



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date: **Thursday, August 17, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Not Present: George Reagan (Alternate)

Staff Present: Elena Piekut (Assistant City Planner)

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

2. APPROVAL OF MEETING MINUTES OF JULY 20, 2017

Motion: Otis Perry moved to approve the July 20, 2017 meeting minutes as submitted. Seconded by Frank Landford.
Vote: U/A

3. HEARINGS

- A. Z17-15 Applicant/Owner D.R. Lemieux Builders, Inc., 53 Spur Road (Tax Map L, Lot 14-N), 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 side setback of 11 feet where a minimum of 20 feet is required.

Otis Perry recused himself. The Applicant elected to proceed with a four-member board.

F.X. Bruton, Esq. of Bruton & Berube and David Lemieux of D.R. Lemieux Builders, Inc. represented the Applicant and provided a background and overview of the request. Chair Chris Prior asked for clarification that the Applicant is requesting a variance to permit the foundation that is already in place to be 11 feet from the side property line and Mr. Bruton confirmed that is the case.

F.X. Bruton discussed the distance from the foundation to existing abutting structures and the existing right of way over the south side of the property. He also discussed the criteria for a variance, stating that: the variance would not result in a substantial change to the neighborhood; the variance would be consistent with the spirit of the ordinance by providing adequate spacing between homes; the abutter to the north does not object and is considering the Applicant's offer of evergreen screening; granting the variance would do substantial justice; the variance would not result in the diminution of property values; and the narrowness of the lot, the shoreland protection area, and the presence of a driveway right of way present a hardship.

Bob Hall asked why the Applicant had not completed a footing certification prior to further construction. David Lemieux stated that he was not required to complete a footing certification and only certified the foundation location because of the presence of State-protected shoreland area within 250 feet of the river. He stated that Building Official James Maxfield did not require him to get a foundation certification at that time. Staff confirmed for Mr. Hall that the building permit states "footing location must be certified prior to further construction" and that footing and foundation certifications are required for all new structures. David Lemieux stated he ceased construction upon obtaining the foundation certification.



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F.X. Bruton stated he believes it is reasonable to grant a variance encroach on the setback to stay away from the driveway, even if the foundation mistake had not been made.

Bob Hall asked whether there was a clear spot to put the foundation in compliance with dimensional regulations. F.X. Bruton said that there was, but noted that the foundation certification does not depict the driveway and that they would be able to seek relief based on the presence of the driveway. Mr. Hall reiterated that the request is not being made “before-the-fact.” Atty. Bruton stated that the Applicant has been up-front about the mistake and reminded the Board that they did not approve the equitable waiver request primarily because the foundation was not considered by them or staff to be a “substantially complete structure.” He reiterated that the variance request could be made if the foundation did not exist.

Bob Hall noted that the abutter mentioned has not made any comment to the Board. Atty. Bruton suggested that the abutter’s lack of objections despite multiple notices results in a reasonable conclusion that they do not oppose the variance.

Public Hearing opened.

Michael Garofano, 258 Dover Point Road, asked whether the hearing is considered a *de novo* hearing. Chair Chris Prior said it is not and that it is a request for a variance, where the Applicant’s previous request was for an equitable waiver. Mr. Garofano asked whether the Board is able to consider information from the previous case, and Chair Prior suggested it is unavoidable to forget evidence presented in the previous case despite it being a new hearing. He noted that the decision requires determinations on different criteria than the previous case. Mr. Garofano stated his opinion that an abutter’s opinion should be received in writing if not in person.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated that the Planning Department does not oppose the request and that the constraints presented by the shoreland protection area, right of way, and build-to line have limited the area in which the structure could be placed.

Public Hearing closed.

Frank Landford made a motion to grant the variance, finding that all of the variance criteria have been met. Nick Couturier seconded. Bob Hall stated his strong disagreement because multiple criteria have not been met, though there was a clear location to place the structure, the abutter has not provided testimony, and the intent of the Zoning Ordinance is to provide sufficient clearance between possible structures on lots regardless of the current distances from adjacent structures. Chair Prior stated that requiring abutters to speak to a case is not reasonable considering they are properly notified and provided several methods to communicate to the Board. He added that the driveway requires the Board to provide some relief. Vote: 3-1, Bob Hall opposed.

- B. Z17-16 Applicant/Owners Hadley and Shane Moores, 33 Littleworth Road (Tax Map G, Lot 6-D), located in the Assembly and Office (I-4) Zoning District, request a variance from **Section 170-12.B** of the Zoning Ordinance to permit reduced setbacks where 75 feet is required from all property lines. The proposed buildings’ distance from side property lines ranges from 17 feet to 42 feet.



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Abigail Karoutas, Esq. represented the Applicant and provided an overview of the property and variance request. She explained that the application has been amended to request a blanket variance to permit all of the setbacks for the Restricted Industrial (I-2) Zoning District to apply to this property. She further explained that an agreement has been reached with the neighbors, the Dunphys, to keep the the proposed structure at least 25 feet from the side property line, though the submitted plan shows approximately 17 feet. The Applicant has also agreed to install an eight-foot fence on that side of the property. Atty. Karoutas explained the nature of the use, structure, and that the property was previously zoned I-2.

Frank Landford asked for clarification of proposed structures and their uses.

Atty. Karoutas discussed the criteria for a variance as they pertain to the proposal and provided the reasons the Applicant's propose the construction on the plan submitted.

Public hearing opened.

Mike Dunphy, 37 Littleworth Road, noted that he is trying to sell his house and asked for clarification about the Applicant's proposal to establish a 25-foot setback from their mutual property line. Atty. Karoutas confirmed that the intent is that the closest corner of the structure will be no closer to the property line than 25 feet, where the plan included in the application shows approximately 17 feet.

Chair Chris Prior asked staff whether the notice sent to abutters was adequate to represent the actual request before the Board, and Assistant City Planner Elena Piekut confirmed that only the language on the agenda was shared with Abutters and that the concern that the plan differs from the notice is valid. Atty. Karoutas suggested that the Board table the item and re-notice abutters with a more clear description of the request and revised plan.

Otis Perry moved to table the application. Frank Landford seconded. Vote: U/A

- C. Z17-18 Applicant/Owner Saint Mary Academy, 222 Central Avenue (Tax Map 9, Lot 98), located in the Central Business District – General sub-district, requests a variance from **Section 170-32.A** of the Zoning Ordinance to permit the installation of a new freestanding sign where freestanding signs are not permitted.

Conor Wade represented the Applicant and explained that he plans to replace the sign at Saint Mary Academy as his Eagle Scout project through Boy Scout Troop 168. Mr. Wade shared a rendering of the proposed sign. He explained that the plastic posts for the existing sign are in poor condition and cannot be maintained to support a new sign, and that the new sign, in a slightly different location, will include granite posts.

Frank Landford asked how the proposed sign compares in size and distance from the sidewalk. Conor Wade responded that the proposed sign would be slightly wider, the same height, and three to four feet from the sidewalk.

Public Hearing opened.

Mary McKiernan, Assistant Principal of Saint Mary Academy, expressed support for the variance request.

Assistant City Planner Elena Piekut stated that the Planning Department supports the variance request and noted that the existing sign could be replaced if the posts were in a condition to be reused. Otis Perry asked whether impact on



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sight distance would be considered and Ms. Piekut stated that the Zoning Ordinances prevents a sign from impeding vision within 30 feet of a street corner.

Otis Perry moved to approve the variance request, finding that the criteria have been met. Bob Hall seconded. Vote: U/A

- D. Z17-19 Applicant Community Action Partnership of Strafford County and Owner County of Strafford, New Hampshire, 262 County Farm Road (Tax Map C, Lot 4), located in the Rural Residential (R-40) Zoning District, requests a special exception per **Section 170-12.A** of the Zoning Ordinance to permit a 24-unit congregate care facility.

Otis Perry recused himself and left the meeting. The Applicant elected to proceed with a four-member board.

Chris Wyskiel, Esq., represented the Applicant. Eric Borrin of Community Action Partnership was also present. Atty. Wyskiel provided an overview of the proposed project, distributed a traffic analysis, and addressed how the proposal meets the specific and general criteria required for the Board to grant a special exception.

Frank Landford asked about the plan to connect circulation with the existing congregate care facility. Eric Borrin explained that the proposed plan will create a loop that is preferred by the emergency services and the COAST bus.

Atty. Wyskiel presented the results of the traffic study, which predicts an increase of four or fewer peak hour trips. He explained how the density requirement is met and provided a copy of the note to explain this on the plan. He noted that a portion of the parking will be provided underground and the rest is screened from residential uses by great distance, other buildings, and existing vegetation.

Public Hearing opened.

Suzanne Medbery, 3 Covered Bridge Lane, asked to see the plan, how the circulation is created, and how the road is to be developed and Atty. Wyskiel showed her the plan. Chair Chris Prior noted that the plan may change after technical review and site plan review.

Don Medbery, 3 Covered Bridge Lane, expressed his concern that conservation land is being consumed by development and that it should be preserved for people.

Phil Gustafson, 9 Covered Bridge Lane, said he was unsure whether to oppose the project or not and expressed concern for the many pedestrians in the area and for the loss of conservation land.

Frank Landford explained that conservation land is not being affected by the project and pedestrian access will be preserved.

Mike Garofano, 258 Dover Point Road, asked how much parking is providing for the building. Chair Prior explained that the number of spaces provided is not within the purview of the Zoning Board of Adjustment and Assistant City Planner Piekut stated that the calculation for the use will result in a maximum number of permitted spaces.

Atty. Wyskiel reiterated that conservation land and pedestrian access over the bridge will not be impacted, and parking will be reviewed during the site plan approval process.



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Assistant City Planner Elena Piekut stated that the Planning Department supports granting the special exception as it finds the specific and general criteria are met by the proposal.

Public Hearing closed.

Frank Landford moved to grant the special exception. Bob Hall seconded. Vote: U/A

4. OTHER BUSINESS

Chair Chris Prior shared Sam Reid's resignation due to his role as the President of Southeast Land Trust.

5. ADJOURN

Frank Landford moved to adjourn at 8:33 p.m. Bob Hall seconded. Vote: U/A

DRAFT