

CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

REVISED

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date: **Thursday, December 15, 2016**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF NOVEMBER 17, 2016

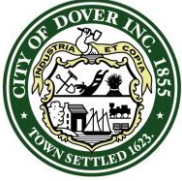
3. HEARINGS

- A. Z16-20 Owner Varney Brook Lands LLC, Pointe Place (Tax Map K, Lot 19-5), located in the Executive Technology Park (ETP) Zoning District and Residential-Commercial Mixed Use (RCM) Overlay District, requests a variance from **Section 170-12.B** of the Zoning Ordinance to permit a lot size of one and one half (1.5) acres where a minimum of three (3) acres is required.
- B. Z16-19 Appellant Paul & Janet Butler Revocable Living Trust, 196 A Dover Point Road (Tax Map L, Lot 89-H) appeals an administrative decision regarding **Section 170-12.B** of the Zoning Ordinance as it relates to dimensional requirements at 42 Shore Lane (Tax Map L, Lot 89-G-12) located in the Low Density Residential (R-20) Zoning District. The Appellant believes an administrative decision regarding side and rear setbacks on the subject property was made in error.

4. OTHER BUSINESS

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 and Friday from 8:30 am to 4:00 pm. The meeting materials are also available online 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 – City Hall
288 Central Avenue, Dover NH 03820
Meeting Date: **Thursday, November 17, 2016**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), Frank Landford, Bob Hall, George Reagan (Alternate), Nicholas Couturier (Alternate)

Members Not Present: Otis Perry (Vice Chair), Chris Prior, Arianna Adams (Alternate)

Staff Present: Elena Piekut (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 OCTOBER 20, 2016

Motion: G.Reagan made a motion to approve the October 20, 2016 Regular Meeting Minutes as submitted. Seconded by F.Landford. Vote U/A

3. HEARINGS

The Chair recognized G.Reagan and N.Couturier to sit in for C.Prior and O.Perry.

- A. Z16-17 Owner Okad of Dover, LLC, 828 Central Avenue (Tax Map 37, Lot 37), located in the Thoroughfare Business (B-3) Zoning District, requests a variance from **Section 170-12.B** of the Zoning Ordinance to permit a front setback of thirty (30) feet where fifty (50) feet is required.

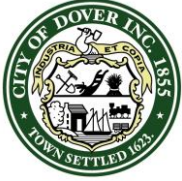
John Arnold of Hinckley, Allen & Snyder, LLP, represented the applicant, displayed plans for viewing and presented the proposed plan. Jim McLean, Tropic Star Development, LLC, and Peter Ellison, TEC Engineering, were also present.

J.McLean explained the intent to address abutter concerns and provide a larger buffer area by locating the parking in the back. He stated their team had a meeting with the abutters to address their concerns.

J.Arnold further explained the proposed plan and addressed the setbacks on the property, the location of the building closer to the lot line to provide parking in the back, and the focus of the development to address a larger buffer for the abutters to minimize impact of the development.

Discussion ensued regarding the uses of the buildings closer to the lot line and that the tenants have not yet been established, clarification of the parking and building location to provide a more attractive streetscape and additional buffer to abutters, the loading area location in the back of the building and a tree line for the abutters, and confirmation that the existing buildings would be demolished and all new buildings would be constructed.

Discussion continued regarding the layout of the plan and cutting in to the sewer easement, the location of the building intended for a restaurant, City owned property and the applicant's intent to lease the property from the City for additional parking and landscaping, clarification of the reason for the variance and that the leased land is extra space for parking and is not needed for the project, and confirmation that the maximum parking requirement has been met and is in keeping with the regulations for retail/restaurant use.



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ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
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288 Central Avenue, Dover NH 03820
Meeting Date: **Thursday, November 17, 2016**
Meeting Time: **7:00 pm**

Public Hearing Opened.

E.Piekut addressed the following:

- The B-3 District table of uses and dimensional regulations distributed to the Board and the new footnote regarding buffer requirements (original in file).
- The maps showing the setback measurements and landscaping in the public right of way (original in file).
- The applicant's intent to provide landscaping and parking on the leased City property.
- For F.Landford that Walgreens maintains their landscaping on City property.
- The letter distributed to the Board from Ken Costello, 4 Page Avenue, which stated his opposition to the project (original in file). She stated K.Costello is not an abutter to the project.
- An overview regarding the Site Review and Planning Board process, and explained there would also be a third party peer review by Sebago Technics and UNH Stormwater Center.

STAFF RECOMMENDATION:

The Planning Department recommends that the Board approve the variance request.

E.Piekut stated the existing four lots do not meet the setbacks, but the proposal would reduce nonconformity. She explained the hardship pertaining to the corner lot and wetlands located in the back, and further suggested the Board could consider adding a condition that the applicant would have to achieve the lease agreement as an option.

Discussion ensued regarding confirmation that the lease pertained to extra parking and was not needed for the project, that the Planning Board would address the landscaping and location of the buildings, and the application would return to the Board for review only if there were changes in the proposal.

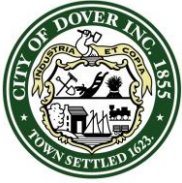
J.Arnold stated there was no intent to move the building, and explained the applicant's obligation to maintain a 50 ft. buffer and that there would be no encroachment to the buffer. He further stated the agreement with the City was not needed for the project.

Discussion ensued regarding the buffer with a fence, the applicant to come to an agreement with the abutters, and an 8 ft. fence would comply.

Public Hearing Closed.

Discussion ensued regarding Board member considerations of the project. B.Hall stated his concern regarding improvement needed on the plan pertaining to the one building with the setback issue.

Motion: F.Landford made a motion to approve the variance as proposed. Seconded by G.Reagan. Vote 4/1
Passed



**CITY OF
DOVER**

ZONING BOARD OF ADJUSTMENT - MINUTES

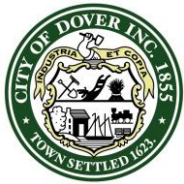
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E.Piekut reminded the Board of the Meet and Greet meeting on January 10, 2017 to be held at 5:30 p.m. at the McConnell Center cafeteria. There will be a Stewardship Master Plan presentation.

4. ADJOURN

Motion: G.Reagan made a motion to adjourn at 7:35 p.m. Seconded by F.Landford. Vote: U/A

DRAFT



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers – City Hall 288 Central Avenue, Dover, NH
Meeting Date:	Thursday, December 15, 2016
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit a lot size of 1.5 acres where a minimum of 3 acres is required.

UNITS PROPOSED: 16 townhouses approved per P16-05.

AGENDA ITEM #: 3-A

ZONING DISTRICT: ETP/RCM Overlay

FILE: Z16-20

APPLICANT/OWNER: Varney Brook Lands, LLC

LOCATION: Pointe Place (Tax Map K, Lot 19-5)

ACREAGE: 1.5 and 3.7 acre lots if granted

EXISTING LAND USE: Vacant

PROPOSED LAND USE: Multifamily residential on proposed lot is approved; existing lot also includes approved mixed use buildings.

SURROUNDING LAND USE: Single family dwellings, commercial and mixed uses approved

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Yes, for subdivision. An overall site plan was approved, P16-05

ATTACHMENTS: Application

STAFF RECOMMENDATION: Staff recommends approval of the variance request.

SUMMARY OF APPEAL AND BACKGROUND

The subject property is located on the western side of Pointe Place, in the center of a large, Planning Board-approved, mixed-use development. Currently, Map K, Lot 19-5 contains two proposed 20,000-square-foot buildings with commercial uses on the first floor and apartments on three floors above, as well as sixteen townhouses arranged in groups of four. The intent of the proposed subdivision, into one 3.7-acre lot and one 1.5-acre lot, is to separate the townhomes from the mixed use buildings.

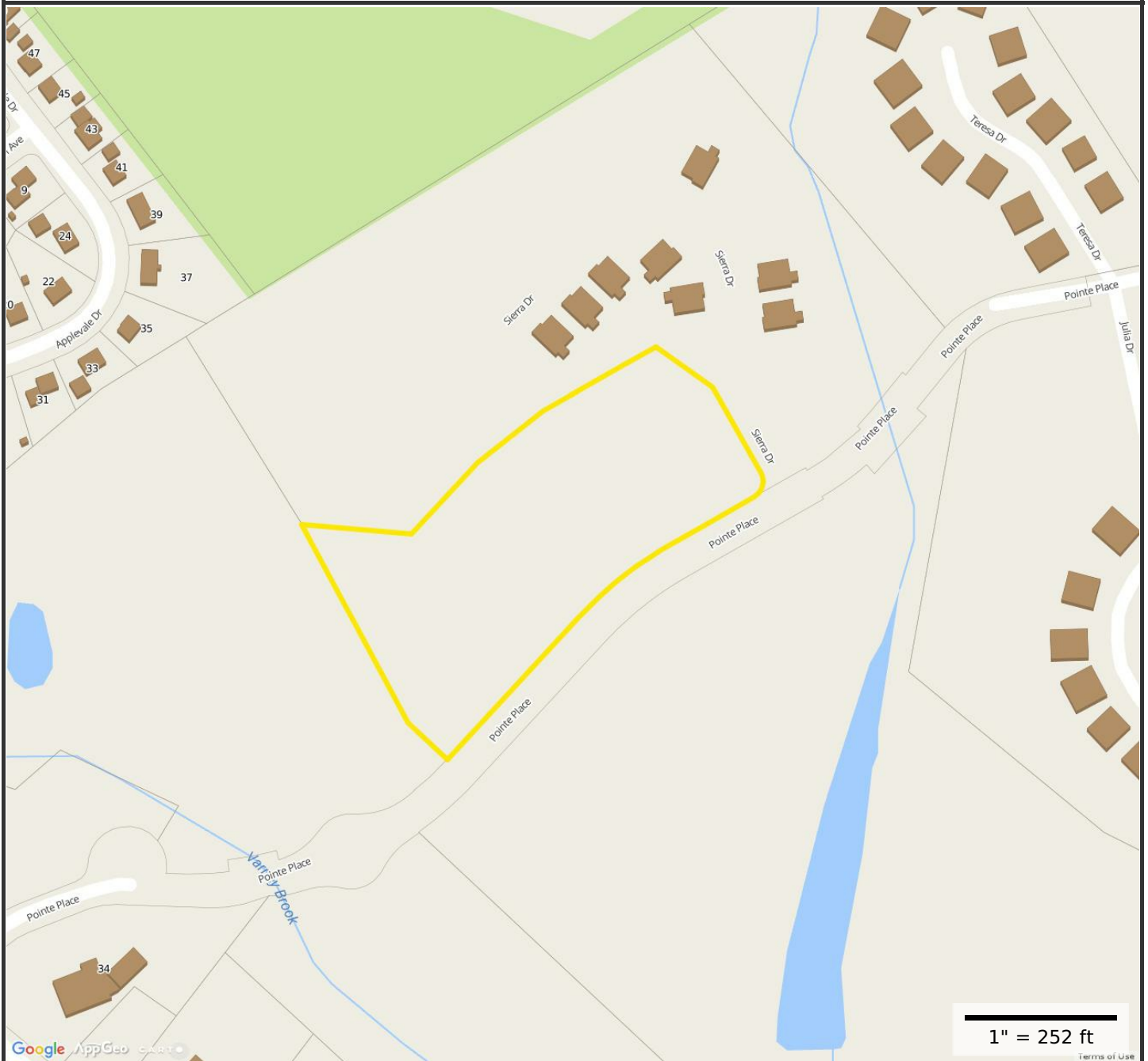
REASON FOR STAFF RECOMMENDATION

The proposed uses and layout are already governed by an approved site plan, and aside from the minimum lot size, no other nonconformities would be created by the proposed subdivision. Further, all abutting lots are part of the same development. Whether the mixed use buildings and townhouses are divided by lot lines or by condominium ownership, the difference is imperceptible. The variance is unlikely to impact property values. Permitting the subdivision actually restricts further development by imposing additional setbacks where currently there are none.

The stated intent of the Residential Commercial Mixed-Use Overlay District is to permit more flexibility and reduced dimensional requirements for dwelling lots.

RECOMMENDATION

Staff recommends that the Zoning Board hold a public hearing and grant the variance request.

**Property Information**

Property ID K0019-005000
Location THORNWOOD LN
Owner VARNEY BROOK LANDS LLC



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

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

Parcels updated 11/15/2016
Properties updated 12/08/2016



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only	Case #:	<u>Z16-20</u>	Date Received:	<u>RECEIVED</u> <u>Planning Office</u>
	Amount Paid:	\$ <u>252.00</u> <u>ck # 1433</u>	Time Received:	<u>NOV 28 2016</u>

Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: VARNEY BROOK LANDS LLC Phone # 603-749-2800

Address of Applicant: _____

E-Mail Address: CHAD@SUMMITLANDDEV.COM

PROPERTY OWNER (if different from applicant): SAME

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: POINTE PLACE

Brief Directions: LEFT ON TO POINTE PLACE (EAST), SITE IS 500'
ON LEFT

Zoning District: ETP
R/C/MOVELAN Assessor's Map # K Lot(s) # 19-5

TYPE OF APPEAL: (Please check one)

- | | |
|--|---|
| ☒ Variance | from Section <u>170-12B</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 PORTION OF THE PROPERTY WILL BE DEVELOPED INTO A MIXED
USE RESIDENTIAL & COMMERCIAL PROJECT AND A PORTION WILL
BE DEVELOPED AS TOWNHOUSE TYPE RESIDENTIAL UNITS.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

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

THE SUBDIVISION OF A PARCEL INTO 2 LOTS, WHERE ONE
OF THOSE LOTS WILL BE 1.50 ACRES WHERE A MINIMUM
OF 3 ACRES IS REQUIRED

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 NARRATIVE

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

3. Granting the variance would do substantial justice because:

PROJECT DESCRIPTION

This request for a variance is to allow a parcel to be subdivided into two lots, one of which would be 1.5 acres where the minimum lot size required is 3 acres, the other being 3.7 acres. The lot to be subdivided is a portion of an overall mixed commercial and residential use development. The underlying Zoning District is ETP (Executive Technology Park) with an R/C/M (Residential/Commercial/Mixed Use) Overlay District. The density for the overall development has been set based on a Master Plan currently approved by the Planning Board.

The lot proposed to be subdivided will have a portion developed with two large mixed (commercial/residential) use buildings fronting on Pointe Place and a "townhouse style" residential component to the rear of the lot. The intent of this subdivision and associated variance is to place the "townhouse style" residential component on separate lot.

VARIANCE REQUIREMENTS

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

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

The planned development of that parcel is already approved by the City and State. This approval was vetted via the Planning Board process. Since the use is approved, it should not matter if the project is on a single lot or two lots.

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

This request is not changing the use of the property. A condominiumization of the parcel is allowed. So it should not matter if this parcel is owned as a condo lot or as a separate lot of record (subdivision).

3. Granting the variance would do substantial justice because:

The method of ownership, condo vs. subdivided lot, should be the election of the Owner as it has no impact on the actual development.

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

The method of ownership of the subject land will have no effect on surrounding property value.

- 5A. Literal enforcement of the provision 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:

It is already fully approved for the intended use; the only question is the method of ownership. And, it is in the ETP Zone but approved as a mixed-use overlay district development.

- (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 method of ownership does not change the spirit of the ordinance.

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

Zoning allows it and it is already an approved site plan by the City.

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*

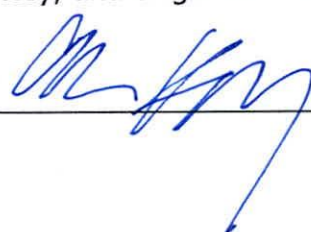
*Both Signatures Required

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: _____

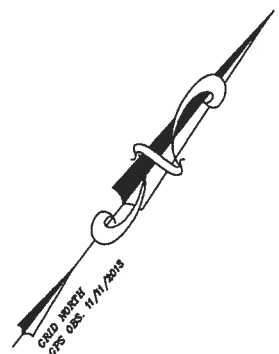
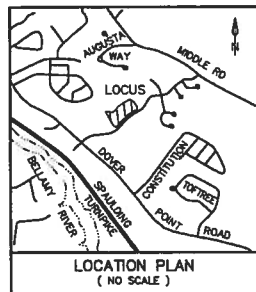
Date: _____


11/18/16

11/18/16 Abutters List for Subdivision Application

Tax Map K, Lot 19-5

Property ID	Owner 1	Owner 2	Owner Address 1	City	State	Zip	Book/Page
K0019-002000	252 DOVER POINT RD LLC		40 DOVER POINT ROAD	DOVER	NH	03820	3671/136
K0019-000000	VARNEY BROOK LANDS LLC	owner/applicant	340 CENTRAL AVENUE STE 202	DOVER	NH	03820	3660/351
* K0019-005000							
K0019-004000							
K0019-003000	STABILE HOMES AT POINTE PLACE LLC		20 COTTON ROAD	NASHUA	NH	03063	4352/422
K0019-000302	STEVEN & NOREEN DORIS		5 SIERRA DRIVE	DOVER	NH	03820	4430/682
K0019-000303	HENRY & LINDA BEYER REVOCABLE TRUST	HENRY & LINDA BEYER, TRUSTE	7 SIERRA DRIVE	DOVER	NH	03820	4416/769
K0019-000301	RAY P. CARTER	KENDREE R. PARKER	3 SIERRA DRIVE	DOVER	NH	03820	4409/536
K0019-000306	FRANCIS W. & JUNE W. DOHERTY		15 SIERRA DRIVE	DOVER	NH	03820	4415/760
K0019-000330	VOGEL FAMILY REVOCABLE TRUST	CARL N. & MAURA K. VOGEL, TR	6 SIERRA DRIVE	DOVER	NH	03820	4424/455
SURVEYOR	MCENEANEY SURVEY ASSOCIATES, INC.		24 CHESTNUT STREET	DOVER	NH	03820	



K / 19
VARNEY BROOK LANDS LLC
340 CENTRAL AVENUE SUITE 202
DOVER, NH 03820
3660 / 351; 3690 / 116; 3854 / 986

30' WIDE
UTILITY EASEMENT
14,801 S.F. / 0.34 Ac.
S.C.R.D. 4407 / 571

30' WIDE
UTILITY EASEMENT
4,622 S.F.
S.C.R.D.
4352 / 422

50' WIDE ACCESS
& UTILITY EASEMENT
66,247 S.F.
1.52 Ac.
S.C.R.D.
4352 / 422

K / 19-8
K/19-3-31
STABLE HOMES AT POINTE PLACE, LLC
c/o STABLE PROPERTY MANAGEMENT
20 COTTON ROAD, SUITE 200
NASHUA, NH 03063
4352 / 422

K/19-3-30
THE VOGLE FAMILY REV. TRUST
C. OGLE, III & M. VOGLE, TRS.
6 SIERRA DRIVE
DOVER, NH 03820
4424 / 455

REFERENCE PLANS:

- 1.) SUBDIVISION AND LOT LINE ADJUSTMENT PLAN FOR POINTE PLACE & DOVER POINT ROAD 252 LLC, TAX MAP K, LOT Nos. 19, 19-2, 19-3 & 19-4, THORNWOOD LANE, CITY OF DOVER, COUNTY OF STRAFFORD, STATE OF NEW HAMPSHIRE. SCALE: 1" = 150'; DATED: MAY 20, 2015, REVISED THROUGH 8/3/15; BY THIS OFFICE. RECORDED S.C.R.D. PLANS 110-23, 110-24, 110-25 & 110-26.
- 2.) AMENDED SITE PLAN OF THE VILLAGE AT POINTE PLACE CONDOMINIUM TAX MAP K, LOT No. 19-3 THORNWOOD LANE & SIERRA DRIVE CITY OF DOVER COUNTY OF STRAFFORD STATE OF NEW HAMPSHIRE. SCALE: 1" = 50'; DATED: JUNE 17, 2016; BY THIS OFFICE. RECORDED S.C.R.D. PLAN 111-82.
- 3.) PLAN OF LAND PREPARED FOR VARNEY BROOK LANDS LLC, TAX MAP K, LOT No. 19-5, POINTE PLACE & SIERRA DRIVE, CITY OF DOVER, COUNTY OF STRAFFORD, STATE OF NEW HAMPSHIRE. SCALE: 1" = ; DATED: BY THIS OFFICE. RECORDED S.C.R.D. PLAN 111-77.

NOTES:

- 1.) OWNER OF RECORD:
VARNEY BROOK LANDS LLC
340 CENTRAL AVENUE, SUITE 202
DOVER, NEW HAMPSHIRE 03820
S.C.R.D. VOLUME 3660, PAGE 351
- 2.) K / 19-5 - DENOTES TAX MAP AND PARCEL NUMBER.
- 3.) PARCEL AREA = 228,449 S.F. / 5.20 Ac..
- 4.) ZONING DISTRICT IS ETP & RCM (RESIDENTIAL COMMERCIAL MIXED USE) OVERLAY. ALLOWED BY APPROVED CONDITIONAL USE PERMIT.
- 5.) THE SUBJECT PARCEL IS LOCATED OUTSIDE THE 0.2 PERCENT ANNUAL CHANCE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330145; PANEL 0340; SUFFIX E; MAP NUMBER 33017C0340E; EFFECTIVE DATE SEPT. 30, 2015.
- 6.) BASIS OF BEARING IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED NOVEMBER 11, 2013. VERTICAL DATUM IS NGVD29 BASED ON BENCHMARK FOUND ON THORNWOOD COMMONS PROJECT.
- 7.) THE INTENT OF THIS PLAN IS TO SUBDIVIDE THE SUBJECT PARCEL INTO TWO (2) LOTS AS SHOWN. THIS PLAN ALSO INTENDS TO DESCRIBE A PROPOSED TWENTY-FIVE FOOT (25') WIDE ACCESS & UTILITY EASEMENT LOCATED ON PARCEL K/19-5 WHICH WILL BENEFIT PROPOSED PARCEL K/19-7.

RECEIVED
Planning Office

NOV 22 2016

Dover, New Hampshire

LEGEND
R.O.W. - RIGHT OF WAY
TYP. - TYPICAL
O.I.R. (TBS) - IRON ROD TO BE SET
G.B. (TBS) - GRANITE BOUND TO BE SET
S.C.R.D. - STRAFFORD COUNTY
REGISTRY OF DEEDS
S.F. - SQUARE FEET
Ac. - ACRE

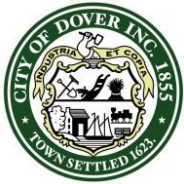
NO.	DATE	DESCRIPTION	BY	CHK
REVISIONS				
15-2041		SUBDIV	16-2	1-15
PROJECT NO		TYPE	FIELDBOOK & PAGES	

No.	Bearing	Distance
L1	N76°32'19"E	65.75'
L2	N81°37'50"E	65.24'
L3	S30°06'48"E	45.77'
L4	S30°06'48"E	9.76'
L5	S30°06'48"E	26.92'
L6	S76°32'19"W	65.75'
L7	N28°42'13"W	25.16'

No.	Central Angle	Radius	Arc Length	Chord Length	Chord Bearing
C1	17°34'34"	630.00	193.26	192.50	S51°05'55"W
C2	09°05'41"	250.00	39.68	39.64	N71°59'29"E
C3	34°13'42"	108.00	64.52	63.56	N59°25'28"E
C4	13°28'44"	370.00	87.04	86.84	N49°03'00"E
C5	25°50'28"	150.00	67.65	67.08	N68°42'36"E
C6	90°00'00"	30.00	47.12	42.43	S14°53'12"W
C7	25°50'28"	125.00	56.38	55.90	S68°42'36"W
C8	13°28'44"	345.00	81.16	80.98	S49°03'00"W
C9	34°13'42"	133.00	79.45	78.28	S59°25'28"W
C10	08°24'31"	225.00	33.02	32.99	S72°20'04"W

"I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL GROUND SURVEY PERFORMED WITH A TOTAL STATION, BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SURVEY MEETS OR EXCEEDS THE MINIMUM PRECISION REQUIREMENTS FOR SURVEY CLASSIFICATION "U" AS SET FORTH IN TABLE 500.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS."

SUBDIVISION PLAN OF LAND PREPARED FOR VARNEY BROOK LANDS LLC TAX MAP K, LOT No. 19-5 POINTE PLACE & SIERRA DRIVE CITY OF DOVER COUNTY OF STRAFFORD STATE OF NEW HAMPSHIRE	
DOVER PLANNING FILE No.	P 16-
DRAWN BY: RJM	FILE: VR CPV2041\2041 K-19-5
SCALE: 1" = 50'	DATE: NOV. 15, 2016
P.O. Box 661 - 24 CHESTNUT STREET DOVER, NH 03820 (603) 742-0911	
SURVEYING - PLANNING - CONSULTING	



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers – City Hall 288 Central Avenue, Dover, NH
Meeting Date:	Thursday, December 15, 2016
Meeting Time:	7:00 pm

INTENT: Paul Butler, 196A Dover Point Road, appeals the administrative decision of the Building Official who determined the setback, which was codified on an approved subdivision plan, by the Planning Board in 2007.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3B

ZONING DISTRICT: R-20

FILE: Z16-19

APPELLANT: Paul Butler

OWNERS: Dover Point Properties Development, LLC

LOCATION: 42 Shore Lane (Tax Map L, Lot 89-G-12)

ACREAGE: 1.65 acre

EXISTING LAND USE: Single Family

PROPOSED LAND USE: Single Family

SURROUNDING LAND USE: Single Family

PREVIOUS ZBA ACTION: None

ATTACHMENTS: Application, Letter

PLANNING BOARD APPROVAL REQUIRED: Subdivision approved in 2007 (P07-39)

STAFF RECOMMENDATION:
The Zoning Board should not accept jurisdiction of the appeal, as it is untimely.

SUMMARY OF APPEAL AND BACKGROUND

On October 23, 2007, the Planning Board conditionally approved the subdivision plan for a 14 lot residential subdivision, and new public roadway, “Shore Lane” off Dover Point Road. The property, formerly known as the Calderwood Property, had a single family home on it, close to the Piscataqua River. Typical of a Planning Board approval, the setbacks are listed on the plan, after the Zoning Administrator (at that time, also the Building Official) verified conformity with Chapter 170.

Dr. Butler and another abutter brought a suit against the City appealing the approval. The suit was remanded back to the Planning Board, which re-approved the plan in 2010. The setbacks, shown on the plan, remained the same. These include a fifteen foot (15’) rear setback. Since 2010, the developer of the project has built and sold homes within the subdivision, all with the same setbacks. The lot in question is one of three lots without Certificates of Occupancy. In this case, the home has been under construction since April 2016, and is near completion. Inspection Services estimates that the CO is on track to be issued in 2016.

REASON FOR STAFF RECOMMENDATION

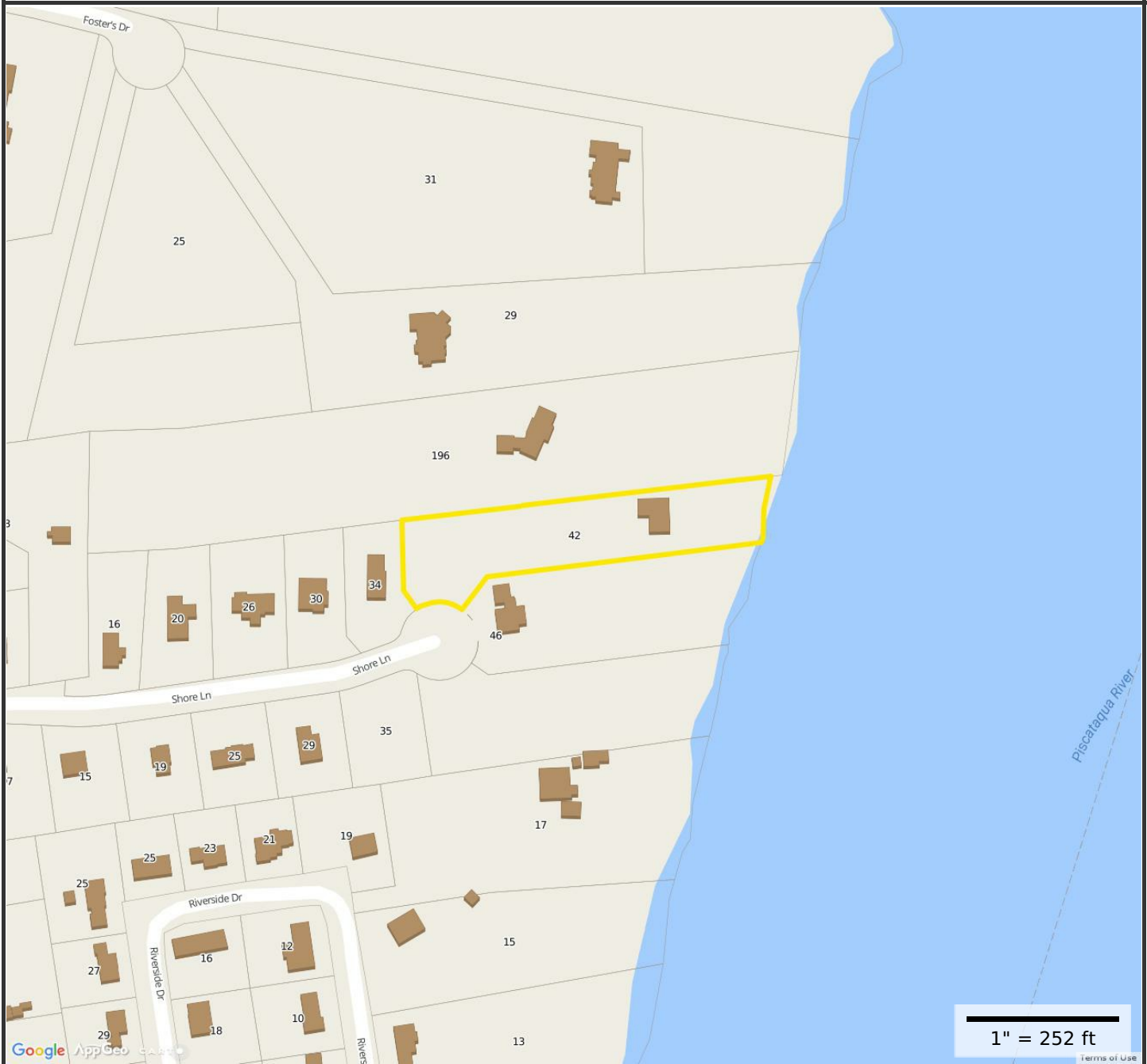
At its heart, the substance of this appeal is that the Building Official should not have determined that the rear setback is opposite the right of way, rather it is based upon the placement of the home. The appellant would like the home relocated five feet (5’) further from his lot line than it is currently placed.

Staff believes that the Planning Board acted appropriately in applying the setbacks verified by the Building Official. The setbacks applied to the lot are the same as those applied to the other lots in the subdivision, and are consistent with the definitions and practices outlined in Chapter 170. Furthermore, the placement of the home is required within the envelope, and the location of the front door or garage, does not determine the front setback location.

Based on the foregoing, Staff’s opinion is that the Zoning Board does not have jurisdiction over the appeal, as it should have been made in 2007, or at least no later than 2010 (after re-approval of the plan following settlement of the lawsuit).

RECOMMENDATION

The Zoning Board should dismiss the appeal as it is untimely, since state law (RSA 676:5 I) requires any appeal of an administrative decision be filed with the ZBA within “A reasonable time,” as defined by the Zoning Board Rules and Procedures. Dover’s Zoning Board Rules and Procedures states that 30 days is a reasonable time. This appeal was filed nearly eight years after the Planning Board’s decision, and is therefore untimely.

**Property Information**

Property ID L0089-G00012
Location 42 SHORE LN
Owner DOVER POINT PROPERTIES DEV LLC



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

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

Parcels updated 11/15/2016
Properties updated 12/08/2016



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only	Case #:	<u>Z16-19</u>	Date Received:	<u>RECEIVED</u> <u>Planning Office</u> <u>NOV 29 2016</u>
	Amount Paid:	\$ <u>236.00</u> <u>ck # 4366</u>	Time Received:	<u>Dover, New Hampshire</u>

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: PAUL + JANET BUTLER REVOCABLE LIVING TRUST Phone # 603 834 5073
Address of Applicant: 196 A DOVER PT. RD. DOVER, NH. 03820
E-Mail Address: pwbono@gmail.com
PROPERTY OWNER (if different from applicant): _____
Address: 196 A DOVER PT. RD. DOVER, NH Phone # 603 834 5073
E-Mail Address: pwbono@gmail.com

PROPERTY/PARCEL INFORMATION

Address: DOVER POINT PROPERTIES DEV LLC
Brief Directions: ADDRESS 42 SHORE LANE DOVER, NH

Zoning District: R-20 Assessor's Map # L Lot(s) # 89G-12

TYPE OF APPEAL: (Please check one)

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

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

NOT APPLICABLE.



APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION TO BE COMPLETED BY APPLICANTS APPEALING AN ADMINISTRATIVE DECISION ONLY

Explain why you feel that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.

PLEASE SEE ATTACHED NOTES & PICTURES.

Jane Burt

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.

Paul W. Butler James E. Butler
Signature of Applicant*

Paul W. Butler James E. Butler
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: Paul W. Butler James E. Butler Date: Nov 29, 2016

Z16-19 Abutter List

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
L0089-B00004	29 FOSTER'S DR	KING ROY C &	KING LINDA P	29 FOSTER'S DR	DOVER	NH	03820
L0089-G00006	26 SHORE LN	GOULD RANDY G &	GOULD NORMA J	26 SHORE LN	DOVER	NH	03820
L0089-G00008	30 SHORE LN	BEAUPRE ANDRE P &	BEAUPRE KAREN A	30 SHORE LN	DOVER	NH	03820
L0089-G00009	29 SHORE LN	KELLIHER DANIEL		29 SHORE LN	DOVER	NH	03820
L0089-G00010	34 SHORE LN	BECKER ANN MARIE		34 SHORE LN	DOVER	NH	03820
L0089-G00013	SHORE LN	DOVER POINT PROPERTIES DEV LLC	C/O PORTSMOUTH CHEVROLET	549 ROUTE 1 BYPASS	PORTSMOUTH	NH	03801
L0089-H00000	196 A DOVER POINT RD	BUTLER PAUL W & JANET E TRUSTEES	BUTLER PAUL AND JANET REVOCABLE LIVING T	196 DOVER POINT ROAD A	DOVER	NH	03820

11/29/16

I believe that the administrative official erred in applying and interpreting the zoning ordinance by arbitrarily determining the front, back and sides of a house (tax map L 89G-12) independent of its front door, front yard, flow of its interior rooms, and orientation to its road. Please refer to the Dover Code. (item # 1.)

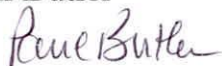
Please examine the subdivision and construction plans produce by Trittech. (item # 2.)

The front door of the house in question and the front yard face west toward Shore Lane. The back, or rear, of the house faces east toward the Piscataqua River. The north side of the house, the side that faces my property, is only 15 feet (or 16 feet depending on whether one believes the fence surveyed and erected by the Calderwoods 33 years ago or the Breezy Point Landing surveyor) from my property line. Dover requires a 20 foot setback for the sides of a house.

Please see my exchange with Chris Parker. (item # 3.)

Thank you for your consideration of this error.

Paul Butler



RECEIVED
Planning Office

NOV 29 2016

Dover, New Hampshire

DOVER CODE

WATERBORNE PASSENGER TRANSPORTATION FACILITY means a facility designed for storing, servicing, fueling, berthing, securing and launching of excursion boats and water shuttles for the purpose of transporting passengers.

WETLAND EVALUATION HANDBOOK FOR DOVER means the manual used to conduct a functional evaluation of the wetland in order to obtain a conditional use permit as required by the Wetland Protection District Ordinance.[†] This handbook shall be adopted and amended, as required, by the PLANNING BOARD after a public hearing. Notice for said public hearing shall be published in a newspaper of general circulation and posted in three (3) places at least fifteen (15) days prior to the hearing.

WHOLESALE means only includes the activity of storage, repacking, sale and/or distribution of commodities in BULK quantities to jobbers, retailers, processors and manufacturers and shall not allow the sale and/or distribution of commodities to consumers on a retail basis.

WIND GENERATOR means the blades and associated mechanical and electrical conversion components mounted on top of the TOWER whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

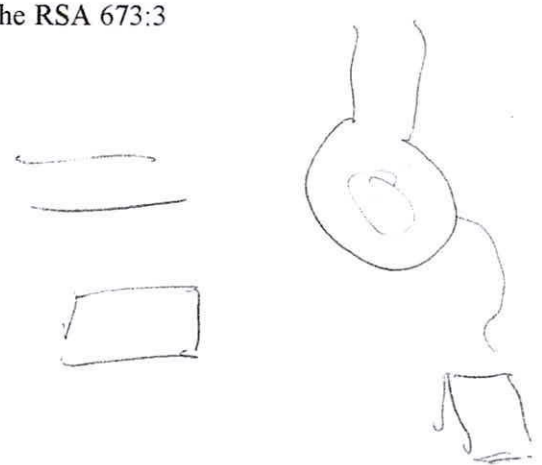
YARD, FRONT means an open unoccupied space on a LOT between the STREET line and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

YARD, REAR means an open unoccupied space on a LOT between the REAR LOT LINE and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

YARD, SIDE means an open unoccupied space on a LOT between the side LOT LINE and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

ZONING BOARD OF ADJUSTMENT means the ZONING BOARD OF ADJUSTMENT of the City of Dover, as provided in the RSA 673:3

[†] See 170-27.1, Wetland Protection District, of this Chapter.



14. PROPERTY LINE DETERMINED TO BE THE MEAN HIGH TIDE LIMIT OF THE PROHIBITION SIGNATURES, NDA 403-B (UNRECORDED, UNRECORDED PROHIBITION SIGNATURES)



PNB I had a chance to walk around the house between the water and my house the other day. The front door and the two garage doors face west (i.e., toward the Calderwood house). I've always assumed that when one talks about the front, sides, or back of a house, the orientation of the house is determined by the front door as well as the the flow and orientation of the interior rooms. However, your email to me dated July 19 states that "the then Zoning Administrator and the Building Official decided that the house would be set so the river and the existing Calderwood house would be considered the sides, the cul de sac face would be the front, and your lot the rear."

CP <<The entrance to a house is not necessarily the front of the house, especially in unique situations such as this lot, where the desire is to face the house to the river. The front setback is determined by proximity to the right of way, as described in the July 19 email, but a house can face any direction.>>

PNB This all feels a little like *Alice in Wonderland* or our current national political landscape where words can mean anything one wants them to mean.

Could you explain to me how the front, sides, and back of a house can be determined by two people rather than by common understanding that has existed since cavemen first left their caves to build houses?

CP <<The zoning ordinance, as adopted by the Community defines the setbacks, the staff you refer to interpret the language. As per Chapter 170 of the City of Dover Code:

SETBACK means the area of a LOT measured from the LOT LINE to a BUILDING facade or elevation that is maintained clear of permanent STRUCTURES, with the exception of allowed encroachments for stairs or porches.

YARD, FRONT means an open unoccupied space on a LOT between the STREET line and a line parallel thereto at such distance therefrom as may be specified herein for the district in which said LOT is located.

CP

I spoke with the building official and he said that the front door and garage doors are placed facing the Calderwood house and Shore Lane.>>

PWB

So it's my belief that the side of the house that stands between the river and my house is actually its side since its front door, and therefore its front face west - away from the water and toward the former Calderwood house. This means that the set-back from my property line needs to be 20 feet. I measured this distance again today and it's 15 feet according to the fence (the Calderwoods erected 33 years ago) or 16 feet according to the surveyor that the Breezy Landing people hired.

What redress do I have at this stage since it's clear that the side of that house bordering my property requires a 20 foot set back by Dover's laws, and they've built it 15 or 16 feet from my property line? One might think that 4 feet is not much but 4 feet times the length of my lot adds up to quite a bit of land.

CP

<<As any action you bring against the City will involve me, as we have discussed before, I cannot give you legal advice. I would approach a land use attorney and ask them for legal advice.>>

Thanks for your interest,

Paul Butler

<<Welcome, have a Happy Thanksgiving.>>

Chris

Please consider conserving our natural resources before printing this e-mail and/or any attachments.

This electronic message and any attachments may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. It is intended only for

