



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, May 21, 2015**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF MARCH 19, 2015 AND APRIL 16, 2015

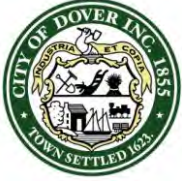
3. HEARINGS

- A. Z 15-10 V.M.D. Companies, LLC, (Property Owner: Profero Management & Holding, LLC), 181 Silver Street (Tax Map 11, Lot 2), located in the Thoroughfare Business (B-3) District, requests two variances, one from **Section 170-12.B** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Regulations to permit a building height of 55 ft. where 40 ft. is allowed, and one variance from **Section 170-11.C** of the Zoning Ordinance to permit an assisted living facility in the B-3 District, where the use is not permitted.
- B. Z 15-11 Clifford & Laura Zabkar, 2 Mohawk Drive (Tax Map A, Lot 127), located in the Medium Density Residential (R-12) District, requests a variance from **Section 170-12.B** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Regulations to permit the construction of an addition to be located eleven (11) ft. from the side lot line shared with 4 Mohawk Lane, where a minimum side setback of fifteen (15) ft. is required.

4. CONSIDERATION OF RE-HEARING REQUEST FOR Z 15-03, KARL LEINSING, 77 SPUR ROAD (TAX MAP L, LOT 15-D)

5. ADJOURN

Persons with questions or interested in reviewing the meeting materials are invited to visit the Planning Department located in City Hall, open Monday-Thursday from 8:30 am to 5:30 pm. The meeting materials are also available on-line at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>.



**CITY OF
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ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, 288 Central Avenue, Dover NH 03820
Meeting Date: **Thursday, March 19, 2015**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Staff Present: Timothy Corwin (Assistant City Planner), Tracy Smith (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.

2. APPROVAL OF MEETING MINUTES OF JANUARY 15, 2015 AND FEBRUARY 19, 2015

Motion: O.Perry made a motion to approve the January 15, 2015 Regular Meeting Minutes. Seconded by B.Hall. Vote U/A

Motion: F.Landford made a motion to approve the February 19, 2015 Regular Meeting Minutes. Seconded by B.Hall. Vote U/A

3. HEARINGS

* Z 15-04 Charles and Joan Garabedian (Property Owner: Charles and Joan Garabedian Irrevocable Trust), 289 Dover Point Road (Tax Map L, Lot 48), located in the Low Density Residential (R-20) District, requests a variance from **Section 170-24.C** of the Zoning Ordinance to allow an accessory dwelling unit having an area of 1,350 s.f. and comprising 48% of the total floor area of the home, where accessory dwelling units are permitted to be no larger than 800 s.f. and may comprise no more than 30% of the total floor area.

Public Hearing Opened

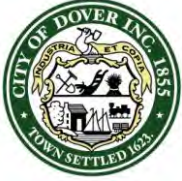
Charles Garabedian, the property owner addressed the Board stating the property was purchased in 1991 from his wife's uncle, Henry Mayrand who in 1972, built the house with a finished basement. He further stated that they never questioned the zoning with the property because the tax assessment documents they received noted the home as having an in-law apartment, and that they have been paying taxes on a three bedroom ranch. He added that they realized the problem when they put the house on the market and found they could not sell as it was because it did not meet the code for an accessory dwelling unit. He further added that they have submitted the necessary paperwork to legalize the basement and are hoping for approval.

S.Reid asked why there are two kitchens. C.Garabedian stated that the uncle loved to entertain and that the kitchen downstairs was his summer kitchen.

Mike Garafano, an abutter from 3 Pineview Drive and 258 Dover Point Road, stated that he was in support of the variance and that it would have no impact on his property. F.Landford verified the location of the abutter being the lot behind the Garabedian property which is a two car garage only at this time because he had the house taken down. S.Reid confirmed with M.Garafano that he has been their neighbor for 2 ½ years.

STAFF RECOMMENDATION:

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



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Public Hearing Closed

MOTION: O.Perry made a motion to grant the variance because the applicant has met all the conditions for the variance, and because it has been occupied and used in this condition for 20 years. Seconded by F.Landford. Vote: 5/0

- A. * Z 15-03 Karl Leinsing (Property Owner: The Leinsing Trust), 77 Spur Road (Tax Map L, Lot 15-D), located in the Low Density Residential (R-20) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance to allow helicopter take-offs and landings in the back yard of the property.

B.Hall, 133 Spur Road, stated he lives ½ mile from the applicant and he has chosen to recuse himself from this discussion to avoid the appearance of impropriety or conflict and reserves the right to participate as a citizen.
G.Reagan was appointed by the Chair to sit in on his behalf.

Public Hearing Opened

K.Leinsing, applicant and trustee of 77 Spur Road, stated that he is a medical device inventor and consultant, who works from home. He further stated that he is a licensed fixed wing and helicopter pilot, and that he flies mostly for personal use, and volunteers by offering his service to the Dover Police Department, the Dover Fire Department, and Patient AirLift Services to assist people in critical need.

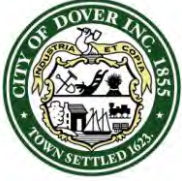
He asked for a variance with take-off and landings in his backyard, with the following restrictions (adding three additional to the original application):

- Notify abutters in advance of take-offs and landings, if requested.
- Hours of helicopter operation between 7 a.m. – 9 p.m.
- No flying over abutters homes.
- Site to maintain Federal Aviation Administration (FAA) and Department of Transportation (DOT) certification.
- Limit maximum amount of passengers to four.
- Provide proof of insurance, if requested.

He addressed his application with the Board requesting a variance to take-off and land his helicopter in his backyard rather than from a boat on the water which he is permitted to do. He stated that he keeps his helicopter in a hangar at the Portsmouth International Airport at Pease and will continue this, adding that the take-off and landing in his backyard would be an occasional occurrence, not every day. He further stated that regarding any concerns, there is no difference between landing on land or water, except that landing on the land would be safer and better for the environment of the Bellamy River and less intrusive to the abutters.

He addressed the 1000 ft. distance requirement with any residential structure and that he is unable to meet this requirement, adding that the requirement does not make sense because no one would put their helipad that far away from their home.

He stated that helipads are associated with higher value homes; therefore, there should be no concern with lowering the value of homes. He also stated that his neighbor has a junk yard which has affected his own property value, and therefore, the helipad would not diminish his property value.



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He stated that the FAA and the DOT has reviewed and approved his backyard for safety. He further stated the uniqueness of his property is that the FAA certification shows a good amount of range for take-offs and landings on his property, and that it abuts the Bellamy River which allows take-offs and landings.

He provided documents for the record pertaining to his application and stated he had a video available to show the noise level of the helicopter.

S.Reid asked K.Leinsing to highlight the differences between his original application and the amended application he submitted on March 19, 2015.

K.Leinsing provided an email from the Chief of the Fire Department, Richard Driscoll, which stated that the location was reviewed for safety and fire concerns and that R.Driscoll preferred landings on land than the water. K.Leinsing also provided a petition for the record signed by 16 people, 12 of whom are his neighbors, in support of the variance. He stated the distances from where he would land to abutter's residences was based on measurements taken from the center of the landing spot. One abutter was at 370 ft. from 83 Spur Road and 264 ft. from 75 Spur Road from the center of the helipad to the closest corner of their residential structure.

K.Leinsing invited FAA designated pilot examiner, Mike Rhoads, to answer any questions regarding safety concerns, legalities, certification, or questions pertaining to the aircraft.

K.Leinsing distributed a document and video for the record to address any noise concerns pertaining to the helicopter. He compared the decimal of noise to the sound of a lawn mower or diesel truck.

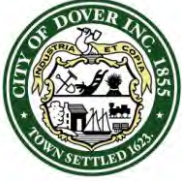
K.Leinsing addressed the safety concerns stating that there is sufficient distance for landing and that a windsock is not needed; however, if the variance is granted, he would put in a wind sock and a fire extinguisher, adding that this is for day operations only.

F.Landford confirmed with K.Leinsing that he will not be keeping the helicopter on the site and that it will be kept in a heated hangar at the Portsmouth International Airport at Pease. K.Leinsing stated that there is no motivation for him to keep the helicopter in the yard, adding that when he needs fuel it's quicker to pick up phone and have the helicopter pulled out and ready. K.Leinsing further stated that he will not build a helipad but will land on the grass keeping it mowed for landings, adding that there is a flat area for this at the bottom of his property, and that it inclines as you get closer to the house.

S.Reid confirmed with M.Rhoads the noise level of the Robinson helicopter in comparison to a lawn mower or a vacuum cleaner and the noisiest level being at take-off.

Discussion ensued regarding landing on the Bellamy River in comparison to over the treetops. K.Leinsing described the forward motion needed for take-offs in helicopters and the safety procedure associated with this. K.Leinsing stated he has not landed on a boat in the water and does not want to this. He described his typical landing procedure on the water.

S.Reid stated that the Board needs to have something specific to determine what about the property is special. He further stated that the landing area has to be 1000 ft. from another house. He addressed the issue where the applicant stated he doesn't have any trees or clear view, adding that it is not different from others comparing his property to other similar



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properties in the area. K.Leinsing stated the open space concept is what makes his property unique, and he does not meet the 1000 ft. requirement currently by landing on the water. S.Reid stated that Dover cannot restrict what happens on water but land. K.Leinsing stated that is why he added the additional restrictions if he was granted the variance to land on the land. He further stated that he wants something safer for him and his passengers adding that what is unique in nature about his property is that it's the only house that he could approach his property with a boat or aircraft, adding that no other property on Spur Road or the Bellamy River has what he has and that he has no restrictions in water. S.Reid stated this argument works against the applicant because he can access his dock, adding that the applicant should present his case before the Planning Board to reduce the 1000 ft. restriction, but this Board needs to determine the five criteria and what about the land is special in this zone to approve. K.Leinsing stated that it's the open space on his property and wants to have an approach that is less intrusive to the neighbors.

F.Landford asked about the boat helipad size requirement. K.Leinsing stated the requirement according to the FAA guidelines and that the neighbor does not want to see that in the water.

One abutter came in support of the variance and did not speak. The following abutters spoke against the variance:

Mark Blumenthal, 11 Bellamy Road, expressed his concern for the effect this would have with the wildlife and the environment on the Bellamy River. He stated his concern for the possibility of injuring birds or distressing horses carrying a rider and the potential harm associated with this. He gave particular attention to the bald eagles nesting on the Bellamy River and the effect the helicopter might have with this. He further stated that he was involved in rerouting planes away from the Bellamy to protect the wildlife in that area. He added that the airport is located 10 minutes away and that the applicant could take-off and land there.

Elizabeth Bratter, 75 Spur Road, stated that she does not support the variance and expressed her concerns with the safety issue as a direct abutter. She addressed her concern regarding enforcement of the restrictions if the variance were granted.

Myles Bratter, 75 Spur Road, expressed his concern for the wildlife and the effect of the property values if the variance was granted.

James Ellis, spoke for his father who resides at 73 Spur Road. He stated that he is totally against the variance due to safety concerns, adding that there is no room for error.

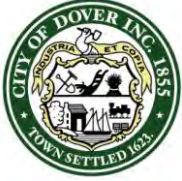
Stepanek Rushmore, 191 Spur Road, stated his concern for the bald eagles he sees several times a week. He also addressed the safety issue regarding a kayaker in the river.

Donna Sears, 19 Nute Road, stated she could not understand why the applicant was doing this when there are so many reasons not to. She asked why he has to pursue this when he has access to an airport 10 minutes away to support his hobby.

Chris Rogers, 123 Spur Road, addressed a concern with the helipad on land and the helicopter approach would be over the wildlife preserve above the tree line. He stated his concern with the impact on environment.

Barb Rushmore, 191 Spur Road, stated her opposition.

T.Corwin submitted three emails, two in favor and one opposed, to the Board which were read by S.Reid.



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M.Rhoads addressed the concerns with the helicopter requirements, wildlife concerns and the typical aircraft safety procedure pertaining to the wildlife.

Robin Leaver, 10 Finch Lane, expressed his concern for the wildlife, noise and the property values of homes.

Myles Bratter, 75 Spur Road, stated that it's not an accident until it's an accident.

Wally Stevens, 49 Back River Road, spoke for the variance stating that pilots from the airport are also dealing with the wildlife and this would not affect the environment.

T.Corwin thanked everyone who came out and participated. He stated that Staff feels the proposal did not meet the five criteria and asked the Board to address and consider, what the hardship is in this case. He also addressed the issue of reasonable use stating it is unique to land a helicopter on the property, but it is not reasonable. He added that the safety issue is beside the point, and that flying a helicopter in what is average residential neighborhood is not reasonable.

STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department recommends the Board deny the request as set forth in the staff memo.

Public Hearing Closed

C.Prior stated that he does not see the justice if the applicant was granted the variance because he can land on the water.

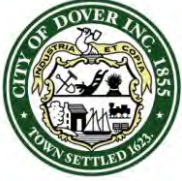
S.Reid stated that the map provided by Staff of the Spur Road neighborhood shows that there are other properties like this. The applicant can land on a barge and walk in the house. He further stated that he did not meet the criteria showing what is different and special about the property, and that the purpose of the ordinance is to keep helicopters away from houses. G.Reagan stated that it's not just safety reasons but the five criteria.

MOTION: O.Perry made a motion to deny the variance because the applicant has not met the hardship criteria, and it is not a reasonable use of the land. Seconded by F.Landford. Vote: 5/0

B.Hall returned to his seat.

- B. * Z 15-05 MCL Builders & Developers LLC (Property Owner: Mace Family Revocable Trust), 46 Back River Road (Tax Map I, Lot 6-C), located in the Medium Density Residential (R-12) District, proposes a seven (7) lot subdivision. Applicant requests a variance from **Section 170-12.B** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Regulations to permit Lot 7 as depicted on the proposed subdivision plan to have a minimum front setback of 176.5 ft., in place of the required build to line of 27.5 ft., which is equal to the average front setback for all properties within the R-12 District within 500 ft. of the property to be subdivided.

Public Hearing Opened



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Attorney Frank Quinn represented the applicant stating the Board would hear from TriTech Engineering on the technical aspects first and he would address the five criteria regarding the application.

Bob Stowell from TriTech Engineering introduced the other representatives regarding the application Doug Larossa from TriTech Engineering, the applicant, Mike Lefebvre of MCL Builders and Developers, and Peggy Mace, the property owner.

B.Stowell displayed the plot plan design (sheet Z1) stating they are proposing to build a seven lot subdivision with a new proposed road. He stated that they are here regarding Lot #7 which is to be located at the riverfront lot on the Bellamy River. He further stated that the build to line at 27.5 ft. doesn't work with the lot that they want to develop, and they are asking for relief of the build to line in order to build the home further back on the property at 176.5 ft. from the road. He displayed another plan for the record to show the build to line, cul-de-sac and shared driveway.

F.Landford confirmed with B.Stowell that the other lots have the build to lines and that they are only addressing the build to line with lot #7.

Discussion ensued regarding the location of the driveways on the displayed plan for lots #5, #6, and #7. B.Stowell stated that the last lot #7 is 5 feet off the abutter according to code and that there is also an access easement that could be included to the subdivision plan.

B.Stowell displayed another plan showing how the lot is a waterfront lot with a walkout basement and a 7% grade on the driveway. He stated that lot #7 is the most desirable spot on the property and that the uniqueness of the property is the objective is to build the house on the river and work the lots around this house.

B.Stowell displayed another plan for the record regarding the build to line showing the properties within 500 ft. of the build to line showing that the five building lots can comply but not lot #7.

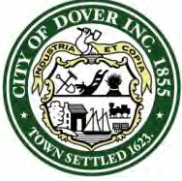
Discussion ensued with comparison to other properties on Back River Road, as well as those that were built with the open space subdivision concepts with no build to line and those that received variances.

B.Stowell stated the uniqueness of the property is the narrow lot that is difficult to develop, a river front that dictates development, as well as steep slopes and conservation districts.

F.Quinn stated if the Board enforces the build to line, this will cause loss. He further stated that the purpose of the build to line is to have homes closer to the street to create uniformity, adding that there is an existing lack of uniformity in this neighborhood. He described the subdivision plan stating it would be acceptable according to the ordinance and requirements for this district, adding that these would be single family homes and no diminishment of property values and little traffic noise.

Wally Stevens, 49 Back River Road, stated he is against the variance and that the plans are different from what he received in the mail. He further stated his concerns regarding the change in the plans regarding the driveway. He added that there was not enough property for the road and recommended the Board see the property before they make a decision.

S.Reid confirmed with W.Stevens that he felt the Board needed to view the property because the plans had changed from what was sent to him, and he believed the developer was attempting to squeeze in too many homes in ratio to the lot size,



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adding that the development would look different from what's described on paper. S.Reid stated that he thought the new plans are better than the old plans.

S.Reid asked T.Corwin if the changed plans are an issue. T.Corwin stated that the changed plans were not an issue, but stated a concern about the driveway which needs to be 5 ft. off the property line, adding according to code.

T.Corwin asked the applicant if this is the plan that they will be bringing before the Planning Board to proceed with construction. B.Stowell clarified that the preferred option is an Open Space Subdivision; however, if that is not approved, they would have this plan to build.

O.Perry could not confirm with B.Stowell that the footprint for lot #7 displayed is the footprint they intend to construct. He stated that if the applicant is not prepared to stipulate this than the argument for hardship is diminished.

D.Larossa compared this application with a two lot application, adding that the builder would not want to build on the road, would want to build away from the road, regardless of amount of lots, would still be before the road and would want to build the last house in this space.

T.Corwin stated that this is a six lot subdivision and the Board still needs to review if there is something unique about the property. He added that the applicant has shown that they could use the property and there is no hardship.

S.Reid stated that the build to line is a work in progress and asked what was established before the build to line and if they would have been able to provide relief before this ordinance and if it applies to a conservation district. T.Corwin stated that prior to the build to ordinance, there would have been setback. S.Reid stated that does not apply to the conservation district and that he does not believe the build to ordinance was established for situations like this.

Attorney Quinn stated that his comments were misinterpreted regarding the property upstream. He further stated that the hardship test can be applied to this property and that there is no rational reason to enforce the build to line to the size of the house. He added that it is the applicants right to use the property and create lots for subdivision.

B.Hall stated that whether the applicant can meet the ordinance is not the issue, the issue is the setback. He further stated that the build to line is appropriate for an established neighborhood to meet up with existing properties in the area, adding that this is a new property and doesn't think it will hold.

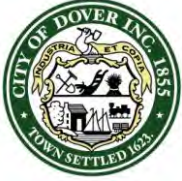
STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department recommends that the Board deny the request as set forth in the staff memo.

Public Hearing Closed

MOTION: C.Prior made a motion to grant the variance to provide relief from the 27.5 ft. build to line for the proposed lot #7, as long as it conforms to all the other zoning regulations. Seconded by B.Hall. Vote: 5/0

- C. * Z 15-06 Richard and Abigail Lundborn, vacant lot on Gina Way (Tax Map G, Lot 12-B), located in the Medium Density Residential (R-12) District. Applicants propose to construct a single family home with an accessory dwelling unit. The R-12 District requires the new home to be located exactly 57 ft. from the front



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lot line (57 ft. is the average front setback for all properties within the R-12 District within 500 ft. of the property). Applicants request a variance from **Section 170-12.B** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Regulations to allow the home to be located farther than 57 ft. from the front lot line.

Public Hearing Opened

Rick Lundborn, the owner of lot G12- B, stated that they want to build a house and garage, but according to the ordinance, both structures needs to be on the build to line. He further stated the lot is three times the size of the minimum lot size in the zone, and he doesn't want to cram all his structures on one line. He compared the setbacks on his property to the properties on Taylor Road as examples.

R.Lundborn stated he is doing the same as his neighbors and wants to put the garage 57 ft. from the shared property line and wants to keep the house where it is shown on the plan. He added that his in-laws will be occupying the accessory dwelling unit.

STAFF RECOMMENDATION:

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

Public Hearing Closed

MOTION: F.Landford made a motion to grant the variance as proposed. Seconded by O.Perry. Vote: 5/0

- D. * Z 15-07 Richard & Abigail Lundborn and Joan & David Parent (Property Owners: Richard & Abigail Lundborn, vacant lot on Gina Way (Tax Map G, Lot 12-B), located in the Medium Density Residential (R-12) District, request a variance from **Section 170-24.C** of the Zoning Ordinance to allow an accessory dwelling unit having an area of 1,200 s.f. where accessory dwelling units are permitted to be no larger than 800 s.f.

Public Hearing Opened

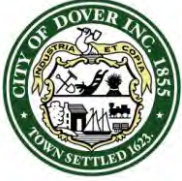
Rick Lundborn the owner of the lot G-12B spoke asking for relief due to the need to have larger rooms for wheelchair access for his in-laws, such as, a handicap accessible master bath and kitchen. He added that the property is on shared sewer and water.

S.Reid addressed the need to determine a recognized physical disability. R.Lundborn stated that his father- in-law has been diagnosed with Parkinson's disease, and his mother- in-law has been diagnosed with ALS and they will need wheelchairs.

Public Hearing Closed

T.Corwin stated if there is a recognizable physical disability, then the hardship criteria can be waived.

R.Lundborn compared his application to the first applicant stating the similarities and that he filled out the other criteria on his application as well, adding that the 800 sq. ft. ceiling is restrictive. He further stated that he believes the hardship criteria has to do with the land, but in his application it pertains to the building not the land. T.Corwin stated the 800 sq. ft. limitation is a common size pertaining to these ordinances.



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Discussion ensued regarding the need for the applicants to obtain an Accessory Dwelling Unit Certificate of Use.

STAFF RECOMMENDATION:

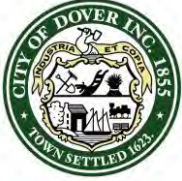
T.Corwin stated that the Planning Department supports the request as set forth in the staff memo.

MOTION: F.Landford made a motion to grant the variance as proposed and in recognition of the physical disability.
Seconded by B.Hall. Vote: 5/0

4. ADJOURN

Motion: O.Perry made a motion to adjourn at 10:28 p.m. Seconded by G.Reagan. Vote: U/A

DRAFT



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Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Otis Perry (Vice-Chair), Frank Landford, Bob Hall

Members Not Present: Sam Reid (Chair), Chris Prior, George Reagan (Alternate)

Staff Present: Timothy Corwin (Assistant City Planner), Tracy Smith (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.

O.Perry stated the applicants would need to receive approval from all three Board members to have their application approved. He gave them the option to wait for the next meeting. The applicants chose to proceed with their applications.

2. APPROVAL OF MEETING MINUTES OF MARCH 19, 2015

Motion: R.Hall motioned to table the March 19, 2015 Regular Meeting Minutes. Seconded by F.Landford. Vote U/A

3. HEARINGS

- A. Z 15-08 Kevin G. Bernier, 13 Rogers Street (Tax Map 24, Lot 125), located in the Urban Density Multi Residential (RM-U) District, requests a variance from **Sections 170-14.A(1)** and **170-12.B** of the Zoning Ordinance and the RM-U District Table of Use and Dimensional Regulations to allow the construction of an attached one-car garage located six (6) ft. from the side lot line shared with 17 Rogers Street, where a minimum side setback of ten (10) ft. is required per Section 170-14.A(1).

Theron Alex, Kevin Bernier's son of 505 Kearsage Way, Portsmouth, NH, represented the applicant stating he wants to add an attached one car garage to the property. The garage would have a new roof line to blend in with the house and a breezeway to the house with a small deck.

Public Hearing Opened

STAFF RECOMMENDATION:

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

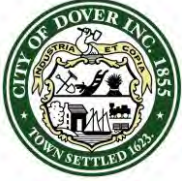
Public Hearing Closed

Motion: B.Hall made a motion to grant the variance. Seconded by F.Landford. Vote U/A

B.Hall stated he viewed the property and felt it would conform to the rest of the neighborhood. O.Perry agreed with B.Hall stating the side lot line is abutted by another garage.

- B. Z 15-09 John Noble (Property Owner: Rita A. Hibscheiler), 24 Whittier Street (Tax Map 35, Lot 72-A), located in the Medium Density Residential (R-12) District, requests a variance from **Section 170-12.B** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Regulations to permit the construction of an attached garage to be located six (6) ft. from the rear lot line shared with 4 Dowaliby Court, where a minimum rear setback of thirty (30) ft. is required.

John Noble of 74 Oak Street, Rochester, NH represented the property owner, Rita Hibscheiler. He stated the plan is to construct a new 18 ft. x 24 ft. garage to replace the existing garage which is located 6 ft. from the property line, but they



**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, April 16, 2015**
Meeting Time: **7:00 pm**

cannot meet the 30 ft. setback. He further stated the new garage will be attached to the existing house with an 8 ft. x 10 ft. addition with two entry doors, adding the addition will be a modest increase in size of the existing garage and will not affect the appearance or structure. He stated changing the address was recommended rather than submitting the variance; however, the applicant did not want to change the address because it's like moving without the move, in the respect that R.Hibschweiler would have to change all her paperwork and records. He added the Planning Department gave life safety as the reason to change the address, and he assumed this was for emergency personnel, adding that he believes emergency personnel would be able to locate the address in the event of an emergency due to the location being a corner lot.

F.Landford confirmed with J.Noble the new garage will be the same as the existing garage in distance from the property line.

Public Hearing Opened

STAFF RECOMMENDATION:

T.Corwin stated that the Planning Department does not take a position on the request as set forth in the staff memo. He added the variance process should be available as a last resort

Discussion ensued regarding confusion with the dimensions shown on the plans and how the applicant calculated his measurements. J.Noble agreed that the scale is off on the plans. R.Hibschweiler stated the new garage is in the exact location as the existing garage.

B.Hall stated if the new garage is to be placed in the same location as the existing garage from the rear lot line, than the measurement is not an issue. Discussion ensued regarding requiring a foundation certification as part of the condition of approval.

Discussion ensued regarding the regulations as defined for a corner lot. O.Perry stated there is an existing non-conforming situation in this house, and once the garage is torn down the applicant would need a variance to rebuild it.

Public hearing closed

Motion: F.Landford made a motion to approve the variance with the condition that the new structure be exactly the same distance from the property line as the existing structure and a foundation certification will be provided. Seconded by B.Hall. Vote U/A

O.Perry stated the Zoning Ordinance creates the hardship for the applicant in this situation. He added he does not agree with requiring the applicant to change the street address.

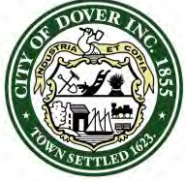
4. ZBA RULES OF PROCEDURE – CITY COUNCIL EDITS

The Board agreed to discuss the Rules of Procedure at the next meeting.

T.Corwin announced that May 7, 2015 will be his last day with the Planning Department. He has accepted a position as City Planner for the City of Lebanon.

5. ADJOURN

Motion: B.Hall made a motion to adjourn at 7:31 p.m. Seconded by F.Landford. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z15-10)

Application Type:	Variance
Applicant:	VMD Companies, LLC
Owner:	Profero Management and Holdings LLC
Location:	181 Silver Street (Tax Map 11, Lot 2)

INTENT: The property is currently improved with a former education facility. The applicant proposes to completely demolish and re-develop the former educational institution to new mixture of commercial uses, including programming for assisted living facility (variance), medical office (permitted), hotel (permitted), restaurant (permitted), bank (permitted), coffee style restaurant (permitted).

UNITS PROPOSED: 75 Assisted Living Units

AGENDA ITEM #: 3-A

ZONING DISTRICT: B-3

EXISTING LAND USE: Education institution – Post Secondary

PROPOSED LAND USE: Assisted living facility (variance), medical office (permitted), hotel (permitted), restaurant (permitted), bank (permitted), coffee style restaurant (permitted).

SURROUNDING LAND USE: Single Family Residential and Vehicle Refueling

PREVIOUS ZBA ACTION:

- H79-17 – Sign Variance
- H84-6 – Multiple Buildings on a Lot

ATTACHMENTS: Site Plan

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application with plot plan

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION: The Planning Department supports the variance application.

Summary of Request and Background

The property is located along the Spaulding Turnpike and fronts on Silver Street in a commercial district, which abuts 2 residential districts. The applicant proposes to demolish the older educational institution and its accessories and construct a mixed use commercial node. This node will include a variety of non-residential uses. The applicant wishes to include an assisted living facility as part of that mixture. This use is similar in density to those allowed in the district (multi-family residential), but not permitted. Furthermore, the application requests the right to construct a hotel (allowed use), adjacent to the Spaulding Turnpike with a 55' height, where 40' is permitted.

Reason for Staff Recommendation

Reviewing the criteria for granting a variance, Staff believes that the following facts are found to be true.

The request is not contrary to the public interest, nor will it affect the value of surrounding properties:

Efficient and modern use of this property benefits the community and the surrounding properties. In its current situation, the property is underutilized and may remain so. The request to add 75 unit of Assisted Living is less than the 165 unit density multi-family could generate, which would have a larger impact on the neighborhood, particularly as the residents would be of all ages and not just elderly. Furthermore, the facility is shown to be over 375' feet from abutting residences, and the hotel will be 425' away, and at a lower elevation than the surrounding residential uses.

The request meets the spirit and intent of the ordinance:

The Thoroughfare Business district allows multiple commercial uses on the property, and encourages a mixture of layouts and design. This proposal incorporates 6 interrelated uses, of which 5 are allowed by right.

The request will do substantial justice:

The Assisted Living use is an anchor tenant for the other uses and will promote a viability to the site. The hotel, is situated along the Spaulding Turnpike away from residential uses and the height requested is consistent with a four story hotel, which meets the market demand for the use.

The request demonstrates hardship because:

The lot is the second largest lot within 2000' of the site, and has unique access to local and state roadways. Due to its size and magnitude, there is potential for a substantial redevelopment. The request is reasonable when you consider Dover's zoning encourages flexibility, and redevelopment of underutilized sites, as well as, the uniqueness of the site and the desire to fully realize the value of the property, which the full development plan intends.

181 Silver Street

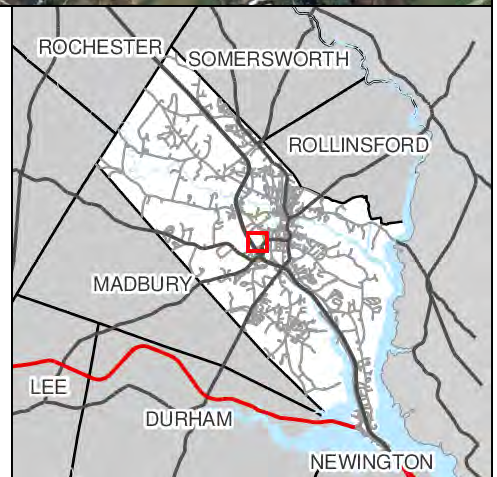
**Property Information**

Property ID 11002-000000
Location 181 SILVER ST
Owner PROFERO MANAGEMENT & HOLD
C/O CAREER EDUCATION CORP

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

The City makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated January 1, 2015





City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

<i>Office Use Only</i>	Case #: <u>215-10</u>	Date Received: <u>APR 27 2015</u>	Planning Office
	Amount Paid: \$ <u>400.00</u> <u>ck # 41992</u>	Time Received: <u>Dover, New Hampshire</u>	

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: V.M.D. Companies, LLC Phone # 978-703-4234
Address of Applicant: 733 Turnpike Street, Route 114, North Andover, MA 01845
E-Mail Address: jvitas@vmdcompanies.com
PROPERTY OWNER (if different from applicant): Profero Management & Holding, LLC
Address: 232 Gulf Road, Dover NH 03820 Phone # _____
E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 181 Silver Street, Dover, NH 03820
Brief Directions: 19.4 acres at the intersection of NH Route 9 and Silver Street.
Former location of McIntosh College (now closed).
Zoning District: B-3 Assessor's Map # 11 Lot(s) # 2

TYPE OF APPEAL: (Please check one)

☒ Variance (2) ☐ Physical Disability Variance (RSA 674:33-V) ☐ Special Exception ☐ Appeal of Administrative Decision ☐ Equitable Waiver	170-11.C* from Section <u>170-12.B**</u> of the Zoning Ordinance from Section _____ of the Zoning Ordinance per Section _____ of the Zoning Ordinance regarding Section _____ of the Zoning Ordinance per Section _____ of the Zoning Ordinance
---	--

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

Complete site demolition and redevelopment to convert former educational institution to new mixture of commercial uses, including programming for assisted living facility (variance), medical office (permitted), hotel (permitted), restaurant (permitted), bank (permitted), coffee-style restaurant (permitted).

*Table 1: Principal Uses, Part C. Commercial Uses
** Table of Dimensional Regulations

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

170-11.C; Table 1, Part C
170-12.B; Dimensional Table

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

An assisted living facility to be part of an overall commercial site redevelopment; and a
4-story hotel that exceeds the maximum height by proposing up to 55' whereas 40' is
permitted.

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:

The site is presently unoccupied and redevelopment would anchor rehabilitation of the southwest
quadrant of the City. Assisted living facilities respond to the aging Seacoast demographic, while
stabilizing the viability of other commercial tenants who may appeal to a broader demographic.
Increasing the hotel building height allows applicant to attract a user having standard 4-floor designs.

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

The site is located within the B-3 zoning district, where a multitude of other commercial and
community uses (i.e., child care facilities) are permitted by exception or right. The spirit of the
ordinance is also respected by offering a mixture of uses within one project. Additionally, a
4-floor hotel would be located in the interior of this larger development site and screened by
the other users.

3. Granting the variance would do substantial justice because:

An assisted living facility will substantially anchor the other uses programmed for the site, and
allow the proposed uses to function in harmony. Invitees and members of the immediate and
surrounding community would have the potential to visit a medical office, bank, restaurant or
hotel at single development site. Conventional hotel design includes four floors, and the
Dover ordinance measures building height to the "highest level of roof surface or front
parapet" rather than to an average or median height

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

Surrounding property values will not diminish, and should increase, in proximity to a revitalized property within a commercial district. At present, abutters view an abandoned campus in various stages of deferred maintenance.

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 site is very large, sits below the grade of the frontage and roads, and presents a unique redevelopment opportunity. Connectivity to the State highway and turnpike help alleviate traffic impacts, while offering the type of volumes necessary to sustain the magnitude of development proposed. Building height is mitigated by grade changes and the overall depth of the site.

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:

Assisted living facilities are not squarely addressed in the Dover Table of Uses, but have commonality with other uses that are permitted by exception or right in the subject zoning district. Hotels are allowed by right, but dimensional relief will help attract a quality user.

and

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

The developer can work with the Planning Board to mitigate development impacts, while simultaneously programming for anchoring uses that will allow a significant commercial redevelopment to move forward.

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:

The size and magnitude of this parcel, and the scope of the overall redevelopment opportunity, lends to the uniqueness of the circumstances and the basic justification for zoning flexibility. Redevelopment will introduce new users to the Dover community, bring new jobs to replace those lost with the closure of the school, and supplement the City tax base.

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.

C.B.M., ESQ. counsel for applicant

Signature of Applicant*

Rob Profero

Signature of Owner

Profero Management & Holding, LLC

*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:

Rob Profero

Date:

4/23/15

Profero Management & Holding, LLC

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
11	1	Ann & Franklin Torr Rev Trust Ann & Franklin Torr Trustees	1 Old Littleworth Rd. Dover, NH 03820
11	2	Profero Management & Holdings, LLC	C/O Career Education Corp Attn AP PO Box 681189 Schaumburg, IL 60168-1189
11	2A	Ann & Franklin Torr Rev Trust Ann & Franklin Torr Trustees	1 Old Littleworth Rd. Dover, NH 03820
11	3A	North Haverhill Management Corp.	444 East Main Street Newport, VT 05855
11	4	GTY MA/NH Leasing Inc.	125 JERICHO TURNPIKE STE 103 Jericho, NY 11753
11	5	Eleanor K. & Bernard J. Duffy	161 Silver Street Dover, NH 03820
11	6	Brock Barbara Call Trustee Brock Barbara Call 2006 Rev. Trust	157 Silver Street Dover, NH
11	7	155 Silver Street Condominiums	C/O Richard N. Spagnolia 72 Pine Knoll Village Lee, NH 03861-6652

11	8	James M. Mcmanus	145 Silver Street Dover, NH 03820
11	9	Patricia and Laurence Tatro	2 Arch Street Dover, NH 03820
11	10	Boc William E & Carol D Trustees Boc William E & Carol D Rev.Trust	8 Arch Street Dover, NH 03820
11	11	Joseph E. & Margaret Jalbert	PO Box 1454 Dover, NH 03821-1454
11	12	David D Ferguson Trustee 16 Arch Street Realty Trust	16 Arch Street Dover, NH 03820
11	13	Catherine M Vandrewell Trustee Catherine Vanderweil Liv Trust	20 Arch Street Dover, NH 03830
11	14	Mark W. & Suzanne M. Jones	317 Haroldson Drive Corpus Christie, TX 78412
13	4	City of Dover	288 Central Street Dover, NH 03820
13	5	Peter K. & Barbara F. Smith Trustees Barbara F. Smith Living Trust	34 Sandown Road Chester, NH 03036
13	7	Edward D. McIntosh & Teresa E. Picard	192 Silver Street Dover, NH 03820
13	11	Eleanor Morris Feeney & Jeffrey Bernstein	PO Box 83 Dover, NH 03821-0083
13	12	Eric B. & Elizabeth S. Hagman	205 Silver Street Dover, NH 03820
13	16	Gail L Bedrosian	2 Old Littleworth Road Dover, NH 03820
G	6C	Storemaster Funding LII, LLC	8501 E. Princess Dr. Ste 190 Scottsdale AZ 85255

CONDO MEMBERS: FIRST CLASS MAIL NOTIFICATIONS

Tax Map	Lot No.	Owner(s) of Record	Mailing Address
11	7-1	Alexander K. Walker & Whitney E. Swaffield	155 Silver Street Unit 1 Dover, NH 03820
11	7-2	Kathleen & William Dibella	5 Hillsboro Circle Milford, NH 03055
11	7-3	Phoenix Asset Group, Inc.	PO Box 236 Dover, NH 03821-0236
11	7-4	Phoenix Asset Group, Inc.	PO Box 236 Dover, NH 03821-0236
G	7-1-1	Mario & Adriana Eade Trustees Mario & Adriana Eade Rev Liv Trust	10 Morrison Lane Dover, NH 03820
G	7-1-2	Mary A. David Trustee Mary A. David 2003 Revocable Trust	12 Morrison Lane Dover, NH 03820
G	7-1-3	Karen A. Batson	14 Morrison Lane Dover, NH 03820
G	7-1-4	Christopher & Cynthia Wyskiel Trustees Christopher & Cynthia Wyskiel Rev Liv Trust	15 Lexington Street Dover, NH 03820-3603
G	7-1-5	Daniel McGary	18 Morrison Lane Dover, NH 03820-3654
G	7-1-6	Ronald A. Hebert Trustee Ronald A. Hebert Rev Trust	20 Morrison Lane Dover, NH 03820
G	7-1-7	John P. Warren	24 Morrison Lane Dover, NH 03820
G	7-1-8	Matthew G. Keene	20 Morrison Lane Dover, NH 03820
G	7-1-9	John F. and Jane N. Romps	38 Morrison Lane Dover, NH 03820
G	7-1-10	Suzanne Strange	40 Morrison Lane Dover, NH 03820
G	7-1-11	Paul N and Helen Goransson	255 Depot Road Eliot, ME 03903
G	7-1-12	Norman A. & Therese Tremblay Tremblay Rev Trust	44 Morrison Lane Dover, NH 03820
G	7-1-13	Charles H. Alty	46 Morrison Lane Dover, NH 03820
G	7-1-14	Peter R & Margaret Beauregard	48 Morrison Lane Dover, NH 03820
G	7-1-15	Gerard Goubert	50 Morrison Lane Dover, NH 03820-3654
G	7-1-16	Virginia Skinger & Karen Parry Co-Trustees Skinger Living Trust	10 Crescent Ave. Dover, NH 03820
G	7-1-17	Helen S. Panasis & Charles & Linstrum KT Helen S. Panasis Rev Living Trust	49 Morrison Lane Dover, NH 03820-3654

CONDO MEMBERS: FIRST CLASS MAIL NOTIFICATIONS

G	7-1-18	Judith A. & Michael A. Sanderall	47 Morrison Lane Dover, NH 03820
G	7-1-19	Janet Gross	45 Morrison Lane Dover NH 03820
G	7-1-20	Nigel S. Jordan	1622 E Irving Pl Apt. 42 Milwaukee, WI 53202-1481
G	7-1-21	Pauline L. Calderwood Pauline L. Calderwood Rev. Trust	23 Morrison Lane Dover, NH 03820
G	7-1-22	Robert & Jean Cannon	21 Morrison Lane Dover, NH 03820
G	7-1-23	Phillips Marilyn Life Estate & Comeau Cynthia & Phillips Berkowitz	19 Morrison Lane Dover, NH 03820
G	7-1-24	Shirley S Wilson Trustee Shirley S. Wilson Rev Trust	17 Morrison Lane Dover, NH 03820-3654

RECEIVED
Planning Office

APR 27 2015

Dover, New Hampshire



PARKING SUMMARY

	REQUIRED	PROPOSED
COFFEE SHOP (RESTAURANT USE)	1 SPACE PER 60 SEATS (35 SEATS)/(60) = 18 SPACES	18
BANK (ASSUMED RETAIL USE)	1 SPACE PER 250 S.F. (2,400)/(250) = 12 SPACES	13
MEDICAL OFFICE	1 SPACE PER 200 S.F. 45,000 S.F./200 S.F. = 225 SPACES	234
HOTEL	1.1 SPACE PER GUEST ROOM (108 GUEST ROOMS)*(1.1) = 119	102
ASSISTED LIVING	2 SPACES PER UNIT AND 1 SPACE PER EMPLOYEE UNITS (180) * 2 + EMPLOYEES (TBD) = TBD SPACES	62
		489 TOTAL

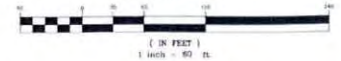
LAND USAGE TABLE

ZONE DISTRICT: THOROUGHFARE BUSINESS DISTRICT (B-3)		
	REQUIRED	PROVIDED
MIN. LOT SIZE	20,000 S.F.	19.4 AC.
MIN. LOT FRONTAGE	125 FT	185+ FT
MIN. FRONT YARD SETBACK	50 FT	50+ FT
MIN. SIDE YARD SETBACK	12 FT	12+ FT
MIN. REAR YARD SETBACK	15 FT	15+ FT
MAX. BUILDING HEIGHT	40' MAX	T.B.D.

NOTES:

1. WETLAND LINES AS PROVIDED BY GOVE ENVIRONMENTAL SERVICES.
2. EXISTING CONDITIONS, COMPILED FROM PLANS ENTITLED, "PRELIMINARY EXISTING CONDITIONS PLAN, SILVER STREET DOVER, NH", PREPARED BY NORWAY PLANS ASSOCIATES, INC. AND "PARTIAL TOPOGRAPHIC & WETLANDS PLAN" PREPARED BY BIRD ENGINEERING AND SHOULD BE CONSIDERED APPROPRIATE.
3. CONCEPTUAL SITE IMPROVEMENTS PROVIDED BY VANASSE & ASSOCIATES, INC. PLAN DATED 09-17-2014.
4. WETLAND FILLING REQUIRED.
5. VARIANCE REQUIRED FOR ASSISTED LIVING USE.
6. A WAIVER MAY BE REQUIRED FOR REDUCED PARKING COUNTS.

GRAPHIC SCALE



CONCEPT PLAN 6
181 SILVER STREET
DOVER, NEW HAMPSHIRE

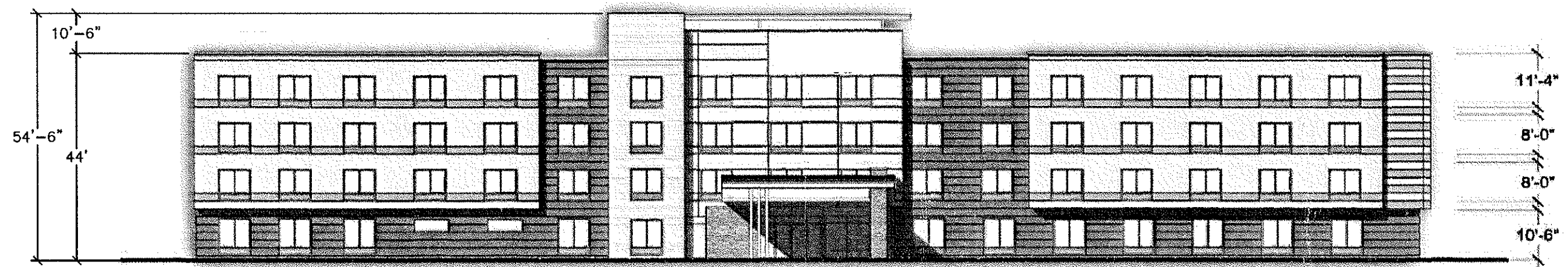
SCALE: 1"=60' APRIL 16, 2015



**ALLEN & MAJOR
ASSOCIATES, INC.**

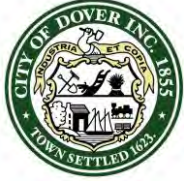
civil & structural engineering • land surveying
environmental consulting • landscape architecture

\\PROJECTS\BPP-SUPPL\WORKING\CURRENT\BPP-08-CONCEPT-6-1\BPP08-06.DWG



Front Elevation

NOTE:
VARIANCE FOR TOTAL HEIGHT OF BUILDING, INCLUDING PARAPET, NOT TO EXCEED 55'-0".



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z15-11)

Application Type:	Variance
Applicant:	Clifford & Laura Zabkar
Owner:	Clifford & Laura Zabkar
Location:	2 Mohawk Drive (Tax Map A, Lot 127)

INTENT: The property is currently improved with a Single Family Home. The applicant proposes to add a 16' X 24' room on the right side of the house, as seen from the street. The room would initially be used by a family member with a medical condition. Long term the space would be additional living space. The side setback would be 11' where 15' is required.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-B

ZONING DISTRICT: R-12

EXISTING LAND USE: Single Family Residential

PROPOSED LAND USE: Single Family Residential

SURROUNDING LAND USE: Single Family Residential

PREVIOUS ZBA ACTION:
None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application with plot plan

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION: The Planning Department supports the variance application.

Summary of Request and

Background

The property is located in an older subdivision, where the layout of the properties is irregular and homes are placed to support drainage and septic system locations. The applicant proposes to construct an attached living room located eleven (11) ft. from the side lot line shared with 4 Mohawk Drive. The new room will be constructed for use as living space for a family member with Parkinson's disease. In the future the space would be additional living space for the homeowner. A variance is required from Section 170-12.B of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Regulations to allow the addition to be located eleven (11) ft. from the side lot line where a minimum setback of fifteen (15) ft. is required.

Reason for Staff Recommendation

Reviewing the criteria for granting a variance, Staff believes that the following facts are found to be true.

The request is not contrary to the public interest, nor will it affect the value of surrounding properties:

The design and layout of the proposed addition is in keeping with the layout of other homes within the subdivision. Many of the homes are placed at an angle, such as 1 and 3 Mohawk, or towards one side of the lot or another, such as 4 Mohawk, and are close to or do not meet setback requirements.

The request meets the spirit and intent of the ordinance:

When the Colonial Park II subdivision was approved in 1978, the lot dimensions required a ten (10) foot side setback. The placement of this room at eleven (11) feet is consistent with the surrounding context.

The request will do substantial justice:

The addition will allow for a more efficient use of the property and will allow a resident to age in place in their community, with their family.

The request demonstrates hardship because:

The layout of the property with an easements to PSNH, AT&T, drainage easements and the location of the septic system limit areas for addition on the front, side and rear of the property. If the addition is placed where requested, it will fit the context and layout of the neighborhood, with no visible detractor or negative impact on neighbors, and allows for a reasonable use of the home as a single family dwelling.

2 Mohawk Drive

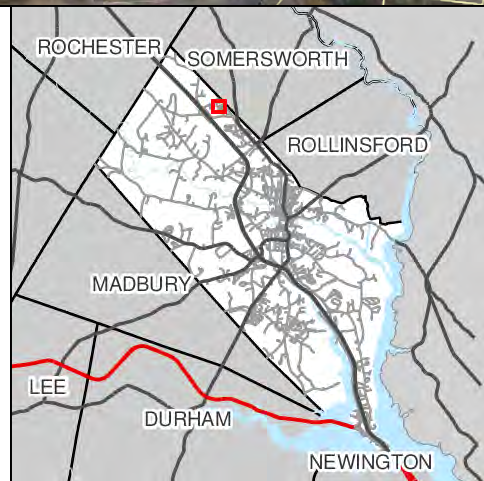
**Property Information**

Property ID A0127-000000
Location 2 MOHAWK DR
Owner ZABKAR CLIFFORD
ZABKAR LAURA

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

The City makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated January 1, 2015





City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only

Case #:

215-11

Date Received:

RECEIVED
Planning Office

Amount Paid:

\$ 352.00

Time Received:

MAY - 6 2015

Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Clifford & Laura Zabkar

Laura (c) 603-978-1062

Cliff (c) 603-988-2093

Phone # (it) 603-742-9564

Address of Applicant: 2 Mohawk Drive, Dover, NH 03820

E-Mail Address: clzabkar

PROPERTY OWNER (if different from applicant):

Address:

Phone #

E-Mail Address:

PROPERTY/PARCEL INFORMATION

Address: 2 Mohawk Drive, Dover, NH 03820

Brief Directions: Take your last left off of Route 16 B before Blackwater Rd onto Apache. Apache turns into Mohawk as it starts to go up hill. We are the last house on the right before Shawnee Lane.

Zoning District:

R-12

Assessor's Map #

A

Lot(s) #

127

TYPE OF APPEAL: (Please check one)



Variance

from Section 170-12.A 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:

We would like to add on a room to the right side of the house as seen from the street measuring 16 feet wide and 24 feet deep. It would start ~~for~~ from behind the chimney casing. This would be one large room used in the short term by Laura's mother, who has advanced Parkinson's, and in the long-term as a living room.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12.A of the Zoning Ordinance to permit:

the addition of a room measuring 16 feet wide and 24 feet deep to the right side of the house. We would need a variance to build to an 11 foot setback instead of 15 feet. This setback would be 11 feet ~~at the front of the room and~~ at the front of the room and would increase to about 14 feet at the back of the proposed room.

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:

the addition that we are planning would be consistent with the look and size of other additions in the neighborhood. It would be nicely proportioned and will improve the look of the house. It will allow a resident to age in place as she cannot live alone and cannot afford assisted living. It will increase the level of privacy in our back yard as well as the neighbors to the right.

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

moving the setback would allow us to add on a moderately sized, nicely proportioned room, that would be in keeping with the style of the rest of the house and other homes in the neighborhood. It would still be a single family home. ~~The~~ If the home were set on the lot ~~as a~~ parallel to the property line, the requested variance would only be about 1 foot.

3. Granting the variance would do substantial justice because:

It would allow us to add a room in which in the short term, would be used by Laura's mother who has severe mobility issues due to Parkinson's. Currently, there are only a kitchen, living room and bathroom on the first floor. This size room is enough to give her a sleeping area as well as a sitting area with room for special equipment that will likely be needed in the future. It will meet her needs and ours as her caregivers and will allow her to age in place.

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

adding such a room will serve to give the house a separate kitchen and dining area and living room. These are desirable in both a home with a young family and for residents who wish to age in place and have room for a first floor bedroom. It will increase the desirability of our home. Also, it will not decrease the value of the surround because its placement will not block their view or sunlight from their yard, as it is adjacent to their garage and a little used side yard.

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 reasons that we need a variance are that we cannot put a room off the back of the house because we will hit the septic system. We cannot put it off the left side because there is even less room as well as a tall retaining wall. We cannot put a room over the garage because Lavar Mitter could not climb the stairs to use it. Putting a room onto the front of the house would look strange and detract ^{and} from the look of the house.

(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 desired configuration of the room will be in context with the surrounding neighborhood which has many homes placed on their lots with angles and in odd configurations. Even with the 11 foot setback, there would still be at least 26 feet between the proposed exterior wall and the neighbor's garage. The side yards between are the least used parts of both of our yards. The section of the proposed room that protrudes into the setback area is triangular in shape ^{and} would decrease in width to only 1 foot over the setback at the rear.

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

This addition would be modest in size and would not have a negative impact on neighboring properties. It would continue to be a single family home and would greatly increase quality of life for an aging resident with a disability.

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.

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.

Cybil A. Zoller / Hanna A. Zoller
Signature of Applicant*

Cybil A. Zoller / Hanna A. Zoller
Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

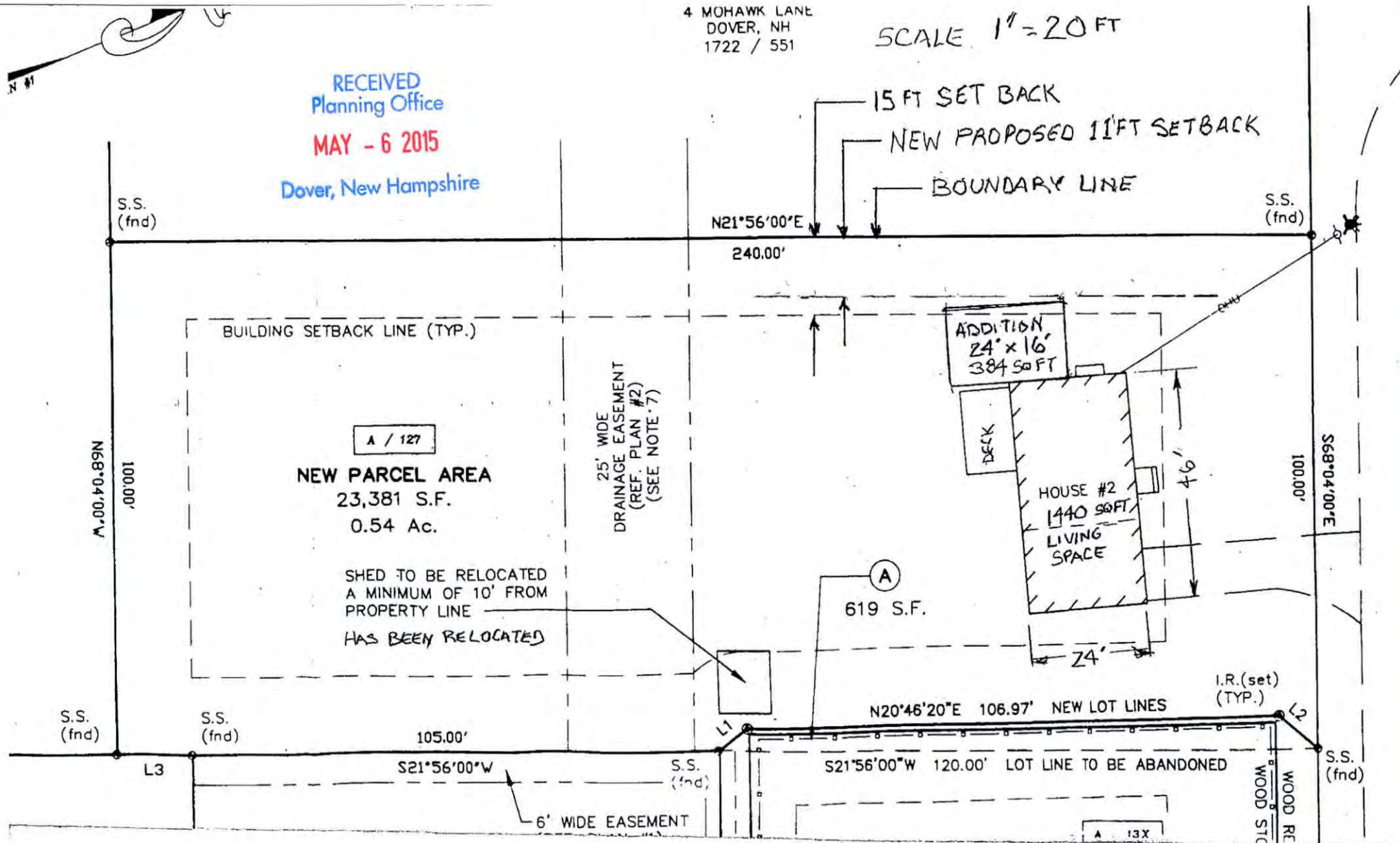
I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction 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: Cybil A. Zoller / Hanna A. Zoller Date: 5/4/2015

SCALE 1" = 20 FT

MAY - 6 2015

Dover, New Hampshire





CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z15-03)

Application Type: Variance
Applicant: Karl Leinsing
Owner: The Leinsing Trust
Location: 77 Spur Road (Tax Map L, Lot 15-D)

INTENT: The property is located adjacent to the Bellamy River and is improved with a single family dwelling. The applicant requests a rehearing for a denied variance to use the back yard of the property for an accessory helicopter take off and landings use.

UNITS PROPOSED: n/a

AGENDA ITEM #: 4

ZONING DISTRICT: R-20

EXISTING LAND USE: Single Family Residential

PROPOSED LAND USE: Single Family Residential with accessory helicopter takeoff and landing

SURROUNDING LAND USE: Residential

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application with supplemental materials

APPLICATION IS COMPLETE:
The attached motion for rehearing was filed on April 20, 2015, within 30 days following the Board's decision on March 19, 2015, and is therefore considered timely.

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department recommends that the Board review the criteria for granting a rehearing and determine if they are met.

Summary of Request and Background

The property is improved with a single family home and is located adjacent to the Bellamy River with frontage on Spur Road. The applicant proposed to use the rear yard of the property for an accessory helicopter take off and landings use. "Helicopter take offs & landings" is a use permitted by Special Exception in the R-20 District. However, the property is ineligible for Special Exception approval because there is no location on the property that could meet Special Exception requirement "A", set forth in the R-20 District Table, which provides that: "[t]here shall be a distance of one thousand (1,000) feet between any existing residential structure and any proposed helicopter landing pad." Therefore, the applicant requires a variance to allow the helicopter use. On March 19, 2015 the Board denied the variance, and the application is asking for a rehearing.

Process for a Rehearing

The Board should review each point in the submitted motion and determine if a rehearing is warranted based on the criteria set forth in RSA 677. The Board's consideration of the motion for rehearing occurs at a public meeting, not a public hearing, and no testimony need be taken at this time. The decision to either grant or deny this request is based on the submitted motion.

A rehearing shall be granted only if: (1) the petitioner has new, relevant evidence which was originally not available; (2) the petitioner raises new, relevant legal issues that were not considered at the original hearing; or (3) the Board feels it may have made a prejudicial technical or legal error in its original decision.

If new evidence is provided, the evidence should be evidence that was unobtainable because of the absence of key people, or for other valid reasons, and not because the petitioner has not adequately prepared the original case and did not take the trouble to determine sufficient grounds and provide facts to support them.

The reasons for granting a rehearing should be compelling ones; the Board has no right to reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created.

The Board shall either grant or deny a rehearing within thirty (30) days of receiving the request. Appeals to the NH Superior Court may be taken pursuant to NH RSA 677:4, as amended, within thirty (30) days after the action complained of has been recorded.

Conclusion

If the Board finds that one the following criteria is met, it should grant the rehearing and hold it at the June 18, 2015 meeting:

- There is new, relevant evidence previously unavailable
- There are relevant legal issues were not considered at the original hearing; or
- The Board feels it may have made a prejudicial technical or legal error in its original decision.



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

<i>Office Use Only</i>	Case #: <u>215-03</u>	Date Received: <u>APR 20 2015</u>	RECEIVED Planning Office Dover, New Hampshire
	Amount Paid: \$ <u>212.00</u>	Time Received:	

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Karl R. Leinsing Phone # 603-926-8216

Address of Applicant: 77 Spur Rd., Dover, NH 03820

E-Mail Address: kleinsing@comcast.net

PROPERTY OWNER (if different from applicant): The Leinsing Trust, dated 05/26/2005

Address: 77 Spur Rd., Dover, NH 03820 Phone # 603-926-8216

E-Mail Address: kleinsing@comcast.net

PROPERTY/PARCEL INFORMATION

Address: 77 Spur Rd., Dover, NH 03820

Brief Directions: From Dover Point Rd. take a left or right on New Bellamy Lane then right on Spur Rd. and property is on the left.

Zoning District: R-20 Assessor's Map # L Lot(s) # 15D

TYPE OF APPEAL: (Please check one)

☐ Variance	from Section <u>170-12.A</u> 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:

To perform helicopter (Robinson R44 Raven II) take-off and landings on the backyard of 77 Spur Rd.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

A variance is requested from Section(s) 170-12.A of the Zoning Ordinance to permit:

Perform helicopter takeoff and landings on the property of 77 Spur Rd. with the following conditions:

- | | |
|--|---|
| 1. Notify abutters in advance of takeoffs and landings if requested. | 6. Provide proof of insurance, if requested. |
| 2. Perform helicopter operations only between hours of 7am and 9pm. | 7. Limit number of takeoffs & landings to 12 per year. |
| 3. No flying over abutters homes. | 8. Takeoffs and landings are permitted for as long as it is legally |
| 4. Site to maintain FAA and DOT certification. | permitted to perform same operation in the Bellamy River |
| 5. Limit size of helicopter to four passengers. | or on a boat in the Bellamy River. |

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 original application and appeal section below for additional evidence)

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

(See original application and appeal section below for additional evidence)

3. Granting the variance would do substantial justice because:

(See original application and appeal section below for additional evidence)

TOWN OF DOVER, NH

DOVER ZONING BOARD OF ADJUSTMENT

MOTION OF KARL R. LEINSING FOR REHEARING OF
DECISION OF ZONING BOARD OF ADJUSTMENT
ON MARCH 19, 2015

Applicant Karl R. Leinsing, Trustee and/or Trustor of the property located at 77 Spur Road, Dover, New Hampshire (the "Property"), respectfully moves the Dover Zoning Board of Adjustment (the "Board") for a rehearing on its March 19, 2015 decision that denied a use variance from Section 170-12.A of the Zoning Ordinance and the R-20 District Table of Use and Dimensional Regulations to allow helicopter take-offs and landings in the back yard of the property at 77 Spur Rd.

This Motion is made pursuant to New Hampshire Revised Statutes Annotated 677:2 and Section 170-12.A of the Dover Zoning Ordinance (the "Zoning Ordinance"). In support of this Motion, I, Mr. Karl R. Leinsing state as follows:

BACKGROUND:

I, Karl R. Leinsing, currently live on the Property. The Property is located within the R-20 District. On February 10, 2015, I submitted a variance application for relief from the 1000' distance requirement from residential structures in Section 170-12.A of the Dover Zoning Ordinance (the "Zoning Ordinance"), which application was heard by the City of Dover Zoning Board of Adjustment on March 19, 2015. Helicopter takeoffs and landings are permitted within the R-20 District; however, pursuant to Section 170-12.A of the Zoning Ordinance, the Table of Permitted Uses, Helicopter Take-offs and Landings are allowed as a special exemption subject to the following conditions:

A. There shall be a distance of 1000 feet between any existing residential structure and any proposed helicopter landing pad; B. Except in the case of an emergency, no helicopter take-offs or landings shall occur between the hours of 9:00pm and 7:00am; C. The facility shall be accessory to the principal use located on the lot; D. All facilities shall be located and designed so that the operation thereof will not adversely affect adjacent residential areas, particularly with respect to noise level; E. The conditions for granting a Special Exception, contained in Chapter 170-52-C(3), must also be satisfied.

New evidence, in addition to the evidence already submitted, which is basis for variance for which a rehearing is requested is as follows:

1. Letter from real estate appraiser indicating abutting property values would not be adversely affected by 12 or less helicopter take-offs and landings per year.
2. Department of Environment Services regulations (WD-SP-5) on Vegetation Maintenance within the Protected Shoreland that prohibit a total clearing of trees and shrubs from waterfront buffer zones. This new evidence supports the

uniqueness of the property at 77 Spur Road which has no trees or shrubs between landing zone and water front. There are no other properties in the R-20 zone which could not be modified to be equivalent to this property.

3. Plots of aircraft traffic landing and/or departing from Portsmouth Airport including altitude and flight path in close proximity to the Property. Picture of aircraft at low altitude across from Property on other side of the river. This new evidence of current aircraft corridor location combined with new evidence in #2 above supports the uniqueness of the Property.
4. Copy of Section IX of North Hampton, NH Zoning Ordinance indicating a 200 foot required distance from highway, pole line for electric or telephone wires, building, or recreation area. This is to support criteria #2 that was determined to lack proof that supported statements about other New Hampshire town requirements.
5. Provide video evidence of helicopter landing in backyard of Property and comparison to noise of lawn mower and leaf blower on same Property.
6. Present additional evidence of hardship in addition to the safety and environmental hardships that were presented at the hearing such take-offs and landings are not permissible in the water, as the town of Dover suggests, during the winter months. Bellamy River water is also high in salt content which is corrosive and harmful to aircraft. Helicopters are designed for point to point transportation and I have a mother that lives on top of a mountain in Vermont and is getting elderly and it is easier, safer, and faster to transport her direct from door to door on more stable ground as opposed to landing in the water or on a boat in the water which is also not possible in the winter. Keeping the helicopter in the yard during family get-togethers, times of potential danger (fires, floods, tsunami, etc.) also gives us quick transportation, any time of year, to the hospital or safer areas if there should be an emergency. Congested traffic over route 16 bridge makes getting to Portsmouth airport more difficult for time sensitive flights for Patient Airlift Services and business meetings. Landing a helicopter on a boat will require an additional specialized boat to maintain, store, and purchase which is an unnecessary and costly burden on the Property owner that can only be used during the warm weather months.

During its review of my area variance application on March 19, 2015, the Board determined that they should deny the request for variance from Section 170-12A of the Zoning Ordinance and the R-20 District Table of Use and Dimensional Regulations to allow helicopter take-offs and landings in the back yard of the property at 77 Spur Road and then listed their basis on the 5 criteria.

GROUND FOR REHEARING:

I. The Board erred by relying on false information provided at the hearing.

The Board, in making its decision, appears to have considered information provided by staff member that is false and inaccurate regarding the uniqueness of the Property. Staff member stated Property was not unique because other properties on the Bellamy River would be just as suitable if they "clear some trees". This is incorrect as indicated by evidence #2 above that forbids complete clearing of trees and shrubs on water front property. Public speaker also indicated that aircraft do not fly at low altitudes above trees across river from the Property and evidence #3 above will contradict such statements in support of uniqueness of the Property.

II. The Board requires additional evidence to grant variance.

The Board, in making its decision, appears to require more "proof" or information to grant variance to Property owner. The Board's basis of its decision stated there was insufficient evidence to support abutting property values would not be adversely affected by 12 or less helicopter landings on the Property. Evidence #1 above will show that abutter property values will not be adversely affected by the few helicopter landings on the Property.

The Board also required more evidence to support uniqueness of the Property. A new property plot of properties along the Bellamy River will show that the Property is unique to all others. The Property at 77 Spur Rd. is the only property that (i) abuts a water body with no residences across from the water body for non-intrusive approaches and departures, (ii) abuts the Portsmouth Airport approach and departure corridor to allow take-offs and landings to branch off from this corridor making the air traffic be no different than what occurs today, (iii) has no trees or shrubs on the property that abuts the water, and (iv) has sufficient space and area for safe take-offs and landings as required by the FAA and NH DOT (Evidence #2 and #3 above).

The Board also required more evidence to support other towns in New Hampshire either have no restrictions on helicopter take-offs and landings or that have more reasonable distance requirements from residences such as the 200 foot requirement in North Hampton provided by Evidence #4 above.

The Board also required more evidence to support that 1000 foot requirement is unreasonable. FAA and NH DOT certified the Property as reasonable for safety, but additional evidence is required for noise. Evidence #5 above will show the helicopter noise is no more intrusive or a nuisance as compared to lawn mowing and leaf blowers.

The Board also required more evidence to support hardship and the 5 criteria for granting of the variance. The Property owner will provide additional evidence #6 above and lay out how the 5 criteria can now be met by the evidence in #6 along with the evidence #1 to 5 that precedes it.

III. Add additional conditions to variance to make it more reasonable.

The Board staff member indicated that the variance should not be granted giving neighbors a continued “fight” if landings occur on the water or on a boat in the water. The Property owner wishes to add that the variance may contain a condition that the Property owner may only be allowed this variance as long as take-offs and landings are legal in the Bellamy River. The Property owner would also like to add a maximum limit to the number of take-offs and landings and make that number 12 or some other number the Board feels is reasonable.

IV. Variance request is not contrary to the public interest and is a reasonable request.

Other towns in the state of NH have a lower distance requirement or no restrictions at all against helicopter landings. New evidence #4 above for town of North Hampton requiring only 200 foot distance from buildings is more reasonable. It is also very reasonable for the Property owner to ask for only 12 landings per year when many more landings are currently allowed in the Bellamy River and as such the Property owner is looking out for public interest, safety, and environmental interests in requesting this variance.

V. Application for variance directed to the Zoning Board of Adjustment is reasonable.

The Board indicated that application for variance on the 1000 foot requirement from residential structures directed to the Zoning Board of Adjustment is not reasonable as they don’t decide this distance and it is more appropriate to request a change from the Planning Board. This is inconsistent with other variance requests from setback requirements from property lines to build a garage or expand a residential structure. It is, therefore, reasonable to ask the Zoning Board of Adjustment for the same type of distance variance that has support from both the state (NH DOT) and federal (FAA) governments.

CONCLUSION:

Mr. Leinsing respectfully requests that this Board rehear and reconsider its decisions on this application. The Board has relied on incorrect information and there is much additional evidence to support statements made by Property owner and the 5 criteria that need to be met to grant the variance.

WHEREFORE, I, Karl R. Leinsing respectfully moves for a rehearing of my February 10, 2015 variance application which was denied by the City of Dover Zoning Board of Adjustment, and, after rehearing, respectfully requests that this Board find that the variance request is a reasonable one and be granted. The variance to read as follows:

Helicopter take-offs and landings are permitted on backyard of 77 Spur Rd. with the following conditions:

1. Owner shall notify abutters in advance of take-offs and landings if requested.
2. Helicopter operations shall be permitted only between hours of 7 am and 9pm.
3. There shall be no flying over abutter's homes.
4. Owner shall maintain FAA and DOT certification.
5. Size of helicopter shall be limited to four passengers.
6. Owner shall provide proof of insurance, if requested.
7. The number of take-offs and landings shall be limited to 12 per year.
8. Take-offs and landings are permitted for as long as it is legally permitted to perform same operations in the Bellamy River or on a boat in the Bellamy River.

Digitally signed by Karl

R. Leinsing

Date: 2015.04.17

14:48:51 -04'00'

Signed/Dated:  _____

Print Name: Karl R. Leinsing

Title: Trustee and/or Trustor

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.



Digitally signed by Karl R. Leinsing
Date: 2015.04.17 14:49:04 -04'00'

Signature of Applicant*



Digitally signed by Karl R. Leinsing
Date: 2015.04.17 14:49:15 -04'00'

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: _____



Digitally signed by Karl R. Leinsing
Date: 2015.04.17 14:49:47 -04'00'

Date: 04/17/2015

New Evidence #1

KEN CHADWICK APPRAISAL SERVICES
20 B ELM STREET ,DOVER NH 03820

SUBJECT: 77 SPUR ROAD,DOVER,NH 03820 TAX MAP L ,LOT 15 -D

OWNER : LEINSING TRUST,KARL R. LEINSING TRUSTEE

REFERENCE :ZONING BOARD DENIAL OF VARIANCE TO LAND PERSONAL
HELICOPTER ON HIS FRONT LAWN AT 77 SPUR ROAD,DOVER,NH 03820

VALUE OF PROPERTY IN QUESTION AS WELL AS SURROUNDING PROPERTIES WILL
NOT BE IMPACTED BY ALLOWING USE OF OF APPLICANTS LAWN FOR LANDING HIS
PERSONAL HELICOPTER.

VALUES IN THE NEIGHBORHOOD ARE GREATLY DEPENDENT ON THE
WATERFRONTAGE FOR THEIR VALUE. PRESENT NEIGHBORHOOD CONSISTS OF A
VARIETY OF HOMES AND COTTAGES WITH MOST OF THEIR VALUE BEING DERIVED
FROM HAVING WATERFRONTAGE WITH LANDING A PERSONAL HELICOPTER ON
ONES LAWN HAVING NO IMPACT WHATSOEVER.

RESPECTFULLY SUBMITTED



KENNETH H. CHADWICK
CERTIFIED APPRAISER
NHCR-170

New Evidence #2

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

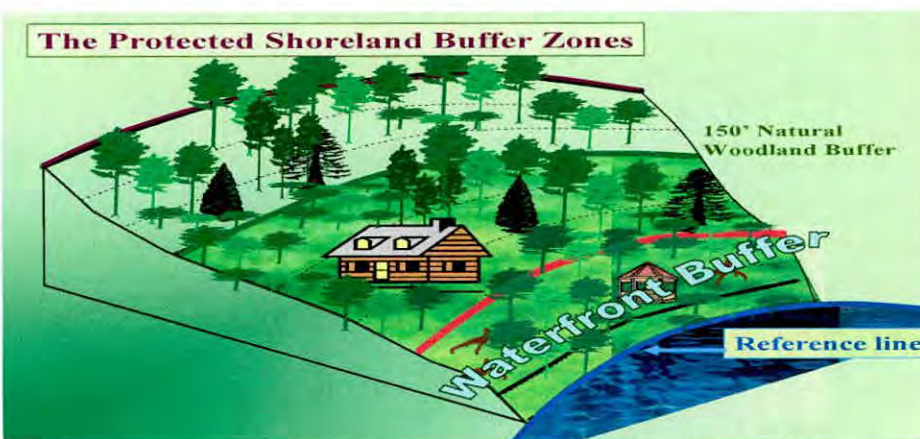
WD-SP-5

2013

Vegetation Maintenance within the Protected Shoreland

Vegetation is a key component in preserving the integrity of public waters and is also a critical element of wildlife habitat. Well vegetated shorelands that include a variety of native trees, saplings, shrubs and natural ground cover are much more apt to naturally manage the harmful effects of stormwater runoff. The NH Shoreland Water Quality Protection Act (SWQPA) RSA 483-B, formerly named the Comprehensive Shoreland Protection Act (CSPA), has protected a 150 ft wide vegetated buffer adjacent to public waters since July 1, 1994. For the purposes of the SWQPA, public waters are defined as lakes, ponds and artificial impoundments greater than 10 acres, rivers and streams that are 4th order or higher, designated rivers and all tidal waters. Waterbodies protected under the SWQPA can be found on the [Consolidated List of Waterbodies Protected Under the Shoreland Water Quality Protection Act](#). A shoreland impact permit is *not* required to manage vegetation within the protected shoreland, however, property owners *must* operate in accordance with the guidelines below.

The 150 ft wide protected vegetated buffer is divided into two regions. The first 50 feet, beginning at the reference line, is called the waterfront buffer zone and the region between 50 ft and 150 ft from the reference line is the natural woodland buffer zone. Different vegetation removal limitations apply within each of these zones and are as follows:



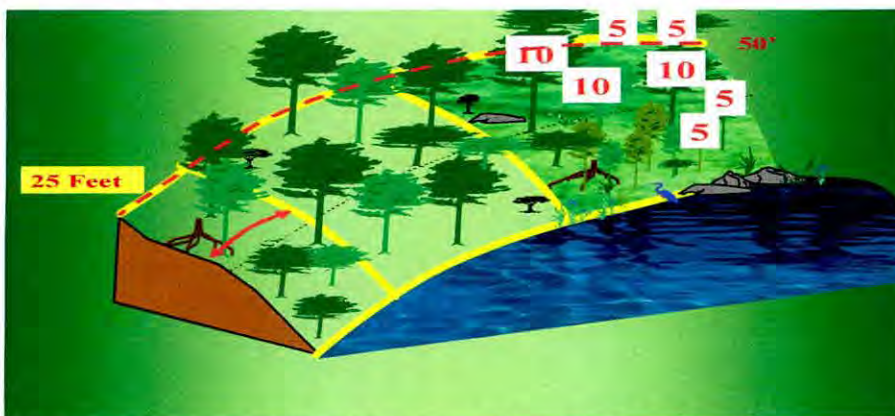
Example: The Waterfront Buffer Zone and the Natural Woodland Buffer Zone

Vegetation maintenance within the Waterfront Buffer

Within the Waterfront Buffer, branches may be trimmed, pruned, and thinned to the extent necessary to protect structures, maintain clearances and provide views. Removal of branches for the purpose of providing views is limited to the bottom half of trees and saplings to help ensure the health of the tree or sapling. Owners of lots that were legally developed prior to July 1st, 2008, that have cleared areas within the waterfront buffer such as existing lawns or beaches are not required to replant or restore these areas and owners may continue to maintain these areas as they have in the past. Expanding existing beaches, replenishing existing beaches with additional sand or constructing a new perched beach requires a Wetland Permit under RSA 482-A.

Ground cover is protected within the Waterfront Buffer. Vegetation generally less than 3 feet in height, rocks, stumps and their root systems must be left intact in the ground. Clearing vegetation to provide a 6 foot wide path to access docks, beaches, structures, existing open areas, and the waterbody is allowed provided it is configured in a manner that does not concentrate stormwater or contribute to erosion. Making pathway improvements such as constructing walkways requires a shoreland permit.

Live trees and saplings may be removed provided that certain criteria are met. Starting from the most northerly or easterly boundary property boundary, and working along the shoreline, divide the waterfront buffer into 50 ft x 50 ft grid segments. Within each grid segment a minimum tree and sapling score of 50 points must be maintained. If, for any reason, there is insufficient area for a full segment, the number of points required to be maintained is proportional to the requirement of a full segment. For instance, a grid segment that measures 25 ft x 50 ft, (*half of a full 50 ft x 50 ft grid segment*) must maintain at least 25 points worth of trees and saplings.



Example: Lot with two full grid segments and one partial grid segment.

To determine if trees and saplings can be removed, the owner must verify that at least the minimum tree and sapling point score will remain within the affected grid segment. To accomplish this, at a height of 4 ½ feet above the ground, on the uphill side, measure the diameter of each tree and sapling within each grid segment and score in accordance with the table below. If nursery stock is present, measure the tree diameter with a caliper at a height consistent with established nursery industry standards. Within any given grid segment, trees and saplings can be removed provided the sum of the remaining trees and saplings meets the required

minimum point score. If the initial total score within a given grid segment is less than the required minimum score, trees and saplings may not be removed. The stumps of felled trees and saplings may be ground flush to the ground surface but, the stump and root systems must remain in the ground. When removing trees, care must be taken to avoid damaging surrounding trees and ground cover.

Calculating the tree and sapling score within a 50 foot by 50 foot segment:

Determine each tree and sapling diameter 4½ feet above the ground, uphill side. If nursery stock is present, measure the trees with a caliper at a height consistent with established nursery industry standards

Diameter of Tree or Sapling	Score
1 to 3 inches	1pt
Greater than 3 to and including 6 inches	5 pts
Greater than 6 to and including 12 inches	10 pts
Greater than 12 inches	15 pts

If possible, owners are encouraged to retain dead trees as they provide valuable wildlife habitat and nesting opportunities. However, dead, diseased or unsafe trees are not included in the scoring and may be removed at any time provided that damage to surrounding trees and natural groundcover is minimized and erosion and sedimentation to the waterbody is prevented.

Vegetation maintenance within the Natural Woodland Buffer

Between 50 feet and 150 feet from the reference line, 25% of this area must remain in an unaltered state. "Unaltered State" means native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing or other similar activities except as needed for renewal or to maintain or improve plant health.



Example: 25% of this region must remain in an unaltered state.

Owners of lots legally developed or landscaped prior to July 1, 2008, that do not comply with this standard are encouraged to but, shall not be required to increase the percentage of area to be

maintained in an unaltered state. Owners of lots that do not currently meet this standard are not permitted to further decrease the size of any areas existing in an unaltered state.

Lawns are modified surfaces and are not considered unaltered areas. This does not prevent raking existing lawns and landscaped areas, the removal of non-native or invasive species, or the removal of dead vegetation.

Dead, diseased, or unsafe trees, limbs, saplings or shrubs that pose an imminent hazard to structures or have the ability to cause personal injury may be removed from the natural woodland buffer, even areas that are to remain in an unaltered state at anytime. However, preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

For more information

For more information about the Shoreland Water Quality Protection Act and the DES Shoreland Program, please go to <http://des.nh.gov/organization/divisions/water/wetlands/cspa/index.htm> or contact the shoreland program at (603) 271-2147 or shoreland@des.nh.gov.



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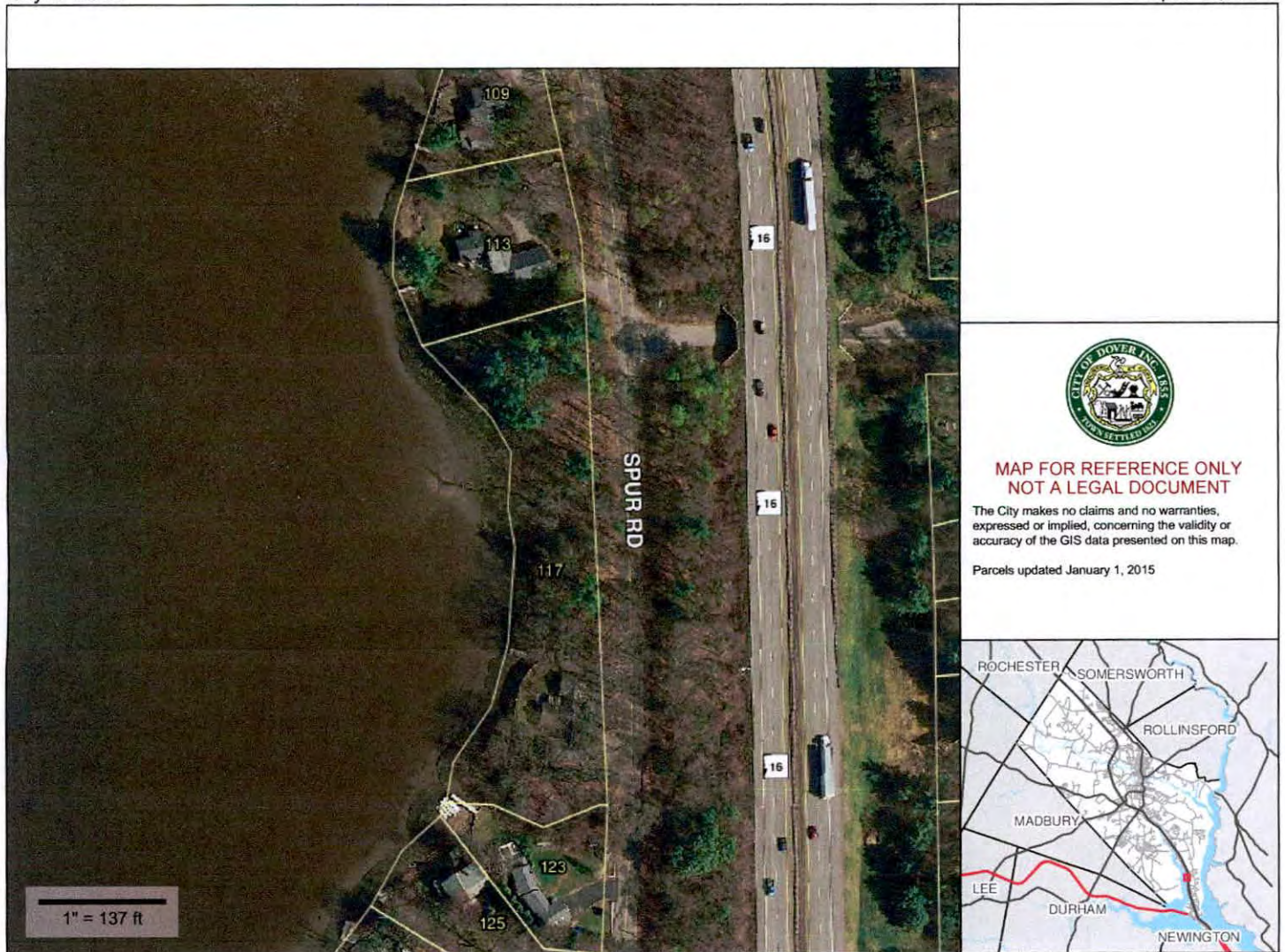


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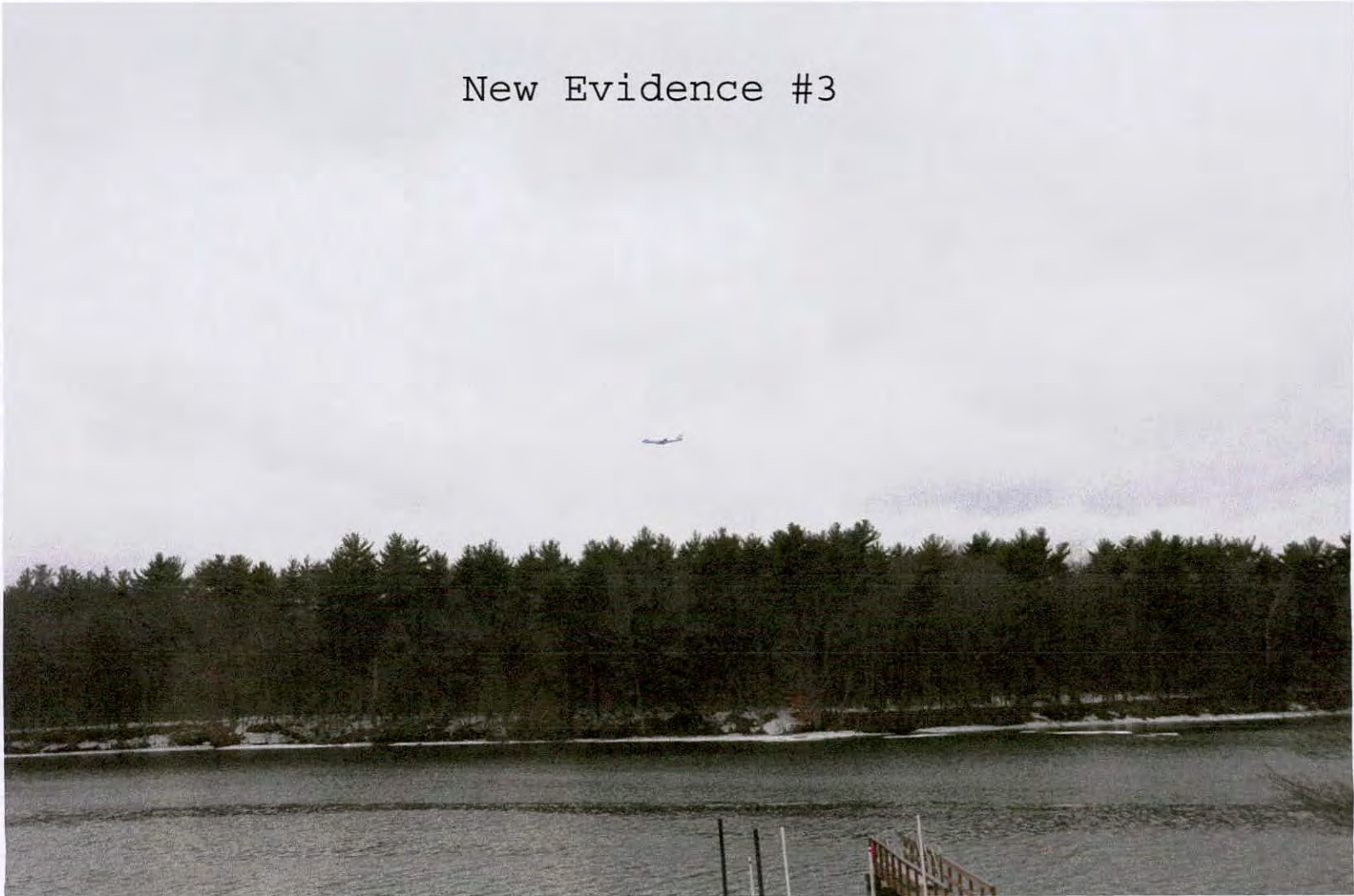
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New Evidence #3



VFR & TFRs

7B9 7B3 120mph 8gph...



Aerial & TFRs

7B9 7B3 120mph 8gph...

10:06 PM EDT



Groundspeed

GPS Altitude

Distance to Next

Nearest Navaid
PSM (116.5)
6R/4

Zulu Time

Current Lat/Lon
43.15°N
70.85°W

0 kts

50'

02:07 Z



Airports



Maps



Plates



Documents



Imagery



File & Brief



ScratchPad



More



Note flight path location over subject property together with altitude of aircraft on next pages makes Property unique in its ability to join this current traffic corridor.

Join FlightAware (Why Join?) [Login](#) [Position](#) [Orientation](#) [Groundspeed](#) [Altitude](#) [Reporting Facility](#) 02:21PM EDT

EDT Latitude Longitude Search for a flight, tail #, airport, or city KTS MPH feet Rate Location/Type [FORGOT THE FLIGHT NUMBER?](#)

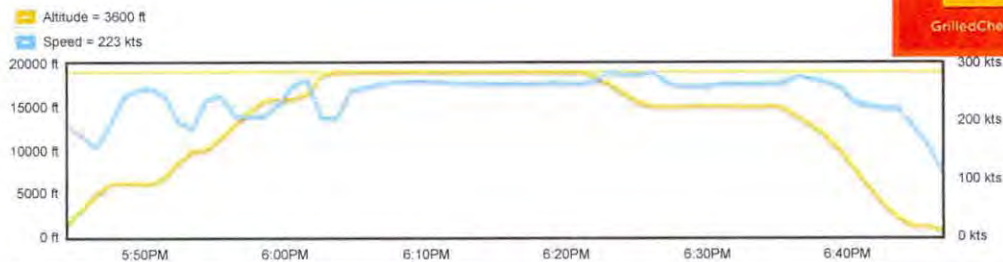
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Flight Track Log - Related Links

- [Live Flight Tracker \(C-FJTQ\)](#)
- [Flight → C-FJTQ → 13-Apr-2015 → KTEB - KPSM](#)

Times and Time Zones

All times are in EDT time to prevent confusion due to time zone crossing. See the [C-FJTQ flight status page for this flight](#) to view local times or [setup timezone preferences in your user account](#).



Boston
Center

Departure (KTEB) @ Monday 05:44:00 PM EDT									
Mon 05:44:00 PM									
Mon 05:44:32 PM	40.8333	-74.1500	270°	West	194	223	1,600		New TRACON
Mon 05:45:32 PM	40.8333	-74.2167	270°	West	173	199	3,200	1,650 ↑	New TRACON
Mon 05:46:32 PM	40.8333	-74.2667	270°	West	154	177	4,900	1,450 ↑	New TRACON
Mon 05:47:32 PM	40.8833	-74.2833	346°	North	198	228	6,100	600 ↑	New TRACON
Mon 05:48:32 PM	40.9333	-74.2500	27°	Northeast	243	280	6,100		New TRACON
Mon 05:49:32 PM	41.0000	-74.2167	21°	North	256	295	6,100		New TRACON
Mon 05:50:32 PM	41.0667	-74.1833	21°	North	257	296	6,100	500	New TRACON
Mon 05:51:32 PM	41.1167	-74.1167	45°	Northeast	242	278	7,100	1,371 ↑	New TRACON
Mon 05:52:17 PM	41.1325	-74.0689	66°	East	201	231	8,500	1,514 ↑	New Center
Mon 05:53:19 PM	41.1511	-74.0064	68°	East	187	215	9,800	726 ↑	New Center
Mon 05:54:21 PM	41.1781	-73.9217	67°	East	238	274	10,000	774 ↑	New Center
Mon 05:55:23 PM	41.2050	-73.8294	69°	East	246	283	11,400	1,440 ↑	New Center
Mon 05:56:26 PM	41.2261	-73.7586	68°	East	209	241	13,000	1,488 ↑	New Center
Mon 05:57:28 PM	41.2464	-73.6808	71°	East	208	239	14,500	1,355 ↑	New Center
Mon 05:58:30 PM	41.2650	-73.6069	71°	East	209	241	15,800	694 ↑	New Center
Mon 05:59:29 PM	41.2842	-73.5308	71°	East	231	266	15,900	50 ↑	Boston Center
Mon 06:00:30 PM	41.3097	-73.4300	71°	East	262	302	15,900	295	Boston Center
Mon 06:01:31 PM	41.3333	-73.3336	72°	East	272	313	16,500	1,328 ↑	Boston Center
Mon 06:02:32 PM	41.3522	-73.2558	72°	East	206	237	18,600	1,200 ↑	Boston Center
Mon 06:03:36 PM	41.3700	-73.1864	71°	East	205	236	19,000	192 ↑	Boston Center
Mon 06:04:37 PM	41.3997	-73.0956	66°	East	254	292	19,000		Boston Center
Mon 06:05:38 PM	41.4369	-73.0133	59°	Northeast	258	297	19,000		Boston Center
Mon 06:06:40 PM	41.4758	-72.9283	59°	Northeast	265	305	19,000		Boston Center
Mon 06:07:41 PM	41.5136	-72.8417	60°	Northeast	268	308	19,000		Boston Center
Mon 06:08:42 PM	41.5539	-72.7489	60°	Northeast	269	310	19,000		

Time	Position		Orientation		Groundspeed		Altitude		Reporting Facility
	EDT	Latitude	Longitude	Course	Direction	KTS	MPH	feet	Rate
									⊙ Boston Center
Mon 06:09:45 PM		41.5917	-72.6631	60°	Northeast	269	310	19,000	⊙ Boston Center
Mon 06:10:46 PM		41.6308	-72.5719	60°	Northeast	268	308	19,000	⊙ Boston Center
Mon 06:11:47 PM		41.6694	-72.4881	58°	Northeast	267	307	19,000	⊙ Boston Center
Mon 06:12:48 PM		41.7081	-72.4056	58°	Northeast	266	306	19,000	⊙ Boston Center
Mon 06:13:51 PM		41.7511	-72.3161	57°	Northeast	266	306	19,000	⊙ Boston Center
Mon 06:14:51 PM		41.7817	-72.2492	59°	Northeast	265	305	19,000	⊙ Boston Center
Mon 06:15:52 PM		41.8283	-72.1489	58°	Northeast	265	305	19,000	⊙ Boston Center
Mon 06:16:56 PM		41.8700	-72.0586	58°	Northeast	265	305	19,000	⊙ Boston Center
Mon 06:17:56 PM		41.9089	-71.9747	58°	Northeast	265	305	19,000	⊙ Boston Center
Mon 06:19:00 PM		41.9450	-71.8964	58°	Northeast	267	307	19,000	⊙ Boston Center
Mon 06:20:01 PM		41.9839	-71.8139	58°	Northeast	265	305	19,000	⊙ Boston Center
Mon 06:21:01 PM		42.0211	-71.7306	59°	Northeast	265	305	19,000	-298 ⊙ Boston Center
Mon 06:22:02 PM		42.0606	-71.6453	58°	Northeast	269	310	18,400	-732 ↓ ⊙ Boston Center
Mon 06:23:04 PM		42.1094	-71.5408	58°	Northeast	287	330	17,500	-905 ↓ ⊙ Boston Center
Mon 06:24:08 PM		42.1492	-71.4531	59°	Northeast	280	322	16,500	-968 ↓ ⊙ Boston Center
Mon 06:25:08 PM		42.1900	-71.3614	59°	Northeast	281	323	15,500	-744 ↓ ⊙ Boston Center
Mon 06:26:09 PM		42.2325	-71.2703	58°	Northeast	286	329	15,000	-242 ↓ ⊙ Boston Center
Mon 06:27:12 PM		42.2708	-71.1864	58°	Northeast	266	306	15,000	⊙ Boston Center
Mon 06:28:13 PM		42.3139	-71.0864	60°	Northeast	260	299	15,000	50 ⊙ Boston Center
Mon 06:29:13 PM		42.3528	-71.0014	58°	Northeast	260	299	15,100	48 ↑ ⊙ Boston Center
Mon 06:30:17 PM		42.3906	-70.9178	59°	Northeast	261	300	15,100	⊙ Boston Center
Mon 06:31:17 PM		42.4408	-70.8342	51°	Northeast	265	305	15,100	-50 ⊙ Boston Center
Mon 06:32:18 PM		42.4925	-70.7739	41°	Northeast	265	305	15,000	-48 ↓ ⊙ Boston Center
Mon 06:33:21 PM		42.5475	-70.7081	41°	Northeast	265	305	15,000	48 ⊙ Boston Center
Mon 06:34:22 PM		42.6100	-70.6325	42°	Northeast	265	305	15,100	-49 ↑ ⊙ Boston Center
Mon 06:35:23 PM		42.6658	-70.5653	42°	Northeast	266	306	14,900	-639 ↓ ⊙ Boston Center
Mon 06:36:24 PM		42.7275	-70.4883	42°	Northeast	279	321	13,800	-1,033 ↓ ⊙ Boston Center
Mon 06:37:25 PM		42.7994	-70.4867	1°	North	273	314	12,800	-1,104 ↓ ⊙ Boston Center
Mon 06:38:29 PM		42.8664	-70.5264	336°	Northwest	267	307	11,500	-1,452 ↓ ⊙ Boston Center
Mon 06:39:29 PM		42.9331	-70.5747	332°	Northwest	258	297	9,800	-1,884 ↓ ⊙ Boston Center
Mon 06:40:30 PM		42.9886	-70.6186	330°	Northwest	235	270	7,700	-2,016 ↓ ⊙ Boston Center
Mon 06:41:31 PM		43.0431	-70.6586	332°	Northwest	228	262	5,700	-1,968 ↓ ⊙ Boston Center
Mon 06:42:35 PM		43.1025	-70.6967	335°	Northwest	223	257	3,600	-1,680 ↓ ⊙ Boston Center
Mon 06:43:36 PM		43.1578	-70.7317	335°	Northwest	222	255	2,200	-1,180 ↓ ⊙ Boston Center
Mon 06:44:37 PM		43.1644	-70.7975	278°	West	194	223	1,200	-492 ↓ ⊙ Boston Center
Mon 06:45:38 PM		43.1442	-70.8561	245°	Southwest	162	186	1,200	-192 ⊙ Boston Center
Mon 06:46:42 PM		43.1139	-70.8517	174°	South	115	132	800	-375 ↓ ⊙ Boston Center
Mon 06:47:43 PM									✈ FlightAware

Arrival (KPSM) @ Monday 06:47:43 PM EDT

✈ FlightAware

<-- Compare Latitude and Longitude to location of Property on pictures on previous pages and note altitude of aircraft over property.



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New Evidence #4


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MOBILE/MOTOR HOMES, STORAGE, & AIRCRAFT

[Printer-Friendly Version](#)

SECTION IX

MOBILE OR MOTOR HOMES, OPEN STORAGE, AND AIRCRAFT

A. MOBILE OR MOTOR HOMES. No mobile or motor home-other than one camper or easily maneuverable travel trailer, while not used for living or sleeping, per single-family house lot - whether with wheels attached or not - shall be permitted in this village district, except while in transit (including temporary necessary brief stops) on a public highway; provided that the Village District Zoning Inspectors may by written permit allow the placing here of any otherwise prohibited mobile or motor home, while not used for living or sleeping, for up to ten (10) days in a temporary location and for a temporary purpose found by said Village District Zoning Inspectors to be neither injurious, detrimental, nor offensive to the neighborhood.

B. FOUNDATIONS UNDER MOBILE HOMES. No mobile or motor home shall, by reason of being put on a foundation of cinder blocks or otherwise, be considered a dwelling exempt from the provisions of this section of this ordinance.

C. OPEN STORAGE.

1. Except as provided in subsections 2 and 3 hereof, no open storage for a period exceeding five (5) days of any man-made material - other than lobster pots, fishing nets, and their accessory buoys, ropes, and similar necessary gear - nor the parking or open storage for a period exceeding five (5) days, of any boat, mobile or motor home, bus, camper, travel trailer, conveyance, or other trailer, for use on land, water, or in the air - other than licensed passenger motor vehicles (excluding buses) and/or not more than one (1) licensed light truck (of not more than 8,100 pounds gross vehicle weight rating) per house lot - shall be permitted in any location in this village district that is either:

a. Any nearer the limits of any highway, in the case of a vacant lot, than the set-back from such highway required for buildings or structures other than ones of accessory use; and, in all other cases, than the lesser of (1) such set-back so required, and (2) the distance from such highway of the nearest existing dwelling or other structure on the lot on which such man-made material or other object is so stored, parked, or placed; or

b. Any nearer the limits of any lot line, in the case of a vacant lot, than the set-back from such lot line required for buildings or structures of accessory use; and, in all other cases, than the lesser of such set-back so required and the distance from the lot line of the nearest existing dwelling or other structure on the lot on which such man-made material or other object is so stored, parked, or placed; or

c. Offensive, injurious, or detrimental to the neighborhood, whether by reason of the particular nature of the material or other enumerated object(s) or by reason of the location thereof, in the light of circumstances peculiar to a particular location, or otherwise.

2. The provisions hereof shall not apply to boats or boat trailers drawn up on the beach, or to lobster pots, nets, and accessory equipment on, or directly adjacent to, the beach.

3. Notwithstanding the provisions of Section IX C 1, the Zoning Board of Adjustment may, as a Special Exception, allow the occupant of any premises in this Village District to store in the open a boat on such premises in a location otherwise prohibited by such Section and for such period of time as the Board may specify, if it is determined by the Board, after a hearing, that the boat cannot practicably be stored on such premises in a location allowed under Section IX C 1 and if it is further determined by the Board that such storage, taking into account the size of the boat and such other factors as the Board may deem relevant, shall not unreasonably interfere with the view from any residence nor otherwise be offensive, injurious or detrimental to the neighborhood.

D. SANITARY FACILITIES. No motor home, camper, trailer, R/V, travel trailer, boat or other conveyance shall be connected with water or sanitary facilities, or be occupied as a dwelling while being parked or stored in this Village District, and no waste water or sewage therefrom shall be emptied into any highway, parking lot, or wetland area in this Village District.

E. AIRCRAFT. No premises in any zone within this Village District may be used for the landing or taking flight of any aircraft or (except in case of emergency) helicopter, within 200 feet of a highway, pole line for electric or telephone wires, building, or recreation area.

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