



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

REVISED

Meeting Type: Regular Meeting
Meeting Location: **Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820**
Meeting Date: **Thursday, January 17, 2019**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. ELECTION OF OFFICERS

3. APPROVAL OF MEETING MINUTES OF DECEMBER 20, 2018 AND JANUARY 8, 2019

4. OLD BUSINESS

- A. Z18-20 Applicant/Owner 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.

5. HEARINGS

None.

6. OTHER BUSINESS

7. 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 Ave., Dover, NH 03820
Meeting Date: **Thursday, December 20, 2018**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Absent: George Reagan, Anthony Sillitta (Alternate)

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

The Vice Chair called the meeting to order at 7:02 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 DECEMBER 6, 2018

Motion: Otis Perry moved to approve the meeting minutes of December 6, 2018 as presented. Frank Landford seconded. Vote: U/A

3. HEARINGS

- A. Z18-19 Applicant/Owner Todd LaFond, 4 Crestview Drive (Tax Map D, Lot 22-2), located in the Medium Density Residential (R-12) Zoning District, requests a variance from Section 170-12.B of the Zoning Ordinance to permit a side setback of 10 feet for an attached garage, where a minimum of 15 feet is required.

Todd LaFond explained he is proposing to build an attached 28'x28' garage. The current garage under the house is only 7' tall and not sufficient for a larger vehicle. All of his neighbors are supportive of the proposal.

Public hearing opened. No one spoke.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated the Planning Department doesn't have any objection to granting the variance. There is a stipulation in the ordinance allowing non-conforming lots with a specified width reduced setbacks. This lot is just barely conforming. If it were a little smaller, it could have 10-foot setbacks. Also, if the garage was to be detached, 10-foot setbacks would be allowed.

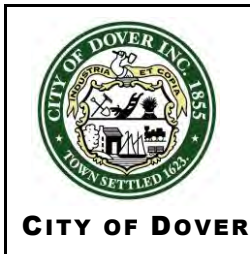
Public hearing closed.

Chair Chris Prior stated Nick Couturier will be the alternate to vote in this case.

Motion: Bob Hall moved to approve the variance as requested. Frank Landford seconded. Vote: U/A

- B. Z18-20 Applicant/Owner 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.

FX Bruton of Bruton and Berube presented the case. This zoning board granted this variance in June of 2018. The case is back before them because there was an error in notifying the abutters in Madbury. He gave the property location and



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history. In 2013 an elderly assisted care facility with 12 beds was approved. They are now looking to have an assisted living facility which will still have 12 rooms, but 24 residents. No changes are proposed to the structure that was approved in 2013. The only exterior change are 11 additional parking spaces in the back.

Chair Chris Prior stated Rich Onufry will be the alternate to vote in this case.
FX Bruton reviewed the five criteria.

Chair Chris Prior addressed concerns from an abutter's email that was sent to the board.

S. Haight, Civilworks NE, addressed questions from the board members.

Public hearing opened.

Sarah Greenshields, 13 South Watson/ 314 Rt 108 Madbury, owner of Little Tree Education stated her facility hosts 75 children a day plus teachers. She is concerned about their water supply being contaminated by medical drugs and cleaning solutions from the commercial leach field.

Danna Truslow, hydrogeologist, 454 Court St Portsmouth reviewed water quality impacts and requested the facility hook up to City sewer.

David Greenshields, 13 South Watson/ 314 Rt 108 Madbury explained where their sewer line connects.

Denis Robinson, Pierce Atwood, Portsmouth described three reasons this application doesn't meet the criteria for variance.

1. It's not consistent with adjacent uses
2. The property doesn't have distinguishing elements- property is large enough to support an allowed use
3. It's not consistent with the spirit and intent of the ordinance. An assisted living facility must be connected to public sewer.

S. Haight and FX Bruton answered and refuted public comments.

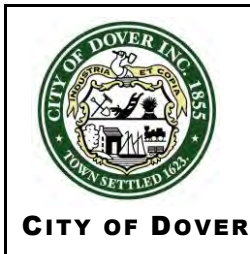
Patte Dell Isola, co-applicant, owns the land where the proposed leach field will go. She explained they've worked with all the necessary state regulatory organizations for approvals. They are back before the board due to an administrative error regarding the public notice. The applicant has attended multiple Madbury and Dover board meetings over the past year to fulfill all requirements.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated the Planning Department has been neutral on this variance. It is not an incompatible use with the other uses in that zone. This application has gone through site plan approval and staff review. The Planning Board added a condition of approval for a drug use and disposal plan. Staff recommended they hook up to public sewer, but it could not be required.

Elena Piekut also confirmed for Otis Perry that the reason the case is before the board tonight is due to an administrative error in noticing the case to the abutters. The variance was granted by this board in June of this year, though the additional leach field in Madbury was not part of that plan.

Public hearing closed.



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Motion: Otis Perry moved to refer the variance to the January meeting so community services can review the expert witness concerns. Frank Landford seconded. Vote: U/A

- C. Z18-21 Applicant/Owner Sarah McClellan, 410 Middle Road (Tax Map M, Lot 60), located in the Rural Residential (R-40) Zoning District, requests a variance from Section 170-18.H of the Zoning Ordinance to permit a popcorn popping home occupation, where uses such as “restaurants, caterers or bakeries...and others of a similar nature” are not considered customary home occupations.

Sarah McClellan, owner and operator, requested a variance for a home occupation to pop popcorn. The product will be taken off-site to sell. There will be no changes to the structure and no additional traffic to the site.

Chair Chris Prior reviewed the criteria list with the applicant then stated Nick Couturier will be the alternate to vote in this case.

Public hearing opened. No one spoke.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated the Planning Department supports the granting of the variance. It is in favor of home businesses. The only reason for the variance is because the business is in the food industry.

Public hearing closed.

Motion: Frank Landford moved to approve the variance as requested. Otis Perry seconded. Vote: U/A

A five minute recess was taken. When the meeting commenced, Chair Chris Prior and Alternate Nick Couturier were no longer seated with the board members. Chair Chris Prior stated he would recuse himself.

- D. Z18-22 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.

Bob Hall, Vice Chair requested the applicant grant a 90-day extension to the clock so that proceedings may continue. He also stated there is a quorum of the board tonight, though not a full board. He asked if the applicant wished to proceed.

Attorney Grill represented the applicant and said he will take the request for extension under consideration, but not decide tonight. He confirmed the applicant will proceed with the hearing tonight.

Attorney Grill stated the purpose of the rehearing is to give the applicant an opportunity to present information that led to errors in the decision - not to start the case over again from square one. He requested the entire record from case Z18-07 be incorporated into case Z18-22.

Bob Hall stated an additional reason for a rehearing is to present new evidence.

Motion: Otis Perry moved to accept the entire previous record into this case record. Frank Landford seconded. Vote U/A

Attorney Grill stated there are two main issues: is there a significant gap in coverage and were feasible alternative locations sought.



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1. IDK confirmed there is a gap- there is an area in Dover where there is an 'in-building' gap. It's in a residential and business area where 1600 people live which is 5% of Dover's population.
2. They looked at the 15 allowed sites and they were not feasible from a technical aspect- they wouldn't cover the gap. They checked if there were existing tall structures in the gap they could use. The silo is too low. 101 Back Rd was discussed and reiterated that negotiations broke down regarding that lot. The reasons 200 Henry Law is unique:

1. Power Line easement
2. Proximity to 101 Back Rd
3. Size of the parcel
4. Location and elevation

The applicant has agreed to a condition of approval for a 160ft tall tower rather than 180ft.

Clarifying questions were asked by the board members and answered by Attorney Grill.
Ryan Monte de Ramos addressed the issue of gap coverage for the board members.

Public hearing opened.

Peter Rousseau, 200 Henry Law Ave stated the tower is going up whether people like it or not. He needs to do it to pay the taxes and run the farm.

Tom Hackett, 43 Samuel Hanson Ave has an issue with the gap and the fact that no residents have supported this tower due to lack of coverage. Has the applicant considered adding height to 292 Middle Rd- WOKQ? He requested the ZBA deny this application.

Norm Fracassa, 1 Penny Ln said the gap area includes 1600 people total in that area- they are not all T-Mobile customers. It's more likely less than 280 people are affected. It is not the abutter's burden to help the applicant find locations.

STAFF RECOMMENDATION:

Assistant City Planner Elena Piekut stated she had no comments and deferred to the recommendations of special counsel due to the complexity of the case and the laws involved.

Public hearing closed.

Motion: Otis Perry moved to deny the application for a tower based on the written statements from the original hearing and the fact that testimony tonight did not add or refute any previous statements. Frank Landford seconded and said there was no new information presented tonight.

Rich Onufry added no proof was given that feasible alternatives were pursued.

Bob Hall stated nothing was presented to change his mind from the previous hearing.

Vote: U/A

4. OTHER BUSINESS

Elena Piekut (Assistant City Planner, Zoning Administrator) reiterated the Land Use board meet and greet will be Tuesday January 8th. Also, goal setting with the Planning Board occurs in January regarding amendments to the Zoning Ordinance so if any ZBA members have issues they need to bring them forward.

5. ADJOURN

Motion: Otis Perry moved to adjourn. Rich Onufry seconded. Vote: U/A. Adjourned: 10:18p.m.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Special Meeting
Meeting Location: **McConnell Center Cafeteria** – 61 Locust St., Dover, NH 03820
Meeting Date: **Tuesday, January 8, 2019**
Meeting Time: **5:00 pm**

1. ATTENDANCE

Members Present: Bob Hall (Vice Chair), Otis Perry, Rich Onufry (Alternate)

Members Absent: Chris Prior (Chair), Frank Landford, George Reagan, Nick Couturier (Alternate), Anthony Sillitta (Alternate)

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

The Vice Chair called the meeting to order at 5:00 p.m.

2. OLD BUSINESS

A. Approval of Written Decision on Z18-22

Motion: Otis Perry moved to approve and confirm the written decision prepared by special counsel. Rich Onufry seconded. Vote: U/A

3. HEARINGS

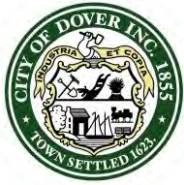
None.

4. OTHER BUSINESS

None.

5. ADJOURN

Motion: Otis Perry moved to adjourn. Rich Onufry seconded. Vote: U/A. Adjourned: 5:02 p.m.



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, January 17, 2019
Meeting Time:	7:00 pm

INTENT: The Applicant requests a variance to permit an assisted living facility

UNITS PROPOSED: 24 beds, 2 accessory apartments

AGENDA ITEM #: 3-A

ZONING DISTRICT: Hotel/Retail (B-4)

FILE: Z18-20

APPLICANT/OWNER: Real McKoy Properties, LLC

LOCATION: 301 Durham Road (Tax Map H, Lot 1)

ACREAGE: 2.95 acres (128,502 sq. ft.)

EXISTING LAND USE: Unfinished 12-bed Elderly Assisted Care Home

PROPOSED LAND USE: Assisted Living Facility

SURROUNDING LAND USE: Single family dwellings, combined light manufacturing, retail, warehousing, and office uses

PREVIOUS ZBA ACTION:

Z06-13: variance granted to permit beauty salon
Z13-18: variance granted to permit and elderly assisted care home for 8-10 residents/2 staff apartments

Z13-18A: variance granted to permit an increase to 12 beds and 2 staff apartments

Z18-12: variance granted to permit an assisted living facility

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: Application, plans

STAFF RECOMMENDATION: Staff supports granting the variance request.

BACKGROUND INFORMATION AND SUMMARY OF REQUEST

The property subject to this variance request is a 2.95-acre lot on the Madbury town line on Durham Road. Previously a single-family home, containing a beauty salon (by variance), variances were granted in 2013 to convert an expanded structure to an elderly assisted care home, first with 8-10 beds (and two staff apartments), then with 12 beds (and two staff apartments). Site plan approval for the 12-bed facility was obtained in October 2015 and the project is partially constructed.

In June 2018, a variance was granted to permit an assisted living facility with 24 beds (and two staff apartments). Due to improper noticing, this was invalidated, and the same request is before the ZBA. No Change to the building footprint is proposed as the increased number of beds fits within the existing layout. Because of the increase in the number of residents served, the use is now classified as an “assisted living facility” rather than an “elderly assisted care facility,” both of which are defined by Section 170-6 of the Zoning Ordinance.

On December 11, 2018, the Planning Board conditionally approved the site plan with a condition that the necessary relief is obtained from the ZBA. **At the December 20, 2018 meeting, the ZBA asked that materials submitted at the hearing be reviewed by Community Services staff. A memo from the City Engineer is attached.**

REASON FOR STAFF RECOMMENDATION

The Zoning Board has thrice previously considered and granted variances for a similar or the same use on this property. The use is compatible with others nearby, as the Zoning District permits retail and hospitality uses as well as other commercial uses. Where changes from the previous variance for a 12 bed facility will be limited to a small increase in the number of parking spaces, and small adjustments to landscaping, lighting, and stormwater management, the proposal is unlikely to have an effect on property values or be more inconsistent with the ordinance than the previous approval. **The Board’s consideration is this matter is whether a variance should be granted for the assisted living facility use. Contrary to provided testimony, the Zoning Ordinance does provide opportunities for housing for older persons to be located on private septic systems.**

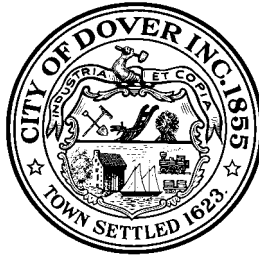
STAFF RECOMMENDATION

Staff recommends the Board remove the item from the table, evaluate and make findings on the five variance criteria, and grant the variance request with the following conditions:

- NH Subsurface Systems Bureau and Town of Madbury approve the Septic System, with permit number added to the plan.
- Prior to issuance of a CO, the City has been provided proof the NH Drinking Water Bureau approves of the well.

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City of Dover, New Hampshire COMMUNITY SERVICES DEPARTMENT

Memorandum

To: City of Dover Planning Department

From: Dave White, PE City Engineer

January 9, 2019

Recently, you passed along a request from the Zoning Board of Adjustment for the Community Services Department to review information submitted by an abutter to a project on Durham Road, requesting a variance from the Board.

So you and the Zoning Board are aware, similar concerns were raised by the abutter at the Planning Board review in November. At that time, as a member of the Planning Board, I reviewed the material, in addition to the review I completed as part of the Technical Review process.

For background, the City has a limited scope of review authority, per RSA 485-A:32 II. City of Dover reviews septic systems prior to submittal to the state of New Hampshire for conformance with the City of Dover Code, specifically Chapter 147 section 3. The State of New Hampshire Subsurface Systems Bureau within the Department of Environmental Services will perform a more technical review of the application. In this regard, we rely on the State for conformance review of all other regulations.

In my review of the system, I found, that once a State permit is issued, the design would be in compliance with the Code. Furthermore, I understand that the ZBA may prefer a tie in to a public sanitary sewer line. Chapter 147 only requires this if the public line is within 100 feet of the property, which in this case it is not.

In summary, to the extent the City can review and approve a septic system we find that the application is compliant with our Code. Regarding the technical issues raised within the Truslow report, those technical elements will be reviewed by the appropriate regulator at the State, and we defer to them. It is my understanding that Planning staff has forwarded the materials to the State for its review.