



John P. Dougherty
Direct Line: (617) 439-2549
Fax: (617) 310-9549
E-mail: jdougherty@nutter.com

March 17, 2025

By Electronic Mail

George Chimento, Chair
Dover Board of Appeals
5 Springdale Avenue
Dover, MA 02030

Re: 15 Park Avenue

Dear Chair Chimento and Members of the Board of Appeals:

I am a resident of 11 Park Avenue and counsel to Lisa Dougherty, owner of 11 Park Avenue, a direct abutter to 15 Park Avenue. Oakley Road is a "Street" in accordance with the terms of the Zoning Bylaw and, accordingly, the setback from Oakley Road for any accessory building constructed or relocated on 15 Park Avenue should be twenty (20) feet for the reasons set forth in this letter.

1. Oakley Road Is A "Street" Under The Dover Zoning Bylaw

The term "Street" is defined in Section 185-5 of the Dover Zoning Bylaw (attached as Exhibit A) as follows:

"A public or private way, alley, lane, court, or sidewalk which is open or dedicated to public use" (emphasis added).

The Selectmen unanimously voted to lay out Oakley Road on April 15, 1998 and it was accepted as a public way at the Annual Town Meeting on May 4, 1998. The legal description of Oakley Road that was accepted as a public way is attached to the notice of the Selectmen's vote provided to the Town Clerk from the Town Administrator dated April 16, 1998 together with the Certificate of Vote, copies of which are attached hereto as Exhibit B. This legal description is based on the plan entitled "Plan of Land in Dover" prepared by Farnham & Gleason, Inc. and filed with the Norfolk County Registry District of the Land Court on July 8, 1926 and filed with Certificate of Title No. 9734. A copy of this Land Court Plan is attached hereto as Exhibit C.

The second course of the legal description of Oakley Road shown on the attached Exhibit B is:

"THENCE: Running N 9-02-00 E, a distance of 717.32 feet to a point on the northerly sideline of Oakly Rd.: (emphasis added)"

The Land Court Plan on the attached Exhibit C shows that the length of Lots 1 through 8 totals 717.32 feet (66.32', 93.00', 93.00', 93.00', 93.00', 93.00', 93.00' and 93.00' = 717.32'). Therefore, Oakley Road was accepted as a public way at Town Meeting extending from Dedham

Street to the back line of 15 Park Avenue. Accordingly, even the portion of Oakley Road that is unimproved was accepted at Town Meeting as a public way.

Even though currently unimproved, the Board of Appeals does not have the authority to find or determine that this portion of Oakley Road is no longer dedicated for public use. A public way can only be discontinued by a vote at Town Meeting as provided in M.G.L. Chapter 82, Section 21.

The fact that the extension of Oakley Road is unimproved is not relevant to the definition of "Street" in accordance with the Zoning Bylaw as Oakley Road must be either "open or dedicated to public use" not both open and dedicated to public use. There is no question that the extension of Oakley Road is dedicated to public use based on the vote of the Selectman and Town Meeting vote in 1998.

It is worth noting that the unimproved portion of Oakley Road is commonly used by dog walkers to access the Chickering trails and Centre Street from Oakley Road.

It is also relevant that in 1960 the Most Precious Blood Church granted the Town a forty (40) foot wide right of way from Centre Street to the publicly-accepted end line of Oakley Road to be used "for all purposes for which ways are commonly used in said Town of Dover." A copy of that deed and the corresponding plan showing this right of way are attached as Exhibit D. Perhaps it was anticipated at such time that Oakley Road might be extended to Centre Street.

2. The Proposed Garage Does Not Comply With The Front Yard Setback Requirement From Oakley Road

Section 185-23 of the Zoning Bylaw (attached as Exhibit E) provides that:

"In a case of a lot abutting on more than 1 street, the regulations as to setbacks from the nearest side line of the street shall be applicable with respect to each street."

The property located 15 Park Avenue is located at the corner intersection of Park Avenue and Oakley Road. Since Oakley Road was accepted as a public way in 1998, any structure on 15 Park Avenue must comply with the twenty (20) foot minimum setback from both Park Avenue and Oakley Road in order to meet the requirements of Section 185-23. Since the proposed garage only has a ten (10) foot setback from Oakley Road, a variance from the Zoning Board of Appeals is required for this setback violation.

Thank you for your time and attention to these matters.

Very truly yours,
John P. Dougherty

EXHIBIT A
Definition of "Street" in Section 185-5 of the Dover Zoning Bylaw

A use of a building or lot that does not conform to a use regulation prescribed by this bylaw for the district in which it is located, but which was in existence at the time the use regulation became effective and was lawful at the time it was established.

PRIVATELY OWNED WASTEWATER TREATMENT FACILITY

Any wastewater treatment plant and its associated infrastructure, including, but not limited to, pumping stations, wastewater treatment plants, all wastewater treatment operations, sewage treatment, disinfection, advanced water treatment, wastewater recycling and reuse and discharge systems which serve primarily for the collection, treatment and discharge of wastewater owned, operated and managed by an entity other than the Town of Dover or other government agency.

RETAIL OR SERVICE ESTABLISHMENT

A building or part thereof, or a lot, or part thereof, that is used for a store or shopping center selling finished retail goods or providing personal services such as salons, barber shops, dry cleaners, self-service or no-service kiosks or similar facilities, housekeeping and domestic animal care, photographer, gyms and fitness studios, and other similar uses, exclusive of formula businesses.

SETBACK

The distance between the closest point of a structure to the nearest lot line.

SHORT-TERM RENTAL

A housing unit, or portion thereof, available for occupancy for less than thirty (30) consecutive days and subject to room occupancy excise tax.

SPECIAL PERMIT GRANTING AUTHORITY

The authority empowered to grant special permits, which shall be the Board of Appeals unless some other board is so designated in this chapter.

STREET

A public or private way, alley, lane, court, or sidewalk which is open or dedicated to public use.

STRUCTURES

A combination of materials, other than a building, except windmills. For windmills, a "structure" is defined as the supporting tower, pole or base upon which are mounted all rotating machinery and airfoil blades.

SUBDIVISION

The division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the Subdivision Control Law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or (c) a way in existence when the Subdivision Control Law became effective in the city or town in which the land lies, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected

EXHIBIT B
Certificate of Vote at 1998 Town Meeting



Paul E. Cohen
Town Administrator

TOWN OF DOVER

BOARD OF SELECTMEN

5 SPRINGDALE AVENUE
P.O. BOX 250
DOVER, MASSACHUSETTS 02030

TELEPHONE (508) 785-2269
FAX (508) 785-2341

April 16, 1998

Ms. Betsey B. Horovitz
Town Clerk
5 Springdale Avenue
Dover, MA 02030

Re: Lay out of Draper and Oakley Roads

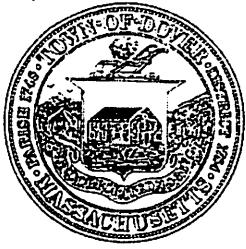
Dear Betsey:

At last evening's Board of Selectmen meeting, the Selectmen unanimously voted to lay out Draper Road and Oakley Road. The descriptions and plans for the lay out of these two ways are as presented to you by Town Engineer Robert Homer on April 7, 1998. The Board of Selectmen will not be assessing any betterments in relation to the acceptance of these two streets as public ways.

Thank you for your assistance throughout this process.

Sincerely,

Paul E. Cohen
Town Administrator



TOWN OF DOVER

5 Springdale Avenue
P.O. Box 250
Dover, Massachusetts 02030

Betsey B. Horovitz
Town Clerk

Tel: (508) 785-1719
Fax: (508) 785-2341

CERTIFICATE OF VOTE

This is to certify that the Annual Town Meeting of the Town of Dover was held at the Lindquist Commons Building at the Dover-Sherborn Regional High School in Dover on May 4, 1998. The meeting was duly called and held pursuant to warrant therefore issued by the Selectmen on the 25th day of February 1998 and duly served in accordance with town bylaws, at which meeting a quorum was present and voting. The following action was taken with respect to **Article 22** of the Warrant. The article reads as follows:

Article 22. (Board of Selectmen) To see if the Town will accept Draper Road, Oakley Road, and Tisdale Drive as accepted public ways, as laid out by the Board of Selectmen, all as shown on plans on file in the Office of the Town Clerk; or take any other action relative thereto.

It was moved by Mr. O'Keeffe and seconded by Mr. Hepburn that the Town accept the laying out of Draper Road and Oakley Road as accepted public ways, pursuant to the reports and orders of the Selectmen filed with the Town Clerk, as shown on plans on file with the Town Clerk, and that the Selectmen be authorized to acquire by purchase or otherwise such interest in land as may be necessary to accomplish such purpose.

The motion was put to a vote and passed unanimously.

Betsey B. Horovitz
Town Clerk
May 5, 1998

A TRUE COPY
ATTEST:

Betsey B. Horovitz

TOWN CLERK OF DOVER, MASS.

May 5, 1998

Description of Oakly Road

Filed with the Norfolk County Registry of Deeds, Commonwealth of Massachusetts Land Court on November 3, 1926, certificate number 9734, decree number 11613, book number 49, page 134.

Beginning at a point on the northerly sideline of Dedham St. and the westerly sideline of Oakly Rd.;

THENCE: Running along a curve to the left of radius 25 feet, a distance of 28.59 feet to the end of the curve;

THENCE: Running N 9-02-00 E, a distance of 717.32 feet to a point on the northerly sideline of Oakly Rd.;

THENCE: Turning and running S 79-42-00 E, a distance of 40.01 feet to a point on the easterly sideline of Oakly Rd.;

THENCE: Running S 9-02-00 W, a distance of 85.24 feet to a point on the northerly sideline of Park Ave.;

THENCE: Running S 9-02-00 W, a distance of 70.00 feet to a point on the southerly sideline of Park Ave.;

THENCE: Running S 9-02-00 W, a distance of 535.75 feet to the beginning of a curve;

THENCE: Running along a curve to the left of radius 15 feet, a distance of 29.97 feet to the end of the curve and a point on the northerly sideline of Dedham St.;

THENCE: Turning and running along the northerly sideline of Dedham St. S 74-33-00 W, a distance of 79.65 feet to the point of beginning.

EXHIBIT C
Land Court Plan Showing Layout of Oakley Road

NOT *11613A*
A N
OFFICIAL LAND IN DOVER OFFICIAL
COPY feet to an inch COPY

JUNE 1926

Farnham & Gleason, Inc., Civil Engineers

Copy of part of plan
filed in
LAND REGISTRATION OFFICE
JULY 8, 1926
Scale of this plan 80 feet to an inch
C. B. Humphrey, Engineer for Court ✓

EXHIBIT D
Deed Granting and Plan Showing 40' Wide Right of Way to Centre Street

ROMAN CATHOLIC ARCHBISHOP OF BOSTON, a CORPORATION SOLE, of Boston,
 A N
 Suffolk County, Massachusetts, for consideration paid grants to TOWN OF
 DOVER, a Municipal corporation duly organized and located in Norfolk County,
 said Commonwealth of Massachusetts, with QUITCLAIM COVENANTS, a certain
 parcel of land situated in Dover, Norfolk County, Commonwealth of Massachu-
 setts, bounded and described as follows:

NORTHWESTERLY: by Center St., forty-six and 28/100 (46.28) feet;
NORTHEASTERLY: by land now or formerly of Michael W. Comiskey,
 twenty-nine and 9/100 (29.09) feet;
NORTHEASTERLY: again, but more Easterly by other land of the Town
 of Dover, being the grantee herein, eighty-six and
 73/100 (86.73) feet; and
SOUTHWESTERLY: by other land of this grantor, being Lot 8 on the
 plan hereafter referred to, one hundred five and
 36/100 (105.36) feet.

The above described land is shown as Lot 7 on a plan entitled:
 "Plan of Land in Dover, Massachusetts" dated September 21, 1959, drawn by
 Cheney Engineering Co. to be filed in the Land Registration Office as Plan
 No. 19441B, a copy of a portion of which is filed herewith in the Norfolk
 Registry District of the Land Court.

Also, a right of easement, to pass and repass over the premises
 marked "Right-of-Way" on said plan above referred to and thereon bounded and
 described as follows:

NORTHWESTERLY: by Center St., ~~for the right of way~~;
EASTERLY: by the remainder of Lot 5 and 6 as shown on said
 plan;
NORTHERLY: by the remainder of Lot 6;
EASTERLY: again by land of the Town of Dover, forty (40)
 feet;
SOUTHERLY: by the Northerly end of Oakley Road and by land
 now or formerly of Dandrow, one hundred forty-
 seven and 90/100 (147.90) feet; and
WESTERLY: by land formerly of James H. Chickering, four
 hundred forty-five and 61/100 (445.61) feet.

The above described easement is appurtenant to and for the benefit
 of the land of said Town of Dover adjacent thereto and now known as the
 Chickering School Land so-called, to be used for all purposes for which ways
 are commonly used in said Town of Dover, in common with this grantor, its
 successors and assigns.

For grantor's title, see Certificate of Title #63992 issued by the
 Norfolk County Registry District of the Land Court in Book 320, Page 192.

IN WITNESS WHEREOF, the said Roman Catholic Archbishop of Boston, a
 Corporation Sole, has caused its corporate seal to be hereto affixed and
 these presents to be signed, acknowledged and delivered in its name and
 behalf by Richard Cardinal Cushing, present Roman Catholic Archbishop of
 Boston, hereunto duly authorized this 24th day of May, A.D., 1960.

ROMAN CATHOLIC ARCHBISHOP OF
 BOSTON, A CORPORATION SOLE

WITNESS:

Robert Kennedy

By *Richard Cardinal Cushing*
 Richard Cardinal Cushing, Roman
 Catholic Archbishop of Boston



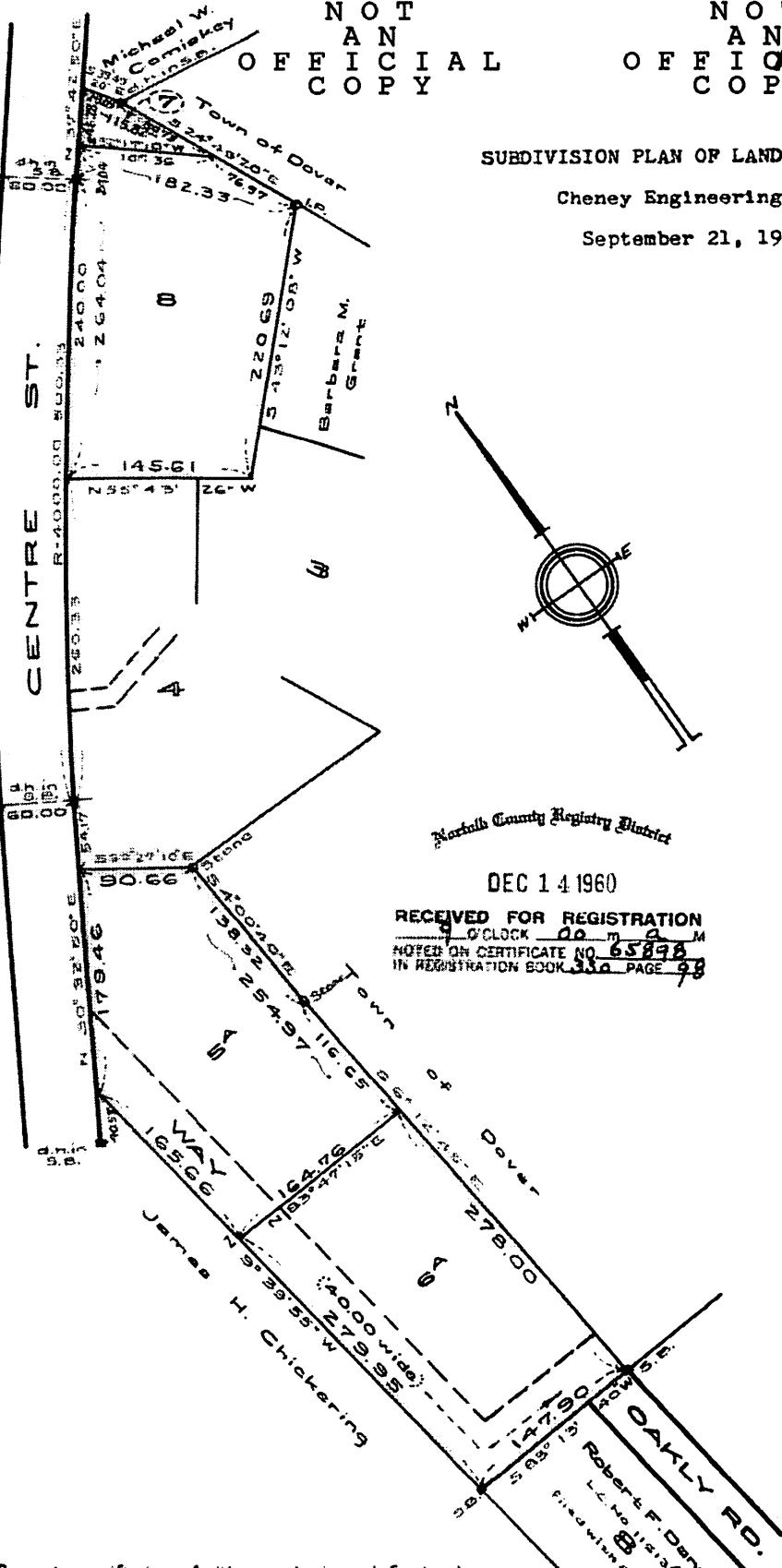
NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

SUBDIVISION PLAN OF LAND IN DOVER

Cheney Engineering Co.

September 21, 1959



Subdivision of Lots 5, 6 & 1
Shown on Plan 19441A
Filed with Cert. of Title No. 41363
Registry District of Norfolk County

Separate certificates of title may be issued for land
shown hereon as Lots 5, 6, 7 & 8
By the Court.

MAY 25, 1960

Margaret B. Daly
Recorder

Copy of part of plan
filed in
LAND REGISTRATION OFFICE
MAY 25, 1960

Scale of this plan 100 feet to an inch
C.M. Anderson, Engineer for Court