



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, June 21, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Chris Prior (Chair), Bob Hall (Vice Chair), Frank Landford, George Reagan, Nick Couturier (Alternate), Rich Onufry (Alternate), Anthony Sillitta (Alternate)

Members Absent: Otis Perry

Staff Present: Elena Piekut (Assistant City Planner, Zoning Administrator)

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

2. APPROVAL OF MEETING MINUTES OF MAY 17, 2018

Motion: George Reagan moved to approve the meeting minutes of April 19, 2018 as written. Bob Hall seconded.
Vote: U/A

3. HEARINGS

- A. Z18-11 Applicant/Owner Robyn Thompson, 321 Back Road (Tax Map M, Lot 105), located in the Rural Residential (R-40) Zoning District, requests a variance from **Section 170-12.A** of the Zoning Ordinance to permit the keeping of a horse in a barn set back approximately 95 feet and 72 feet from the two closest lot lines, on a 1.24 acre (54,014-square-foot) lot, where the keeping of farm animals in the R-40 Zoning District is only permitted on a lot of 100,000 square feet (2.3 acres) or more, and where any shelter used to contain said animals is no less than 100 feet from any property boundary.

Robyn Thompson provided an overview of the request and presented information supporting her application. The Board had no questions.

Public hearing opened.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated that the Planning Department supports the variance request as the intent to maintain proper density and prevent impacts to abutters is met and the Applicant has supplied supporting information from abutters and experts on the care of her horse.

Public hearing closed.

Motion: Bob Hall moved to grant the variance with the condition that only one horse be allowed. Frank Landford seconded. Chair Chris Prior asked Nick Couturier to vote on the case. Vote: U/A.

- B. Z18-12 Applicant/Owner Aramis Black/Real McKoy Properties, LLC, 301 Durham Road (Tax Map H, Lot 1), located in the Hotel/Retail (B-4) Zoning District, requests a variance from **Section 170-12.A** of the Zoning Ordinance to permit an assisted living facility, where assisted living facilities are not permitted in the B-4 Zoning 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, June 21, 2018**
Meeting Time: **7:00 pm**

Attorney FX Bruton, Bruton & Berube, represented the applicant and provided an overview of the request and how it meets the five variance criteria, as well as its differences from the previously approved variance for an elderly assisted care home.

Chair Chris Prior appointed Rich Onufry to vote on the case.

Rich Onufry asked what was compromised in order to double the number of beds in the facility. FX Bruton explained that the included floor plan was tentatively approved by the State agency that licenses these facilities. Chris Prior asked about the difference between the previous type of facility and requested type of facility with regard to vehicles and Atty. Bruton explained that residents of the proposed facility will not be driving. Rich Onufry asked for clarification about operations and staffing, and Atty. Bruton explained there will be 24-hour staff.

Public hearing opened.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut said that staff does not oppose granting the variance, as the increase in intensity will result in minor site plan changes that will be reviewed by the Planning Board. She noted that the use is similar to that of a hotel, which is allowed in this zoning district.

Public hearing closed.

Rich Onufry moved to grant the variance. George Reagan seconded. Vote: U/A

- C. Z18-07 Applicant Industrial Tower and Wireless, LLC and Owners Peter and Susan Rousseau, 200 Henry Law Avenue (Tax Map K, Lot 1), located in the Rural Residential (R-40) Zoning District, request a variance from **Section 170-22.C(1)** of the Zoning Ordinance to permit the construction of a new, 180-foot tall telecommunications tower on the above referenced property, where the construction of new telecommunications towers is only permitted on 15 parcels specified by the Zoning Ordinance.

Chair Chris Prior recused himself from hearing the case and left the table.

Vice Chair Bob Hall explained the process used to review the case and its progression to this point.

Nick Couturier also recused himself from hearing the case, as he had engaged in discussion on the case on social media.

George Reagan moved to remove the case from the table. Rich Onufry seconded. Vote: U/A

Attorney Steve Grill represented the applicant. He addressed the additional information requested at the previous meeting and the response he submitted. He clarified that negotiations had occurred to erect a tower at 101 Back Road, and that a tower of 205 feet in height exists at 286 Middle Road. He noted that most of the information that the Board is asking about will be subject to peer review and that the Applicant provided data to the peer review consultant today. Atty. Grill acknowledged that the Dover Heritage Commission had met as requested and agreed with the Applicant's consultant, Public Archaeology Laboratory. He addressed the request for information about T-Mobile's method of prioritizing coverage gaps and said that he has been told T-Mobile does not divulge that information. He addressed the balloon test held June 9 and said that the Applicant did their best to obtain as many



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, June 21, 2018**
Meeting Time: **7:00 pm**

photos as possible from the sites identified by staff the previous afternoon. He said the Applicant agrees with notifying all abutting municipalities of potential impact as suggested by staff. He said he would defer addressing the five variance criteria until the end of the process.

Vice Chair Bob Hall asked for clarification about the negotiations with the owner of 101 Back Road and whether a tower at that location would have addressed the coverage gap. Atty. Grill said that the location was close enough that a tower at a sufficient height would have worked, but the landlord's terms were not commercially viable. He added that T-Mobile already has an antenna at 286 Middle Road and an additional tower would not have helped.

Frank Landford moved to reopen the public hearing. George Reagan seconded. Vote: U/A

Public hearing opened.

Bob Hall noted that the forthcoming peer review will address much of the information the Board and public still need. He read a letter into the record at the request of Norm Fracassa, 1 Penny Lane:

“Ms. Piekut and Mr. Parker-

Here is my letter we discussed yesterday regarding the application for variance on Henry Law Avenue. Thank you for distributing it to the members of the ZBA and please have it read into the minutes of tonight's meeting as I am unable to attend.

Thank you.

-Norm Fracassa

1 Penny Lane

To: Dover Zoning Board of Adjustment

I am a resident at 1 Penny Lane in Dover and attended the Zoning Board site walk on Saturday, June 9 regarding the application for a variance to install a 15 story cell tower on land that is not zoned for this activity.

I wanted to write you to convey my concerns that took place that day that play a role in the decision process.

1) When I arrived with my neighbor we saw cars but no people. I did see the property owner and when I asked where people were meeting he replied there was no meeting and indicated that we were to view the balloon from where I was standing at the entrance to his property. It was not until city staff and ZBA members came walking down from the site that my neighbor and I felt comfortable taking part in the site walk. Frustrating at the least. Deceptive.

2) Was the height of the balloon set exactly at 180'? I posed this question to city staff and ZBA staff on site that day so I made my concerns known at that time. I'd like the city to confirm whether it was at 180' and if so, what is the basis for knowing this? I do not believe the balloon was anywhere close to 180' and many others also voiced their concerns regarding the portrayal of the potential cell tower height. All I could do that day was compare the balloon to the electrical lines side by side. It is my understanding the electrical lines are at 40' in height. I generously estimate the balloon at another 80' above that which would still put it at least 60' short if it's planned height.



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, June 21, 2018**
Meeting Time: **7:00 pm**

The upcoming June 21 ZBA meeting will be the third time this applicant will have to make its case which is quite frustrating. I am not sure if this is typical but it seems incredibly accommodating to allow an applicant multiple opportunities to state their case and answer questions they should have been prepared to answer the first time.

As is probably very clear from this email, I (along with many of my fellow neighbors) am against the ZBA granting a variance for this use. I would have seriously reconsidered purchasing my property if I knew that this was possible just as I made sure surrounding property was not zoned for gas stations, restaurants, industrial, etc... The applicant has not provided facts (only vague opinion) as to the need, priority level, what is adequate coverage, current coverage, post coverage, or how that is measured for this project. Their own graphics showed that this project won't even achieve their goal of full coverage in this area.

In addition to the multiple reasons to deny this variance, equally important, if not more, is the precedent setting that if approved this will make. Months from now another company can find a land owner to accept their money offer to erect a tower and when the city says no they will point to this situation and say, you allowed them, now you have to allow us.

Thank you for taking the time to listen and to consider my concerns.

Sincerely,

Norm Fracassa

1 Penny Lane Dover"

Tom Hackett, 43 Samuel Hanson Avenue, stated that there are now 80 signatures on a petition opposing the tower and that that indicates it is not in the public interest. He criticized the Applicant's assumption that 1/3 of the people in the coverage area could be T-Mobile customers, as T-Mobile only represents 17 percent of market share. He suggested that if none of the 15 permitted new tower locations will satisfy the coverage need, that the Applicant be required to review industrially and commercially zoned lots before requesting a variance in a residential zoning district. He noted that 45 Littleworth is listed as an existing tower location but that it is not shown on coverage maps and that T-Mobile's Garrison Hill facility is not on the provided table. He brought up the possibility of a Distributed Antenna System (DAS) and asked why it won't work. He said that he also took photos of the balloon and that it was visible from George's Marina, the veterans' memorial at Pine Hill Cemetery, and the steps of City Hall. He noted that an antenna will be larger than the balloon and that it will be more visible in the fall and suggested renderings of fall conditions. He addressed the Applicant's statement that power lines and AM radio towers render the property "already compromised," suggesting that a tower would also compromise the property and cause further harm. He addressed property values, saying that the risk that they will be negatively affected is borne by the abutting property owners.

Eric Borrin, 117 Back Road, stated his concern that the applicant is "peppering the record" with variations of an argument and citing examples of different definitions. He is concerned that they have represented that a tower at 101 Back Road would have worked although the site is 120 feet lower in elevation than the proposed site. He believes their figures are a misrepresentation of customers and that there is no proof that property values won't be reduced. He suggested the Applicant offer a bond for a guaranteed period to compensate any property owners who suffer a loss in a sale.



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, June 21, 2018**
Meeting Time: **7:00 pm**

Atty. Grill responded to comments about the number of customers available to T-Mobile, saying that the number presented is not relative to market share. He said it was intended to exclude children and those who don't use mobile services, and that 1/3 was a conservative estimate of potential customers, as federal law is intended to provide equal opportunity to provide wireless service. Discussion ensued regarding clarifying these numbers and what they intend to represent.

Kevin Delaney of Industrial Tower and Wireless, LLC said he would be happy to have the company they hired for the balloon test prepare a letter certifying the height of the balloon. He said that he watched it go up and that they counted to 18, 10-foot intervals on the line used. He also noted that the balloon was in addition to 180 feet of height.

George Reagan asked the Applicant to address Mr. Hackett's concerns about missing existing towers. Radiofrequency engineer Ryan Monte de Ramos said that the data has been provided to the peer review consultant, and he will be able to show them.

Jason Clough, 41 Samuel Hanson Avenue, stated that the wind moved the balloon significantly so that it didn't represent 180 feet in height, and that AT&T is sufficient so T-Mobile should be able to provide the same.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut explained the procedural recommendations made in the staff memo regarding notification to abutting municipalities per RSA 12-K:7 and a determination regarding a development of regional impact per RSA 36:55. She read the definition in state law and suggested that it is not a development of regional impact. She explained that the Board should recess the public hearing and table the case to the July 19th meeting, which will be held in Room 306 of the McConnell Center.

George Reagan moved to notify all abutting New Hampshire municipalities. Anthony Sillitta seconded. Vote: U/A

Bob Hall asked Ms. Piekut for clarification about the determination of regional impact, and she explained and provided an example from the Strafford region where a proposed gravel pit on a town line was declared by a Planning Board to be a development of regional impact. Frank Landford stated that he believes this project would have very minor impact.

Anthony Sillitta made a motion that the proposal does not meet the definition of a development of regional impact. Rich Onufry seconded. Vote: U/A

George Reagan moved to table the case and recess the public hearing to the July 19, 2018 meeting. Frank Landford seconded. Vote: U/A

Public hearing recessed.

4. OTHER BUSINESS

None.

5. ADJOURN



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, June 21, 2018**
Meeting Time: **7:00 pm**

Motion: Anthony Sillitta moved to adjourn. George Reagan seconded. Vote: U/A. Adjourned: 8:13 p.m.