City of Dover Tax Map 19 Lot 8, is located at 103 Court Street, currently contains a single-family home, is located in the R-12 Zoning District, contains 1.199 acres and is serviced by municipal water & sewer.

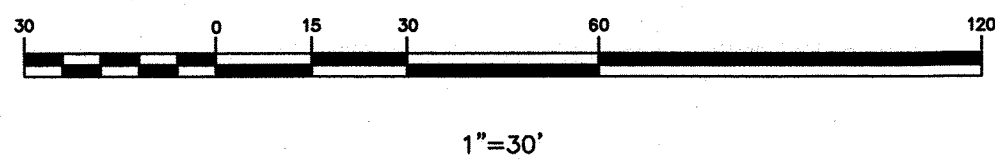
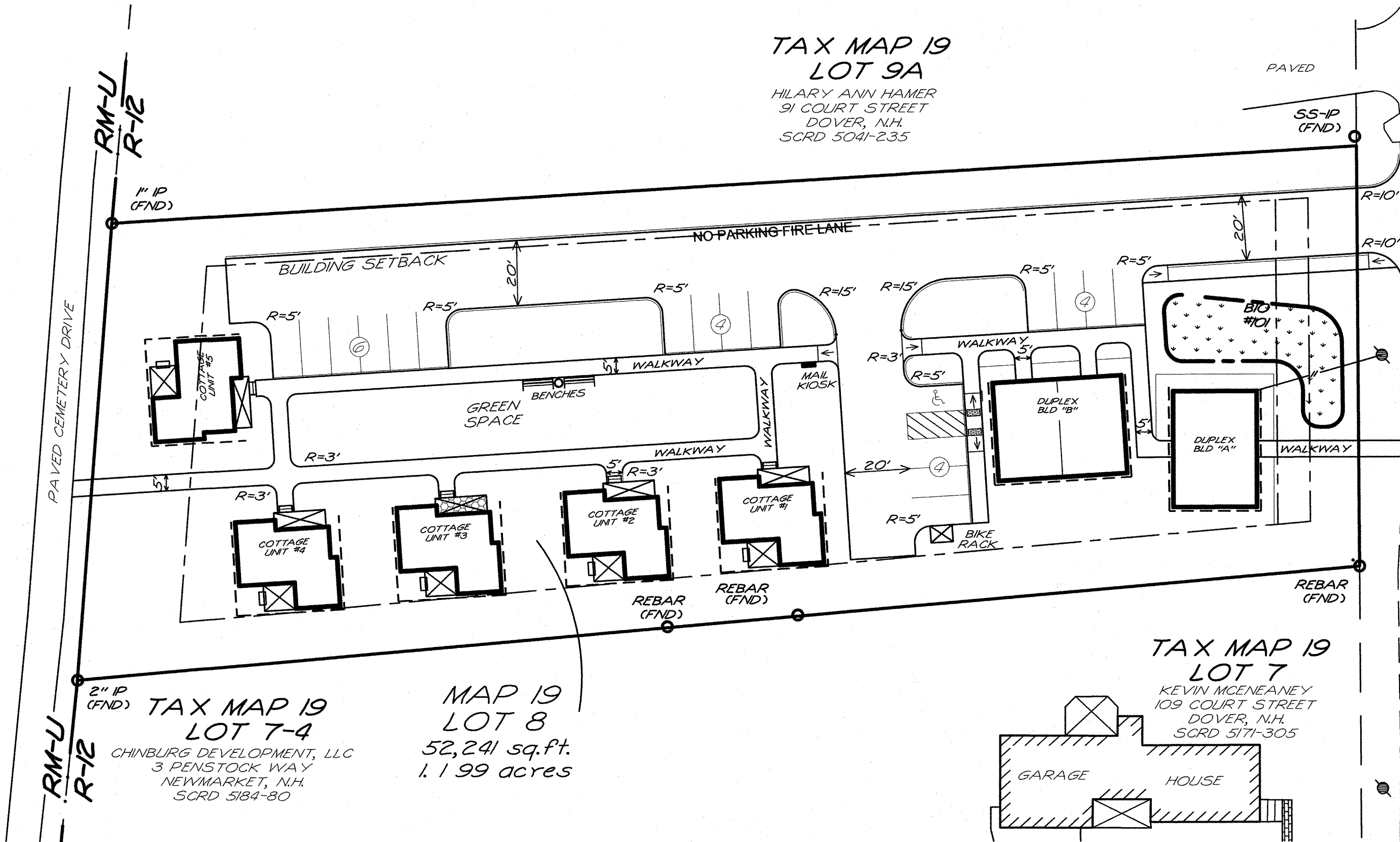
The applicant proposes utilizing the City of Dover Transfer Development Rights (TDR) regulations to redevelop Map 19 Lot 8. The proposal calls for the conversion of the existing home into a duplex, the construction of an additional duplex and the construction of five (5) new single-family homes for a total of nine (9) units. The TDR Base Density Calculation provide for a Base Density of three (3) units, therefore, six (6) of these units will be obtained under the TDR regulations. The four (4) units located in the two (2) duplex buildings will be deed restricted to a Fair Market Rent (FMR) set by Housing Urban Development (HUD). The five (5) new single-family homes will be size restricted to maximum of 1400 square feet of total living space per unit. The TDR application also request relief from the thirty (30) foot buffer requirement and relief from the thirty (30) foot rear setback requirement. The Landscape Design provides for new screening as mitigation for this relief.

This development will include the construction of a 360-foot-long driveway beginning from Court Street and ending near the rear of property adjacent to the Pine Hill Cemetery. Municipal water & Sewer will be extended from Court Street to service the structures. Electric, Telephone & Cable TV along with Natural Gas will be installed underground for all new structures.

The Stormwater Analysis and Design detail the use of Stormtech underground chambers for flow mitigation, a bioretention basin for the Stormwater Treatment and Stormtech underground chambers for Groundwater Recharge. Ultimately, all the Stormwater Runoff is directed to Court Street closed drainage system.

TAX MAP 19
LOT 52
CITY OF DOVER
288 CENTRAL AVENUE
DOVER, N.H.

PINE HILL
CEMETERY



TAX MAP 20
LOT 112 A
LISA O GRADY
100 COURT STREET
DOVER, N.H.
SCRD 2208-121

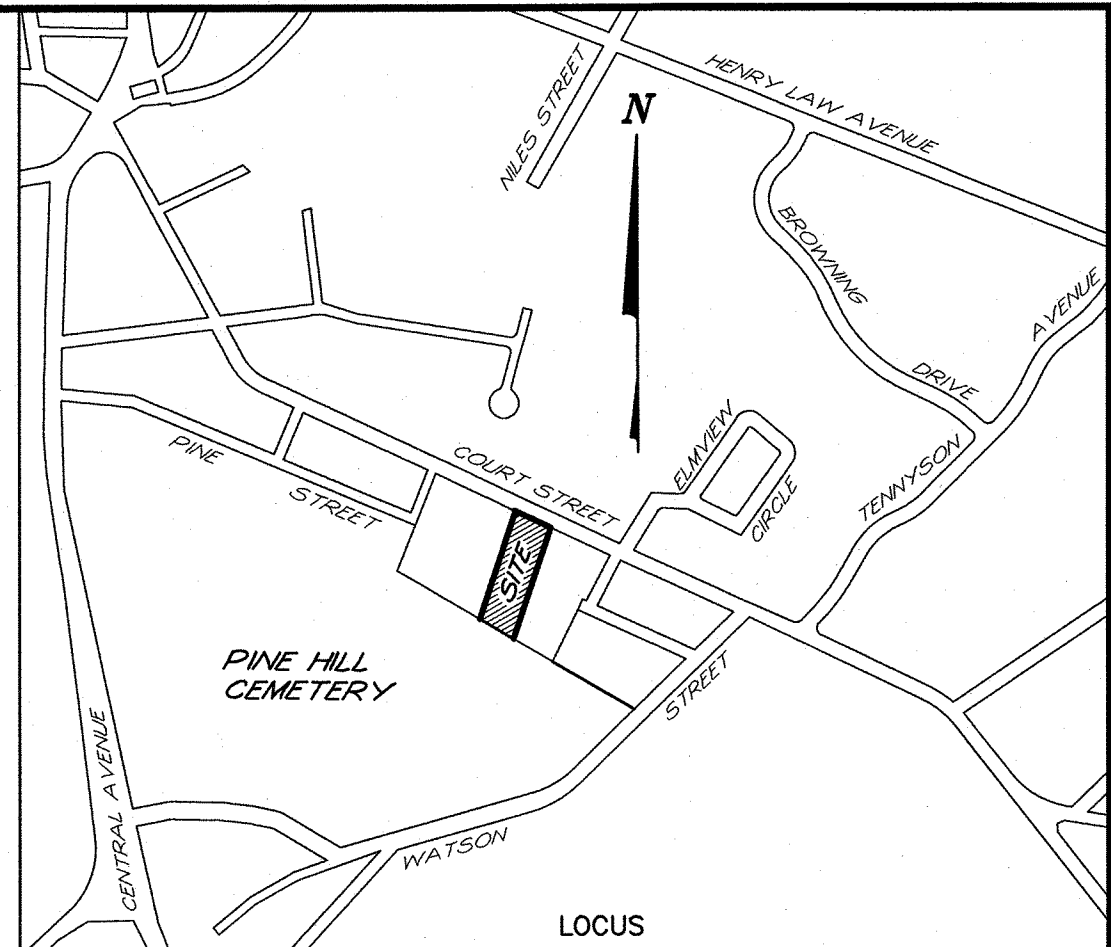
TAX MAP 20
LOT 113-1
CONSTANCE ANN CARPENTER
102 COURT STREET
DOVER, N.H.
SCRD 4387-2

TAX MAP 20
LOT 113
CHANGING PLACES, LLC
42 J DOVER POINT ROAD
DOVER, N.H.
SCRD 4225-722

TAX MAP 19
LOT 7
KEVIN MCNEANEY
109 COURT STREET
DOVER, N.H.
SCRD 5171-305

TDR BASE DENSITY CALCULATIONS

TOTAL AREA	=	52,241 SQ.FT.
LESS WETLANDS	=	<0> SQ.FT.
UPLAND AREA	=	52,241 SQ.FT.
LESS ROAD ALLOCATION (15%)	=	<7,836> SQ.FT.
NET AREA	=	44,405 SQ.FT.
LESS WETLAND FACTOR FOR 0% WETLANDS (85%)	=	<6,661> SQ.FT.
AREA	=	37,744 SQ.FT.
12,000 SQ.FT. PER UNIT REQUIRED IN THE R-12 DISTRICT	÷	12,000
BASE TDR DENSITY	=	3.14 UNITS
ROUNDED DOWN TO	=	3 UNITS



(NOT TO SCALE)

NOTES

- 1.) INTENT: TO FURTHER DEVELOP TAX MAP 19 LOT 8. THIS DEVELOPMENT WILL INCLUDE THE CONVERSION OF THE EXISTING SINGLE FAMILY HOUSE INTO A DUPLEX AS WELL AS THE CONSTRUCTION OF AN ADDITIONAL DUPLEX STRUCTURE. BOTH OF THESE DUPLEXES (4 UNITS) WILL BE HUD RENT RESTRICTED AND WILL BE OBTAINED UNDER THE TRANSFER DEVELOPMENT RIGHTS (TDR) ORDINANCE. THE DEVELOPMENT WILL INCLUDE THE CONSTRUCTION OF 5 SINGLE FAMILY SIZE RESTRICTED HOMES. THESE HOMES WILL BE CONSTRUCTED UNDER THE TDR ORDINANCE. 3 BASE UNIT AND THE PURCHASE OF 2 SIZE RESTRICTED UNITS.
- 2.) CURRENT OWNER: 5 SHERMAN STREET LLC
242 CENTRAL AVENUE
DOVER, N.H.
- 3.) TAX MAP 19 LOT 8.
- 4.) TOTAL LOT AREA: 52,241 SQ.FT. - 1.199 ACRES
- 5.) PROJECT DEED REFERENCE: BOOK 5172 PAGE 55
- 6.) PROJECT PLAN REFERENCE: SURVEYED MAY 1935
W.S. WHEELER, CE
DOVER, N.H.
SCRD
POCKET #10, FOLDER #2, PLAN #11 & 12
LIMITED SUBDIVISION
CECIL TAYLOR
DOVER, N.H.
FREDERICK E. DREW ASSOCIATES
JULY 1977 SCRD 17-112
PROPERTY SURVEY
109 COURT STREET, DOVER
STRAFFORD COUNTY, NEW HAMPSHIRE
JOANNE RICHARD LIVING REVOCABLE TRUST
STONEWALL SURVEYING
AUGUST 1, 2023 SCRD #13011
- 7.) ALL APPLICABLE RIGHT-OF-WAY, CONSERVATION, SLOPE, CONSTRUCTION, POWER LINE, CROSS TRAVEL OR OTHER EASEMENTS HAVE BEEN REFERENCED IN A NOTE.
- 8.) ZONING: R-12
MIN. LOT SIZE: 12,000 SQ.FT.
MIN. FRONTAGE: 100 FT
MIN. SETBACKS:
FRONT: 15 FT TO 25 FT
SIDE: 15 FT
REAR: 30 FT
MAX. COVERAGE: 30 %
- 9.) VARIANCES, SPECIAL EXCEPTIONS, CONDITIONAL USE PERMITS: NONE
- 10.) THE RAW UNADJUSTED CLOSURE OF OUR RANDOM POINT TRAVERSE WAS 1 PART IN 60,000, AND WAS ACCOMPLISHED USING A TOPCON GT 503 TOTAL STATION, DURING THE MONTH OF FEBRUARY, 2024.
- 11.) SUBJECT PARCEL IS NOT WITHIN A FEDERALLY DESIGNATED SPECIAL FLOOD HAZARD ZONE (FLOOD HAZARD ZONE A - PANEL 0320E, MAP No. 33017C0340E, DATE: 9-30-2015).
- 12.) DURING THE MONTH OF MARCH, 2024 MICHAEL MARIANO, STATE OF NEW HAMPSHIRE CERTIFIED SOIL SCIENTIST #76, NH CERTIFIED WETLAND SCIENTIST #183, CONDUCTED AN ON-SITE WETLANDS DELINEATION OF THE SUBJECT PARCEL. WETLANDS WERE IDENTIFIED BASED ON THE CITY OF DOVER ZONING ORDINANCE (170-27.1) AND ON STATE & FEDERAL CRITERIA OUTLINED IN THE "CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL" (DEPT. OF THE ARMY, 1987) ON THIS SITE, WETLANDS BASED ON LOCAL CRITERIA SHARE THE SAME BOUNDARIES WITH THOSE BASED ON STATE AND FEDERAL CRITERIA. NO WETLANDS WERE FOUND.
- 13.) BASIS OF BEARING: BEARING SYSTEM BASED ON GPS FIELD OBSERVATIONS ON FEBRUARY 16, 2024 USING TOPCON HIPER SR RECEIVERS AND OPUS CORRECTED ON FEBRUARY 19, 2024. DATUM BASED ON NEW HAMPSHIRE STATE PLANE COORDINATES SPC (2800 NH), (NAVD 88).

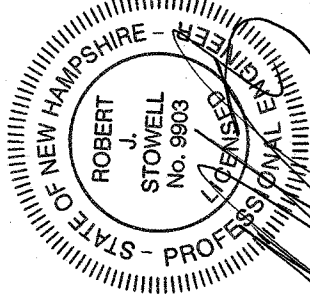
TRITECH

ENGINEERING CORPORATION

756 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE 03860
TELEPHONE 603 742 8907
FAX 603 742 9830

ISSUED FOR TRC REVIEW
August 15, 2024

REVISIONS
DATE: DESCRIPTION:



GENERAL SITE PLAN

103 COURT STREET

103 COURT STREET
DOVER, NEW HAMPSHIRE
STRAFFORD COUNTY

AUGUST 15, 2024 JOB No. 24101
SCALE: 1" = 30'

SHEET No.

SP-1

(P24-)



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Date: September 5, 2024

INTENT: Convert an existing home into a two-family dwelling, construct a second two-family dwelling, and construct an additional five (5) new single-family homes for a total of nine (9) dwelling units.

UNITS PROPOSED: Nine (9) units including one (1) existing unit and six (6) TDR units

AGENDA ITEM #: 1

ACREAGE: 1.20± ac.

ZONING DISTRICT: R-12

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential, Cemetery

ZBA ACTION: None.

PERMITS REQUIRED: None.

WAIVERS REQUESTED: None.

ATTENDANCE:

Donna Benton, Planning
Paul Crouser, Zoning
Jim Maxfield, Inspection Services
Ken Mavrogeorge, Engineering
Craig Chabot, Fire Department
James Burdin, Business Development

Others:

Erin Bassegio, Assistant City Planner
Rob Baldwin, Applicant/Owner
Bob Stowell, Trittech Engineering

Approval of minutes from August 29, 2024:

J. Burdin moved to approve the August 29, 2024 minutes. Seconded by K. Mavrogeorge. Vote: U/A.

PLAN REVIEW:

Planning:

- Reminder: Impact fees, Water and sewer investment fees
- Provide letters to serve when received.
- Provide HOA and
- Remove unit from the rear setback.
- Shrink common area or unit count to gain more than the 10' visual buffer. Narrative would be needed for TDR relief being sought from setback and buffer. However, seeing the density being sought is double what the base calculates out to be would indicate the buffers and setbacks should be met or unit request reduced.
- Setback measurements should be detailed on plan
- Active recreation and passive recreation is required.
- Floor plan of restricted units needed (probably only for TDR app at PB)
- Parking space dimensions need to be listed on plan
- Internal parking aiseways w/ one entrance/exit must be 24' wide
- R-12 zoning indicates duplexes should look like a one-family. Please provide justification for barn design.
- Provide detail for fencing shown on the landscape plan behind cottage units 3 & 4
- Any additional screening planned behind cottage units?
- Consider moving sewer line
- Replace "handicap" with "accessible"
- Update note 13 regarding Locke Street and Tranquility Way
- Indicate snow storage
- Revise note 30 to indicate no Saturday hours
- Bioretention area seems close to right of way
- Easement/license needed for walkway onto City property to cemetery
- Note congregate trash site as discussed and explain how odor and pests will be controlled.



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Date: September 5, 2024

Engineering:

- General Comment:
 - Applicant and contractor shall review the Dover Construction Guidelines prior to scheduling a Preconstruction meeting with City staff. The guidelines can be found on the City of Dover Website on the Engineering page.
<https://www.dover.nh.gov/Assets/government/city-operations/1form/community-services/engineering/engineering-documents/Construction%20Guidelines.pdf>
 - Coordinate with Community Services (Engineering Department) for latest City Standard Details for utilities and curbing.
 - Add note that Design Engineer shall provide signed letter to City Engineer certifying that the stormwater management system has been installed in accordance with approved plans.
 - Recommend providing 1 sf of snow storage per 10 sf of pavement to be cleared. Verify snow storage meets or exceeds this recommendation or provide note to remove excess snow when storage areas are filled.
 - Sewer manhole covers shall be Liftmate R-1743-LM or approved equal with 90 deg hinge
 - The City recommends that the applicant source out ductile iron piping, which is the City preferred material, in advance commencing construction.
 - Change “handicap” references to “accessible” where applicable throughout documents.
 - **Engineering requests a letter certifying the tie in locations or discharge points for all sump pumps and roof leaders for existing structures on the property.**
- Check the finished floor elevation of the duplex immediately on Court Street.
- Applicant shall review the section 153-14 of the Dover Code and clarify how the design meets each of the criteria of the City's requirements.
- Sanitary Sewer shall be PVC pipe SDR35.
- How will trash be managed for the property?
- Recommend individual water shut offs be located outside of paved surfaces and in grass. All shut offs in City ROWs must be in grass at the edge of the ROW. If shut offs on the private road remain in the paved surface, a road box should be provided.
- Provide confirmation that 400 foot of sight distance is provided in each direction as required by the Dover Code.
- It is strongly recommended that the Applicant submit a detailed breakdown of proposed HOA costs for annual maintenance and replacement of private infrastructure including backup as to how the fees are estimated.
- Provide drainage pipe material.
- Landscaping may obstruct site distance. Please confirm trees at driveway exit will not obstruct site lines.
- Show locations of electrical infrastructure (transformers, switch gear, and/or communication pedestals. Each of these will need to be screened.
- Sewer main on eastern property line looks close to the PL. Can this be constructed without an easement from the abutter?
- Applicant shall provide an easement to the City along the private drives within the property to allow for access and operation of the water infrastructure (hydrants and shut offs) to maintain water quality.
- Each unit should have unique address (Building A has units 1 and 2... Building B has units 2 and 3).
- C-1:
 - Provide a minimum 6-inch water main down the private drive with a standard hydrant at the end.
- C-3:
 - Show a core and boot on existing sewer tie in.
 - Confirm that the proposed sewer main tie in is above or below the new City drainage proposed as part of the Court St Reconstruction. Coordinate with CS. City



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
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Date: September 5, 2024

preference is to have an internal drop SMH on private property.

- Rebuild inverts in SMHs.
- SP-2:
 - Show location of EV charging station and accessible charging station.
 - Consolidate the utility trenches within City ROW and provide overlay of entire area of disturbance from curb to curb. Note: The City is expected to reconstruct Court Street in 2025 and work in the road including pedestrian and utility areas should be coordinated with the City and their Engineer.
- SP-4:
 - Please show the water connection(s) to Duplex A.
 - Clarify if two water and sewer services will be provided to Duplex A. If only one water line is proposed, only one meter will be provided by the City.
 - It appears that first 50+ feet of the driveway will be discharging water into the City ROW. Please add structures to ensure private water stays on private property.
 - Multiple pipes in the chart have slopes exceeding 17% with some as high as 50%. The locations of these pipes was not found.
 - All pipes are required a minimum of 3 feet of cover per the Dover code or a waiver must be requested.
 - Grading adjacent to the southern property line is very close. It appears a temporary construction easement will be required.
- SP-5:
 - Please confirm if the intent of the design is to have the bioretention soil mix up the side slopes of the basin. It seems excessive and could potentially wash out into the basin.

Police:

- Consider a street name for the proposed driveway, to facilitate assignment of addresses and public safety benefit.
- Was any consideration given to connecting to "Locke Street" right-of-way, or what appears to be referred to in City GIS records as Tranquility Way? (This is at the rear of proposed Cottage #1)
- Is it feasible to shorten the landscape bump-out in front of Cottage #2, and pull Cottage #5 to meet the rear setback without losing parking?
- Add sign at the end of proposed walkway before entrance to cemetery: "Dogs Not Allowed in Cemetery". Contact Facilities and Grounds Division of Community Services for sign specs and desired language.
- Sheet SN-1, Note 41: I realize this is a standard Dover note, but security system is not applicable for this project. Amend note to indicate this, to avoid future confusion over "multi-family dwelling" language.
- Sheet SP-2, Note C-9: pavement marking FIRE LANE stenciling is fine, but must be supplemented or replaced with at least 2 "No Parking Fire Lane" signs on the northerly side of driveway.

Inspection Services:

- Provide street name for the proposed private roadway.

Fire Department:

- Fire truck detail is appropriate.
- Fire hydrant to be installed at end of road.

Business Development:

- Should duplex "B" units be relabeled as 3 & 4?
- The combination of architectural styles and use of the cottage court layout add visual interest to the site and maintain the look and feel of traditional New England development.
- Proximity of this site to RM-U zoning district mitigates the impacts of the extra density.

Planning Board:

- No comments.

Next Steps: Revise plans per comments above and resubmit for second official TRC.

Paused TRC at: 11:11 a.m.

TRITECH

ENGINEERING CORPORATION

755 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE 03820

TELEPHONE 603.742.8107
FACSIMILE 603.742.3830

September 12, 2024

Donna Benton, AICP
Director of Planning & Community Development
City of Dover, Planning Department
288 Central Avenue
Dover, New Hampshire 03820

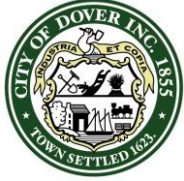
Subject: Technical Review Committee Response Letter
103 COURT STREET
Dover Tax Map 19 Lot 8
103 Court Street
Dover, New Hampshire
Job No. 24101
City of Dover Planning # Site-2024-0012

Dear Donna:

At their meeting on August 29, 2024 the Dover Technical Review Committee (TRC) offered the following comments. Our response to each of their comments are identified in blue text.

PLANNING

- Reminder: Impact fees, Water and sewer investment fees.
The Applicant is aware of this requirement.
- Provide letters to serve when received.
The City Engineer indicated at the TRC meeting that he was preparing a letter to serve regarding city services and the Planning Director indicated that, as the project is less than 10 units, an Eversource letter to serve is not required.
- Provide HOA.
The Applicant has prepared Home Owners Association (HOA) documents (see attached).
- Remove unit from the rear setback.
Cottage Unit #5 has been relocated to meet the rear setback requirement.
- Shrink common area or unit count to gain more than the 10' visual buffer. Narrative would be needed for TDR relief being sought from setback and buffer. However, seeing the density being sought is double what the base calculates out to be would indicate the buffers and setbacks should be met or unit request reduced.
Our TDR request has been revised to eliminate the relief from the R-12 setback requirement. The revised plan has reduced the common area to increase the distance from the proposed cottages to the easterly property. The property is approximately 135 feet wide and strict compliance with the 30-foot perimeter buffer would leave development of the property limited. We feel the proposed landscaping is adequate mitigation for the reduction in the buffer.
The Applicant has prepared a Transfer Development Rights Narrative (see attached).



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Date: September 26, 2024

INTENT: Convert an existing home into a two-family dwelling, construct a second two-family dwelling, and construct an additional five (5) new single-family homes for a total of nine (9) dwelling units. *[This item was previously heard on Thursday, September 5, 2024]*

UNITS PROPOSED: Nine (9) units including one (1) existing unit and six (6) TDR units

AGENDA ITEM #: 1

ACREAGE: 1.20± ac.

ZONING DISTRICT: R-12

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential, Cemetery

ZBA ACTION: None.

PERMITS REQUIRED: None.

WAIVERS REQUESTED: None.

ATTENDANCE:

Donna Benton, Planning
Paul Crouser, Zoning
Jim Maxfield, Inspection Services
Ken Mavrogeorge, Engineering
Marn Speidel, Police Department
James Burdin, Business Development
Tom Clark, Planning Board

Others:

Erin Bassegio, Assistant City Planner
Rob Baldwin, Applicant/Owner
Bob Stowell, Trittech Engineering

Approval of minutes from September 5, 2024:

J. Burdin moved to approve the September 5, 2024 minutes.
Seconded by K. Mavrogeorge. Vote: U/A.

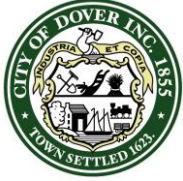
PLAN REVIEW:

Planning:

- *Reminder: Water and sewer investment fees*
- *Provide City of Dover letter to serve when received.*
- *Shrink common area or unit count to gain more than the 10' visual buffer. Narrative would be needed for TDR relief being sought from setback and buffer. However, seeing the density being sought is double what the base calculates out to be would indicate the buffers and setbacks should be met or unit request reduced.*
 - This comment has not been adequately addressed. Still seems to have too many units and not enough buffer area.
- *Internal parking aiseways w/ one entrance/exit must be 24' wide*
 - TRC response indicates a waiver has been submitted. Could not locate in materials.
- *Any additional screening planned behind cottage units?*
 - Visual buffer is needed behind cottage units in addition to existing fencing.
 - Provide more robust landscaping plan
- How do you ensure critters don't get into or attracted to the toters stored outside?
- Sight distance photo looking northwest should be taken from a ~1ft back. The photo seems to be taken from a spot where the front of the car would already be in the street.
- How do you ensure snow storage does not get pushed up against abutter's fence?
- The streetscape rendering doesn't seem to accurately show how tall the barn building is compared to the front dwelling.
- Show 25' cemetery line setback per RSA 289:3 III. No excavation can occur with that 25' buffer so stormwater and utilities will need to be adjusted.

Engineering:

- General Comment:
 - Condo Docs are provided. Please revise to include maintenance of private sewer and water systems.
 - HOA fee breakdown:
 - Show cost of routine pavement maintenance (crack sealing, striping, etc.).



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Date: September 26, 2024

- Is \$1800 per year in maintenance for catch basin cleanings and basin O&M too low?
- \$15000 for fence repair in year 30 seems low.

- SP-7:
 - Drainage trench does not meet City standards. Stone bedding and backfill are required.
- SP-11:
 - Sewer manhole detail is not consistent with the City standard. City of Dover uses plastic steps in SMHs.
- SP-12:
 - Sewer trench details need to show stone bedding and backfill above pipe to match the City standard.
- TR-1:
 - Fire truck movement into the site crosses over the curbing. Please revise.

Police:

- Sheet SP-2, notes C-19 and C-20: do these 2 pads serve the entire lot? Access to C-19 appears mostly obstructed by adjacent parking space.
- Label the “designated collection area” per the Trash Management Protocol - particularly if out at Court Street - or indicate if toters would simply be collected straight from the storage pads.
- RE: Sheet LI-1, Lighting Note 2: regarding the reference to timers and 10pm shutoff, is there any site lighting that this pertains to? Wall packs seem likely to be controlled by individual unit owners; would this impact any lighting of community space and/or parking areas?

Inspection Services:

- Farm Gate Drive is an acceptable private drive name.

Fire Department:

- Yard hydrant is no longer an issue as it has been changed to a fire service hydrant on a 6” main.
- Truck 1 turning template is not within the confines of the curbed area in two locations and appears to get into a walkway in another. See attached.

Business Development:

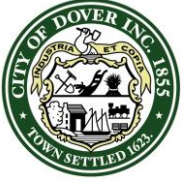
- The narrative says that the design is context-sensitive with the neighborhood and consistent with the master plan, but doesn't provide much analysis to support the claim. The following information would make it easier to evaluate compatible density vs. overdevelopment:
 - Define the "surrounding area" for the purposes of evaluating density and visual character
 - Provide density comparisons between the proposed development and surrounding area (units/acre, building massing, lot coverage, presence of duplexes, prevailing setbacks and/or separation of buildings, etc.)
 - The narrative cites goals to increase housing supply, but has limited discussion of the Master Plan's vision for the future of this area in Dover.
- Many structures/areas of disturbance are within the TDR 30' no-cut-no-disturb area/still do not appear to have a visual buffer in place. If requesting a waiver, data suggestions above would also be important for evaluating waiver.
- Is there an opportunity to adapt the rear wing of the existing house or build the new duplex within the same footprint? If that is a viable solution it may improve both the architectural consistency and free up space to lessen buffer impacts.
- Review RSA 289:3 III for compliance – “no new construction, excavation, or building” within 25' of the boundary of an established cemetery.
- Plan orientation is not consistent across all sheets (e.g. both Court Street and the Cemetery appear on plan left on different sheets) – it is confusing the way it flips.

Planning Board:

- *No comments.*

Next Steps: Revise plans per comments above and resubmit for subsequent TRC.

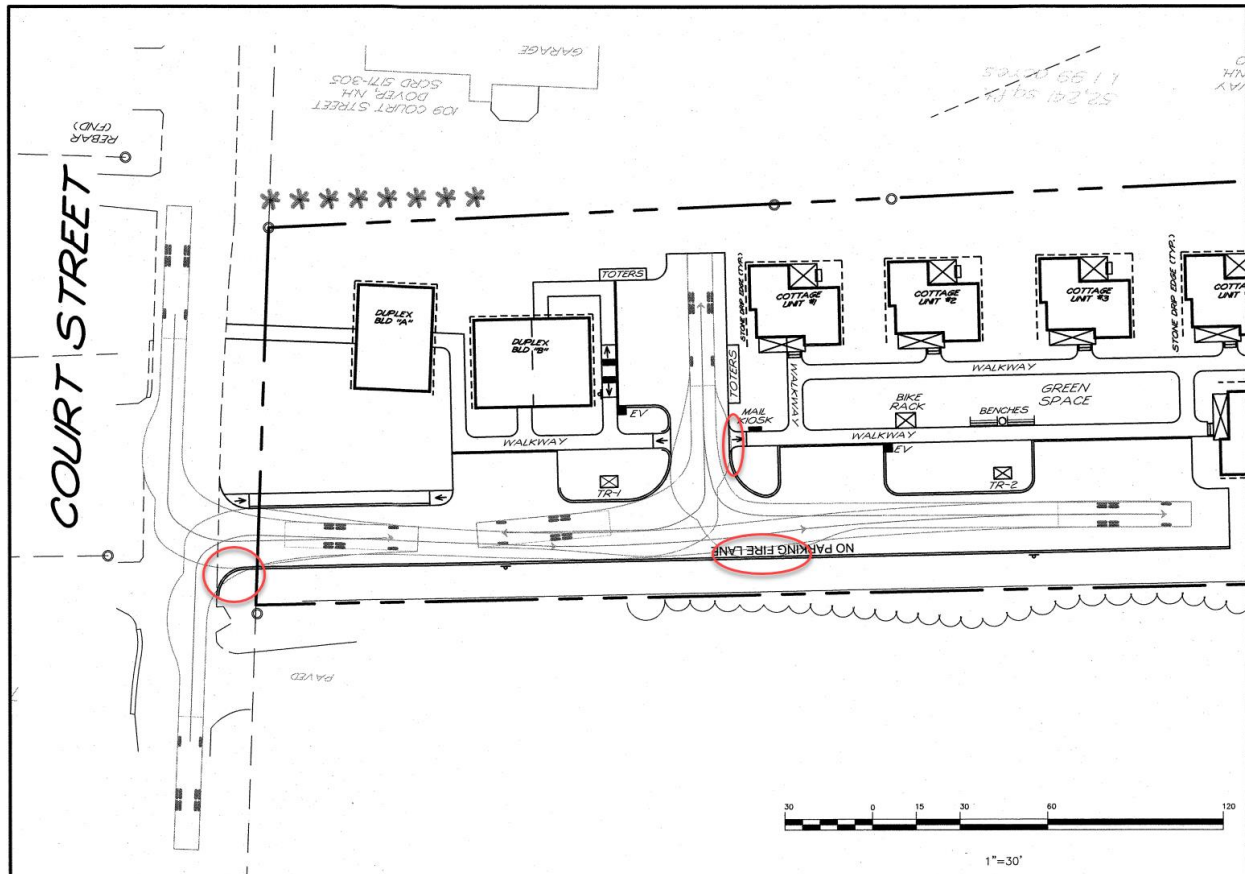
Adjournment: P. Crouser moved to adjourn the meeting at 11:25 a.m. Seconded by M. Speidel. Vote: U/A



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Date: September 26, 2024



October 24, 2024

Donna Benton, AICP
Director of Planning & Community Development
City of Dover, Planning Department
288 Central Avenue
Dover, New Hampshire 03820

Subject: Technical Review Committee Response Letter #2
103 COURT STREET
Dover Tax Map 19 Lot 8
103 Court Street
Dover, New Hampshire
Job No. 24101
City of Dover Planning # Site-2024-0012

Dear Donna:

At their meeting on September 26, 2024 the Dover Technical Review Committee (TRC) offered the following comments. Our response to each of their comments are identified in blue text.

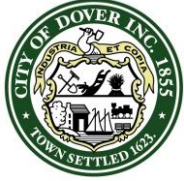
PLANNING

- *Reminder: Water and sewer investment fees.*
The Applicant is aware of this requirement.
- *Provide City of Dover letter to serve when received.*
The City Engineer indicated at the TRC meeting that he was preparing a letter to serve regarding city services.
- *Shrink common area or unit count to gain more than the 10' visual buffer. Narrative would be needed for TDR relief being sought from setback and buffer. However, seeing the density being sought is double what the base calculates out to be would indicate the buffers and setbacks should be met or unit request reduced.*

- This comment has not been adequately addressed. Still seems to have too many units and not enough buffer area.

The revised Site Plan provides a radical revision to the site layout. The unit count has been reduced by 2 units. The existing house will remain as a single-family home, which will utilize its existing utilities, trash collection and driveway. The new duplex has been moved slightly to more closely coincide with the existing barn foot print and will provide additional buffer to the east. These units will remain HUD restricted. Cottage #5 has been removed. The remaining cottages have been pushed to the west another 15 feet and completely out side of the 30-foot buffer.

The aerial photographs from the City of Dover GIS shows that in 2005, 2010 and as recently as 2018 much of the property was maintained as field and much of the growth on site does not provide effective screening. The proposal still requests a waiver from the 30-foot perimeter buffer which will allow for clearing of the existing undergrowth and the installation of stockade fence with an additional vegetative screen.



CITY OF DOVER

TECHNICAL REVIEW COMMITTEE MINUTES – SITE-2024-0012

Application Type: Site Review
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Date: November 14, 2024

INTENT: Maintain an existing single-family home, construct an additional two-family dwelling and four (4) new single-family homes for a total of seven (7) dwelling units. *[This item was previously heard on September 5, 2024 and September 26, 2024]*

UNITS PROPOSED: Seven (7) units including one (1) existing unit, two (2) additional units allowed per base density, and four (4) TDR units

AGENDA ITEM #: 2

ACREAGE: 1.20± ac.

ZONING DISTRICT: R-12

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential, Cemetery

ZBA ACTION: None.

PERMITS REQUIRED: None.

WAIVERS REQUESTED: §153-14.D.6(a) and §153-14.D.6(b), requiring an aisle width of 22' or 24', where an aisle width of 20' is being proposed.

ATTENDANCE:

Donna Benton, Planning
Paul Crouser, Zoning
Jim Maxfield, Inspection Services
Ken Mavrogeorge, Engineering
Marn Speidel, Police Department
James Burdin, Business Development
Tom Clark, Planning Board

Others:

Erin Bassegio, Assistant City Planner
Rob Baldwin, Applicant/Owner
Bob Stowell, Trittech Engineering

Approval of minutes from November 7, 2024:

K. Mavrogeorge moved to approve the November 7, 2024 minutes. Seconded by P. Crouser. Vote: U/A.

PLAN REVIEW:

Planning:

- *Reminder: Water and sewer investment fees*
- *Provide City of Dover letter to serve when received.*
- Thank you for revising the design to provide more buffer with the exception of the pavement. Please label a bit more clearly on the plan. Thank you for providing a thorough narrative regarding the neighborhood context.
- If possible, please update portal application to current unit count request.
- Planning and City Attorney's staff will review HOA/condo documents.
- Thanks for providing reserve calculation.
- Revise wording for rear setback line.
- Add leader note about distance from cemetery meeting RSA 289:3.III.
- Snow storage areas still seem a bit inadequate.

Engineering:

- General Comment:
 - Update HOA documents to talk about private sewer and water maintenance and how that will be accounted for.
- SP-11:
 - Sewer manhole detail is not consistent with the City standard. City of Dover uses plastic steps in SMHs.

Police:

- Update unit count on sheet SN-1.

Inspection Services:

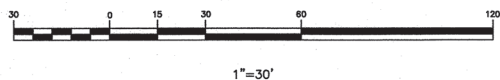
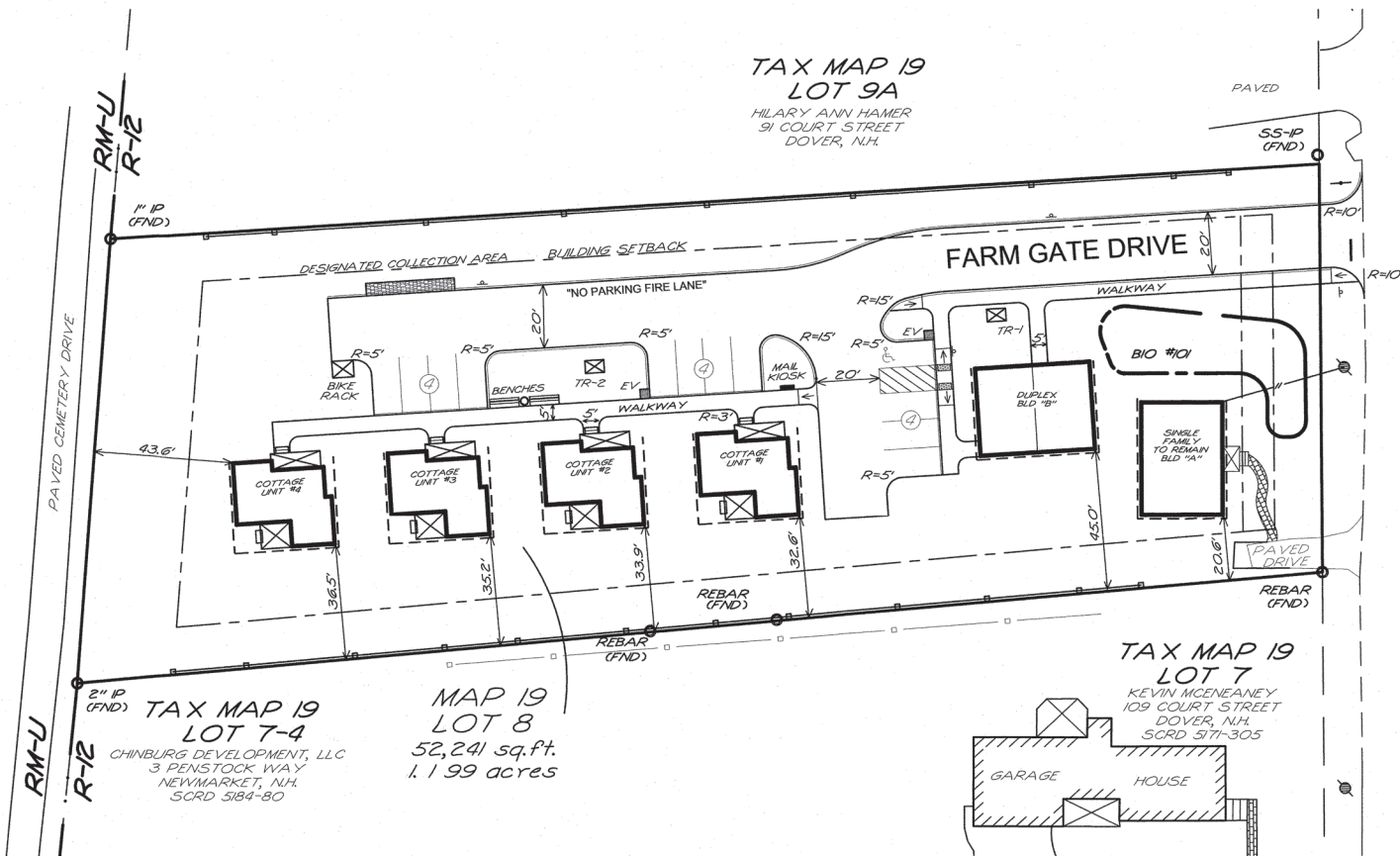
- Previous comments addressed.

Fire Department:

- *Yard hydrant is no longer an issue as it has been changed to a fire service hydrant on a 6" main.*
- *Truck 1 turning template is not within the confines of the curbed area in two locations and appears to get into a walkway in another. See attached.*

TAX MAP 19
LOT 52
CITY OF DOVER
288 CENTRAL AVENUE
DOVER, N.H.

PINE HILL
CEMETERY



TAX MAP 20
LOT 112 A
LISA O GRADY
100 COURT STREET
DOVER, N.H.
SCRD 2208-121

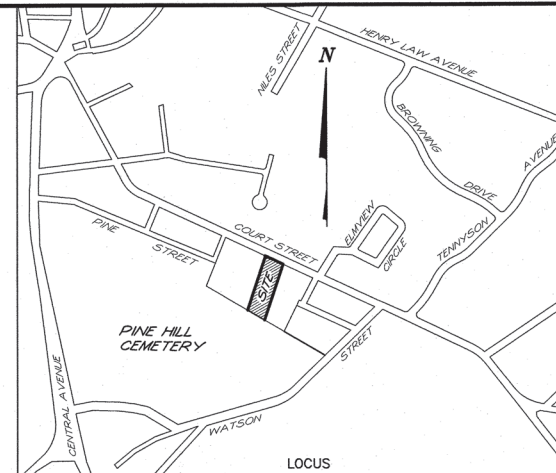
TAX MAP 20
LOT 113-1
CONSTANCE ANN CARPENTER
102 COURT STREET
DOVER, N.H.
SCRD 4387-2

TAX MAP 20
LOT 113
CHANGING PLACES, LLC
42 J DOVER POINT ROAD
DOVER, N.H.
SCRD 4225-722

TAX MAP 19
LOT 7
KEVIN MCENEANEY
109 COURT STREET
DOVER, N.H.
SCRD 5171-305

TDR BASE DENSITY CALCULATIONS

TOTAL AREA	=	52,241 SQ.FT.
LESS WETLANDS	=	<0> SQ.FT.
UPLAND AREA	=	52,241 SQ.FT.
LESS ROAD ALLOCATION (15%)	=	<7,836> SQ.FT.
NET AREA	=	44,405 SQ.FT.
LESS WETLAND FACTOR FOR 0% WETLANDS (85%)	=	<6,661> SQ.FT.
AREA	=	37,744 SQ.FT.
12,000 SQ.FT. PER UNIT REQUIRED IN THE R-12 DISTRICT	=	12,000
BASE TDR DENSITY	=	3.14 UNITS
ROUNDED DOWN TO	=	3 UNITS



LOCUS
(NOT TO SCALE)

NOTES

1.) INTENT: TO FURTHER DEVELOP TAX MAP 19 LOT 8. THIS DEVELOPMENT WILL INCLUDE THE RENOVATION OF THE EXISTING SINGLE FAMILY HOUSE. AS WELL AS THE CONSTRUCTION OF AN ADDITIONAL DUPLEX STRUCTURE. THE DUPLEX (2 UNITS) WILL BE HUD RENT RESTRICTED AND WILL BE OBTAINED UNDER THE TRANSFER DEVELOPMENT RIGHTS (TDR) ORDINANCE. THE DEVELOPMENT WILL INCLUDE THE CONSTRUCTION OF 4 SINGLE FAMILY SIZE RESTRICTED HOMES. THESE HOMES WILL BE CONSTRUCTED UNDER THE TDR ORDINANCE. 2 BASE UNITS AND THE PURCHASE OF 2 SIZE RESTRICTED UNITS.

2.) CURRENT OWNER: 5 SHERMAN STREET LLC
242 CENTRAL AVENUE
DOVER, N.H.

AUTHORIZED SIGNATURE

3.) TAX MAP 19 LOT 8.

4.) TOTAL LOT AREA: 52,241 SQ.FT. - 1.199 ACRES

5.) PROJECT DEED REFERENCE: BOOK 5172 PAGE 55

6.) PROJECT PLAN REFERENCE: SURVEYED MAY 1935
W.S. WHEELER, CE
DOVER, N.H.
SCRD
POCKET #10, FOLDER #2, PLAN #11 & 12

LIMITED SUBDIVISION
CECIL TAYLOR
DOVER, N.H.
FREDERICK E. DREW ASSOCIATES
JULY 1977 SCRD 17-112
PROPERTY SURVEY
109 COURT STREET, DOVER
STRAFFORD COUNTY, NEW HAMPSHIRE
JOANNE RICHARD LIVING REVOCABLE TRUST
STONEWALL SURVEYING
AUGUST 1, 2023 SCRD #13011

7.) ALL APPLICABLE RIGHT-OF-WAY, CONSERVATION, SLOPE, CONSTRUCTION, POWER LINE, CROSS TRAVEL OR OTHER EASEMENTS HAVE BEEN REFERENCED IN A NOTE.

8.) ZONING: R-12
MIN. LOT SIZE: 12,000 SQ.FT.
MIN. FRONTAGE: 100 FT
MIN. SETBACKS:
FRONT: 15 FT TO 25 FT
SIDE: 15 FT
REAR: 30 FT
MAX. COVERAGE: 30 %

9.) VARIANCES, SPECIAL EXCEPTIONS, CONDITIONAL USE PERMITS: NONE

10.) THE RAW UNADJUSTED CLOSURE OF OUR RANDOM POINT TRAVERSE WAS 1 PART IN 60,000, AND WAS ACCOMPLISHED USING A TOPCON GT 503 TOTAL STATION, DURING THE MONTH OF FEBRUARY, 2024.

11.) SUBJECT PARCEL IS NOT WITHIN A FEDERALLY DESIGNATED SPECIAL FLOOD HAZARD ZONE (FLOOD HAZARD ZONE A - PANEL 0320E, MAP No. 3301700340E, DATE: 9-30-2015).

12.) DURING THE MONTH OF MARCH, 2024 MICHAEL MARIANO, STATE OF NEW HAMPSHIRE CERTIFIED SOIL SCIENTIST #76, NH CERTIFIED WETLAND SCIENTIST #183, CONDUCTED AN ON-SITE WETLANDS DELINEATION OF THE SUBJECT PARCEL. WETLANDS WERE IDENTIFIED BASED ON THE CITY OF DOVER ZONING ORDINANCE (170-27.1) AND ON STATE & FEDERAL CRITERIA OUTLINED IN THE "CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL" (DEPT. OF THE ARMY, 1987) ON THIS SITE, WETLANDS BASED ON LOCAL CRITERIA SHARE THE SAME BOUNDARIES WITH THOSE BASED ON STATE AND FEDERAL CRITERIA. NO WETLANDS WERE FOUND.

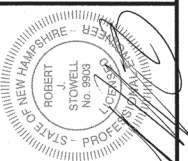
13.) BASIS OF BEARING: BEARING SYSTEM BASED ON GPS FIELD OBSERVATIONS ON FEBRUARY 16, 2024 USING TOPCON HIPER SR RECEIVERS AND OPUS CORRECTED ON FEBRUARY 19, 2024. DATUM BASED ON NEW HAMPSHIRE STATE PLANE COORDINATES SPC (2800 NH), (NAVD 88).

TRITECH
ENGINEERING CORPORATION

785 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE 03860
TELEPHONE 603 742 8107
FAX 603 742 3630

ISSUED FOR TRC REVIEW
October 24, 2024

REVISIONS	DATE	DESCRIPTION
1	9-12-24	REVISED PER TRC COMMENTS
2	10-24-24	REVISED PER TRC COMMENTS



GENERAL SITE PLAN

103 COURT STREET

103 COURT STREET
DOVER, NEW HAMPSHIRE
STRAFFORD COUNTY

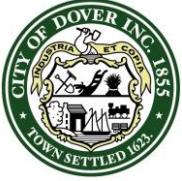
SEPTEMBER 30, 2024 JOB No. 24101

SCALE: 1" = 30'

SHEET No.

SP-1

CR 644
(P24-0012)



CITY OF DOVER

PLANNING BOARD - STAFF MEMO FILE #TRAN-2024-0011

Application Type: Transfer of Development Rights
Applicant(s): 5 Sherman Street, LLC
Owner(s): 5 Sherman Street, LLC
Location: 103 Court St. (Assessor's Map 19, Lot 8)
Meeting Date: December 10, 2024

INTENT: To request the purchase of four (4) units through the Transfer of Development Rights (TDR) for a total of seven (7) units, where three (3) units are allowed by right.

AGENDA ITEM #: 4-G

APPLICANT/OWNER: 5 Sherman Street, LLC

LOCATION: 103 Court St. (Assessor's Map 19, Lot 8)

LOT/UNITS PROPOSED: Four (4) TDR units, Seven (7) units total

ACREAGE: ± 1.20 ac.

ZONING DISTRICT: R-12

EXISTING/PROPOSED USE: Residential

SURROUNDING USE: Residential, Cemetery

ZBA ACTION: None

PERMITS: None

WAIVERS REQUESTED: §153-14.D.6(a) and §153-14.D.6(b), requiring an aisle width of 22' or 24', where an aisle width of 20' is being proposed.

(Note the applicant is also requesting partial relief of the 30' buffer)

APPLICATION IS COMPLETE: Yes

REGIONAL IMPACT: No

NOTICES SENT: Abutter notices were sent by certified mail.

TRC: 09/06/2024, 09/26/2024, 11/14/2024

ATTACHMENTS: Site Plan, TDR Application, Narrative

Summary of Request and Background

The applicant is proposing a residential project consisting of seven (7) residential units by purchasing four (4) units through TDR. The proposal includes reconstruction of the existing single-family dwelling and the construction of a duplex and four (4) size-restricted, single-family cottages.

The existing lot, Assessor's Map 19, Lot 8, contains one single-family dwelling. The current Zoning Ordinance permits the use of the Transfer of Development Rights ordinance (TDR) in the R-12 zone, but specifies that applicants must utilize the single-family yield plan method, or otherwise construct *only* duplexes if the two-family yield calculation is used. As the applicant proposes a mixture of unit counts, the single-family yield calculation is used, which given the subject lot's physical characteristics, results in a base density calculation of three (3) units. This, therefore, means that the remaining four (4) sought units could be granted if the Planning Board votes to approve the use of TDR.

Per the applicant's plan, both units within the duplex, although not required, are proposed to be restricted to the applicable HUD Fair Market Rental rate, with the four (4) cottages being size-restricted to no more than 1,400 s.f. The units purchased through TDR include the two duplex units, and two of the size-restricted cottages.

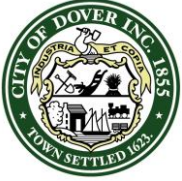
Consistency with Land Use Regulations - TDR

§170-27.2 provides for additional density to be purchased through Transfer of Development Rights. This application meets all provisions of the TDR Ordinance, with the exception of the required 30' buffer which the applicant seeks partial relief from. To elaborate, all newly proposed structures on the lot comply with the 30' buffer requirements. The applicant seeks relief for mild encroachment of driveway access pavement to the East of the parcel. Also noteworthy is the parcel's proximity to cemetery to the South, which, per state law, requires a mandatory 25' buffer which the applicant complies with.

Staff has reviewed the proposal and supplied a TDR memo to the applicant.

STAFF RECOMMENDATION - TDR:

The Planning Department understands changes to the plan may still be needed and could be subsequent conditions of approval or made before the Board votes on the TDR request. The Planning Department also recognizes the public comments received so far and recommends the Planning Board accept the application, open the public hearing, and provide the applicant any feedback based on the application, presentation, and public hearing and then table the item to a date certain.



CITY OF DOVER

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Hilary Hamer, OD, MA, MS
Abutter, 91 Court St
Dover, NH 03820
Tel: (603) 361-9428

City of Dover, Planning
288 Central Ave
Dover, NH 03820

Subject: 103 Court St, TDR Proposal

To the Planning Board:

I urge you to thoroughly review the following information before considering accepting the TDR proposal at 103 Court St. TDR serves a purpose, but as so many expressed at the 566 Sixth Street project hearing on October 22nd, is this the correct use of it? While there may be a housing shortage right now, is it fair to homeowners like me to approve TDR that permanently changes our streets while admitting it is not the intended use of TDR? TDR is not required for this lot to be developed.

Consider the implications of 103 Court St for Dover but also for yourselves. This site will open a floodgate to additional TDR proposals as the densest and smallest residential TDR ever, except for one little past site next to Walgreens off Central Ave. I urge you to look at Court St and then scan the Dover map and see just how many long, skinny lots like this there are across the city.

I especially urge you to look at the applicability of code G(7) regarding a buffer and G(8d). The lack of any semblance of a 30-foot buffer provides an easy reason to dismiss this project. Deny this project due to lack of the required buffer as well as the overreaching density request.

My husband and I have poured our hearts into this home since moving here in 2022. The idea of nine new units on the mostly wooded single-family lot next to us when it first came out in September was shocking. The slightly revised proposal still represents an enormous increase in density and would fundamentally change the character of our street. This is a unique area. We are next to the Pine Hill cemetery. It does not have an urban feel to it. Our backyard creates a lovely field continuous with two neighbors' backyards by the cemetery. Many people both recreate and reflect there, a lovely and peaceful historic space.

We understand the need for housing, but this type of overdevelopment in our neighborhood is not the solution. It is not compatible with the neighborhood. Develop the lot under normal zoning which allows for three units. Four more housing units using TDR will do nothing to fix the larger housing problems of this city.

Thank you,



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TDR Density

This is the densest proposed residential TDR to date, except for one previous site next to Walgreens.

Right-to-Know provided this list of approved and pending TDR projects since 2021 which I then researched to add the acres and final number of approved units:

Approved TDR Projects

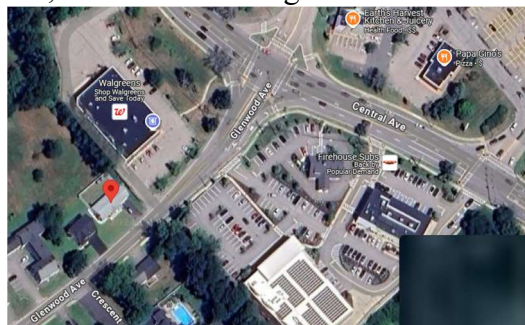
8/4/21	51-65 Bellamy	R40	7.79 acres	17 units	2.2 units/acre
8/4/21	725 Central	G			
7/26/22	757 Central	G			
5/20/22	16 Prospect	R12	1.56 acres	3 units	1.9 units/acre
10/18/22	Little Bay Road	LBW			
6/30/23	5 Glenwood	R12	0.36 acres	2 units	5.6 units/acre
10/27/23	Cielo Drive	IT			
12/23/23	105 Durham	R20	1.28 acres	9 units	4.1 units/acre
3/26/24	30 Grapevine	C			

I did not include further details for TDR examples located in non-residential zones, as surely these are not relevant to 103 Court St.

Pending TDR Projects

6/27/22	77 Sixth	R12	0.26 acres	4 units	No action? Abandoned?
3/8/23	41 Long Hill	R12	11 acres	34 units	3.1 units/acre In TRC
11/21/23	306 Dover Point	R20	1.64 acres	5 units	3.0 units/acre
5/2/24	512 Sixth	R12	1.87 acres	5 units	2.7 units/acre
5/22/24	131 Littleworth	R40	Withdrew – not relevant		
6/4/24	101 Back Rd	R40	Village Theme – not relevant		
6/6/24	566 Sixth	R40	1.35 acres	5 units	3.7 units/acre Denied
7/15/24	52 Old Rochester	C			
8/15/24	103 Court	R12	1.19 acres	7 units	5.9 units/acre

This represents the densest residential TDR ever, and the second smallest TDR lot ever except for one located at 5 Glenwood Ave, a site next to Walgreens:



This lot is small and sets an example by which almost any residential lot in Dover would be a candidate for TDR development.

Minimum frontage by residential zone:

R12: 100-feet

R20: 125-feet

R40: 150-feet

103 Court St frontage is 129.36 feet, and it is 141.18 feet in the rear. By this example, every single R40 lot, almost every R20 lot in town, and an awful lot of R12 are candidates for TDR. Dover is littered with long skinny lots like this in residential neighborhoods. This project is a floodgate for more TDR proposals.

Neighborhood Analysis

Arguing 103 is a transition between RMU and R12

From the developer: “The property borders the RMU zone along its 160-foot rear property line... This project respects the transition between the higher-density RMU zone and the medium-density residential R-12 zone”

Pine Hill Cemetery does border 103 Court St in the back. It is technically RMU zone. It is a cemetery. It will never be developed. This is not a transition.

Detailed Analysis

Existing Density and Building Coverage within 300-feet

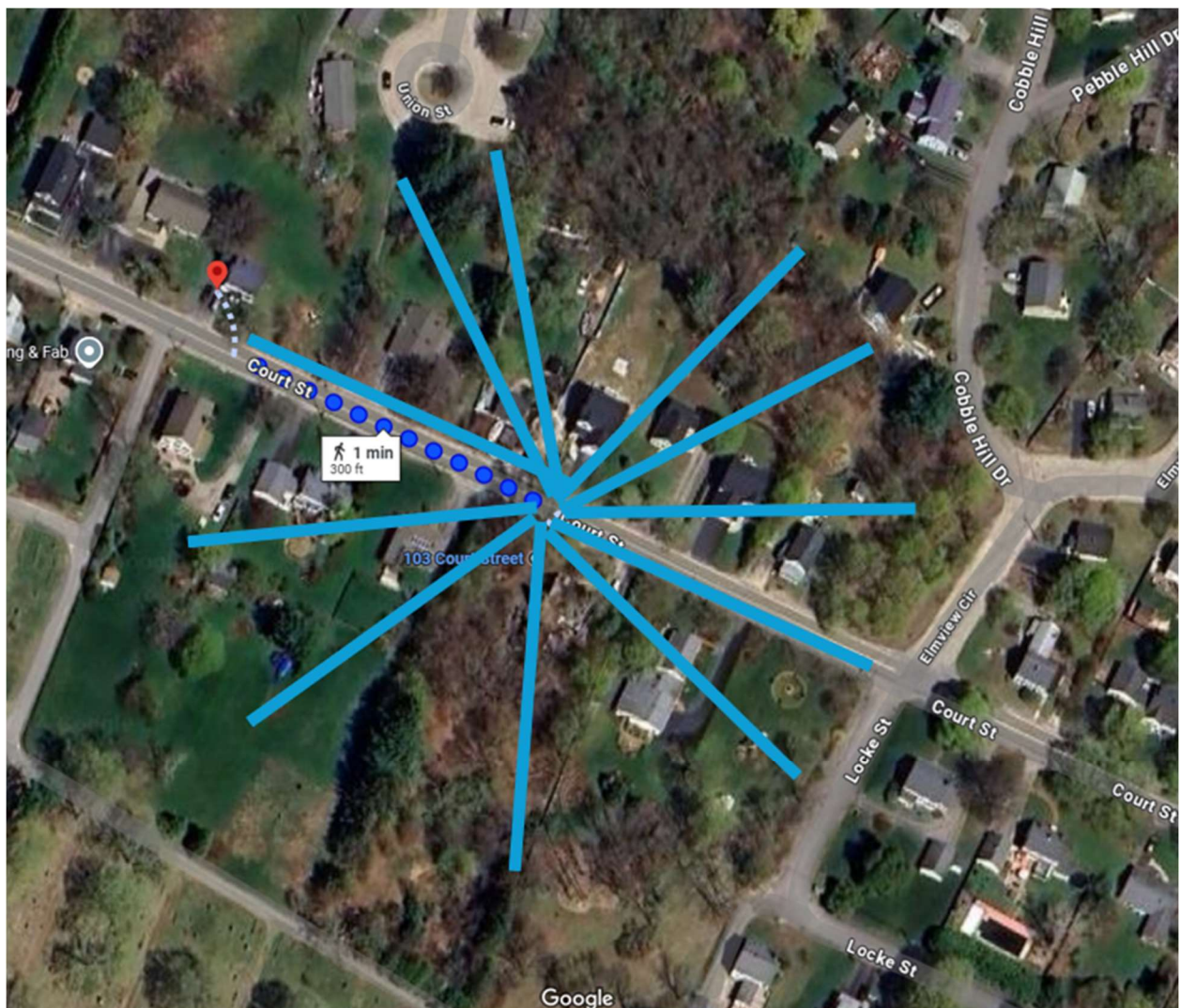


Figure 1: 300-foot circle around the existing home on 103 Court St (the recommended range from TRC #2 9/26/24)

In the 300' circle centered on the current single-family home at 103 Court St, these are the residences:

Address	Lot Size (acres)	Type	Existing Home ground floor (sqft)	Unit /Acre	Existing Building Coverage*
85 Court St	0.687	1 family	1065	1.45	3.56%
89 Court St	0.904	1 family	864	1.11	2.19%
91 Court St	0.865	1 family	1008	1.16	2.67%
103 Court St	1.19	1 family	936	0.84	1.81%
109 Court St	0.439	1 family	741	2.28	3.87%
111 Court St	0.39	1 family	Unsure- new	2.56	
Tranquility Way	0.36	1 family	Unsure- new	2.78	
Tranquility Way	0.408	1 family	Unsure- new	2.45	
108 Court St	0.367	1 family	580	2.72	3.63%
106 Court St	0.33	1 family	918	3.03	6.39%
104 Court St	0.32	1 family	576	3.13	4.13%
102 Court St	0.31	1 family	737	3.23	5.46%
100 Court St	0.38	1 family	480	2.63	2.90%
92 Court St	0.698	1 family	768	1.43	2.53%
			AVERAGE:	2.2 units/acre	3.56%

**I was unable to calculate proper lot coverage as I cannot readily access the impermeable area per lot. The houses along Court St are all located towards the front of the properties, so the impermeable areas (driveways) reflect the building sizes, so I feel this is still a very valid assessment to use.*

Versus proposal at 103 Court St:

Unit Density = 7 units/1.19 acres = 5.88 units/acre – **This is 2.7X higher than the average**

4 cottages at ~20x30' + current single family (936sqft) + barn (estimate 1000sqft) = 8.36% building coverage – **This is 2.3X higher than the average**

Presence of duplexes

There are no duplexes in a 300-foot radius of 103 Court St currently.

Spacing of Existing Homes

If a buffer is not enforced, then the cottages in the rear of the lot will be visible and should be therefore considered relative to their consistency to the neighborhood as well as the front buildings.

Houses are an average of 36-feet spaced apart on the North of Court St and 40-feet from each other on the South of Court St in the immediate area. The proposal meanwhile places a row of identical cottages each spaced 20-feet apart.



Figure 2: Developer diagram of existing houses.

Home Sizes and Diversity

The homes on Court St are diverse, built over many years. Every single house is unique. I will not include a photo of every home in the immediate area, but I invite you to travel down Court St. There is no example of a row of identical houses anywhere. Our homes also cover a wide range of sizes but are all larger than the ~20'x30' cottages proposed. These cottages are not visually consistent to the local street in size, nor in their spacing and uniformity.



Figure 3: All of the sizes of houses along Court St in immediate area from the street

The parcel “within 165’ has 59 units on 6 acres”

The developer alludes to a “parcel within 165’ has 59 units on 6 acres.” I assume they are referring to the property at the end of Union Street based on the maps. However, the corner of that parcel is 300-feet from 103 Court St. Furthermore, topographically this parcel exists at an entirely different elevation to Court St and is not even visible from the paved walkway that connects it to Court St.



Figure 4: This is the view to that parcel from Court St

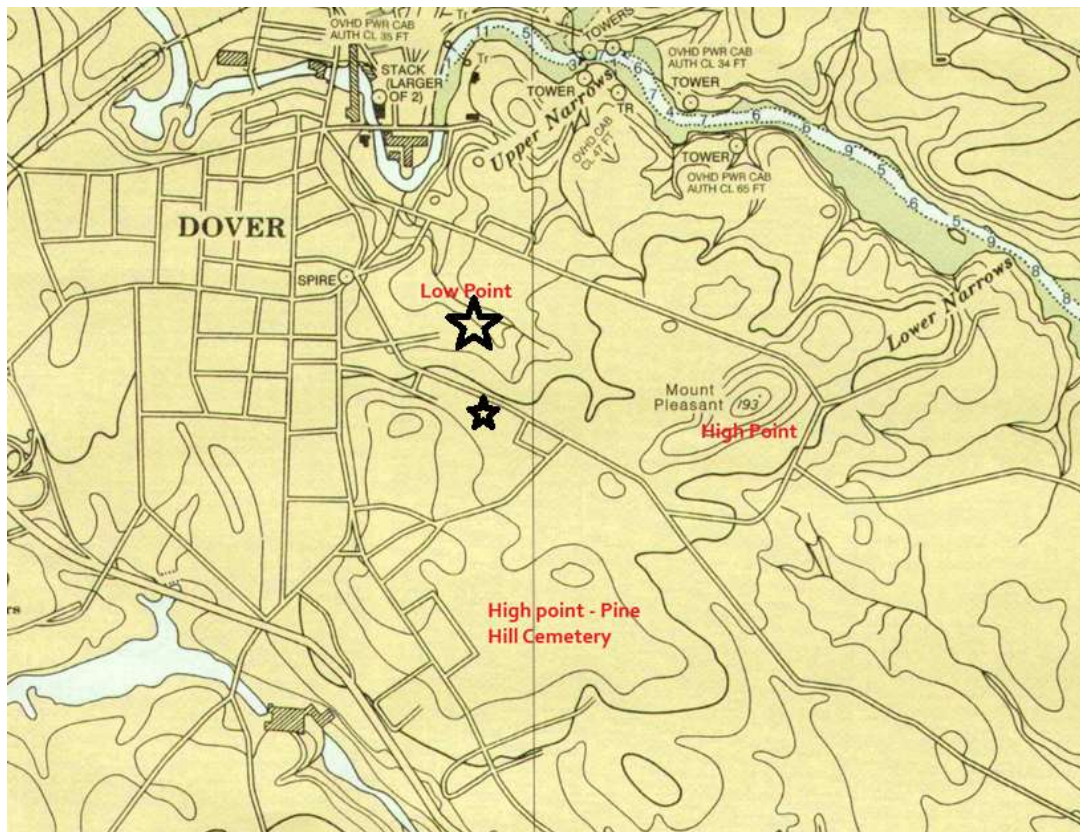
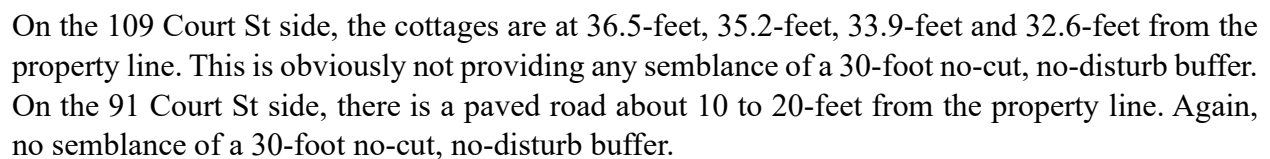


Figure 5: USGS Survey Topographical Map of Dover showing the significantly lower topographical elevation to the Union St area residences relative to 103 Court St.

170-27.2(G)7: "A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty (30) foot no cut, no disturb buffer."

I apologize for my poor rendering skills. There was no buffer drawn onto the submitted plans, so I did my best:



From the online recording under Meeting Minutes from 9/26/2024 second TRC at:
[https://publicrecords.dover.nh.gov/Tabs/Index/21116/public/1/deptnum/0/cab/Public Meetings](https://publicrecords.dover.nh.gov/Tabs/Index/21116/public/1/deptnum/0/cab/Public%20Meetings)

Transcribed with minute references:

- 1:30 Director Benton, “I know we chatted last time about trying to add more than the existing 10-foot visual buffer so if we can still look to make the 30 that is technically required.”
- 7:17 Dir. Benton, “The issue is the TDR ordinance is clear that if you're asking for relief because of the extra density, then you shouldn't be getting the extra density. So, we're just trying to make sure that you're meeting the buffer requirements.”
 - [Developer asks for clarification]
- So the ordinance is clear that you can't be asking for relief if it's caused by the extra density. So you really shouldn't be getting extra density if you can't meet the buffer requirements, and the setbacks. So you may need to lose units or figure out a redesign.”

The buffer comes up repeatedly in the meeting as a requirement. When the slightly modified proposal you are now viewing was approved at the third TRC meeting on November 14, 2024, it was an utter shock to myself and neighbors.

I inquired with my City Council representative for ward 3, Anthony Retrosi, on how this could possibly be happening. He procured this explanation from Director Benton on November 18, 2024:

“Hi Councilor Retrosi,

Thanks for reaching out for more information. As you're likely aware the Transfer of Development Ordinance allows for housing density to occur in excess of the underlying zoning allowances providing the Planning Board grant the request. Ms. Hamer raises two main questions I want to address. The first being the 30' visual buffer on the parent parcel. The parcel is not seeking a subdivision and therefore "parent" is a key word. There have been other instances where the Planning Board has not required the 30' visual buffer depending on the site, proximity to urban core, lack of subdivision or new lot lines, etc.

The other is the criteria of no additional relief being sought. This was added about 2 years ago to the Zoning Ordinance and the intention was in terms of wetland or wetland buffer impacts and not to parts of the TDR ordinance itself. The 30' buffer is a part of the TDR ordinance not underlying zoning like an environmental conditional use permit would be. Relief from wetlands impacts due to additional development is a different level of relief than providing or not providing a 30' visual buffer. Due to discussion during the TRC process, the applicant is proposing fencing and additional landscaping to try to meet the same intent and help screen the project from abutting properties.

Certainly this zoning ordinance could use clearer word smithing which staff plans to discuss with the Planning Board during its annual goal setting in January.

Please let me know if you or Ms. Hamer have any additional questions.

Thanks,

Donna Benton, AICP

Director of Planning and Community Development”

This is entirely inconsistent with every single part of the past TRC discussions and none of us can understand what changed between 9/26 and 11/18. It is extremely upsetting to see this complete reversal in language and utterly confusing.

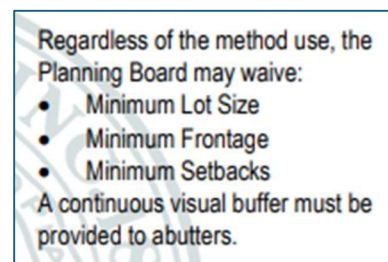
The buffer applies under all interpretations of TDR code.

Imagine my and my neighbors' utter shock at these statements which are in contradiction with the TRC meetings, TDR code and prior discussions at Planning Board meetings relative to TDR. It's pretty obvious that ordinance G(7) located under the section of residential TDR code would apply to a residential TDR project. It makes sense because the buffer is to protect neighbors from the increased density that would never occur under regular zoning.

The parent parcel is the lot of 103 Court St. I have asked a licensed surveyor with frequent business in Dover, a zoning lawyer in Dover, civil engineers and others what they consider a "parent parcel" to be for TDR. The answer is unanimous that the "parent parcel" for the TDR application is the original lot.

Whether the TDR functions as a subdivision or a site plan is immaterial for residential TDR projects, as both fall under the hierarchy of the full section G. Look at (E)4 in the TDR code which states that a TDR proposal is subject to all of section F or all of section G. 103 Court St as a residential TDR application is subject under this language to all of section G, including the buffer.

170-27.2(G)7: "A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty (30) foot no cut, no disturb buffer."



Furthermore, the City of Dover Transfer of Development Rights Fact sheet for Residential Development Rights specifically promises a "continuous visual buffer" (to the left here) without any restriction to a subdivision or site plan format.

It does not spell out thirty feet of buffer. However, it clearly implies that a buffer is a requirement for all residential TDR projects. The "continuous visual buffer" and the 30-foot distance is specified in the full clause of G(7). There is no separation of a visual buffer and a 30-foot buffer in the written ordinance. You cannot say a visual buffer is a requirement here while not the 30-foot no cut, no disturb zone.

Additionally, in the Planning Board Submittal letter from the developer, the developer asks for relief from the "buffer requirement". Therefore, they understand it as a requirement.

of 1400 square feet of total living space per unit. The TDR application still requests relief from the thirty (30) foot buffer requirement. The Landscape Design provides for new screening as mitigation for this relief.

In the Plan Snapshot Report, the comments from the TRC committee include mentioning the "TDR 30' no-cut-no-disturb area":

Comments: • The narrative says that the design is context-sensitive with the neighborhood and consistent with the master plan, but doesn't provide much analysis to support the claims. The following information would make it easier to evaluate compatible density vs. overdevelopment:

- o Define the "surrounding area" for the purposes of evaluating density and visual character
- o Provide density comparisons between the proposed development and surrounding area (units/acre, building massing, lot coverage, presence of duplexes, prevailing setbacks and/or separation of buildings, etc.)
- o The narrative states goals to increase housing supply, but has limited discussion of the Master Plan's vision for the future of this area in Dover.
- Many structures/areas of disturbance are within the TDR 30' no-cut-no-disturb area/still do not appear to have a visual buffer in place. If requesting a waiver, data suggestions above would also be important for evaluating waiver.
- Is there an opportunity to adapt the rear wing of the existing house or build the new duplex within the same footprint? If that is a viable solution it may improve both the architectural consistency and free up space to lessen buffer impacts.
- Review RSA 289:3 III for compliance – "no new construction, excavation, or building" within 25' of the boundary of an established cemetery.
- Plan orientation is not consistent across all sheets (e.g. both Court Street and the Cemetery appear on plan left on different sheets) – it is confusing the way it flips.

The 30-foot no cut, no disturb buffer requirement does apply to 103 Court St, and all TDR for that matter, for the perimeter of the existing lot. Under section 8d, as Director Benton so clearly said at the 9/26 TRC meeting, this buffer cannot be waived to achieve the extra TDR density.

There are no similar examples of residential TDR waiving the buffer in an R-12, R-20 or R-40 project.

Let's look at all the other residential TDR projects since 2021 and the very well-defined buffers on their plans.



Figure 6: Approved at 51-65 Bellamy Road

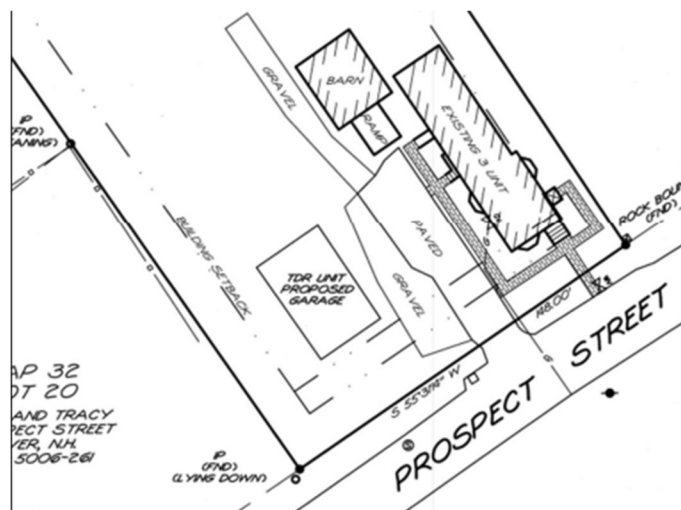


Figure 7: Approved at 16 Prospect St - buffer not drawn, but clearly obeys 30-feet by scale on plan

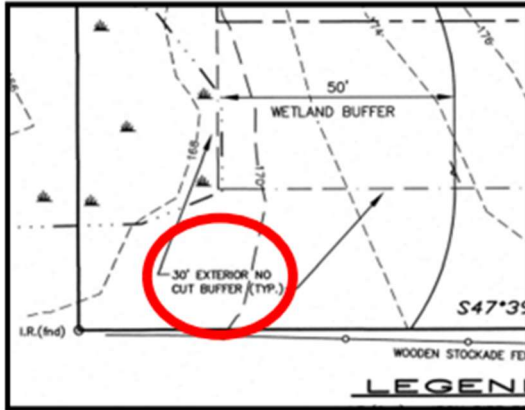


Figure 11: Proposal at 512 Sixth St

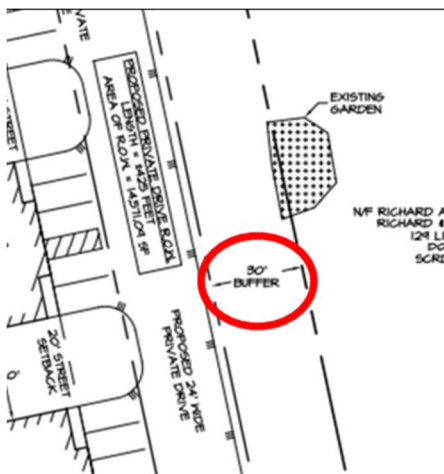


Figure 12: Proposal at 131 Littleworth Road - even though they withdrew

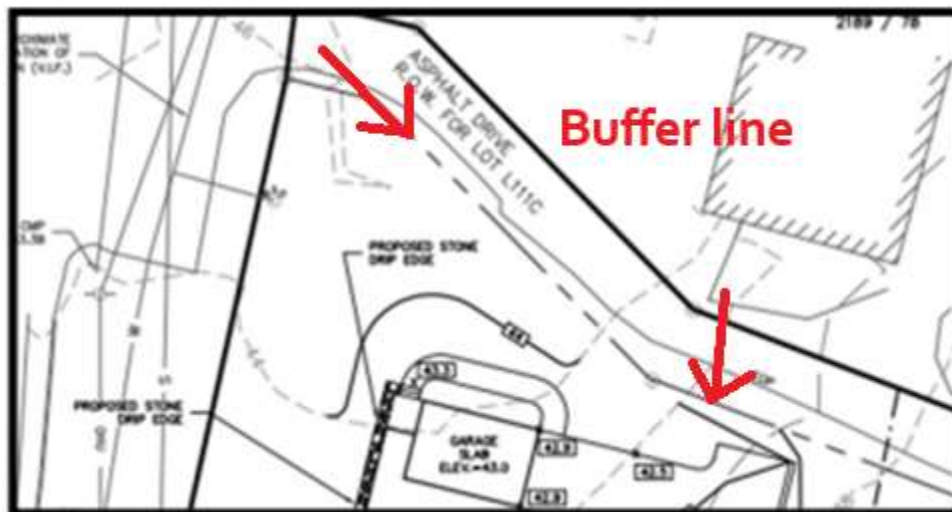


Figure 13 306 Dover Point Rd, even though it's bordered by driveways to lower coastal lots, still maintained a buffer.

Acknowledging the single example of residential TDR without a buffer, for fairness.

5 Glenwood Ave (a site next to Walgreens off Central Ave) is the one example that waived a buffer. It provided a very clear explanation and requested only one unit. It was also approved on 6/30/23, prior to the amendment creating 8d in the TDR ordinance which disallows buffer relief.

There is no attempt at a valid argument for waiving a buffer at 103 Court St.

The project narrative literally includes no argument for waiving the buffer at all. It is not mentioned in the current material (as of 11/25/2024). The only comment from the developer is in the “TRC Response Letter #2”:

- *Shrink common area or unit count to gain more than the 10' visual buffer. Narrative would be needed for TDR relief being sought from setback and buffer. However, seeing the density being sought is double what the base calculates out to be would indicate the buffers and setbacks should be met or unit request reduced.*
 - This comment has not been adequately addressed. Still seems to have too many units and not enough buffer area.
- The revised Site Plan provides a radical revision to the site layout. The unit count has been reduced by 2 units. The existing house will remain as a single-family home, which will utilize its existing utilities, trash collection and driveway. The new duplex has been moved slightly to more closely coincide with the existing barn foot print and will provide additional buffer to the east. These units will remain HUD restricted. Cottage #5 has been removed. The remaining cottages have been pushed to the west another 15 feet and completely out side of the 30-foot buffer.*
- The aerial photographs from the City of Dover GIS shows that in 2005, 2010 and as recently as 2018 much of the property was maintained as field and much of the growth on site does not provide effective screening. The proposal still requests a waiver from the 30-foot perimeter buffer which will allow for clearing of the existing undergrowth and the installation of stockade fence with an additional vegetative screen.*

As previously highlighted in my diagram, the cottages are not within 30-feet of the property line. However, a backyard is not a buffer. This also fails to acknowledge that the pavement on the other side of the lot is 10-feet from that property line.

Furthermore, what does the past aerial photography have to do with this? The lot is currently wooded. In fact, the current single-family home is barely visible from any view except from the front. Here's some photos from this November for you – when there's not even full leaves on the trees. There is currently a very good visual buffer surrounding the entirety of the 103 Court St lot.



Figure 14: Small orange flag in the middle is rear property marker for 103 Court St. The house is just barely visible.



Figure 15: View of the 103 Court St from the West.



Figure 16: View of 103 Court St from Court St



Figure 17: View of 103 Court St from Locke St/Tranquility Way

Landscaping has been proposed to provide a continuous visual buffer without a 30-foot no-cut, no-disturb zone. How is sufficiently dense landscaping going to screen this property from all of these angles within the 10-foot strip remaining unpaved on the East and in the 30-foot backyards on the West? As previously mentioned, if the cottages in the rear are visible at all, then they must be consistent with the neighborhood context which, as I argued, they are not.

What about section 8d – is seeking relief for the buffer allowed?

170-27.2(G)7: "A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty (30) foot no cut, no disturb buffer."

170-27.2(G)8d reads, "Any relief sought should not be caused by the additional density."

Transcribed from the online recording under Meeting Minutes from 9/26/2024 second TRC meeting for 103 Court St with minute references, again:

7:17 Director Benton, "The issue is the TDR ordinance is clear that if you're asking for relief because of the extra density, then you shouldn't be getting the extra density. So, we're just trying to make sure that you're meeting the buffer requirements."

[Developer asks for clarification]

So the ordinance is clear that you can't be asking for relief if it's caused by the extra density. So you really shouldn't be getting extra density if you can't meet the buffer requirements, and the setbacks. So you may need to lose units or figure out a redesign."

If you agree that the buffer is a requirement, as I argue every single discussion and prior example demonstrates for TDR, then the buffer cannot be waived for 103 Court St just to get the extra TDR density under ordinance 8d.

In conclusion, deny this project on the basis that it overreaches even under TDR, is not compatible with the existing neighborhood in density and appearance, and fails to meet the buffer requirement for TDR.

Hilary Hamer
Abutter, 91 Court St
Dover, NH 03820

Planning Board, City of Dover
Subject: 103 Court St, TDR Proposal

January 28th, 2025

I am writing to provide a summary of my concerns regarding the TDR proposal abutting my property at 103 Court St. My husband and I remain opposed to this development.

This letter comes late for your review. I was caught unaware having received no communications regarding the project since the site walk on January 11th when it was strongly implied that the project would not be on the January 28th agenda. We are aware of the newest version of the plan.

A. The TDR 30-foot no-cut, no-disturb perimeter buffer applies to this residential TDR project, and it is still not provided.

- The buffer was discussed clearly as a requirement at the first two Technical Review Committee meetings, and I have multiple emails with the Planning Department regarding the buffer at this project between September and October. There was never any statement that the buffer did not apply to this project until December 10th, and I have yet to see a reasonable explanation as to how the buffer could possibly not apply to this development.
 - **Director Benton, 9/26, TRC:** "Yeah, because the buffer is a requirement."
- At one point, one seemed to suggest that the buffer did not apply due to the type of project. However, 103 Court St is a subdivision under the TDR law, as well as under the Dover and New Hampshire definitions of a subdivision.
 - **TDR 170-29-G(3)a.6:** "The plan shall be considered a subdivision application." This statement in the TDR ordinance follows under the single-family detached method for calculating TDR base density specifically used for this project.
- While TDR allows the Board to reduce rear, street and side setbacks in a residential zone, authority is not granted to reduce the minimum distance between buildings for subdivisions. In R-12 under **151-21-F Dimensional Requirements**, the minimum distance between individual units is 20-feet. At the Site Walk, the applicant said that the distance between units was 14-feet, significantly less than this minimum.
- At another time, it was suggested that the problem with the buffer law is the definition of the parent parcel. The only use of "parent parcel" in the entirety of Dover code is in line G(7) defining the TDR buffer. "Parent lot" is used in G(3)a which defines the TDR base density formula used here. "Parent parcel" and "parent lot" clearly apply to the same thing,

which is the lot of 103 Court St. The 30-foot perimeter buffer applies to the lot of 103 Court St.

- **170-29-G(7):** "A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer."
- **170-29-G(3)a.1-a:** "The square footage of the parent lot minus unsuitable areas is the base lot size."

B. The Planning Board has no authority to waive a 30-foot buffer for this project.

- **170-29-G(8)d:** "Any relief sought should not be caused by the additional density." There is no written statement that this requirement only pertains to wetlands or environmental concerns. If a buffer cannot be provided while fitting additional units under TDR, then the relief for a buffer is directly due to the additional density being created and not allowed.
- **Director Benton, 9/26, TRC audio recording:** "The issue is the TDR ordinance is clear that if you're asking for relief because of the extra density, then you shouldn't be getting the extra density."

C. TDR is discretionary. It is up to the discretion of the Planning Board to ensure projects provide, under **NH State 674:36:**

- "(b) Provide for the harmonious development of the municipality and its environs;
 - (d) Provide for open spaces of adequate proportions;
 - (j) Include provisions which will tend to create conditions favorable to health, safety, convenience, or prosperity;"
- I do not find that this proposal meets these requirements in this location.

D. There is strong evidence of prejudgement for this TDR project with a consistent strategy of rationalizing this project for acceptance before the full evidence is heard.

- **NH RSA 500-A: 12** defines the 'Juror Standard' for which Planning Board are required to adhere. Per the NH Planning Board Handbook Appendix G page G-2, this standard calls for disqualification where a board member:
 - (a) Expects to gain or lose upon the disposition of the case;
 - (b) Is related to either party;
 - (c) Has advised or assisted either party;
 - (d) Has directly or indirectly given his opinion or has formed an opinion;
 - (e) Is employed by or employs any party in the case;
 - (f) Is prejudiced to any degree regarding the case; or
 - (g) Employs any of the counsel appearing in the case in any action then pending in the court.
- II. If it appears that any juror is not indifferent, he shall be set aside on that trial.

- On October 22nd, 2024, Planning Board members discussed TDR in general and argued that TDR is necessary across all of Dover due to a NH housing shortage. I will add that the Planning Board has provided for over 1,800 new housing units coming to Dover already, and I find this argument invalid given the upcoming approved developments.
- At the December 10th, 2024 meeting, Planning Board Chair Cruikshank assured that there is “no rewriting or ignoring of regulations” (minute reference 2:19) before later stating that the city attorney would be asked to clarify the technicalities (minute reference 2:31). This initial assurance about lawful TDR here was premature to appropriate legal counsel particularly given the actual language of the buffer law as discussed above.
- At the January 11th, 2025 Site Walk, Planning Board member Ken Mavrogeorge repeatedly speculated that alternative developments on the lot would only be worse than the TDR proposal without having any actual knowledge of alternative options.
- The Planning Department has also flat-out written in the newest Staff Memo in the meeting packet that, “The proposal is consistent with the Master Plan; is compatible with the land uses on neighboring lots; ... and not seeking permitted relief caused by additional density.” This inappropriately precedes deliberations by the Planning Board and it is not the role of the Planning Department to advise, rather the Applicant’s job to argue and the Planning Board to deliberate. Accepting the memo without critically reviewing the written ordinances and all evidence provided would be an utter failure in the Planning Board’s legal duties.

E. A 30-foot buffer could be provided for this project. The applicant chooses not to do so.

- At the site walk on January 11th, the applicant said that a 30-foot buffer could be provided by changing the type of buildings.
- A 30-foot no-cut, no-disturb buffer provides a significant level of protection to neighbors for sound, visual, and pollution. I find that meeting this requirement using a different type of building is preferable for the protection of my family’s privacy, safety and future use of our own property. I request that the Planning Board uphold the standard for TDR of a 30-foot no-cut, no-disturb perimeter buffer, even if it means changing the building type. Maintaining the 30-foot buffer would further provide for increased green space and wildlife habitat and reduce impermeable areas related to drainage.

F. This project continues to ask for an enormous increase in density.

- The correct base density for this lot creates up to 8 bedrooms. This proposal creates 15 bedrooms.
- The appropriate base density here, *confirmed by surveyor Kevin McEneaney*, is **2-units**. The current calculation used by the applicant includes the 25-foot cemetery buffer in the rear as developable land. Under NH state law, this land cannot be disturbed and should not be included in the calculation. [170-29-G(3)a.1-a: “The square footage of the parent lot minus unsuitable areas is the base lot size.”] My calculation confirmed by surveyor Kevin

McEneaney (in addendum) shows that when removing the area of the cemetery buffer, the density yield is **two units**. That is how small this lot is.

- Under regular zoning, a duplex might provide 6 bedrooms. Two houses might provide 8 bedrooms. The TDR project here creates 15 bedrooms (each cottage has 3 bedrooms). Furthermore, a bedroom count fails to acknowledge the difference between two families living here and five families. More than five adults residing here is not the same as two families. This is why the 30-foot buffer is necessary, to protect us from increased activity.
- Without a deed restriction, the existing single-family home could still be converted into a duplex after this TDR project is built, creating further density. At a minimum, a deed restriction on the existing single-family home is required.

G. This project is not compatible with the existing neighborhood.

- This project does not fit into the existing neighborhood of 103 Court St. Refer to my previous detailed submission with maps and measurements within the neighborhood. There are no examples on this street of anything like this. Court St is characterized by diverse architecture and homes built over many different years in different styles.
- The RMU zone cited as providing transition here is Pine Hill Cemetery. A cemetery is not a transition between higher density residential and Court St. It is actually a very nice buffer between zones.

H. This area is a significant wildlife corridor. Wildlife corridors are identified as a priority in the updated Open Space chapter of the Master Plan.

- I have seen and taken photos of deer, foxes, coyotes, turkey and rabbits in my backyard. Neighbors and previous residents can also describe the wide variety of wildlife that traverse this side of Court St adjacent to the Pine Hill Cemetery.
- Such a large increase in human activity at 103 Court St will negatively affect the wildlife that traverse this area. This is a small remaining island for wildlife in this area of Dover.
- This area is far from being a location “with the least conservation value” to be overdeveloped utilizing TDR. Besides wildlife activity, Pine Hill Cemetery is of huge historic value to Dover and especially the portion of the cemetery adjacent to 103 Court St with gravestones dating back to the 1800s.

I. There are significant drainage concerns for this project.

- On my own property, in August of 2024 I had to install an underground dry well and have been changing the grading behind our home due to downward water flow from the hill of Pine Hill Cemetery backing up against our house.
- Court St has regular flooding along its length and while upcoming street improvements are planned, these improvements are not in place yet and additional impermeable space at 103 Court St will worsen the conditions for the entire street.

- If you do consider the upcoming Court St rebuild, our side of the street is losing ~12ft within the city Right-of-Way, further shrinking the 103 Court St lot. Again, the true base density here is at most two housing units, not three. The drainage plans we do have from the applicant place significant drainage in the area of Right-of-Way that is being used by the city in the road redesign as well, and without new plans we have no way of knowing if adequate drainage is truly possible.

J. No one has asked what we want here.

- We want a buffer to protect from the density increase. We want less density.
- I also want unrestricted neighbors. I want neighbors who can make a house their own, put in a swing set, plant a garden, decorate for Christmas – not a row of identical permanently restricted units crammed next to each other under a high-cost homeowners association. Let's provide actual sustainable real housing for neighbors.

As you can see, there are significant ongoing legal questions and problems here. I ask the Planning Board to seek their own legal counsel prior to any vote on this project in order to clarify that this proposal is a subdivision under the TDR language, and that the 30-foot buffer law does apply.

The applicant here was fully aware of the 30-foot buffer from day one. In the first and second Technical Review Committee meetings this was discussed. I spoke to him on the phone myself on November 9th, 2024. There has been no further invitation to discuss the designs here with myself or the community since. The applicant's very own past TDR project at 51 Bellamy Road not only provided a 30-foot buffer, but the submission letter reads; "As part of the site development, the applicant also creates an intensive landscape buffer on the sides of the subject parcel. This will provide a buffer between the development and abutting lots and will enhance the required 30' external TDR buffer." That parcel was 1.49 acres and resulted in only 4 total units under TDR.

Finally, I again ask you to consider the precedence that 103 Court St will set. We'll be making these arguments forever, for every long and skinny lot that exists in Dover. Look at Court St and scan the Dover map and see just how many lots like this there are across the city that could be targeted for more TDR developments under this precedence going forward. As I provided on January 14th, everything about TDR lately has been about precedence. I find this project is unacceptable on Court St but also in every single other existing residential neighborhood in Dover. If the buffer doesn't apply here, when does it apply for TDR?

Thank you,



Addendum 1: Excerpts of the Relevant Dover Code

G. Residential performance standards.

[Amended 8-22-2018 by Ord. No. 2018.08.08-009]

- (1) Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve open space within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development and coordinated with the Conservation Commission. This cost shall become the value at which development rights may be purchased.
- (2) Proceeds from the purchase of development rights shall be placed into the Conservation Fund to be used to purchase future property or easements, or monitor easements, and not into the general fund.
- (3) A residential transfer of development rights applicant may pursue one of the following methods for transferring development rights.

(a) Single-family detached method.

- [1] An applicant shall develop a baseline yield for the lot to be developed through the following formula:

[Amended 10-13-2021 by Ord. No. 2021.09.08-006]

[a] The square footage of the parent lot minus unsuitable areas is the base lot size.

[b] The base lot size is then reduced by 15% to account for roadway; this creates the net area.

[c] The net area is then multiplied by a factor determined by the amount of unsuitable development area over the parent lot. This is the developable area.

Percentage of Parcel That Is Unsuitable Development	
Area	Factor
0% to < 10%	0.85
10% to < 20%	0.8
20% to < 30%	0.75
30%	0.7

TDR BASE DENSITY CALCULATIONS

TOTAL AREA	=	52,241 SQ.FT.
LESS WETLANDS	=	<0> SQ.FT.
UPLAND AREA	=	52,241 SQ.FT.
LESS ROAD ALLOCATION (15%)	=	<7,836> SQ.FT.
NET AREA	=	44,405 SQ.FT.
LESS WETLAND FACTOR FOR 0% WETLANDS (85%)	=	<6,661> SQ.FT.
AREA	=	37,744 SQ.FT.
12,000 SQ.FT. PER UNIT REQUIRED IN THE R-12 DISTRICT	÷	12,000
BASE TDR DENSITY	=	3.14 UNITS
ROUNDED DOWN TO	=	3 UNITS

Left: Base Density Calculation from Applicant. It is using the formula identified above.

Below: Removing the cemetery buffer as clearly *unsuitable* area results in only 2-unit yield.


Kevin McEneaney <kevin@surveyrnh.com>

Thu, Dec 5, 2024, 2:00 PM

☆

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to me ▾

Hilary

I calculated the 25' cemetery unusable land area to be slightly smaller than yours, because the side property lines are converging as you go towards Court Street. The net result is still under 3 units. I will send these calculations to Donna.

52,241 sf

- 3511 sf Cemetery unusable land

48,730 sf

- 7,310 sf Roads

41,420 sf

- 6,213 sf Wetlands

35,207 sf Base Developable Lot Area

Base area divided by 12,000 sf = 2.93 units Rounded to 2

- [6] The plan shall be considered a subdivision application. Prior to submission, a determination by the Director of Planning and Community Development shall be made whether to follow the minor or major subdivision regulations.
[Added 7-22-2020 by Ord. No. 2020.07.08-007]

Following in the same section, line 6 identifies that when this TDR calculation type is used, it results in a subdivision.

Additionally, you can see in this section the use of “parent lot” for TDR in the formula. As follows, the language for the buffer specifies the perimeter of the “parent parcel”. Clearly the relevant area is the same as the “parent lot.”

- (7) A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer.
[Amended 7-22-2020 by Ord. No. 2020.07.08-007]
- (8) Regardless of the method utilized, any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity meets the following criteria and a narrative is submitted indicating how those criteria are met:
[Amended 7-22-2020 by Ord. No. 2020.07.08-007; 8-9-2023 by Ord. No. 2023.07.12-008]
- (a) Is consistent with the Master Plan.
 - (b) Is compatible with the land uses on neighboring lots (e.g., a multifamily building fits in within a single-family neighborhood). The applicant shall provide in their narrative an explanation of their neighborhood analysis.
 - (c) Is created on property served by public water and sanitary sewer.
 - (d) Any relief sought should not be caused by the additional density.^[1]
- [1] Editor's Note: Original § 170-27.2H of the 2013 Code, Conditional uses, which immediately followed this subsection, was repealed 8-22-2018 by Ord. No. 2018.08.08-009.

You also will see here that there is no qualification that ordinance (8)d only applies to wetland or environmental concerns. It says any relief.

Addendum 2: Communications Asserting Buffer at 103 Court St in September & October

Here follows a series of my communications and transcribed portions of the Technical Review Committee meeting regarding this project since September.

There was no change in the type of submission and the site plan is almost identical between the original 9-unit plan and the subsequent 7-unit plan discussed on December 10th, besides the removal of one building. The same is true now for the 5-unit plan. The buffer is discussed and asserted as relevant to 103 Court St multiple times by the Planning Department.

Email Thread 1:

Sent 9/5/2024:

Hilary Hamer <hilary.a.hamer@gmail.com>
To: ZoningBoard-All@doover.nh.gov
Bcc: Dorna <dorna.hamer@gmail.com>, Merlin Money Mason <niremi254@gmail.com>

Thu, Sep 5, 2024 at 9:12 PM

Hello,

I am writing to formally request clarification to zoning code 170-27.2 F(4): "SETBACKS for parking, paved areas, and BUILDINGS may be waived by the PLANNING BOARD, and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, BUILDINGS shall be at least one hundred fifty (150) feet from residential STRUCTURES that exist on the date of enactment of the I-4 and B-4 Zoning districts, and seventy five (75) feet from the LOT LINE of a disagreeing residential ABUTTER."

My understanding in the context of the 103 Court St site would be that the existing single-family homes abutting at both 91 and 109 Court St as existing older residential structures would therefore require new construction to be located at least 150ft away if built under TDR code at 103 Court St, and not susceptible to waiving by the planning board as specifically written.

Furthermore, I understand that if either the owners of 91 or 109 Court St which abut the parent property at 103 Court St disagree with a proposed TDR building, then it must be set a minimum of 75ft away from either's entire property line. Otherwise, how is a disagreeing residential abutter defined? Again, as specifically written this is not susceptible to waiving by the planning board.

Additionally, I am writing to formally request the zoning board recognize and enforce the abutter right to continuous visual barrier for any considered TDR development. The zoning code 170-27.2 G(7) states, "A continuous visual buffer shall be created along the perimeter of the parent parcel." Continuous by definition would imply no gaps or interruptions. A tree screen would hardly seem to meet this requirement and by definition a perimeter would include all sides of the parent lot. A reasonable interpretation might be a solid fence in the 7-8ft height which city guidelines allows for along each side and back of the property.

Thank you,

Hilary Hamer, OD, FAAO

1/5/21 3:21 PM

Reply Paul Crouser 9/6/2024:

Crouser, Paul <P.Crouser@doover.nh.gov>
To: Hilary Hamer <hilary.a.hamer@gmail.com>
Cc: "Benton, Donna" <d.benton@doover.nh.gov>

Fri, Sep 6, 2024 at 11:05 AM

Hi Hilary,

Thanks for your email - I'd be happy to clarify a few things for you.

1. TDR projects are under the purview of the Planning Board, not the Zoning Board;
2. Procedurally, the project will take on the following order of operations:
 - a. Review by the Technical Review Committee (we had our first meeting yesterday, 9/5/24, in which we made recommendations and requirements for the project to move forward, including the visual buffer which you expressed concern about. The TRC required the applicant to make plan revisions and return for a second TRC review, the date of which has yet to be determined.)
 - b. Second TRC review
 - c. Planning Board Review, which separates the project into two discreet review processes, which are:
 - i. TDR Project Application compliance
 - ii. Site Review compliance
 - d. Preconstruction meeting

Only when a-d are complete may the applicant begin construction on their project, and it is likely that the plan will be amended several times prior to that happening, both at the TRC and Planning Board level.

3. The section you referenced, Section 170-27.2(F)4 refers to Industrial TDR projects, not residential.
4. Under Residential TDR Standards, setback, frontage, and lot size requirements may be waived
5. Regarding your suggestion about the fence as a visual buffer - staff agrees and made that exact same recommendation to the applicant, who is revising the plan to reflect a joint landscaping/fence buffer. The minutes for the TRC meeting have not yet been posted, but they will shortly (likely by end of business today), while the recordings and materials are available to view right now via this link: [Treeno - Docs \(nh.gov\)](#)

If you have any other questions, please let me know. I'd also be happy to have a phone conversation with you to clarify anything you wish.

Regards,

Paul R. Crouser
Zoning Administrator / Assistant City Planner
Planning & Community Development

City of Dover, NH
288 Central Avenue

Dover, NH 03820
e: P.Crouser@doover.nh.gov
m: 603.546.6007 / 603.546.6040

No statement made by Paul Crouser that (G)7 30-foot buffer does not apply to 103 Court St.

Email Thread 2:

Sent 9/19/2024:

Hilary Hamer <hilary.a.hamer@gmail.com>
To: "Crouser, Paul" <P.Crouser@dover.nh.gov>
Cc: "Benton, Donna" <d.benton@dover.nh.gov>
Bcc: Dorna <dorna.hamer@gmail.com>, Merlin Money Mason <nilem254@gmail.com>

Thu, Sep 19, 2024 at 8:27 AM

Good morning,

Thank you for addressing my questions so far. I saw that an updated plan has been submitted for 103 Court St with a TRC meeting date of 9/26. I believe you explained that there is no opportunity for public questions at TRC meetings, is this correct, please? Is there a way to formally request the TRC answer a question by submitting in advance of the meeting? Would a formal letter be acknowledged or does an email suffice, such as this?

I want to inquire to the code 170-27.2(G)7: "A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty (30) foot no cut, no disturb buffer." I am looking at the updated plan and do not see a 30-foot buffer adjacent to my property still. If I am to read the scale, there is approximately 10' between my property line and the road being created. This TDR places a road within 30' of my family's bedrooms. Now I see the proposal is specifically asking for relief from this 30-foot buffer. 170-27.2(G)8d reads, "Any relief sought should not be caused by the additional density." Now this was a more recent amendment it seems, but by this statement Dover cannot offer this relief for the 30-foot buffer just to make more units work in this lot. Part of the updated materials from the developer says "...strict compliance with the 30-foot perimeter buffer would leave development of the property limited." This exactly acknowledges that buffer relief is required to fit this extent of dense development on this lot. 170-27.2(G)8d states this relief is not allowed.

Thank you,
Hilary Hamer, OD, FAAO
cell: (603)361-9428

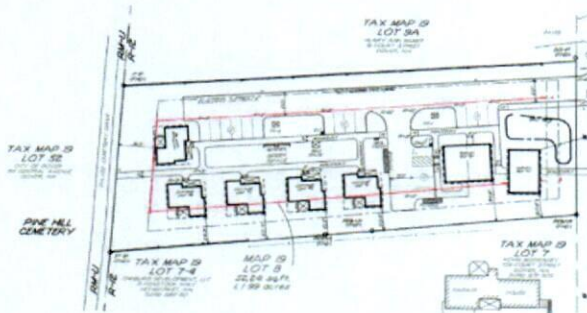
No reply, sent morning of second TRC 9/26/2024:

Hilary Hamer <hilary.a.hamer@gmail.com>
To: "Crouser, Paul" <P.Crouser@dover.nh.gov>
Cc: "Benton, Donna" <d.benton@dover.nh.gov>

Thu, Sep 26, 2024 at 8:20 AM

Good morning,

I wanted to provide a diagram that shows (in red) where the 30-ft buffer should actually extend against the proposal being reviewed today:



170-27.2(G). Any relief sought should not be caused by the additional density.

Thank you,
Hilary Hamer, OD, FAAO
cell: (603)361-9428
[Quoted text hidden]

Reply 9/30/2024 after second TRC:

Crouser, Paul <P.Crouser@dover.nh.gov>
To: Hilary Hamer <hilary.a.hamer@gmail.com>
Cc: "Benton, Donna" <d.benton@dover.nh.gov>

Mon, Sep 30, 2024 at 10:29 AM

Good morning, Hilary.

Apologies for the delay in response. I wanted to let you know that the Planning Department echoed your concerns regarding the 30' buffer to the Applicant during last week's TRC. Please note that the buffer has been waived in the past for existing structures which are part of the development, and while that is the case with the proposed project at 103 Court, we do recognize that the cottages in the rear of the development all violate the 30' buffer, and the Applicant was directed to bring the project into compliance with that specific regulation as the relief requested is from the density sought, as you pointed out.

If you have any other questions or concerns, please feel free to reach out.

Best,

Paul R. Crouser
Zoning Administrator / Assistant City Planner
Planning & Community Development

City of Dover, NH

288 Central Avenue

Dover, NH 03820
e: P.Crouser@dover.nh.gov
p: 603.516.6007 / f: 603.516.6049

Paul Crouser acknowledges concern with applying 30-foot buffer to 103 Court St. Paul Crouser states relief requested is due to density sought.

TRC Meeting Recording 9/26/2024:

(By minute reference in audio recording)

1:30 Director Benton: "I know we chatted last time about trying to add more than the existing 10 foot visual buffer so if we can still look to make that **the 30 that is technically required**"

7:17 Director Benton [regarding (G)7] "the issue is the TDR ordinance is clear that **if you're asking for relief because of the extra density then you shouldn't be getting the extra density**

[Clarification request from Developer]

The issue is the TR ordinance is clear that if you're asking for relief because of the extra density, then you shouldn't be getting the extra density. So we're just trying to make sure that you're meeting the buffer requirements and the setbacks. So you may need to lose units or figure out a redesign "

25:20 Director Benton: "**Yeah, because the buffer is a requirement.**"

Email Thread 3, after revised proposal posted 10/24:

Sent 11/6/2024:

Hilary Hamer <hilary.a.hamer@gmail.com>
To: "Crouser, Paul" <P.Crouser@doover.nh.gov>
Cc: "Benton, Donna" <d.benton@doover.nh.gov>

Wed, Nov 6, 2024 at 8:00 AM

Good morning,

There is a broken link to a document for 103 Court St from 10/24 the file, "103 Court St TRC Response Ltr #2.pdf" - last link at: https://publicrecords.dover.nh.gov/Files/Index/9833/public/1/deptnum/6/cab/Property_Information/Applications/73758602
Hoping to please get access to this document.

I am also confused by contradicting statements about unit count in these new documents. The snapshot document still says 9 total units, but the site development plan says 7 units in some spots (looks like 7 in the drawings) but also says the existing single family will be a duplex still under the 'Intent' paragraph and statement 10 says 9 units. What is the new proposal actually for: two duplexes, four cottages (8 units) - or one single family (existing) with one duplex and four cottages (7 units), or somehow the 9 units still?

Where is the 30' no-cut, no-disturb perimeter buffer still? There is a setback line drawn on the plans but no representation of the 30' no-cut, no-disturb perimeter buffer.

It looks like there is now a second driveway in the plan for the existing single family house to have parking. How is the existing single family going to continue to have sufficient parking once Court St is reconstructed (losing about 10' within the city's right of way)? What is the new site parking plan for each unit exactly - again, very unclear as even the number of units contradicts throughout the documents. In the drawing it looks like 12 parking spots? Does a second driveway have appropriate sight distances or drainage - does not seem to be included in information.

The new narrative document also says there will be a shared "large outdoor fireplace". Where is this going (do not see it on the site plan)? The fire department has strict requirements for outdoor fires being located near any structures and dimensions of any fire pit so would really like to see where they are placing this and how it will comply with the fire codes. I personally have to have a permit for anything on my property. I question who will be responsible for an outdoor fire here/who will hold the permit and who is going to be ultimately responsible for the shared fireplace.

Thank you,
Hilary Hamer, OD, FAO
cell: (603)361-9428

Reply 11/13/2024, morning of third TRC:

Crouser, Paul <P.Crouser@doover.nh.gov>
To: Hilary Hamer <hilary.a.hamer@gmail.com>
Cc: "Benton, Donna" <d.benton@doover.nh.gov>, "Bassegio, Erin" <E.Bassegio@doover.nh.gov>

Wed, Nov 13, 2024 at 5:23 PM

Hi Hilary,

Apologies for the broken link -- it has since been fixed but I've also attached the letter you referenced for your review/records.

As for the conflicting notes re: density -- you are correct in that it is confusing. The snapshot report, as well as the "intent" note on the new plan set refer to the originally-sought density of 9 units (existing single-fam converted to a duplex, one new duplex, and five new single-fam cottages = 9).

The revised drawings are the correct density (7) -- it would just appear as though the engineers drafting the plan failed to update relevant notes throughout the plan -- all of which will be highlighted as issues during this Thursday's TRC.

Re: the 30' buffer -- Staff will be asking them to better label it on the plan. All structures appear to adhere to the buffer requirements, although staff will be seeking clarification on the apparent pavement impacts to the 30' buffer to the west of the parcel.

Re: the driveway of the existing single-fam home -- I had the same thought when this revision was submitted. It turns out that the driveway already exists and simply was not included on the original plan set because alternative parking for the existing structure was proposed, which has now been scrapped, necessitating showing parking for the existing single-fam home on the revised plan set. Regarding this driveway's compliance with sight distances and drainage, as the driveway is existing, there are no grounds for the City to require it to meet current standards.

As to the parking for the new structures, there are indeed 12 new spaces being proposed, with each unit being provided two parking spaces per, which is shown on the plan. I don't believe there is any plan to assign parking spaces for this project.

Finally, regarding the communal fireplace, I don't believe there are municipal rules governing open fires, rather, all such regulations are codified and enforced through the NH Division of Forests & Lands, through which burn permits are issued.

[Quoted text hidden]

[Quoted text hidden]

 3. 103 Court Street TRC Response Ltr #2.pdf
3052K

Paul Crouser states staff will clarify 30-foot buffer. There is no statement that 30-foot buffer does not apply for the updated project plan which was on the December 10th meeting agenda.

G. Residential performance standards.
[Amended 8-22-2018 by Ord. No. 2018.08.08-009]

- (1) Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve open space within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development and coordinated with the Conservation Commission. This cost shall become the value at which development rights may be purchased.
- (2) Proceeds from the purchase of development rights shall be placed into the Conservation Fund to be used to purchase future property or easements, or monitor easements, and not into the general fund.
- (3) A residential transfer of development rights applicant may pursue one of the following methods for transferring development rights.
 - (a) Single-family detached method.

- [1] An applicant shall develop a baseline yield for the lot to be developed through the following formula:
[Amended 10-13-2021 by Ord. No. 2021.09.08-006]

- [a] The square footage of the parent lot minus unsuitable areas is the base lot size.
- [b] The base lot size is then reduced by 15% to account for roadway; this creates the net area.
- [c] The net area is then multiplied by a factor determined by the amount of unsuitable development area over the parent lot. This is the developable area.

Percentage of Parcel That Is Unsuitable Development Area	Factor
0% to < 10%	0.85
10% to < 20%	0.8
20% to < 30%	0.75
30%	0.7

- [d] The developable area is then divided by the minimum lot size, and the whole number value is the base number, with no rounding.
 - [i] This base number is not required to be restricted by the requirements in Subsection G(3)(a)[3], unless the formula defined in Subsection G[2][a] is utilized.
[Amended 7-22-2020 by Ord. No. 2020.07.08-007]
- [e] The development plan shall be laid out in a design that meets the requirements for block length and cul-de-sac length.
[Added 7-22-2020 by Ord. No. 2020.07.08-007]

- [2] The transfer shall equate to one of the following calculations:
[Amended 7-22-2020 by Ord. No. 2020.07.08-007]

- [a] For construction of units no larger than 600 square feet of total living area, including the base calculated units, there shall be no density limit. The monthly cost of said units shall conform to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority, and there shall be no TDR fee collected for said unit(s).
- [b] For construction of units no larger than 1,000 square feet of total living area, two units per development right purchased shall be allowed.
- [c] For construction of units no larger than 1,400 square feet of total living area, one unit per development right purchased shall be allowed. The unit count shall be the whole number value and not rounded up.
 - [i] Total living area shall mean the size of the home (in square feet) based upon the exterior dimensions, excluding unconditioned spaces.

- [3] The units created through the transfer must be:
[Amended 7-22-2020 by Ord. No. 2020.07.08-007]

- [a] Limited to the square footage originally constructed.

- [4] A note shall be placed on the approved plan, and any building permit shall note the adherence to this section of the Code.

- [5] A note shall be placed in the property/unit deed citing the restrictions listed above.

- [6] The plan shall be considered a subdivision application. Prior to submission, a determination by the Director of Planning and Community Development shall be made whether to follow the minor or major subdivision regulations.
[Added 7-22-2020 by Ord. No. 2020.07.08-007]

**From Applicant Plan:
Formula in this section**

TDR BASE DENSITY CALCULATIONS

TOTAL AREA	=	52,241 SQ.FT.
LESS WETLANDS	=	<0> SQ.FT.
UPLAND AREA	=	52,241 SQ.FT.
LESS ROAD ALLOCATION (15%)	=	<7,836> SQ.FT.
NET AREA	=	44,405 SQ.FT.
LESS WETLAND FACTOR FOR 0% WETLANDS (85%)	=	<6,661> SQ.FT.
AREA	=	37,744 SQ.FT.
12,000 SQ.FT. PER UNIT REQUIRED IN THE R-12 DISTRICT	÷	12,000
BASE TDR DENSITY	=	3.14 UNITS
ROUNDED DOWN TO	=	3 UNITS

G. Residential performance standards.

[Amended 8-22-2018 by Ord. No. 2018.08.08-009]

- (1) Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve open space within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development and coordinated with the Conservation Commission. This cost shall become the value at which development rights may be purchased.
- (2) Proceeds from the purchase of development rights shall be placed into the Conservation Fund to be used to purchase future property or easements, or monitor easements, and not into the general fund.
- (3) A residential transfer of development rights applicant may pursue one of the following methods for transferring development rights.
 - (a) Single-family detached method.

- [1] An applicant shall develop a baseline yield for the lot to be developed through the following formula:

[Amended 10-13-2021 by Ord. No. 2021.09.08-006]

- [a] The square footage of the parent lot minus unsuitable areas is the base lot size.

Parent Lot in the base density formula is clearly the same area identified in the Parent Parcel for the buffer.

(8)(d) 'No relief caused by additional density' has nothing to do with environmental or other wetland only concerns – any relief.

- (4) Regardless of the method utilized, the minimum lot size requirement may be waived by the Planning Board for land subjected to the transfer of development rights.

- (5) Regardless of the method utilized, the setbacks shall be:

[Amended 7-22-2020 by Ord. No. 2020.07.08-007]

Minimum Building Setbacks for Subdivision Lots		
Abutting a Street	Abutting a Side Lot Line	Abutting a Rear Lot Line
20 feet	10 feet	30 feet

- (6) Regardless of the method utilized, the minimum frontage requirement may be waived by the Planning Board, to no less than 40 feet. Paved access to all developed areas shall be suitable for emergency vehicles.

[Amended 7-22-2020 by Ord. No. 2020.07.08-007]

- (7) A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer.

[Amended 7-22-2020 by Ord. No. 2020.07.08-007]

- (8) Regardless of the method utilized, any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity meets the following criteria and a narrative is submitted indicating how those criteria are met:

[Amended 7-22-2020 by Ord. No. 2020.07.08-007; 8-9-2023 by Ord. No. 2023.07.12-008]

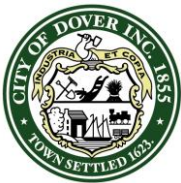
- (a) Is consistent with the Master Plan.

- (b) Is compatible with the land uses on neighboring lots (e.g., a multifamily building fits in within a single-family neighborhood). The applicant shall provide in their narrative an explanation of their neighborhood analysis.

- (c) Is created on property served by public water and sanitary sewer.

- (d) Any relief sought should not be caused by the additional density.^[1]

[1] Editor's Note: Original § 170-27.2H of the 2013 Code, Conditional uses, which immediately followed this subsection, was repealed 8-22-2018 by Ord. No. 2018.08.08-009.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

Members Present: Gina Cruikshank (Chair), Ken Mavrogeorge, Tom Clark, Melina Gambino, Doug Glennon, George DeBoer, Kyle Pimental, Dennis Shanahan (Deputy Mayor), and Jeff Sanborn (Alternate)

Members Not Present (excused): Fergus Cullen (Councilor), Mallory Strange (Alternate)

Staff Present: Donna Benton, Planning Director

Gina Cruikshank (Chair) called the meeting to order at 7 p.m. and noted that Deputy Mayor Shanahan would be sitting in for Councilor Cullen, G. DeBoer will Vice Chair and J. Sanborn will sit for the vacant seat.

1. CITIZENS' FORUM

The Chair explained the Citizens' Forum process.

Citizens Forum Opened

Rory Wilkie, 566 Sixth St addressed his concerns and opinions about the TDR program.

Hilary Hamer, 91 Court St, asks for a redesign of the TDR language with stricter guidelines and adjustments to the timeline for public input to projects.

Ed Neister, 574 Sixth st commented on TDR and sent some examples to the Board ahead of time. He suggested an acre to acre comparison rather than a financial criteria.

D. Benton noted two emails were received from additional residents with concerns about the TDR program.

Eric Salovitch, 239 Long Hill Rd, Licensed Land Surveyor offered his services if the language of TDR is going to be rewritten.

Ken Durell, 508 Sixth St is concerned about TDR. He is against the proposal at 566 Sixth St.

Citizens Forum Closed

2. APPROVAL OF THE PRIOR MINUTES

- November 12, 2024 Regular Meeting Minutes

Motion: D. Shanahan moved to approve the regular meeting minutes of November 12, 2024 as submitted.

Seconded by: D. Glennon. Vote: U/A

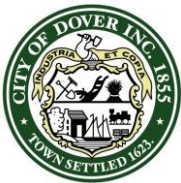
3. OLD BUSINESS

None

4. NEW BUSINESS

- A. Consideration and acceptance of a Site Plan for the City of Dover, Assessor's Map 9, Lot 57, zoned CBD-M, located at 73 Locust Street. (Proposal is for a 3,539 s.f. expansion to the library that includes accessibility improvements and a new elevator, stairway, and restrooms.) *(SITE-2024-0017)

D. Benton explained that the City of Dover, as the applicant, is proposing a ±3,539 square foot expansion to the south side of the Dover Public Library that includes accessibility improvements and a new elevator, stairway, and restrooms. A new entry vestibule from the parking lot will be constructed as part of this expansion and a new meeting room will be constructed on the top floor. These alterations and additions have been identified as needed improvements to better serve patrons at the library. Three waivers have also been requested as part of this proposal for relief from requirements for a landscape plan, neighborhood plan, and outdoor lighting plan.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

The Technical Review Committee reviewed the application at their December 5, 2024 meeting.

K. Mavrogeorge recused himself from the item.

Eric Sanderson, City of Dover Facilities Manager, represented the application and explained the request. He answered questions from the Board relating to size of additional square footage added (3,500sf).

Motion: M. Gambino moved to accept the application and declared no regional impact. Seconded by: G. DeBoer. Vote: U/A

Public hearing opened.

Margarat Hanlan, 51 Augusta Way asked if any changes are proposed to the existing portion of the library.

Public hearing closed.

Mr. Sanderson addressed public comment:

- None of the woodwork will be removed- some will be refinished. The job is mostly a paint and patch job.

K. Pimental asked if there were any design considerations to maintain the Carnegie status.

Mr. Sanderson noted the original portion has not changed except for the elevator. They are trying to match the existing library exterior. The rear portion has a glass floor (currently covered by carpet) which is planned to have a portion uncovered.

STAFF RECOMMENDATION - Waivers/Relief:

§153-21 of the Site Plan Review Regulations state the “Planning Board may waive specific provisions of these regulations. The Planning Board may only grant a waiver if the Planning Board finds, by majority vote, that:

- (1) Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; or
- (2) Specific circumstances relative to the subdivision, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.”

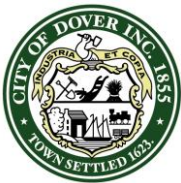
Planning Staff believes the applicant’s rational for the waivers meets criterion (2) and waiving such standards and requirements will properly carry out the spirit and intent of the regulations.

The Planning Department recommends that the Planning Board make the necessary and supporting findings of fact, and vote to grant the waiver with the following non-binding subsequent condition:

Subsequent Condition to be Met Prior to the Signing of the Plans:

1. Add a note that the Planning Board found the criteria of Chapter 153-21 have been met and the Board approved the following waivers:
§153-13.A (12) Landscape plan
§153-13.A (16) Neighborhood plan
§153-14.E Outdoor lighting plan

Motion: D. Glennon moved to grant the waiver requests with the subsequent conditions set by staff as it meets criteria for relief. Seconded by: D. Shanahan. Vote: U/A



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

STAFF RECOMMENDATION- Site Plan:

Chapter 153-13 outlines Site development plan requirements. This plan meets those standards outlined. Therefore, the Planning Department recommends that the Planning Board make the necessary and supporting findings of fact, and vote to approve the Site Plan with the following subsequent conditions:

Subsequent Condition to be Met Prior to the Signing of the Plans:

1. Add owner's signatures;
2. Add professional stamps and signature;
3. Submit final plans (including CAD) with owner's signature and all professional stamps and signatures;
4. Add note to display total number of parking spaces that will be removed;
5. Provide amended plans and response to Technical Review Committee comments.

Subsequent Condition to be Met Prior to Construction:

6. A site construction sign with the contact information for the general contractor be displayed in a location approved by the City Engineer or Planning Director;

Subsequent Condition to Be Met Prior to Building Permit:

7. Payment of Water and Sewer Investment Fees if applicable at time or request of service;

Subsequent Conditions to Be Met Prior to Occupancy:

8. Issuance of Certificate of Occupancy;
9. Design engineer to submit a construction certification letter to the City ensuring construction was completed in accordance with the plans and specifications approved by the City of Dover.

Motion: M. Gambino moved to approve the Site Plan with subsequent conditions set by staff as it meets criteria. Seconded by: D. Shanahan. Vote: U/A

B. Consideration and acceptance of a Lot Line Adjustment for Robert S. Mairs Revocable Trust, George Maglaras & Robert S. Mairs Trustee, & George Maglaras, Assessor's Map 24, Lots 141, 140 & 139, zoned CWD, located at 5, 11, and 31 Cocheco Street. *(LOTA-2024-0013)

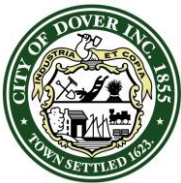
This item has requested a continuation to the January 28, 2024 Planning Board meeting.

C. Consideration and acceptance of a Lot Line Adjustment for Northam Survey, LLC (Owners: Gasses Farm Revocable Trust 2009 and Portsmouth Christian Academy), Assessor's Map J, Lots 1 & 1-C, zoned R-40, located at 120 Garrison Road and 20 Seaborne Drive. *(LOTA-2024-0014)

D. Benton explained that the applicant is proposing a lot line adjustment to revise the lot lines between abutting properties located at 120 Garrison Rd. and 20 Seaborne Dr. adding approximately 11.4 acres to 20 Seaborne Dr. from 120 Garrison Rd. For both lots, frontage and compliance with the underlying R-40 zoning regulations will remain the same.

As a Lot Line Adjustment, this application did not appear before the TRC.

Eric Salovitch, Northam Survey represented the application and explained the request for the lot line revision. He explained the history of the lots through this process. He addressed some of the staff memo comments which will be fixed.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

Motion: T. Clark moved to accept the application and declared no regional impact. Seconded by: G. DeBoer.
Vote: U/A

Public hearing opened.

One email was received from 65 Bellamy Woods asked if there were plans for building on the property which staff addressed with the resident.

Public hearing closed.

STAFF RECOMMENDATION- Lot Line Adjustment:

Chapter 157-17 of the Land Subdivision Regulations of the City Code provides for the adjustment of existing lot lines between two or more lots. This plan is consistent with those regulations.

The Planning Department recommends the Planning Board make findings, and vote to approve the application with the following subsequent conditions:

Subsequent Conditions to Be Met Prior to Signing of Plans:

1. Provide physical and digital copies (including CAD) of complete plan set for recording at Strafford County Registry of Deeds which additionally shall include:
 - 1.1. Planning File Number #LOTA-2024-0014
 - 1.2. The owner's signatures
 - 1.3. The LLS stamp and signature
 - 1.4. Move Planning Board approval area to lower right hand corner.

Motion: G. DeBoer moved to approve the Lot Line Adjustment with conditions as it is consistent with regulations. Seconded by J. Sanborn. Vote: U/A.

D. Consideration and acceptance of a Lot Line Adjustment for The Roberts Family Revocable Living Trust and Philip H. & Brenda L. Bennett, Assessor's Map I, Lots 74-G & 1-B, zoned R-12, located at 81 and 87 Garrison Road. *(LOTA-2024-0015)

D. Benton explained that the applicant is proposing a lot line adjustment to revise the lot lines between abutting properties located at 81 Garrison Rd. and 87 Garrison Rd. adding approximately 5,323 square feet to 81 Garrison Rd. from 87 Garrison Rd. For both lots, frontage and compliance with the underlying R-12 zoning regulations will remain the same.

As a Lot Line Adjustment, this application did not appear before the TRC.

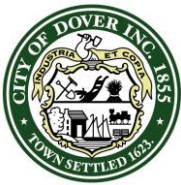
Brenda Kolbow, TF Moran represented the application and explained the request for the lot line revision.

Motion: M. Gambino moved to accept the application and declared no regional impact. Seconded by: T. Clark. Vote: U/A

Public hearing opened.

No one spoke

Public hearing closed.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

STAFF RECOMMENDATION- Lot Line Adjustment:

Chapter 157-17 of the Land Subdivision Regulations of the City Code provides for the adjustment of existing lot lines between two or more lots. This plan is consistent with those regulations.

The Planning Department recommends the Planning Board make findings, and vote to approve the application with the following subsequent conditions:

Subsequent Conditions to Be Met Prior to Signing of Plans:

1. Provide physical and digital copies (including CAD) of complete plan set for recording at Strafford County Registry of Deeds which additionally shall include:
 - 1.1. Planning File Number #LOTA-2024-0015
 - 1.2. The owner's signatures
 - 1.3. The LLS stamp and signature
 - 1.4. Remove City of Dover signature box and replace with 2x2" blank area in lower right corner.

Motion: K. Pimental moved to approve the Lot Line Adjustment subject to conditions set forth by staff as it is consistent with regulations. Seconded by G. DeBoer. Vote: U/A

- E. Consideration and acceptance of an Amendment to the Conditions of Approval for 54 BRR, LLC, Assessor's Map I, Lot 6, zoned R-12, located at 54 Back River Road. (Proposal is a request to waive the condition of impact fees associated with previously approved plans, P20-60) *(WAIV-2024-0020)

D. Benton explained that on March 9, 2021, the Board approved a TDR Site Plan (P20-60) for 44 single-family units, rent-restricted at the HUD Fair Market Rental Rate. The site has been under construction and many of the units occupied. The Applicant now requests the removal of Condition of Approval #9, to waive the remaining impact fees associated with the approved project or for another option satisfactory to the Planning Board whether it be a payment in lieu or a payment plan.

John Randolph, owner 54 Back River Rd LLC represented the application and explained the request for reduction or removal of impact fees. The applicant has paid \$67,000 in fees for this project. The units are locked in as affordable housing in perpetuity. He gave additional financial information. There is a recreational path to the river that can be opened to the public and they request the recreational impact fees be waived. The project currently does not house any school-aged children and they ask the school impact fees be waived.

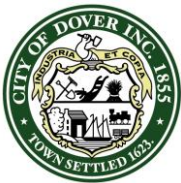
Mr. Randolph answered questions from the board clarifying there are \$120,000 in fees still owed, all units have been built, applicant is not asking for a refund of fees paid, just waiving of unpaid fees and or extended time to pay. Additional financial information given. Clarification given about ownership status of the project.

Motion: T. Clark moved to accept the application and declared no regional impact. Seconded by: G. DeBoer. Vote: U/A

Public hearing opened.

Matthew Smith, 57 Back River Rd is concerned about setting a precedent and how it will affect residential taxes. He has never been in favor of this project and not in favor of the ongoing development in that area. He listed his concerns due to the overdevelopment.

Public hearing closed.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

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Meeting Time: **7:00 pm**

D. Benton explained a recent decision of the Planning Board related to setting the impact fees to \$0 moving forward from July 1, 2024. This applicant doesn't meet that timeline, but is a unique project based on who and how the housing is served. She clarified for the board what it was they voted on regarding the impact fees when asked.

D. Shanahan gave comments in favor of the request and his reasons.

T. Clark noted for this project, the rent rates are capped and unable to be raised. He supports the request.

G. DeBoer noted we need to keep precedence in mind and clarify what our criteria is for these requests, which will be coming.

K. Mavrogeorge agreed to caution against precedence. Extending the timeline is the reasonable request in this instance. There are some impacts to the City, including Police and Fire and there do seem to be some children in that neighborhood.

J. Sanborn clarified the lack of impact fees does not fall to the taxpayers to cover. It is a waiving of a fee for a particular project with great positive impact.

K. Pimental noted this is a great project and model for others to look to. He agrees to extend the payments out over time rather than waiving them since it was approved several years before the impact fees were changed.

Motion: G. DeBoer moved to table the request indefinitely for the staff to work with the applicant to restructure a payment plan. Seconded by K. Mavrogeorge. Vote: 6-3 with Shanahan, Sanborn and Clark opposed.

F. Consideration and acceptance of a Conditional Use Permit for Michael & Shelby Brewer, Assessor's Map 32, Lot 36-F, zoned R-12, located at 77 Fourth Street. (Proposal is to construct a garage and modify the paved areas to have 1,467 $\pm$ s.f. of permanent impacts to the 50-foot wetland buffer and 756 $\pm$ s.f. of temporary buffer impacts.) *(COND-2024-0031)

D. Benton explained that the applicant is proposing modifications to the existing single-family dwelling that includes the construction of a deck, garage, and breezeway and modifications to the driveway pavement resulting in 1,467 square feet of permanent impacts to the 50-foot wetland buffer and 756 square feet of temporary buffer impacts. There are no direct wetland impacts.

The project was reviewed and endorsed by Conservation Commission at their meeting on December 9, 2024 with no conditions.

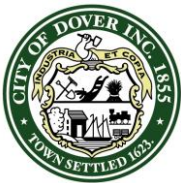
Kevin McEneaney, McEneaney Survey/CivilWorks represented the application and explained the request to add an ADU to the property and the building changes needed to incorporate that project.

Motion: D. Glennon moved to accept the application and declared no regional impact. Seconded by: T. Clark. Vote: U/A

Public hearing opened.

No one spoke

Public hearing closed.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

STAFF RECOMMENDATION- Conditional Use Permit

The Wetlands Protection District ordinance §170.28.F provides for Conditional Use Permits to allow impacts to the Wetlands Protection District if standards related to demonstration that no practicable alternative is available, impact avoidance was considered, impacts were minimized, mitigation has been sought, and approval of the wetlands impact from NHDES Wetlands Bureau has been granted.

Planning Staff feels that the applicant considered and met all of the criteria as specified in §170-28.F per their narrative. The proposal minimizes wetland buffer impacts and avoids direct wetland impacts. The proposed project does not require state mitigation or NHDES review, and the project has been endorsed by the Conservation Commission.

The Planning Department recommends the Planning Board make the necessary and supporting findings of fact, and to approve the Conditional Use Permit with no conditions.

Motion: T. Clark moved to approve the Conditional Use Permit subject to conditions set forth by the Planning Director as it meets the standards outlined. Seconded by G. DeBoer. Vote: U/A

The Chair announced Items 4G & H would be heard together.

G. Consideration and acceptance of Transfer of Development Rights for 5 Sherman Street, LLC, Assessor's Map 19, Lot 8, zoned R-12, located at 103 Court Street. (Proposal is to purchase four (4) units through TDR.) *(TRAN-2024-0011)

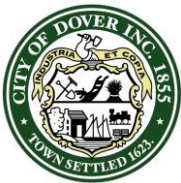
H. Consideration and acceptance of Site Review for 5 Sherman Street, LLC, Assessor's Map 19, Lot 8, zoned R-12, located at 103 Court Street. (Proposal is to maintain an existing single-family dwelling, construct a two-family dwelling that is deed-restricted to Fair Market Rent, and construct four (4) new size-restricted single-family homes for a total of seven (7) dwelling units. *(SITE-2024-0012)

D. Benton explained that the applicant is proposing a residential project consisting of seven (7) residential units by purchasing four (4) units through TDR. The proposal includes reconstruction of the existing single-family dwelling and the construction of a duplex and four (4) size-restricted, single-family cottages. The existing lot, Assessor's Map 19, Lot 8, contains one single-family dwelling. The current Zoning Ordinance permits the use of the Transfer of Development Rights ordinance (TDR) in the R-12 zone, but specifies that applicants must utilize the single-family yield plan method, or otherwise construct *only* duplexes if the two-family yield calculation is used. As the applicant proposes a mixture of unit counts, the single-family yield calculation is used, which given the subject lot's physical characteristics, results in a base density calculation of three (3) units. This, therefore, means that the remaining four (4) sought units could be granted if the Planning Board votes to approve the use of TDR.

Per the applicant's plan, both units within the duplex, although not required, are proposed to be restricted to the applicable HUD Fair Market Rental rate, with the four (4) cottages being size-restricted to no more than 1,400 s.f. The units purchased through TDR include the two duplex units, and two of the size restricted cottages.

The Technical Review Committee reviewed the application at their September 6 and 26, 2024 and November 7, 2024. meetings. (*minutes attached to the board packet*)

Robert Baldwin represented the application and explained the request explaining they are not looking for approvals tonight, but instead to hear the project and provide feedback so they can come up with an appropriate design.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

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He explained the existing situation and the proposed plan. Initially there were 9 units proposed which has been minimized through the TRC process.

He explained the restricted rent units proposed and some additional building details for the variety of units along with the layout for the buildings on the lot.

For the board, he clarified the buffer areas, setbacks, landscape and fence shielding.

K. Mavrogeorge gave some feedback on the site layout. M. Gambino and D. Benton clarified information about the additional development going onto the abutting lot.

Additional discussion with the applicant continued regarding drainage, driveway location, rent/sale options, density: allowed vs requested. Board members gave their opinions on the density request.

The applicant suggested a site walk and the board was in favor.

Motion: G. DeBoer moved to accept the applications and declared no regional impact. Seconded by: J. Sanborn. Vote: U/A

Public hearing opened.

Matthew Teece, 85 Court St mentioned a subdivision that occurred across the street at 102 and 106 Court st as well as another development. These were well thought out and single family units that fit with the neighborhood. This proposal brings concerns for him for density, water/impervious surfaces proposed, and having renters in the neighborhood.

Ed Neister, 574 Sixth St is concerned about losing the buffer zone if this passes, contractors getting TDRs by purchasing units, this parcel becoming a blight due to the density. Does not believe anyone would want to live there or next to this.

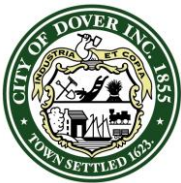
Rory Wilkie, 568 Sixth St spoke in opposition to the proposal due to density, lot size and buffers. Requests the applicant come back with a plan that meets the TDR regulations.

Merlin Mason, 91 Court St, expressed concerns about the proposal not meeting the 30' buffer abutting his lot.

Hilary Hamer, 91 Court St, expressed concerns about the proposal not meeting the 30' buffer abutting her lot. She played an audio clip from a TRC meeting on the project. She stated the property was not available to all buyers on the open market. Expressed concerns about this project getting this far in the process while not meeting the regulations, disagreed with the lot line measurements given, construction concerns about the old home vs the new construction, and abutting cemetery as inaccurate transition zone.

Dorna Hamer, 18 Tuttle Ln spoke in opposition to the proposal itemizing the restrictions to parcels abutting cemeteries. She noted this project should be subject to open space subdivision requirements. The plans presented are not complete and do not show buffers that should be adhered to. She requested the public hearing remain open tonight if applicable so additional comments can be received at the next meeting.

Kevin McEneaney, 109 Court St noted the key information being sought by abutters tonight relates to the 30-foot no cut, no disturb buffer. If that applies and there is no relief that can be sought because of the increased density, that's the key point the board should consider before moving forward. A fourth unit seems reasonable. He mentioned the rental, sales, and condominium options and consequences. He also requested the public hearing remain open for the next meeting.



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Lisa O’Grady, 100 Court St described her parcel and the abutting subdivision that affected her (deeded easement from 102 Court St). Occupancy was granted without the conditions of the subdivision being met. She is additionally concerned about drainage which causes pooling on her parcel. The proposal will ruin the historical nature of the existing structure. She is against the proposed density.

Public hearing tabled.

D. Benton noted the emails received have been given to the board for review and can be addressed at the next public hearing.

She addressed public comment:

- No TDR fees are paid until after approval
- TRC had comments during that process which haven’t been addressed yet as this is not before the board for approval tonight- only for feedback
- Staff has a list of requests that would still need to be addressed
- Staff knows of that have not needed the TDR buffer since they didn’t create new lot lines. She can provide to the board if requested and projects that have gotten relief for the buffers.
- “no relief can be sought” language was added by a member of the planning board in relation to environmental CUPs or similar, not about the TDR buffer or requirements.
- She agrees there should be as much screening, back yard and buffer as possible, even if that results in a reduction of units. A site walk will be beneficial for that.
- TDR requests are reviewed individually, and do not set precedence for future requests on other parcels.
- Agrees with cemetery buffer concerns
- This would be a private road which not be plowed by the City.
- Staff and the Chair addressed TDR regulations and the TRC and Planning Board process in relation to this request.

The applicant addressed public comment:

- Comparisons to the development next door

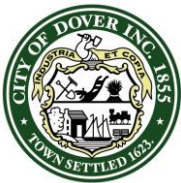
Fair market vs HUD rate was clarified by staff.

The applicant addressed the comments regarding the 30-foot no-cut no-disturbance buffer noting his understanding is that any use would require the waiver from the 30-foot buffer, even the current use. K. Mavrogeorge asked to see a yield plan showing the alternative described with three units on the lot allowable by right. The applicant described the alternative would look like a three-story townhouse with garage under and that’s not what he hopes to put on this lot. He believes a lower scale project with increased screening and encroachment to the buffer is a preferred option.

K. Pimental asked if the 30-foot buffer even applies to this proposal if it is a site plan/ condo without lot lines. This is what Mr. McEneaney was asking. Staff agreed that in these instances, the City’s position is that the buffer would not apply, though staff would like to see more screening.

The 25’ boundary to the cemetery was not on the plans, but will be added as the project moves forward.

D. Benton explained further details about when the 30’ buffer restriction has and has not been utilized in similar projects. D. Shanahan asked for additional clarification.



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The board discussed a date and time for a site visit: Saturday January 11th, 2025 at 9am
The board would like the buffers, corners of the house, driveway location, 25' buffer from cemetery staked out for the site visit.

Motion: G. DeBoer moved to continue both items to January 28, 2025. Seconded by: K. Mavrogeorge.
Vote U/A.

The Chair announced Items 4I & J would be heard together.

- I. Consideration and acceptance of Transfer of Development Rights for Fergus and Jennifer Cullen, Assessor's Map B, Lot 4-F, zoned R-40, located at 566 Sixth Street. (Proposal is to purchase two (2) non-restricted units through TDR for a total of three (3) units.) *(TRAN-2024-0015)
- J. Consideration and acceptance of a Minor Subdivision for Fergus and Jennifer Cullen, Assessor's Map B, Lot 4-F, zoned R-40, located at 566 Sixth Street. (Proposal is for a minor subdivision creating two (2) new lots for a total of three (3) lots.) *(SUBM-2024-0006)

D. Benton explained that the applicant is proposing a project for three residential units by purchasing two units through TDR. The proposal includes maintaining the existing single-family dwelling and the construction of two, single-family dwellings. The single-family dwellings are not proposed to be size- or HUD-restricted.

A Minor Subdivision is being proposed as part of this project (SUBM-2024-0006) to subdivide the existing lot into three lots. The proposed lots, (4-F, 4-F-1, and 4-F-2), are shown as each having approximately 0.45± acres. As the applicant is utilizing the TDR ordinance, relief for lot size, frontage, setbacks, density and intensity may be provided.

The applicant has made prior, differing requests for increased units on the subject property. These previous applications were reviewed by the Technical Review Committee. A review for this application by the Technical Review Committee was not conducted as it is not required for Minor Subdivisions.

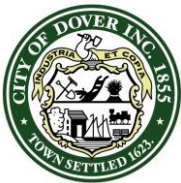
Steve Haight, CivilWorks NE, represented the applications and explained the request for minor subdivision of the single lot into three lots- each of which will have a single-family home and maintain the 30-foot buffer along with meeting all setback restrictions in the R40 zone. Water and sewer will come off Sixth St. The proposed lots meet the character of the neighborhood. Each new home will have it's own driveway per the plans shown.

He answered questions from the board relating to square footages of homes.

Motion: T. Clark moved to accept the applications and declared no regional impact. Seconded by: M. Gambino. Vote: U/A

Public hearing opened.

Hillary Hamer, 91 Court St, requested the Board deny any request by a property owner who has an open appeal on the same parcel such as this one. Tax revenue should not be a motivation for TDR approval as listed in the application. She does not believe the project is suitable for the parcel even with the deed restrictions to prevent the structures becoming duplexes. These two additional units are not needed based on the many additional units coming online that she listed. She doesn't agree that these TDR applications don't set precedence. She asked the board to comment on the open appeal.



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Amelia Trapp, 14 Pierce St is in opposition to the proposal since it is a conflict of interest as the owner is a City Councilor on the Planning Board.

Ed Neister, 574 Sixth St is opposed to the project. The area is nice now for the abutters, but the proposal will ruin that. He is concerned about parking, density, too many families on one site, public officials should not trade on inside information. Additional concerns are the topography, potential for accidents, additional children and quality of life for the abutters.

Michael Ortlieb, 560 Sixth St discussed the R-40 zone should be for single-family homes with optional ADU. This proposal doesn't belong in this zone.

Rory Wilkie, 568 Sixth St spoke for himself and his wife. He is a direct abutter and opposes the proposal. He speaks for others in the area. The application is only signed by one owner of the property, not both, so why is it before the Board. He believes this plan proposed is no different than the previous plan and that the applicant will add the duplexes without approvals. He discussed the appeal of the Planning Board decision of an initial denial of the applicant's plans. He requests a deed restriction be filed confirming the units will not be converted into duplexes for 20 years. He agreed with the Board's denial decision in October. These units will not be affordable. The lot has been clear cut before development was approved.

D. Benton itemized the emails received in opposition to the proposal. These are all part of the record.

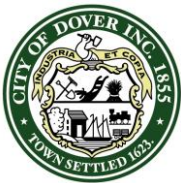
The applicant addressed public comment:

Eli Leino, Attorney Bernstein Shur representative for the applicants

- Strick timelines for appeals must be followed
- This was determined at TRC to be too dense with 5 units, so they have come before the board with 3 units
- Not fair to say these proposed units aren't attainable, when the proposal for smaller units was filtered out through the process
- Tax revenue is not a criteria- the application meets the four TDR criteria- tax revenue is an added bonus
- Adding units is in line with the master plan
- Conflict of interest: a property owner who volunteers their time on City boards is allowed to come before the Planning Board.
- The dilapidated property could have been bought by anyone and has been renovated by the applicant.
- Traffic increase is minimal for two additional units
- Commented on the letter sent in by the Attorney

S. Haight, CivilWorks NE

- Confirmed the buffers
- This proposal minimizes parking and traffic issues
- Current intent is to sell the properties (each SFH and would need to come back to PB for any change to duplex)



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Board members asked for clarification on the following and discussion ensued:

Smaller square footage for a more attainable home, additional plantings requested, style and square footage of the proposed homes, current proposal smaller square footage than first proposal, procedures relating to the outstanding appeal, both owners are aware of the proposal and will sign if approved.

Public hearing closed.

STAFF RECOMMENDATION - TDR

§170-28 provides for additional density to be purchased through Transfer of Development Rights. This application meets the ordinance.

Section 170.28G(8) states:

“Regardless of the method utilized, any other provision in this Chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the TRANSFER OF DEVELOPMENT RIGHTS so long as the increase in density or intensity meets the following criteria and a narrative is submitted indicating how those criteria are met:

- (a) Is consistent with the Master Plan*
- (b) Is compatible with the land uses on neighboring LOTs (eg a multifamily building fits in with in a single family neighborhood). The applicant shall provide in their narrative an explanation of their neighborhood analysis.*
- (c) Is created on property served by public water and sanitary sewer.*
- (d) Any relief sought should not be caused by the additional density.”*

The Planning Department recommends that the Planning Board make the necessary and supporting findings of fact, and vote to find the criteria of the TDR ordinance has been met with the following subsequent conditions:

Subsequent Conditions to be Met Prior to Granting TDR:

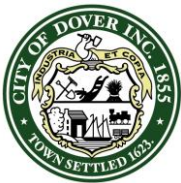
1. Conditional approval of SUBM-2024-0006;
2. Payment of TDR fees;
3. Add note to plat: “This subdivision uses the Transfer of Development Rights ordinance which allows for relief to the setbacks, lot area, frontage, density and intensity of the development. The Board granted TDR relief to purchase two units for a total of three units between the three proposed lots. The existing single-family unit and the proposed single-family dwellings may not be converted to a duplex without further review and approval by the Planning Board;”
4. The applicant provide a revised narrative included the latest TDR ordinance section and all four criteria.
5. Additional landscaping (ie 6’ white spruce or similar) to be planted along northern and southern buffer.
6. Both owners sign the plat

Motion: K. Pimental moved to grant the Transfer of Development Rights request based on the comments and conditions set by the Planning Dept. Seconded by: K. Mavrogeorge. Vote: U/A

STAFF RECOMMENDATION – Minor Subdivision

The plan is consistent with §157-17 of the City of Dover’s Land Subdivision Regulations, which provides for subdivision of existing lots.

The Planning Department recommends the Planning Board make findings, and vote to approve the application with the following subsequent conditions:



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Subsequent Conditions to be Met Prior to Signing of Plans:

1. Approval of TRAN-2024-0015;
2. Provide physical and digital copies (including CAD) of complete plan set which additionally shall include:
 - 2.1. Signature and stamp of PE, LLS.
 - 2.2. The owners' signatures for recording at Strafford County Registry of Deeds
 - 2.3. Add where future treeline will be or if existing, show existing treeline and remove treeline currently shown on plan.
 - 2.4. Add note about no-cut buffer placards to be installed.
 - 2.5. Add note that no sump pumps or roof leaders will be tied to the public sewer.
 - 2.6. Revise sewer lines to be off Sixth Street for two new units.
 - 2.7. Add note about addressing as assigned by the Building Official.
 - 2.8. Revise lot numbering to what the City Assessor assigns.

Subsequent Condition to be Met Prior to Water and Sewer Service Tie In:

3. Payment of water and sewer investment fees.

Subsequent Conditions to be Met Prior to Occupancy:

4. Certificate of Occupancy.
5. Buffer placards shall be in place or if damaged during construction replaced.

Motion: M. Gambino moved to approve the Minor Subdivision with conditions detailed by staff as it meets the criteria of 157. Seconded by K. Mavrogeorge. Vote: U/A

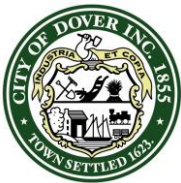
K. Discussion and possible posting of a Citizens Petition for a Zoning Amendment to rezone a portion of Map K, lot 6 on Middle Road from R-40 to IT *(WAIV-2024-0021)

D. Benton explained that the applicant is proposing an amendment to the City's Zoning Ordinance, Chapter 170, to rezone a portion of his parcel located at 105 Middle Rd. The subject parcel is 66 acres in area, divided by Middle Road, with 48 acres to the north of Middle Road, and 18 acres to the south. The lot is currently zoned R-40 and contains no structures or dwelling units.

The applicant requests that the area of their lot to the south of Middle Road, (approximately 18 acres), be rezoned into the Innovative Technology (IT) District, asserting that given the lot's location within the City, that the uses within the IT are more consistent with the City's Master Plan than that of the R-40 zone and the area's abutting development.

The proposed rezoning area abuts the IT zone but is uniquely surrounded by residential development. The applicant references the Teresa Drive subdivision and the Pointe Place development as support for the rezoning request. However, staff notes that the current zoning already allows for additional residential development at 105 Middle Road. While Pointe Place is a mixed-use development, its commercial components are concentrated near Dover Point Road, a major thoroughfare, rather than within residential areas.

Staff is unclear about the applicant's intentions for rezoning to IT and has received opposition from abutting residents. Staff would not recommend the rezoning as proposed as it would leave a small portion of Teresa Drive's property outside the rezoning area. To include this portion, the applicant would need the Teresa



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Drive property owner's consent and a revised Planning Board submission, along with new abutter notices at the applicant's expense.

Craig Williams, 154 Middle Rd represented the application. He explained the sizes of his lots and the history and current status of his lots and zoning changes made to his and surrounding parcels over the years. He described the uses of the abutting parcels. The request is to put the zoning back to the way it used to be. This will allow for mixed use housing in that area rather than larger homes with higher values.

The applicant and staff explained that if the board grants the request for rezoning of Mr. Williams' land, the City requests the sliver of land with Theresa Dr also be rezoned so it is not left on its own island.

The board and staff discussed the timeline of previous zoning changes and whether the change in 2008 went through a review process. Staff can look into that to see if there are meeting minutes or approval documents of record.

Mr. Williams answered questions from the board relating to his reason for this request: meets master plan goals, R-40 zone is not appropriate since it doesn't fit the neighborhood now and to build it out would support upscale homes at higher building costs. He is not a developer, he is a long-time resident who has accumulated land over many years and as a retirement plan would look to sell portions of the land for development of single family homes and/or townhouse style homes.

D. Shanahan commented there is some documentation to look into regarding the zoning change of 2008, and it would be helpful to have a conceptual plan brought forth by the resident petitioner so the board and the residents have a better understanding of the reasoning and plans.

Public hearing opened.

Doug Walsh, 12 Teresa Dr, on behalf of the association's board of directors of Preston Place. The owner has the right to develop the land, as long as planning, zoning and permitting restrictions are met. These abutters feel strongly that any development must be compatible with the existing uses of the abutters. He described the zoning changes and development which created the abutting residential neighborhood. The commercial aspects of this request do not have a place on 18 acres surrounded entirely by single family homes on three sides and Middle Road on the 4th. Most of the categories of IT do not belong here- which he listed several.

Richard Kirk, 8 Teresa Dr, described the surrounding housing communities to the parcel and how that should mean the parcel should have an R zoning designation, regardless of whether it's R-40 or R-12. If the parcel is developed, it should be single family housing to match the surrounding neighborhoods.

D. Benton listed the emails received to the office.

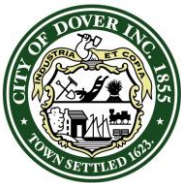
Public hearing closed.

STAFF RECOMMENDATION- Rezoning Request

The Planning Department recommends the Planning Board open the public hearing, make findings, and vote to recommend that Council not grant the rezoning request.

Motion: T. Clark moved to recommend to City Council to not grant the rezoning based on not enough information and a better comprehensive plan needed. Seconded by D. Glennon.

For the applicant, the board noted wanting more information about what is the need for the requested change? What is not allowed now, that would require the change? The City wants to avoid spot-zoning so



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having more information will allow for thoughtful planning for any recommended zoning change. It was clarified that the applicant can still come back to staff / the board with more information.

Vote: 8-1 with G. DeBoer opposed. [Editor's note: Under Member Comments G.DeBoer noted he was confused by the motion and meant to vote differently].

The Chair announced Items 4L & M would be heard together.

L. Consideration and acceptance of a Conditional Use Permit for 210 Tolend Road, LLC, Assessor's Map F, Lot 3, zoned R-40, located at 210 Tolend Road. (Proposal is for a 32-lot subdivision that includes an open space subdivision yield plan that would cause $700\pm$ s.f. of wetland impact and $6,400\pm$ s.f. of impacts to the 50-foot wetland buffer. In order for the yield plan to be considered realistic to calculate the density for an Open Space Subdivision plat, a conceptual CUP is required.) *(COND-2024-0028)

M. Consideration and acceptance of a Waiver Request for 210 Tolend Road, LLC, Assessor's Map F, Lot 3, zoned R-40, located at 210 Tolend Road. (Proposal is to request a waiver from Section 157-32.J, for proposed cul-de-sac of approximately 1,750 feet where 1,000 feet is the maximum required for the yield plan for an Open Space Subdivision.) *(WAIV-2024-0019)

D. Benton explained that the applicant is proposing a conceptual Conditional Use Permit for $700\pm$ square feet of wetland impact and $6,400\pm$ square feet of impacts to the 50-foot wetland buffer. The proposal also includes a conceptual waiver for a cul-de-sac of approximately 1,750 feet where 1,000 feet is the maximum required for an Open Space Subdivision.

To determine allowable density for an Open Space Subdivision, a yield plan must be submitted and determined to be realistic and in compliance with regulations, this may include conceptual conditional use permits and waivers.

The conceptual application is related to a proposed yield plan to allow up to a 32-lot Open Space Subdivision. The wetland and wetland buffer impacts shown on the yield plan are related to a proposed crossing and would need to be reviewed again on subsequent applications related to this project.

The Conservation Commission reviewed and endorsed the application at their October 15, 2024 meeting.

The applicant provided a conceptual Open Space subdivision plat that the development team is considering in case the Board or public are interested. However, the plat has not been submitted for review yet by the Technical Review Committee, Conservation Commission, or Planning Board so full review would still be required for this project and plans may change based upon those reviews.

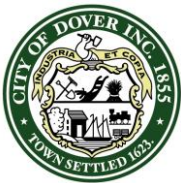
Bob Stowell, Trittech Engineering, represented the application and explained the request for an open space subdivision. The yield plan has been prepared and provided with the wetland crossing. He discussed the various development options and impacts for each option along with the waiver request for the length of cul-de-sac.

Once the yield plan is confirmed they can confirm the density calculation and move forward with the open space subdivision plan. The conceptual plan is provided.

This step is to solidify the yield. Next steps are: engineering design, TRC, Planning Board approval.

The applicant and board discussed the existing gravel road and how that affects the yield.

Motion: T. Clark moved to accept the applications and declared no regional impact. Seconded by: G. DeBoer. Vote: U/A



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Public hearing opened.

Lee LaPierre, 159 Emerald Ln, President of Indian Woods HOA is confused by the differences between the yield plan and the conceptual plan. What is the actual proposal? And what was approved at Conservation Commission?

D. Benton noted an email came in from 201 Tolend Rd in support of the open space conceptual plan.

Mr. Stowell clarified that the yield plan is not the plan of what is to be built. It is used to establish the density of the project so that the subdivision plan can be developed.

Public hearing closed.

STAFF RECOMMENDATION- Conditional Use Permit:

The Wetlands Protection District ordinance §170.28.F provides for Conditional Use Permits to allow impacts to the Wetlands Protection District if standards related to demonstration that no practicable alternative is available, impact avoidance was considered, impacts were minimized, mitigation has been sought, and approval of the wetlands impact from NHDES Wetlands Bureau has been granted.

Planning Staff feels that the applicant considered and met all of the criteria as specified in §170-28.F per their narrative. The proposal minimizes wetland buffer impacts and direct wetland impacts. The proposed project does not require state mitigation, does not require NHDES review at this stage. The project was endorsed and reviewed by the Conservation Commission on October 15th.

The Planning Department recommends the Planning Board make the necessary and supporting findings of fact, and vote on the Conditional Use Permit with the following subsequent conditions, as the plans meet the standards outlined:

Subsequent Conditions to Be Met Prior to Issuance of a Conditional Use Permit:

1. Approval of WAIV-2024-0019.
2. Lot 13 is removed and the yield plan yields 31 total lots.

Staff clarified the reasoning for removal of lot 13.

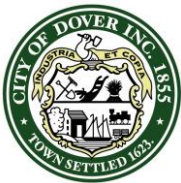
Motion: D. Glennon moved to approve the Conditional Use Permit with the subsequent conditions as it's consistent with regulations. Seconded by T. Clark. Vote: U/A

STAFF RECOMMENDATION- Waivers/Relief:

The Site Plan Review Regulations state the "Planning Board may waive specific provisions of these regulations. The Planning Board may only grant a waiver if the Planning Board finds, by majority vote, that:

- (1) Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; or
- (2) Specific circumstances relative to the subdivision, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations."

Planning Staff believes the applicant's rationale for the waivers meets criterion (1) and waiving such standards and requirements will properly carry out the spirit and intent of the regulations.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, December 10, 2024**
Meeting Time: **7:00 pm**

The Planning Department recommends that the Planning Board make the necessary and supporting findings of fact, and vote to grant the waiver with the following subsequent condition:

Subsequent Condition to Be Met Prior to Issuance of a Waiver:

1. Approval of COND-2024-0028

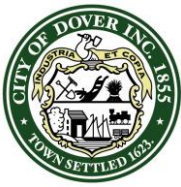
Motion: K. Pimental moved to grant the waiver request with the subsequent condition set by staff as it meets criteria for relief. Seconded by: G. DeBoer. Vote: U/A

5. STAFF COMMENTS

- D. Benton shared that the Board will be reviewing and considering for adoption the updated land use chapter master plan
- Seeking PB member for the Land Use Chapter Master Plan Steering Committee.
- Land Use All Boards Meet and Greet January 14th at 5:30pm.
- TRCs since last meeting:
 - (Nov. 21st) Review of site plan and TDR request for 1 Cold Springs Rd. Proposal is to construct eight single-family homes, a four-unit residential building, and maintain an existing single-family home for a total of 13 units. The project includes a TDR request to purchase the four multi-family units with HUD-restricted rental rates and the eight, 1,400 s.f. single family homes and a request for relief from TDR setbacks.
 - (Dec. 5th) Review of TDR proposal for 77 79 Sixth St. Proposal is to purchase two TDR units with intent to construct a new two-family residential structure and maintain an existing two-family structure.
 - (Dec. 5th) Review of two environmental CUPs for a project on Back Road that was previously reviewed by the Planning Board and referred for TRC review.
 - (Dec. 5th) Review of site plan for the Dover Public Library addition.
- Upcoming TRCs:
 - (Dec. 19th) Review of TDR site plan for 512 Sixth St. Proposal is to build five single-family dwellings that includes three units previously approved through TDR.
- Reminder that this is the only meeting in December so Happy Holidays to everyone.

6. MEMBER COMMENTS

- G. DeBoer
 - Noted he misunderstood the vote on the zoning change and would have voted differently. He did not want it to be approved, but just wanted the applicant to be given guidance on next steps which seems to be implied.
- D. Glennon
 - TDRs are causing confusion so might want to hold some workshops with public for education and feedback.
- J. Sanborn
 - The packet was too much for one meeting and it's a disservice to the public to make them have to be here so long.
- T. Clark
 - Planning Board Chair term
 - Her term is up in March 2025
- Discussion on the time commitment for the land use steering committee
- Chair signed the following:
 - Lot Line Adjustment for 141 Sixth St. and 5 Dowaliby Ct.



CITY OF DOVER

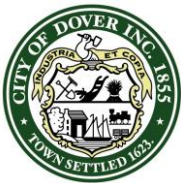
DOVER PLANNING BOARD – MINUTES

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- Lot Line Adjustment for 5 and 7 McKenna St.
- Site Plan and CUP for the approved 4-unit dwelling on Locust Street.
- CUP Plan for 189 Spur Rd. for Conservation District impacts for a patio and retaining wall renovation.
- Site Plan and CUP for 105 Durham Rd. for the approved 9-unit group housing facility for adults with Intellectual Developmental Disabilities.
- Appointed the following to the Steering Committee for the Land Use Chapter update:
 - Krysta Gingue for Community Housing Needs Committee rep
 - Rick Lundborn for DBIDA rep
 - George DeBoer Planning Board Member
 - City Councilor (likely April Richer upon Council appointment)
 - A Conservation Commission member
 - Steve Brown

7. ADJOURNMENT

Motion: K. Mavrogeorge moved to adjourn at 11:51pm. Seconded by M. Gambino. Vote: U/A



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, January 28, 2025**
Meeting Time: **7:00 pm**

Members Present: Gina Cruikshank (Chair), Doug Glennon (Vice Chair), Ken Mavrogeorge, Kyle Pimental, Melina Gambino

Members on Phone: Fergus Cullen (Councilor)

Members Not Present (excused): George DeBoer, Tom Clark, Mallory Strange (Alternate), Jeff Sanborn (Alternate)

Staff Present: Donna Benton, Planning Director

Gina Cruikshank (Chair) called the meeting to order at 7:00p.m. and noted that Councilor Cullen is participating in the meeting by telephone.

1. CITIZENS' FORUM

Citizens Forum Open

Caitlin Wilkie, 568 Sixth St expressed concerns about the TDR program and education around the program. She described some clarifications she has received from staff and how she feels that contradicts the way TDR items have been handled at Planning Board level. If the staff and board are interpreting the code beyond its written language, then the language needs to be updated to maintain fairness and legality. She is also concerned about the TDR fees and how the funds have been used. She asked for transparency in this process. She asks the board members to take the time to fully understand the repercussions their decisions have on residents – especially with TDR.

Citizens Forum Closed

2. APPROVAL OF THE PRIOR MINUTES

- January 11, 2025 Special Meeting Minutes and January 14, 2025 Regular Meeting Minutes

Motion: K. Mavrogeorge moved to approve the special meeting minutes of January 11, 2025 and regular meeting minutes of January 14, 2025. Seconded by: D. Glennon.

Roll Call Vote: Passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

3. OLD BUSINESS

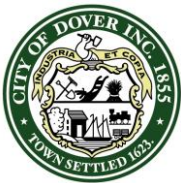
4. NEW BUSINESS

- A.** Consideration and acceptance of a Lot Line Adjustment for Robert S. Mairs Revocable Trust, George Maglaras & Robert S, Mairs Trustee, & George Maglaras, Assessor's Map 24, Lots 141, 140 & 139, zoned CWD, located at 5, 11, and 31 Cocheco Street. *(LOTA-2024-0013)

D. Benton explained that the applicant is proposing a lot line adjustment to revise the lot lines between abutting properties located at 5 Cocheco St. (Map 24, Lot 141), 11 Cocheco St. (Map 24, Lot 140), and 31 Cocheco St. (Map 24, Lot 139).

F. Cullen disclosed that he has a professional relationship with Kevin McEneaney's firm who surveyed the property for this application, and he is a client of Mr. McEneaney's company. He does not have any financial, personal, or professional interest that would create a conflict of interest in relation to this application. His evaluation of this application is unbiased and impartial. If any member of the Planning Board objects to his participation with this application, he asked them to say so. (No one spoke)

This lot line adjustment dissolves lot 140 and adds $\pm$ 3,889 square feet to lot 139 and $\pm$ 4,176 square feet to lot 141. Each lot's frontage and compliance with underlying zoning regulations (CBD-G and CWD) will remain post-adjustment.



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As a Lot Line Adjustment, this application did not appear before the TRC.

Kevin McEneaney, McEneaney Survey, represented the application noted three abutting lots are proposed to adjust the lot lines. He listed the ownerships of the lots and noted though the total square footages of the two proposed lots will not be equal, they will each have equal frontages and waterfronts.

K. Pimental asked about the boundary of the zoning districts and how the adjustment of the lot line now puts one of the proposed lots in two different zoning districts.

D. Benton clarified that the rule is that the lot will have zoning regulations based on which district the majority of the lot encompasses, though the regulations allow for a change of zoning of moving the boundary 50' for that lot if necessary for a future use.

Motion: M. Gambino moved to accept the application and declared no regional impact. Seconded by: K. Mavrogeorge.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

Citizens Forum Open

No one spoke

Citizens Forum Closed

STAFF RECOMMENDATION – Lot Line Adjustment

Chapter 157-17 of the Land Subdivision Regulations of the City Code provides for the adjustment of existing lot lines between two or more lots. This plan is consistent with those regulations.

The Planning Department recommends the Planning Board make findings, and vote to approve the application with the following subsequent conditions:

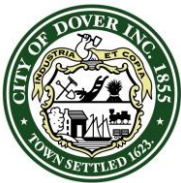
Subsequent Conditions to Be Met Prior to Signing of Plans:

1. Provide physical and digital copies (including CAD) of complete plan set for recording at Strafford County Registry of Deeds which additionally shall include:
 - 1.1. Planning File Number #LOTA-2024-0013
 - 1.2. The owner's signatures
 - 1.3. City Assessor confirms lot numbering.

Motion: M. Gambino moved to approve the Lot Line Adjustment with subsequent conditions set by staff as it meets criteria. Seconded by: K. Mavrogeorge.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

- B.** Consideration and acceptance of Transfer of Development Rights for 5 Sherman Street, LLC, Assessor's Map 19, Lot 8, zoned R-12, located at 103 Court Street. (Proposal is to purchase four (4) units through TDR.) *(TRAN-2024-0011)
- C.** Consideration and acceptance of Site Review for 5 Sherman Street, LLC, Assessor's Map 19, Lot 8, zoned R-12, located at 103 Court Street. (Proposal is to maintain an existing single-family dwelling, construct a two-family dwelling that is deed-restricted to Fair Market Rent, and construct four (4) new size-restricted single-family homes for a total of seven (7) dwelling units. *(SITE-2024-0012)



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Motion: M. Gambino moved to remove this item from the table. Seconded by: D. Glennon.

Roll Call Vote: Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes

D. Benton explained that the applicant is proposing a residential project consisting of five residential units by purchasing two size restricted units through TDR. This item was before the board, accepted and tabled on December 10th, but the plan has been revised since then. The agenda reads as it does because this item was a continuance.

The proposal includes renovation of the existing single-family dwelling and the construction of four single-family “cottage” dwelling units. The duplex has been removed from the proposal and the applicant is requesting to purchase two units through TDR which will be size restricted to 1,400 sq ft.

A Site Visit was conducted on January 11, 2025, to allow staff, Planning Board members, and members of the public to review the site in person, observe existing conditions, and be able discuss how the proposed development aligns with the surrounding area and zoning requirements.

The applicant provided previous iterations of this proposal for increased units on the subject property. The applicant is now proposing a decrease in total units, an increase in perimeter screening, and a change to the site layout with the “cottage” units and access driveway being shifted further from the side property boundaries.

The existing lot, Assessor’s Map 19, Lot 8, contains one single-family dwelling. The current Zoning Ordinance permits the use of the Transfer of Development Rights ordinance (TDR) in the R-12 zone, but specifies that the applicant must apply single-family density for the creation of additional single-family homes. As the applicant is proposing single-family density, the single-family yield calculation has been used and has resulted in a base density calculation of three units. This, therefore, means that the remaining two sought units could be granted if the Planning Board votes to approve the use of TDR.

Per the applicant’s plan, the existing single-family home will be renovated and remain, and four single-family “cottage” dwelling units will be constructed. Two of the cottage units are proposed to be size-restricted to 1,400 square and purchased through TDR.

Because of the change of plans, the board can take action on the TDR request tonight but staff recommends the second item could be tabled so it can go to TRC.

Staff has reviewed the proposal and supplied a TDR memo to the applicant.

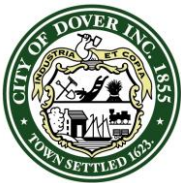
The Board has received comments tonight. Staff has tried to respond and reference the correct areas of the TDR code and try to ensure the public is informed.

Robert Baldwin, 5 Sherman St LLC represented the application and confirmed they are expecting to table the second request tonight to take the proposal to TRC.

He highlighted the changes to the plans: removed the duplex, straightened the driveway, noted the 25’ cemetery setback, included a detailed landscape plan showing the screening, and fencing adjustments. He described some other development options that they considered.

Board members asked clarifying questions of the applicant which were addressed. Topics included storm water, size restrictions (all four units are proposed restricted to 1,400 sf), ownership vs rental status.

The applicant reviewed the development options again while the plans were shown on the screen.



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The TDR buffer was discussed and clarified that based on the plans presented and the section of the code they are developing under, the 30-foot buffer is not a requirement.

Public Hearing Open

Hilary Hamer, 91 Court St believes the 30-foot buffer does apply for this proposal and explained her reasoning and handed out a paper to the board members. She asked the board which residential performance standard applies to this project and why. She asked for an explanation for when the buffer does apply to residential TDRs. She believes this proposal is unlawful and unreasonable, that a buffer applies and has not been provided. She highlighted the state's definition of subdivision.

Merlin Mason, 91 Court St is concerned about the proposed increase to density, is in favor of the buffer, and he explained he and his wife want real neighbors in real homes.

Dorna Hamer, 18 Tuttle Ln is opposed to the project and is in favor the buffer. The parent lot is the existing lot. This density is out of place in this neighborhood. The TDR rules are vague, and this project should be put on hold until those can be clarified.

Keith Hamer, 18 Tuttle Ln is opposed to the project noting many of the neighbors and abutters have written to the office in opposition. If the board tables the item, he asks that the public hearing be tabled so it can be continued.

Caitlin Wilkie, 568 Sixth St is in opposition to the project. TDR is to be used to restrict density to appropriate locations and protect other areas. She agrees the buffer should apply. Proposed cottages have no consistency with the existing homes on the street. The proposal is also too dense for the neighborhood. She asked this proposal to be denied.

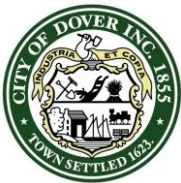
D. Benton noted emails were received from some who have already spoken tonight and summarized one from Lisa O'Grady of 100 Court St.

Public Hearing Closed

D. Benton addressed public comment:

- She gave an explanation of the two sections of the TDR ordinance with different options and how they apply to this application.
- She explained a lot restoration for four lots at Locke St and Tranquility Way and the density options for those lots being more so than the current proposal.
- She discussed that some projects have the buffer and some do not. She appreciates the table provided by the resident, but it is not 100% accurate. Staff can review and comment.
- Why this proposal isn't a subdivision: In Dover, condominiums don't fall under subdivision. Dover subdivisions are focused on fee simple lot lines, rather than form of ownership.
- The 30' buffer is not required because they are proposing units instead of fee simple lots.

Board members continued discussion about condominiums, 30-foot buffer applications to some types and not others, tightening up the zoning regulations as part of the review to require the buffer for consistency, allowed density by right, considering the reasons for a no-cut buffer and utilizing their ability to have applicants create buffers where they don't exist.



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STAFF RECOMMENDATION - TDR

§170-29 provides for additional density to be purchased through Transfer of Development Rights. This application meets the ordinance.

Section 170.29G(8) states:

“Regardless of the method utilized, any other provision in this Chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the TRANSFER OF DEVELOPMENT RIGHTS so long as the increase in density or intensity meets the following criteria and a narrative is submitted indicating how those criteria are met:

- (a) Is consistent with the Master Plan*
- (b) Is compatible with the land uses on neighboring LOTs (eg a multifamily building fits in with in a single family neighborhood). The applicant shall provide in their narrative an explanation of their neighborhood analysis.*
- (c) Is created on property served by public water and sanitary sewer.*
- (d) Any relief sought should not be caused by the additional density.”*

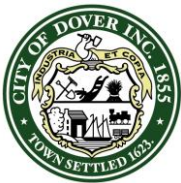
Section §170-29 provides for additional density to be purchased through Transfer of Development Rights, provided that four criteria are met: The proposal is consistent with the Master Plan; is compatible with the land uses on neighboring lots; is created on property served by public water and sanitary sewer; and not seeking permitted relief caused by additional density. This application meets the criteria.

Specifically, the lot is served by water and sewer, and the Master Plan supports housing diversity and encourages creating housing in walkable neighborhoods which encourage community engagement. Regarding the requested density, it is in line with neighboring land uses and development. The proposal is for single-family homes, and there are single- and two-family homes in the immediate area. Currently, the parcel has a single unit, and by right, the unit could be converted to a two-family dwelling unit. The applicant is proposing five total residential units, or an increase of four units. On the adjacent parcel at 109 Court Street, that and the three lots that were created from it, all meet the zoning to allow two-family units. These four lots equate to a similar-sized area, (1.5 acres), and with no Planning Board review, eight units could be constructed by right where one unit exists today. In regards to TDR buffers, as 170-29.G(7) states, “A continuous visual buffer shall be created along the perimeter of the parent parcel, which shall include a thirty-foot no cut, no disturb buffer,” and the proposal is not indicating to subdivide or add new lot lines, staff’s interpretation has been that the buffer is not required. However, staff has continually asked the applicant to add more green space and screening as possible and to ensure the 25’ setback from the cemetery has been met. This revised plan meets those requests.

The Planning Department recommends that the Planning Board make the necessary and supporting findings of fact, and vote to find the criteria of the TDR ordinance has been met with the following subsequent conditions:

Subsequent Conditions to be Met Prior to Granting TDR:

1. A Site Plan application is required to be submitted for review and consideration;
2. Payment of TDR fees;
3. Add note to plan: “This site plan uses the Transfer of Development Rights ordinance which allows for relief to the setbacks, lot area, frontage, density and intensity of the development. The Board granted TDR relief to purchase up to two units for a maximum total of five units on the subject lot. The existing single-family unit and the proposed single-family dwellings may not be converted to a two-family dwelling without further review and approval by the Planning Board;”
4. The applicant provide a revised narrative including the latest TDR request;



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5. Add note indicating which units will be purchased as size-restricted units through the TDR ordinance and that a deed restriction is required.
6. The board may decrease the total unit count based on TRC review.

Comments by board members:

M. Gambino:

Noted she thinks the developer has shown good faith and adjusted the project to be more clearly aligned with concerns around the density. This is a 50% decrease in the number of requested TDR units from 4 to 2. This TDR project will support and promote the City's diversity of ages and income which is part of the master plan by building more attainable housing on this lot that might otherwise be allowed by right.

A public comment mentioned wanting to see somebody with a garden and the swing set in the backyard. The reality is that not everybody wants that in their yard and so there needs to be diversity of housing.

She referred to the discussion about the 30-foot buffer clouded this project for her and is now confident that staff gave the Board the right information and is looking forward to having further discussions about the TDR regulations.

This project is in a place where TDR is appropriate. She prefers to see the TDR here in the R-12 zone rather than the rural zone.

K. Pimental:

Diversity of housing is important and emphasized that not everyone wants the same single-family home on a certain sized lot. This project has gotten better with public, staff and Planning Board input.

K. Mavrogeorge:

The difference tonight is the Board is being asked to approve the number of units and table the plan so it can go to TRC. The plan is heading in the right direction, but additional work is needed. Any vote tonight on number of units does not approve any particular plan or development option.

Motion: K. Pimental moved to grant Transfer of Development Rights request based on the comments and conditions set by the Planning Department. Seconded by: K. Mavrogeorge.

Roll Call Vote: Motion passed 5-1 (Cruikshank- yes, Glennon- no, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

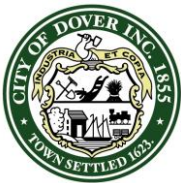
Motion: M. Gambino moved to table the site plan. Seconded by: K. Mavrogeorge.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

The Chair announced Items 4D, E, F, & G would be heard together.

D. Consideration and acceptance of a Minor Subdivision for Allen & Major Associates, Inc., (Owners: 114 Silver Street Group, LLC), Assessor's Map 12, Lot 148, zoned HR, located at 114 Silver Street. (Proposal is to subdivide the parcel to make one (1) new lot for a total of two (2) lots.) *(SUBM-2024-0001)

E. Consideration and acceptance of a Conditional Use Permit for Allen & Major Associates, Inc., (Owners: 114 Silver Street Group, LLC), Assessor's Map 12, Lot 148, zoned HR, located at 114



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Silver Street. (Proposal is to convert a single-family residential home to a 4-unit residential dwelling within the Heritage Residential Zoning District.) *(COND-2024-0011)

F. Consideration and acceptance of a Conditional Use Permit for Allen & Major Associates, Inc., (Owners: 114 Silver Street Group, LLC), Assessor's Map 12, Lot 148-1, zoned HR, located at 114 Silver Street. (Proposal is to construct a new 4-unit, residential dwelling in the Heritage Residential Zoning District.) *(COND-2024-0012)

G. Consideration and acceptance of a Site Review for Allen & Major Associates, Inc., (Owners: 114 Silver Street Group, LLC), Assessor's Map 12, Lot 148 & 148-1 zoned HR, located at 114 Silver Street. (Proposal is to convert an existing single-family home into a 4-unit residential dwelling on the parent lot and to construct a 3-story, 4-unit residential dwelling on the proposed subdivided lot with eight (8) associated parking spaces for each building.) *(SITE-2024-0006)

D. Benton explained that the applicant is proposing to convert an existing single-family home into a 4-unit residential dwelling on one lot and to construct a 3-story, 4-unit residential dwelling on a proposed subdivided lot.

The existing residential structure and new residential structure have been designed to appear as single-family homes facing Silver Street. The applicant provided an architectural narrative to explain adherence to guidelines set forth in the Dover Historic Preservation Guide including traditional materials and detailing.

The access driveway for the project, currently on Silver Street, is proposed to be moved to Rutland Street. The proposal includes 16 total surface parking spaces behind the residential structures with perimeter landscaping and fencing.

Within the Heritage Residential (HR) Zoning District, any conversion or creation of a structure to a 3-4 family dwelling, must meet the required criteria of a Conditional Use Permit (CUP). Two related CUPs have been submitted as part of this project (COND-2024-0011 and COND-2024-0012).

The applicant has also submitted a related Minor Subdivision application that proposes a subdivision of the subject lot at 114 Silver St., creating one new lot for a total of two lots (Assessor's Map 12, Lots 148 & 148-1). Lot 148 will be approximately 11,650 square feet and Lot 148-1 will be approximately 10,690 square feet.

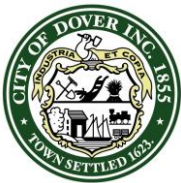
The Technical Review Committee reviewed the application at their July 18, 2024, September 5, 2024, October 31, 2024, and November 21, 2024 meetings.

Tom Toye, owner, Arthur Thomas Properties and Michael Malynowski, Allen and Major represented the application.

Mr. Toye noted he and his wife purchased the property a year ago with the intent to develop it as a multi-family. He explained the experience they have with development. The intent was to repurpose the barn, but that was not viable. They intend to keep the property and manage it as part of their portfolio which includes other properties within that neighborhood.

They have looked at many options before bringing this proposal to the board. They made an effort to work the project within the confines of the ordinance. They did not seek any variances or TDR.

Mr. Malynowski addressed the engineering and technical aspects of the project.



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K. Mavrogeorge noted the Engineering staff is not in favor of the subdivision of the lots as new, separate sewer lines will be required for each lot. He asked that the applicant address the reasoning for the subdivision.

Mr. Malynowski clarified there will be two separate lines from Rutland. There will also be two separate water lines.

M. Gambino asked about the unit sizes and why two 500+ sq ft units are proposed rather than a large unit. Mr. Toye addressed the four 1-bedroom units in the existing structure and two 1-bedrooms and two 2-bedrooms in the new structure. Their research shows a need for small units.

Motion: K. Pimental moved to accept the four applications and declared no regional impact. Seconded by: K. Mavrogeorge.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

Public hearing opened.

Deborah Child, 8 Rutland St provided a letter last week. She has concerns about the cut out on Rutland St due to safety. Additional concerns about traffic, transient population living nearby, and the carriage house is historic and doesn't want it removed.

Liz Goldman, 44 Rutland St is in favor of density but this seems too much. She is concerned about the design being too 'cookie cutter'.

Patty Diengott, 35 Rutland St is concerned about the traffic on Rutland St particularly at that corner. Safety is a real concern there. It is a high density street where people go way too fast at that corner. There are multiple developments in progress in that area.

Bob Gelinas, 15 Rutland St noted the historical aspects of the City and the wonderful carriage house on the lot. He is concerned about the proposed curb cut on Rutland with the added traffic and safety impacts.

D. Benton listed the emails received to the office and summarized the concerns.

Public hearing closed.

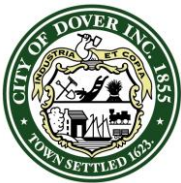
D. Benton addressed public comment:

- Traffic study/ Technical Review Committee
- Right-out only from driveway option deemed unwarranted by Traffic Bureau and Police Dept
- As the City does not own the property, they have no say in what happens to the carriage house
- Described the iterations of plans and discussion the Planning staff has had with the applicant

Chair Cruikshank noted that property owners have rights and the Planning Board does not have the authority to tell a property owner they have to keep a building or not. They are allowed to do what they want with the property within the regulations.

She also noted the board follows the rules and regulations. Sometimes they may personally agree with the public comment, but have to act as a board member within the regulations.

She appreciates the applicant's efforts in the design. The buildings look different from each other and look like single-family homes.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, 288 Central Ave, Dover, NH.
Meeting Date: **Tuesday, January 28, 2025**
Meeting Time: **7:00 pm**

Board members discussed the following;

- Carriage house options
- Guidance on traffic
 - Individual projects don't show an impact, but collectively they do
 - Is there any staff guidance that can inform the Board on a wider scope
 - Lengthy discussion/ information given by K. Mavrogeorge
- Historic area alongside necessity of diversity of housing

STAFF RECOMMENDATION- Minor Subdivision

The plan is consistent with §157-17 of the City of Dover's Land Subdivision Regulations, which provides for subdivision of existing lots.

The Planning Department recommends the Planning Board make findings, and vote to approve the application with the following subsequent conditions:

Subsequent Conditions to be Met Prior to Signing of Plans:

1. Provide physical and digital copies (including CAD) of complete plan set which additionally shall include:
 - 1.1. The owner's signatures for recording at Strafford County Registry of Deeds;
 - 1.2. Include the Planning File #: SUBM-2024-0001;
 - 1.3. The stamp and signature of the LLS on the final plans;
 - 1.4. Confirm lot numbering with City Assessor.
2. Provide copies of easements between the two lots for access, and utilities.

Motion: K. Pimental moved to approve the Minor Subdivision with conditions detailed by staff as it meets the criteria of 157. Seconded by M. Gambino.

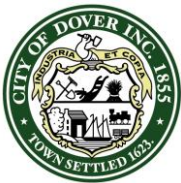
Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

STAFF RECOMMENDATION- Conditional Use Permit, HR District, Conversion of existing dwelling to accommodate not more than 4 units

§170-20.B(1) of the Zoning Ordinance allows for Conditional Use approval for relief from the standards herein which may be granted by the Planning Board, (RSA 674:21 II), after proper public notice and public hearing provided that the proposed project complies with the following standards:

Conversion to, or creation of Dwelling, 3-4 Family: Three- or four-family dwellings and conversions of existing dwellings to three (3) or four (4) units shall be subject to the following regulations:

- a. *The specific site must have an amount of open space, either landscaped or left natural, at least equal to the average amount of open space on all developed lots in the HR District that are wholly or partly within two hundred (200) feet of the subject parcel. Existing parking areas, either gravel, paved or unpaved, shall not be considered to be open space.*
- b. *Off-street parking, in accordance with Chapter 153, Site Review, shall be provided as to avoid vehicles backing into the street. Two (2) parking spaces per unit shall be required.*
- c. *Parking lots shall be at least five (5) feet from a side property line and ten (10) feet from a front property line.*
- d. *Parking areas shall be screened from the street and from abutting lots.*



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- e. *Structures shall be at least twenty (20) feet from a front property line, thirty (30) feet from a rear property line and fifteen (15) from a side property line unless abutting a street, in which case, the distance from the side property line shall be twenty (20) feet.*
- f. *For new construction, the building must be designed to look like a single-family dwelling. At a minimum, this shall mean that only one entrance shall be visible from a public street. For conversions, the building must retain its appearance as a single-family dwelling or a 2-family dwelling, whichever is the current use. notwithstanding any other provision of Chapter 170, a legal or legal non-conforming accessory structure existing as of the effective date of these regulations may be converted into one or more residential units, provided that the building shall not be enlarged, nor shall any exterior improvements be made to alter its appearance as an accessory structure.*

The applicant assesses the average open space within 200' of the subject property to be 57.3%, which per the submitted Drainage Report and site plan pages C-102 & C-107, this CUP request complies with. Staff feels the parking requirements, (criteria B, C, & D), were met during TRC review, with the applicant providing the required number of spaces, adequate screening, and parking space setbacks as prescribed in criterion C. Setbacks, per the applicant's submitted plan, are compliant with criterion E, and the existing structure's appearance adheres to the aesthetic specifications detailed in criterion F.

Chapter 170-19.B.2 also lists three criterion for granting a non-environmental CUP for relief. Staff feels this proposal meets those criteria which include:

- a. *The requested use shall be compatible with abutting uses and the surrounding neighborhood.*
- b. *The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.*
- c. *The requested use will not result in objectionable noise or odor which would constitute a nuisance.*

The Planning Department recommends the Planning Board make the necessary and supporting findings of fact, and vote to approve the application with the following subsequent conditions:

Subsequent Conditions to Be Met Prior to Issuance of a Conditional Use Permit:

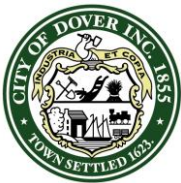
1. Include sheet C107 from related site plan (SITE-2024-0006) in CUP plan set.
2. Amend sheet C107 to include site-specific open space calculations for both lots, post subdivision.
3. Work with the Planning Department to endorse a development agreement per Chapter 170-19.C and then record at SCR.D. The development agreement shall include a contribution for the RRFB at Belknap St.

Motion: M. Gambino moved to approve the Conditional Use Permit with conditions as it's consistent with regulations. Seconded by K. Pimental.

Discussion about the regulation in the zoning ordinance of requiring two parking spaces per unit in the Heritage District. Staff will look into this. At the time it was added, it is what the residents of that district wanted, but public opinion might have changed since and it seems in opposition to what Dover is doing in other districts.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

STAFF RECOMMENDATION- Conditional Use Permit, HR District, Creation of a 3–4-unit dwelling



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§170-20.B(1) of the Zoning Ordinance allows for Conditional Use approval for relief from the standards herein which may be granted by the Planning Board, (RSA 674:21 II), after proper public notice and public hearing provided that the proposed project complies with the following standards:

Conversion to, or creation of Dwelling, 3-4 Family: Three- or four-family dwellings and conversions of existing dwellings to three (3) or four (4) units shall be subject to the following regulations:

- a. The specific site must have an amount of open space, either landscaped or left natural, at least equal to the average amount of open space on all developed lots in the HR District that are wholly or partly within two hundred (200) feet of the subject parcel. Existing parking areas, either gravel, paved or unpaved, shall not be considered to be open space.*
- b. Off-street parking, in accordance with Chapter 153, Site Review, shall be provided as to avoid vehicles backing into the street. Two (2) parking spaces per unit shall be required.*
- c. Parking lots shall be at least five (5) feet from a side property line and ten (10) feet from a front property line.*
- d. Parking areas shall be screened from the street and from abutting lots.*
- e. Structures shall be at least twenty (20) feet from a front property line, thirty (30) feet from a rear property line and fifteen (15) from a side property line unless abutting a street, in which case, the distance from the side property line shall be twenty (20) feet.*
- f. For new construction, the building must be designed to look like a single-family dwelling. At a minimum, this shall mean that only one entrance shall be visible from a public street. For conversions, the building must retain its appearance as a single-family dwelling or a 2-family dwelling, whichever is the current use. notwithstanding any other provision of Chapter 170, a legal or legal non-conforming accessory structure existing as of the effective date of these regulations may be converted into one or more residential units, provided that the building shall not be enlarged, nor shall any exterior improvements be made to alter its appearance as an accessory structure.*

The applicant assesses the average open space within 200' of the subject property to be 57.3%, which per the submitted Drainage Report and site plan pages C-102 & C-107, this CUP request complies with. Parking requirements, (criteria B, C, & D), were met per TRC review, with the applicant providing the required number of spaces, adequate screening, and parking space setbacks as prescribed in criterion C. Setbacks, per the applicant's submitted plan, are compliant with criterion E, and the proposed, (revised from previous versions), architecture, in staff's opinion, meets the criterion F's requirements, and is consistent with neighboring historic architectural design.

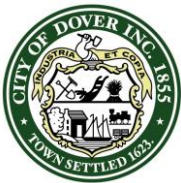
Chapter 170-19.B.2 also lists three criterion for granting a non-environmental CUP for relief. Staff feels this proposal meets those criteria which include:

- a. The requested use shall be compatible with abutting uses and the surrounding neighborhood.*
- b. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.*
- c. The requested use will not result in objectionable noise or odor which would constitute a nuisance.*

The Planning Department recommends the Planning Board make the necessary and supporting findings of fact, and vote to approve the application with the following subsequent conditions:

Subsequent Conditions to Be Met Prior to Issuance of a Conditional Use Permit:

1. Include sheet C107 from related site plan (SITE-2024-0006) on CUP plan set.
2. Amend sheet C107 to include site-specific open space calculations for both lots, post subdivision.
3. Work with the Planning Department to endorse a development agreement per Chapter 170-19.C and



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then record at SCRD. Said development agreement shall also include contribution to RRFP system at Belknap St.

Motion: M. Gambino moved to approve the Conditional Use Permit with conditions as it's consistent with regulations. Seconded by K. Mavrogeorge.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

STAFF RECOMMENDATION- Site Plan:

Chapter 153-13 outlines Site development plan. This plan meets those standards outlined. Therefore, the Planning Department recommends that the Planning Board make the necessary and supporting findings of fact, and vote to approve the Site Plan with the following subsequent conditions:

Subsequent Conditions to be Met Prior to Signing of Plans:

1. Approval of COND-2024-0011;
2. Approval of COND-2024-0012;
3. Approval of SUBM-2024-0001;
4. Confirm lot numbering with City Assessor.
5. Confirm building addressing with Building Official.
6. Draft utility and access easement to be reviewed by the Planning Department.
7. Sewer services for each building must be independent and to the satisfaction of the Community Services Department or a waiver must be approved through the Dover Utilities Commission.
8. Provide letter from pest control management professional regarding whether pest control management plan is needed per Chapter 153-10.G.
9. Provide physical and digital copies (including CAD) of complete plan set for final Planning Board signature which additionally shall include:
 - 9.1. Owner's signatures;
 - 9.2. Professional stamps and signatures;
 - 9.3. Amend sheet C107 to include site-specific open space calculations for both lots, post subdivision.
10. Add note to eliminate any conflicts between the proposed sanitary sewer and the stormwater system and confirm existing sewer line condition to the satisfaction of the Office of the City Engineer.

Subsequent Condition to Be Met Prior to Construction:

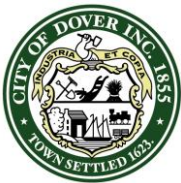
11. If pest management is needed per letter from pest management professional, then pre-baiting or any other recommendation occur.
12. City's standard site construction sign with the contact information for the general contractor must be displayed in a location approved by the City Engineer or Planning Director;

Subsequent Condition to Be Met Prior to Building Permit:

13. Payment of Water and Sewer Investment Fees if applicable at time or request of service;

Subsequent Conditions to Be Met Prior to Occupancy:

14. Issuance of Certificate of Occupancy;
15. Surety or other form of security acceptable to the City is provided for any unfinished work;
16. Contribution for RRFB has been paid to the City per Development agreement.
17. Design engineer to submit a construction certification letter to the City ensuring construction was completed in accordance with the plans and specifications approved by the City of Dover.



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Discussion occurred on sewer lines in relation to the existing tree that is staying and the buffers.

Motion: M. Gambino moved to approve the Site Plan with subsequent conditions set by staff as it meets criteria. Seconded by: K. Pimental.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

5. STAFF COMMENT

- Director Benton announced that a discussion and training on TDR, ADUs and Planning Board roles has been scheduled for the next regular Planning Board meeting on Feb. 11, 2025.
- There have been no TRCs since the last meeting and no upcoming TRCs are scheduled.
- Land Use Chapter update kicked off last night with a steering committee meeting
- Community listening sessions for CDBG
- Thank you to Ryan Pope as Housing Navigator- he has taken a job with NH Housing
- Hiring a Housing Planner
- An email came in about McDonald's and was in the board packets

6. MEMBER COMMENTS

- The Chair signed the following:
 - Lot Line Adjustment for 3 and 59 Spur Rd.
 - Lot Line Adjustment for 120 Garrison Rd. and 20 Seaborne Dr.
 - Plans for Conservation District Conditional Use Permit for 167 Spur Rd.
- Appointed the following to the Steering Committee for the Land Use Chapter update:
 - Anna Boudreau, or representative of the Open Lands Committee (in place of a Conservation Commission member)

7. ADJOURNMENT

Motion: K. Mavrogeorge moved to adjourn at 9:08p.m. Seconded by M. Gambino.

Roll Call Vote: Motion passed unanimously (Cruikshank- yes, Glennon- yes, Pimental- yes, Mavrogeorge- yes, Gambino- yes, Cullen- yes)

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



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City of Dover, New Hampshire

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

NOTICE OF DECISION

January 30, 2025

5 Sherman Street, LLC
242 Central Avenue
Dover, NH 03820

Re: Transfer of Development Rights for 5 Sherman Street, LLC, Assessor's Map 19, Lot 8, zoned R-12, located at 103 Court Street. (Proposal is to purchase four (4) units through TDR.) (TRAN-2024-0011)

Dear Mr. Baldwin;

Please be advised that on Tuesday, January 28, 2025 the Dover Planning Board voted to approve your request to purchase two (2) Transfer of Development Rights (TDR) units for a total of up to five (5) on site and found the criteria of 170-29 have been met. **The specific subsequent conditions are included with this letter.**

In addition to the subsequent conditions of approval, please provide the following to the Planning Office:

- ☐ Two (2) full size plans and One (1) 11" x 17" plan (plus any additional plans for the applicant or owner)
- ☐ One (1) PDF digital version of the plat

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Donna Benton, AICP
Director of Planning & Community Development

EC: Inspection Services Office
Engineering Office
Assessing Office
Tritech Engineering Corp.

Subsequent Conditions to be Met Prior to Granting TDR:

1. A Site Plan application is required to be submitted for review and consideration;
2. Payment of TDR fees;
3. Add note to plan: "This site plan uses the Transfer of Development Rights ordinance which allows for relief to the setbacks, lot area, frontage, density and intensity of the development. The Board granted TDR relief to purchase up to two units for a maximum total of five units on the subject lot. The existing single-family unit and the proposed single-family dwellings may not be converted to a two-family dwelling without further review and approval by the Planning Board;"
4. The applicant provide a revised narrative including the latest TDR request;
5. Add note indicating which units will be purchased as size-restricted units though the TDR ordinance and that a deed restriction is required.
6. The Board may decrease the total unit count based on TRC review.

Submitted**Reviewed**☐☐☐☐☐☐☐☐☐☐☐☐