

**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, 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

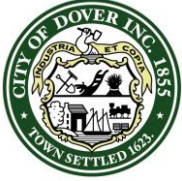
Charles Garabedian, the property owner addressed the Board stating the property was purchased in 1991 from his wife's uncle, Henry Mayrand who in 1972, built the house with a finished basement. He further stated that they never questioned the zoning with the property because the tax assessment documents 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.

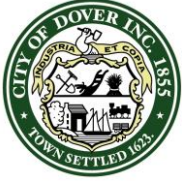
He asked for a variance with take-off and landings in his backyard, with the following restrictions (adding three additional to the original application):

- 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 decibel of noise to the sound of a lawn mower or diesel truck.

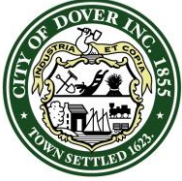
K.Leinsing addressed the safety concerns stating that there is sufficient distance for landing and that a windsock is not needed; however, if the variance is granted, he would put in a wind sock and a fire extinguisher, adding that this is for day operations only.

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.

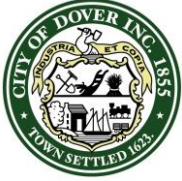
Stepanek Rushmore, 191 Spur Road, stated his concern for the bald eagles he sees several times a week. He also addressed the safety issue regarding a kayaker in the river.

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.

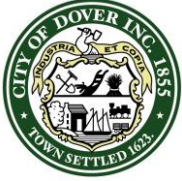
S.Reid stated that the map provided by Staff of the Spur Road neighborhood shows that there are other properties like this. The applicant can land on a barge and walk in the house. He further stated that he did not meet the criteria showing what is different and special about the property, and that the 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.

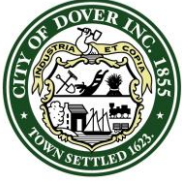
Discussion ensued with comparison to other properties on Back River Road, as well as those that were built with the open space subdivision concepts with no build to line and those that received variances.

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.

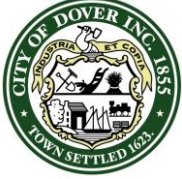
STAFF RECOMMENDATION:

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

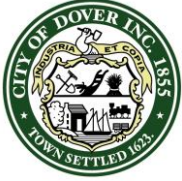
Rick Lundborn the owner of the lot G-12B spoke asking for relief due to the need to have larger rooms for wheelchair access for his in-laws, such as, a handicap accessible master bath and kitchen. He added that the property is on shared sewer and water.

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