



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, October 18, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF MEETING MINUTES OF SEPTEMBER 20, 2018

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.
- B. Z18-17 Applicant Mark G. Phillips and Owner TSB Properties, LLC, 447 Sixth Street (Tax Map D, Lot 12), located in the Assembly and Office (I-4) Zoning District, request a variance from **Section 170-12.A** to permit open storage, where it is not a permitted use.
- 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, September 20, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Absent: Otis Perry, George Reagan

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 AUGUST 16, 2018

Motion: Bob Hall moved to approve the meeting minutes of August 16, 2018 as written. Frank Landford seconded.
Vote: U/A

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.

Assistant City Planner Elena Piekut stated that prior to the meeting the applicant withdrew the application from tonight's agenda.

- 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.

Susan Manchester, Attorney, represented the applicant. She stated they are seeking a height variance for two of the buildings in the Point Place mixed use development. The proposed buildings are 44 feet high where only 35 feet is allowed. Originally the plan called for commercial use on the first floor of the buildings which would have allowed a building height of 55 feet. The plan was revised. The buildings will be completely residential with parking. There is no increase in residential units. What was going to be commercial is now parking. The reason the building needs to be 44 feet is due to the desire to have the parking underneath and the topography issue of the road being 5 feet above the building pad. Ms. Manchester provided information relative to the variance criteria.

Public hearing opened.

John Gray, managing member of 34 Dover Point Rd said their property has been enhanced by this project and they are in favor of the application.



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Chair Chris Prior read into the record a letter of support for the application from abutter Debbie Reed, President of Bill Dube Ford and Toyota.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated that the Planning Department supports the granting of the variance.

Public hearing closed.

Motion: Bob Hall moved to approve the variance as requested. Frank Landford 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.

Assistant City Planner Elena Piekut stated the peer review consultant hired to review the radio frequency information could not attend tonight's meeting due to an emergency. There would also only be four voting members of the board present tonight after two members recused themselves. The applicant was informed of all of this and agreed to have the item tabled to the October 18th meeting.

The chair stated Nick Couturier will not vote on this motion.

Motion: Frank Landford moved to continue the item to the October 18th ZBA meeting. Bob Hall seconded. Vote: U/A

4. OTHER BUSINESS

Assistant City Planner Elena Piekut stated the annual meet and greet will be January 8th, 2019.

5. ADJOURN

Motion: Anthony Sillitta moved to adjourn. Frank Landford seconded. Vote: U/A. Adjourned: 7:18 p.m.

From: Chuck Robbins [<mailto:cpr55@roadrunner.com>]
Sent: Monday, October 1, 2018 5:40 PM
To: Piekut, Elena <E.Piekut@dover.nh.gov>
Subject: RE: Littleworth Rd

Still working with Carolie Cash, but would like to postpone October meeting. Will keep you updated. Thanks again Chuck 603 473 2000

From: Piekut, Elena [<mailto:E.Piekut@dover.nh.gov>]
Sent: Monday, October 1, 2018 2:46 PM
To: Chuck Robbins
Subject: RE: Littleworth Rd

Chuck,

I am ready to post the October 18 ZBA agenda. Should I still include your item, or will you be requesting further postponement or withdrawal?

Elena Piekut
Assistant City Planner
Zoning Administrator
City of Dover, NH
288 Central Avenue
Dover, NH 03820-4169
e: e.piekut@dover.nh.gov
p: 603.516.6008 f: 603.516.6049

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From: Chuck Robbins [<mailto:cpr55@roadrunner.com>]
Sent: Wednesday, August 29, 2018 12:58 PM
To: Piekut, Elena <E.Piekut@dover.nh.gov>
Subject: RE: Littleworth Rd

I am still working with landowners and I am optimistic. Will let you know asap on direction we are moving in. Thanks Chuck 603 473 2000

From: Piekut, Elena [<mailto:E.Piekut@dover.nh.gov>]
Sent: Wednesday, August 29, 2018 12:44 PM
To: Chuck Robbins
Subject: Littleworth Rd

Hi Chuck,

I heard through the grapevine that you may not be pursuing the 64 Littleworth Rd project anymore. If that is true, would you please send me a note formally withdrawing the zoning board application?

Thanks,

Elena

Elena Piekut

Assistant City Planner

Zoning Administrator

City of Dover, NH

288 Central Avenue

Dover, NH 03820-4169

e: e.piekut@dover.nh.gov

p: 603.516.6008 f: 603.516.6049

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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, October 18, 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 #: 3-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. That hearing was then continued to October 18, as the peer review consultant was unable to attend.

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



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p. **7/12/2018 – Letter from Atty. Grill of 7/12/2018**

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. **6/26/2018 - Letter from Wendi Tremblay, 42 Samuel Hanson Ave.**

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

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



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Assistant City Planner Elena Piekut to arrange all three. The Board continued the application to the May 17 meeting.

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.