



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date: **Thursday, June 15, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF MAY 18, 2017

3. HEARINGS

- A. Z17-05 Applicant/Owner Edward B. & Martha E. Heaphy Revocable Living Trust, 5 & 7 Heaphy Lane, (Tax Map 8, Lot 21-B), located in the Low Density Residential (R-20) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit a rear setback of 15 feet where 30 feet is required.
- B. Z17-11 Applicant Salty Sea, LLC and Owner Thomas J. Cauley, Sr., 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Thoroughfare Business (B-3) Zoning District, request a variance from **Section 170-12.A** of the Zoning Ordinance to permit a Multi-Family Dwelling (15 units) where Multi-Family Dwelling is a Use Permitted by Special Exception and the Applicant's proposal does not meet one of the two special exception criteria, which requires that dwelling units are located only on the second story or higher of a newly constructed structure.
- C. Z17-10 Applicant Salty Sea, LLC and Owner Thomas J. Cauley, Sr., 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Thoroughfare Business (B-3) Zoning District, request a special exception per **Section 170-12.A** of the Zoning Ordinance to permit Multi-Family Dwellings.
- D. Z17-12 Applicant Quantum Real Estate Group, LLC and Owner George F. Mitropoulos Revocable Living Trust, Littleworth Road (Tax Map H, Lot 29-A), located in the Low Density Residential (R-20) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit a minimum front setback of 35 feet where a build-to line of 20 feet minimum, 35 feet maximum is required. The request applies to all six lots to be subdivided from Lot 29-A.

4. CONSIDERATION OF REHEARING REQUEST

Z17-07R, a Motion for Rehearing of Z17-07 by DR Lemieux Builders, Inc., where Z17-07 was a request by Owner DR Lemieux Builders, Inc., 53 Spur Road (Tax Map L, Lot 14-N), for an equitable waiver of dimensional requirements from **Section 170-12.B** of the Zoning Ordinance to permit a side setback of 11 feet where 20 feet is required, and where the request was denied on April 20, 2017.

5. OTHER BUSINESS

6. 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, May 18, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Otis Perry, Frank Landford

Members Not Present: Sam Reid (Vice Chair), Bob Hall, George Reagan (Alternate), Nicholas Couturier (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 and introduced the Board members to the audience.

2. APPROVAL OF MEETING MINUTES OF APRIL 20, 2017

Motion: O.Perry made a motion to approve the April 20, 2017 Regular Meeting Minutes as submitted. Seconded by F.Landford. Vote: U/A

The Chair described the process used to hear cases, introduced the Staff, and explained the applicants would need to receive approval from all three Board members to have their application approved. He gave them the option to defer to the next meeting.

3. HEARINGS

- A. Z17-08 Applicant Brad Shejen and Owner David Haskell, 5 Deerfield Drive (Tax Map I, Lot 22-164), located in the Rural Residential (R-40) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit a side setback of 6 feet where 10 feet is required.

Brad Shejen chose to proceed with his application. He presented his application and confirmed for O.Perry that 5 Deerfield Drive is located in Farmwood Village which is also a corner lot. David Haskell was also present.

Public Hearing Opened.

STAFF RECOMMENDATION:

Staff recommends the Board determine whether each of the five criteria are met, and approve the request.

E.Piekut presented the Staff recommendation and explained the reasonable use, hardship, spirit and intent of the ordinance, and distance from the neighbor.

E.Piekut explained for O.Perry the reason this application was presented to the Board, how this park pre-dated the Manufactured Home Parks Ordinance, and how the application pertains to the Zoning Ordinance regulations regarding accessory structures for this case.

B.Shejen addressed the other homes in the area that have a garage, and confirmed for F.Landford that he is not the contractor. He stated the park manager, Chuck McDonald has someone who will assist him in building the garage, and that C.McDonald will approve the garage as long as the variance is granted.

Public Hearing Closed.



**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, May 18, 2017**
Meeting Time: **7:00 pm**

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

- B. Z17-09 Applicant Wolcott Holdings, LLC and Owner Thomas J. Cauley, Sr., 52 Old Rochester Road (Tax Map 40, Lot 25), located in the Thoroughfare Business (B-3) Zoning District, request a variance from Section 170-12.A of the Zoning Ordinance to permit a Multi-Family Dwelling where Multi-Family Dwelling is a Use Permitted By Special Exception and the Applicant's proposal does not meet one of the two special exception criteria, which requires that dwelling units are located only on the second story or higher of a newly constructed structure.

Attorney F.X. Bruton of Bruton & Berube, PLLC, represented the applicant and stated the applicant has opted to continue the case to the next Zoning Board of Adjustment meeting on June 15, 2017. Jim Wolcott of Wolcott Holdings, LLC was also present.

Motion: O.Perry made a motion to refer the case to the next scheduled Zoning Board of Adjustment meeting. Seconded by F.Landford. Vote U/A

The Chair confirmed for the audience the next Zoning Board of Adjustment meeting would be held at 7:00 p.m. at the McConnell Center on June 15, 2017, and to expect the application to be heard at that time. He stated if there is not a full Board the applicant would have the opportunity to defer until there is a full Board.

4. OTHER BUSINESS

O.Perry stated his concern regarding the intent of the ordinance for item 3.B and that the conditions of the Special Exception are not subject to variance. E.Piekut addressed the Staff Memo and the email received from F.X.Bruton that was distributed to the Board. She confirmed the email will be part of the packet for the next meeting, and stated the Staff Memo would be revised to address the amended conditions proposed by the applicant. She confirmed that the applicant authorized the Board to visit the site.

E.Piekut informed the Board members that Arianna Adams has resigned from the Board and that there is now a vacancy for an alternate Board member.

E.Piekut stated the Planning Department received a Motion for Rehearing for D.R. Lemieux Builders, Inc. (Case #Z17-07-Equitable Waiver for 53 Spur Road) which will be presented to the Board at the Zoning Board of Adjustment meeting on June 15, 2017. O.Perry stated that he recused himself from this case at the last meeting, and would again.

E.Piekut stated the next meeting would be held at the McConnell Center.

C.Prior provided an update from the Office and Energy Planning conference and stated there may be a change in the regulations to require all Zoning Boards to vote separately on each variance criteria item according to House Bill 86.

5. ADJOURN

Motion: O.Perry made a motion to adjourn at 7:15 p.m. Seconded by F.Landford. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St., Dover, NH 03820
Meeting Date:	Thursday, June 15, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit a rear setback of 15 feet where 30 feet is required.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: Low-Density Residential (R-20)

FILE: Z17-05

APPLICANT/OWNER: Edward B. & Martha E. Heaphy Revocable Living Trust

LOCATION: 5 & 7 Heaphy Lane (Tax Map 8, Lot 21-B)

ACREAGE: 0.17 acre (7,190 sq. ft.)

EXISTING LAND USE: Two-family dwelling

PROPOSED LAND USE: Single-family dwelling

SURROUNDING LAND USE: Single-family dwellings, Hilton Park

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Yes, for lot line adjustment

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports granting the variance request with conditions.

SUMMARY OF APPEAL AND BACKGROUND

The subject property is located at the end of Dover Point Road, adjacent to Hilton Park. Every lot on Heaphy Lane is owned by the Applicant, and their ultimate goal is to consolidate the four lots (5 & 7, 6, 8, and 10) into three lots, demolish the structures, and build new homes. 5 & 7 Heaphy Lane is a duplex, and the Applicant requests a variance for a reduced rear setback so that the duplex can be demolished and replaced with a new structure.

The plan depicts a configuration of 6, 8, 9, and 10 Heaphy Lane that would require additional variances (minimum lot size and frontage), however, the Applicant decided to withdraw those requests at this time. Staff recommends a condition of approval requiring the plan to be revised to reflect the actual request.

REASON FOR STAFF RECOMMENDATION

The existing structures on the property were built in the 1940s and encroach onto the abutting property (14 Leighton Road). If the structures are demolished, they must meet the current zoning, which creates a buildable area about 15 feet deep at most.

The size and shape of the lot presents a hardship. Permitting a rear setback variance for the new structure(s) results in greater conformity than exists today. A new single-family home is a reasonable use, and will not reduce property values.

RECOMMENDATION

Staff recommends the Board hold a public hearing, determine whether each of the five criteria are met, and if all five criteria are met, approve the request. If the Board decides to approve the request, staff suggests the following condition of approval:

1. The Applicant shall revise the plan to reflect the amended application and single variance request.



Property Information

Property ID 08021-B00000
Location 5 7 HEAPHY LN
Owner HEAPHY EDWARD & MARTHA TRUSTEES



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 03/20/2017
 Properties updated 06/04/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

RECEIVED
Planning Office

Office Use Only Case #:

217-05

Date Received:

MAY 22 2017

Amount Paid:

\$ 272.00

Time Received:

Dover, New Hampshire

Chs 4307 + 4313

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Edward B. & Martha E. Heaphy Rev. Living Trust Phone # _____

Address of Applicant: 9 Heaphy Lane, Dover, NH 03820

E-Mail Address: _____

PROPERTY OWNER (if different from applicant): Same

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 5 & 6 Heaphy Lane, Dover, NH 03820

Brief Directions: Dover Point Road towards Hilton Park, right on Leighton Road,
slight left onto Heaphy Lane.

Zoning District: R-20 Assessor's Map # 8 Lot(s) # 21B & 21C & 21A & 21

TYPE OF APPEAL: (Please check one)

☒ Variance

from Section 170-12.B. 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:

Consolidate westerly portion of Lot 8-21 with Lot 8-21.B. Consolidate easterly portion of Lot 8-21 with Lot 8-21A. Adjust lot line between Lot 8-21C and
Lot 8-21A such that proposed Lot 8-21A is slightly smaller in area and frontage and less than the 20,000 s.f. area and 125' frontage required
in R-20 zone. Reduce the rear lot line setback on Lot 8-21B from 30' to 15'.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

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

Proposed Lot 8-21C to be less than 20,000 s.f. in area (13,840 s.f.) and have less than 125' of frontage (119.29') after lot line adjustment with (former) Lot 8-21A.

AND

A rear setback of 15' on Lot 8-21B, where a rear setback of 30' 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:

The number of dwelling structures and unit count density on Heaphy Lane will be reduced. After lot line adjustment, the remaining lots will be substantially more and closer to conforming with the R-20 density and dimensional requirements than present conditions.

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

Dwelling number density will be reduced. Structure coverage will be reduced. Open space will be increased. Congestion will be lessened.

3. Granting the variance would do substantial justice because:

It would allow for the area to become more conforming to the Zoning Ordinance.

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

Five (5) existing dwellings and five (5) existing outbuildings in various states of disrepair will be removed and thereafter replaced with three (3) new dwellings.

NOTE: please complete EITHER paragraph 5A OR paragraph 5B. Staff recommends that you complete paragraph 5B only if you feel you cannot meet the requirements set forth in paragraph 5A.

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

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

The subject area was developed prior to current zoning as "camp" (or "cottage") lots. As such, they are in most regards much smaller than lots, as now required, in the R-20 zone.

and

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

It doesn't allow for the thoughtful and more conforming redevelopment of Heaphy Lane, which thereafter, furthers the expressed purposes and goals of the Zoning Ordinance.

and

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

It allows Heaphy Lane to become much closer in appearance, feel and spacial relations to the dimensional and density objectives of the Zoning Ordinance int he R-20 zone.

OR

5B. If the criteria in subparagraph 5A above are not established, explain how, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

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

IMPORTANT

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

**Martha Heaphy, Trustee*
Signature of Applicant*

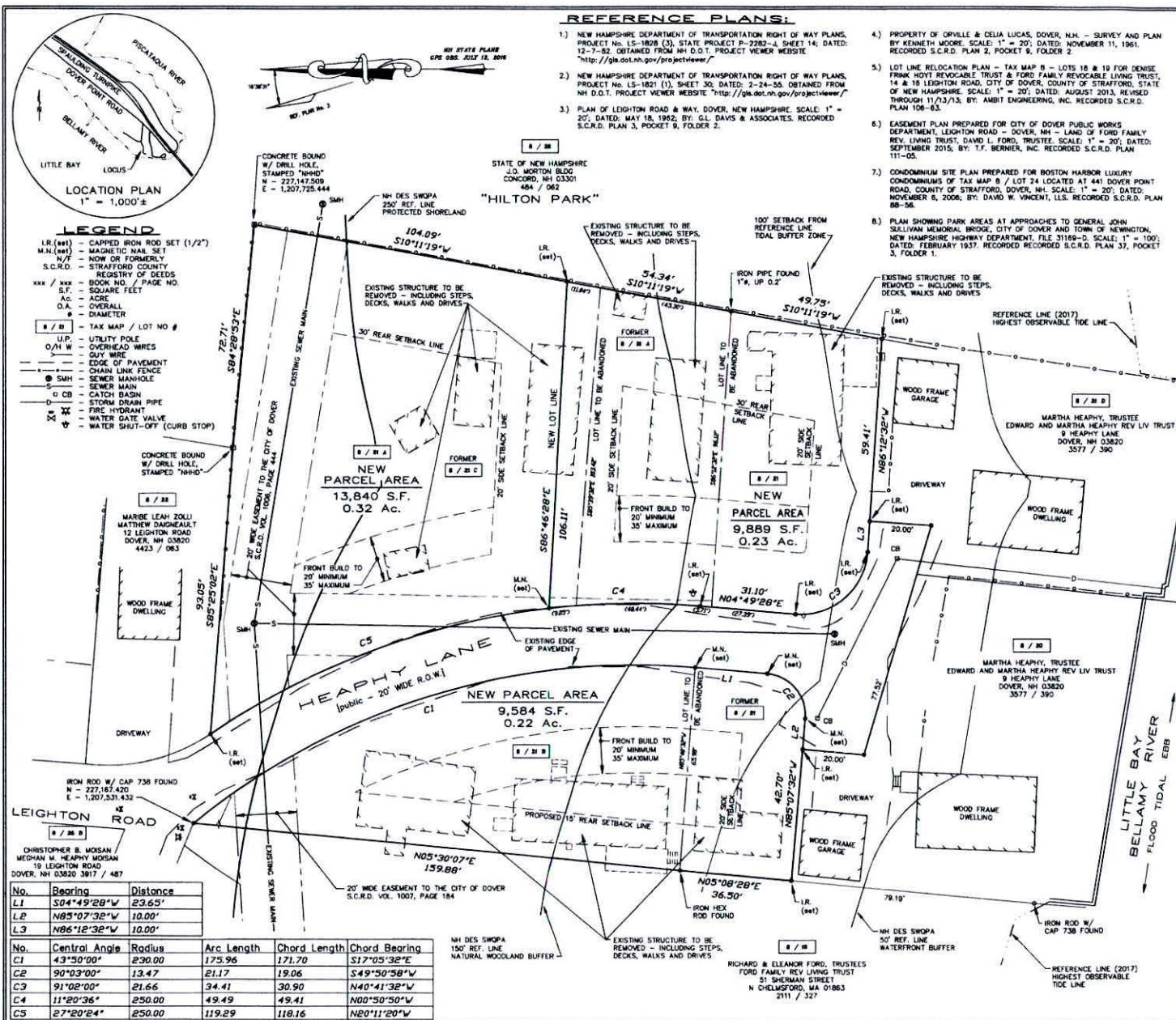
**Martha Heaphy, Trustee*
Signature of Owner*

*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: **Martha Heaphy* Date: *5/16/17*



Heaphy Lane Vicinity



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 03/20/2017
Properties updated 05/14/2017



AERIAL SKETCH
SCALE: 1"=60'

HEAPHY LANE
DOVER, NH

CIVILWORKS NEW ENGLAND

CIVIL ENGINEERING
181 Watson Road, P.O. Box 1166
Dover, New Hampshire 03820
(603) 749-0443

DATE: 5-19-17

PROJECT No.: 1722
FILE: AERIAL-001

SK-1722-051917-01

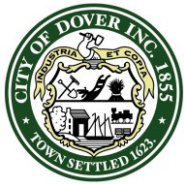
ABUTTER LIST: Z17-05 EDWARD & MARTHA E. HEAPHY REV LIVING TR HEAPHY LANE

CERTIFIED MAILINGS:

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
08017-000000	20 LEIGHTON RD	DELISLE PAUL R & ROSA Z TRUSTEES	COLMAX REVOCABLE TRUST OF 2011	20 LEIGHTON RD	DOVER	NH	03820-4620
08018-000000	16 LEIGHTON RD	HOYT ATTALLA DENISE F TRUSTEE	FRINK HOYT DENISE REVOCABLE TRUST	16 LEIGHTON RD	DOVER	NH	03820
08019-000000	14 LEIGHTON RD	FORD RICHARD & ELEANOR TRUSTEE	FORD FAMILY REV LIVING TRUST	51 SHERMAN ST	N CHELMSFORD	MA	01863
08020-000000	9 HEAPHY LN	HEAPHY EDWARD & MARTHA TRUSTEES	HEAPHY EDWARD AND MARTHA REV LIV TRUST	9 HEAPHY LANE	DOVER	NH	03820
08022-000000	12 LEIGHTON RD	ZOLLI MARIBE LEAH &	DAIGNEAULT MATTHEW	12 LEIGHTON RD	DOVER	NH	03820
08023-000000	8 LEIGHTON RD	ALBERT ARNOLD M &	TURK ZOLLI ALBERT BARBARA	8 LEIGHTON RD	DOVER	NH	03820
08024-000000	441 DOVER POINT RD	BOSTON HARBOR LUXURY CONDOMINIUMS	C/O STEAD JESSE K	PO BOX 1135	RYE	NH	03870
08025-000000	439 DOVER POINT RD	NEWICK DIANE L REVOCABLE TRUST 2001	NEWICK DIANE L TRUSTEE	431 DOVER POINT ROAD	DOVER	NH	03820
08025-B00000	19 LEIGHTON RD	MOISAN CHRISTOPHER B &	HEAPHY MOISAN MEGHAN M	19 LEIGHTON RD	DOVER	NH	03820
08026-000000	HILTON PARK	STATE OF NEW HAMPSHIRE		J.D. MORTON BLDG	CONCORD	NH	03301
		CIVILWORKS NEW ENGLAND	PAUL CONNOLLY	PO BOX 1166	DOVER	NH	03820

FIRST CLASS MAILINGS:

08024-000001	441 1 DOVER POINT RD TURNER JOHN		PO BOX 633	GREENLAND	NH	03840-0633
08024-000002	441 2 DOVER POINT RD STEAD ANGELA K		22 HOBBS RD	NORTH HAMPTON	NH	03862



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, June 15, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit multi-family dwellings, where said use is permitted only by special exception and this proposal does not meet one of the two special exception criteria.

UNITS PROPOSED: 15 residential, 4+ new commercial

AGENDA ITEM #: 3-B

ZONING DISTRICT: Thoroughfare Business (B-3)

FILE: Z17-11

APPLICANT/OWNER: Salty Sea, LLC/Thomas J. Cauley, Sr.

LOCATION: 52 Old Rochester Rd. (Tax Map 40, Lot 25)

ACREAGE: 1.72 acres (74,923 sq. ft.)

EXISTING LAND USE: Commercial and one, two-story apartment

PROPOSED LAND USE: Existing apartment converted to commercial; one new building with 8 dwellings and 4 commercial units, one new building with 7 dwellings

SURROUNDING LAND USE: Office/warehouse, Longhill Dog Park, single- and two-family dwellings

PREVIOUS ZBA ACTION: H84-50: Denied sp. ex. for multi-family (22 units)
H85-02: Denied sp. ex. for multi-family (28 units)
H85-17: Denied sp. ex. for multi-family (14-16 units)
H85-68: Approved variance to permit an apartment to be added to the existing retail building.

PLANNING BOARD APPROVAL REQUIRED: Yes, site plan review

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff does not oppose the variance request.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the west side of Old Rochester Road, between Strafford Road and Long Hill Road. It is currently home to a retail store and one apartment. Multi-family dwellings are permitted in the B-3 district by special exception with two additional criteria: the lot must contain at least 5,000 square feet for each dwelling unit, and dwelling units are only allowed in the second story or higher of a new structure.

The Applicant withdrew a previous application (Z17-09), redesigned the site concept, and submitted two new applications at staff's recommendation. Z17-11 is a variance request to allow one building (Building C) to contain multifamily dwellings (7 units) without first-floor commercial uses despite being a new structure. Z17-10 concerns a special exception for Building B, which is proposed to contain first-floor commercial uses and 8 dwelling units above. Because the Applicant does not propose non-residential first floor space in Building C, they cannot meet one of the two special exception criteria for multi-family use in that structure and instead request a variance.

REASON FOR STAFF RECOMMENDATION

The Thoroughfare Business (B-3) district is a nonresidential district and its stated purpose is to "provide an environment that encourages efficient and attractive automobile oriented commercial development along major highways outside of the downtown," but it permits multi-family residential above commercial uses in new structures through the Zoning Board's power to grant special exceptions. Single-family, two-family, and three-to-four-family dwellings are not permitted. The shape and size of the lot does present some hardship to creating commercial units with good visibility and precludes subdividing the land. The lot abuts residences and the R-12 zoning district to the south and a nonconforming single-family use to the north.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are met, the Board should approve the request and staff suggests the following condition of approval:

1. The Applicant shall convert the existing mixed-use building to commercial only and obtain a Certificate of Occupancy for the converted space prior to obtaining a building permit for the proposed residential-only structure.

**Property Information**

Property ID 40025-000000
Location 52 OLD ROCHESTER RD
Owner CAULEY THOMAS J SR



**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 03/20/2017
Properties updated 06/05/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only	Case #:	<u>217-11</u>	Date Received:	RECEIVED Planning Office MAY 25 2017 Dover, New Hampshire
	Amount Paid: \$	<u>388.00</u> <u>chk # 1166 + 1167</u>	Time Received:	

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Salty Sea Realty, LLC Phone # (603) 765-6305

Address of Applicant: 30 Governor Sawyer Lane, Dover, NH 03820

E-Mail Address: Jim Wolcott (jwolcott3@yahoo.com)

PROPERTY OWNER (if different from applicant): Thomas J. Cauley, Sr.

Address: 52A Old Rochester Road, Dover, NH 03867 Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 52 Old Rochester Road, Dover, NH 03820

Brief Directions: Indian Brook Drive to Old Rochester Road (Old Audio Experts Bldg across from Willand Auto)

Zoning District: B-3 Assessor's Map # 40 Lot(s) # 25

TYPE OF APPEAL: (Please check one)

☒ Variance ☐ Physical Disability Variance (RSA 674:33-V) ☐ Special Exception ☐ Appeal of Administrative Decision ☐ Equitable Waiver	from Section <u>170-11</u> of the Zoning Ordinance from Section _____ of the Zoning Ordinance per Section _____ of the Zoning Ordinance regarding Section _____ of the Zoning Ordinance per Section _____ of the Zoning Ordinance
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DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

The applicant desires to construct fifteen (15) residential units, with one (1) building containing eight (8) residential units with four (4) commercial units and the other building containing seven (7) residential units.

SIGNATURE PAGE

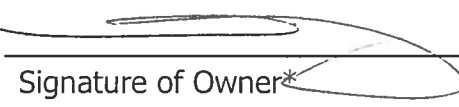
THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

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.

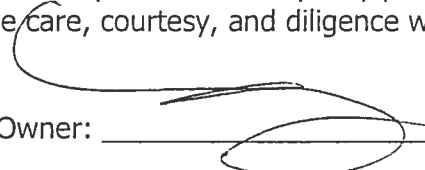

Signature of Applicant*

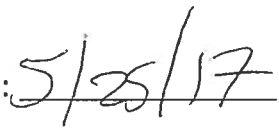

Signature of Owner*

*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: 

Salty Sea LLC
Variance Application
52 Old Rochester Road
Dover, New Hampshire

INTRODUCTION

The property subject to this application is located at 52 Old Rochester Road and is depicted on the City's Tax Maps at Map 40, Lot 25. The property consists of two (2) existing commercial spaces, totaling approximately 3,200 sq. ft. of commercial space and one (1) existing apartment, totaling approximately 1,500 sq. ft. of residential space. The entire size of the parcel is approximately 1.723 acres and is located in the B-3 zoning district.

The Applicant, Salty Sea, LLC, has the property under agreement, and desires to construct fifteen (15) residential units, with one building containing eight (8) residential units with four (4) commercial units (depicted as Building B on the attached plan) and the other building containing seven (7) residential units (depicted as Building C on the attached plan).

The Applicant plans on converting the existing 1,500 sq. ft. of residential use to commercial use. Building B will contain commercial units on the first floor with façades looking to the southern side yard and will require a special exception. Building C will not contain commercial units, and thus requires a variance for the use as an all residential building.

The parcel is unique with respect to its size and shape when compared to all of the abutting parcels that surround the parcel (see attached map). Specifically, the lot is quite large when considering the residential uses located nearby and configured as a "pork chop" lot, with the first 150 +/- feet of the lot forming the narrow "neck" of the pork chop with the property widening to almost double in width after the neck. The shape of the lot makes the lot conducive to locating only residential units within the "wide" portion of the lot and toward the rear of the lot located within Building C, and locating additional commercial space located within Building B. However, given the distance from the frontage and roadway, and in order to provide safe traffic flow for the residential units located in Buildings B and Building C, the Applicant seeks a variance from the zoning ordinance, which would require commercial units within the first floor of Building C. The existing development on the parcel limits the development options. However, at the same time, the existing and proposed commercial development helps to satisfy the "mixed use" concept within the B-3 zone. Given the odd shape of the lot and given that the new proposed residential units within Building C are located beyond the visible frontage portion of the lot, the Applicant respectfully suggests that the location of commercial units in Building C is unnecessary in order to satisfy the purposes of the ordinance, and for the reasons set forth herein, requests a variance from Section 170-11, which requires conformity to the B-3 Table of Uses for Building C, and a special exception for Building B.

The Applicant believes that its request for a variance and special exception are reasonable, and can be supported by the following evidence:

APPLICANT'S REQUEST FOR VARIANCES
FACTS SUPPORTING THIS REQUEST

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

The Applicant respectfully submits that the proposed use for Building C represents a reasonable use of the property in question. The proposed use is not only reasonable, given the surrounding uses, but is complementary to the existing uses within the property. The net result is that the "mixed use" concept intended within the B-3 zone is maintained. Introducing a commercial component to Building C would interfere with the proposed residential uses within Building C and Building B by creating issues of safety with respect to cars having to utilize the internal driveways within the property to access any potential commercial use within Building C. With the grant of the variance, the proposed new uses will be a mix of residential and commercial uses and will not be contrary to the public interest as the new uses will not alter the essential character of the locality. Quite the opposite, the grant of the variance will allow the Applicant to maintain the essential residential character of the rear portion of the property, while adding and maintaining the existing commercial used already on the property.

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

The Applicant respectfully submits that if the variance is granted, the spirit of the ordinance would be observed because the variance would permit uses which are suitable for the property considering the existing uses of the property, the shape of the property, and given the surrounding uses of properties. The grant of the variance would result in an encouragement of the most appropriate use of the land, as the "mixed-use" concept within the B-3 zone would be obtained. By granting the variance the intent of the ordinance will be sustained as it relates to residential uses, as the future residents within the property will enjoy a peaceful and safe environment within the property without the threat of business and/or commercial uses being introduced to a portion of the property. To be contrary to the public interest or injurious to the 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 objective. In this instance, the grant the variance would promote the public health, safety and general welfare by protecting the anticipated residents and will promote the mixed use aspect of the B-3 zone within the property.

3. Granting the variance would do substantial justice because:

This test requires a balancing of the benefit to the Applicant versus the burden to public. In this instance, there would be no burden to the public whatsoever in terms of allowing the Applicant to construct residential uses on the first floor of Building C. Conversely, the burden to the Applicant would be significant, as commercial space within Building C would be un-rentable and would increase safety risks to potential residents in the new proposed structures.

Accordingly, the benefit to the Applicant would exceed the burden to the public, thus, resulting in substantial justice being done.

4. Explain how the proposal would not diminish the surrounding property values:

It is respectfully submitted that all of the surrounding property values have a value associated with them which is premised upon the existence of the existing buildings located on the Applicant's property. In this instance, the property is located in an area where commercial units exist along the frontage area of lots, with a mixture of a residential use. In addition, the property is, and would be, heavily buffered along the property line that is adjacent to single-family home uses. The grant of the variance will maintain a consistent residential use with respect to the property in the rear, while adding commercial units in an appropriate location within Building B, while maintaining the commercial uses that already exist and function on the property. The additional units will utilize private parking areas that will be contained within the rear portion of the parcel. There are no negative aspects with respect to the Applicant's proposal, and there are no activities proposed by the Applicant that would have any negative affect upon the value of the surrounding properties.

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 property is large enough, and much larger than those within the general surrounding area, to sustain the use of the property as it currently exists, and to allow, without any negative affect, additional residential and commercial uses within the property. It would be a detriment and hardship, in this context, to require commercial units within the first floor of Building C, particularly in light of the existing and proposed commercial uses and those proposed in Building B. Requiring such a use would be inappropriate given the surrounding uses, and given the concerns of safety the Applicant would have in terms of introducing a commercial traffic flow throughout portion of the property where residential uses will be located within Building B and Building C. The unique shape of the lot promotes a residential use, but not a commercial use within Building C. By allowing the variance, the Applicant would be able to proceed with orderly development of the project in a way that actually protects the health, safety and general welfare not only of the potential residents within the proposed Building B and Building C, and for the general public who will access the commercial units within Building B.

(ii) 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:

The general purpose of the ordinance is to promote orderly development and to protect the health, safety, and general welfare of the public. In this instance, the Applicant seeks to increase the existing commercial uses located on the property away from the proposed residential uses, while providing the mixed use of residential, but in an area that will provide promote safety. Requiring a commercial use in Building C will not advance the general purposes of the ordinance, or the purposes of the B-3 (Business thoroughfare) zone, which is intended to promote commercial uses on the first floor of new structures along the thoroughfare (frontage portion of a lot).

In light of the above, the Applicant respectfully submits that requiring a commercial use on the first floor of Building C for this parcel is unnecessary in light of the general public purposes of the zoning ordinance. Thus, there is no relationship between the general public purpose of the ordinance and the specific application of the zoning requirement to this parcel, given the unique characteristics of the property, which include its size, its shape and its existing and proposed residential and commercial uses.

(iii) The proposed use is a reasonable one:

The Applicant submits that the proposed use is reasonable as it provides for the Applicant to expand the use of the property in a manner that is consistent with the existing commercial uses. The use is reasonable because it provides for additional housing for those within the City, but, by eliminating the requirement that a first floor of Building C contain commercial units, addresses the safety aspects of the project for those that will reside within the residential portion of Building B and Building C. Further, it would be unreasonable to expect a business to locate in this portion of the lot, so far from the main thoroughfare and flow of commercial activity along Old Rochester Road.

ABUTTER LIST: Z17-10/Z17-11

SALTY SEA REALTY, LLC/THOMAS J. CAULEY, SR 52 OLD ROCHESTER ROAD

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
40018-C00000	51 NEW ROCHESTER RD	CAMPBELL GILBERT G TRUSTEE	CAMPBELL GILBERT 2006 REVOCABLE TRUST	176 CHURCH ST	LOWELL	MA	01852
40019-000000	55 OLD ROCHESTER RD	STEWART JUDY N		55 OLD ROCHESTER RD	DOVER	NH	03820
40023-000000	56 OLD ROCHESTER RD	TRIMCO INC		250 ROLLINS ROAD	ROLLINSFORD	NH	03869
40024-000000	54 OLD ROCHESTER RD	MOCLOCK MARK W		54 OLD ROCHESTER RD	DOVER	NH	03820
40043-000000	58 NEW ROCHESTER RD	STRAFFORD FARMS RESTAURANT INC		58 NEW ROCHESTER ROAD	DOVER	NH	03820
40044-000000	60 NEW ROCHESTER RD	MIDON PROPERTY MANAGEMENT SERVICES		60 NEW ROCHESTER RD	DOVER	NH	03820
D0009-000000	50 OLD ROCHESTER RD	BRILLARD RICKY A & MARY S REV LIV TRUST	BRILLARD RICKY A AND MARY S TRUSTEES	167 VARNEY RD	DOVER	NH	03820
D0009-D00000	7 STRAFFORD RD	MARSHALL CRAIG	MARSHALL BARBARA J	7 STRAFFORD RD	DOVER	NH	03820
D0009-E00000	9 STRAFFORD RD	PARADIS GERTRUDE REVOC TRUST	GERTRUDE PARADIS TRUSTEE	9 STRAFFORD ROAD	DOVER	NH	03820
D0009-G00000	5 STRAFFORD RD	WATKINS HANNELORE E	WATKINS CHARLES A	5 STRAFFORD ROAD	DOVER	NH	03820
D0010-P00000	3 STRAFFORD RD	KELLEHER DANIEL T TRUSTEE	KELLEHER D AND L REV TRUST	3 STRAFFORD RD	DOVER	NH	03820
D0010-T00000	1 STRAFFORD RD	GAGNON MADELEINE	GAGNON CONRAD	1 STRAFFORD ROAD	DOVER	NH	03820
		FRANCIS X. BRUTON, III, ESQUIRE	BRUTON & BERUBE, PLLC	798 CENTRAL AVENUE	DOVER	NH	03820
		TRITECH ENGINEERING INC	ROBERT J. STOWELL, P.E., L.L.S.	755 CENTRAL AVENUE	DOVER	NH	03820
		THOMAS J. CAULEY, SR		52A OLD ROCHESTER ROAD	DOVER	NH	03820
		SALTY SEA REALTY, LLC	JIM WOLCOTT	30 GOVERNOR SAWYER LANE	DOVER	NH	03820
D0010-A00000	32 LONG HILL RD	CITY OF DOVER ***NO FEE ASSESSED***		288 CENTRAL AVE	DOVER	NH	03820



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, June 15, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a special exception to permit multi-family dwellings above first-floor commercial uses in a new structure (Building B).

UNITS PROPOSED: 15 residential, 4+ new commercial

AGENDA ITEM #: 3-C

ZONING DISTRICT: Thoroughfare Business (B-3)

FILE: Z17-10

APPLICANT/OWNER: Salty Sea, LLC/Thomas J. Cauley, Sr.

LOCATION: 52 Old Rochester Rd. (Tax Map 40, Lot 25)

ACREAGE: 1.72 acres (74,923 sq. ft.)

EXISTING LAND USE: Commercial and one, two-story apartment

PROPOSED LAND USE: Existing apartment converted to commercial; one new building with 8 dwellings and 4 commercial units, one new building with 7 dwellings

SURROUNDING LAND USE: Office/warehouse, Longhill Dog Park, single- and two-family dwellings

PREVIOUS ZBA ACTION: H84-50: Denied sp. ex. for multi-family (22 units)
H85-02: Denied sp. ex. for multi-family (28 units)
H85-17: Denied sp. ex. for multi-family (14-16 units)
H85-68: Approved variance to permit an apartment to be added to the existing retail building.

PLANNING BOARD APPROVAL REQUIRED: Yes, site plan review

ATTACHMENTS: Application, plan

STAFF RECOMMENDATION: Staff supports the special exception request.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the west side of Old Rochester Road, between Strafford Road and Long Hill Road. It is currently home to a retail store and one apartment. Multi-family dwellings are permitted in the B-3 district by special exception with two additional criteria: the lot must contain at least 5,000 square feet for each dwelling unit, and dwelling units are only allowed in the second story or higher of a new structure.

The Applicant withdrew a previous application (Z17-09), redesigned the site concept, and submitted two new applications at staff's recommendation. Z17-11 is a variance request to allow one building (Building C) to contain multifamily dwellings (7 units) without first-floor commercial uses despite being a new structure. Z17-10 concerns a special exception for Building B, which is proposed to contain first-floor commercial uses and 8 dwelling units above.

ZBA records indicate special exception requests for multi-family dwellings were denied three times in the mid-1980s. Staff research indicates that these denials occurred prior to the establishment of the density and commercial first floor criteria and were decided only on the general criteria applied to all special exceptions.

REASON FOR STAFF RECOMMENDATION

The Thoroughfare Business (B-3) district is a nonresidential district but it permits multi-family residential above commercial uses in new structures through the Zoning Board's power to grant special exceptions. The first criterion is that the lot must contain at least 5,000 square feet of land area for each dwelling unit; the lot is approximately 75,000 square feet and the Applicant proposes the maximum density permitted with 15 units. The attached plan proposes four commercial units on the first floor of Building B.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the three general special exception criteria (170-52.C(3)) and two additional criteria specific to the B-3 are met. If the Board finds that all five conditions are satisfied, the Board should approve the request.

**Property Information**

Property ID 40025-000000
Location 52 OLD ROCHESTER RD
Owner CAULEY THOMAS J SR



**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 03/20/2017
Properties updated 06/05/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

Office Use Only	Case #:	<u>217-10</u>	Date Received:	<u>RECEIVED</u> <u>Planning Office</u> <u>MAY 25 2017</u>
	Amount Paid:	\$ <u>388.00</u> <u>cks 1166 + 1167</u>	Time Received:	<u>Dover, New Hampshire</u>

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Salty Sea Realty, LLC Phone # (603) 765-6305

Address of Applicant: 30 Governor Sawyer Lane, Dover, NH 03820

E-Mail Address: Jim Wolcott (jwolcott3@yahoo.com)

PROPERTY OWNER (if different from applicant): Thomas J. Cauley, Sr.

Address: 52A Old Rochester Road, Dover, NH 03867 Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 52 Old Rochester Road, Dover, NH 03820

Brief Directions: Indian Brook Drive to Old Rochester Road (Old Audio Experts Bldg across from Willand Auto)

Zoning District: B-3 Assessor's Map # 40 Lot(s) # 25

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 ^{B-3 Table of Uses} _____ 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:

The applicant desires to construct fifteen (15) residential units, with one (1) building containing eight (8) residential units with four (4) commercial units and the other building containing seven (7) residential units.

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*

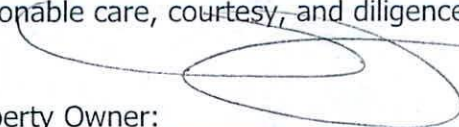


Signature of Owner*

*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: 5/25/17

APPLICANT'S REQUEST FOR SPECIAL EXCEPTION
FACTS SUPPORTING THIS REQUEST

A. General Special Exception Requirements (as set forth in Section 170-52.C.3 of the Zoning Ordinance)

- 1. Explain how the requested use would be essential or desirable to the public convenience or welfare.**

The Applicant respectfully submits that the addition of commercial and residential uses proposed for Building C is consistent with the purposes of the B-3 zone which is to provide economic development opportunities for a mix of land uses, where it is expected that retail and/or personal services will be provided in an area adjacent to a large multi-unit complex and other surrounding residential uses, resulting in services that will be desirable and convenience to the existing residential uses within the area.

- 2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.**

The proposed location of residential uses, with first floor commercial will result in less traffic use for the property that if the property were to be developed on an entirely commercial basis, and given the configuration of the property, the development is designed to promote and enhance pedestrian safety.

- 3. Describe how the requested use would not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use of any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.**

The Applicant has conferred with the applicable departments within the City and understand that the proposed uses will not result on an overload of public services or systems, and will not have an adverse impact on the health, safety or general welfare of the area

B. Special Exception Requirements (as may be set forth in the applicable Table of Use)

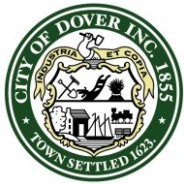
Explain how the proposal meets the specific exception requirements as may be set forth in the Table of Use for the zoning district in which the subject property is located.

The proposal provides for at least 5,000 sq. ft. of land for each unit, and proposed first floor commercial units within Building C.

ABUTTER LIST: Z17-10/Z17-11

SALTY SEA REALTY, LLC/THOMAS J. CAULEY, SR 52 OLD ROCHESTER ROAD

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
40018-C00000	51 NEW ROCHESTER RD	CAMPBELL GILBERT G TRUSTEE	CAMPBELL GILBERT 2006 REVOCABLE TRUST	176 CHURCH ST	LOWELL	MA	01852
40019-000000	55 OLD ROCHESTER RD	STEWART JUDY N		55 OLD ROCHESTER RD	DOVER	NH	03820
40023-000000	56 OLD ROCHESTER RD	TRIMCO INC		250 ROLLINS ROAD	ROLLINSFORD	NH	03869
40024-000000	54 OLD ROCHESTER RD	MOCLOCK MARK W		54 OLD ROCHESTER RD	DOVER	NH	03820
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40044-000000	60 NEW ROCHESTER RD	MIDON PROPERTY MANAGEMENT SERVICES		60 NEW ROCHESTER RD	DOVER	NH	03820
D0009-000000	50 OLD ROCHESTER RD	BRILLARD RICKY A & MARY S REV LIV TRUST	BRILLARD RICKY A AND MARY S TRUSTEES	167 VARNEY RD	DOVER	NH	03820
D0009-D00000	7 STRAFFORD RD	MARSHALL CRAIG	MARSHALL BARBARA J	7 STRAFFORD RD	DOVER	NH	03820
D0009-E00000	9 STRAFFORD RD	PARADIS GERTRUDE REVOC TRUST	GERTRUDE PARADIS TRUSTEE	9 STRAFFORD ROAD	DOVER	NH	03820
D0009-G00000	5 STRAFFORD RD	WATKINS HANNELORE E	WATKINS CHARLES A	5 STRAFFORD ROAD	DOVER	NH	03820
D0010-P00000	3 STRAFFORD RD	KELLEHER DANIEL T TRUSTEE	KELLEHER D AND L REV TRUST	3 STRAFFORD RD	DOVER	NH	03820
D0010-T00000	1 STRAFFORD RD	GAGNON MADELEINE	GAGNON CONRAD	1 STRAFFORD ROAD	DOVER	NH	03820
		FRANCIS X. BRUTON, III, ESQUIRE	BRUTON & BERUBE, PLLC	798 CENTRAL AVENUE	DOVER	NH	03820
		TRITECH ENGINEERING INC	ROBERT J. STOWELL, P.E., L.L.S.	755 CENTRAL AVENUE	DOVER	NH	03820
		THOMAS J. CAULEY, SR		52A OLD ROCHESTER ROAD	DOVER	NH	03820
		SALTY SEA REALTY, LLC	JIM WOLCOTT	30 GOVERNOR SAWYER LANE	DOVER	NH	03820
D0010-A00000	32 LONG HILL RD	CITY OF DOVER ***NO FEE ASSESSED***		288 CENTRAL AVE	DOVER	NH	03820



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306 – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, June 15, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit a minimum front setback of 35 feet, where a build-to line of 20 feet minimum, 25 feet maximum, is required. The request applies to all six lots proposed to be subdivided from Lot 29-A.

UNITS PROPOSED: 5 new lots

AGENDA ITEM #: 3-D

ZONING DISTRICT: (R-20)

FILE: Z17-12

APPLICANT/OWNER: Quantum Real Estate Group, LLC/George F. Mitropoulos Revocable Living Trust

LOCATION: Littleworth Road (Tax Map H, Lot 29-A)

ACREAGE: 7.25 acres (315,829 sq. ft.)

EXISTING LAND USE: Vacant

PROPOSED LAND USE: Single-family dwellings

SURROUNDING LAND USE: Single-family dwellings, commercial

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Yes, major subdivision

ATTACHMENTS: Application, variance plan, lot development plan

STAFF RECOMMENDATION: Staff does not oppose the variance.

SUMMARY OF APPEAL AND BACKGROUND

The property is located on the southwest side of Littleworth Road, between Knox Marsh Road and Industrial Park Road. It abuts the Hotel/Retail (B-4) Zoning District and commercial use to the southeast, but is otherwise surrounded by residential/agricultural uses and the Low Density Residential (R-20) Zoning District.

The Applicant has submitted an application to subdivide Lot 29-A into six lots, five of which are between 20,000 square feet in area and 30,000 square feet in area. The sixth lot is about 4 acres. All lots have at least 125 feet of frontage on Littleworth Road. The application is scheduled for Planning Board review and possible approval on June 13, 2017. Sheet LD-1 from the subdivision plan set is attached.

REASON FOR STAFF RECOMMENDATION

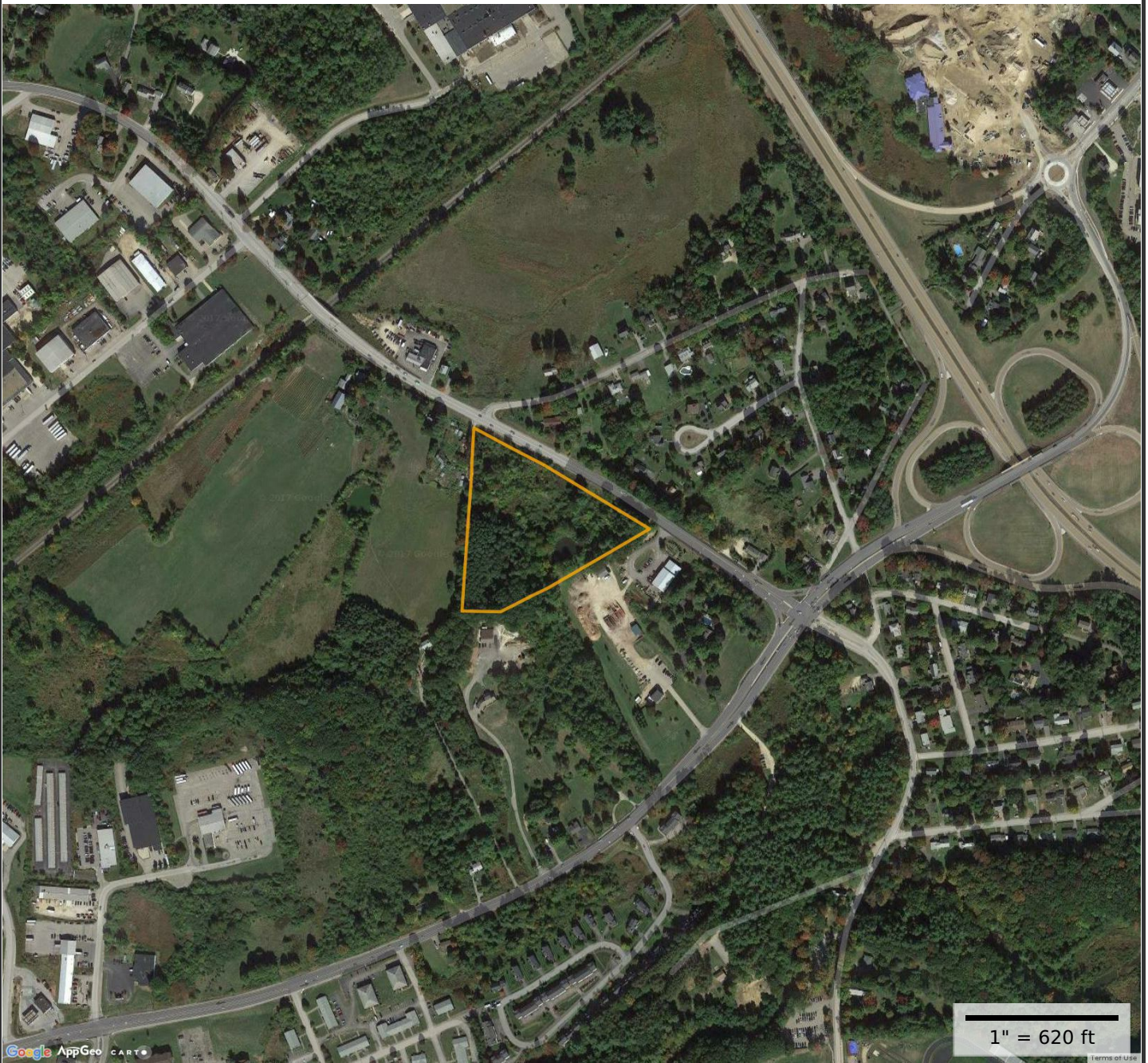
The Perimeter Landscape & Lot Development Plan (LD-1) submitted to the Planning Board as part of the pending subdivision application depicts house locations in conformity with the build-to line requirement. There is no inherent hardship in the land preventing these lots from conforming to the dimensional regulations. If anything, the subdivision plan was designed with this variance request in mind so that the home on the largest lot (29A-3) can be built far from Littleworth Road.

Because Littleworth Road has a 100-foot right of way, front property lines are already approximately 30 feet from the edge of pavement, so a house may be as far as 65 feet from the road yet conform to the build-to line. Existing trees and wetland buffers provide additional protection from the road. Across the street, the house at 17 Littleworth Road appears to conform to the build-to line. Homes at 19, 19A, and 20 Littleworth Road appear not to, but are between approximately 40 to 60 feet from the front property line. If the abutting 50 acre lot or the 14 acre lot across Littleworth Road were subdivided, they would also be subject to the R-20 build-to-line.

RECOMMENDATION

Staff recommends the Board hold a public hearing and make findings as to whether each of the five variance criteria are met. If the Board finds that all five criteria are satisfied, the Board should approve the request. Staff recommends the following conditions:

1. Subdivision plan P17-34 shall be approved by the Planning Board, signed, and recorded at the Strafford County Registry of Deeds.
2. An amendment sheet to subdivision plan P17-34, including a note regarding the granting of this variance (file #Z17-12) to permit a front setback of 35 feet as opposed to the build-to line, shall be provided and recorded with the approved plan.



**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 03/20/2017
Properties updated 06/06/2017

THE LAND DEVELOPMENT FEATURES
(HOUSES AND DRIVEWAYS)
SHOWN ON THIS PLAN ARE
APPROXIMATE AND SHOWN FOR
PLANNING PURPOSES ONLY.

THIS PLAN IS INTENDED TO SHOW THE
FEASIBILITY / BUILDABILITY OF THE
PROJECT AND IS NOT INTENDED TO
RESTRICT THE DEVELOPMENT BEYOND
WHAT IS DEPICTED ON THE SUBDIVISION
PLANS.

THE HOUSES DEPICTED HEREON ARE
POSITIONED IN COMPLIANCE WITH THE
R-20 DISTRICT BUILD TO LINE 20' TO 35'
(35' DEPICTED).

1 TREE CUTTING & VEGETATION REMOVAL
IS PROHIBITED WITHIN 20' OF RESIDENTIAL
ZONED PROPERTIES (LOTS 31, 31A & 33E).

2 TREE CUTTING & VEGETATION REMOVAL
WITHIN THE 50' WETLAND BUFFER SHALL
COMPLY WITH CHAPTER 170.27.1 (G) 1. b.

3 TREE CUTTING & VEGETATION REMOVAL
WITHIN THE 50' CONSERVATION DISTRICT
SHALL COMPLY WITH CHAPTER 170.27.(E) 4.

4 THERE SHALL BE NO RESTRICTIONS ON
TREE CUTTING & VEGETATION REMOVAL
ABUTTING COMMERCIAL Y ZONED
PROPERTIES (LOT 32A-1, 32A-2, 33 & 33A)
OR ALONG LITTLEWORTH ROAD

1. THE PROPOSED STORMWATER PRACTICES AND MEASURES DEPICTED HEREON ARE REQUIRED TO BE INSTALLED AND MAINTAINED DURING THE SITE AND HOUSE CONSTRUCTION OF THE INDIVIDUAL LOTS.

2. ALL PROPOSED STORMWATER PRACTICES AND MEASURES SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH MANUFACTURERS' SPECIFICATIONS AND PERFORMANCE SPECIFICATIONS OUTLINED IN THE NH STORMWATER MANUAL, VOLUMES 2 & 3 (DECEMBER 2008 OR CURRENT REVISION)

3. INSTALL HAYBALE BARRIER, FOR INLET PROTECTION AT CULVERT INLET, PRIOR TO THE START OF CONSTRUCTION ON LOTS 29A & 29A-1 & MAINTAIN THROUGHOUT CONSTRUCTION OF BOTH LOTS.

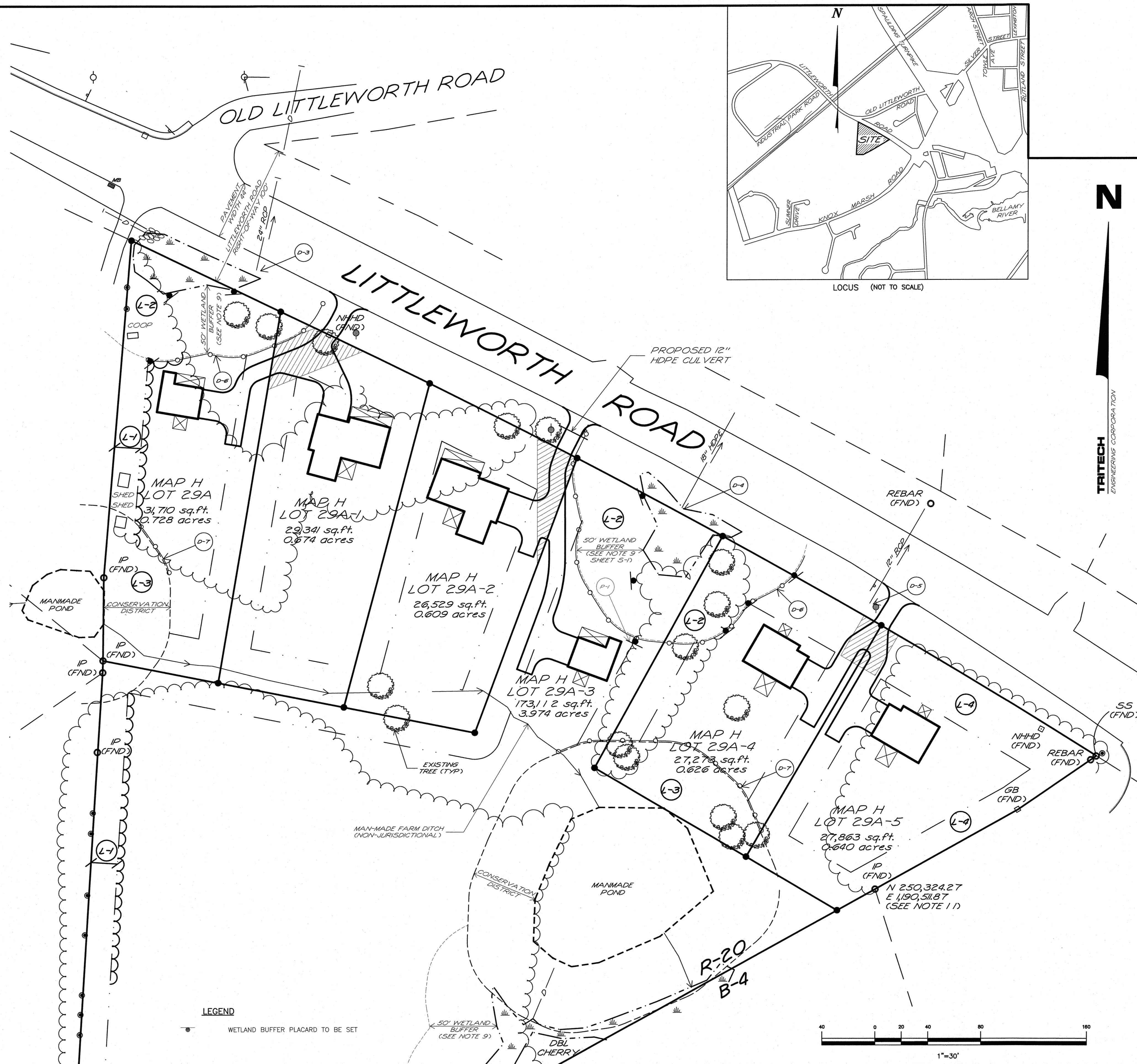
4. INSTALL HAYBALE BARRIER, FOR INLET PROTECTION AT CULVERT INLET, PRIOR TO THE START OF CONSTRUCTION ON LOTS 29A -2 & 29A-3 & MAINTAIN THROUGHOUT CONSTRUCTION OF BOTH LOTS.

5. INSTALL HAYBALE BARRIER, FOR INLET PROTECTION AT CULVERT INLET, PRIOR TO THE START OF CONSTRUCTION ON LOTS 29A-4 & 29A-5 & MAINTAIN THROUGHOUT CONSTRUCTION OF BOTH LOTS.

6. INSTALL SILT FENCE OUTSIDE THE 50' WETLANDS BUFFER PRIOR TO THE START OF CONSTRUCTION & MAINTAIN THROUGHOUT THE CONSTRUCTION OF THE APPLICABLE LOT.

7. INSTALL SILT FENCE OUTSIDE THE 50' CONSERVATION DISTRICT PRIOR TO THE START OF CONSTRUCTION & MAINTAIN THROUGHOUT THE CONSTRUCTION OF THE APPLICABLE LOT.

1. INSTALL 4" TALL GREEN STEEL "GARDEN STAKE" AND ATTACH 3 3/4" x 3 3/4" CITY OF DOVER STANDARD "WETLAND BUFFER" PLACARD. PLACARD SHALL STATE "THIS AREA OF WETLAND PROTECTION DISTRICT IS PROTECTED BY THE CITY OF DOVER ZONING ORDINANCE 170.27 AT DOVER WWW.DOVER.NJ.GOV OR CALL PLANNING DEPARTMENT, 603-516-6008".



TRITECH
ENGINEERING CORPORATION

TRITECH
ENGINEERING CORPORATION

REVISIONS	
DATE:	DESCRIPTION:
5-23-2017	REVISED PER TRC COMMENTS

PERIMETER LANDSCAPE &
LOT DEVELOPMENT PLAN

**GEORGE F. MITROPOULOS
REVOCABLE LIVING TRUST**

LITTLEWORTH ROAD
DOVER, NEW HAMPSHIRE

APRIL 27, 2017 JOB No. 16144
SCALE: 1" = 40'

755 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE 03820
TELEPHONE 603 742 8107
FAX 603 742 3830

SHEET No.

LD-1



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

RECEIVED
Planning Office

Office Use Only

Case #:

217-12

Date Received:

MAY 25 2017

Amount Paid:

\$ 308.00

Time Received:

Dover, New Hampshire

ck #31136

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Quantum Real Estate Group, LLC Phone # (603) 742-8107

Address of Applicant: 755 Central Avenue, Dover, NH 03820

E-Mail Address: [Robert J. Stowell] rjs@tritecheng.com

PROPERTY OWNER (if different from applicant): George F. Mitropoulos Rev. Liv. Trust

Address: 315 Rochester Hill Road, Rochester, NH 03867 Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: Littleworth Road, Dover, NH

Brief Directions: The property is located on the southerly side of Littleworth Road next to the North Country Tractor/ John Deere store.

Zoning District: R-20 Assessor's Map # H Lot(s) # 29A

TYPE OF APPEAL: (Please check one)

☒ Variance

from Section 170-12.A

and the Table of Uses and
Dimensional Requirements
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:

The Applicant intends to subdivide teh parcel into six (6) lots.

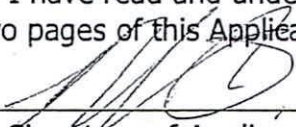
SIGNATURE PAGE

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.

 member

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: 5-26-17

Abutters List
Quantum Real Estate Group, LLC

Variance Application
Littleworth Road
Tax Map H, Lot 29A
Dover, New Hampshire

Page 1 of 2

Abutters:

Map H, Lot 23-1	Lakpa Sherpa 9A Chandler Way Dover, NH 03820
Map H, Lot 28	Richard W. Kay, Trustee Richard W. Kay 1997 Trust 45 Littleworth Road Dover, NH 03820
Map H, Lot 29	Bernard R. Stillwagon Life Estate Ramona L. Stillwagon Stowe 20 Old Littleworth Road Dover, NH 03820
Map H, Lot 29-4	Joshua A. Roberge Rachel L. Roberge 19 Littleworth Road Dover, NH 03820
Map H, Lot 29-5	Charles E. Carmichael, Jr. Cheryl Carmichael 19a Littleworth Road Dover, NH 03820
Map H, Lot 30	Benjamin J. Merrill Steven J. Blethen 26 Littleworth Road Dover, NH 03820
Map H, Lot 31	Ruth K. Sousane Nancy K. Quinlan 30 Littleworth Road Dover, NH 03820
Map H, Lot 31	Deborah Sousane 24 Littleworth Road Dover, NH 03820

Abutters List
Quantum Real Estate Group, LLC

Variance Application
Littleworth Road
Tax Map H, Lot 29A
Dover, New Hampshire

Page 2 of 2

Abutters (cont'd)

Map H, Lot 32- A1	Robert E. Sherwood & Marilyn A. Sherwood, Trustee Robert & Marilyn Sherwood Family Revocable Trust 11 Lisa Beth Circle Dover, NH 03820
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Map H, Lot 3A2-	Gonyou Properties, LLC 1862 Nectar Rd The Villages, FL 32163-2136
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Map H, Lot 33 Map H, Lot 33-A	Kevin Cooper Lydia Cooper 85 Knox Marsh Road Dover, NH 03820
----------------------------------	---

Map H, Lot 33-E	Denis J. Quinlan Nancy K. Quinlan 89 Knox Marsh Road Dover, NH 03820
-----------------	---

Owner:

Map H, Lot 29A	George Mitropoulos, Trustee George F. Mitropoulos Rev. Liv. Trust 315 Rochester Hill Rd Rochester, NH 03867
----------------	--

Applicant:

Quantum Real Estate Group, LLC
755 Central Avenue
Dover, NH 03820

Engineer:

Robert J. Stowell, P.E., L.L.S
Tritech Engineering Corporation
755 Central Avenue
Dover, NH 03820

Attorney:

Francis X. Bruton III, Esquire
Bruton & Berube, PLLC
798 Central Avenue
Dover, NH 03820

Quantum Real Estate Group, LLC

**Littleworth Road
Map H, Lot 29A**

APPLICATION FOR VARIANCE

Introduction

The property subject to this application is located on Littleworth Road and is depicted on the City's Tax Maps at Map H, Lot 29A. The property is within the R-20 zoning district. The property is comprised of 7.25 acres. The parcel is unique, not only in its size, but also as to its zoning designation for residential use along Littleworth Road, which the parcel is also surrounded by industrial and commercial uses and zones. The Applicant is subdividing the parcel into six (6) lots. The subdivision will comply with all zoning requirements.

Pursuant to Section 170-12.A and the Table of Uses and Dimensional Requirements, construction of single family dwellings in the R-20 District are required to be located no closer than 20 feet and no greater than 35 feet from the front lot line, or a "35 foot build-to-line." The Applicant, however, is seeking a variance in order to provide that the proposed houses on the new lots will be subject to a traditional thirty-five (35') foot setback line, as opposed to the minimum build-to-line. Given the location of the lot along Littleworth Road and considering the surrounding commercial and industrial uses and zones, it is believed that requiring the intended house to be located to a build-to-line, as opposed to a traditional 35' setback line, is unreasonable and will result in an unnecessary hardship.

APPLICANT'S REQUEST FOR VARIANCES
FACTS SUPPORTING THIS REQUEST

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

The Applicant respectfully submits that the proposed use represents a reasonable use of the property in question. By permitting the use, the public interest is served by permitting orderly development in an area where previous commercial and industrial development has already occurred. In addition, by allowing the location of the single-family residence within the proposed lots beyond a traditional setback line, as opposed to a build-to-line represents a context sensitive design, given the location of the commercial and industrial uses and given the traffic speeds along Littleworth Road. As such, the proposed use will not be contrary to the public interest, as the use will not "alter the essential character of the locality." See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577 (2005). Granting the variance will permit the location of a dwelling in the most appropriate location due to the surrounding area, and would not threaten the public health, safety or welfare.

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

The Applicant respectfully submits that if the variance is granted, the spirit of the ordinance would be observed because the variance would permit uses which are suitable for the property considering the existing uses of the property, the shape of the property, and given the surrounding commercial and industrial uses of properties.

Further, the proposed use is consistent with the purpose behind the R-20 District, which mainly is to provide for conventional single-family neighborhoods on lots not less than 20,000 square feet. It is unreasonable to require houses to be located so close Littleworth Road when no other residential uses or neighborhoods are located as such or within the area. Rather, the neighborhood created should be permitted to exist toward the rear of the lots give the location of the lots and other existing uses. To be contrary to the public interest or injurious to the 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. See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577, at 581 (2005). It is respectfully submitted, that given the reasons set forth above, the granting of the variance will promote the ordinance's basic zoning objectives.

3. Granting the variance would do substantial justice because:

The grant of the variance would do substantial justice because it would allow the Applicant's property to be utilized in a reasonable fashion by allowing the location of a house away from, as opposed to close to Littleworth Road. By doing so, and granting the variance, a neighborhood feel to the lots will be created. This test considers whether the benefit to the Applicant outweighs the burden to the public. See Farrar v. City of Keene, 158 NH 684, 692 (2009). In this instance, given the proposed location of the structures, there will be no burden to the public whatsoever. Accordingly, the benefit to the Applicant would exceed the burden to the public, thus resulting in substantial justice being done.

4. Explain how the proposal would not diminish the surrounding property values:

It is respectfully submitted that all of the surrounding properties have a value associated with them that is premised upon the existence of the same type of buildings to be located upon the Applicant's property. In this instance, the location of the houses, whether located adjacent to Littleworth Road, or towards the rear of the lots, as sought by the Applicant, will have no negative affect upon any abutter.

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:

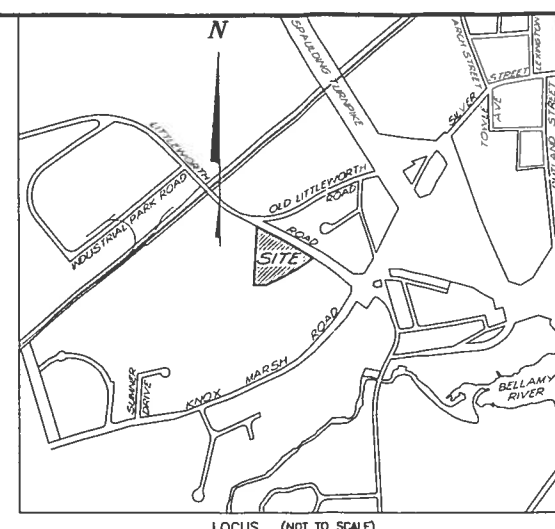
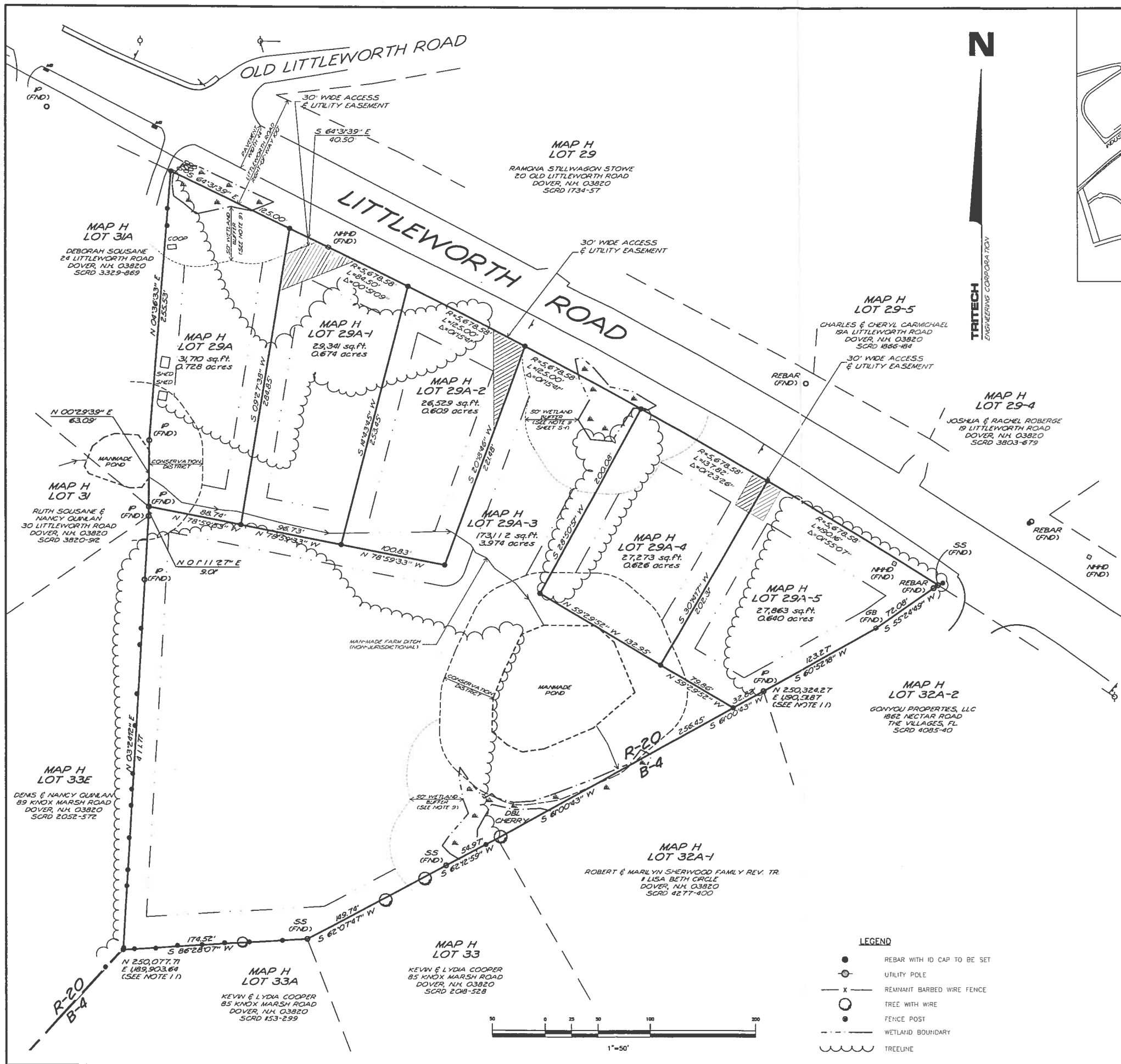
As one can see from the Plan, the parcel in this case is located along a portion of Littleworth Road that is surrounded by commercial and industrial uses and zones. The property can support residential uses, all consistent with the R-20 District, however, it is unreasonable and unnecessary to require that these residential structures, considering the location of the property, should contain houses within the parameters of the required build-to-line, particularly when no other residential uses are adjacent to the property that promote a streetscape affect within the area.

(ii) 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

The general purpose of the ordinance is to promote orderly development and to protect the health, safety and general welfare of the public. In this instance, the Applicant seeks to locate a single-family residence beyond the required build-to-line in an effort to promote orderly development and provide for additional safety measures for the residents that will occupy the residential homes. The purpose of the "build-to-line" concept is geared to context sensitive design, and, in this case the context appears to be commercial and industrial uses, and, thus, requiring the single-family homes to meet the build-to-line is unnecessary. As such, with the grant of the variance, the purpose of the ordinance and the specific restriction itself will be preserved as the single-family homes can be constructed to create more of a "neighborhood," but most importantly, in a safer manner away from Littleworth Road and other commercial and industrial uses. Thus, the Applicant respectfully submits that there is no relationship at all between the general public purpose of the ordinance, and the specific application, which would require houses to be constructed closer to Littleworth Road.

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

The proposed use is reasonable because it provides for the location of the single-family residence within an area that is safer for the intended residents than if the houses were located closer to the road.



- NOTES**
- 1) INTENT: THIS PLAN IS INTENDED TO ACCOMPANY A VARIANCE APPLICATION, WHICH IS SEEKING RELIEF FROM CITY OF DOVER ZONING ORDINANCE, 170-12 (B), SPECIFICALLY TO ALLOW A 35 FOOT FRONT BUILDING SETBACK IN LIEU OF THE "BUILD TO LINE" SPECIFIED IN THE R-20 DISTRICT.
 - 2) CURRENT OWNER: GEORGE F. MITROPOULOS REVOCABLE LIVING TRUST
315 RICHMOND HILL ROAD
ROCHESTER, N.H. 03867
 - APPLICANT: QUANTUM REAL ESTATE GROUP, LLC
755 CENTRAL AVENUE
DOVER, N.H. 03820
 - 3) TOTAL AREA: 315,829 SQ. FT. = 7.250 ACRES
 - 4) TAX MAP H LOT 29A
 - 5) PROJECT DEED REFERENCE: BOOK 3410 PAGE 150
 - 6) PROJECT PLAN REFERENCE:
NHDOT PROJECT No. L-5 1823-(1) 1954
SUBDIVISION OF LAND OF THE SOUSANE PROPERTY IN DOVER, N.H. BRUCE L. POHOPEK JUNE 2, 1982 SCRD 23A-73
PLAN OF SUBDIVISION MARGUERITE WATKINS KNOX MARSH ROAD DOVER, NEW HAMPSHIRE G.L. DAVIS AND ASSOCIATES SEPT. 1984 SCRD 24A-114
PLAN OF CONSERVATION EASEMENT LAND OF RUTH SOUSANE AND DENNIS AND NANCY QUINLAN DOVER, N.H. RICHARD P. TOWLE DEC. 16, 1995 SCRD 51-97
 - 7) ZONING: R-20
MIN. LOT SIZE: 20,000 SQ. FT.
MIN. FRONTAGE: 125 FT.
MIN. SETBACKS:
FRONT: BUILD TO LINE (20' TO 35')
SIDE: 20 FT.
REAR: 10 FT.
IN ADDITION TO R-20, THIS PROPERTY FALLS WITHIN A ZONING OVERLAY DISTRICT:
- WETLANDS PROTECTION DISTRICT
- CONSERVATION DISTRICT

- LEGEND**
- REBAR WITH ID CAP TO BE SET
 - UTILITY POLE
 - × REMNANT BARBED WIRE FENCE
 - TREE WITH WIRE
 - FENCE POST
 - WETLAND BOUNDARY
 - ~~~~~ TREELINE

TRITECH
ENGINEERING CORPORATION

755 CENTRAL AVENUE
DOVER, NEW HAMPSHIRE 03820
TELEPHONE 603 742 8707
FAX 603 742 9830

REVISIONS	DATE	DESCRIPTION

VARIANCE APPLICATION PLAN
QUANTUM REAL ESTATE
GROUP, LLC.
LITTLEWORTH ROAD
DOVER, NEW HAMPSHIRE
MAY 25, 2017
JOB No. 16144
SCALE: 1" = 50'

SHEET No.

VA-1



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	McConnell Center Room 306, 61 Locust St., Dover, NH 03820
Meeting Date:	Thursday, June 15, 2017
Meeting Time:	7:00 pm

INTENT: DR Lemieux Builders, Inc. has filed a motion for rehearing of Z17-07, in which the Board denied an equitable waiver request to permit a side setback of 11 feet where 20 feet is required.

AGENDA ITEM #: 4

ZONING DISTRICT: R-20

FILE: Z17-07R

PETITIONER: DR Lemieux Builders, Inc.

APPLICANT/OWNERS: DR Lemieux Builders, Inc.

LOCATION: 53 Spur Road (Tax Map L, Lot 14-N)

ACREAGE: 1.35 acre (58,806 sq. ft.)

EXISTING LAND USE: Vacant

PROPOSED LAND USE: Single-family dwelling

SURROUNDING LAND USE: Single-family dwellings

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Motion for rehearing, April 20, 2017 meeting minutes

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

Summary of Request and Background

The property is located toward the north end of Spur Road with a small amount of frontage on the Bellamy River. The owner also owns the abutting lot, 55 Spur Road, where he built a house in 2015-2016.

With an approved building permit, the Petitioner/Owner constructed a foundation 11 feet from the side property line, where 20 feet is the minimum requirement. The error was discovered upon the completion of a foundation certification survey. The Applicant sought an equitable waiver of the side setback, which the Board denied 4-0 on April 20, 2017.

A motion for rehearing of this case was filed with the Planning Department on May 17, 2017, and is therefore timely.

Process for a Rehearing

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

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

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

The reasons for granting a rehearing should be compelling ones; the Board has no right to reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created. The Board can also hold a rehearing as an opportunity to complete its records and make clear the reasons for its initial decision.

The Board shall either grant or deny a rehearing within 30 days of receiving the request.

Recommendation

Please review NH RSA 677 and guidance in *The Board of Adjustment in New Hampshire: A Handbook for Local Officials*, page IV-1. (<https://www.nh.gov/oep/planning/resources/zoning-board-handbook.htm>)

Please consider reviewing the information presented and discussion at the April 20th meeting:
<https://dovernh.viebit.com/player.php?hash=pAdqoNVID2QL>. Minutes of the meeting are attached.

Following a discussion on the motion for rehearing, if the Board finds that one of the following criteria is met, it should grant the motion for rehearing and hold the rehearing at the July 20, 2017 meeting:

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

If the Board finds that none of the above criteria are met, it should deny the motion for rehearing.



FRANCIS X. BRUTON, III
CATHERINE A. BERUBE

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC
ATTORNEYS AT LAW

798 Central Avenue
Dover, NH 03820

TEL (603) 749-4529
(603) 743-6300
FAX (603) 343-2986

www.brutonlaw.com

May 17, 2017

VIA HAND DELIVERY

Chris Prior, Chairperson
Dover Zoning Board of Adjustment
City of Dover
288 Central Avenue
Dover, NH 03820

RECEIVED
Planning Office

MAY 17 2017

Dover, New Hampshire

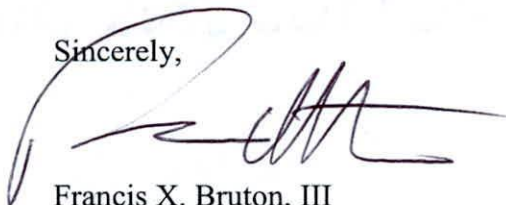
RE: D.R. Lemieux Builders, Inc.
Case# Z17-07

Dear Chairperson Prior:

Enclosed please find a Motion for Rehearing relative to the above referenced case. We understand that the next Zoning Board of Adjustment meeting is May 18, 2017, and, as such, we respectfully request that this matter be placed on the agenda for such meeting.

Should you have any questions with respect to the above, please do not hesitate to contact me.

Sincerely,



Francis X. Bruton, III
E-mail: fx@brutonlaw.com

FXB/mas
Enclosures

cc: D.R. Lemieux Builders, Inc.

STATE OF NEW HAMPSHIRE

Strafford, SS.

City of Dover
Zoning Board of Adjustment

In Re: D.R. Lemieux Builders, Inc.
Case# Z17-07

**MOTION FOR REHEARING
PURSUANT TO RSA 677:2**

NOW COMES D. R. Lemieux Builders, Inc., (hereinafter the "Applicant"), by and through its attorneys, Bruton & Berube, PLLC, who respectfully move for a rehearing pursuant to RSA 677:2 with respect to the denial of a request for an Equitable Waiver of Dimensional Requirements (RSA 674:33-a), and state as follows:

INTRODUCTION

1. The Applicant, D. R. Lemieux Builders, Inc., is the owner of property depicted as Map L, Lot 14-N, on Spur Road, Dover, New Hampshire (hereinafter the "Property").

2. Recently, at the April 20, 2017 meeting of the Dover Zoning Board of Adjustment (hereinafter referred to as the "ZBA"), the Applicant presented its request for an Equitable Waiver of Dimensional Requirements, pursuant to NH RSA 674:33-a as a result of its recent discovery of an approximate nine (9') foot encroachment on a side yard setback, which requires a twenty (20') foot setback from a side yard property line.

3. The Applicant discovered the encroachment after the foundation was 100% complete.

4. At the hearing, an opinion was expressed by Dover Planning Staff member, Elena Piekut, that Dover requires a foundation survey after a foundation is complete to avoid this very situation and prior to a building permit being issued.

5. Contrary to Ms. Piekut's assertion, the Applicant had previously been issued a building permit and only performed the survey to review if it met shore land protection setback, which it had.

6. It is the experience of the Applicant, a builder with thirty (30) years of experience, that a foundation survey is not required at any specific time during construction.

7. Within her staff memo to the ZBA, Ms. Piekut indicated that NH RSA 674:33-a requires that the ZBA grant an equitable waiver if all four criteria are met. Further, Ms. Piekut correctly pointed out that NH RSA 674:33-a (a) requires the following:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, **until after a structure in violation had been substantially completed**, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value (highlighting by Ms. Piekut);

8. In response, the Applicant pointed out that the foundation is considered a "structure," as defined by the Dover Zoning Ordinance which specifically defines a structure as **"Structure means a framework of support."**

9. The ZBA found that the other three (3) criteria set forth in NH RSA 674:33-a were met, but denied the application based upon a sense that the structure was not substantially complete.

The New Hampshire Supreme Court has ruled that the rehearing process is designed to afford a zoning board of adjustment an opportunity to correct its own mistakes or to consider new evidence. *Fisher v. Town of Boscaawen*, 121 N.H. 431 (1981).

9. The Applicant respectfully requests board to grant a rehearing in order to consider the new evidence submitted herein with respect to the requirement that a foundation survey be submitted at a specific time during the construction cycle, and to reconsider its decision, which, for the reasons set forth herein, the Applicant alleges is unreasonable and or unlawful.

ARGUMENT

10. It is uncontroverted that the foundation in question is 100% complete and that the discovery of the encroachment occurred after the foundation was 100% complete.

11. It is only reasonable that a foundation is a "structure" according to the definition set forth by the Dover Zoning Ordinance, as a foundation is a "structure of support."

12. NH RSA 674:33-a does not specify that the discovery of the encroachment occur after a "building" is substantially complete, but rather, after a "structure is substantially complete. The distinction is relevant as the Dover Zoning Ordinance specifically defines a "Building" separately from that of a "Structure."

13. If the Dover Zoning Ordinance intended to treat a structure and a building as synonymous, it would be superfluous to have two (2) definitions.

14. NH RSA 674:33-a is intended to employ an equitable, or fairness, analysis. Thus, if the foundation was not substantially complete, it would be reasonable and

“equitable” and “fair” to require removal; but where a structure is 100% complete, it is reasonable and “equitable” and “fair” to grant the relief.

15. Those who rely upon the Dover Zoning Ordinance should be afforded the opportunity to rely upon the plain meaning of the code, and, in this case, it is reasonable and lawful for the Applicant to obtain equitable relief based upon having met the criteria set forth in subsection (a) of NH RSA 674:33-a, as the Applicant discovered the encroachment after the foundation (the structure) was substantially complete (100% complete).

16. As set forth by David Lemieux, President of the Applicant, such an error in measurement has never occurred in thirty (30) years of constructing foundations.

17. Given the lack of an abutter opposition, and the Applicant’s testimony that abutters were consulted about the relief, and did not object to the relief, it would be only equitable and reasonable that the relief be granted in this instance.

18. Requiring that an Applicant complete an entire “building,” as opposed to a “structure” in order to receive the equitable relief afforded by NH RSA 674:33-a is contrary to the specific requirements of the statute, and thus unreasonable and illegal.

WHEREFORE, the Applicant respectfully requests the Dover Zoning Board of Adjustment to:

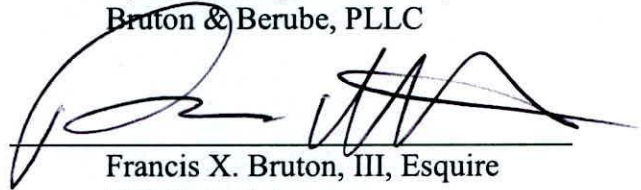
- A. Grant a rehearing with regard to the above matter; and
- B. That upon a rehearing, grant the request for an Equitable Waiver of Dimensional Requirements; and
- C. To the extent the ZBA denies the relief requested herein, provide the Applicant with written reasons for disapproval pursuant to NH RSA 676:3, I; and

D. For such other and further relief as may be just and equitable.

Respectfully submitted,
D.R. Lemieux Builders, Inc.
By and through its attorneys,
Bruton & Berube, PLLC

Dated: May 17, 2017

By:

A handwritten signature in dark ink, appearing to read 'Francis X. Bruton, III', is written over a horizontal line.

Francis X. Bruton, III, Esquire
798 Central Avenue
Dover, New Hampshire 03820
Phone: (603) 749-4529



**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, April 20, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Not Present: Sam Reid (Vice Chair), Arianna Adams (Alternate), Nicholas Couturier (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. He explained the meeting would not be broadcast live due to the School Board meeting. He described the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF MARCH 16, 2017

Motion: O.Perry made a motion to approve the March 16, 2017 Regular Meeting Minutes as submitted. Seconded by F.Landford. Vote: U/A Passed - B.Hall and G.Reagan abstained from the vote as they were not present at that meeting.

3. HEARINGS

- A. Z17-06 Owner Christi Haffner, 45 Boston Harbor (Tax Map 7, Lot 17-A), located in the Low Density Residential (R-20) Zoning District, requests a variance from **Section 170-12.B** of the Zoning Ordinance to permit a front setback of 37.8 feet where a front build-to line of 20 feet minimum, 35 feet maximum is required.

Attorney Timothy Phoenix of Hoefle, Phoenix, Gormley & Roberts, P.A., represented the applicant, displayed plans for viewing, and presented the criteria pertaining to the application and the proposed plan. He stated the applicant could not attend the meeting due to a conflict with her schedule. Paul Dobberstein of Ambit Engineering was also present.

Public Hearing Opened.

STAFF RECOMMENDATION:

Staff recommends the Board determine whether each of the five criteria are met, and approve the request.

E.Piekut presented the Staff recommendation.

Cody Cartnick, 53 Boston Harbor Road, stated if the power lines were placed underground there would be no need for a variance, and that the power lines were placed underground for his home.

Discussion ensued regarding clarification that the power lines service other homes in the surrounding area, and that the lines would still need to be rerouted to do the work and the expense involved.

Michael Garofano, 258 Dover Point Road, requested clarification regarding the two driveways for the single family home with the apartment and asked if this was allowable for the R-20 District.



**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, April 20, 2017**
Meeting Time: **7:00 pm**

E.Piekut briefly explained the City and State regulations regarding Accessory Dwelling Units (ADU), addressed the existing driveways on the property, and provided the procedure for the applicant to obtain a building permit and an ADU Certificate of Use.

Discussion continued regarding clarification of the build to line and access to the property, and the location of the front property line.

Public Hearing Closed.

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

O.Perry recused himself from hearing item 3.B, and left the room.

The Chair explained the rules of procedure requiring at least three votes for approval, and provided the applicant the opportunity to defer to a later meeting. The applicant elected to proceed.

The Chair recognized G.Reagan to vote on the case.

- B. Z17-07 Owner DR Lemieux Builders, Inc., 53 Spur Road (Tax Map L, Lot 14-N), located in the Low Density Residential (R-20) Zoning District, requests an equitable waiver of dimensional requirements from **Section 170-12.B** of the Zoning Ordinance to permit a side setback of 11 feet where 20 feet is required.

Attorney F.X. Bruton of Bruton & Berube, PLLC, represented the applicant, and presented the criteria pertaining to the application. David Lemieux of DR Lemieux Builders, Inc. was also present.

F.X.Bruton addressed the Staff comments, recited the definition of the structure according to the Zoning Ordinance, and argued that the foundation is a complete structure. He addressed the timing of the foundation survey and when to ask for relief, and clarified this was a mistake by the builder.

Discussion ensued regarding clarification that the property pins were used as a reference for the installation of the foundation and the miscalculation by the builder, and that the applicant spoke to the abutters and stated there were no objections by them regarding the requested waiver.

F.X.Bruton noted the time, procedure, and expense to seek a Lot Line Adjustment (LLA) for 9 ft., and the purpose for the equitable waivers.

D.Lemieux confirmed for B.Hall that he has previously placed over 100 foundations, that he read the tape incorrectly, and that his mistake was unintentional.

Public Hearing Opened.

Michael Garofano, 258 Dover Point Road, requested the Board table the item to consider the LLA in order to stay in compliance with the regulations, and consider future abutters in case the property is sold.



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Discussion ensued regarding the purpose for the equitable waiver, consideration that all other avenues have been considered, the cost and factors associated with a LLA, that the foundation is not crossing the property line, that the abutter's home is located 100 ft. from the foundation, and that the abutter is not opposing the project.

B.Hall stated that the abutters were not present at the meeting to confirm there are no objections, that the applicant presented nothing in writing from the abutter, and that the abutter's house location has no bearing on the case.

F.X.Bruton stated that any future neighbor would buy the home based on the house location. He addressed the nuisance of nonconformity, and the absence of the abutter. He stated that the applicant spoke to the abutter.

STAFF RECOMMENDATION:

Staff recommends the Board determine whether each of the four criteria are met, and deny the request.

E.Piekut clarified when an equitable waiver should be granted according to the regulations, and that a request must meet all four criteria. She recommended the Board review the four criteria.

Public Hearing Closed.

The Chair addressed the four criteria to be met. Discussion ensued regarding the structure and expense to change it, and comparison to past equitable waivers that were granted.

Motion: B.Hall made a motion to deny the equitable waiver as it did not meet the required criteria. Seconded by G.Reagan. Vote: 3/1 F.Landford opposed

4. OTHER BUSINESS

The Chair addressed the email from Sam Reid distributed to the Board members stating he was stepping down as Vice-Chair. The Board voted by secret ballot to elect a new Vice-Chair. The votes were tallied and the results were announced by C.Prior. B.Hall was elected as Vice Chair.

5. ADJOURN

Motion: B.Hall made a motion to adjourn at 7:42 p.m. Seconded by G.Reagan. Vote: U/A