



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, September 20, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF AUGUST 16, 2018

3. HEARINGS

- A. Z18-15 Applicant/Owner Little Bay Marina & Development, LLC, 421, 423, 425 & 427 Dover Point Road (Tax Map 8, Lots 11, 9, 12, and 10 respectively), located in the Little Bay Waterfront (LBW) Zoning District, requests a variance from **Section 170-11** of the Zoning Ordinance to permit multi-family dwellings, where multi-family dwellings are not a permitted use in the Little Bay Waterfront (LBW) Zoning District.
- B. Z18-16 Applicant Summit Land Development and Owner Varney Brook Lands LLC, Pointe Place (Tax Map K, Lot 19-4), located in the Executive Technology Park (ETP) Zoning District and Residential-Commercial Mixed Use (RCM) Overlay District, request a variance from **Section 170-28.2.F(2)(b)(iii)** of the Zoning Ordinance to permit a building height of 44.5 feet, where the maximum height for residential buildings in the RCM Overlay District is 35 feet.
- 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.

4. OTHER BUSINESS

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: Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date: **Thursday, August 16, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Absent: George Reagan, Nick Couturier (Alternate), Anthony Sillitta (Alternate)

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 JULY 19, 2018

Motion: Otis Perry moved to approve the meeting minutes of July 19, 2018 as written. Bob Hall seconded.

Vote: 4 in favor with Frank Landford abstaining.

3. HEARINGS

- A. Z18-13 Applicant Charles Robbins and Owner Fred E. & Ruth K. Riley Trust 1991, 64 Littleworth Road (Tax Map G, Lot 2), located in the Rural Restricted Industrial (I-2) Zoning District, request a special exception per Section 170-12.A of the Zoning Ordinance to permit a vehicle refueling and recharging station with an accessory retail store.

Chris Prior stated the applicant sent an email wishing to postpone the case. Otis Perry remarked that the next meeting (September 20) already has the postponed cell tower case on the agenda and suggested it would be too much to hear both of these cases on the same night.

Motion: Otis Perry moved to postpone case Z18-13 to the October 18, 2018 ZBA meeting. Frank Landford seconded. Vote: U/A

- B. Z18-14 Applicant Laura Utley, 7 Federal Street, (Tax Map 20, Lot 94), located in the Urban Density Multit-Residential (RM-U) Zoning District, requests a variance from **Section 170-15.B** of the Zoning Ordinance to permit a new garage to be five feet from the single-family dwelling, where accessory structures are required to be at least as far away from the principal building as the height of the accessory structure's rear wall.

Laura Utley, homeowner, represented herself to present the case. She provided an overview of the project.

Otis Perry asked if she considered connecting the garage to the house. Laura Utley responded that she did but after hearing the estimate of construction work and cost she deemed that option not economically feasible.

Bob Hall asked what the length of the overlap will be, and Laura Utley responded that it will be five feet.

Public hearing opened.



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 16, 2018**
Meeting Time: **7:00 pm**

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated that the Planning Department does not oppose granting the variance. Adding a garage to a single-family home is a reasonable use. The board has granted a similar variance to allow a closer distance with a fire-rated wall. She has spoken to the building official about this matter and he was supportive of a similar condition.

Public hearing closed.

Motion: Otis Perry moved to grant the variance for a five-foot separation between the house and proposed garage with the condition that the wall or walls nearest the principal building shall be fire rated as determined by the building official. Frank Landford seconded. Vote: U/A

4. OTHER BUSINESS

Bob Hall stated the September meeting will be an important one for all board members to attend. The cell tower case on the agenda has already been postponed from lack of a full board. It was also pointed out that the timeframe for the granted extensions is getting tight so it's best to get the case heard.

5. ADJOURN

Motion: Otis Perry moved to adjourn. Bob Hall seconded. Vote: U/A. Adjourned: 7:13 p.m.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type: Regular Meeting
Meeting Location: Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date: Thursday, September 20, 2018
Meeting Time: 7:00 pm

INTENT: The Applicant requests a variance to permit multi-family dwellings, where multi-family dwellings are not a permitted use.

UNITS PROPOSED: 24 residential, 1 commercial

AGENDA ITEM #: 3-A

ZONING DISTRICT: Little Bay Waterfront (LBW)

FILE: Z18-15

APPLICANT/OWNER: Little Bay Marina & Development, LLC

LOCATION: 421, 423, 425, & 427 Dover Point Road (Tax Map 8, Lots 11, 9, 12, and 10)

ACREAGE: 3.45 acres (150,275 sq. ft.)

EXISTING LAND USE: Little Bay Marina, single-family dwellings

PROPOSED LAND USE: 23 condominium units in six multi-family buildings, marina with accessory apartment

SURROUNDING LAND USE: Single-family dwellings, two family dwelling, restaurant

PREVIOUS ZBA ACTION:

Z18-01 variance granted to permit multi-family dwellings where multi-family is not a permitted use

H88-8 variance granted to expand non-conforming use

H80-33 variance granted for Lot 9 to subdivide a lot without street frontage

H87-3/H87-4 unclear decision regarding boat storage and boat slips

H87-14/H87-15 denied variance to expand non-conforming use (marina)

PLANNING BOARD APPROVAL REQUIRED: Yes, site plan review

ATTACHMENTS: Application, plans

STAFF RECOMMENDATION: Staff does not oppose granting the variance.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

The Applicant seeks to combine four lots to redevelop Little Bay Marina, with the addition of an accessory apartment for the marina and 23 condominium dwelling units in six buildings of three or four units each. While the marina will remain, boat storage will be eliminated.

In February, the Board granted the Applicant a variance to permit multi-family dwellings, totaling 15 units in four buildings plus an accessory apartment with the marina building. The request was equal to what would have been permitted by right if the four lots remained unmerged: four separate three-to-four family dwellings, at the maximum density of one unit per 10,000 square feet of lot area.

The Applicant submitted a Transfer of Development Rights (TDR) application to the Planning Board and was on the September 11th agenda. Transfer of Development Rights allows the Applicant to purchase the right to construct additional dwelling units over the density that is permitted by right. Recent amendments to Section 170-27.2 of the Zoning Ordinance, Transfer of Development Rights, require the Applicant to appear before the Planning Board with a sketch plan for a preliminary hearing and decision on whether the proposed density (23 units plus accessory apartment) and general layout will be approved by the Board. Staff will provide an update at the meeting.

REASON FOR STAFF RECOMMENDATION

Staff opinion is that due to the Planning Board's ability to waive density and dimensional requirements through TDR, a variance would not normally be required. However, because the Board granted a variance prior to TDR being applicable, the variance for multi-family should be corrected.

STAFF RECOMMENDATION

Staff recommends the Board hold a public hearing and evaluate and make findings on each of the variance criteria. Staff does not oppose granting the variance.

421,423,425,427 Dover Point Road

**Property Information**

Property ID 08012-000000
Location 425 DOVER POINT RD
Owner LITTLE BAY MARINA & DEVELOPMENT 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 03/29/2018
Properties updated 09/04/2018



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

RECEIVED
Planning Office

Office Use Only

Case #:

218-15

Date Received:

AUG 30 2018

Amount Paid:

\$ _____

Time Received:

Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: **Little Bay Marina & Development, LLC** Phone # **(603) 749-9282**

Address of Applicant: **197 Loudon Road, Concord, NH 03301**

E-Mail Address: _____

PROPERTY OWNER (if different from applicant): **Same**

Address: _____ Phone # _____

E-Mail Address: _____

PROPERTY/PARCEL INFORMATION

Address: **421, 423, 425, & 427 Dover Point Road, NH**

Brief Directions: **The four lots are located on the south side of Dover Point Road, one of which is currently the Little Bay Marina.**

Zoning District: **LBW** Assessor's Map # **8** Lot(s) # **9, 10, 11 & 12**

TYPE OF APPEAL: (Please check one)

☒ Variance

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

☐ Special Exception

☐ Appeal of Administrative Decision

☐ Equitable Waiver

Article IV, Section 170-11(D)
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:

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

Article IV, Section 170-11(D)

A variance is requested from Section(s) _____ of the Zoning Ordinance to permit:

the merging of four lots into one lot for the construction of six structures, containing 23 multi-family units and a structure for the marina facilities within an accessory dwelling unit, where only one structure per lot is permitted.

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:

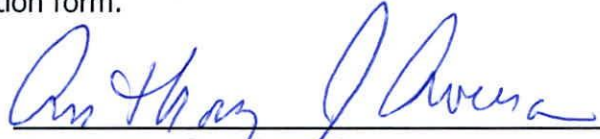
SIGNATURE PAGE

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

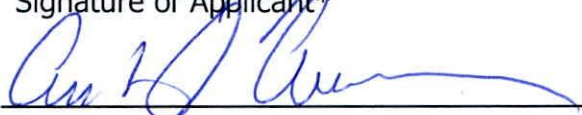
I, the undersigned Applicant, hereby certify that the information contained within this Application is complete and accurate, and I acknowledge that I have read and understand the Application Instructions, which are set forth on the first two pages of this Application form.

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*



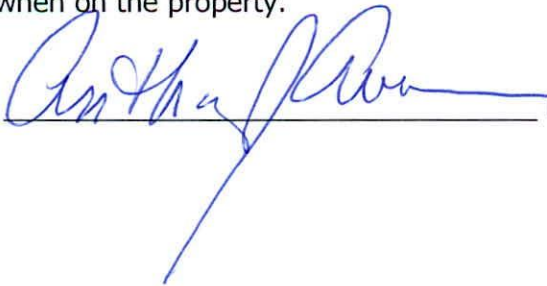
Signature of Owner*

*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:

8/29/18

**Little Bay Marina & Development, LLC
Dover Point Road & Little Bay
Tax Map 8, Lot Nos. 9, 10, 11 & 12
Dover, NH
BOARD OF ADJUSTMENT APPLICATION**

INTRODUCTION

Little Bay Marina & Development, LLC, the Applicant, is the owner of four (4) parcels located on Dover Point Road, Dover, New Hampshire. The properties are depicted on the city of Dover's tax maps at Map 8, Lot No. 9, 10, 11 & 12. The Applicant owns Lot Nos. 9, 10 & 12, and will purchase Lot 11. Lot 9 contains a marina facility, with retail sales of marine supplies, bait and gasoline, and includes an apartment above the retail store. Lots 10, 11 & 12 each contain one single-family residential dwelling. The property is located in the Little Bay Waterfront (LBW) zoning district.

The Applicant intends to merge the four properties resulting in 150,275 +/- square feet of land and intends to remove all existing structures on the property. Subsequent to the merger of the four lots, the Applicant originally intended construct fifteen (15) multi-family dwelling units within the four structures and one (1) structure to support the marina facilities, with an accessory dwelling unit. In the LBW zone it is permitted to construct 3-4 dwellings per lot with mixed uses to the extent 10,000 square feet of land exists for each unit. With the understanding that the Applicant was to merge the four lots, the Applicant requested that it be permitted to locate more than one building (the four originally proposed) on the one merged lot.

On February 15, 2018, the ZBA granted the request of the Applicant, as its proposal met the density requirements of the zone. In the interim, the Dover City Council approved recent changes suggested by the Dover Planning Board to provide an increased density pursuant to the Transfer of Development Rights ("TDR") provision that allow an increase in density. The increase in density through the TDR process must be permitted by the Planning Board. As a result, the Applicant has submitted a TDR application, asking for an additional eight (8) units, which would increase the number of units from 15 plus one accessory unit to 23 plus one accessory unit and increase the number of buildings from four to six. The new plan is attached hereto showing the approximate location of the six buildings. Please note that the building locations are for illustration purposes, with the exact locations of the buildings and other developed areas such as the retail store, access ways, parking areas, etc. being subject to further engineering and approval by the Dover Planning Board.

As a result of the revised TDR provisions, the Applicant is seeking to amend the previous variance granted to the Applicant prior to the applicability of the TDR provision from Article IV, Section 170-11 (D) to go from four (4) buildings on one site to six (6) buildings with the number of units indicated above. Assuming the TDR application is approved by the Planning Board, the density as to the number of units will be conforming to the requirements of the Dover Zoning Ordinance.

The property is unique given its location, being just along Little Bay, and in the aggregate, being a large lot with existing residential, recreational and commercial uses. The property is also unique as it contains the only marina operating in the area. To the extent the property is to be developed, the most appropriate use for the property, given the surrounding properties and exiting uses, would be to develop the lot as one lot, as opposed to retaining the parcels as four separate lots. The Applicant respectfully submits that the proposal represents the best course in order to provide a unified development with enhanced drainage and that the grant of the variance requested is reasonable for the following reasons:

APPLICANT'S REQUEST FOR VARIANCE
FACTS SUPPORTING THIS REQUEST

1. The Variance Will Not Be Contrary to the Public Interest.

In Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005), the Supreme Court held that to be contrary to the public interest or injurious to 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. The Court went on to note that to determine whether a variance would violate the basic zoning objectives, it was appropriate to examine whether the granting of the variance would alter the essential character of the locality or threaten the public health, safety or welfare. In this case, developing the property as one unified lot, as opposed to four separate lots will result on a unified system of drainage which is currently lacking; result in the removal of retail gasoline sales just adjacent to the Little Bay; result in the removal of the existing dwelling on Lot 10, which is located within the 100' Tidal Conservation District and will result in the reduction of impervious surface with the use of pervious asphalt that is adjacent to Little Bay. The uses proposed will be similar to the existing residential, recreational and commercial uses already existing on the separate parcels. Thus, granting the variance will not change or alter the essential character of the area and will not be contrary to the public interest.

2. The spirit of the ordinance is observed.

The Applicant respectfully submits that if the variance is granted, the spirit of the ordinance would be observed as the use in question is suitable, considering existing uses of the property and considering the significant environmental benefits that will be obtained with one unified lot under a condominium declaration and association. Within its general purpose and intent clause, the Dover Zoning Ordinance indicates that its intent is to promote the health, safety and general welfare of Dover. This clause further regulates the preservation and enhancement of the aesthetic environment. The Applicant respectfully submits that the general purposes and intent of the Zoning Ordinance will be maintained, to the extent that the variance is granted.

3. Substantial justice is done.

In Malachy Glen Associates v. Town of Chester, 155 N.H. 102, 109 (2002), the New Hampshire Supreme Court held that "the only guiding rule [in determining whether the requirement for substantial justice is satisfied] is that any loss to the individual that is not

outweighed by a gain to the general public is an injustice." The Court also noted that it would look at whether a proposed development was consistent with the area's present use. The grant of the variance in this instance would result in substantial justice as it would allow the Applicant's property to be utilized in a unified fashion not only as to drainage and other environmental concerns but as to management of the parcel by one condominium association, as opposed to 4 separate associations. The loss that would be experienced by the Applicant if the use was denied is not outweighed by any gain to the general public, as there is none to be gained by the public, and thus denial of the requested relief would be an injustice.

4. Value of Surrounding Properties Will Not Be Diminished.

It is respectfully submitted that all of the surrounding properties have a value associated with them which is premised upon the existence of the existing buildings and uses located upon the subject property and surrounding properties. The proposal does not change the residential, recreational or commercial uses of the parcels. Further, the Applicant is not seeking to increase the permitted density as to the number of units, but only seeks to locate the permitted number of units on one parcel, which can be more appropriately developed and maintained in the future by one association. Thus granting the variance will not result in a diminution of surrounding property values.

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

The general purposes of the ordinance are to promote the health, safety and general welfare and to thus encourage the most appropriate land uses in various parts of the City. The general purpose of the LBW zone is to provide an environment that is suitable for a mixture of residential and commercial uses on waterfront parcels along the shores of the Little Bay. The property is unique as it currently operates the only marina in the area, with residential, recreational and commercial existing uses, and once merged, will result in one of the larger parcels in the neighborhood. For the reasons set forth above, the Applicant respectfully submits that the restriction as to the number of units on one lot would result in an unnecessary hardship and denial of the variance would prohibit a unified development plan and the control of the subject parcels, and associated common areas, by one condominium associations, rather than by four separate associations.

Denial of the variance is not necessary to enforce in order to protect the purpose of the ordinance. Thus, if unnecessary, there is no conflict between the general public purpose of the ordinance and the granting of the variance sought by the Applicant, and denial of the variance would result in an unnecessary hardship to the Applicant.

**ABUTTERS LIST (DIRECT)
FOR
LITTLE BAY MARINA & DEVELOPMENT, LLC
421, 423, 425 & 427 DOVER POINT ROAD, DOVER, NH
(MAP 8, LOTS 9, 10, 11 & 12)
JANUARY 25, 2018**

OWNER OF RECORD/ APPLICANT:

TAX MAP 8/ LOTS 9, 10, 11 & 12
LITTLE BAY MARINA & DEVELOPMENT, LLC
197 LOUDON ROAD
CONCORD, NH 03301

ABUTTERS:

TAX MAP 8/ LOT 8
ANN SHINE
419 DOVER POINT ROAD
DOVER, NH 03820

TAX MAP 8/ LOT 8A
ERIC BAILO PUIDOKAS
417 DOVER POINT ROAD
DOVER, NH 03820

TAX MAP 8/ LOT 8B
JOHN ANASTAS
GLORIA ESPOSITO- ANASTAS
419A DOVER POINT ROAD
DOVER, NH 03820

TAX MAP 8/ LOT 13A
JOHN F NEWICK, TRUSTEE
JOHN F NEWICK REVOCABLE TRUST 2001
431 DOVER POINT ROAD
DOVER, NH 03820

TAX MAP 8/ LOT 29
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
PO BOX 483
CONCORD, NH 03302-0483

TAX MAP 8/ LOT 38A
MILES C ROBERGE
COURTNEY E. ROBERGE
420 DOVER POINT ROAD
DOVER, NH 03820

TAX MAP 8/ LOT 38B
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
PO BOX 483
CONCORD, NH 03302-0483

TAX MAP 8/ LOT 38C
PATRICK J. CRAGIN
PO BOX 250
DOVER, NH 03821-0250

TAX MAP 8/ LOT 38D
PAUL G. LONG
418 DOVER POINT ROAD
DOVER, NH 03820

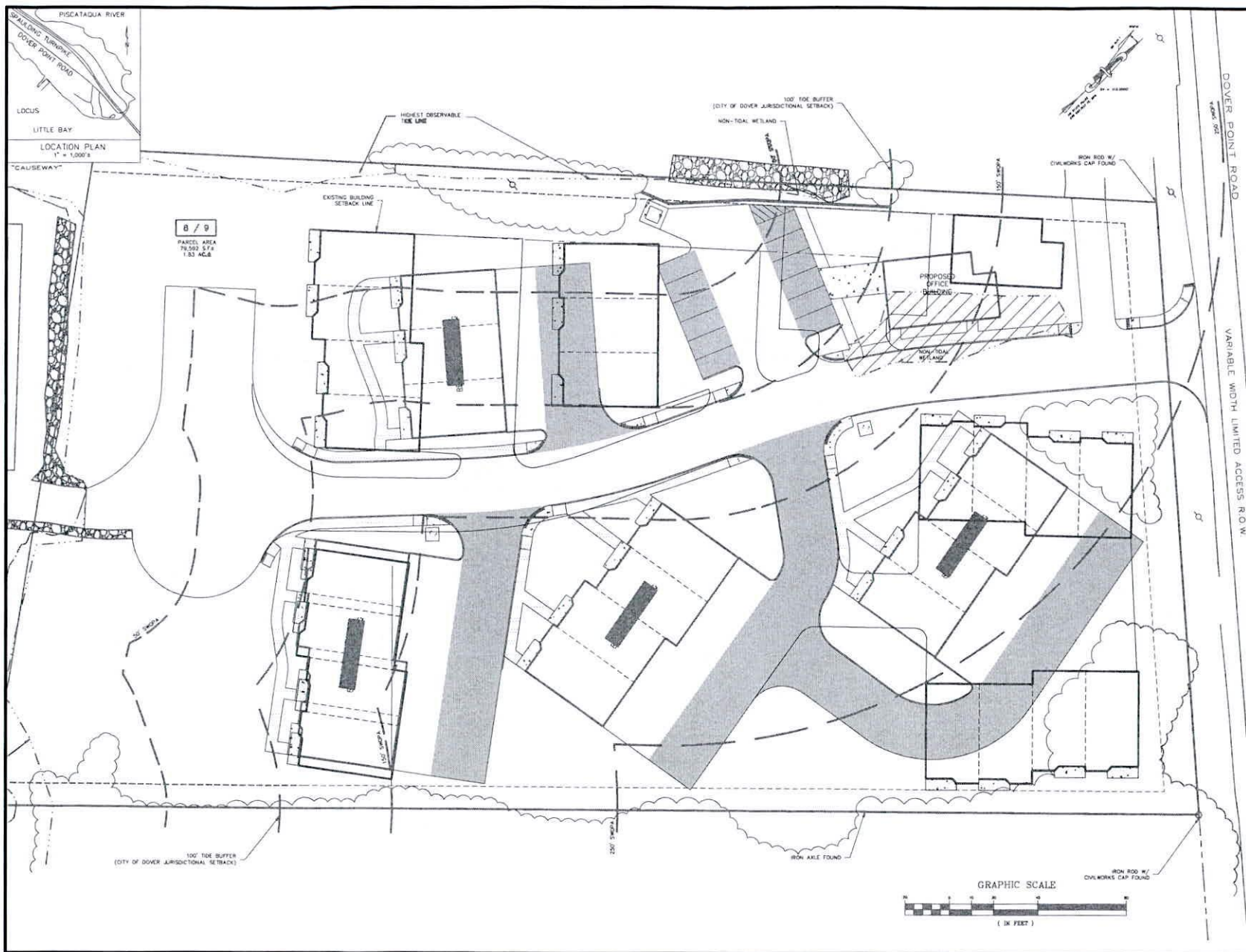
TAX MAP 8/ LOT 39
ERIC J. WHITE
DEBORAH J. MONNAT-WHITE
118 OLD CONCORD ROAD
SULLIVAN, NH 03445

PROFESSIONALS:

MCENEANY SURVEY ASSOCIATES, INC.
ATTN: KEVIN MCENEANEY
24 CHESTNUT STREET
DOVER, NH 03820

CIVILWORKS NEW ENGLAND/HAIGHT ENGINEERING, PLLC
STEVE HAIGHT, PE
181 WATSON ROAD
DOVER, NH 03820

FRANCIS X. BRUTON, III, ESQUIRE
BRUTON & BERUBE, PLLC
601 CENTRAL AVENUE
DOVER, NH 03820



CONCEPT-24 UNITS		LITTLE BAY MARINA & DEVELOPMENT, LLC 111 LOUDON ROAD DOVER, NH		LITTLE BAY MARINA & DEVELOPMENT, LLC 111 LOUDON ROAD DOVER, NH 03301		NOT FOR CONSTRUCTION FOR PERMIT USE ONLY	
24 UNIT		DATE: -		PLANNING FILE NO.: P18-		CIVILWORKS NEW ENGLAND	
		SCALE: 1"=20'				1111 LITTLE BAY	
		DRAWN BY: BDO				1111 LITTLE BAY	
		DESIGN BY: BDO				1111 LITTLE BAY	
		APPROVED BY: BDO				1111 LITTLE BAY	
		PROJECT NO: 1788				1111 LITTLE BAY	
		FILE CONCEPT-04				1111 LITTLE BAY	
		NO.				1111 LITTLE BAY	
		REVISION				1111 LITTLE BAY	
		APP'D				1111 LITTLE BAY	
		DATE				1111 LITTLE BAY	

Z18-15

421,423,425,427 Dover Point Road

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
08013-A00001	431 DOVER POINT RD	NEWICK JOHN F REVOCABLE TRUST 2001	NEWICK JOHN F TRUSTEE	431 DOVER POINT ROAD	DOVER	NH	03820
08008-000000	419 DOVER POINT RD	SHINE ANN		419 DOVER POINT ROAD	DOVER	NH	03820
08038-A00000	420 DOVER POINT RD	ROBERGE MILES C &	ROBERGE COURTNEY E	420 DOVER POINT RD	DOVER	NH	03820
08039-000000	416 DOVER POINT RD	WHITE ERIC J &	MONNAT-WHITE DEBORAH J	118 OLD CONCORD RD	SULLIVAN	NH	03445
08038-D00000	418 DOVER POINT RD	LONG PAUL G JR		418 DOVER POINT RD	DOVER	NH	03820-4638
08038-C00000	424 DOVER POINT RD	CRAGIN PATRICK J		PO BOX 250	DOVER	NH	03820
08008-A00000	417 DOVER POINT RD	PUIDOKAS ERIC BAILO		417 DOVER POINT RD	DOVER	NH	03820
08038-B00000	1 WIGGIN DR	STATE OF NEW HAMPSHIRE		PO BOX 483	CONCORD	NH	03302-0483
08029-000000	430 DOVER POINT RD	STATE OF NEW HAMPSHIRE		PO BOX 483	CONCORD	NH	03302-0483
08038-000000	422 DOVER POINT RD	DESJARDINS SETH C		422 DOVER POINT RD	DOVER	NH	03820
08008-B00000	419 A DOVER POINT RD	ANASTAS JOHN &	ESPOSITO-ANASTAS GLORIA	419A DOVER POINT RD	DOVER	NH	03820
			LITTLE BAY MARINA & DEVELOP	111 LOUDON ROAD	CONCORD	NH	03301
			RICHARD JC BENN & VICTORIA	421 DOVER POINT ROAD	DOVER	NH	03820
		MCENEANY SURVEY ASSOCIATES, INC.	KEVIN M SENEANEY	24 CHESTNUT STREET	DOVER	NH	03820
		FRANCIS X. BRUTON, III, ESQUIRE	BRUTON & BERUBE, PLLC	601 CENTRAL AVENUE	DOVER	NH	03820



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, September 20, 2018
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit a building height of 44.5 feet where a maximum of 35 feet is allowed for a residential building.

UNITS PROPOSED: N/A

AGENDA ITEM #: 3-B

ZONING DISTRICT: Executive Technology Park (ETP) and Residential-Commercial Mixed Use (RCM) Overlay

FILE: Z18-16

APPLICANT/OWNER: Summit Land Development/Varney Brook Lands LLC

LOCATION: Pointe Place (Tax Map K, Lot 19-4)

ACREAGE: 20.93 acres (911,710 sq. ft.)

EXISTING LAND USE: Vacant

PROPOSED LAND USE: One mixed-use building, two multi-family buildings

SURROUNDING LAND USE: Mixed-use buildings, single-family residential, multi-family townhomes, assisted living facility

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: Yes, site plan review

ATTACHMENTS: Application, plans

STAFF RECOMMENDATION: Staff supports granting the variance.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

The Applicant has completed technical review and submitted site plans for three buildings on the southeast side of Pointe Place, opposite the two mixed-use buildings that were recently completed. The first building will also be mixed-use, while the second and third are intended to be fully residential with first-floor parking.

The Applicant seeks a variance from the maximum building height of 35 feet for residential buildings in this overlay district. The maximum height for a nonresidential building is 55 feet.

REASON FOR STAFF RECOMMENDATION

Rather than providing a commercial first floor in the two proposed buildings exceeding 35 feet in height, the Applicant has provided indoor parking, decreasing the amount of surface parking and associated impervious area. The building height of 44.5 feet, which is measured from average grade, is in part due to grade changes on the site. This presents a physical hardship. Granting the variance would be consistent with the spirit and intent of the ordinance, as building height restrictions are partially intended to create uniformity in each district, and taller residential buildings would better fit the streetscape of Pointe Place. The proposed mixed-use building will be approximately 52 feet high.

STAFF RECOMMENDATION

Staff recommends the Board hold a public hearing and evaluate and make findings on each of the variance criteria. Staff supports granting the variance.

Point Place



Property Information

Property ID K0019-004000
Location POINTE PL
Owner VARNEY BROOK LANDS 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 03/29/2018
Properties updated 09/05/2018

VARIANCE APPLICATION

RECEIVED
Planning Office

SEP 12 2018

Dover, New Hampshire

INTRODUCTION

The proposed building is part of a large mixed use project sometimes known as Point Place Development. The Master Plan was approved years ago. The project is being developed in phases. Under the original Master Plan, the building was the same height as currently proposed but there was commercial use proposed on the first floor and parking underground was not proposed. As with any master plan for a mixed use development, as development continues, appropriate changes are made to maximize smart economic growth and urban living while preserving open space. The reason the building exceeds 35' is because of the proposed underground parking and topography at this location. By swapping the commercial floor for parking and keeping parking underneath the Building, more land can remain open.

1. The Variance Will Not Be Contrary To The Public Interest

The public interests behind height restrictions are to preserve open space, air and light, to promote attractive development and to control density. In this case, open space, air and light are enhanced by placing parking underneath the building. There will be no increase in residential units. In essence, the "Commercial Floor" is swapped for parking. The proposed building does not alter the essential character of the neighborhood. It is compatible with the neighborhood as there are other buildings of the same or greater height in the area. If there was commercial on the first floor, no variance would be needed. The fact that the first floor has been swapped for underground parking, will not threaten public health, safety or welfare. The reason for the extra height is not more units, but to put parking underground.

2. The Spirit Of The Ordinance Is Observed because

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the Ordinance. For the reasons noted in # 1 above, the spirit of the Ordinance is observed. The variance will result in more green space. There will not be any additional residential units. The purpose of the variance is to keep parking underground. The height of the building will not alter the essential character of the neighborhood because there are other buildings of the same height and higher nearby. The proposed building is in keeping with the neighborhood. It will be aesthetically more pleasing to keep parking underground.

3. Substantial Justice Would Be Done because

First, parking can be underground which will result in more green space. Denying the variance would needlessly require the applicant to construct a surface parking lot. Second, because the test for substantial justice is whether the loss to the applicant by denying the variance is greater than the gain to the general public in denying the variance.

If the loss to the individual is greater if the variance is denied, then substantial justice is done by GRANTING the variance. As noted above, there would be loss to the Applicant because Developer would not be able to develop the project in the best way possible. On the other hand, there would be no gain to the general public in denying this variance. As noted above, the purposes of the Zoning Ordinance are not violated by granting the variance. In fact, having the parking under the building will increase open space and will be more attractive than a parking lot which would be much more payment. If the first floor was commercial, no variance would be required. The first floor is not being replaced with more units. It is "replaced" with parking. Pointe Place has other buildings of the same height. The proposed building is consistent with the area's present use as a mixed use development containing commercial and residential use. There is, therefore, no gain to the public in denying the variance. (See, eg Harborside Associates v Parade Residence Hotel where the NH Supreme Court ruled that a variance was appropriate because the gain to the developer outweighed any detriment to the public. 162 NH 508 (2011).)

4. The Values of Surrounding Properties Would Not Be Diminished because

Applicant's proposed building will be attractive and will not, therefore, diminish property values. The proposed use and height of the building are consistent with the neighborhood. Neither the fact that the building is higher or that the first floor is parking and not commercial will adversely affect the values of surrounding properties. There are many buildings of that height or higher in the neighborhood.

5. A. 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 part of a large-scale mixed use development which intentionally combines residential and commercial uses in buildings of various sizes, shapes and heights. The topography at the site is such that the road is approximately 5' to 6' above the building pad;

- (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:

A building of the same height would be allowed if there was commercial on the first floor. Due to the topography, it makes sense to have parking underneath. Placing parking underneath will allow there to be approximately one (1) acre more of open space. No additional units are being created; and

- (iii) The proposal is a reasonable one because:

No variance would be required if the first floor was commercial. Parking underneath the building is more attractive and allows approximately one (1) acre of land to remain green. There are other buildings of the same or greater height in the area.



City of Dover, New Hampshire
ZONING BOARD OF ADJUSTMENT APPLICATION

[Revised April 7, 2017]

Office Use Only	Case #:	Z 18-16	Date Received:	RECEIVED Planning Office SEP 04 2018
	Amount Paid:	\$ _____	Time Received:	Dover, New Hampshire

APPLICANT/PROPERTY OWNER INFORMATION

APPLICANT: SUMMIT LAND DEVELOPMENT Phone # 603-749-2800
Address of Applicant: 340 CENTRAL AVE, #202, DOVER NH 03820
E-Mail Address: chad@SUMMITLANDDEV.COM
PROPERTY OWNER (if different from applicant): VARNEY BROOK LANDS LLC
Address: 340 CENTRAL AVE DOVER NH 03820 Phone # 603-749-2800
E-Mail Address: chad@SUMMITLANDDEV.COM

PROPERTY/PARCEL INFORMATION

Address: POINTE PLACE DOVER NH
Brief Directions: PARCEL IS ON SOUTH SIDE OF POINTE PLACE, ACROSS STREET FROM EXISTING BUILDINGS AT 50 & 60 POINTE PLACE
Zoning District: ETP/RCM Assessor's Map # K Lot(s) # 19.4

TYPE OF APPEAL: (Please check one)

☐ Variance ☐ Physical Disability Variance (RSA 674:33-V) ☐ Special Exception ☐ Appeal of Administrative Decision ☐ Equitable Waiver	170-28.2.F(2)(b)(iii) 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 DEVELOP MULTI STORY RESIDENTIAL BUILDING
AS CONTINUATION OF MASTER PLANNED MIXED USE
COMMUNITY

VARIANCE REQUIREMENTS

THIS SECTION TO BE COMPLETED BY VARIANCE APPLICANTS ONLY

A. Variance Requested

170-28.2.F(2)(G)(iii)

A variance is requested from Section(s) _____ of the Zoning Ordinance to permit:

THE CONSTRUCTION OF A 44.5' TALL RESIDENTIAL
BUILDING WHERE 35' HEIGHT IS THE PRESENT LIMIT.

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:

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:

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

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:

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:

and

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

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 _____

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

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.

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.

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

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.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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.

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

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. _____

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.

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:

POINTE PLACE

DOVER, NH

JUNE 2018

EXISTING
55'
Height
bldgs

LEGEND

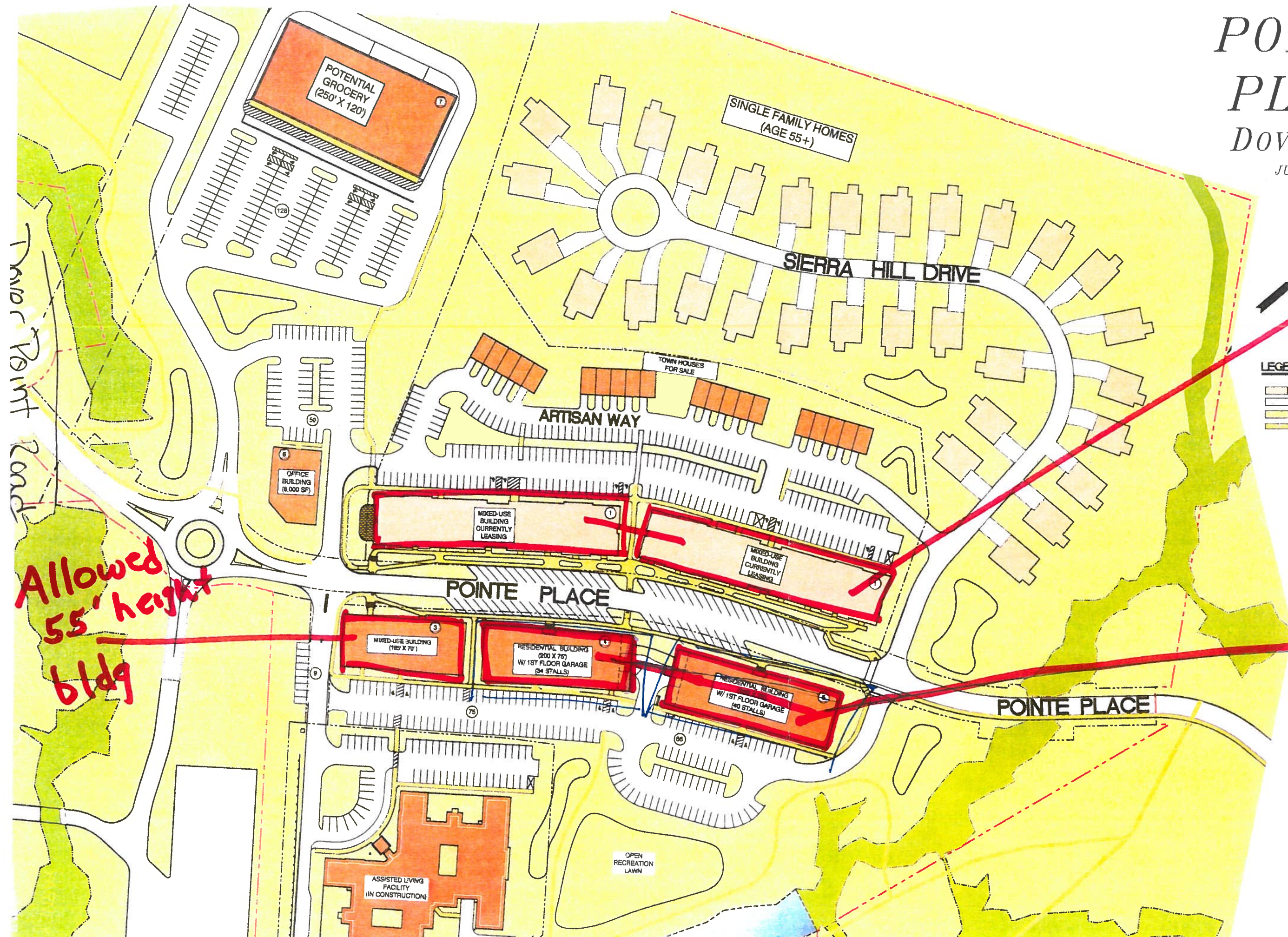
- BUILDINGS (EXISTING / PROPOSED)
- PAVED ROADWAYS / PARKING AREAS
- OPEN SPACE / LANDSCAPING AREAS
- PEDESTRIAN WALKWAYS/PATHS

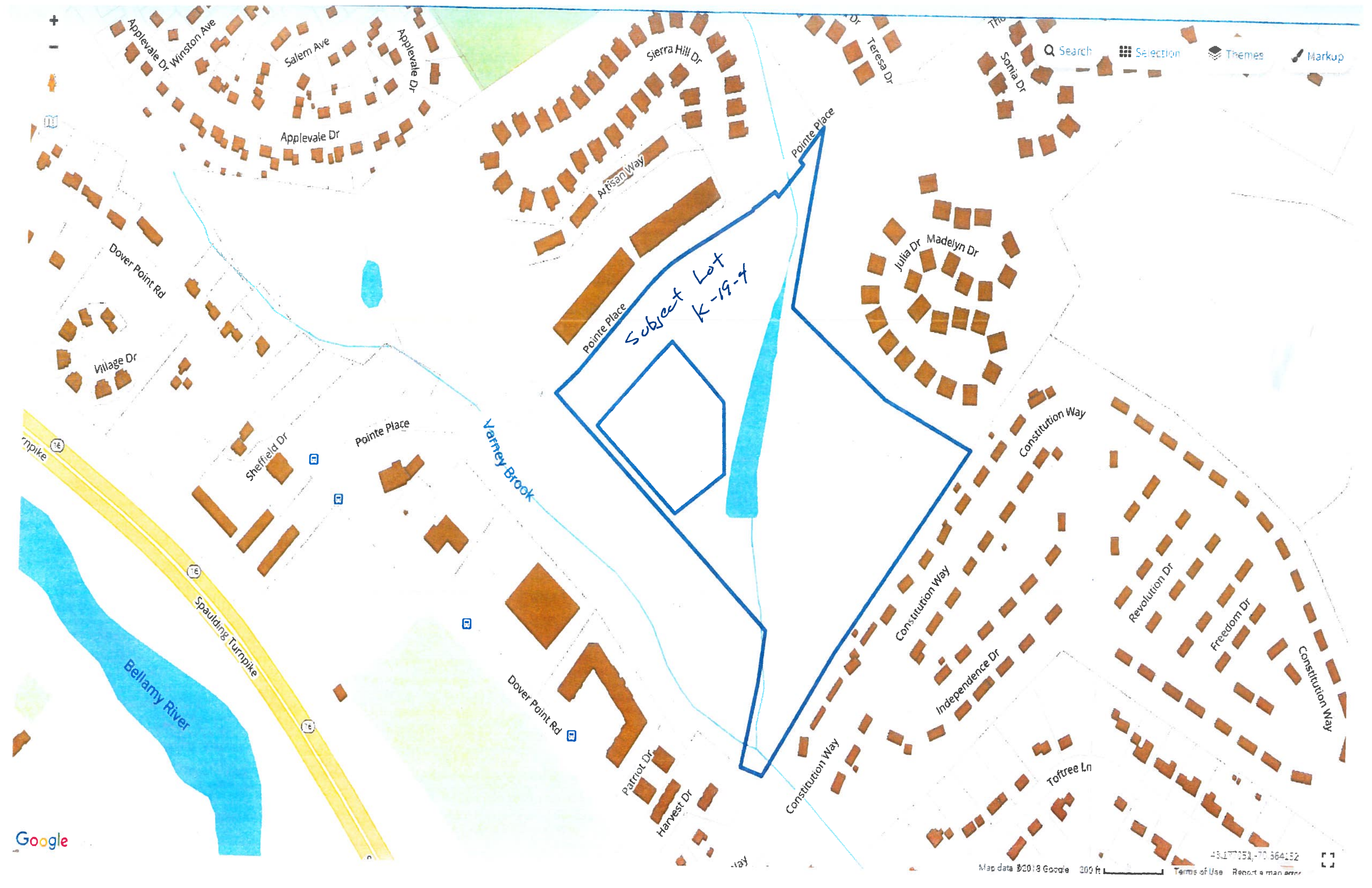
VARIANCE
Subject
Buildings

44.5'
Height

Allowed
55'
Height
bldg

Dover Point Road





Subject Lot
K-19-4

Z18-16

Point Place

First Class

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	Stat Zip
K0022-000010	10 11 HARVEST DR	PAOLINI ROBERT V TRUSTEE	JNM REALTY TRUST	54 DOVER POINT RD STE 103	DOVER	NH 03820
K0021-000005	10 CONSTITUTION WY	WALLINGFORD ANTHONY D &	WALLINGFORD NANCY L	10 CONSTITUTION WY	DOVER	NH 03820
K0021-00006A	12 CONSTITUTION WY	SHELLONG KATHERINE SUCCESSOR TRUSTEE	MRC REVOCABLE TRUST	201 ALLISON RUN	WHITE RIVER JUNCTION VT	05001
K0021-000007	14 CONSTITUTION WY	WRIGHT JOHN JR &	WRIGHT TARA L	14 CONSTITUTION WAY	DOVER	NH 03820
K0021-000008	16 CONSTITUTION WY	CARSWELL WILLIAM &	CARSWELL SANDRA	16 CONSTITUTION WY	DOVER	NH 03820
K0021-000052	17 CONSTITUTION WY	HANSON KENNETH L	HANSON ROSEMARY A	PO BOX 1609	DOVER	NH 03820
K0021-000019	18 CONSTITUTION WY	MATTHEWS DARLENE &	HEFLER VALERIE	18 CONSTITUTION WAY	DOVER	NH 03820
K0021-000053	19 CONSTITUTION WY	DEANGELIS ROBERT J TRUSTEE	PENZO MARY R IRREVOCABLE TRUST	19 CONSTITUTION WY	DOVER	NH 03820-4928
K0021-000001	2 CONSTITUTION WY	STEPCHIN LORRAINE		2 CONSTITUTION WY	DOVER	NH 03820-4926
K0019-001014	2 TERESA DR	DUGAN ALAN H &	DUGAN LYNNE H	2 TERESA DR	DOVER	NH 03820
K0021-000010	20 CONSTITUTION WY	LECAROZ ALFRED L &	LECAROZ JEANETTE M	20 CONSTITUTION WAY	DOVER	NH 03820
M0004-000046	21 JULIA DR	HESS DANIEL J III & DOROTHEA P TRUSTEES	HESS DANIEL J III DOROTHEA P REVOCABLE L	21 JULIA DR	DOVER	NH 03820
K0021-000011	22 CONSTITUTION WY	CARLSEN LAURITS S &	CARLSEN GLORIA A	22 CONSTITUTION WAY	DOVER	NH 03820
K0021-000055	23 CONSTITUTION WY	CLEVELAND RALPH D &	CLEVELAND NANCY J	23 CONSTITUTION WY	DOVER	NH 03820
M0004-000045	23 JULIA DR	BRAUN JOSEPH J JR &	BRAUN JOYCE J	23 JULIA DR	DOVER	NH 03820
K0021-000012	24 CONSTITUTION WY	COLGAN JOHN &	COLGAN MICHELLE	34 JULIA DR	DOVER	NH 03820
M0004-000044	25 JULIA DR	DUDEK NANCY		25 JULIA DR	DOVER	NH 03820
K0021-000013	26 CONSTITUTION WY	COPELAND WILLIAM E &	COPELAND PATRICIA A	26 CONSTITUTION WAY	DOVER	NH 03820
M0004-000043	27 JULIA DR	KAGELEIRY JAMES &	KAGELEIRY FRANCES T	27 JULIA DR	DOVER	NH 03820-5021
M0004-000042	29 JULIA DR	BARSTOW THOMAS R & PATRICIA C TRUSTEES	BARSTOW THOMAS AND PATRICIA TRUSTS	29 JULIA DR	DOVER	NH 03820
K0019-003001	3 SIERRA HILL DR	PARKER KENDREE R &	CARTER RAY P	3 SIERRA HILL DR	DOVER	NH 03820
M0004-000041	31 JULIA DR	AMBRULEVICH JOHN T &	AMBRULEVICH ALMEDA C	31 JULIA DR	DOVER	NH 03820
M0004-000040	33 JULIA DR	DUNLAVEY SUZAN M &	DUNLAVEY ROBERT J	33 JULIA DR	DOVER	NH 03820
K0021-000002	4 CONSTITUTION WY	KARAS PATRICIA A &	KARAS CHRIS D	4 CONSTITUTION WY	DOVER	NH 03820-4926
K0021-000044	5 CONSTITUTION WY	MERRITT NANCY S		5 CONSTITUTION WAY	DOVER	NH 03820
K0021-000003	6 CONSTITUTION WY	HUSE ETHEL E		279 CENTRAL AVE APT 103	DOVER	NH 03820-7106
K0021-000004	8 CONSTITUTION WY	NICHOLSON SANDRA L &	KEENAN ERMINIE W	8 CONSTITUTION WAY	DOVER	NH 03820
K0022-000008	8 HARVEST DR	LEVASSEUR THOMAS TRUSTEE	LEVASSEUR THOMAS REVOCABLE TRUST	8 HARVEST DR	DOVER	NH 03820
K0022-000009	9 HARVEST DR	PAQUIN DAVID ANDREW &	PAQUIN NANCY ANN	9 HARVEST DR	DOVER	NH 03820

Certified

K0022-000000	1 11 HARVEST DR	PAOLINI BROTHERS DEVELOPMENT LLC		15 BRIARWOOD LN	DOVER	NH 03820
K0019-006000	35 POINTE PL	BFG DOVER PROPCO LLC		228 PARK AVE STE A	WINTER PARK	FL 32789
K0023-000000	46 DOVER POINT RD	MARKET SQUARE CONDOMINIUM	C/O RIVER VALLEY DEVELOPMENT CORP	9 PATRIOT DR	DOVER	NH 03820-4708
K0022-B00000	48 1/2 DOVER POINT RD	LARA CHRISTOPHER &	SAPIENZA LEIGH-ANNE	48 1/2 DOVER POINT RD	DOVER	NH 03820
K0019-005000	50 60 POINTE PL	POINTE PLACE DEVELOPMENT LLC	C/O SUMMIT LAND DEVELOPMENT	340 CENTRAL AVE #202	DOVER	NH 03820
K0021-000000	CONSTITUTION WY	DOVERBROOK LLC		40 NEWBRIDGE RD	SUDBURY	MA 01776
K0019-000000	DOVER POINT RD	VARNEY BROOK LANDS LLC &	CITY OF DOVER	340 CENTRAL AVE STE 202	DOVER	NH 03820
K0019-002000	DOVER POINT RD	DOVER POINT RD 252 LLC		40 DOVER POINT RD	DOVER	NH 03820
M0004-000000	MIDDLE RD	THORNWOOD COMMONS LLC	C/O GREAT NORTH PROPERTY MANAGEMENT	3 HOLLAND WAY	EXETER	NH 03833
K0019-003000	SIERRA HILL DR	STABILE HOMES AT POINTE PLACE LLC		20 COTTON RD	NASHUA	NH 03063
K0019-001000	TERESA DR	CHANGING PLACES LLC		42 J DOVER POINT RD	DOVER	NH 03820
		SUMMIT LAND DEVELOPMENT		340 CENTRAL AVENUE #202	DOVER	NH 03820



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, September 20, 2018
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit a new telecommunications tower, where telecommunications facilities are not permitted on this lot.

UNITS PROPOSED: N/A

AGENDA ITEM #: 4-C

ZONING DISTRICT: Rural Residential (R-40)

FILE: Z18-07

APPLICANT: Industrial Tower and Wireless, LLC

OWNER: Peter & Susan Rousseau

LOCATION: 200 Henry Law Avenue (Tax Map K, Lot 1)

ACREAGE: 55.18 acres

EXISTING LAND USE: Single-family dwelling/farm

PROPOSED LAND USE: Single-family dwelling/farm, with telecommunications tower

SURROUNDING LAND USE: Single-family dwellings, Cochecho River Wildlife Management Area, conserved open space, WTSN radio

PREVIOUS ZBA ACTION:
None

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application, site plans

STAFF RECOMMENDATION: See Staff Recommendations

TABLE OF CONTENTS

The following text is unchanged from the memo issued for the July 19, 2018 meeting. The Applicant declined to proceed due to the four-person quorum and asked that the hearing be postponed to the September 20, 2018 meeting.

To aid the Board, a list of all materials submitted to date follows (new submissions since June meeting in **bold**):

1. From Applicant:
 - a. 3/23/2018 – Initial bound Application for Variance
 - b. 4/13/2018 – Letter from Atty. Grill of 4/11/2018
 - c. 4/17/2018 – FAA Determination of No Hazard to Air Navigation Letter of 11/13/2017
 - d. 4/17/2018 – NH Natural Heritage Bureau Review issued 4/6/2018
 - e. 4/17/2018 – US District Court for Rhode Island *Industrial Tower and Wireless, LLC v. Town of Foster Zoning Board of Review*
 - f. 5/2/2018 – Letter from Atty. Grill of 4/26/2018 including answers to questions and computer model coverage maps (and cover letter of 5/1/2018)
 - g. 5/9/2018 – Letter from Atty. Grill of 5/8/2018 and Real Estate Consultants of New England, Inc. Market Study dated 5/4/2018
 - h. 6/1/2018 – Letter to Atty. Hilson in response to Board's request for more information
 - i. 6/8/2018 – Letter and two maps: Existing L2100 Coverage, LTE Best Server Coverage with Primary Candidate
 - j. 6/8/2018 – Email to Atty. Hilson regarding peer review, regional notice, and regional impact finding
 - k. 6/13/2018 – Email response to Andrew Nanaa's email of 6/13/2018
 - l. 6/14/2018 – Email response to Andrew Nanaa's email of 6/14/2018
 - m. 6/15/2018 – Email and PDF of photo simulations; included in online meeting materials (<http://www.dover.nh.gov/government/boards-and-commissions/zoning-board/index.html>), hard copies to be distributed
 - n. 6/28/2018 – Letter from Virtual Site Simulations, LLC regarding balloon test
 - o. 7/9/2018 – Peer Review Letter and Maps from IDK Communications
 - p. 7/12/2018 – Letter from Atty. Grill of 7/12/2018



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, September 20, 2018
Meeting Time:	7:00 pm

2. From the Public:

- a. 4/16/2018 – Email from Daniel Spuches, 40 Samuel Hanson Avenue
- b. 4/19/2018 – Email and petition from Thomas Hackett, 43 Samuel Hanson Avenue
- c. 4/19/2018 – Letter from Andrew Nanaa, 5 Industrial Park Drive, on behalf of Burson/Chalifour, 3 Mulligan Drive
- d. 4/23/2018 – Letter from Colleen and Matt Walker, 45 Samuel Hanson Drive
- e. 4/30/2018 – Photographs of materials submitted to Dover Heritage Commission Chairman and Dover Planning Department, submitted by Andrew Nanaa
- f. 5/18/2018 – Email from Thomas Hackett with questions and updated petition
- g. 6/13/2018 – Email and photos of DAS installation from Andrew Nanaa
- h. 6/14/2018 – Letter and photos of DAS installation from Andrew Nanaa
- i. **6/19/2018 – Letter and photos of balloon rest from Andrew Nanaa, presented at meeting**
- j. **6/21/2018 – Email from Norm Fracassa, read into record at meeting**
- k. **6/21/2018 – Letter from Andrew Nanaa, presented at meeting.**
- l. **Letter from Wendi Tremblay, 42 Samuel Hanson Ave.**

The Board also received minutes from the Dover Heritage Commission meeting June 18.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

New information in this memo is underlined.

The property subject to this variance request is an approximately 55-acre cattle farm located on the east side of Henry Law Avenue, north side of Back Road, and on both sides of McKone Lane. Although McKone Lane divides the property, it is one lot. Assessing records indicate the home dates to 1790. The property is located in the Rural Residential (R-40) Zoning District.

The Telecommunication Facilities section of the Zoning Ordinance, **Section 170-22**, permits the construction of new telecommunications towers on 15 specific lots around the City. This section also permits co-location, or the placement of facilities on existing towers or alternative tower structures, much more broadly, throughout the City. “Towers” include not only dedicated telecommunications towers, but also alternative structures such as steeples and smokestacks. The Applicant requests a variance to permit construction of a new, 180-foot tall tower on a lot where the use is not permitted. The Applicant is a tower developer who has identified a specific tenant, T-Mobile, but who has also expressed an intent to lease space on the tower for other wireless service providers’ facilities.

The proposed tower height of 180’, on land at an elevation of approximately 145’, creates a total elevation of 325’. For comparison, the highest point in Dover, Garrison Hill, is at elevation 291’.

In addition to Section 170-22 of the Zoning Ordinance, the City of Dover, in its permitting processes, must also adhere to the requirements of the federal Telecommunications Act of 1996 (TCA), as well as NH RSA 12-K, Deployment of Personal Wireless Facilities, if the Applicant/Co-Applicant is a wireless service provider. Staff has been advised by the NH Municipal Association that sections of the TCA do not apply to developers of tower structures unless a licensed wireless carrier is a co-applicant. If the variance to permit this use is granted, Planning Board review and approval will also be required per Section 170-22.

At the April 19, 2018 meeting of the Zoning Board of Adjustment, the Applicant provided a brief overview of the variance request and responded to questions from the Board. The Board held a public hearing, which it then recessed to May 17, 2018. The Board indicated its desire to schedule a site walk and balloon test, and to obtain a third-party review of the submitted radiofrequency analysis, and directed Assistant City Planner Elena Piekut to arrange all three. The Board continued the application to the May 17 meeting.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO

Meeting Type:	Regular Meeting
Meeting Location:	Room 306, McConnell Center – 61 Locust St. Dover, NH 03820
Meeting Date:	Thursday, September 20, 2018
Meeting Time:	7:00 pm

At the May 17, 2018 meeting of the Zoning Board of Adjustment, the Applicant and their radiofrequency engineer provided additional information. The Board reopened the public hearing, received additional testimony, and recessed it to the June 21, 2018 meeting. The Board scheduled a site walk/balloon test for 8:00 am to 12:00 pm on Saturday, June 9, 2018 (with a rain date of June 16). The Board provided a list of additional requested information. Assistant City Planner Piekut provided an update on obtaining a peer review. The item was continued to the June 21 meeting.

Staff provided the Applicant with a list of locations for photo simulations based on the balloon test. The balloon test/site walk was held June 9 and members of the Board and staff also viewed the balloon from several locations around Dover and at the Rollinsford line.

At its June 21 meeting, the Board heard additional testimony from the Applicant and public. The Board voted to notify all abutting NH municipalities under RSA 12-K:7 and voted that the proposal is not a development of regional impact under RSA 36:55. The public hearing and case were continued to the July 19 meeting.

Additional information received from the Applicant and the public since June 21 is included with this packet.

REASONS FOR STAFF RECOMMENDATION

Please see memorandum from Attorney Christopher Hilson dated July 13, 2018.

STAFF RECOMMENDATION

Staff recommends the Board:

- 1) Remove case Z18-07 from the table.
- 2) Provide the Applicant an opportunity to present additional information and review how the request meets each of the variance criteria.

- 3) Hear report from peer review consultant IDK Communications.
- 4) Reopen the public hearing.
- 5) Close the public hearing.
- 6) Deliberate on each of the five variance criteria and vote on the variance request.

Special counsel is available by phone should the Board wish to recess for consultation at any point.