

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, February 20, 2014**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF PRIOR MINUTES OF JANUARY 16, 2014

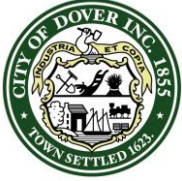
3. HEARINGS

- A. * Z 14-04 Mark G. Phillips, 385 Sixth Street (Tax Map D, Lot 16) (Property Owner: Weeden Family Revocable Trust) and 387 Sixth Street (Tax Map D, Lot 15) (Property Owner: Diane I. and Jeffrey A. Weeden), 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 a self storage facility use to be located no closer than 500 ft. from the front property line where self storage facilities are not permitted in the B-4 District.
- B. * Z 14-05 Matthew Kozazcki/Tendercrop Farm, Dover Point Road (Tax Map M, Lot 52B) (former location of Tuttle's Red Barn), located in the Low Density Residential (R-20) District, requests a variance from **Section 170-44.F** of the Zoning Ordinance to permit the installation of a four (4) ft. split rail fence adjacent to the parking lot for the retail center, in place of the seven (7) ft. screening that is required wherever parking spaces are provided for nonresidential structures and the parking area adjoins a residential use.

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
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1. ATTENDANCE

Members Present: Sam Reid (Chair), Otis Perry (Vice Chair), James Kelley, Frank Landford, Chris Prior, Bob Hall (Alternate), Jennifer Stone (Alternate), Joshua Cote (Alternate)

Staff Present: Timothy Corwin (Assistant City Planner), Diane Britt (Recording Secretary)

The Chair called the meeting to order at 7:00 p.m. He opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

The chair announced that case Z13-20, Mark Phillips is the applicant, 385 Sixth Street, was withdrawn and will not be heard tonight, and case Z14-03, the proposal by White Dove Properties, LLC, 24-26 Hanson Street, was also withdrawn and will not be heard tonight.

Scott Erickson, representing the Cricket Brook Condominium Association, stated he had prepared a letter voicing the association's concern in reference to case Z14-03 and asked if the case had been withdrawn altogether.

T.Corwin confirmed the application was withdrawn, stating the applicant is considering different avenues for the development of their property.

2. REMARKS BY CHRISTOPHER G. PARKER, AICP, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

C.Parker stated he would like to thank the Board as a resident and as the Director of Planning and Community Development for the time and effort they put into preparing for meetings, and for the commitment they have made to serving the community by volunteering their time to serve on the Board.

3. APPROVAL OF PRIOR MINUTES OF THE DECEMBER 19, 2013 MEETINGS

O.Perry pointed out an error at the bottom of page 6: Kelly Jewett was identified incorrectly as the "wife" but she is the "property owner".

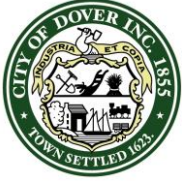
Motion: O.Perry made the motion to accept the December 19, 2013 meeting minutes as amended. Seconded by J.Stone. Vote: U/A. C.Prior recused himself as he was not present at the December meeting.

4. HEARINGS – CONTINUED FROM DECEMBER 19, 2013 MEETING

- A. Z 13-20 Mark G. Phillips, 385 Sixth Street (Tax Map D, Lot 16) (Property Owner: Weeden Family Revocable Trust) and 387 Sixth Street (Tax Map D, Lot 15) (Property Owner: Diane I. and Jeffrey A. Weeden), 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 a self storage facility use where self storage facilities are not permitted in the B-4 District.

As noted above, this case was withdrawn.

5. HEARINGS – NEW



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- A. * Z 14-01 River Valley Development Corp. (Property Owner: The Horizon Trust of New Hampshire), 1.1 acres of vacant land identified as Tax Map 38, Lot 9A-2, located between Dover Bowl and the Meineke Car Care Center at 899 Central Avenue in the Thoroughfare Business (B-3) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to permit the construction of a building to be located 25 ft. from the front lot line where a minimum setback of 50 ft. is required.
- B. * Z 14-02 River Valley Development Corp. (Property Owner: The Horizon Trust of New Hampshire), 1.1 acres of vacant land identified as Tax Map 38, Lot 9A-2, located between Dover Bowl and the Meineke Car Care Center at 899 Central Avenue in the Thoroughfare Business (B-3) District, proposes to construct a mixed use building containing twelve (12) residential units on the upper floors with commercial uses reserved on the first floor. The applicant requests (a) a special exception under **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to permit multi-family dwelling units, and (b) a variance from **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to allow twelve (12) multi-family dwelling units, where the permitted density of 5,000 sq. ft. per dwelling unit permits only 6 units on this lot.

Both cases were heard at the same time and voted on together.

S.Reid explained that Joseph T. Molle, the Chief Investment Officer of Unison Realty Partners, LLC, sent him a letter dated 1/16/2014 requesting continuance of the hearing because he had just recently received the notice of this request. S.Reid stated, according to T.Corwin, the notice was sent out in accordance with state law.

T.Corwin explained he also spoke with Mr. Molle and explained what recourse he had. He stated Mr. Molle's phone number was given to the applicants and they said they would contact him.

S.Reid asked the Board if they wanted to continue with the case tonight.

J.Kelley confirmed with T.Corwin that Unison Realty Partners, LLC, owns Shaw's Plaza and is an abutter.

T.Corwin stated that the abutter notice was mailed at least five days before the meeting date and it appeared the recipient received the notice on Tuesday when he spoke with Mr. Molle.

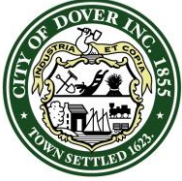
J.Kelley stated he understands the notice problem but agrees the case should be heard tonight.

S.Reid stated he spoke with T.Corwin before the meeting and they agreed that, particularly when dealing with "corporate America", five days is not sufficient.

T.Corwin stated he will look into the process and see if notices could be sent out 7 or 8 days before the meeting date.

Public Hearing Opened

Atty. F.X. Bruton, of Bruton & Berube, spoke on behalf of River Valley Development Corp. He introduced one of the principals, Mike Patenaude, who was in attendance, as well as Chris Berry, of Berry Surveying and Engineering. He stated he had an opportunity to speak with Mr. Molle today and address some of his concerns. He explained details about changes that the lot has gone through and details about the plan for commercial space on the first floor and a total of 10



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residential units on the second, third and fourth floors. He explained the variance request is for a front setback of 25 feet, where 50 feet is required but that would encroach on the wetlands. The second variance is a density request for 10 residential units, where 7 would be the allowed number. He also explained that the plan is to provide 30 parking spaces on the parcel and rent an additional 18 spaces from Dover Bowl. He stated this would provide ample parking for the commercial space and 2 parking spaces for each unit.

S.Reid pointed out that the agenda states the applicant is requesting a special exception, but since the application does not comply with the special exception requirements, he believed the applicant should withdraw that and proceed with a request for a variance.

Atty. Bruton stated that they were withdrawing the request for the special exception and they want to proceed with the request for the density variance.

S.Reid confirmed with Atty. Bruton that the two variances were to allow 10 residential units and a 25 foot front setback. He mentioned that the lot is not on a city street and there is no frontage but there is legal access to the right of way. He remembers that there was a case in the past where this was a problem, so he asked what Atty. Bruton's position was with respect to the need for the variance from the frontage requirements.

Atty. Bruton explained that the lot was created in a subdivision in 1970 with access and frontage by the right of way. It becomes a grandfathered lot in terms of the frontage issue, and noted that the applicant wants to make improvements to the right of way.

O.Perry confirmed with Atty. Bruton that the right of way is presently owned by Mr. Molle's company.

Discussion ensued regarding easement rights to the right of way for access and if it actually is being used for access, the condition of the right of way and the intent of applicant to improve it, and tractor trailers being parked overnight on the right of way.

F.Landford stated he had a problem with the survey map given to him which shows the lot to be located on Central Avenue, and he wanted to know the correct location of the lot and how far back from Central Avenue it was.

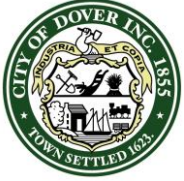
C.Berry apologized, stating that the inset map was incorrect. He stated the actual survey map was correct and the lot was approximately 200 feet from Central Avenue.

Atty. Bruton explained at length how the variance requests meet the criteria, that the project will meet all other zoning and planning criteria, and that the use is reasonable.

Discussion ensued regarding the reason for the 25 foot frontage setback variance request as well as the reason for the placement of the proposed building was to avoid wetlands, the buffer requirements and the density requirements.

J.Kelley asked why the building was not placed in accordance with the zoning frontage setback and less units built to meet code and avoid the variance requests.

T.Corwin explained the setback is off the right of way and not off a city street and the Planning Department felt there was no need to enforce the 50 foot setback on this property, and the Planning Department was comfortable with the project.



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O.Perry stated he felt the density and setback requirements were to provide open space, recreational space, and space for parking, and the size of the parking lot will be impacted by the number of units. He wanted to know what open space was left over per unit. He also wanted to know if the developer would restrict himself to two units on the top floor.

Atty. Bruton explained he wanted to separate two issues. He stated the concern with the wetlands relates to the 25 foot vs. the 50 foot setback, and it was felt that 25 feet of frontage, given this unique location, is appropriate. The density goes up and the building meets the height restriction. He explained they felt that the residential units would be extremely well suited for professional people, given the location and being above the commercial first floor. He verified that the plan was for two residential units on the top floor.

C.Berry told the Board that he did not have an exact figure for the open space available per unit, but he had calculated that an area of approximately 4500 square feet would be available for passive recreation. He stated during the planning process typically funds would be allocated for active recreation. He stated the applicant has another project that is similar to this one with 12 units, commercial on first floor, residential on second floor, and no children live there.

S.Reid confirmed with C.Berry that there is no final design but the right of way would be resurfaced, the subsection would probably be removed and rebuilt, and if the owner, abutters and users of the right of way agree, planting could be done on the sides. It has not been determined if curbing would be required, but resurfacing and lane delineation is important so that it would be used and viewed as a proper entrance.

Discussion ensued regarding the right of way being used as a shortcut, placement of a trash dumpster and the possibility of it taking away a parking space, who maintains the right of way and the need for an agreement with the owner to maintain it, what utilities are available to the site, and treating water runoff before it is sent to the wetlands. There was discussion regarding placement of the front of the proposed building.

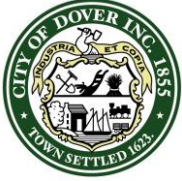
Debbie Driscoll Davis, who represents Driscoll Realty, an abutter, stated that Driscoll Realty owns the lot behind Meineke and she pointed to a map to identify the lot for the Board. Driscoll Realty has a parking easement on top of the right of way that is owned by the owner of Shaw's Plaza, and also has head in parking along that right of way against their lot for almost the distance of their lot which they obtained from the owner of Shaw's Plaza years ago. They have land next to the lot being discussed tonight that is for sale. They are concerned that runoff from the lot could increase the wetlands onto their lot, which they think may have already happened, and they plan to have a wetlands study done in the spring. She stated the tractor trailers park on the right of way and only the owner of Shaw's Plaza can do something about that, and pointed to a map to show the Board where the tractor trailers are parking.

S.Reid asked for clarification as to the reason for her mentioning that they have a parking easement along the right of way.

D.Driscoll Davis stated it was because of the potential that the right of way may not be 50 feet wide at times.

J.Kelley confirmed with D.Driscoll Davis the reason she felt the wetlands have been impacted on their lot was because some trees and things that were removed from that lot in the past and other things were brought onto the lot, and after that happened, she feels it pushed the wetlands onto their lot.

J.Kelley asked T.Corwin about protection of wetlands in the hypothetical case that something was done to a lot to reduce the wetlands. He stated that it might be a wetlands violation under our ordinance, under state law, or it could be a zoning code violation.



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C.Prior confirmed with D.Driscoll Davis that the parking easement was on the paved right of way.

S.Reid stated that generally a right of way is 50 feet wide but the paved portion is 22-26 feet wide. Roads generally are not 50 feet wide.

C.Prior confirmed with D.Driscoll Davis that on the aerial view map the entire right of way is paved.

J.Kelley asked if there have been any discussion with Driscoll Realty about their lot.

D.Driscoll Davis explained when she received the abutter notice for this meeting, which was at the beginning of the week and did not give her much time to prepare, she contacted the broker handling this property to see if there was any interest in their lot. She believes at this time there was no interest.

Mark Bowen, owner of the Dover Bowl property since 1987, spoke next. He stated he talks to Mr. Molle quite often. He has been working with the applicants. He feels something should be done with the property. He feels there is plenty of room in the right of way for parking and for getting in and out. Many people have looked at the property and could not do anything with it.

F.Landford confirmed with M.Bowen that he is the owner of the parking lot in front of Dover Bowl which abuts the lot being discussed tonight and that the Shaw's Plaza owner owns the land that the right of way goes over.

C.Berry stated that the property did have a wetlands violation in the past, explaining that someone had moved material around which impacted the wetlands. He stated this happened before he was involved with this property. DES was involved and fill was removed, and the violation was taken care of. He stated, regarding treatment, that he is not allowed to increase the rate of flow onto someone else's property and that will have to be addressed.

O.Perry asked C.Berry to address traffic flow.

C.Berry stated the right of way was large enough to accommodate parking and still have ample space to pass.

STAFF RECOMMENDATION:

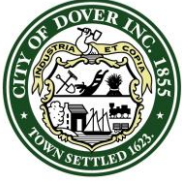
T.Corwin read the staff memo prepared for cases Z14-01&02 into the record.

T.Corwin stated that the Planning Department recommends that the Board approve the variance from the front setback requirements and the variance from the density requirements provided that no more than ten (10) dwelling units are constructed on the property.

J.Kelley asked T.Corwin if, in the staff recommendations, first paragraph, last sentence, a period could be inserted after the word "buffer" and the language "as much as possible" be removed. T.Corwin explained there will be some paved parking area in the buffer and the applicant will need to get a Conditional Use Permit for that.

Regarding O.Perry's question limiting the residential units to two bedroom units, S.Reid asked T.Corwin if, in the Planning Department's perspective, that suggestion is viable.

T.Corwin stated that the applicant was agreeable to that.



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Public Hearing Closed

Motion: O.Perry made the motion to approve both variances, with the condition that no more than ten 2-bedroom units be constructed, with commercial space reserved for the first floor. Seconded by C.Prior. Vote: U/A

- A. * Z 14-03 White Dove Properties, LLC, 24-26 Hanson Street (Tax Map G, Lot 20-41), located in the Urban Density Multi-Residential (RM-U) District, proposes to subdivide the property into two lots, one containing 10,000 gross sq. ft., of which 2,836 sq. ft. is located in the Conservation District, and the other containing 8,084 gross sq. ft., of which 2,413 sq. ft. is located in the Conservation District. Applicant requests a variance from **Section 170-12.A** of the Zoning Ordinance and the RM-U District Table of Use to permit the creation of a lot containing 8,084 sq. ft. where a minimum of 10,000 sq. ft. is required, and from **Section 170-27.D** to permit the creation of two lots that have an area outside the Conservation District of less the minimum required 10,000 sq. ft. lot size.

The above case was withdrawn.

6. ANNUAL ELECTION OF OFFICERS

The Chair entertained nominations for Chair.

C.Prior nominated Sam Reid for Chair. There were no other nominations for Chair. Seconded by J.Kelley. With a show of hands Sam Reid was elected as Chair of the Zoning Board. Vote: U/A

The Chair entertained nominations for Vice Chair. J.Kelley nominated Otis Perry for Vice Chair. There were no other nominations for Vice Chair. Seconded by J.Cote. With a show of hands Otis Perry was elected as Vice Chair of the Zoning Board. Vote: U/A

Staff Comments:

T.Corwin announced that he had parking passes for Board members and explained how these can be used.

O.Perry stated that, due to the abutters for tonight's meeting not receiving the notice in a timely fashion, he is requesting that notices be sent out a minimum of 10 days before the meeting date.

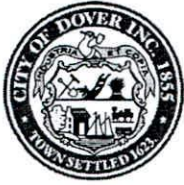
Discussion ensued.

T.Corwin said he would speak with Director Parker about this administrative change because deadline dates for applications are already posted and these may need to be changed.

T.Corwin reminded Board members that next month there will be a legal update at 6 p.m. and refreshments will be provided.

7. ADJOURN

Motion: O.Perry made the motion to adjourn at 8:20 p.m. Seconded by J.Kelley. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z14-04)

Application Type:	Variance
Applicant:	Mark G. Phillips
Owner:	Weeden Family Revocable Trust and Diane & Jeffrey Weeden
Location:	385 Sixth Street (Tax Map D, Lot 16) and 387 Sixth Street (Tax Map D, Lot 15)

INTENT: The Applicant proposes to merge 385 and 387 Sixth Street to create a single lot and construct a multi-building self storage facility to be located no closer than 500 ft. from the front lot line. A variance is required to permit the self-storage facility which is not a permitted use in the B-4 District.

UNITS PROPOSED: Up to 17 self-storage buildings with one (1) accessory residential unit

AGENDA ITEM #: 3-A

ZONING DISTRICT: B-4 District

EXISTING LAND USE: 385 Sixth Street – Vacant; 387 Sixth Street – Residential

PROPOSED LAND USE: Commercial and Self-Storage Facility

SURROUNDING LAND USE:
Commercial and Residential

PREVIOUS ZBA ACTION:

- Variance granted on December 18, 2008 to permit a drive-in movie theater (Case Z08-26)

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application, zoning map, conceptual site plan (2), satellite image and photo, existing conditions map, building elevations, site plan (2)

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:

The Planning Department does not oppose the request.

Summary of Request and Background

The subject properties consist of a total of 44.1 acres and are located on the north side of Sixth Street east of Enterprise Park and west of the Indian Brook/Sixth Street intersection. A portion of the property is currently improved with a residence, but is otherwise vacant and encumbered by the presence of wetlands and a sewer easement. As depicted on the conceptual site plan submitted as part of the application, the Applicant proposes to construct up to seventeen (17) commercial buildings primarily for a self-storage facility (the applicant states that he also proposes offices for the storage facility, an office for a real estate company, and a residence for the storage facility caretaker). 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 self-storage facility which is not a permitted use in the B-4 District.

Reason for Staff Recommendation

The prior application (Z13-20) for the property was heard by the Board on December 19th. Staff opposed that application because the scope of the request was unreasonable and the proposed self-storage use on this property and in this area of the City is undesirable from an economic development and planning perspective. The current application attempts to limit the scope and impact of the self storage use by placing it further back from the road.

Recommendation

The Planning Department does not oppose the request.



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only Case #: Z14-04 Date Received: JAN 28 2014
Amount Paid: \$ 340.00 Time Received: 1:40 PM
Ck# 8849

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Mark G. Phillips

Phone # 603-433-1566 or Cell 603-396-1635

Address of Applicant: 35 Hodgdon Farm Lane, Newington, NH 03801

E-Mail Address: greatbaynh@comcast.net

PROPERTY OWNER (if different from applicant): This variance application involves two adjacent but separate pieces of land.

385 Sixth Street. Tax Map D, Lot 16, approx. 27 acres

Owner: Weeden Family Revocable Trust, Beulah M. Eldredge and Bertharlene Miller, Trustees.

Address: 447 Sixth St. Dover, NH 03820 Phone # 603-742-5606

387 Sixth Street. Tax Map D, Lot 15, approx. 5 acres

Owner: Diane I and Jeffrey A. Weeden.

Address: 387 Sixth St. Dover, NH 03820 Phone # 603-749-3520

TYPE OF APPEAL: (Please check one)

- X Variance from Section 12 (B-4) 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:

This variance application only refers to the land that starts 500 feet back from Sixth Street. The entire front seven acres or so will remain subject to the present B-4 zoning and we will aggressively seek commercial users for that portion of the land. We are seeking relief only for the land that is 500 feet back from the road for a self-storage facility.

The city sewer easement runs the entire length of the property down the center and we will pave that and use it as the internal access road to the storage area. On the east side of this easement, starting 500 feet back from Sixth Street will be a classic wooden New England barn 40' x 60' with offices on the first

floor for the storage operation as well as Winsor Brook Property Advisors, a Dover based real estate brokerage and management firm. The second floor will be a residence for the manager's family for security purposes. Attached to the barn will be a wood framed addition that will appear to be a row of horse stables from the front with simulated Dutch doors, but is actually a storage building capable of climate control, with loading from the rear, out of sight. Over time the storage buildings will be constructed on each side of the easement to the rear.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 12 of the Zoning Ordinance to permit:

The land 500' back from the street to support a self-storage facility with a second floor residence, for security, over the office / administration building.

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:** Self-storage facilities are a tax positive development with no drain on city services. Other than the office building, it requires no water or sewer, only minimum electricity, and creates no noise, waste, dust, odor or glare on the neighborhood. National studies show only 5 cars per day enter a storage facility per 100 storage units and there are no "peak hours" creating a traffic hazard. In summary, the proposed use will not injure the public or private rights of others.

2. **Deviation from the strict requirements of the Ordinance is consistent with the spirit of the Ordinance because:** Storage units in the rear of the property will be a consistent use with the industrial buildings developed by the City along Venture Drive. We are avoiding 100% of the wetlands and so are in conformance with the City's Land Use Goal IX: "To encourage sustainable growth that is sensitive to environmental issues and minimizes energy consumption." The commercial use proposed is consistent with the spirit of the ordinance, to promote commerce in this location. As the storage units will start back 500' from Sixth Street, the use will not alter the character of the locality.

3. **Granting a variance would do substantial justice because:** This property has been actively on the market for 15 years with some ideas brought forward, but aside from the dental office, none have come to fruition largely due to the challenging configuration of the odd shaped and intertwined lots. There are very few development opportunities for such a linear piece of land further compromised by wetland encroachments and such a large utility easement down its center. The proposed self-storage is a commercial use in a commercial area that poses no threat to the wetlands or its neighbors; thus the general public will realize no gain from denying this variance.

4. **The value of surrounding property will not be diminished because:** The primary focus will remain on the front seven or so acres that will have a substantial commercial use to be in conformance to the present B-4 zoning. The only visible portion of the storage facility from the street will be a classic 40' x 60' conventional wood framed two story New England barn set 500' back from the street that will be conforming offices on the first floor and a residence on the second floor. Attached to that will be a wood framed one and a half story addition that will appear to be a row of horse stables from the front but are internal storage areas, loaded from the rear out of sight. From the street entrance, the storage and real estate office housed in an attractive barn will resemble an upscale equestrian estate, in sync with the long history of farming in the area.

NOTE: please complete EITHER paragraph SA OR paragraph 58. Staff recommends that you complete paragraph 58 only if you feel you cannot meet the requirements set forth in paragraph SA.

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:** Not only is its shape unusually long, over half a mile deep but its narrow buildable area distinguish it from other parcels in the area, allowing only 100' of buildable width on much of it from 75' setback requirements on the west side, the 40' wide utility easement down the middle of it and major wetlands all along the east side. With 32 acres in all, it would be unreasonable not allow a use for the 25 acres of land remaining behind the predominant front seven commercial acres.
- (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:** Given the challenges cited above with the shape, man-made limitations (setbacks, and utility easement) and ecological features (wetlands and their buffer zones) following the strict guidelines of the ordinance would not advance the purposes of the ordinance in any fair and substantial way.
- (iii) **The proposed use is a reasonable one because:** Storage buildings are a relatively benign use of the land that, because they are typically long and narrow, can be placed in areas unsuited for other types of buildings. We know of no other parcel of land in this area so impaired by special conditions that restrict its use in strict conformance of the ordinance. Considering the unique setting of this property and its geometric limitations, a storage facility is a reasonable use of this back land.

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:

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.

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

[Signature] 1-28-14
Signature of Applicant*

Beulah M. Eldredge 1-27-14
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: *Beulah M. Eldredge* Date: 1-27-14

SIGNATURE PAGE

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[Signature] 1-28-14
Signature of Applicant*

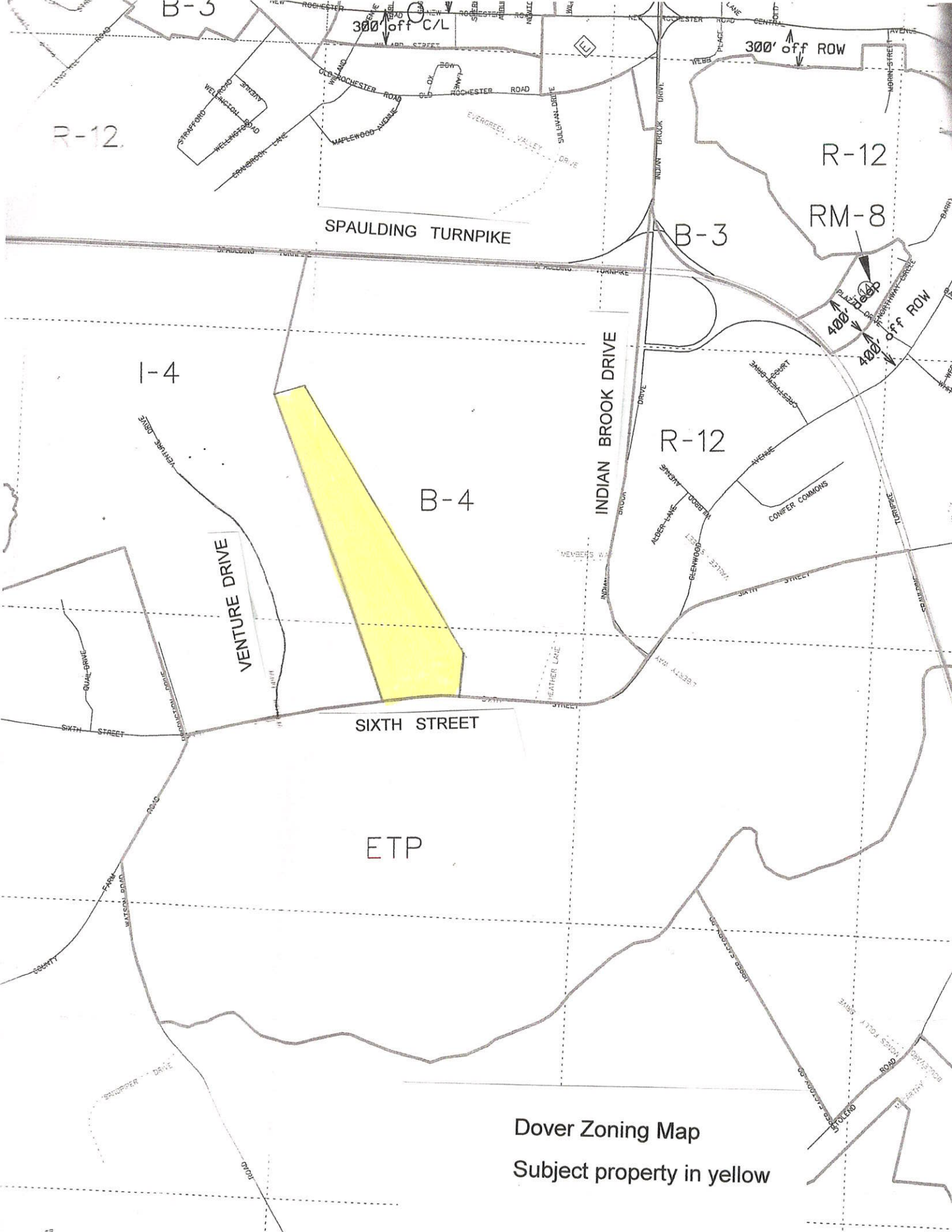
Deane Wooden *Jeffrey Wooden* 1.27.14
Signature of Owner*

*Both Signatures Required

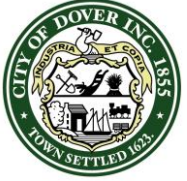
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Signature of Property Owner: *Deane Wooden* *Jeffrey Wooden* Date: 1.27.14



Dover Zoning Map
Subject property in yellow



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z14-05)

Application Type: Variance
Applicant: Matthew Kozazcki/ Tendercrop Farm
Owner: Matthew Kozazcki
Location: Dover Point Road (Tax Map M, Lot 52B)

INTENT: The Applicant proposes to reopen and operate a farmer’s market/grocery store at this location, and has installed a four (4) ft. split rail fence along the parking lot that serves the store. A variance is required to permit the four (4) ft. split rail fence in place of the seven (7) ft. screening that is required wherever parking spaces are provided for nonresidential structures and the parking area adjoins a residential use.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-B

ZONING DISTRICT: R-20

EXISTING LAND USE: Commercial

PROPOSED LAND USE: Commercial

SURROUNDING LAND USE: Residential and Agriculture

PREVIOUS ZBA ACTION:

- Variances granted on 10/22/81 and 8/21/86 to permit expansions of a nonconforming use (Cases H81-26 and H86-48, respectively)
- Variance granted on 4/16/87 for additional signage (Case H87-17)

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application, photos, tax map, GIS map

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:

The Planning Department opposes the request.

Summary of Request and Background

The subject property consists of 3.63 acres and is located across from the intersection of Dover Point Road and Tuttle Lane. The existing building was formerly occupied by Tuttle’s Red Barn, and is being readied to be occupied by a similar farmstand/grocery store use under the name “Tendercrop Farm”. As part of the current renovations for Tendercrop Farm, the tall vegetative buffer that screened the store’s parking lot from the residential uses across Dover Point Road was removed and replaced with a four (4) ft. tall split-rail fence. The screening that was removed, however, was required under Section 170-44(F) of the Zoning Ordinance which provides that, “[w]here parking spaces are provided for nonresidential structures and this parking area adjoins a residential use, suitable screening at least seven (7) feet in height shall be provided and maintained.” Therefore, a variance is required from Section 170-44(F) to permit the split rail fence in place of the required screening.

Reason for Staff Recommendation

Staff welcomes the Tendercrop Farm use which will include not just the use of the subject property, but the return of the surrounding farm properties to their historic agricultural use. However, while the use of the subject property will include sale of products raised on the surrounding farm properties, the use of the building will be commercial retail, as it was when Tuttle’s Red Barn operated. The split rail fence installed by the applicant does not address the purpose of the Section 170-44(F) requirement which is to screen commercial parking lots from abutting residential uses.

It is not clear what is unique about the property that will not permit compliance with the screening requirement, especially considering the screening was already in existence and then removed by the applicant. The applicant states that the vegetative screening removed by the applicant created a safety hazard, but according to the Dover Police Department there have been no reported accidents at this location. Moreover, there is nothing to prevent the applicant from making adjustments to the location of the screening to maximize driver safety.

The split rail fence is admittedly attractive, but there is nothing to prevent the applicant from creating an attractive screen that will both fit with the character of the property and meet the screening requirements of the Zoning Ordinance.

Recommendation

The Planning Department opposes the request.



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only Case #: Z14-05 Date Received: FEB 06 2014
Amount Paid: \$ 414.- Time Received:
Cb # 30927

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Matthew Kozazcki/ Tendercrop Farm Phone # Cell: (978) 479-8314
Address of Applicant: 108 High Road, Newbury, MA 01951
E-Mail Address: info@tendercropfarm.com; tyler@tendercropfarm.com

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

PROPERTY/PARCEL INFORMATION

Address: 123 Dover Point Road
Brief Directions: Formerly Tuttle's Red Barn

Zoning District: Assessor's Map # Lot(s) #

TYPE OF APPEAL: (Please check one)

- X Variance from Section 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:

Matt intends to operate the old Tuttle Farm as a second location of his business, Tendercrop Farm, currently located in Newbury, MA.
In season, we sell our own produce fruits and year-round sell our own meats, baked goods and prepared foods.
Examples of our product are demonstrated on our website, www.tendercropfarm.com

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 1-2044-F of the Zoning Ordinance to permit:

This variance is requested to permit the farmstand located at 123 Dover Point Road (formerly Tuttle's Red barn, now Tendercrop Farm at the Red Barn) from the town zoning regulation referenced above that requires a 7' fence to be constructed between a commercial property and a residential one. Previously there had been a section of arborvitae trees that exceeded 7' in this location. This fence has been replaced with a 4' split rail fence. The owner proposes that the fence currently in place be left as-is, with no additional construction or plantings in order to meet the zoning regulations.

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:

This variance is requested primarily on the grounds of safety. Exiting the parking lot to the left was extremely dangerous because the driver could not see around the Arborvitae far enough due to height and size of the hedge. With the existing fence, this has danger has been eliminated.

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

The farmstand located at 123 Dover Point road has been extensively renovated, including repainting the entire exterior of the building, which has enhanced the scenic nature of the building and surrounding farmland.

3. Granting the variance would do substantial justice because:

This variance is just and appropriate because it 1) increases safety of drivers exiting the parking lot and 2) enhances the scenic nature of the property.

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

The surrounding properties benefit from the classic New England flavor of the repainted farmstand and new split rail fence. In addition there are increased employment opportunities and access to locally grown food in the South Dover area.

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:

The entrance to the property is located on a corner of Dover Point Road, and if a zoning-compliant fence were in place it would be very difficult to see oncoming northbound traffic and making for a dangerous entry and exit to the property.

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:

The applicant does not dispute the intention of the ordinance, as it is clearly aimed improving the quality of life concerns in Dover.

It is the opinion of the owner and hopefully also the Zoning Board of Appeals that the safety of the entrance and egress supersede this zoning requirement. We are not all opposed to planting or constructing the appropriate fence on abutters properties, as long as that does not also create a safety issue.

We would ask that concerns of this nature be raised at the hearing.

and

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

We believe it is reasonable to value safety of those entering and exiting the parking lot over the strict compliance to a zoning regulation that seem in this case to be at odds. We believe that a traffic accident caused by the presence of this fence would indeed be a hardship on the driver and probably the whole community.

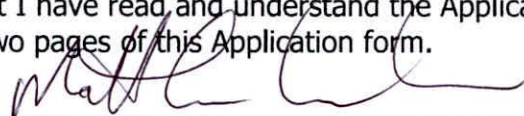
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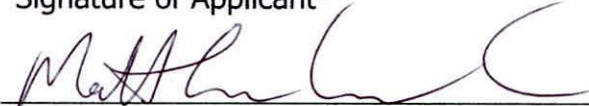
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Signature of Applicant*



Signature of Owner*

*Both Signatures Required

IMPORTANT

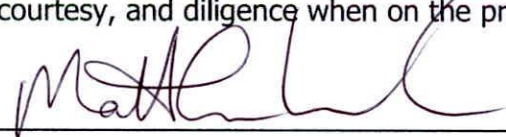
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MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.

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Signature of Property Owner:



Date:

2/6/14

ABUTTER LIST

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

Pursuant to RSA 676:7, the State Law of New Hampshire, the City of Dover is required to notify the applicant and every abutter of the public hearing by certified mail. The cost of required publication or posting of notice, and the cost of mailing said notices, shall be paid by the applicant.

"Abutter" is defined in Chapter 170, Dover Zoning Ordinance, as:

The owner of record of a parcel of land located in New Hampshire and adjoins or is directly within **two hundred (200) feet** (including land across the street or waterway) of the proposed site under consideration by the Board.

In the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356-B: 3, XXIII. Additionally, the individual owners of units within the association, which are located within two hundred (200) feet of the common property line shall be notified only by first class mail.

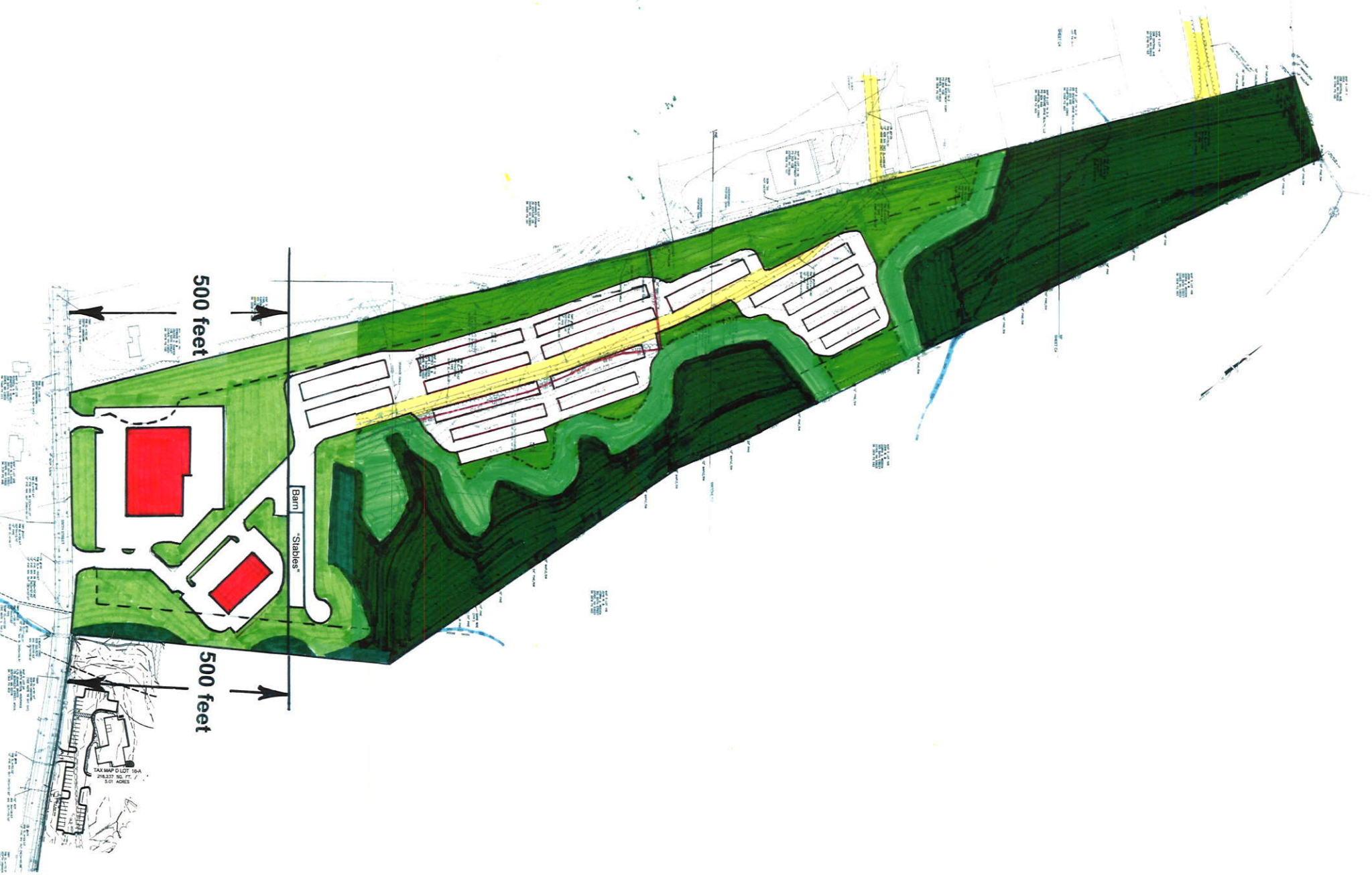
PLEASE NOTE: abutter ownership information for lots located in Dover, shall be obtained through the City's Tax Assessment Office.

Tax Map	Lot No.	Owner(s) of Record	Mailing Address
	M-52-1	Kathleen Tarbox	6 Ivans Lane Dover, NH 0382
	M-52-24	Hung. T Nguyen	4 Ivans Lane Dover, NH 0382
	M-52-3	RBS Citizens Bank	10561 Telegraph Road Glen Allen, VA 23059
	M-52-4	Steven T White	14 Ivans Lane Dover, NH 0382
	M-52-5	Matthew Zahorik	20 Ivans Lane Dover, NH 0382
	M-52-6	Daniel Pelton	24 Ivans Lane Dover, NH 0382
	M-52-7	Julie Dane	23 Ivans Lane Dover, NH 0382
	M-52-8	William Coneys	17 Ivans Lane Dover, NH 0382
	M-52-9	Jeff Jones	11 Ivans Lane Dover, NH 0382
	M-52-10	Joseph Dulac	9 Ivans Lane Dover, NH 0382
	M-52-11	David Tompkins	3 Ivans Lane Dover, NH 0382
	M-52-12	Daniel Twomey	9210 Byron Ter Burke, VA 22015-2061
	M-53-0	Ronald Fenerty	159 Dover Point Road Dover, NH 0382
	M-63-0	William Chenevert III	142 Dover Point Road Dover, NH 0382
	M-64-0	Diane Aluxek	140 Dover Point Road Dover, NH 0382
	M-65-0	Matthew Haas	138 Dover Point Road Dover, NH 0382
	M-66-0	Frederick King	134 Dover Point Road Dover, NH 0382
	M-66-A	Peter McDonald	132 Dover Point Road Dover, NH 0382
	M-66-B	Jeryl Pritchett	136 Dover Point Road Dover, NH 0382
	M-67-0	John Leggett	3 Penny Lane Dover, NH 03820
	M-67-A	Trefethen Family Trust	130 Dover Point Road Dover, NH 0382
	M-68-0	David Brough	7 Tuttle Lane Dover, NH 0382
	M-68-A	Jean Brunette	126 Dover Point Road Dover, NH 0382
	M-68-D	Brian Gennaco	19 Tuttle Lane Dover, NH 0382

M-68-C
M-68-E
M-52

Stewart Bradley
Charles Linn
Matthew Kozacki

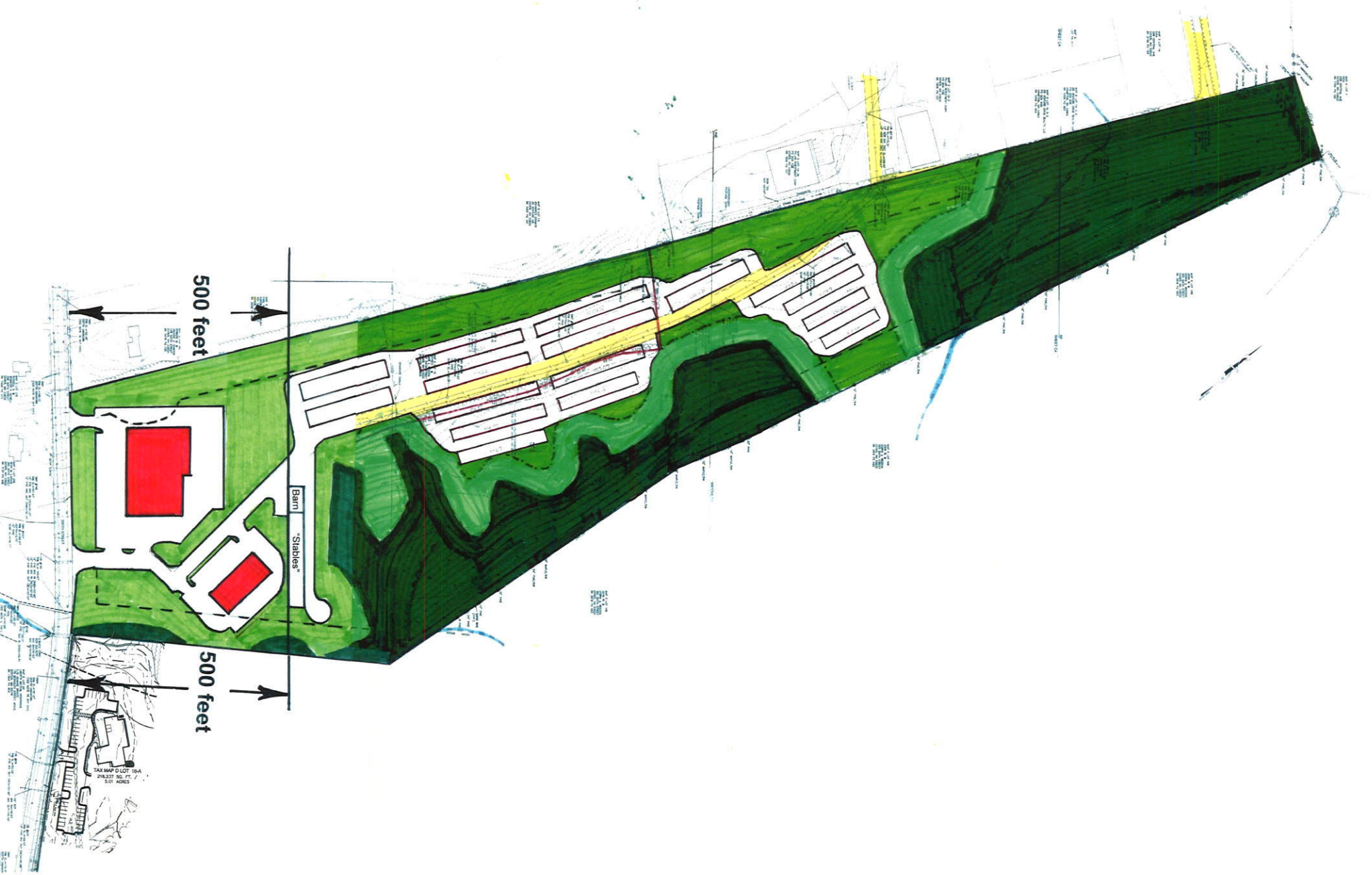
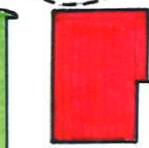
25 Tuttle Lane Dover, NH 0382
2 Tuttle Lane Dover, NH 03820
108 High Road Newbury MA 01951



500 feet

500 feet

Barn
Stables



TAX MAP D LOT: TRK
218,327 SQ. FT.
5.01 ACRES