



**CITY OF
DOVER**

ZONING BOARD OF ADJUSTMENT - MINUTES

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**

1. ATTENDANCE

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

Members Not Present:

Staff Present: Elena Piekut (Assistant City Planner), Tracy Smith (Recording Secretary)

The Chair called the meeting to order at 7:00 p.m. He opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF MAY 18, 2017

Motion: O.Perry made a motion to approve the May 18, 2017 Regular Meeting Minutes as submitted. Seconded by F.Landford. B.Hall and N.Couturier abstained as they were not present at that meeting. Vote: U/A

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.

Paul Connolly, Civilworks, Inc., represented the applicant, displayed a plan for viewing which showed the lots owned by the applicant, and presented the proposed plan. Martha Heaphy was also present.

Discussion ensued regarding clarification that the application pertains to only Lot 21B as recommended by the Planning Staff, which homes on the lots are used by family and those that are currently used as rental properties, and that the removal of three structures in order to place one structure will reduce the existing non-conformity of Lot 21B.

Public Hearing Opened. Nobody Spoke.

E.Piekut stated that Staff supports the variance, and explained that the removal of the structures would make the property more conforming.

Discussion ensued regarding consideration of previous rear setbacks at 15 ft., and clarification of the condition of approval would amend the application and plan.

STAFF RECOMMENDATION:

Staff recommends the Board 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.



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Public Hearing Closed.

Motion: O.Perry made a motion to grant the variance as the applicant has met the requirements for granting the variance with the condition to revise the plan to make it accurately reflect the variance requested. Seconded by S.Reid. C.Prior confirmed for B.Hall the condition would revise the plan. Vote: U/A

- 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.

Attorney Jim Schulte of Bruton & Berube, PLLC, represented the applicant, displayed a plan for viewing which showed the lots, and presented the proposed plan. He reviewed the five criteria pertaining to the application. Jim Wolcott of Salty Sea, LLC, Bob Stowell of Tritech Engineering Corporation, and Thomas J. Cauley, Sr. were also present.

Discussion ensued regarding clarification of the application as it relates to the special exception criteria, the purpose and requirements of the special exception in the B-3 District, the reason for consistency as it pertains to the percentage of commercial use available, the safety of traffic flow, clarification of commercial and residential parking locations on the plan, the hardship regarding difficulty to rent the spaces, particularly the back units and the traffic flow, and comparison of the proposed plan to other projects that have commercial rentals.

Public Hearing Opened.

Mark Moclock, 54 Old Rochester Road, stated his concern regarding the proximity of the project to his home and the need for a sound barrier. He requested the tree line and shrubs be kept for a sound barrier. C.Prior stated the application process and Planning Board purview if the variance application were granted.

J.Schulte addressed the change of use and how the variance would enhance health and safety of the neighborhood.

E.Piekut stated that Staff does not oppose the variance and stated the proposed condition of approval.

STAFF RECOMMENDATION:

Staff recommends the Board 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.

J.Schulte confirmed for C.Prior that the variance application was for 7 units (building C) and the special exception application referred to the other units.



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O.Perry asked whether the applicant considered creating a subdivision instead. E.Piekut stated it had not been discussed.

Public hearing closed.

Discussion ensued regarding Board deliberation and voting options with consideration to the Zoning regulations with the applicant submitting both the special exception and a variance, the hardship criteria, the health and safety perspective regarding the traffic flow and proximity to other residential zones, and the commercial rental hardship.

Motion: S.Reid made a motion to grant the variance for building C as shown on the plan for 7 units as recommended by the City. Seconded by B.Hall. Vote: 4/1 O.Perry opposed

- 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.

Attorney Jim Schulte, Bruton & Berube PLLC, represented the applicant, displayed a plan for viewing and presented the proposed plan. He addressed the five criteria pertaining to the application. Jim Wolcott of Salty Sea, LLC, Bob Stowell of Tritech Engineering Corporation, and Thomas J. Cauley, Sr. were also present.

J.Schulte confirmed for O.Perry that the existing building would be commercial and is confirmed as a condition in the variance.

Public Hearing Opened. Nobody Spoke.

E.Piekut stated the Staff recommendation.

STAFF RECOMMENDATION:

Staff recommends the Board 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.

Public Hearing Closed.

C.Prior addressed the concern that the existing building would be converted to commercial and stated it could be listed as a condition of approval. J.Schulte proposed the Board use the same condition listed for the variance.

Motion: O.Perry made a motion to grant the special exception per the same condition as the variance as recommended by the Planning Staff. Seconded by S.Reid. Vote: U/A

- 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.



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S.Reid recused himself from hearing the case. The Chair recognized G.Reagan to hear the case.

Attorney Jim Schulte of Bruton & Berube, PLLC, represented the applicant, displayed a plan for viewing, and presented the proposed plan. He reviewed the five criteria pertaining to the application. Bob Stowell, Trittech Engineering Corporation, was also present.

Discussion ensued regarding the substantial justice criteria and the proposal approved by the Planning Board depicting home locations consistent with the criteria except lot 29A, house location further from the road due to wetlands, and consideration of burden due to house location, and confirmation that shared driveways would still serve the structures.

Public Hearing Opened.

Michael Garofano, 258 Dover Point Road, spoke against the variance and stated his concern regarding appropriate abutter notification. He recommended tabling the item for further abutter notification.

E.Piekut confirmed the abutter notifications were sent for both the Planning Board and Zoning Board of Adjustment meetings. She stated the Staff recommendation and noted the previous effort to rezone area to non-residential which had been approved by the Planning Board and overturned by the City Council. She stated the conditions of approval and the procedure that after the subdivision plan amendment sheet is recorded it is no longer subject to the build to line.

E.Piekut clarified for G.Reagan the right of way and the build to line distance.

STAFF RECOMMENDATION:

Staff recommends the Board 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.

Public Hearing Closed.

B.Hall requested clarification to the recommendation of the setback and build to line.

Public Hearing Reopened.

E.Piekut clarified the recommendation.

J.Schulte clarified the build to line conversion to a 35 ft. setback for B.Hall.

Public Hearing Closed.



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Motion: B.Hall made a motion to grant the variance with the two conditions as recommended by the Planning Staff to permit a 35 ft. minimum front setback for condition #2. Seconded by F.Landford. Discussion ensued regarding clarification of the conditions. Vote: U/A

S.Reid returned to his seat.

O.Perry recused himself from hearing the case, and left the meeting at 8:18 pm.

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.

The Chair recognized N.Couturier to hear the case.

C.Prior explained the process for the re-hearing request and requested Board feedback. The Board evaluated the information regarding the motion provided, especially the definition of a structure, and determined there was no new evidence provided.

Motion: S.Reid made a motion to deny the re-hearing. Seconded by B.Hall. Vote 4/1

5. OTHER BUSINESS

There was no other business.

6. ADJOURN

Motion: S.Reid made a motion to adjourn at 8:26 p.m. Seconded by B.Hall. Vote: U/A