



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, 288 Central Avenue Dover NH 03820
Meeting Date: **Thursday, December 18, 2014**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), Otis Perry (Vice Chair), Frank Landford, Chris Prior, Bob Hall

Members Absent: George Reagan (Alternate), Gary Green (Alternate)

Staff Present: Timothy Corwin (Assistant City Planner), Jean Glidden (Recording Secretary)

The Chair called the meeting to order at 7:01 p.m. He opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF NOVEMBER 20, 2014

C.Prior requested the spelling for George Reagan's name be corrected.

Motion: O.Perry made a motion to accept the November 20, 2014 Regular Meeting Minutes as amended. Seconded by C.Prior. Vote: U/A

3. HEARINGS

- A. * Z 14-28 Robert Paolini (Property Owner: JNM Realty Trust), #10 Harvest Drive (Tax Map K, Lot 22), located in the Thoroughfare Business (B-3) District, proposes to remove an attached garage and construct an additional living unit which will bring the total number of units on the property to eleven (11). The existing ten (10) units are non-conforming in that multi-family is only permitted in the B-3 District on the second floor or above. The applicant requests variances from (i) **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to permit an additional multi-family unit to be located on the first floor and above, and (ii) **Section 170-40.A and B** of the Zoning Ordinance to permit the expansion of a non-conforming use.

Public Hearing Opened

Attorney Jim Schulte represented the applicant. He clarified that there is an existing Special Exception for the 10 units that are there. The Condominium Association met and approved the applicant's proposed conversion to Unit 10. A letter was submitted for the record. The general purpose of the ordinance is to provide consistency in the appearance of the buildings in the neighborhood. The unit is at the far end of the three unit building and is hidden from the road. It is not conducive for commercial use. The applicant is requesting the allowance of a garage and small living space on the ground floor instead of commercial use. The other unit owners would like an additional occupant to help with the financial cost associated with plowing and maintenance. He added that Robert Paolini was also present. The Attorney provided pictures for the record.

C.Prior asked why was only the garage constructed at that time, as opposed to another unit. R.Paolini replied that he needed the garage initially for storage, but does not now. He stills owns unit 10 which is abutting the garage.

F.Landford confirmed with Attorney Schulte that there was enough land for the additional unit. There is a 5000 sq. ft. per unit requirement. The lot is 60,000 sq. ft.

S.Reid asked whether this would it qualify for a special exception under the old ordinance. The Attorney replied that there is enough land for the 5000 sq. ft. requirement. The Attorney also stated that there is adequate water and sewer so there is no impediment, as well as, no impediment for pedestrian traffic. There is enough parking on site, therefore parking is not an issue. The garage would be consistent in appearance with the other buildings.



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STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department supports the request as set forth in the staff memo. Staff decided that it does not require Planning Board approval, but would need TRC review. This is not just one variance, but two variances both related to the first floor non-residential requirement. The one variance is required for the use and the other for the expansion of the non-conforming use. T.Corwin suggested the Zoning Board approve the variance with a condition that states no additional dwelling unit shall be allowed on the property.

Public Hearing Closed

Motion: O.Perry made a motion to grant the variance to allow the first floor occupancy and permit the expansion of the non-conforming use with the condition that no more dwelling units are to be built on the property. Seconded by F.Landford. Vote: 5/0

- B. * Z 14-30 Jason Pohopek (Property Owner: John A. Valyo), 20 Gladiola Way (Tax Map A, Lot 20), located in the Rural Residential (R-40) District. The applicant proposes to subdivide the property into two lots for the purpose of creating a 78.18 acre parcel which will be deeded the City of Dover and subject to a conservation easement. The applicant requests a variance from Section 170-12.B of the Zoning Ordinance and the R-40 District Table of Use and Dimensional Requirements to permit the subdivision which will result in the creation of a 2.6 acre lot (containing the existing house) having 0 ft. of frontage where minimum frontage of 150 ft. is required.

Public Hearing Opened

Jason Pohopek, the surveyor, summarized the application. In order to donate the proposed conservation land, the applicant worked with the Planning Department to craft a proposed subdivision so that the house could be separated from the land to be donated to the City of Dover. The applicant wanted to comply with subdivision regulations. They ran a property line making a pork chop style lot that acquired road frontage to make it a compliant lot. The intent is to protect Blackwater Brook and the surrounding wetlands, but the land in the pork chop lot would not be included in the property to be donated to the city or the easement. The property owner has access to Gladiola Way via his neighbor's property. A variance is needed for the lot frontage on the lot.

S.Reid questioned if it is the intent to donate the property as a whole or just have a conservation easement. J.Pohopek replied that the intent is to put a conservation easement on the property and then donate it. The City of Dover would hold the fee title to the property but a different entity would hold the easement.

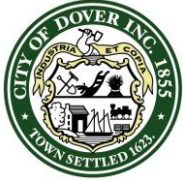
O.Perry questioned the property owner's access to the pork chop lot. J.Pohopek replied that there are three lots that share one common access point on Gladiola. The property owner cuts across two lots for access.

STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department supports the request as set forth in the staff memo. T.Corwin suggested a condition of approval that the subdivision plan submitted be approved by the Planning Board and the conservation lot be accepted by the City Council subject to a conservation easement.

Public Hearing Closed

Motion: O.Perry made the motion to grant the variance with the conditions as suggested by staff. Seconded by R.Hall. Vote: 5/0



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- C. * Z 14-31 Richard R. and Abigail P. Lundborn, 340 Washington Street (Tax Map G, Lot 12), located in the Medium Density Residential (R-12) District, propose to subdivide the property into two lots, one of containing the existing residence with frontage on Washington Street, and the other proposed to contain a single family dwelling with frontage on Gina Way. The applicants request variances from Section 170-12.B of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Requirements to permit (i) the Gina Way lot to have frontage of 19.5 ft. where minimum frontage of 100 ft. is required, and (ii) the Washington Street lot to have a contiguous non-wetland area of 10,610 s.f. where a minimum of 12,000 s.f. of contiguous non-wetland area is required.

Public Hearing Opened

Richard Lundborn represented his family who are the property owners and were present. He summarized the application, and submitted plans for review and record. The deed for Map G Lot 12A states the City has the right to activate the easement, and use the right of way for future development on Gina Way for the next lot north.

In regards to the second variance to break the lots apart, the lot's purpose has a contiguous upland requirement. They want to do the lot line between two existing pins. The applicant requests the front Washington Street lot to exist with a total acre of .69 acres.

C.Prior asked about the diagonal easement for sewer on the plan. The lot on Washington Street has a 40 ft. wide sewer easement. R.Lundborn replied Gina Way has no sewer. The applicant has a 12 inch sewer main running through his property. The applicant will grant an easement for the back lot to attach to the existing sewer main.

B.Hall asked about future development for Gina Way. R.Lundborn replied that there are neighbors who might team up eventually to do a subdivision. Doing this would give him an additional 103 ft. of frontage to his property.

F.Landford asked if there are wetlands on the new lot. R.Lundborn stated there are no wetlands on the new lot. His property mirrors the grade the rest of the development has.

STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department supports the request as set forth in the staff memo.

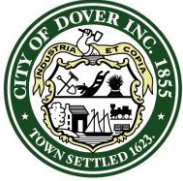
O.Perry wanted to know what the ordinance says specifically. T.Corwin stated that the requirement is to have frontage, and proceeded to explain what frontage is as defined in Zoning Ordinance.

Discussion ensued regarding the right of way for 3 Gina Way and how long it extends. T.Corwin and R.Lundborn clarified the location of the pins.

Public Hearing Closed

Motion: O.Perry made the motion to grant the variance from the frontage requirement for the rear lot and the upland requirement for the front lot with the requirement that the easement for the future extension of Gina Way be granted to the City. O.Perry stated the applicant has met the requirements of the criteria for the variance. The variance is also subject to Planning Board approval. Seconded by B.Hall. Vote: 5/0

- D. *Z 14-32 John Pike (Property Owners: John E. Pike and Regina K. Pike), 2 Phillip Street (Tax Map A, Lot 16-B), located in the Medium Density Residential (R-12) District, requests a variance from Section 170-



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33.A of the Zoning Ordinance to permit the installation of a fence having a height of ten (10) feet where fences may be no more than four (4) feet in height between the right of way and a parallel line with the front of the house and no more than eight (8) feet in height to the rear of the front of the house.

Public Hearing Opened

O.Perry stated for the record that he knows the applicant, and feels that it will not affect his vote. He has decided not to recuse himself.

John Pike explained they put an addition on the house. The view from the window in the addition is the neighbor's property. The privacy they needed is not being met, even with the 8 ft. high fence. The 10 ft. is also needed to improve the view. J.Pike added that the abutters are all fine and in agreement.

Discussion ensued as to the reason for the fence. J.Pike clarified that the view in the neighbor's yard is not a desirable one and supplied photos of his neighbor's junk pile.

B.Hall questioned why this was not expected with the addition, and why they are surprised. J.Pike replied that they weren't certain at the time what it would look like, and after it was completed decided to consider fencing.

Discussion ensued regarding the clarification of how much privacy fence is needed. T.Corwin stated he did view the site with the City Planner, and that the applicant would need fencing all the way to the front to accomplish what the applicant's goal is.

S.Reid questioned whether arborvitae could complete this goal. J.Pike stated he felt fencing would look more aesthetically pleasing.

STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department is not opposed to the application, but is struggling with it. The concern is that the junkyard pile that is in view is a code enforcement issue. Because it cannot be seen from the right of way, J.Pike would need to issue a written complaint. S.Reid questioned why a complaint had to be made for there to be a code enforcement issue. T.Corwin stated he would follow up on this matter.

Public Hearing Closed

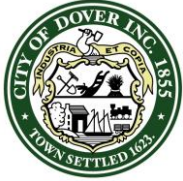
C.Prior stated if they granted the variance with 10 ft. fence, then every person who had an issue with their neighbor would want to extend their fence.

C.Prior stated Regulations 5.A.1 that this situation has nothing to do with the property's uniqueness as it does the neighbor's placing items in their backyard that can easily be removed. O.Perry stated it does create a uniqueness in the respect that the front of J.Pike's property faces the back of his neighbor's property. He added this is not common. B.Hall stated this is common when you have an intersection of two houses on a corner lot.

Motion: C.Prior made the motion to deny the variance. Seconded by B.Hall. Vote: 2/3 – Failed (Opposed by F.Landford, O.Perry and S.Reid)

Discussion continued regarding the concern of the height and the impact on the neighborhood. B.Hall suggested natural alternatives, such as arborvitae to block the view. He noted that there are no height restrictions associated with natural screens.

Motion: F.Landford made the motion to grant the variance as proposed. Seconded by O.Perry. Vote: 2/3 – Failed (Opposed by C.Prior, B.Hall and S.Reid)



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T.Corwin proposed an amendment to the variance that the 10 ft. be allowed only along the rear lot line of Map A Lot 16A, and not be allowed all around the property. O.Perry and F.Landford accepted the amendment to the variance. It was opposed by C.Prior, B.Hall and S.Reid.

C.Prior stated that all five criteria needs to be met to approve the variance, and that he believes all five have not been met.

S.Reid asked how it would change the character of the neighborhood by having a 10 foot fence, and how it would impact property values.

T.Corwin asked the Board if they would like an investigation as to the existence of other 10 ft. fences that were approved in the residential areas in the city.

S.Reid would like to table until additional information is made available, as well as images showing what a 10 ft. fence looks like.

Motion: O.Perry made the motion to table the variance. Seconded by S.Reid. Vote: 3/2 – Approved (B.Hall and C.Prior opposed)

4. REVIEW OF ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE

Discussion ensued regarding posters that needs to be posted by applicants. T.Corwin clarified Rules of Procedure, that the applicant is required to post the poster in clear view of the street no later than 5 days prior to the date of the hearing. Not doing so could disqualify the application.

The current office procedure is that the posters are handed to the applicants at the time they drop off their application; sometimes it is at a later date.

T.Corwin stated that Staff is currently addressing the consistency of the application procedures and is developing a checklist to avoid future oversights. The new procedure would consist of a poster being given at the same time the application is dropped off, and then followed up with a reminder email from Staff.

B.Hall expressed his concern regarding existing applicants not displaying posters.

T.Corwin suggested that the Board consider changing the rules to require the poster to be located at or near the front lot line of their property in clear view from the street.

Discussion ensued regarding what should happen if the applicant does not have the poster displayed.

T.Corwin addressed changes regarding direct abutters, and who can speak at the hearing. This applies to anyone within 200 feet. O.Perry suggested to eliminate the word direct and just leave the word abutter only.

Discussion ensued regarding site visits and the Roberts Rules of Order. The Board determined that normal business hours are daylight hours, clarifying the city is closed on Friday. B.Hall stated such visits should be scheduled with an applicant in advance because no two Board members should be present simultaneously, otherwise it's a meeting. O.Perry suggested to use wording on the application form stating, "By the signing of this application, the property owner gives members of the Board permission to go on the property." T.Corwin stated that if the Board adopts the current rules, the paragraph would need to be changed anyway.

5. ADJOURN

Motion: O.Perry made the motion to adjourn at 8:30 p.m. Seconded by B.Hall. Vote: U/A