



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT AGENDA

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, October 17, 2013**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF PRIOR MINUTES OF SEPTEMBER 19, 2013

3. HEARING

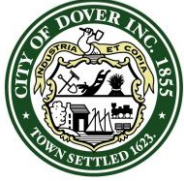
- A. * Z 13-18 Aramis Black/Real McKoy Properties, LLC, 301 Durham Road (Tax Map H, Lot 1), located in the Hotel/Retail (B-4) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the B-4 District Table of Use and Dimensional Requirements to permit the construction of an elderly assisted care home for 8-10 residents with 2 accessory staff apartments, where elderly assisted care homes are not a permitted use in the B-4 District.

4. ADJOURN

*** If the application is accepted for discussion, the public hearing will be held that evening.**

Persons with questions or interested in reviewing the application materials are invited to visit the Planning Department located in City Hall, open Monday-Thursday from 8:30 am to 5:30 pm. The application materials are also available on-line at www.dover.nh.gov. A map showing project locations can be found at www.dover.nh.gov/planhome.htm.

Follow us on Twitter @DoverNHPlanning and find us on Facebook at www.facebook.com/pages/Dover-NH/City-of-Dover-NH-Planning/446789895351.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 19, 2013**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Otis Perry (Vice Chair), Chris Prior, Bob Hall (Alternate), Jennifer Stone (Alternate)
Members Not Present: Sam Reid (Chair), Josh Cote (Alternate), Frank Landford, James Kelley
Staff Present: Timothy Corwin (Assistant City Planner), Jean Glidden (Recording Secretary)

The Vice Chair called the meeting to order at 7:00 p.m. He opened the meeting and stated that the four members will be voting. They have the option to proceed or wait for a full Board to hear the case.

2. APPROVAL OF PRIOR MINUTES OF THE AUGUST 15, 2013 MEETING

O.Perry stated that he asked for corrections on the minutes regarding case Z13-15. He explained that the word "confirmed" was used in several places and asked that it be changed as a discussion with the applicant and the members and the first motion wasn't clear with a second or a vote. A revised set of minutes were submitted with the corrections. He asked if they would like to vote to approve with the amendments.

Motion: C.Prior made the motion to approve the minutes. Nobody seconded. Discussion on the motion. B.Hall stated that on the rehearing case Z13-09 page 5, as part of the rehearing discussion he stated that he had indicated that all items have been reviewed and felt that they have judged fairly. B.Hall seconded to approve the minutes with the amendments mentioned. Vote: U/A (*J.Stone abstained*)

O.Perry described the process used to hear the cases.

3. HEARINGS – NEW

- A. * Z 13-16 Gregory S. Krise (Property Owner: Robert R. Romano & Wayne Ewald), 92 Long Hill Road (Tax Map A, Lot 53G-1), located in the Medium Density Residential (R-12) District, requests a variance from Section 170-12.A of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Requirements to permit the construction of a single family dwelling located at a distance further than 25 ft. from the front lot line where principal buildings are required to be located no closer than 5 ft. and no greater than 25 ft. from the front lot line.

Gregory Krise explained that the lot has a very narrow entrance and it has approximately 100 ft. of frontage and it narrows to approximately 70 ft. wide and then expands out to 200 ft. wide. The narrow portion of the property has wetlands and it already has an approved driveway to get to the back part of the lot, where the buildable part is located. The home in that location will meet all setback requirements.

B.Hall mentioned that he did drive by and looked at the lot. He asked for clarification on the two plot plans provided as they appear different. One plan shows the proposed house and garage and it appears they are located near the existing garage foundation and the other plan has the house on the hill.

G.Krise explained that it is the subdivision plan that shows the house at the back part of the property. He added that this property received a permit in 1996 for a 24 x 28 foundation permit for a garage.

C.Prior confirmed with the applicant that the septic system and well are already installed on the property.



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Public hearing open.

Gary Gagnon, 86 Longhill Road stated that he is the abutter on both sides of this property and is in favor of the request. This is a better plan than what was submitted in 1996.

T.Corwin stated that the Planning Department supports the application for the reasons set forth in the staff memo, but suggests a proposed condition that the variance be subject to the submitted subdivision plan, which will be marked as Exhibit A, where the proposed house is located.

B.Hall asked T.Corwin why this district has to be 25 ft. from the front lot line.

T.Corwin explained that it is a medium density district and the idea is to encourage a more traditional neighborhood feel to bring houses up to the front of the street and have larger back yards. On this particular property it doesn't make sense and that is why they are asking for a variance.

Public hearing closed.

Motion: B.Hall made the motion to grant the variance with the condition that the house be located in accordance with Exhibit A. Seconded by J.Stone. Vote: 4-0.

- B. * Z 13-17 Laura I. Cursack, Trustee (Property Owner: Laura I Cursack Revocable Trust), 41 Spruce Lane (Tax Map I, Lot 27B), located in the Medium Density Residential (R-12) District, requests a variance from **Section 170-14(A)(1)** of the Zoning Ordinance to permit the construction of an attached garage to be located 6 ft. from the side lot line shared with 39 Spruce Lane, where a minimum side yard of 10 ft. is required.

Laura Cursack explained her application. She stated that she would like to construct an attached garage and located on the same side of the house with the existing driveway. It would be located 6 ft. from the side lot line shared with 39 Spruce Lane. There is a substantial drop that would not allow the garage to be located to the rear of the house.

O.Perry mentioned that the picture shows a bow window. He asked if it was once a garage.

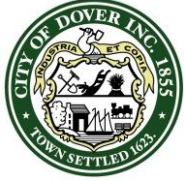
L.Cursack stated that she just moved in and it may have been, but wasn't sure.

T.Corwin noted that it appears that a number of the houses had converted garages similar to this property.

O.Perry asked T.Corwin how much space between the lot line and the house at 39 Spruce Lane.

T.Corwin stated that it appears to be 12 ft. based on the mapping system.

L.Cursack added that she measured and it was approximately 10 ft. to her neighbor's home. She mentioned that properties are more valuable with a garage and it would be consistent with the properties in the neighborhood.



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Public hearing open. Nobody spoke.

T. Corwin stated that the Planning Department supports the application for the reasons set forth in the staff memo.

J.Stone asked if there were any fire issues as far as building codes with this being located so close together.

T.Corwin explained that if the applicant's property had less than the required frontage it would be entitled to a 6 ft. setback. It would be consistent with previous concerns for life safety issues. Accessory structures have a rule that detached accessory structures would have to be the minimum distance, which is based on the height of the rear wall of the accessory structure.

Public hearing closed.

Motion: J.Stone made the motion to grant the variance. Seconded by B.Hall. Vote: 4-0.

B.Hall mentioned that he attended the law lecture series and if interested he has electronic handouts that he can send. He stated that at one of the lectures he was given new information that the ZBA is the appeals route if there is a disagreement with Building or Fire Inspectors. He added that there are still a number of sessions that are left to attend. He suggested to T.Corwin that he hold a session to discuss the latest legal developments.

T.Corwin stated that it is a good idea and would coordinate with B.Hall.

4. ADJOURN

Motion: C.Prior made the motion to adjourn. Seconded by B.Hall. Vote: 4-0



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z13-18)

Application Type: Variance
Applicant: Aramis Black/Real McKoy Properties, LLC
Owner: Real McKoy Properties, LLC
Location: 301 Durham Road (Tax Map H, Lot 1)

INTENT: The Applicant proposes to construct an elderly assisted care home for 8-10 residents with 2 accessory staff apartments. The home will be located behind the existing building, currently occupied by the “My Liege” salon. A variance is required to permit the home which is not a permitted use in the B-4 District.

UNITS PROPOSED: 8-10 elderly care units, plus 2 accessory staff apartments

AGENDA ITEM #: 3-A

ZONING DISTRICT: B-4 District

EXISTING LAND USE: Commercial

PROPOSED LAND USE: Commercial and Elderly Care Assisted Home

SURROUNDING LAND USE:
Commercial

PREVIOUS ZBA ACTION:

- Variance granted on June 15, 2006 to permit a beauty salon use (Case Z06-13)

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application, subdivision plan, subdivision plan with proposed house location, septic plan

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department supports the variance request.

Summary of Request and Background

The property is 2.95 acres in size and is located on NH Route 108, Durham Road. It is improved with a structure that is currently occupied by the “My Liege” salon, permitted by variance granted in 2006. The Applicant proposes to construct a second building on the property, to be located toward the rear of the lot, to be used as an elderly assisted care home for 8-10 residents, together with 2 accessory staff apartments. A variance is required from Section 170-12.A of the Zoning Ordinance and the B-4 District Table of Use and Dimensional Requirements to permit the proposed assisted care home which is not a permitted use in the B-4 District.

Reason for Staff Recommendation

Staff believes that the proposed elderly care assisted home is a comfortable fit in this area and in fact is a permitted use by special exception in the surrounding R-40 District. The home will sit back significantly from the street and will help to provide a base of customers within walking distance to the nearby commercial uses. In that way, the use complements and supports the commercial focus of the district, but does not detract from it. It is always incumbent upon the applicant to demonstrate compliance with the 5 criteria, but from a planning perspective, it is staff's view that the proposal is a reasonable and beneficial one.

Recommendation

The Planning Department recommends the Board hold the public hearing and approve the variance as requested.



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only Case #: 213-18 Date Received: OCT 02 2013
Amount Paid: \$292.00 Time Received:
CP# 015514

APPLICANT/PROPERTY OWNER INFORMATION

Aramis Black
APPLICANT: Real McKoy Properties, LLC Phone # 603-591-1256
Address of Applicant: P.O. Box 1727, Dover, New Hampshire 03821
E-Mail Address: amblack99@gmail.com

PROPERTY OWNER (if different from applicant): SAME
Address: Phone #
E-Mail Address:

PROPERTY/PARCEL INFORMATION

Address: 301 Durham Road, NH Route 108, Dover, New Hampshire 03820
Brief Directions: Route 108 driving toward Durham, property is on right.

Zoning District: B4 Assessor's Map # H Lot(s) # 1

TYPE OF APPEAL: (Please check one)

- X Variance from Section 170-12A of the Zoning Ordinance
Physical Disability Variance (RSA 674:33-V) from Section of the Zoning Ordinance
Special Exception per Section of the Zoning Ordinance
Appeal of Administrative Decision regarding Section of the Zoning Ordinance
Equitable Waiver per Section of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

An elderly assisted care home for 8-10 residents with 2 accessory staff apartments is proposed to be located on the property behind the current building, where My Liege Salon is located.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12A of the Zoning Ordinance to permit:
An elderly assisted care home for 8-10 residents with 2 accessory staff
apartments to be located on the property behind the current building,
where My Liege salon is located.

B. The Five Variance Criteria (as set forth in NH RSA 674:33, I(b))

Please demonstrate compliance with the following:

1. Waiving the terms of the Ordinance will not be contrary to the public interest because:

See attached.

2. Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:

See attached.

3. Granting the variance would do substantial justice because:

See attached.

4. The value of surrounding property will not be diminished because:

See attached.

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

5A. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(i) The following special conditions of the property distinguish it from other properties in the area:

See attached.

and

(ii) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

See attached.

and

(iii) The proposed use is a reasonable one because:

See attached.

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:



2 October 2013

Application for a Variance

NH Care Home

AG Architects Project No. 13-654

- Assessor Map H, Lot I, Zoning District B4.
- Variance is requested from Section 170-12A) Table of Use of the Zoning Ordinance to permit an Elderly Assisted Care Home for 8-10 residents with 2 accessory staff apartments in the B4 zoning district.
- Site Plan and Photographs are attached.
- Facts Supporting This Request:

1. *Waiving the terms of the Ordinance will not be contrary to the public interest because:*

The proposed use for an Elderly Assisted Care Home is a similar commercial use to those allowed in the B4 zone and the Residential-Commercial Mixed Use (RCM) Overlay District, and fits in well with the surrounding properties in the area. There is elderly housing located behind the Hannaford grocery store, there are existing residences nearby in the B4 district and on adjacent properties in Dover's R40 district and Madbury's Residential/Agricultural zone. The lot is an existing 2.95 acres (128,641 SF) lot, which is smaller than the 5 acre minimum lot size for the B4 zone. An elderly assisted care home on this lot would complement the mixed uses permitted on larger lots, and help buffer the adjacent residential uses while using this smaller lot effectively. The salon located on the front of the property (see Photo 1) is an excellent match for mixed uses on the same property.

The site is bordered by the R40 zoning district, which does allow elderly assisted care homes by Special Exception. The proposed facility would meet the R40 Special Exception density requirement of 10,000 SF land per bedroom on septic and well; 10 resident bedrooms plus 2 accessory staff apartments would require 120,000 SF. The proposed use would be compatible with the adjacent properties, while adding to the mixed uses in the zone.

2. *Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:*

The stated purpose of the B4 zone is to "encourage efficient and attractive commercial development on a larger scale". The relatively small size of the existing lot and the configuration of the lot limits the size of what can be built on the lot. The proposed use effectively uses the rear of the lot with a commercial/residential use similar to other permitted uses in the zone. The rear of the lot has limited visibility and is a more difficult location for a successful commercial use, so this proposed use helps meet the goal for an attractive commercial development. This use on this lot has no negative impact and won't alter the character of the other properties in the zone. Finally, the elderly assisted care home offers the benefit of also being a compatible use to the adjacent residential uses in the Dover R40 zone and Madbury Residential/Agricultural zone.

3. *Granting the variance would do substantial justice because:*

Substantial justice is achieved with this variance for several reasons, as follows:

- A small existing lot can be developed with a commercial/residential use that is similar to uses allowed on larger properties in the B4 zone/RCM Overlay district.
- There is no benefit in preventing this development. The elderly assisted care home will bring an attractive commercial development to this lot that is compatible with other uses in the zone.
- An elderly assisted care home will provide a more effective buffer to adjacent residential properties with less traffic impact than most of the other uses permitted in the zone.

4. *The value of surrounding property will not be diminished because:*

The surrounding properties are a mix of commercial and residential uses (see Photos 2, 3, 4 and 5). An elderly assisted care home is a commercial use that enhances the value of the district, and complements other existing uses in the area. The proposed use, located to the rear of the lot, is also a lower impact residential use that helps buffer the adjacent residential uses. Both of these attributes will enhance surrounding property values.

5A. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

(i) *The following special conditions of the property distinguish it from other properties in the area:*

The lot is an existing lot that has several conditions that create a hardship in utilizing the property.

- The first condition is that it is smaller than the 5 acre minimum lot size intended for the zoned uses; many of the uses would not fit on the property.
- The second condition is the triangular shape of the property, which when combined with a 75' side and rear setback, reduces the land available for building by 26.8% compared to a square lot. The shape further limits the property compared to other properties in the area.
- The third condition is the location of the lot adjacent to residential zones with residences on the side and rear of this property. The proposed use helps balance these unusual conditions.

(ii) *No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:*

The general purpose of the ordinance is to “encourage efficient and attractive commercial development”, including “larger commercial development”. The RCM Overlay District encourages mixed use on a single lot for residential housing for older persons. The proposed elderly assisted care home effectively utilizes the lot in a way that would not be possible with many of the other permitted uses. The rear of any lot is difficult to develop, and this proposal develops a very difficult shaped rear of the lot. The combination of this elderly facility with the salon at the front of the property is a good mixed use combination.

(iii) *The proposed use is a reasonable one because:*

The elderly assisted care home is a reasonable use for all the numerous reasons outlined above. The facility essentially complements and supports commercial development, it effectively uses the rear of a very difficult shaped lot, it follows the intent of mixed residential/commercial development, it proves an effective transition/buffer to the adjacent residential zones to the side and rear of the property, and it will further the goals of this zone.

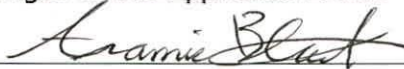
SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED.



Signature of Applicant*



Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

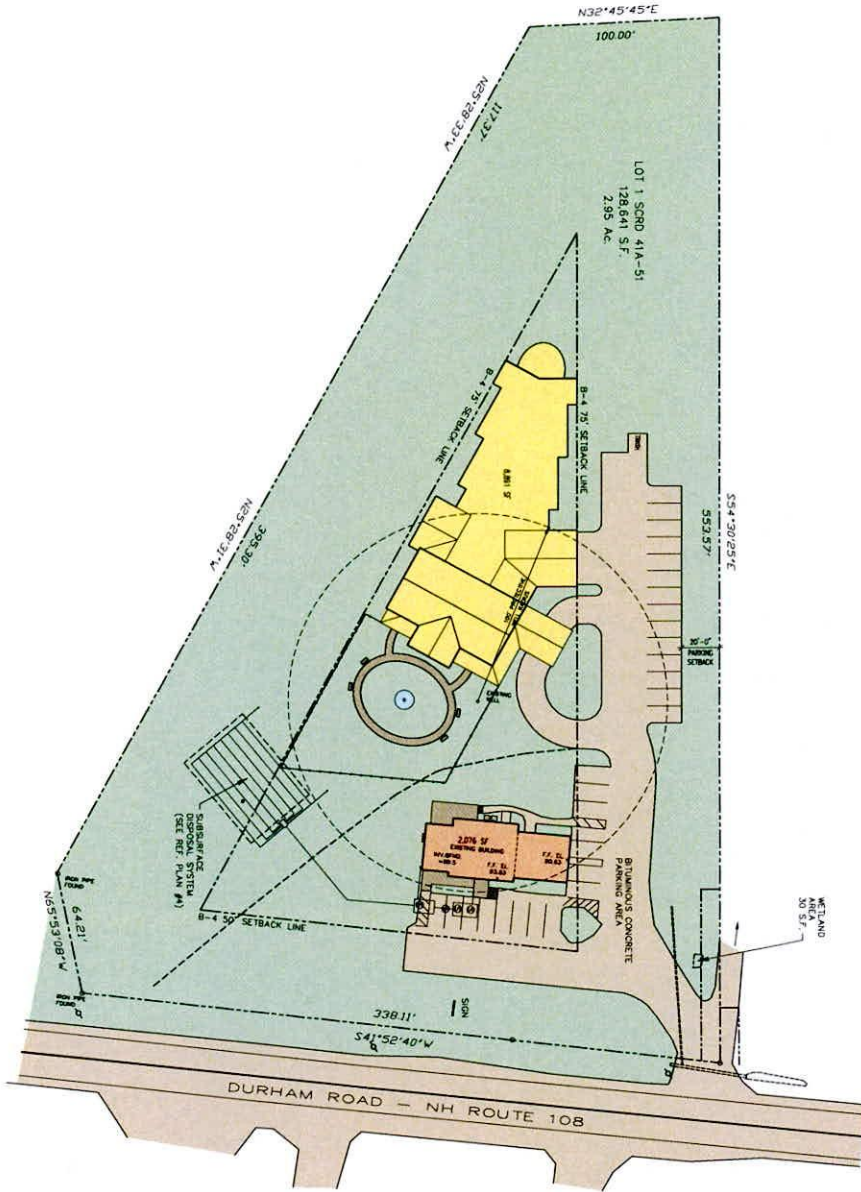
I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:



Date:

10-1-13



NOTES:

ZONING DISTRICT: B-4, LOT (600)
 ZONING: B-4, LOT (600)
 MINIMUM LOT SIZE: 5.0 ACRES
 MINIMUM LOT COVERAGE: 30 PERCENT
 MAXIMUM BUILDING HEIGHT: 35 FEET
 MINIMUM SETBACKS: 25 FEET
 FRONT: 25 FEET
 SIDE (ABUT A LOT): 25 FEET
 REAR: 25 FEET

THE SUBJECT PARCEL IS LOCATED WITHIN AREAS DETERMINED TO BE FLOOD HAZARDOUS BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AND IS SUBJECT TO FLOOD HAZARD NUMBER 1007202000. EFFECTIVE DATE MAY 17, 2008.

LOT AREA CALCULATIONS:
 TOTAL PARCEL AREA = 128,641 SF.
 WETLAND - WEST ENV. 11/16/2011 = 30 SF.

Progress Print
 Not For Construction


		<h1>NH Care Home</h1> <h2>Dover, New Hampshire</h2>		<p>AG Architects, PC 634 Central Avenue, Dover, NH 03820 E-Mail: agarchitects.com www.agarchitects.com Phone: 603-743-3700 Fax: 603-743-3777</p>	
<p>Date: 2 October 2013</p> <p>Scale: 1" = 30'-0"</p> <p>Drawn By: [Name]</p> <p>Checked By: [Name]</p> <p>Sheet Title: Concept Site Plan</p> <p>Sheet No: C1.1</p>					



Photo 1



Photo 2



Photo 3



Photo 4



2006

Photo 5