

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT AGENDA

Meeting Type: Regular Meeting
Meeting Location: McConnell Center, Room 306
61 Locust Street, Dover, NH 03820
Meeting Date: **Thursday, July 16, 2015**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF MAY 21, 2015

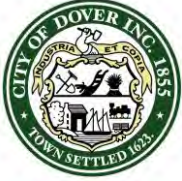
3. HEARINGS

- A. * Z 13-18A Aramis Black/Real McKoy Properties, LLC, 301 Durham Road (Tax Map H, Lot 1), located in the Hotel/Retail (B-4) District, requests an amendment to a variance granted on October 17, 2013, from **Section 170-12.A** of the Zoning Ordinance and the B-4 District Table of Use and Dimensional Requirements to permit the construction of an elderly assisted care home for 8-10 residents with 2 accessory staff apartments, where elderly assisted care homes are not a permitted use in the B-4 District. The amendment requests a total of 12 residents with 2 accessory staff apartments be allowed in the home.
- B. Z 15-13 Seacoast Charter School (Owner: Measured Progress Inc.), 171 Watson Road (Tax Map E, Lot 33), located in the Executive Technology Park (ETP) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the ETP District Table of Use and Dimensional Regulations to permit the existing structure to be used as an Educational Institution, K-12, where an Educational Institution, Post-Secondary is permitted.

4. ZBA RULES OF PROCEDURE – CITY COUNCIL EDITS

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
DOVER**

ZONING BOARD OF ADJUSTMENT - MINUTES

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

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

Members Not Present: Bob Hall

Staff Present: Steve Bird (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 MARCH 19, 2015 AND APRIL 16, 2015

Motion: O.Perry made a motion to approve the March 19, 2015 Regular Meeting Minutes. Seconded by F.Landford. Vote U/A

Motion: O.Perry made a motion to approve the April 16, 2015 Regular Meeting Minutes. Seconded by F.Landford. Vote U/A

O.Perry stated those members who were not present can still vote on the meeting minutes.

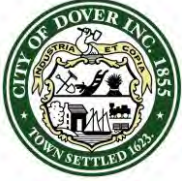
3. HEARINGS

- 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.

Ari Pollack, lawyer from Gallagher, Callahan and Gartrell, represented the applicant. Jim Vitas, Managing member of V.M.D. Companies, LLC, and Bob Clark, Site Engineer from Allen & Major Associates, Inc. were also present. A.Pollack displayed plans stating it is a 19.4 acre site located at the intersection of Route 9 and Silver Street. He further stated the overall plan is to completely demolish the McIntosh College buildings and redevelop with a mix of commercial uses, such as, an assisted living facility, medical office, hotel, restaurant, bank, and a coffee shop. One variance is needed to allow the assisted living facility. The other variance is to build a four story hotel with a proposed height of up to 55 ft., where only 40 ft. is permitted. He further stated the redevelopment would be appealing to a wide demographic of people and would add to the property values by revitalizing the area. The site is large and sits below the grade of the frontage and roads. He added the hotel building height is mitigated by the grade changes and overall depth of the site.

F.Landford confirmed with A.Pollack the existing site would be completely demolished.

O.Perry asked if another hotel is needed due to the existing hotels not being used to full capacity. A.Pollack stated the demographic works well and there will be some interest to have a hotel for this site. O.Perry asked if four floors were needed. A.Pollack stated building a four story hotel is the typical modern design, adding the first floor is typically used for common space or conventions and the upper three floors for rooms.



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Public Hearing Opened

The following spoke in favor of the variances:

D.Barufaldi of Dover Business and Industrial Development Authority, stated the area hotels are experiencing expansion due to activity at Pease, the Portsmouth Naval Shipyard and tourism in Kittery, Maine, adding Liberty Mutual uses hotels for conferences. He further stated the City Council wants to expand commercial development in the area to result in a positive effect on the tax rate. He added the existing site has been dormant and this is a great opportunity for development.

David Choate of Colliers International, stated he is the listing agent for the property and expressed the importance of this development to Dover, adding this project could cause the traffic area network to be reconstructed resulting in improved and safer traffic with the possible installation of a roundabout. He further stated this project is an opportunity to generate tax revenue for the City.

Eric Hagman of 205 Silver Street stated he is in support of assisted living and would support the variance if trees with additional height were guaranteed to provide a barrier for the abutters, adding the height of the hotel would be seen from his backyard. He showed on the plans where he is located in comparison to where the hotel would be, and stated the new building would be higher, and he would appreciate trees with height to block the view, adding the trees that were there were removed for the drain line construction.

The following spoke against the variance:

Teri Picard of Silver Street Extension asked if there was information for a traffic impact analysis, research regarding a market analysis to support viability, who would install and pay for the roundabout installation, the number of parking spaces required and where the parking would be located, detailed information regarding the assisted facility, and the architectural designs that would be met to coincide with the Heritage district.

Dawn Duffy of 163 Silver Street stated she received the information with short notice to consider plan and could not read it, adding the application should be postponed for people to consider the matter. She further stated her concern regarding the wetlands in the area and building within 100 ft. of it.

A.Pollack gave his response to the abutters stating the applicant understands the landscaping obligation involved and is willing to work with the abutters. He stated they are working with Jeff Dirk, Traffic Engineer of Vanasse & Associates and have contacted the Department of Transportation regarding the traffic issue which is yet to be determined. He further stated any wetland disruptions would be reviewed by the State of NH, as well as, the Planning Board and Conservation Commission.

S.Reid confirmed with A.Pollack that the specifics regarding type of the assisted living facility are not available at this time.

S.Reid confirmed with S.Bird the notification to abutters according to State law is five days. S.Bird stated the plans are available for inspection in the Planning Department, and he is willing to assist an abutter in locating the plan on the website.



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C.Prior confirmed with A.Pollack that no other plan is considered for multi-family use if this variance is not granted. A.Pollack clarified the applicant is requesting the use of up to 55 ft. for the height of the hotel, and the height would depend on the hotel user.

S.Reid confirmed with A.Pollack that the height relief is specific for a hotel and would be used only for a hotel.

S.Bird stated the project will require a full traffic analysis, adding if the variance was not granted to consider the other options for this site, such as, apartments which would be allowed and would generate more traffic. He further stated to consider the option of assisted living and that the elderly might not have as many vehicles. He confirmed the project location in the B3 district, not the Heritage district. He stated a market analysis is not information the Planning Board requires, adding that is up to the applicant. He further stated a project of this size requires a landscape plan, and there is no guarantee they would not see building with the planting of trees. He added there are lighting requirements regarding this project as well.

Discussion ensued regarding parking at the site. S.Bird stated the Planning Board is trying to encourage shared parking for mixed uses.

STAFF RECOMMENDATION:

S.Bird stated that the Planning Department supports the request as set forth in the Staff memo, adding it is a good project for the City with six interrelated uses and a great use for the abandoned site. He further stated there is a five story building in the area, and height variances for hotels have been granted at Weeks Crossing and one near Margaritas.

Michelle Routhouska of 4 Mohawk Drive stated the architectural concepts should be considered. S.Bird clarified the site is not in the Heritage District and therefore those standards would not apply.

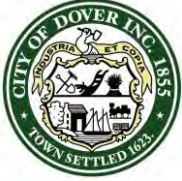
Public Hearing Closed

Motion: O.Perry made a motion to grant both variances with the condition that the building height variance is limited to the use of the structure for a hotel or motel. Seconded by G.Reagan. Vote U/A

- 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.

Laura Zabkar presented the application. Clifford Zabkar was also present. L.Zabkar stated they need a variance to build a room to the right side of their house, adding the difficulty to add to the back due to the location of the septic. She further stated the room is to be used as a living space by her mother who has advanced Parkinson's disease, adding the room would eventually be used as a living room.

Public Hearing Opened



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Michelle Routhouska of 4 Mohawk Drive stated she is in favor of the addition, but requested clarification if it is just one floor the applicant proposes, confirmation of the property line, and if it is a foundation with a crawl space, adding her concern with her tree's root system. She further requested to have the project staked, so she would know how much the addition would affect her property.

L.Zabkar stated the addition will be a one story structure with a cement post foundation, and will not disrupt the surrounding property. She further stated the digging is for five posts. She added she has not found the pin to determine the property line. S.Reid stated where the steel stake is located on the property according to the plan.

STAFF RECOMMENDATION:

S.Bird stated that the Planning Department supports the request as set forth in the staff memo.

Public Hearing Closed

O.Perry asked if this should be a handicap variance. S.Bird stated that variance would limit the future use of the space.

Motion: O.Perry made a motion to grant the variance based on the criteria and Staff recommendation. Seconded by F.Landford. Vote U/A

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

S.Reid stated the re-hearing request is not open for public input. He further stated there was a Scribner's error on the Findings of Facts sheet where he checked yes, when he meant no; however, the text is consistent with his no. He evaluated the Staff Memo with the Board to examine whether or not to grant the rehearing. S.Reid reviewed the material presented as new evidence and stated that all the material could have been available to the applicant at the time of the original hearing. The Board evaluated the materials submitted by the applicant and determined that granting the re-hearing was not warranted.

Motion: O.Perry made a motion to deny the rehearing. Seconded by F.Landford. Vote U/A

S.Bird stated the Zoning Rules of Procedure will be placed on the June agenda. Discussion ensued regarding the authority of the City Council on the adoption of the Rules of Procedure. S.Bird will have the City Attorney determine the authority.

5. ADJOURN

Motion: O.Perry made a motion to adjourn at 8:11 p.m. Seconded by F.Landford. Vote: U/A



CITY OF DOVER

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

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

INTENT: The Applicant received a variance to construct an elderly assisted care home for 8-10 residents with 2 accessory staff apartments. They seek an amendment to allow 12 residents. A variance is required to permit the home which is not a permitted use in the B-4 District.

UNITS PROPOSED: 12 elderly care units, plus 2 accessory staff apartments

AGENDA ITEM #: 3-A

ZONING DISTRICT: B-4 District

EXISTING LAND USE: Commercial

PROPOSED LAND USE: Elderly Care Assisted Home

SURROUNDING LAND USE:
Commercial

PREVIOUS ZBA ACTION:

- Variance granted on June 15, 2006 to permit a beauty salon use (Case Z06-13)
- Variance granted on October 17, 2013 to permit an elderly assisted care home for 8-10 residents with 2 accessory staff apartments (Case Z13-18)

PLANNING BOARD APPROVAL REQUIRED: Yes

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

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department supports the amendment request.

Summary of Request and Background

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

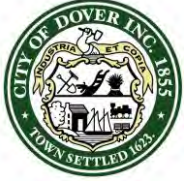
The applicant wishes to add two additional units to the variance request.

Reason for Staff Recommendation

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

Recommendation

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



CITY OF DOVER

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

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





City of Dover, New Hampshire

ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only	Case #:	<u>- Z13-18A</u>	Date Received:	<u>RECEIVED</u> <u>Planning Office</u> <u>JUL 01 2015</u>
	Amount Paid:	\$ <u>300.00</u> <u>ck # 016246</u>	Time Received:	<u>Dover, New Hampshire</u>

APPLICANT/ PROPERTY OWNER INFORMATION

Aramis Black

APPLICANT: Real McKoy Properties, Inc. Phone # 603-591-1256

Address of Applicant: P.O. Box 1727, Dover, New Hampshire 03821

E-Mail Address: amblack99@gmail.com

PROPERTY OWNER (if different from applicant): SAME

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/ PARCEL INFORMATION

Address: 301 Durham Road, NH Route 108, Dover, New Hampshire 03820

Brief Directions: Route 108 driving toward Durham, property is on right.

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

TYPE OF APPEAL: (Please check one)

- | | |
|--|---|
| ☒ Variance | from Section <u>170-12A</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:

A variance was granted on 17 October 2013 (Z13-18) to permit an elderly assisted care home for 8-10 residents with 2 accessory staff apartments to be located on the property behind the current building. A modification to the variance is being requested to allow the elderly assisted care home to have 12 residents with 2 accessory staff apartments. Development of the program and plans have found that 12 residents located in a home in 3 neighborhood groups of 4 rooms each provides the proper setting and scale for the comfort of the residents.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

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

A variance was granted on 17 October 2013 (Z13-18) to permit an elderly assisted care home for 8-10 residents with 2 accessory staff apartments to be located on the property behind the current building. A modification to the variance is being requested to allow the elderly assisted care home to have 12 residents with 2 accessory staff apartments. Development of the program and plans have found that 12 residents located in a home in 3 neighborhood groups of 4 rooms each provides the proper setting and scale for the comfort of the residents.

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

Please demonstrate compliance with the following:

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

See attached.

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

See attached.

3. Granting the variance would do substantial justice because:

See attached.



30 June 2015

Application for a Variance

Cocheco Village

AG Architects Project No. 14-666

- Assessor Map H, Lot I, Zoning District B4.
- Variance is requested from Section 170-12A) Table of Use of the Zoning Ordinance to permit an Elderly Assisted Care Home for 12 residents with 2 accessory staff apartments in the B4 zoning district. The previously approved Variance Z13-18 permitted 8-10 residents with 2 accessory staff apartments in the B4 Zoning District.
- Site Plan and Photographs are attached.
- Facts Supporting This Request:

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

The proposed use for an Elderly Assisted Care Home is a similar commercial use to those allowed in the B4 zone and the Residential-Commercial Mixed Use (RCM) Overlay District, and fits in well with the surrounding properties in the area. There is elderly housing located behind the Hannaford grocery store, there are existing residences nearby in the B4 district and on adjacent properties in Dover's R40 district and Madbury's Residential/Agricultural zone. The lot is an existing 2.95 acres (128,641 SF) lot, which is smaller than the 5 acre minimum lot size for the B4 zone. An elderly assisted care home on this lot would complement the mixed uses permitted on larger lots, and help buffer the adjacent residential uses while using this smaller lot effectively. The existing building at the front of the property (see Photo 1) will accommodate the 2 accessory staff apartments.

The site is bordered by the R40 zoning district, which does allow elderly assisted care homes by Special Exception. The proposed facility will include a new septic system designed to meet NHDES sewage loading lot size and nitrate setback requirements for the 12 residents and 2 accessory staff apartments, and the applicant will be obtaining permits for the new septic system. The new septic system will not be detrimental to the surrounding properties. The proposed use would be compatible with the adjacent properties, while adding to the mixed uses in the zone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The elderly assisted care home is a reasonable use for all the numerous reasons outlined above. The increase from 8-10 residents and 2 accessory apartments previously approved to 12 residents and 2 accessory apartments is a minor difference, and the new design provides a greater distance separating adjacent residential uses from the home. The site design also eliminates the parking that is in front of the existing building and locates it on the North side adjacent to a commercial use. The facility essentially complements and supports commercial development, it effectively uses the rear of a very difficult shaped lot, it follows the intent of mixed residential/commercial development, it proves an effective transition/buffer to the adjacent residential zones to the side and rear of the property, and it will further the goals of this zone.

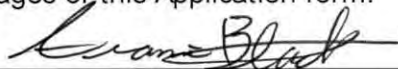
SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

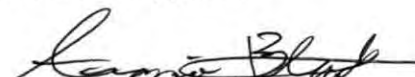
I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

IMPORTANT

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



Signature of Applicant*



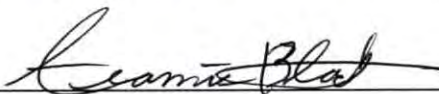
Signature of Owner*

* Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

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

Signature of Property Owner:



Date:

6-30-15

ABUTTER LIST

Tax Map	Lot No.	Owner(s) of Record	Mailing Address
Dover			
H	1	Real McKoy Properties, LLC	P.O. Box 1727, Dover, NH 03821
H	1A	Riza Pahlevi and Gantini Atik	20 Freshet Road, Dover, NH 03820
H	1B	David Geanoulis	299 Durham Road, Dover, NH 03820
H	2	City of Dover	288 Central Avenue, Dover, NH 03820
H	2A	Joanne Johnson	18 Freshet Road, Dover, NH 03820
H	2A-1	Joanne Johnson	(Same lot as H2A above)
H	2A-2	Joanne Johnson	(Same lot as H2A above)
I	22D	Gordon D. Clark	294 Durham Road, Dover, NH 03820
I	122	Order of Elks	282 Durham Road, Dover, NH 03820
I	123	Kevin Vincent Donahue	50 Mill Pond Road, Durham, NH 03824
I	129	Leo Croisetiere	308 Durham Road, Dover, NH 03820
Madbury			
9	23	Thomas and Cheryl Daigle	24 Freshet Road, Madbury, NH 03823
9	24	Rinta Family Trust of 1995, Lillian Rinta Trustee	34 Freshet Road, Madbury, NH 03823
9	25	Our Mustard Seed, LLC	155 Drew Road, Madbury, NH 03823
9	67	Arthur Gagnon	18 Freshet Road, Dover, NH 03820
9	69	Allan Brown and Susan Burdett Brown	22 Freshet Road, Madbury, NH 03823
9	73	Riza Pahlevi and Gantini Atik	(Same lot as H1A above)
10	7	Shaheen Enterprises, LLC	140 Washington Street, P.O. Box 977, Dover, NH 03820
10	8	Leo Croisetiere	(Same lot as I129 above)

Job Memorandum

AG Architects, PC

634 Central Avenue, Dover, NH 03820

E-Mail aga@agarchitects.com

www.agarchitects.com

Phone 603-743-3700

Fax 603-743-3777



RECEIVED
Planning Office

JUL 01 2015

Dover, New Hampshire

Date: 30 June 2015

To: Mr. Chris Parker, City Planning Director

City of Dover

288 Central Avenue

Dover, New Hampshire 03820

From: Art Guadano, AIA, LEED AP BD+C

Project: Cocheco Village

AGA Project No.: 14-666

Subject: Zoning Board of Adjustment

☐ Telephone Conversation. Time _____

☐ Memorandum

☐ E-Mail Address _____

☐ Facsimile Transmittal

Attached Files _____

No. of Receiving Party _____

Mail Original after E-Mailing: ☐ Yes ☐ No

No. of Pages including this page _____

☒ Transmittal

Mail Original after Faxing: ☐ Yes ☐ No

Comments:

Dear Chris,

Attached is our Application for a zoning variance to amend the previously approved Variance Z 13-18 to allow 12 residents (in lieu of 8-10 residents) and two accessory apartments in the Elderly Assisted Care Home in the B-4 zone at 301 Durham Road (Route 108). Included as required are the following items:

- Application, signed by the Owner.
- Application, 10 copies.
- Application Checklist, 10 copies.
- Plot Plan, 10 copies.
- Plot Plan, 8 1/2 x 11.
- Photos, 10 copies.
- Abutter List.
- Mailing labels.
- Fee, payable to City of Dover.

We request that this be heard at the 16 July 2015 ZBA Hearing. If you have any questions or need additional information, please give me a call.

Thanks,


Art

cc: Aramis Black, Cocheco Village

Fax: If you do not receive all the pages or you experience problems, please call AG Architects at (603) 743-3700. AGA facsimile number is (603) 743-3777.



Title C2.1 Date 30 June 2015 Scale 1" = 30'-0" Sheet No. 1-11 Project Name Concept Site Plan Drawing Number 		Cocheco Village Dover, New Hampshire	AG Architects, PC 634 Central Avenue, Dover, NH 03820 E-Mail: ag@agarchitects.com www.agarchitects.com Phone: 603-743-3700 Fax: 603-743-3777
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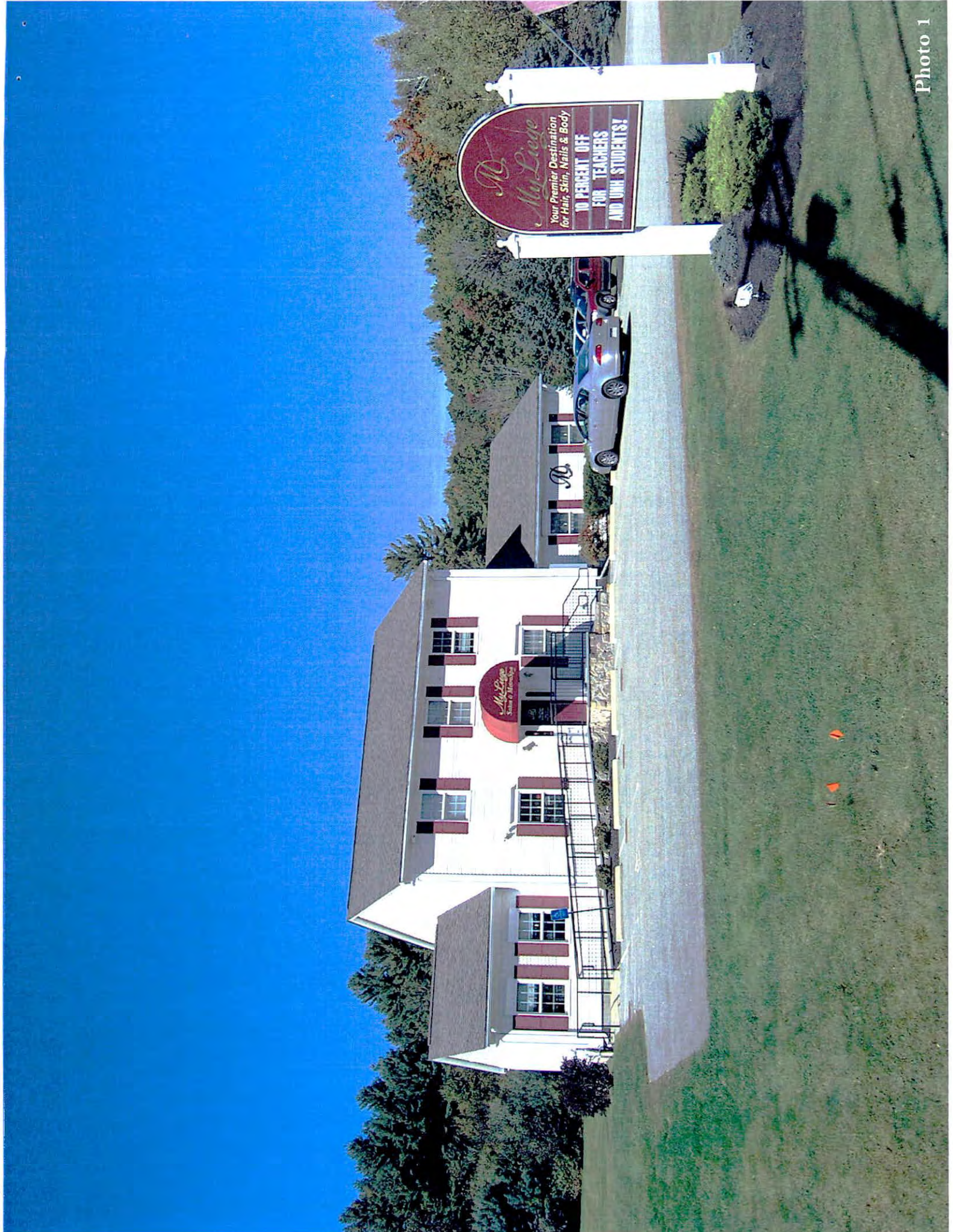


Photo 1



Photo 2



Photo 3



Photo 4



Photo 5



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z15-13)

Application Type:	Variance
Applicant:	Seacoast Charter Schools
Owner:	Measured Progress, Inc
Location:	171 Watson Road (Tax Map E, Lot 33)

INTENT: The Applicant wishes to convert an office building into an Educational Institution, K- 12. A variance is required to permit the use which is not a permitted use in the ETP District.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-B

ZONING DISTRICT: ETP District

EXISTING LAND USE: Office Building

PROPOSED LAND USE: Educational Institution, K-12

SURROUNDING LAND USE: Commercial/Residential

PREVIOUS ZBA ACTION:

- N/A

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application, plot plan

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department supports the variance request.

Summary of Request and Background

The property is 8.15 acres in size and is located on Watson Road. It is improved with a structure that was previously occupied by an educational testing organization and a child care center. The Applicant is requesting a variance to convert the building to be used as an educational institution, K-12 Facility. A variance is required from Section 170-12.A of the Zoning Ordinance and the ETP District Table of Use and Dimensional Requirements to permit the proposed use which is not a permitted use in the ETP District, although an Educational Institution, Post-Secondary is allowed by right.

Reason for Staff Recommendation

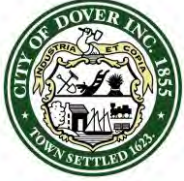
Staff believes that the proposed Educational Institution is a reasonable evolution from the previous childcare usage of the building. Additionally, it is reasonable to continue early childhood education in the structure, as well as continue the mission of Measured Progress, which advances childhood learning and growth.

Furthermore, due to the layout of the building and the site, with screening and buffers to surrounding property, the use will be in harmony with the surrounding neighborhood and not cause any undue hardship on abutting property owners.

Finally, promoting education in the City is a positive activity and is consistent with the community's Master Plan.

Recommendation

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



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z15-13)

Application Type:	Variance
Applicant:	Seacoast Charter Schools
Owner:	Measured Progress, Inc
Location:	171 Watson Road (Tax Map E, Lot 33)



Property Information

Property ID E0033-000000
Location 171 WATSON RD
Owner MEASURED PROGRESS INC
ATTN ACCOUNTS PAYABLE



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 #:	<u>215-13</u>	Date Received:	<u>RECEIVED</u> <u>Planning Office</u> <u>JUL 01 2015</u>
	Amount Paid:	\$ <u>316.00</u> <u>ck 2111</u>	Time Received:	<u>Dover, New Hampshire</u>

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Seacoast Charter School Phone # 978-375-9726
Address of Applicant: 13 Church Street, Kingston, NH 03848
E-Mail Address: brianna@kw.com
PROPERTY OWNER (if different from applicant): Measured Progress Inc.
Address: PO Box 1217, Dover, NH 03821-1217 Phone # _____
E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 171 Watson Road, Dover, NH
Brief Directions: located on Watson Rd., off of County Farm Rd. (the former Measured Progress Building)
Zoning District: ETP Assessor's Map # E Lot(s) # 33

TYPE OF APPEAL: (Please check one)

☒ Variance	(ETP table of uses)
_____ Physical Disability Variance (RSA 674:33-V)	from Section <u>170-11 (C)</u> of the Zoning Ordinance
_____ Special Exception	from Section _____ of the Zoning Ordinance
_____ Appeal of Administrative Decision	per Section _____ of the Zoning Ordinance
_____ Equitable Waiver	regarding Section _____ of the Zoning Ordinance
	per Section _____ of the Zoning Ordinance

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

The property is intended to be used as an educational facility for grades pre-K through 8, with the option for future use through grade 12.

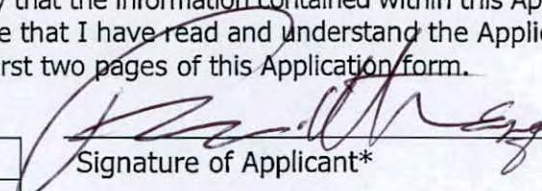
SIGNATURE PAGE

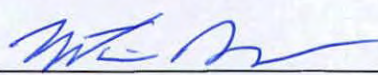
THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

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

IMPORTANT

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


Signature of Applicant*


Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

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

Signature of Property Owner:



Date:

7-1-15

VARIANCE REQUEST

**171 Watson Road, Map E, Lot 33
Dover, New Hampshire**

Project Narrative

The Seacoast Charter School is a publicly funded elementary and middle school, uniquely focused on experiencing education through the arts. The school was founded in 2004 serving 8 children in the 3rd, 4th, and 5th grades. Over the past eleven years, the school has grown to serve more than 250 children in grades Pre-K – 8. The Seacoast Charter School provides excellence in core academics and the arts while cultivating the individual qualities and strengths of each child. The Seacoast Charter School is currently located in Kingston, New Hampshire, but is interested in moving to Dover, New Hampshire. The Seacoast Charter School has identified the former Measured Progress building, located at 171 Watson Road, as a prime building suited for its current needs and future growth potential. As the Board may be aware, this building has remained vacant, and for sale, for a significant period of time. The School intends to occupy the building as soon as possible in order to prepare for the upcoming school year, first on a lease basis, with the intention to purchase the building in the near future.

The property is located in the Executive Technology Park (ETP) District. Within the ETP District the property is permitted to be used both as a child care facility and/or a post-secondary educational institution. In the past, the current owner, Measured Progress, Inc. used a portion of the building to provide childcare for its employees. Although the proposed use is quite similar to the permitted uses within the zone, the school cannot be defined as a child care facility or a post-secondary educational facility. Thus, the school seeks a variance from Section 170-11(C) of the Zoning Ordinance to permit the use of the building as an education facility for grades Pre-K-8, with the ability to expand to grades 12 in the future.

It is believed that the School's proposal to use the property as an educational facility for grades Pre-K-8, with the possibility to increase to grade 12, represents a blending of two permitted uses, and thus a reasonable use of the property. Given the unique location and size of the property next to commercial uses, the Applicant respectfully submits that the grant of the variance requested herein is reasonable.

Variance Requirements

1. The Variance Will Not Be Contrary to the Public Interest.

In Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005), the Supreme Court held that to be contrary to the public interest or injurious to public rights of others, the variance must unduly, and in a marked degree, conflict with the ordinance such that it violates the ordinance's basic zoning objectives. The Court went on to note that to determine whether a variance would violate the basic zoning objectives, it was appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten

the public health, safety or welfare. In this instance, the proposed use as a school for grades Pre-K through 8, with possible future use through grades 12 would be consistent with a prior use of the building, when it was used for daycare services by the current owner and resembles a blend of two permitted uses within the District. The property is large and extremely well buffered. The design of the building is well suited for the use of the building as a school for the grades offered by the Applicant. For these reasons, it is respectfully submitted that the essential character of the locality will not be changed or altered by the granting of the variance, and will not be contrary to the public interest.

2. The spirit of the ordinance is observed.

The Applicant respectfully submits that if the variance is granted, the spirit of the ordinance would be observed as the use in question is suitable, considering the former use of the property, given the similarity of the permitted uses within the District and given the size and location of the property. Granting the variance would result in an encouragement of the most appropriate use of the land. Section 170-3 of the Dover Zoning Ordinance sets forth the purpose of the zoning ordinance which includes protecting the health, safety, convenience and general welfare of the inhabitant of the City, while still promoting economic development and appropriate uses of the land. The Applicant respectfully submits that the general purposes and intent of the Zoning Ordinance will be maintained and observed to the extent that property is permitted to be used as proposed by the Applicant.

3. Substantial justice is done.

In Malachy Glen Associates v. Town of Chester, 155 N.H. 102, 109 (2002), the New Hampshire Supreme Court held that "the only guiding rule [in determining whether the requirement for substantial justice is satisfied] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." The Court also noted that it would look at whether a proposed development was consistent with the area's present use. The grant of the variance would result in substantial justice as it would allow the subject property to be utilized in a similar fashion as it has been used in the past, with a use that represents a blend of two existing permitted uses. Granting the variance will promote the use of a dormant property and will bring many family members located outside of Dover to the City. There are no negative aspects of the proposed use that would adversely affect abutters or surrounding neighborhood. Thus, substantial justice would be done by the grant of all the variance.

4. Value of Surrounding Properties Will Not Be Diminished.

It is respectfully submitted that all of the surrounding properties have a value associated with them which is premised upon the existence of the existing buildings and uses located upon the subject property. In light of the substantial buffer that exists at the property, and given the existing permitted uses of the property, it is respectfully submitted that the grant of the variance would not result in a diminution of the value of surrounding property values.

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

"Unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one. The special conditions of the property are its location abutting commercial uses and its historical use as a child care facility.

The general purpose of the Dover Zoning Ordinance is to promote the health, safety and general welfare and to encourage the most appropriate land uses in various parts of the City. The Applicant respectfully submits that the restrictions that cannot be met by the Applicant with respect to it being an educational facility, but not one that is post-secondary, and services children, but not as a child care facility are not necessary to enforce in order to protect the purpose of the ordinance. To the contrary, by allowing this use, the property will essentially be used as a blended use of two existing permitted uses and will thus promote the purposes of the ordinance without any negative affect. Thus, there is no conflict between the general public purpose of the ordinance, and enforcing the restrictions for which the Applicant seeks the variance.

**ABUTTERS LIST
FOR
MEASURED PROGRESS INC/ SEACOAST CHARTER SCHOOL
171 Watson Road
Dover, NH
Map E, Lot 33**

July 1, 2015

MAP/LOT

NAME/ADDRESS

OWNERS/APPLICANTS:

MAP E/LOT 33

MEASURED PROGRESS INC.
PO BOX 1217
DOVER, NH 03821-1217

SEACOAST CHARTER SCHOOL
13 CHURCH STREET
KINGSTON, NH 03848

ABUTTERS:

MAP E/LOT 27-B

171 WATSON RD OF DOVER HOLDING CORP
PO BOX 1217
DOVER, NH 03821-1217

MAP E/LOT 27-D

171 WATSON RD OF DOVER HOLDING CORP
PO BOX 1217
DOVER, NH 03821-1217

MAP E/LOT 31

FMX LLC
44 VENTURE DR.
DOVER, NH 03820

MAP E/LOT 32-1

TOFTREE PROPERTIES LLC
PO BOX 1166
DOVER, NH 03821-1166

MAP E/LOT 32-2

YOUNG & LANG LLC
PO BOX 1768
DOVER, NH 03821-1768

MAP E/LOT 32-4

SGI REALTY LLC
150 GARRISON RD
DOVER, NH 03820

MAP E/LOT 32-A

MICHELE W. & MARK R. CARRIER
156 WATSON RD
DOVER, NH 03820

**ABUTTERS LIST
FOR
MEASURED PROGRESS INC/ SEACOAST CHARTER SCHOOL
171 Watson Road
Dover, NH
Map E, Lot 33**

July 1, 2015

MAP E/ LOT 32-B

CHARLES S. ARVENITIS
43 RIVERVIEW DR
ELIOT, ME 03039

MAP E/LOT 32-C

LINDA S. & JAMES W. VARNEY, TRUSTEES
LINDA S. VARNEY LIVING REVOCABLE TRUST
88 COUNTY FARM RD
DOVER, NH 03820

MAP E/LOT 32-D

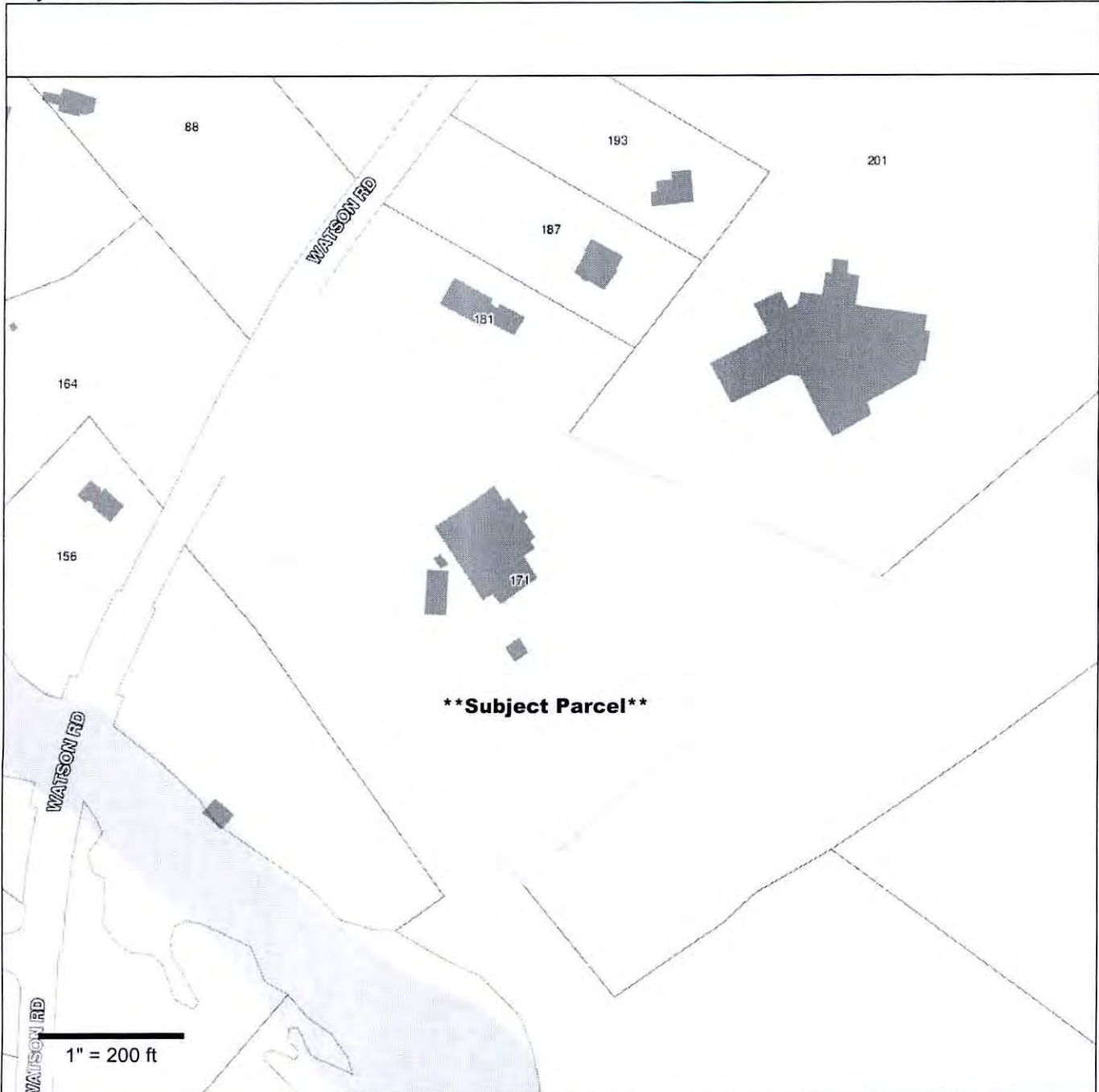
THOMAS L. & HEIDI S. HUTCHISON
164 WATSON RD
DOVER, NH 03820

MAP E/LOT 33-B

NH WATER DIVISION
DEPT OF ENVIRONMENTAL SERVICES
6 HAZEN DR
CONCORD, NH 03301

PROFESSIONALS:
ATTORNEY

FRANCIS X. BRUTON, III, ESQUIRE
BRUTON & BERUBE, PLLC
798 CENTRAL AVENUE
DOVER, NH 03820

**Property Information**

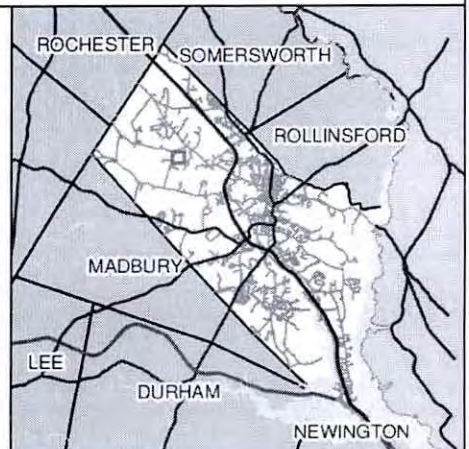
Property ID E0033-000000
Location 171 WATSON RD
Owner MEASURED PROGRESS INC
ATTN ACCOUNTS PAYABLE

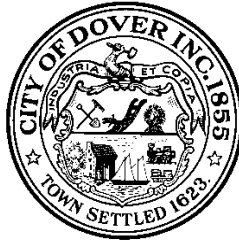


**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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Parcels updated January 1, 2015





ZONING BOARD OF ADJUSTMENT

OPERATING RULES OF PROCEDURE

Article I. Name-

The name of the board is the Dover Zoning Board of Adjustment.

Article II. Authority and Duties-

A. These Rules of Procedure are adopted under the authority of New Hampshire RSA 676:1 and ~~the~~ Chapter 5 (Boards, Commission, and Committees) and Chapter 170 (Zoning Ordinance) of the Code of the City of Dover, New Hampshire.

B. The Zoning Board of Adjustment shall have duties and responsibilities pursuant to RSA Chapters 672-677. The members shall also perform the duties of a Building Code Board of Appeals pursuant to RSA 674:34.

Article III. Membership

A. **Membership.** ~~There~~The Zoning Board of Adjustment shall ~~be~~consist of five (5) ~~regular~~members and up to three (3) ~~alternate members~~alternates, appointed by the City Council, in a manner prescribed by the Council, pursuant to RSA 673:3 and 673:6.

B. **Terms of Membership.** Members shall be appointed to terms of three (3) years pursuant to RSA 673:5.

B.C. **Alternates.** Alternates should attend all meetings to familiarize themselves with the workings of the Board so that they are ready to serve whenever a regular member is unable to fulfill his or her responsibilities.— Alternate members shall substitute for

regular members on any case when a regular member is absent or disqualified ~~pursuant~~pursuant to RSA 673:14 and the Chair designates them to do so. See also Article III, paragraph E, and Article V, paragraph C.2.

On all other matters before the Board including but not limited to approval of meeting minutes, election of officers, and amendments to and/or the adoption of these Rules of Procedure, alternate members shall be permitted to deliberate and vote on such matters together with the regular members. This shall not, however, have any impact on the ability of the Board to establish a quorum pursuant to Article V, Section C.1 below.

C.D. Members must reside in Dover, New Hampshire and are expected to attend each meeting of the Board to fulfill their duties and responsibilities. -Any member unable to attend a meeting shall notify the Chair or Clerk as soon as possible.-

D.E. Voting members shall be announced by the Chair prior to the consideration of the agenda item.- Alternate members who are not voting may fully participate during the presentation of applications and the public hearing. Once the Board moves into deliberations, alternates may no longer participate.

E.F. **Attendance, Vacancies and Removal.**- All appointments to the ~~board~~Board shall serve for the terms appointed and until a successor shall have been appointed and qualified. Members who fail to attend four (4) meetings ~~annually~~out of any twelve (12) consecutive meetings held without due cause may be recommended by the Board for replacement by the City Council. Such failure to attend shall be deemed sufficient cause for the City Council to remove the member pursuant to RSA 673:13. Appointments made to fill any vacancies shall be for full terms to begin the date of appointment by the appointing authority unless otherwise provided in state statute.-

Article IV. Officers and Staffing

- A. A **Chair** shall be elected ~~in January on a yearly basis~~ at the first regular meeting of the Board each new calendar year by a majority vote of the members of the Board— in attendance. The Chair shall preside over all meetings and hearings, appoint such committees as directed by the Board, and shall sign documents on behalf of the Board.
- ~~B. B.~~ A **Vice-Chair** shall be elected ~~in January on a yearly basis~~ at the first regular meeting of the Board each new calendar year by a majority vote of the members of the Board— in attendance. The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters that come before the Board during the absence of the Chair.—
- ~~C.~~
- ~~C.~~ If the Chair and the Vice-Chair are not present, or cannot sit on a case due to a conflict of interest, then the Board shall elect a temporary Chair from its members for that particular case or meeting.
- ~~D.~~
- ~~D.~~ The **Clerk** shall be the staff person designated by the Director of Planning and Community Development. If the City does not ~~provide~~ a staff person to perform the duties of the Clerk, then the Board may elect a temporary Clerk by majority vote of the ~~Board in January~~ members of the Board in attendance at the first regular meeting of the Board each new calendar year who shall serve as Clerk until approval and funding can be obtained to hire a dedicated Clerk as an employee of the City pursuant to RSA 673:16, I.— The Clerk shall maintain a record of all meetings, transactions, and findings of the Board, as approved by the Board.
- ~~E.~~
- ~~E.~~ All officers shall serve a term that expires ~~in January~~ at the first regular meeting of the Board each new calendar year and shall be eligible for re-election.—

Article V. Procedures

A. Site Visits.

1. Members may make site visits before the public meeting, if authorized by the Applicant. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board.
2. At no time shall more than two (2) members of the Board be present simultaneously during a site visit unless the site visit has been called as a public meeting and proper public notice as required by New Hampshire statutes has been given. Other than observations of the site, no evidence shall be taken; and there will be no discussions of the evidence or deliberations at such site visits.

B. Meetings.—

Adopted _____

Approved by the ZBA on August 18, 2011 City Council _____

~~A.~~

1. Regular meetings shall be held at ~~the Municipal Building~~ a municipal building at 7:00 p.m. on the third Thursday of the month. ~~Other meetings may be held on call of the Chair—provided, All meetings shall comply with the public notice and notice to each member is given in accordance with provisions of~~ RSA 91-A:2, II.

~~B.~~

2. A maximum of six (6) ~~applicant~~ Applicant related items, which includes the combination of new applications and old business, shall be placed on the agenda for each monthly meeting, unless the Chair approves additional items. ~~If no applications have been submitted to the Planning Department and there is no Other Business~~ other business, the regularly scheduled monthly meeting may be canceled by the Chair.

~~C.~~

3. The order of business for regular meetings of the Board shall be as follows:

~~1.~~

a. Call to order by the Chair

~~2. Roll Call~~ b. Board and Staff Introductions by the ~~Clerk~~ Chair

~~3. c.~~ Approval of minutes from the previous meeting

~~4. d.~~ Changes to the Agenda/Special Announcements

~~5. e.~~ Old Business

~~6. f.~~ New Business – Disposition of new applications under consideration

~~7. g.~~ Other Board Business

~~8. h.~~ Adjournment

- ~~D.~~ 4. Nonpublic meetings. If required, the Board may conduct nonpublic meetings pursuant to the laws of the State of New Hampshire. The Chair shall conduct nonpublic meetings utilizing the Checklist prepared by General Legal Counsel for nonpublic meetings.

~~E.B.~~ **Appeals.** Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the ~~City~~ Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely. ~~The Zoning Board of Adjustment reserves the rights to waive this deadline under any special circumstances as it sees fit.~~

~~E.~~

C. Quorum— and Alternates.

1. A quorum for all meetings of the Board shall be three (3) regular members, which ~~would include~~ includes alternates sitting in place of regular members, as designated by the Chair on a case by case basis before the public hearing.
2. ~~Parliamentary~~ If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting. The Chair shall use his or her reasonable discretion in choosing alternates, but shall

endeavor to do so on a rotating basis, where possible and appropriate.

3. If there are less than five (5) members (including alternates) present, the Chair shall give the option to proceed or not to the Applicant. Should the Applicant choose to proceed with less than five (5) members present that shall not constitute grounds for a rehearing should the application fail.

F.D. **Parliamentary Authority.** ~~The parliamentary authority for the board is All Meetings are conducted in accordance with Robert's Rules of Order Revised, 10th ed, except as provided by these rules or local, state or federal law, Eleventh Edition or later edition.~~

G.E. **- Minutes.** Minutes shall be kept for all meetings of the ~~board~~Board. The minutes shall be kept in accordance with RSA 91-A and shall include the names of the members in ~~attendance~~attendance, persons appearing before the Board, all actions and motions coming before the Board including the votes of the members, and a general summary of all discussions. Draft minutes shall be provided to the City Clerk in accordance with RSA 91-A; minutes of public meetings shall be provided within five (5) business days of each meeting, and minutes of non-public meetings that have not been sealed pursuant to RSA 91-A:3 shall be provided within seventy-two (72) hours, for posting on the ~~city~~City website in draft form. Draft minutes shall be clearly marked "DRAFT". Draft minutes, with or without revisions, shall be approved by the ~~board~~Board at the next meeting of the ~~board~~Board or as soon as possible. Final approved minutes shall be provided to the City Clerk for posting on the ~~city~~City website.

H.F. **-Recording of Meetings.** ~~The board may arrange for video recording at all meetings. If video is not available, Recording of~~ meetings shall be recorded using audio equipment. All recordings shall be provided to in accordance with Chapter 5 of the City Clerk within five (5) business days of the meeting. Dover Code ("Board, Commissions and Committees"), Section 5-1.M.

I.G. **E-mail accounts.** Board members may obtain a City of Dover e-mail address or use their own account to facilitate communications regarding meetings, agendas and the dissemination of information. Board members shall refrain from using e-mail to discuss issuesthe substance of any issue before or expected to be before the Board. Members shall not use email with other members where the e-mail discussion directly or indirectly involves a quorum of the ~~board~~Board. It is recommended that Board Members refrain from using the "reply all" feature of the email. In addition, ~~board~~Board members shall refrain from conducting the official business of the ~~board~~Board outside the view of the public and the press unless permitted by state law.

H. **Member Disqualification**

A.

1. If any member finds it necessary to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, the member shall notify the Chair as

Adopted _____

Approved by the ZBA on August 18, 2011 City Council _____

soon as possible so that the Chair can designate an alternate to sit in the disqualified member's place.— When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to make a non-binding vote on the question of disqualification; only the member can disqualify himself or herself.— Any such request shall be made before the beginning of the public hearing.— The Board's vote shall be advisory and non-binding.

B.—2. Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification.

A disqualified member shall not sit with the Board during the public hearing and during all deliberations on the case.

I. Applications and Decisions

A

1. **Applications.**— Each application for a hearing shall be made on forms approved by the Board and provided by the Planning Department to the ~~applicant.~~Applicant. At each meeting of the Board, the Clerk shall provide the Board with all applications received by the Planning Department which have been received no less than ~~fourteen (14)~~twenty-one (21) days before the date of the hearing.

B.—

All application forms for the Zoning Board of Adjustment, and any revisions thereto, shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.

2. **Fees.** Pursuant to RSA 673:16,II, all expenses incurred by the Board in connection with any Application shall be borne solely by the Applicant, including but not limited to fees and any expenses incurred for consultant services or investigative studies (as authorized by RSA 676:5,IV), unless otherwise waived by the Board for reason of special circumstance upon written request of an Applicant.

3. **Public Notice.**— Public notice of hearings on each application shall be given in the Foster's Daily Democrat and shall be posted in two (2) public places not less than ~~five (5)~~ten (10) days before the date of the hearing.— Notice shall include the ~~applicant's~~Applicant's name, description of the subject property, action desired by the ~~applicant~~Applicant, provisions of the zoning ordinance concerned, the type of relief being sought and the date, time and place of the hearing.— Personal notice of the hearing shall be made by certified mail to the ~~applicant~~Applicant and all abutters not less than ~~five (5)~~ten (10) days before the date of the hearing.— Notice shall also be given to the Planning Board, City Clerk and other parties deemed by the Board to have special interest in the application. The ~~applicant~~Applicant shall pay in advance for the cost of all required notice.

4.

The ~~applicant~~Applicant must post ~~at~~near the front lot line of their property in clear view from the Street, the poster provided to them by the Planning ~~Office.~~
Department. The poster must be posted no later than five (5) days before the hearing at which their application will be presented. If the poster is not posted, the Board may deem that as cause to disqualify the application.

DRAFT

~~C.~~

J. Public Hearing. -The conduct of public hearings shall be governed by the following rules:

~~1.~~

~~1. The Chair shall call open the public hearing ~~in session~~ by reading the public notice referring to the application. ~~If there are less than five (5) members of the Board sitting on a particular application, the Chair shall give the applicant the option of postponing the hearing until there is a full Board. If the applicant elects to proceed with less than a full Board (less than five (5) members, but not less than a quorum defined as three (3) members), that fact will not be grounds for a rehearing in the event the application is denied.~~~~

~~2.~~

~~2. Members of the Board may ask questions at any point during testimony after recognition from the Chair.~~

~~3.~~

~~3. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.-~~

~~4.~~

~~4. Everyone who speaks and is not a member of the Board or an advisor to the Board, shall be required to state his or her name and address and indicate whether he or she is a party to the case, an abutter or an agent or counsel to a party or an abutter.~~

~~5.~~

~~5. The applicant Applicant (or the applicant's Applicant's counsel or agent) shall be called by the Chair to present the application to the Board. -Thereafter, those (or their counsel or agent) in favor of the application shall be allowed to speak. Once those in attendance in favor of the application have spoken, the Board shall hear those (or their counsel or agent) in opposition to the application. After those in opposition to the application have spoken, the applicant Applicant (or the applicant's Applicant's counsel or agent) shall be allowed to speak in rebuttal. -Once they have spoken in rebuttal, those in opposition (or their counsel or agent) shall be allowed to speak in final rebuttal.- Upon completion of the final rebuttal, questioning by the Board Members and presentation by the staff of the City's comments, if any, the public hearing shall be declared closed; and the Board shall deliberate on the application or defer action on the application to a later date, and schedule a date for continuance.- After close of the public hearing no further comment from applicant or Applicant, abutter, or any other member of the public shall be taken.~~

~~D~~

~~6. Any person who speaks at a public hearing, other than the Applicant or an abutter, should clearly demonstrate and explain to the Board how he or she is affected directly by the proposal under consideration.~~

~~7. Any person who wants the Board to compel the attendance of a witness shall present his or her request in writing to the Chair not later than three (3) days prior to the public hearing.~~

K. Decisions. -Decisions of the Board shall be governed by the following rules:

4. —

1. Any decision made by the Board that is in favor of the ~~applicant~~Applicant shall require three (3) votes; ~~this applies to, including~~ the approval of any conditions ~~that are placed on a variance.~~

2. ~~All decisions shall be documented on a form that is approved by the ZBA.~~

3. —

2. The application shall be approved or denied based upon a majority vote by the members of the Board. ~~hearing the application.~~ In the event an application is heard by only three (3) members, an affirmative vote shall require all three (3) votes.

4. —

3. The Board shall decide all cases within 31 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal.

4. All decisions shall be documented on a form that is approved by the ZBA. If the appeal is denied, the notice shall include the reasons therefore.

5. The Board has the authority to attach reasonable conditions in the granting of any relief. These reasons include, but are not limited to, those necessary to preserve the spirit of the Ordinance. The placing of conditions may also be designed to protect the adjacent landowners, preserve the essential character of neighborhoods, secure the basic values of the master plan, and attempt to provide that substantial justice is done. However, the condition or conditions must be related to the use of the land and not to the personal circumstances of the Applicant. Reasonable conditions shall also include the authority to make the decision conditional on placing on deposit with the City, in the manner provided by RSA 673:16 (II), sums of money to ensure compliance with such conditions. The conditions must be adhered to otherwise the granting of the appeal will be revoked. If the Board finds it necessary to attach conditions they must be spelled out in detail in the Board's decision. Pursuant to RSA 676:15 and 676:17 the Board may seek Injunctive Relief, a Fine, or both for the violation of a condition.

6. Notification of the decision shall be sent to the ~~applicant and~~Applicant, shall be filed in the records of the Board, and shall be available to the public within five (5) business days.

F. ~~Nonpublic meetings. If required, the board may conduct nonpublic meetings pursuant to the laws of the State of New Hampshire. The Chair shall conduct nonpublic meetings utilizing the Checklist prepared by General Legal Counsel for nonpublic meetings.~~

L. Voting: The Chair may assign the task of making a motion to any Board member, or such motion may be made by any voting member. Should a motion result in a tie vote or not receive the necessary three (3) votes to decide in favor of the Applicant, the opposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.

M. Reconsideration by the Board: The Board may reconsider a decision to grant or deny an application, or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per 74 Cox Street, LLC v. City of Nashua, 156 N.H. 228 (N.H. 2007). Motions for Rehearing can only be received at the Planning Department during normal business hours. See Cardinal Development v. Winchester, 157 N.H. 710 (N.H. 2008).

N. Motions for Rehearing: If the Board grants a motion for rehearing, a new public hearing shall be held within thirty (30) days of the decision to grant the rehearing, provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

Article VI. Joint Meetings and Hearings

A. RSA 676:2 provides that the Board may hold joint meetings or hearings with other “land use boards”, including the Planning Board, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

B. Joint meetings with any other land use board may be held at any time when called jointly by the Chairs of the two Boards.

C. A public hearing on any application before the Board of Adjustment will be held jointly with another board only under the following conditions:

1. The joint public hearing must be a formal public hearing on applications to both boards regarding the same subject matter; and
2. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and
3. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and
4. The other board shall concur in these conditions.

Article VII. Amendment of Rules.

~~G.~~ These Rules of Procedure may be amended by a majority vote of the members provided that such amendment is presented at one (1) the meeting immediately preceding the meeting at which the vote is to be taken.