



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, January 16, 2020
Meeting Time: 7:00 pm

1. ATTENDANCE

Members Present: Chris Prior (Chair), Otis Perry, Anthony Sillitta (Alternate), Rich Onufry (Alternate), Nick Couturier, Frank Landford, James Burdin (Alternate)

Members Absent (Unexcused): George Reagan (Vice Chair)

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

The Chair called the meeting to order at 7:03 PM.

2. APPROVAL OF MEETING MINUTES OF DECEMBER 19, 2019

Motion: James Burdin moved to approve the minutes of December 19, 2019 as submitted. Seconded by Nick Couturier. Vote: U/A

3. ELECTION OF OFFICERS

Motion: Otis Perry moved, and James Burdin seconded to move this item to the end of the meeting after the hearings. Vote: U/A

4. HEARINGS

The Chair explained the ZBA meeting process and stated Anthony Sillitta will be a voting member for the first case.

A. Z20-01 Applicant/Owners Stephen and Rosemary Forcillo, 206 Gulf Road (Tax Map N, Lot 12-A), located in the Rural Residential (R-40) Zoning District, request a variance from Section 170-12.B of the Zoning Ordinance to permit the subdivision of Tax Map N, Lot 12-A into two lots with less than the required minimum contiguous upland land area of 40,000 square feet. One lot will contain 1.115 acres (48,575 sq. ft.) including 32,000 sq. ft. of upland, and the second lot will contain 2.788 acres (121,460 sq. ft.) including 32,000 sq. ft. of upland.

Robert Stowell of Tritech Engineering represented the applicant and presented the case. The applicant wishes to subdivide the land to create a new building lot behind their existing home so they can relocate to a single-floor home. Most of the land to the side of the existing house is wetlands. The plan they've come up with will utilize a shared driveway and be located behind the existing house. However, the upland in that area does not meet requirements. Both lots will be about 20% short. Mr. Stowell noted that the applicants have multiple family members living in the neighborhood and that's why they want to stay in that location.

Peggy Carter, 210 Gulf Rd is the sister of the applicant and an abutter. She explained the health issues leading to the need for a single-floor residence for her family. She is in favor of the application. Their mother's home is also right in a row with their homes, and they want to maintain that proximity as they are a close family. She noted they did look at trying to add on to the existing house, but the layout wouldn't make any sense.

The public hearing was opened. No one spoke.



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STAFF RECOMMENDATION:

Elena Piekut stated the Planning Department supports granting the variance with a few conditions. The shared driveway minimizes the impact and the intent of the variance is maintained as much as possible. It is a reasonable use. The conditions are:

- The new lot will utilize a shared driveway
- Buffer signage is put in place along the wetland buffer

The applicant is aware of the conditions and accepts them.

Public hearing closed.

Motion: Otis Perry moved to approve the variance with the conditions drafted by staff. Anthony Sillitta seconded. Vote U/A

B. Z20-02 Applicant/Owner Mary Paola, 31 Tennyson Avenue (Tax Map 21, Lot 76), located in the Medium Density Residential (R-12) Zoning District, requests a variance from Section 170-6 of the Zoning Ordinance to permit a “childcare home” to exceed the maximum of 12 children by allowing the existing, legally nonconforming business to expand from 24 children to 30 children.

The Chair noted James Burdin will be a voting member for this case. He also disclosed that his son did attend this daycare, but he does not feel the need to recuse himself from the case.

Chris Wyskiel, attorney from Wyskiel, Boc, Tillinghast & Bolduc represented the applicants and presented the case. The applicant started her business in 2003 and at that time the conditions were a maximum of 24 kids as long as four of them were siblings. The zoning ordinance has changed over time, but they have a preexisting nonconforming use. The applicant would like to convert a room in the house that is 240 sq. ft. and currently a den into part of the child-care portion of the home. By adding this square footage to the operation, the state will allow her to care for 30 children, but they won’t certify the business for that until it is first granted by Dover.

The law allows for this reasonable expansion of a preexisting nonconforming use as long as there is no negative impact to the surrounding areas- which this won’t. Children are dropped off at different times and for different lengths of time throughout the day. There will be no visible change to the exterior.

Mr. Wyskiel briefly addressed the variance criteria.

Board members asked some questions at this time.

James Burdin wondered if the staff number will be increased with the number of children increasing. There are four full-time employees plus the applicant. None will be added with the change proposed.

He also asked staff why the additional children need to be siblings, and how that would be enforced.

Mr. Wyskiel said the application just lists the change from 24-30 kids, but in their materials, they mention it’s requested due to the desire to accept siblings. The applicant is ok with leaving stipulation regarding siblings out of the conditions. It would be enforced by the state who can drop in and check who is on the premises at any time.

Anthony Sillitta wondered if the original variance granted was for 20 kids with four more if they are siblings.

Mr. Wyskiel handed out some original paperwork and yes, that is how it was written.



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Chair Prior is conflicted based on the public interest criteria for variance regarding health, safety and welfare of the general public. The traffic and street parking during the after work pick up time can be difficult for the neighborhood. If this was a new facility, it would go before the technical review committee. If a board member recommends approval tonight, he will add a condition that the request go before TRC for review.

The public hearing was opened.

Carol Marshall, 29 Tennyson Ave is the closest abutter to the applicant. She currently experiences people parking in front of her mailbox and driveway and walking across her lawn to access the daycare. There is not enough parking to support the application. On top of the traffic from that use, there is a similar use across the street, there are bus pick-ups and neighbors walking. This is already a busy, dangerous area. The employees and customers all park on the street and the street cannot accommodate any more parking.

Tim Marshall, 29 Tennyson Ave also has parking concerns. He described where the employees park and what vehicles are in the driveway. He says customers park in front of his mailbox and driveway. He also stated his own vehicle has been vandalized when it's parked in front of his home.

Mary Paola, 31 Tennyson Ave, applicant noted the business began in 1987 prior to the zoning laws. The original 20 kids maximum came from state regulations based on the square footage of the house being used for the daycare. Regarding parking, these abutters are the only ones who complain. The business was in place when the neighbors purchased the property. The drop-off and pick-up times do vary. She has attendance logs she can submit to show the scheduling. She currently has 13 siblings attending and two more are expecting. Additional siblings would not add traffic since they are in the same vehicle.

James Burdin wondered what the schedule is for inclement weather. It is not based on the school system- it depends on the storm if they open, close or delay.

Anthony Sillitta wondered if there is a parking ban due to a storm, what do they do? Ms. Paola said they would close for the day.

STAFF RECOMMENDATION:

Elena Piekut revised her opinion based on the discussion. She had planned to propose a condition about a customary home occupation. But now she is striking that condition. She doesn't think the added number of children should be required to be siblings for the ZBA vote, though it is reasonable to expect that a number of them would be. The Planning Department supports granting the variance. They have been in business for 30 years and some amount of increase is reasonable. She agrees that a TRC review needs to occur.

Public hearing closed.

The board discussed the language of a possible granted variance with relation to numbers of kids, ages of kids, staffing numbers and public safety.

Motion: Otis Perry moved to grant the variance to permit the expansion of the child home care to allow for up to 30 children with the condition the application be reviewed by TRC to specifically address pick-up and drop-off procedures and timing and the traffic on Tennyson Ave. The familial relationships of the children shouldn't have any bearing on the application. James Burdin seconded.



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Discussion: James Burdin said the TRC review is appropriate and should account for the abutters concerns. TRC is the appropriate place for review to occur.

Vote U/A

3. ELECTION OF OFFICERS

Nominations were made as follows:

Otis Perry nominated Chris Prior for Chair. Anthony Sillitta seconded.

Anthony Sillitta nominated Otis Perry for Vice Chair. Nick Couturier seconded.

Votes were turned in by ballot. Unanimously, Chris Prior was voted in as Chair and Otis Perry was voted in as Vice Chair.

5. OTHER BUSINESS

None

6. ADJOURN

Motion: Otis Perry moved to adjourn at 8:09 PM. Seconded by Anthony Sillitta. Vote U/A