



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, December 21, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF NOVEMBER 16, 2017

3. HEARINGS

- A. Z17-23 Applicant Mark G. Phillips/Storage Barn, LLC, 387 Sixth Street (Tax Map D, Lot 16-G), appeals a November 8, 2017 administrative decision regarding **Section 170-12.A and 170-6** of the Zoning Ordinance. The Zoning Administrator determined that recreational vehicle storage does not constitute a permitted use in the Hotel/Retail (B-4) Zoning District.
- B. Z17-24 Applicant/Owner Margaret M. Gabriel Revocable Trust, Dover Point Road (Tax Map L, Lot 99), 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 approximately 95 feet where a build-to line of 20 feet minimum, 35 feet maximum is required.

4. OTHER BUSINESS

- A. Land Use Board Meet & Greet, January 9, 2018, 5:30 PM – McConnell Center

5. ADJOURN

Persons with questions or interested in reviewing the meeting materials are invited to visit the Planning Department located in City Hall, open Monday-Thursday from 8:30 am to 5:30 pm and Friday from 8:30 am to 4:00 pm. The meeting materials are also available online at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, November 16, 2017**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Absent: Anthony Sillitta (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 members to the audience and explained the process used to hear cases.

2. APPROVAL OF MEETING MINUTES OF OCTOBER 19, 2017

O. Perry moved to approve the minutes as written. B. Hall seconded. Vote: U/A.

3. HEARINGS

- A Z17-21 Applicant/Owner Jeremy D. Towle, 83 Columbus Avenue (Tax Map F, Lot 24-A), located in the Assembly and Office (I-4) Zoning District, requests a variance from **Section 170-12.A** of the Zoning Ordinance to permit an additional (second) single-family dwelling where single-family dwellings are not a permitted use, and from the definition of “lot” in **Section 170-6** of the Zoning Ordinance to permit two principal buildings on one lot.

Paul Connelly, Civil Engineer, appeared on behalf of Jeremy Towle, who was present, along with his children. He described the application, as well as the history of the property and the challenges that the property owners have faced.

The Board asked the following questions:

- Can you show me again where the I-4/R-40 zoned property is?
 - The existing R-40 zone is the wooded area here, and there's quite a few houses up in this area.
- Paradise and the Kay are I-4?
 - Up to 300 or 400 feet back from Tolend Road; adjacent to Tolend Road is all R-40.
- The proposed new single-family dwelling would remain consistent with the setbacks of the I-4 zone?
 - Yes.
- There is actually no industrial use that abuts him other than farming?
 - Correct.



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- On the plot plan you presented, it does illustrate R-40 setbacks and not I-4 setbacks.
 - You're right. This was leftover from when we exploring the subdivision potential.
- Why didn't you just pursue having this rezoned to R-40? It seems like what you're trying to do, but by variance, which I'm not sure is appropriate.
 - Well, it was certainly discussed and felt that the variance route was still the best way to approach it at this point, not having the knowledge of what potentially could be done on the abutting properties, primarily in the Kay property.
- Thinking back to the R-40, and you get the setbacks of the R-40, how would you have, then, been able to subdivide it if you were in the R-40, or get a variance?
 - We wouldn't have to acquire another 30 feet of frontage, or get a variance.
- How would you have cut the land? How would you have split that?
 - Pretty much right down the middle here, and probably have set off a 5-acre lot.
- You then could have built the second house. You still would have been within setbacks, wetland buffer, and all of that. It would have worked?
 - Yes.
- Then an easement or some kind of consideration for a shared driveway, right?
 - Yes.
- Why didn't you request a variance from 170-40D, which indicates no additional structure not conforming to the requirements shall be redacted onto such nonconforming use of land?
 - If I could defer the answer of that to Elena Piekut, I'd prefer to do that, at this point.

Public Hearing opened.

STAFF RECOMMENDATION:

E. Piekut noted that P. Connelly did put 170-40 as the request on the Application Form, although she felt it was more appropriately a different section, wherein she set it as 170-12A, which is what is used generally for a request for a use that is not permitted in that Zoning District. She continued on that 170-40 doesn't apply in this case.

She stated that staff does not oppose the request, but it is important to keep in mind that due to the wetlands onsite, there isn't much potential for significant industrial development there, as well as the fact that the horse farm is in a conservation easement.

Public Hearing closed.

O. Perry moved to approve the Application, based on the fact that the Applicant has met the five criteria for a variance. F.Landford Seconded. Vote (5-1)



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4. OTHER BUSINESS

E. Piekut reminded that on Tuesday, January 9th, 2018, is the Annual Land Use Board Meet & Greet, where the focus will be presenting the Climate Adaptation Chapter of the Master Plan.

The new Recording Secretary was discussed.

5. ADJOURN

O. Perry moved to adjourn. B. Hall seconded. Vote: U/A. Adjourned: 7:26 p.m.

DRAFT



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, December 21, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant appeals an administrative decision regarding permitted uses in the B-4 Zoning District and the definition of “commercial parking facility.”

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-A

ZONING DISTRICT: Hotel/Retail (B-4)

FILE: Z17-23

APPLICANT/OWNER: Mark G. Phillips/Storage Barn, LLC

LOCATION: 387 Sixth Street (Tax Map D, Lot 16-G)

ACREAGE: 3.88 acres (169,000 square feet)

EXISTING LAND USE: N/A

PROPOSED LAND USE: N/A

SURROUNDING LAND USE: N/A

PREVIOUS ZBA ACTION:
Z14-04, conditional approval for self-storage facility
Z08-26, conditional approval for drive-in movie theater

PLANNING BOARD APPROVAL REQUIRED: N/A

ATTACHMENTS: Application

STAFF RECOMMENDATION: N/A

SUMMARY OF APPEAL AND BACKGROUND

Per state law and **Section 170-52.C(1)**, one of the powers of the Zoning Board of Adjustment is “to hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the [Zoning Administrator] in the enforcement of this Chapter (interpretation of ordinance).” See also **170-52.C(2) Interpretation of Chapter**.

Mr. Phillips appeals the Zoning Administrator’s determination that his proposed use for covered storage of recreational vehicles (RVs) and “other large vehicles” does not constitute a permitted use in the Hotel/Retail (B-4) Zoning District.

Mr. Phillips argues that the proposed use meets the definition of Commercial Parking Facility, which is permitted in the B-4:

“COMMERCIAL PARKING FACILITY means an area of OFF-STREET PARKING, where, for a fee, or permit, motor vehicles may be stored for the purpose of temporary, daily, weekly, or overnight OFF-STREET PARKING. Said facility may provide shuttle or park-n-ride services.”

“OFF-STREET PARKING means parking facilities located in city or privately owned lots and STRUCTURES.”

RECOMMENDATION

Staff recommends that the Board review relevant definitions and **Article XIII Administration**, as well as the **Hotel/Retail District Purpose Statement (170-7.B(2)(c))**.

Staff opinion is that a commercial parking facility as defined is clearly oriented toward short-term, rather than monthly or seasonal, vehicle parking. It is commonly understood that “parking” is a relatively brief action charged by the hour or day, if at all, whereas “storage” in this sense involves a long-term action and a long-term relationship (in the case of RVs, a lease with a monthly rate). Further, the proposed use is not consistent with the stated purpose of the zoning district.

**Property Information**

Property ID D0016-G00000
Location SIXTH ST
Owner BLACK DOG REALTY LLC



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

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

Parcels updated 6/13/2017
Properties updated 12/14/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

RECEIVED
Planning Office

Office Use Only Case #:

217.23

Date Received:

NOV 30 2017

Amount Paid:

\$ CK 10289
9278.00

Time Received:

Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: MARK & PHILLIPS Phone # 603-396-1635

Address of Applicant: 35 HODGSON FARM LANE, NEWINGTON NH 03801

E-Mail Address: greatbaynh@comcast.net

PROPERTY OWNER (if different from applicant): BLACK DOG REALTY LLC

Address: SAME AS ABOVE Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: 387 SIXTH STREET

Brief Directions: VACANT LOT TO THE LEFT OF ENTRANCE
TO THE STORAGE BARN AT 385 SIXTH STREET

Zoning District: _____ Assessor's Map # D Lot(s) # 15

TYPE OF APPEAL: (Please check one)

- | | |
|---|--|
| ☐ Variance | from Section _____ of the Zoning Ordinance |
| ☐ Physical Disability Variance (RSA 674:33-V) | from Section _____ of the Zoning Ordinance |
| ☐ Special Exception | per Section _____ of the Zoning Ordinance |
| ☒ Appeal of Administrative Decision | regarding Section <u>170-6</u> of the Zoning Ordinance |
| ☐ Equitable Waiver | per Section _____ of the Zoning Ordinance |

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

WE AT THE STORAGE BARN, ARE RECEIVING REQUESTS FOR
RV (RECREATIONAL VEHICLE) STORAGE AND SEEK TO BUILD
A BARN AND A SHED TO PARK MOTOR HOMES AND
OTHER LARGE VEHICLES UNDER COVER ON THE REAR
PORTION OF THIS 3.88 ACRE LOT ZONED B-4.
AS A COMMERCIAL PARKING FACILITY

SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

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

IMPORTANT

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


Signature of Applicant*


Signature of Owner*

*Both Signatures Required

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I, and my successors, hereby authorize members of the Dover Zoning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:  Date: 11/29/17

APPEAL OF ADMINISTRATIVE DECISION

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

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

This is part of the 27-acre property on upper Sixth Street, locally known for many years as the Weeden Farm. On February 20, 2014, the applicant received a variance to build a self-storage facility. The approvals for The Storage Barn, at 385 Sixth Street, required us to start construction of our buildings 500' back from the road and we are in compliance with that condition.

By designating five acres of wetlands in the far rear of the property as conservation land we were able to create two front lots, under the Transfer of Development Rights ordinance. The front lot to the right of our driveway (383 Sixth St., Map D, lot 16F) has been sold and will soon open as Little Tree Daycare, owned and operated by City Councilor Sarah Greenshields.

The 3.88-acre vacant front lot to the left of our driveway (387 Sixth St., Map D, Lot 16G) remains under our control and is the subject of this discussion. The B-4 zoning (Hotel-Retail) allows a Commercial Parking Facility as a use permitted by right, and is defined in the Dover Zoning Ordinance:

“COMMERCIAL PARKING FACILITY means an area of OFF-STREET PARKING, where, for a fee, or permit, motor vehicles may be stored for the purpose of temporary, daily, weekly or overnight OFF-STREET PARKING. Said facility may provide shuttle or park-n-ride services.”

We informally presented a conceptual plan to the Planning Director and Zoning Administrator to develop the rear portion of this land for storing motor homes or RV's, by erecting a large barn accessed only from the sides and rear with only a large decorative barn door facing the front. Behind this would be a smaller open shed built for the same purpose. We are reserving the front portion of the parcel for a more intensive use, such as a hotel.

After reviewing the concept, the planning director wrote “the zoning administer does not believe that the RV storage meets the definition of an allowed use in the B-4 district.”

We respectfully disagree. If the land can be approved for a park-n-ride facility, where hundreds of cars might be parked in the open for days or weeks at a time, then what makes a building to house or store vehicles not an acceptable use? We are trying to continue our barn theme which the planning board found attractive. Are we allowed to park cars on this land in the open as the ordinance states?

Certainly, structures would contribute a lot more taxable revenue to the city than just a parking lot.

We seek the board's guidance in resolving this request.

Thank you for your time and consideration.

[illegible][illegible]

J/B Jones & Beach Engineers, Inc.
Designed and Produced by BEI

Civil Engineering Services

88 Fitchwood Ave.
PO Box 210
Dover, NH 03828

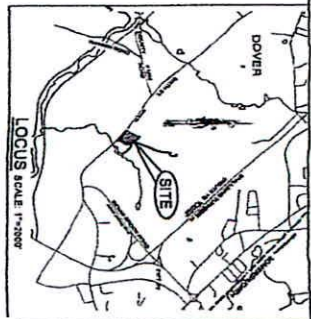
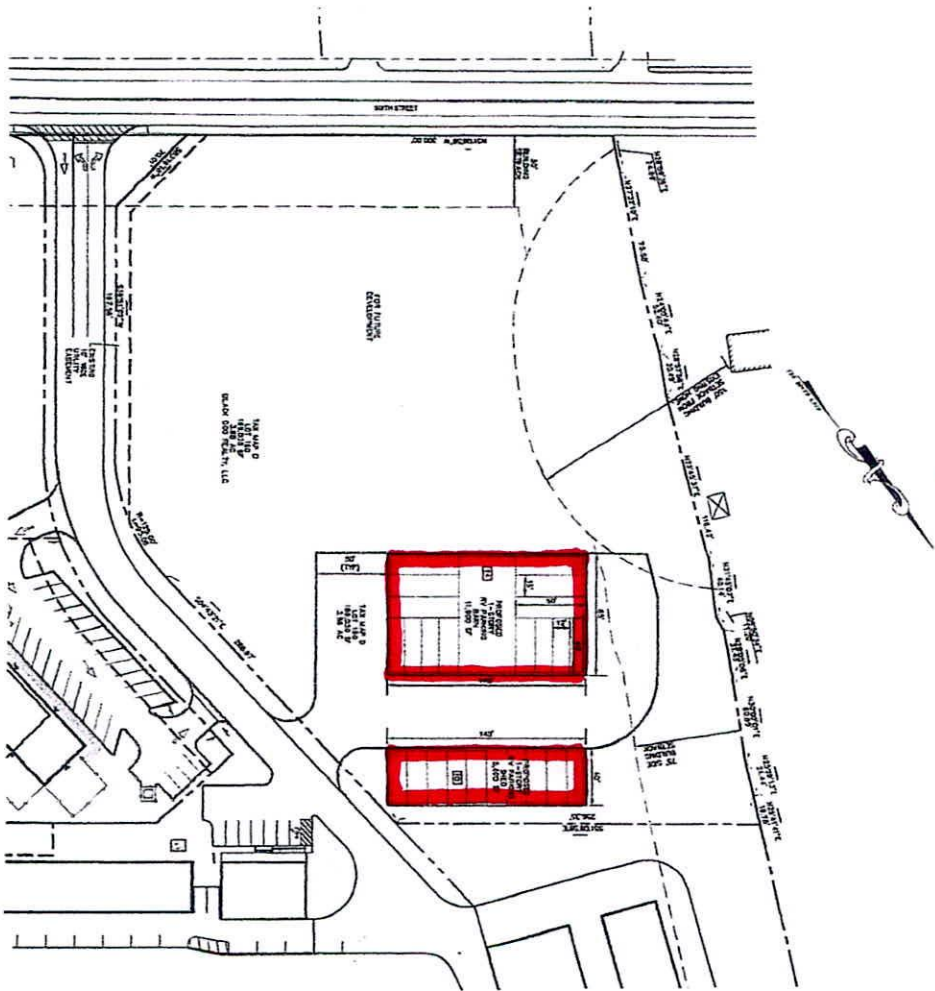
603-773-4740
FAX: 603-772-0237
E-MAIL: JBE@JONESANDBEACH.COM

Plan Item: **CONCEPTUAL SITE PLAN**

Project: **THE STORAGE BARN, LLC
385 & 387 SIXTH STREET, DOVER, NH**

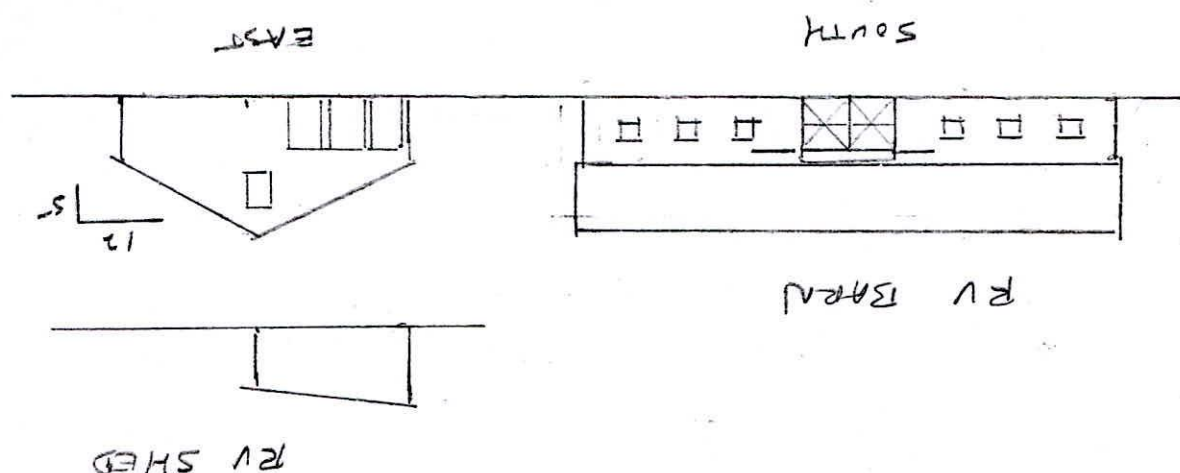
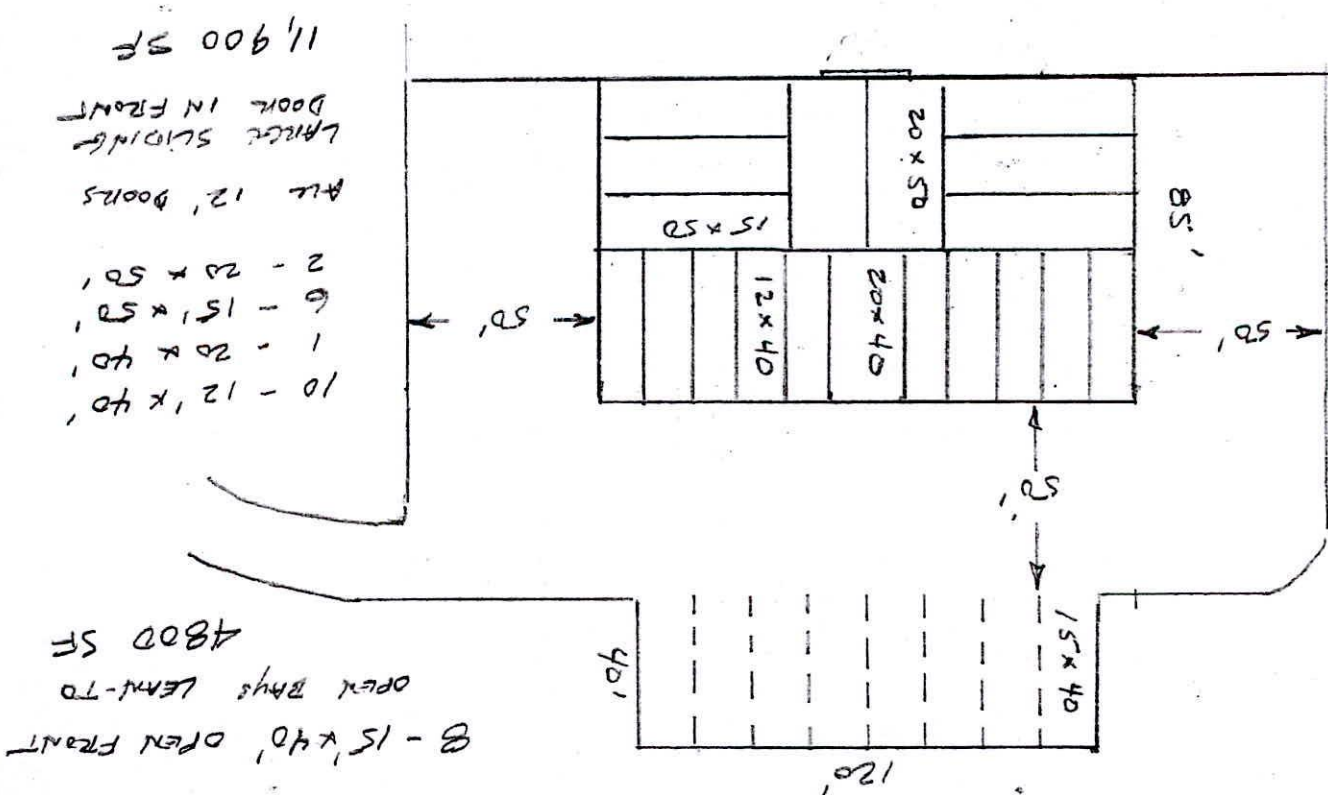
Owner or Applicant: **THE STORAGE BARN, LLC, 35 HIGGSON FARM LANE, NEWINGTON, NH 03301
DAHE I. AND JEFFREY A. WEINER, 387 SIXTH STREET, DOVER, NH 03820**

GRAVITY 11
C2



- [illegible]

[illegible]



Usbelger, Nancy

Subject: FW: 387 Sixth Street, Tax map D, Lot 16-G

From: greatbaynh [<mailto:greatbaynh@comcast.net>]
Sent: Thursday, November 30, 2017 1:02 PM
To: Piekut, Elena <E.Piekut@dover.nh.gov>
Subject: FW: 387 Sixth Street, Tax map D, Lot 16-G

Hi Elena,

I am forwarding Chris' email to me with the decision on November 8th, so I am still within the 30 day appeal period.
Thank you for bringing this to my attention,

Mark

From: Parker, Christopher G. [<mailto:C.Parker@dover.nh.gov>]
Sent: Wednesday, November 8, 2017 8:24 AM
To: greatbaynh <greatbaynh@comcast.net>
Cc: 'Jessica Smith' <jsmith@winsorbrook.com>
Subject: RE: 387 Sixth Street, Tax map D, Lot 16-G

Mark

Sorry for the delay. Upon review, the zoning administrator does not believe that the RV storage meets the definition of an allowed use in the B-4 district.

Chris

Christopher G. Parker, AICP
Assistant City Manager: Director of Planning and Strategic Initiatives
City of Dover, NH
288 Central Avenue
Dover, NH 03820-4169
e: c.parker@dover.nh.gov
p: 603.516.6008 f: 603.516.6049

Dover: First in New Hampshire, First with you!
www.dover.nh.gov
<http://dovernhplanning.tumblr.com/>
Facebook: <https://www.facebook.com/DoverNHPlanning>
Twitter: @DoverNHPlanning

From: greatbaynh [<mailto:greatbaynh@comcast.net>]
Sent: Wednesday, November 08, 2017 8:01 AM
To: Parker, Christopher G.
Cc: 'Jessica Smith'
Subject: RE: 387 Sixth Street, Tax map D, Lot 16-G

Hi Chris,

We haven't heard back from you, so can you please share your thoughts with Jes and me regarding our hotel/RV Barn concept for the 3.88 acres fronting on Sixth Street?

Thank you,

Mark

From: Parker, Christopher G. [<mailto:C.Parker@dover.nh.gov>]
Sent: Saturday, October 14, 2017 5:07 PM
To: greatbaynh <greatbaynh@comcast.net>
Cc: Bird, Steve L. <S.Bird@dover.nh.gov>; Barufaldi, Daniel <d.barufaldi@dover.nh.gov>; 'Jessica Smith' <jsmith@winsorbrook.com>
Subject: RE: 387 Sixth Street, Tax map D, Lot 16-G

Good afternoon Mark

I can do Tuesday at 9, 11 or 5. I am in Concord Wed – Friday, and Monday is booked solid already.

Let me know if Tuesday works for you

Chris

Christopher G. Parker, AICP
Assistant City Manager: Director of Planning and Strategic Initiatives
City of Dover, NH
288 Central Avenue
Dover, NH 03820-4169
e: c.parker@dover.nh.gov
p: 603.516.6008 f: 603.516.6049

Dover: First in New Hampshire, First with you!
www.dover.nh.gov
<http://dovernhplanning.tumblr.com/>
Facebook: <https://www.facebook.com/DoverNHPlanning>
Twitter: @DoverNHPlanning

From: greatbaynh [<mailto:greatbaynh@comcast.net>]
Sent: Friday, October 13, 2017 5:04 PM
To: Parker, Christopher G.
Cc: Bird, Steve L.; Barufaldi, Daniel; 'Jessica Smith'
Subject: 387 Sixth Street, Tax map D, Lot 16-G

Hi Chris,

Jessica and I have come up with an exciting proposal for the 3.88 acre front lot at our Sixth Street storage facility that we think you will like.

Do you have any time next week to meet for an informal review of our conceptual plan?

Thanks,

Mark

Mark G. Phillips
The Storage Barn
385 Sixth Street, Dover, NH 03820
Office: 603-742-0900
Mark's cell: 603-396-1635
Jes' cell: 603-396-1637
greatbaynh@comcast.net

Z17-23

387 Sixth Street

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
D0014-03B000	69 VENTURE DR	69 VENTURE DRIVE REALTY LLC		P O BOX 695	NORTH HAMPTON	NH	03862
D0014-001000	67 VENTURE DR	MSN PROPERTIES LLC		67 VENTURE DR	DOVER	NH	03820
D0014-03A000	53 VENTURE DR	EVEREST CO INC	C/O LEPAGE BAKERIES	PO BOX 1900	AUBURN	ME	04211-1900
D0014-003002	VENTURE DR	69 VENTURE DRIVE REALTY LLC		P O BOX 695	NORTH HAMPTON	NH	03862
D0016-E00000	401 SIXTH ST	DUBE DENNIS D JR &	DUBE KIMBERLY J	401 SIXTH ST	DOVER	NH	03820-5906
D0016-C00000	399 SIXTH ST	SAWYER EDWARD M &	SAWYER VALERIE C	399 SIXTH ST	DOVER	NH	03820
D0014-002000	71 VENTURE DR	SARNIA PROPERTIES INC	C/O CP MANAGEMENT	11 COURT ST STE 100	EXETER	NH	03833
D0016-F00000	SIXTH ST	BRADFORD DAWN REAL ESTATE LLC		PO BOX 405	RAYMOND	NH	03077
D0016-G00000	SIXTH ST	BLACK DOG REALTY LLC		35 HODGDON FARM LN	NEWINGTON	NH	03801
D0013-000000	VENTURE DR	CRAMER JOHANNES		20 VENTURE DR	DOVER	NH	03820
D0016-000000	385 SIXTH ST	STORAGE BARN LLC		385 SIXTH ST	DOVER	NH	03820
		MARK PHILLIPS		35 HODGDON FARM LANI	NEWINGTON	NH	03801
		JONATHAN RING P.E.	JONES & BEACH ENGINEE	85 PORTSMOUTH AVE	STRATHAM	NH	03885



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers, City Hall – 288 Central Ave. Dover, NH 03820
Meeting Date:	Thursday, December 21, 2017
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance from the front build-to line to permit a front setback of approximately 95 feet.

UNITS PROPOSED: One

AGENDA ITEM #: 3-B

ZONING DISTRICT: Low Density Residential (R-20)

FILE: Z17-24

APPLICANT/OWNER: Margaret M. Gabriel Revocable Trust

LOCATION: Dover Point Road (Tax Map L, Lot 99)

ACREAGE: 1.86 acre (81,000 square feet).

EXISTING LAND USE: Vacant

PROPOSED LAND USE: Single-family dwelling

SURROUNDING LAND USE: Single-family dwellings

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Yes, Conditional Use Permit for Wetland Buffer impacts

ATTACHMENTS: Application

STAFF RECOMMENDATION: Staff supports the variance request.

SUMMARY OF APPEAL AND BACKGROUND

The property is located between Dover Point Road and the Piscataqua River but does not have frontage on Dover Point Road. The property line closest to the road is considered to be the front and is thus subject to the build-to line requirement.

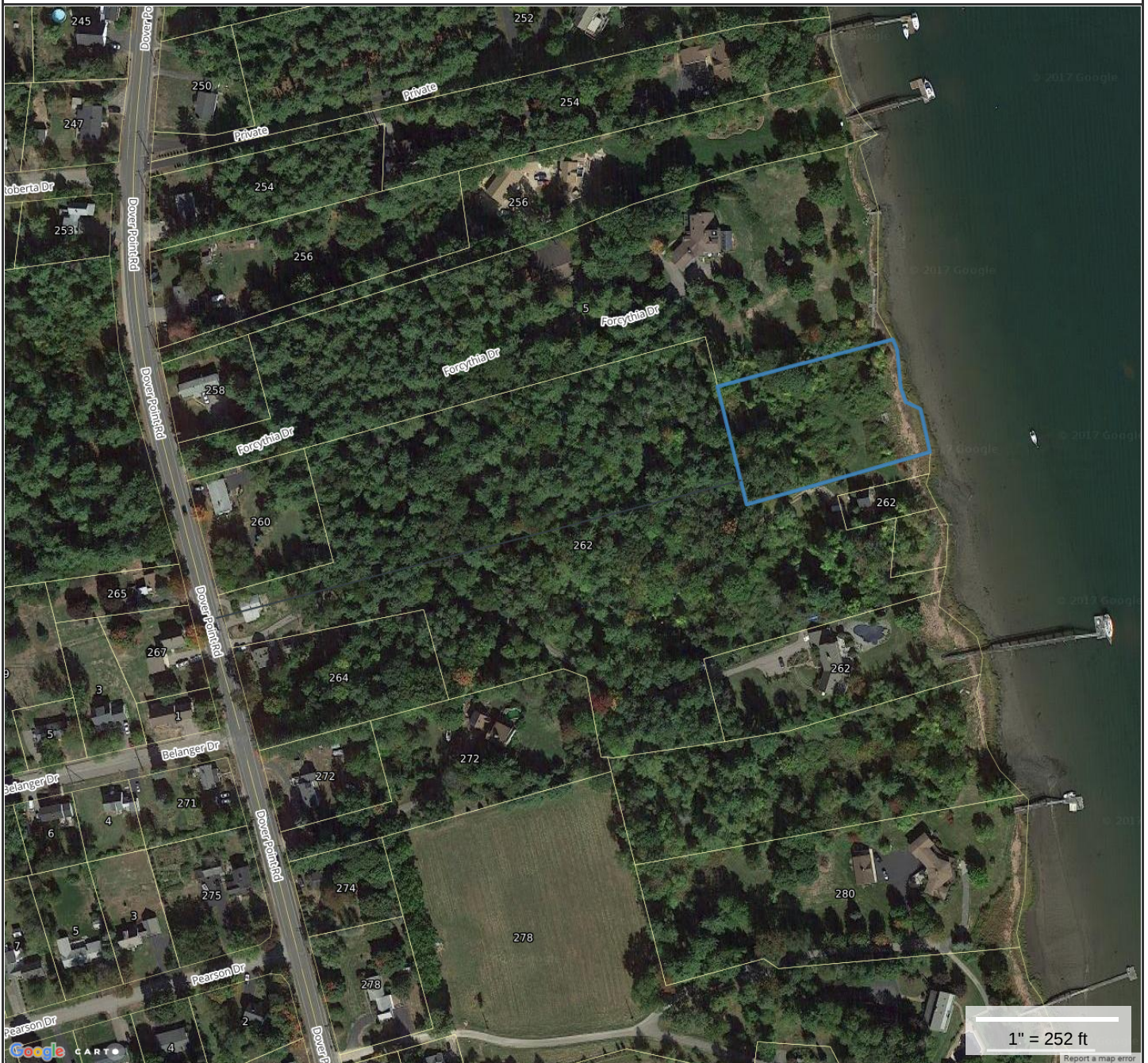
The Applicant requests a variance to permit a front setback of approximately 95 feet.

REASON FOR STAFF RECOMMENDATION

The property is unique both in that it does not front on a road and in that an easement crosses the front yard. The intent of the build-to line is to create continuity and consistency among neighborhoods and their streetscapes. This lot is approximately 900 feet from Dover Point Road, and in this case requiring the structure to meet the R-20 build-to line does not meet the spirit and intent of the ordinance.

RECOMMENDATION

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

**Property Information**

Property ID L0099-000000
Location DOVER POINT RD
Owner GABRIEL MARGARET M TRUSTEE



**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 6/13/2017
Properties updated 12/14/2017



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Adopted: August 16, 2012]

<i>Office Use Only</i>	Case #: _____	Date Received: _____
	Amount Paid: \$ _____	Time Received: _____

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: Margaret M. Gabriel, Trustee of the
Margaret M. Gabriel Revocable Trust Phone # (603) 767-9163

Address of Applicant: 270 Gulf Road, Dover, Strafford County, New Hampshire, 03820

E-Mail Address: Dan Gabriel / dgabriel90@aol.com

PROPERTY OWNER (if different from applicant): Same

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: Dover Point Road, Dover, NH

Brief Directions: _____

Zoning District: R-20 Assessor's Map # L Lot(s) # 99

TYPE OF APPEAL: (Please check one)

☒ Variance

☐ Physical Disability Variance (RSA 674:33-V)

☐ Special Exception

☐ Appeal of Administrative Decision

☐ Equitable Waiver

Section 170-12 (B)
from Section _____ 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

DESCRIBE BRIEFLY YOUR PLANS FOR THE PROPERTY:

To construct a single family residence.

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

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

See attached.

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

Please demonstrate compliance with the following:

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

See attached.

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

See attached.

3. Granting the variance would do substantial justice because:

See attached.

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

See attached.

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:

See attached.

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:

See attached.

and

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

See attached.

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:

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

THIS SECTION TO BE COMPLETED BY EQUITABLE WAIVER APPLICANTS ONLY

An Equitable Waiver of Dimensional Requirements is requested from Article _____ Section _____ of the Zoning ordinance to permit _____

Not applicable

1. Does the request involve a dimension requirement, not a use restriction? yes no

Not applicable

2. a) Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the city **OR** b) explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser **AND** how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

Not applicable

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.

Not applicable

4. Explain how the cost of correction far outweighs any public benefit to be gained.

Not applicable

NOTE: The Board must find in the affirmative on all four questions or the request must be denied

APPEAL OF ADMINISTRATIVE DECISION

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

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

Not applicable

SPECIAL EXCEPTION REQUIREMENTS

THIS SECTION TO BE COMPLETED BY SPECIAL EXCEPTION APPLICANTS ONLY

A. General Special Exception Requirements (as set forth in §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.

Not applicable

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

Not applicable

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 or 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.

Not applicable

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

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

A. Not applicable

B.

C.

D.

E.

F.

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.

Margaret M. Gabriel Trustee
Signature of Applicant*

Margaret M. Gabriel 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:

Margaret M. Gabriel Trustee Date: 11-29-17

ABUTTER LIST

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

Pursuant to RSA 676:7, the State Law of New Hampshire, the City of Dover is required to notify the applicant and every abutter of the public hearing by certified mail. The cost of required publication or posting of notice, and the cost of mailing said notices, shall be paid by the applicant.

"Abutter" is defined in Chapter 170, Dover Zoning Ordinance, as:

The owner of record of a parcel of land located in New Hampshire and adjoins or is directly within **two hundred (200) feet** (including land across the street or waterway) of the proposed site under consideration by the Board.

In the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356-B: 3, XXIII. Additionally, the individual owners of units within the association, which are located within two hundred (200) feet of the common property line shall be notified only by first class mail.

PLEASE NOTE: abutter ownership information for lots located in Dover, shall be obtained through the City's Tax Assessment Office.

[illegible]

Abutters List

**Margaret M. Gabriel, Trustee of the
Margaret M. Gabriel Revocable Trust**

Variance Application
Dover Point Road
Tax Map L, Lot 99
Dover, New Hampshire

Page 1 of 1

OWNER/APPLICANT:

Map L, Lot 99

Margaret M. Gabriel, Trustee of the
Margaret M. Gabriel Revocable Trust
270 Gulf Road
Dover, NH 03820

ABUTTERS:

Map L, Lot 97

Neal I. Nowick
Jeanna R. Nowick
5 Forsythe Drive
Dover, NH 03820

Map L, Lot 98

Margaret M. Gabriel, Trustee of the
Margaret M. Gabriel Revocable Trust
270 Gulf Road
Dover, NH 03820

Map L, Lot 100

Richard D. Curley
262 A Dover Point Road
Dover, NH 03820

Map L, Lot 101

Margaret M. Gabriel, Trustee of the
Margaret M. Gabriel Revocable Trust
270 Gulf Road
Dover, NH 03820

PROFESSIONALS:

Kevin McEneaney, LLS
McEneaney Survey & Associates, Inc.
PO Box 681
Dover, NH 03821-0681

Attorney:

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

Introduction

The property subject to this application is adjacent to 262 Dover Point Road and is depicted on the City's Tax Maps at Map L, Lot 99 (a portion of the tax map is attached hereto). The property is located within the R-20 zone. The property is comprised of 1.45 +/- acres, or 63,350 +/- square feet. The parcel was created prior to the adoption of zoning requirements requiring frontage, and, as such is unique, given its lack of frontage and its access point to Dover Point Road through a shared driveway across an adjacent parcel, and given the location of a utility easement along the westerly ("front") portion of the property that is closest to Dover Point Road, and given the location of a band of wetlands and wetland buffer along the southerly ("side") portion of the property. The easement and location of the wetlands and wetland buffer are depicted on the plan, entitled Variance Application Plan, attached hereto.

The intent of the Applicant is to build a single family residence on the parcel. The lot is intended to be used for the construction of a single-family dwelling which will comply with all of the zoning restrictions within the R-20 zone, except for the front build to line which requires 20 foot minimum and 35 foot maximum. In this instance, given the location of the utility easement and the location of the wetlands and wetland buffer, and given the need for a driveway with a turnaround for oil truck deliveries, etc., as there is no road frontage, the front portion of the proposed construction is to be located a maximum of 95 feet from the westerly portion of the parcel. Although it was assumed that the build-to-line requirement does not apply to this lot due to lack of frontage along Dover Point Road, the Applicant is advised that Dover Planning considers the westerly side of the parcel to be the "front" of the parcel, from which the frontage build-to-line should be measured.

Within the Table of Dimensional Requirements for the Low Density Residential (R-20) District, there is a provision for new construction which requires a "build-to-line," as opposed to the traditional front yard setback, that permits, but does not require, a structure to be built to that setback point. In this case, pursuant to the District Regulations of the R-20 zone, the front "build-to-line" is between a 20 foot minimum and a 35 foot maximum. Rather, given the location of the utility easement and the location of the wetlands and wetland buffer, the Applicant seeks to locate the house in a location that is sensitive to the context of the lot, which appears to be river-fronted homes. Specifically, the Applicant seeks to locate the home within 95 feet of the westerly "front" of the parcel, as depicted on the proposed Variance Application Plan. Thus, the Applicant is seeking a variance from Article IV, Section 170-12 (B) of the Dover Zoning Ordinance, which requires compliance with a build to line, as described above, and as set forth in the Low Density Residential (R-20) District Regulations Summary, in order for construction to be located as depicted on the proposed Variance Application Plan."

Variance Requirements:

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 such development has already occurred, all of these reasons are consistent with the purpose behind the Low Density Residential District (R-20), which provides for conventional single-family neighborhoods on lots not less than 20,000 square feet. In addition, by allowing the location of the single-family residence as depicted, the purpose of the "build to line" will be preserved, as the area represents a context sensitive design, given the other waterfront homes within the area. 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, 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 was granted, the spirit of the ordinance would be observed as the use in question is suitable, considering the surrounding properties, the need to build beyond the existing utility easement and in order to protect existing wetlands and its associated buffer, and therefore result in an encouragement of the most appropriate use of the land. In addition, by allowing the location of the single-family residence as depicted, the purpose of the "build-to-line" will be preserved, as the area represents a context sensitive design, given the other waterfront homes within the area. Further, the proposed use is consistent with the purpose behind the Low Density Residential District, which mainly is to provide for conventional single-family neighborhoods on lots not less than 20,000 square feet.

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 similar fashion to other properties located within the area, by allowing the location of a structure, in a location that is even possible and that would be consistent with the context of the area, where waterfront homes exist. This test considers whether the benefit to the Applicant outweighs the burden to the public. In this instance, given the proposed location of the structure and the other described limitations of the site, 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. The value of surrounding property will not be diminished because:

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 located upon the Applicant's property. In this instance, the location of the structure in the area sought by the Applicant will have no affect upon any abutter, with respect to its property, as the use will be consistent with other uses in the near vicinity, and consistent with the existing zoning. In addition, the lot is unique, given the shared driveway access, the location of a utility easement along the "front" of the parcel and given the location of wetlands and wetland buffer.

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:

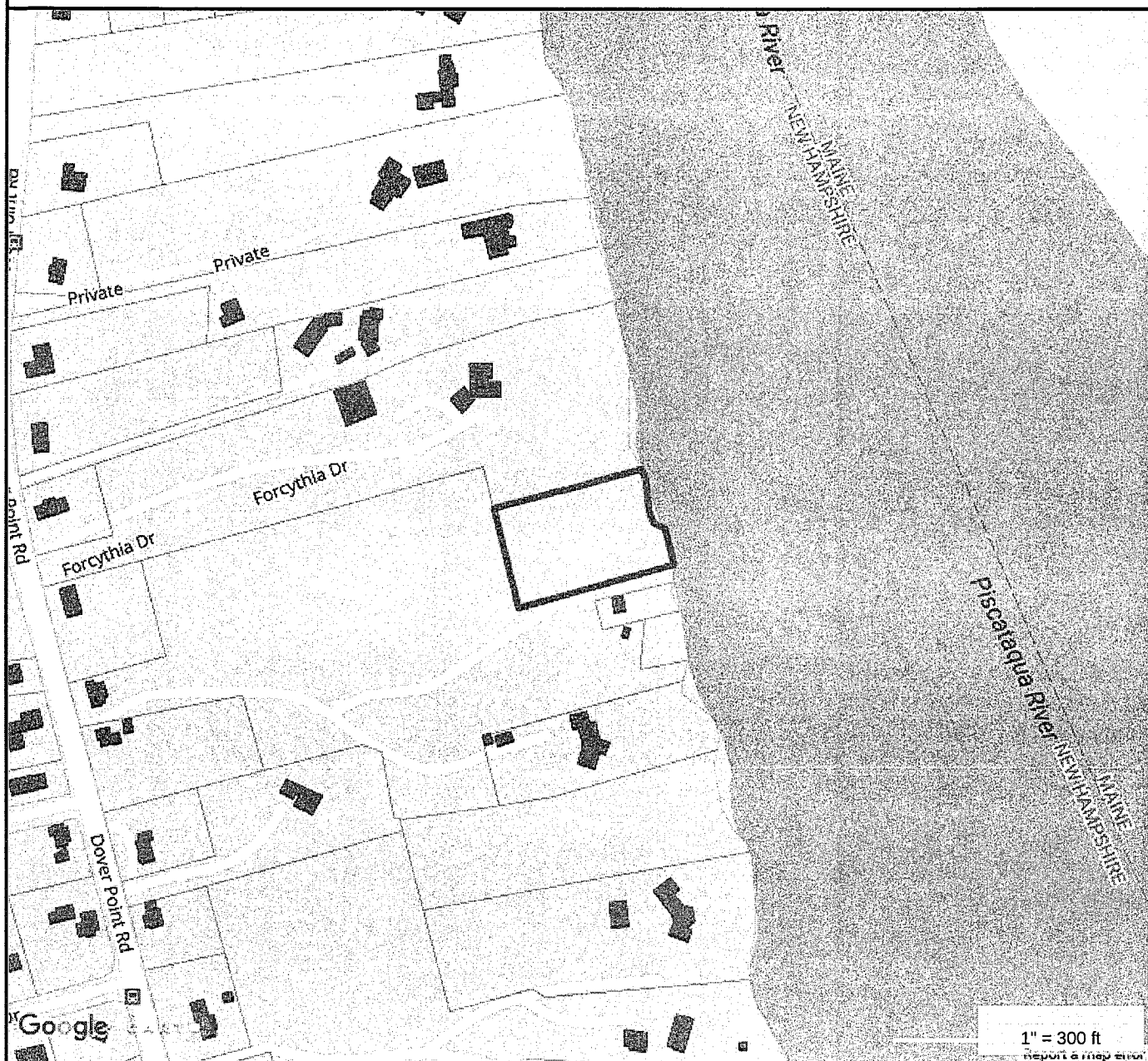
As one can see from the enclosed tax map, the subject parcel in this case is significantly different than the parcels that are located in the same vicinity as it does not have traditional frontage, but an access from a shared driveway. In addition, the parcel is burdened by a utility easement and wetlands and associated buffers that result in a limited area for possible development, which area cannot satisfy the build-to requirements.

(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 because:

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 within the area depicted on the Plan. Further, the purpose of the "build-to-line" is geared to context sensitive design, and, in this case the context appears to be river-fronted homes. As such, and given the need to protect the integrity of the utility easement and the wetlands and wetland buffer on the parcel, in this setting, the purposes of the ordinance will be preserved. Thus, the Applicant respectfully submits that there is no relationship between the general public purpose of the ordinance, and the specific application of the restriction, which would require a structure to be built within the required build-to-line.

(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 "context sensitive," given the other waterfront homes within the area, while protecting the utility easement and wetlands and wetland buffer.

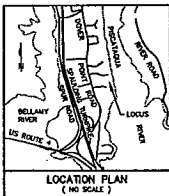
**Property Information**

Property ID L0099-000000
Location DOVER POINT RD
Owner GABRIEL MARGARET M TRUSTEE

**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 6/13/2017
Properties updated 11/29/2017



REFERENCE PLANS:

- 1) PLAT OF LAND(S) - PHYLIS CARABELAS HOLT - DOVER ASSESSORS MAP L, LOTS 98, 99, 100 & 101, 262 DOVER POINT ROAD / PISCATAQUI RIVER, DOVER, NEW HAMPSHIRE, SCALE: 1" = 50'; DATED: NOVEMBER 12, 1997, REVISED THROUGH 11/20/98; BY: LAND TECHNICAL SERVICES, REFERENCE S.C.R.D. PLAN 53-51.
- 2) MINOR LOT LINE ADJUSTMENT - PETER & JOYCE FORSYTHE TAX MAP L, LOT 97A WITH PHYLIS CARABELAS HOLT TAX MAP L, 98 DOVER POINT ROAD / PISCATAQUI RIVER, DOVER, NEW HAMPSHIRE, SCALE: 1" = 50'; DATED: NOVEMBER 1998, REVISED THROUGH 12/14/98; BY: LAND TECHNICAL SERVICE CORP., RECORDED S.C.R.D. PLAN 55-50.

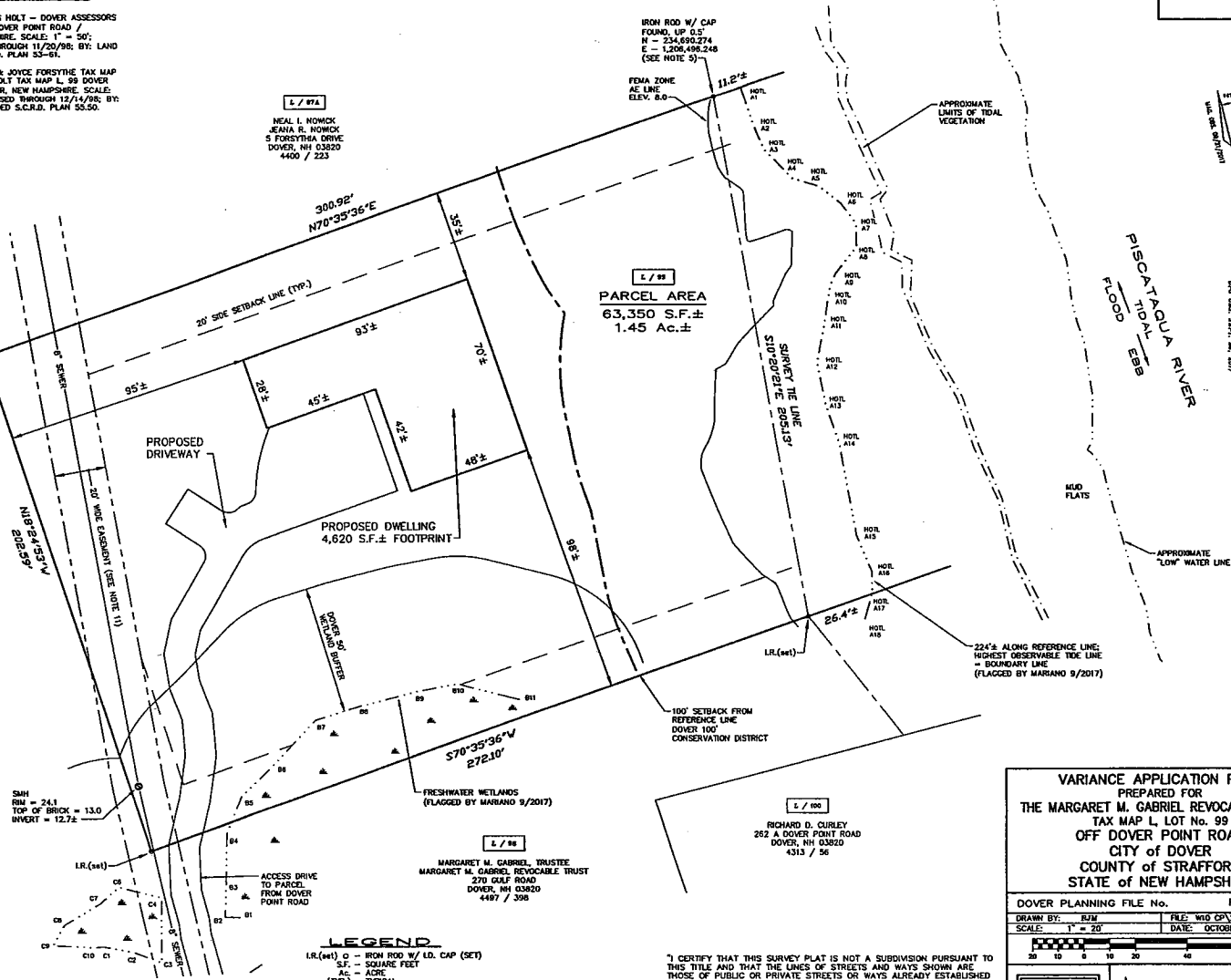
L / 97A
NEAL I. NOWICK
JEANA R. NOWICK
5 FORSYTHA DRIVE
DOVER, NH 03820
4497 / 223

IRON ROD W/ CAP
FOUND, UP 0.5'
N - 234,690.274
E - 1,206,498.248
(SEE NOTE 5)

L / 98
PARCEL AREA
63,350 S.F.±
1.45 Ac.±

NOTES:

- 1) OWNERS OF RECORD:
MARGARET M. GABRIEL, TRUSTEE
MARGARET M. GABRIEL, REVOCABLE TRUST
270 GULF ROAD
DOVER, NEW HAMPSHIRE 03820
S.C.R.D. VOL. 4497, PAGE 400
- 2) **L / 98** - DENOTES TAX MAP AND PARCEL NUMBER.
- 3) PLAN INTENT:
- TO DESCRIBE THE SUBJECT PARCEL.
- TO SHOW THE PROPOSED LOCATION OF A DWELLING TO BE SITUATED UPON THE SUBJECT PARCEL, TO ACCOMPANY A VARIANCE APPLICATION REQUESTING RELIEF FROM THE FRONT BUILDING BUILD-TO-REQUIREMENT OF 20 FEET MINIMUM AND 35 FEET MAXIMUM.
- 4) PARCEL AREA = 63,350 S.F.± / 1.45 Ac.±
REFERENCE LINE IS BOUNDARY LINE AT RIVER.
- 5) BASIS OF BEARINGS IS NH STATE PLANE GRID FROM GPS OBSERVATION TAKEN ON SEPTEMBER 26, 2017. VERTICAL DATUM IS NAVD83 FROM GPS OBSERVATION TAKEN ON SEPTEMBER 26, 2017.
- 6) ZONING DISTRICT IS LOW DENSITY RESIDENTIAL (R-20) DISTRICT
MINIMUM LOT SIZE = 20,000 S.F.
MINIMUM LOT COVERAGE = 30 PERCENT
MINIMUM LOT FRONTAGE = 125 FEET
SETBACK REQUIREMENTS:
FRONT BUILD TO = 20 FEET MINIMUM
SIDE = 35 FEET MINIMUM
REAR = 35 FEET MINIMUM
OUTBUILDINGS:
SIDE = 10 FEET
REAR = 10 FEET
MAXIMUM BUILDING HEIGHT = 35 FEET
- 7) A PORTION OF THE SUBJECT PARCEL IS LOCATED WITHIN THE 0.2 PERCENT ANNUAL CHANCE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330145; PANEL 0340; SUFFIX E; MAP NUMBER 330703040E; EFFECTIVE DATE SEPT. 30, 2015. ZONE AE - ELEVATION 8.
- 8) PARCEL IS SUBJECT TO THE STATE OF NEW HAMPSHIRE SHORELINE WATER QUALITY PROTECTION ACT (SWOPA). THOSE AREAS WITHIN 250 FEET OF THE REFERENCE LINE (HOTL AS DELINEATED BY MICHAEL MARIANO AND FIELD LOCATED BY THIS OFFICE).
- 9) PARCEL IS SUBJECT TO THE STATE OF NEW HAMPSHIRE WETLANDS BUREAU. THOSE AREAS BELOW THE SHORELAND REFERENCE LINE IF WORKING IN THIS AREA, WETLAND JURISDICTION EXTENDS TO 100 FEET ABOVE THE REFERENCE LINE.
- 10) FRESHWATER WETLAND AND HOTL LINES DELINEATED BY MICHAEL MARIANO DURING SEPTEMBER 2017 AND FIELD LOCATED BY THIS OFFICE.
- 11) THE PARCEL IS SUBJECT TO A TWENTY (20) FOOT WIDE EASEMENT FOR SENIORS AND APPURTENANCES, INCLUDING THE MANNER OF ENTRY AND INSPECTION FEES FOR TEN STUBS, AS DESCRIBED IN S.C.R.D. BOOK 1008, PAGE 7.



- LEGEND**
- IR.(Ht) ○ - IRON ROD W/ LD. CAP (SET)
 - S.F. - SQUARE FEET
 - AC. - ACRE
 - (TYP.) - TYPICAL
 - ± - MORE OR LESS
 - S.C.R.D. - STRAFFORD COUNTY RECORDS OF DEEDS
 - SWH - SEWER MAINHOLE
 - H.O.T.L. - HIGHEST OBSERVABLE TIDE LINE
 - SWOPA - SHORELAND WATER QUALITY PROTECTION ACT
 - R.O.W. - RIGHT OF WAY
 - WETLANDS
 - W - EDGE OF WETLAND
 - A1 - WETLAND FLAG LD.

"I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN." (RSA 676:18)

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

11/23/17
DATE: / KEVIN M. McNEANEY LLS # 801

VARIANCE APPLICATION PLAN
PREPARED FOR
THE MARGARET M. GABRIEL REVOCABLE TRUST
TAX MAP L, LOT No. 99
OFF DOVER POINT ROAD
CITY OF DOVER
COUNTY OF STRAFFORD
STATE OF NEW HAMPSHIRE

DOVER PLANNING FILE No. P 17-
DRAWN BY: RJM FILED W/DO 11/21/17
SCALE: 1" = 20' DATE: OCTOBER 24, 2017



Mcneaney
Survey
Associates, Inc.

P.O. Box 681 - 24 CHESTNUT STREET
DOVER, NH 03820 (603) 742-0911

SURVEYING - PLANNING - CONSULTING

NO.	DATE	DESCRIPTION	BY	CHK
17-2156	VARIANCE APP	17-05	69-73	
PROJECT NO	TYPE	FIELDBOOK & PAGES		