



TOWN OF DOVER
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BOARD OF APPEALS
DOVER, MASSACHUSETTS 02030

2025 MAY 21 P 1:09

DECISION: CASE 2025-03

TOWN CLERK

APPLICATION

Application on January 24, 2025 of Thomas and Christine Heer (“Applicants”), of 15 Park Avenue, Dover, MA 02030. The Applicants:

“appeal the Building Inspector’s determination that the Town Property adjacent to our western side lot line is a street and therefore requires a 20 foot set back for an accessory building in accordance with 185-23 and 185-25.”

NOTICE OF PUBLIC HEARING

After review and consultation with counsel for Applicants, this Notice was mailed and posted in accordance with applicable law and published in the Dover/Sherborn Hometown Weekly on March 6 and March 13:

Notice is hereby given that the Board of Appeals of the Town of Dover, Massachusetts will hold a public hearing on Thursday, March 20, 2025 at 8:30 PM through Remote Participation (Zoom) on the application of Thomas and Christine Heer. The application relates to property identified on Dover Assessor’s Map 6, Parcel 103 (with address of 15 Park Avenue, Dover, MA 02030). Applicants request a finding that a portion of the Town-owned land known as “Oakley Road” on the western boundary of the Parcel is not a Street and that the setback requirement from said portion of “Oakley Road” to construct or relocate an accessory building is accordingly 7.5 feet and not 20 feet. This is not a request for a Variance, but a request for a finding of law. Anybody interested or wishing to be heard should follow the instructions found on the Agenda that will be posted online at least 48 hours prior to this hearing at doverma.gov. Copies of the Application may be viewed at the Town Clerk’s office during its regular hours.

PROCEEDINGS

Record: A list of Record materials for the Proceedings are appended to this Decision.

Hearing (four public sessions and a site walk):

Session 1 of the public hearing was held on March 20, 2025 at 8:30 p.m. through remote participation (Zoom). Present were Board of Appeals members LaVerne Lovell, Nadir Ahmed, and Chairman George Chimento. Also present was associate member Michael Donovan. Associate member Nancy Greene was unable to attend but has certified to the Chairman that she has viewed the Zoom recording of the meeting that is posted on YouTube.

A site walk at the Heers' lot (the "Property") was conducted on March 26, 2026 between 6:30 and 7:00 PM pursuant to unanimous vote in the first session. All Board members attended or have since viewed Oakley Road and the portion of the Property abutting it.

Session 2 of the hearing was conducted through Zoom on April 10, 2025 at 7:00 PM. All Board members attended.

Session 3 of the hearing was conducted through Zoom on May 7, 2025 at 7:00 PM. All Board members attended.

- At this session, the hearing was closed in order that the Board be allowed to decide based on information received.
- At this session, the Board determined to deny the Applicants' request to overturn the decision of the Building Inspector. It agreed that construction and relocation of accessory buildings on the Property must observe 20 foot setbacks from Oakley Road on the western boundary of the Property.
- The Board further agreed that the Chairman should prepare a more detailed decision that would be evaluated, and edited if requested, at a 4th Session of the Hearing, and that the 4th Session should be scheduled for May 20 at 7:00 PM

Session 4 of the hearing was conducted on May 20, 2025 at 7:00 PM. All Board members attended. Board members unanimously agreed (3 voting members Chimento, Ahmed and Lovell with associate members Donovan and Greene concurring) to approve the draft decision prepared by Chairman Chimento and circulated for consideration to members prior to the meeting. Mr. Chimento was authorized to submit the decision to the Town Clerk and to instruct her to notify Applicants and other interested parties of the decision and of their 20 day appeal rights.

FINDINGS

After deliberation, the Board made the following findings at its 4th Session on May 20, 2025:

1. The Property (15 Park Avenue, Dover, MA) is in an R Zone. Its southern boundary abuts Park Avenue and its western boundary abuts Oakley Road, each of which are listed as public ways by the Town Clerk.
2. The Property is clearly delineated as Lot 26 on a subdivision plan recorded in the Land Court on July 8, 1926.
3. The setback requirement for accessory buildings in an R Zone is 20 feet from the frontage street. For accessory buildings, the side yard requirement is 7 & 1/2 feet (Bylaw §185-25) unless the lot is a "corner lot" abutting two streets. In that event the side yard setback for accessory buildings is 20 feet. (Bylaw §185-23).
4. On August 13, 2002, the Building Inspector approved construction of accessory buildings on Applicants' Lot 26 within 10 feet (not 20 feet) of Oakley Road. There were no appeals by interested parties and the accessory building was constructed. The Board finds that this 2002 decision was erroneous because it did not take into account the 20 foot setback required for corner lots under Bylaw §185-23. Although sufficient time has elapsed to allow the accessory

buildings approved in 2002 to stay in place, the Board finds that the 2002 decision is not binding as to construction of new accessory buildings or alteration or relocation of existing accessory buildings.

5. On January 8, 2025 the Planning Board reviewed a proposed plan of the Applicants to construct a new accessory building and to relocate existing accessory buildings so that all would be set back 10 feet (not 20 feet) from Oakley Road. Planning Board review is required under §185-26 when an owner decides to relocate accessory buildings. This ensures that the “use” of the property will not be inconsistent with zoning requirements.
6. The Planning Board did not decide on the applicability of §185-23 and correctly decided that “any variance for setback requirements would be done through the Building Department or the ZBA.”
7. On January 14, 2025, after receiving the proposed plans and the Planning Board decision, the Building Inspector denied approval of the plans because they showed 10 foot setbacks, not 20 foot setbacks, from Oakley Road. The Building inspector was specific that 20 foot setbacks should apply because Oakley Road is a street and §185-23 applies.
8. On January 24, 2025, the Heers filed a timely appeal with this Board.
9. On April 11, 2025 the Applicants, through their attorney, extended until May 23, 2025 at 5:00 PM the time for the Board to deliberate and file a written decision.
10. Applicants maintain that Oakley Road is not a “street” as defined in §185-5 and that the setback requirement for constructing or relocating accessory buildings is 7 & ½ feet. They do not consider Oakley Road to be a street or their Lot 26 to be a corner Lot with 20 foot setbacks from both Oakley Road and Park Avenue. Their special concern is that Oakley Road abutting the Applicants’ Lot is mostly unpaved and unsuitable for vehicle traffic.
11. Oakley Road was accepted as a public way at Town Meeting on May 4, 1998. The vote authorized the Selectmen:

“... to acquire by purchase or otherwise such interest in land as may be necessary to accomplish such purpose.”
12. No action was taken by the Selectmen to purchase or otherwise acquire an interest in Oakley Road and there is dispute between attorneys for Applicants and neighbors as to whether steps beyond Town meeting vote were necessary under M.G.L. c. 82, Section 24. This Decision does not address that debate and relies on the fact that the definition of “street” in §185-05 does not require a “street” to be a public way.
13. In addition to their position that Oakley Road is not a public way, Applicants insist that Oakley Road is not a “street” under the broad definition of Bylaw §185-5.
14. Applicants focus especially on the portion of Oakley Road (the “Stub”) between Applicants’ Lot 26 and Lots 7 & 8 (owned by Indra and John Guertler). They refer to this portion of Oakley Road as a “paper street” because it is unsuitable for firetrucks or automobiles.

15. Consistent with the 2002 Building Inspector decision (which the Board believes was incorrect) Applicants' proposed plan apparently assumes that the Stub is not a "street" and that the 20 foot set back requirement for corner lots in an R zone under §185-23 is inapplicable.
16. After a site walk the Board agrees that the Stub is mostly unpaved, but also recognizes that a small portion of the Stub is paved and used for the driveway entrance to the Guertlers' home.
17. It is clear from uncontradicted testimony that the Stub is used regularly by neighbors for walking and access to the adjacent Church and nearby school. The site walk indicates the likely veracity of this testimony.
18. The Board finds that the Oakley Road Stub abuts the parking lot of the Church of the Most Precious Blood with has frontage on Centre Street. It also finds that a subdivision plan of adjacent property (Land Court recording on December 14, 1960) shows a 40 foot right of way from Oakley Road to Centre Street.

DELIBERATION

The Board has considered the well thought arguments of the Applicants, the attorneys for certain neighbors, and opinions expressed by unrepresented neighbors. Applicants maintain that Oakley Road is not a "street" and the corner lot 20 foot setback requirements of §185-23 do not apply. Specifically, they maintain that:

1. The Town did not obtain releases of ownership interests in Oakley Road from its abutting owners within 120 days of the Town Meeting vote and Oakley Road accordingly cannot be a public way.
2. The Stub portion of Oakley Drive which abuts their Lot 26 cannot be a "street" of any kind, whether private or public under the broad definition in §185-5. They assert that the Stub is an unpaved "paper street" unsuitable for vehicle traffic.

The Board disagrees with the Applicants' positions.

I. Oakley Road is a "street" within the broad definition of Dover Bylaw §185-5. It accordingly determines:

1. If Oakley Road, including its Stub portion, is not a public way it is still a "street" under Dover Bylaws §185-5 which provide that a street is:

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

Our Bylaws refer to the 11th edition of Merriam Webster for undefined terms. Even a quick scan reveals that a "lane" can be a "narrow way or track" and that a "track" could even be a "path made by repeated footfalls." Considering the unrefuted testimony that the Stub is used repeatedly for recreation and travel to church and school, the Stub would qualify as a "street" as part of a private way, even if not a public way.

2. Does this mean that every trail and footpath in Dover is a street? We limit our decision to this appeal and its special circumstances. Oakley Road is laid out clearly on a subdivision plan recorded in the Land Court. Town Meeting has accepted it as a public way without differentiating

the Stub from the paved portion. Neighbors have used it for decades for vehicle traffic up to the Stub and for foot access on the Stub to the Church and the neighboring school. The neighboring Guertlers even use a small portion of the Stub as entrance to their driveway. In short, there is more here than a path or trail.

3. The Applicants make much of the fact that the Stub is a “paper street,” meaning that although it is shown on a subdivision plan it cannot be used for vehicles and firetrucks. Excepting the small portion used for the Guertlers’ driveway we agree the stub is a “paper street.” However, even paper streets are streets under our Bylaws.
4. When a street is a paper street, set back and other zoning requirements do not go out the window. It is simply not allowed to use frontage on a paper street as a justification to build a structure. In Dover, our Bylaws address this elegantly. The definition of “street” is broad, but we also have a very precise and rigorous definition of “Street Frontage” in §185-19. The Stub clearly lacks Street Frontage in its present condition but that does not prevent it from being a street at the present time. Street frontage is irrelevant for this determination of whether 15 Park Avenue is a corner lot. It is sufficient that it be bounded by two streets to be a corner lot, regardless of whether the streets are adequate to provide frontage:

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. Such a lot must have the entire minimum frontage on 1 street but need not have it on more than 1 street, and there shall be deemed to be only 1 back line. §185-23

II. It is unnecessary to determine if Oakley Road, including the Stub, is a public way.

The Board does not reject the argument that Oakley Road could instead be a public way but finds it unnecessary to make a formal determination on this question.

DECISION

1. The Board denies the Appellants’ appeal from the January 14, 2025 decision of the Building Inspector.
2. The Board votes to confirm the January 14, 2025 decision of the Building Inspector.
3. New accessory buildings may not be constructed on the Heers’ lot within 20 feet of Oakley Road, and current structures may not be relocated to within 20 feet of Oakley Road or Park Avenue.
4. For this purpose, all of Oakley Road, including its undeveloped Stub portion, is considered a “street” within the meaning of the corner lot requirements of §185-23 and the definition of “street” in Bylaw §185-5.

This was a unanimous decision of the Board at its duly called meeting of May 20, 2025, with its three members voting: Chairman George Chimento and members LaVerne Lovell and Nadir Ahmed voting, and Associate Members Michael Donovan and Nancy Greene concurring.

An appeal from this Decision may be taken pursuant to Mass. Gen. Laws ch. 40A, § 17. Any action taken in disregard of this Decision is at risk that a court will order reversal of such actions, in whole or in part, and that any construction performed may be ordered undone. This Decision does not approve or condone any prior action, including construction, reconstruction or moving of any structure without the prior written approval of the Building Inspector, unless exempt under Massachusetts law due to passage of time. This Decision does not waive the Town of Dover's right to enforce the Zoning Code against any other building or zoning issues.

For the Board of Appeals

George Chimento

George L. Chimento, Chairman

A True Record for the Board of Appeals

LaVerne Lovell

LaVerne Lovell, Clerk

Received: May 21, 2025

Julie S. Huppman

Dover Town Clerk

Dover Board of Appeals / Case 2025-03

Record Documents

1926.7.8_Oakley_Park_Recorded Plan

1998.5.4 Oakley Acceptance Plan

2002.8.13 Building permit

2025.1.8_Planning Bd Site Plan approval

2025.1.12 Building Inspector denial

2025.1.24_Owner Application re/ Building Inspector denial (Case # 2025_03)

2025.2.11_Owners Memorandum

2025.2.14_Plot Plan

2025.2.14_Owners photos & legal position

2025.2.24_O_Brien e-mail cases and analysis

2025.3.17_Nutter letter and exhibits w/ 1960 Right of Way

2025.3.18_Nutter letter

2025.3.20_Notify of Hearing 15 Park Ave_ RI

2025.3.26_Notify Site Walk _ 15 Park Ave.

2025.3.28_Nutter legal memo

2025.3.28_O_Brien legal memo with exhibits

2025.4.10_Dowling memo

2025.4.11_extension of time for decision to May 23, 5 PM.

2025.4.14_O_Brien e-mail with legal memo from KP Law

Various e-mails

Record materials are available on request of the Town Clerk. Most may be viewed on the Town website at <https://www.doverma.gov/770/15-Park-Ave>