

**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, December 15, 2016**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Not Present: None

Staff Present: Christopher Parker (Assistant City Manager), 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 NOVEMBER 17, 2016

Motion: B.Hall made a motion to approve the November 17, 2016 Regular Meeting Minutes as submitted. Seconded by F.Landford. Vote U/A

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.

Chad Kageleiry, agent for Varney Brook Lands, LLC, presented the application, and explained the proposed plan. He addressed the petition submitted by the abutters indicating concerns and requests, as well as his rebuttal also submitted. Copies were distributed to the Board members (originals in file).

Discussion ensued regarding the submitted letters, clarification regarding ownership of the access and viability, location and access of the utility easement on the subdivision plan, and change of the property line on the plan.

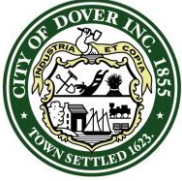
C.Parker clarified information regarding the frontage, access, and the parking lot access via the utility easement as it pertains to the development plan and required by the Planning Board. He confirmed for O.Perry the Lot Line Adjustment application was approved, and the Subdivision application will go before the Planning Board.

F.Landford confirmed with C.Kageleiry the reason for the variance.

Public Hearing Opened.

Carl Vogel, 6 Sierra Drive, spoke against the plan and summarized key points addressed in the letter submitted by the abutters to the Board.

C.Parker clarified the density of the total parcel associated with the 31 unit development pertaining to Dover Point Road and Middle Road, as well as the berm, drainage, and lighting as previously approved by the Planning Board. He addressed the berm on the conceptual plan, and confirmed for C.Vogel the berm is preserved. He further



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clarified issues with the landscaping, lighting, and drainage for C.Vogel. He confirmed for B.Hall that there would be no changes to the original plan except dividing the lot as presented.

S.Reid explained that granting the variance would provide separate ownership of the townhouses which is consistent with the abutters' request.

C.Vogel stated the abutters could support the development based on the information heard at the meeting.

C.Parker stated the Board could not place a condition on the variance to have the townhouses sold as owner occupied.

STAFF RECOMMENDATION:

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

Public Hearing Closed.

Motion: O.Perry made a motion to approve the variance subject to the condition that both properties are developed according to the plan approved by the Planning Board. Seconded by B.Hall. Vote U/A

- A. 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.

S.Reid recused himself from hearing the appeal due to his affiliation with Attorney Stephen Roberts. O.Perry sat in as Chair.

Paul Butler presented the information included in his application. Janet Butler was also present.

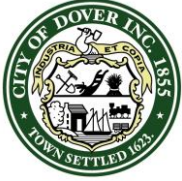
C.Prior addressed the lot on 42 Shore Lane, displayed the map provided on the back of the Staff Memo (original in file), and explained how the frontage is considered.

P.Butler addressed previous conversations he had with C.Parker and Tony McManus. He distributed a letter from Tony McManus to the Board members (original in file).

P.Butler clarified for O.Perry his request for the appeal is that he should be mitigated for the 5 ft. x 935 ft. of land of the property that was lost to him. He stated the house in question was placed 5 ft. too close to the property line which has created a loss in the amount of setback to his own property.

Discussion ensued regarding clarification that the front of the lot is determined by the public right of way.

C.Parker provided a timeline of the Planning Board review pertaining to the case, as well as the lawsuit brought upon the City by P.Butler and another abutter. He stated the Planning Board agreed with the setbacks as presented to them. He further stated the locations of the front, side, and rear setbacks and the building envelope and



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addressed the untimely appeal which should have been brought up in 2007 or 2010, adding the issue is not about the placement of the house but the building envelope of the lot and the setbacks. He further stated the setbacks approved in 2010 is what has been applied to the building permit that was issued in April 2016.

STAFF 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.

B.Hall confirmed with C.Parker the placement of the house and the issues of front, side and rear setbacks according to the Zoning ordinance is not referenced by the house, but the lot. C.Parker explained the front of the lot is based according to the public right of way.

O.Perry stated there would be no public hearing for this case.

J.Butler stated the law suit C.Parker previously mentioned was due to their concern for the river caused by poor storm water drainage.

Motion: C.Prior made a motion not to accept jurisdiction of the appeal as it is untimely. Seconded by B.Hall. Vote U/A

S.Reid resumed his seat as Chair at 7:56 p.m.

C.Parker reminded the Board of the Land Use Meet and Greet on January 10, 2017. He provided information regarding the topic for the meeting and requested the Board notify the department if they can attend.

4. ADJOURN

Motion: O.Perry made a motion to adjourn at 7:58 p.m. Seconded by B.Hall. Vote: U/A