

Bassegio, Erin

From: Benton, Donna
Sent: Thursday, January 15, 2026 10:29 AM
To: 'Hilary Hamer'; Planning Board - All
Cc: Parker, Christopher; Perez, Jennifer
Subject: RE: 103 Court St: Request for Stay or Denial with Supreme Court Case Pending # 2025-0686

Hi Dr. Hamer,
Thank you for your emails. We will make sure the Board receives a copy.
Take care,
Donna

Donna Benton, AICP

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Dover: First in New Hampshire, First with you!

From: Hilary Hamer <hilary.a.hamer@gmail.com>
Sent: Thursday, January 15, 2026 8:44 AM
To: Planning Board - All <PlanningBoard-All@dover.nh.gov>
Cc: Parker, Christopher <C.Parker@dover.nh.gov>; Perez, Jennifer <J.Perez@dover.nh.gov>
Subject: 103 Court St: Request for Stay or Denial with Supreme Court Case Pending #2025-0686

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To the Dover Planning Board:

I am writing to formally request that the Board **stay or deny** the site plan application for 103 Court St **pending resolution of the NH Supreme Court case (Docket #2025-0686)**. This case challenges the foundational TDR approval upon which this entire site plan is built.

If the Board cannot grant a stay - or if the applicant refuses to waive the 65-day review clock under RSA 676:4, I(f) - the Board's only safe harbor to protect the City's zoning integrity is an **outright denial on the grounds of prematurity**. At a minimum, any possible vote must include a robust condition of approval stating that the project shall not proceed until the final resolution of the Supreme Court appeal and a subsequent re-evaluation by this Board to ensure compliance.

To the Board members: If the Supreme Court rules that the TDR approval is invalid, that a 30-foot buffer is required, or that the project must be legally considered as a subdivision and not a site plan, how will

the Board enforce those mandates against a site plan you have already approved? Proceeding now creates an unnecessary legal and administrative knot for the City and a "zombie approval" for the applicant.

The NH Supreme Court accepted this appeal on December 19, 2025 (Docket #2025-0686). (The appeal and official docket were sent to the Planning Board by email on January 13, 2026, and should therefore be already in the project record.) The key questions for the Court to resolve (on page 6 of the Appeal) strike at the very core of this application:

1. **The 30-foot No-Cut Buffer:** Did the City err in finding that the 30-foot "no-cut, no-disturb" perimeter buffer required by §170.29 G(7) was only applicable to TDR subdivisions?
2. **Procedural Classification:** Did the City err under §170.29 G(3) by allowing the applicant to use a density formula intended for a subdivision while treating the application as a site plan, in a non-multifamily zone?

If the Court rules that the buffer is required or the classification was wrong, this site plan is immediately non-compliant. The Planning Board's jurisdiction to approve this specific density is derived entirely from the TDR Ordinance. Since the scope of that authority is currently being litigated, **the Board lacks a stable legal platform upon which to grant an approval.** The application is **"unripe"** for a final decision.

Proposed Findings of Fact / Reasons to Stay or Deny

1. **Pending Judicial Review:** The Board finds that the New Hampshire Supreme Court has accepted an appeal (Docket # 2025-0686) on December 19, 2025 specifically challenging the Transfer of Development Rights (TDR) approval that serves as the legal basis for the current density and layout of the 103 Court St site plan.
2. **Dependency of Site Plan on TDR Validity:** The Board finds that the current site plan application relies on a specific interpretation of TDR Zoning Ordinance §170.29 G(3) regarding site plan versus subdivision classification. Should the Supreme Court determine the project was misclassified, the current application would be **fundamentally void**.
3. **Potential for Non-Conformity:** The Board finds that a central question of the NH Supreme Court appeal is the application of §170.29 G(7) regarding a 30-foot "no-cut, no-disturb" perimeter buffer. If the Court rules this buffer is required for all residential TDR projects, the site plan currently before the Board would be in **immediate violation** of the Zoning Ordinance.
4. **Administrative Efficiency and Judicial Economy:** The Board finds that granting conditional approval while a Supreme Court case is pending creates a risk of conflicting orders and a waste of municipal resources, as a ruling by the Court would necessitate a complete re-review of the present application.
5. **Preservation of the Status Quo:** The Board finds it in the public interest to stay the proceedings or deny until the "threshold legal questions" regarding the TDR standards are resolved by the NH Supreme

Court, ensuring that any approved plan is fully compliant with the final judicial interpretation of the Dover Zoning Ordinance and avoiding the need for unduly repetitious hearings.

Closing Thought: **This Board cannot determine if a plan complies with the law when the very law it is based on is currently being defined by the Supreme Court.** While conditions of approval may be used, conditional approval is for minor technical fixes, not for foundational legal questions like a 30-foot buffer or project classification. Rulings on these points fundamentally change the 'footprint' of the project. You cannot 'condition' a change that requires moving buildings and roads or an entirely different set of approval criteria. That would require a brand-new review anyway.

A Note on Board Discretion: While a Supreme Court appeal does not create a *mandatory* stay, it is well-established that this Board possesses the **inherent discretionary authority** to continue a hearing or **deny an approval with appropriate findings**, such as the proposed findings of fact above. This is a request for the Board to exercise that judgment – not because you are legally compelled, but because it is the most prudent and responsible course of action for the City of Dover.

Furthermore, as the TDR Subcommittee is currently rewriting these regulations, a stay or denial absolutely allows for a future design that aligns with the improved standards the City is currently seeking. Approving a plan now that may be obsolete within months—either by Court order or by the City's own evolving standards—is an inefficient use of this Board's time and the public's trust.

Respectfully,
Hilary Hamer, 91 Court St

Please include this Request for Stay and Proposed Findings of Fact in the Board's physical packet for any hearing regarding 103 Court St. We believe these threshold legal questions are a prerequisite to any Site Plan discussion and should be addressed by the Board and Staff prior to the merits of the application.

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