

**To:** Town of Dover, MA Zoning Board of Appeals

**From:** Thomas & Christine Heer  
15 Park Ave  
Dover, MA 02030  
(508) 259-1851

**Date:** February 11, 2025

**Re:** 15 Park Ave Garage

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To Town of Dover Zoning Board of Appeals,

We are appealing the Building Inspector's determination that the Town Property adjacent to our western side lot line at 15 Park Ave. is a "Street" and therefore requires a 20-foot setback for an accessory building (garage) in accordance with § 185-23 and § 185-25.

If it is not a street, then the sideline setback for an accessory building is 7.5 feet (one half the 15-foot setback for a dwelling).

Oakley Road and Park Ave were laid out in the 1920s and developed beginning then through the 1950s. Originally laid out in 26 approximately quarter acre lots, they now have 17 houses on a mix of half acre and smaller lots. The Town made a taking of the streets many years ago, with Oakley Road and the undeveloped parcel beside us taken in May 1998. At the time of the taking the undeveloped parcel of land on our western boundary was undisturbed woodland. It has remained that way ever since. While it is identified as "Oakley Road" on some plans it has never been developed or made passable.

In no objective way could it be considered a Road or Street.

The proposed location of our new garage is in compliance with the zoning bylaw for accessory buildings in zoning district R:

§ 185-25 Accessory buildings.

Buildings for an accessory use permissible in a residence district under Article II of this chapter may be built, altered, enlarged, reconstructed or moved upon any lot in a residence district, provided that every such building for an accessory use shall conform to the same minimum set back from the nearest side line of the street required for a dwelling house and shall be set back from the side lines and back line of the lot at least **one-half** the distance required for a dwelling house.

The zoning district R defines minimum accessory building setbacks as follows:

- Lot line, Front: 20 feet
- Lot line, Rear: 15 feet

- Lot line, Side: 7.5 feet

The Building Inspector however has taken the position that the abutting Town parcel of land is a “street” and thus § 185-23 applies:

§ 185-23 Lots abutting more than 1 street.

*In a case of a lot abutting on more than 1 street, the regulations as to set backs 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.*

Our lot has the required 100 feet of frontage Park Avenue. When we built our existing barn in 2002, the Town did not consider the undeveloped Town land beside us a street and thus did not require a 20-foot set back (see attached building permit).

While the confusion of what is and what is not a “street” is understandable, it is clear on the ground and under the Town of Dover’s Zoning Bylaw (“The Bylaw”) that this parcel of land is not a “street”.

**Definitions:**

Dover bylaw § 185-5 C provides the following defined pertinent terms (see attached excerpt from The Bylaw):

LOT LINE, FRONT — A line separating a lot from a street.

LOT LINE, SIDE — A line separating a lot from other lots or from land in a different ownership and which is not a front or a rear lot line.

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

For the definition of “way”, we look to Miriam Webster:

- 1 a: a thoroughfare for travel or transportation from place to place
- b: an opening for passage

Or Massachusetts General Laws c.90, § 1 defines Public Way as:

- Any public highway, [or a] private way [that is] laid out under authority of [a] statute, or
- A way dedicated to public use, or
- [a] way [that is] under [the] control of park commissioners or
- [a] body having [similar] powers.”

Interstate and state highways, as well as municipal streets and roads, would all be included in this definition. In determining whether a road is a public

way, you may consider whether it has some of the usual indications of a public way — for example, whether it is paved, whether it has street lights, street signs, traffic signals, curbing and fire hydrants, whether there are abutting houses or businesses, whether it has any crossroads intersecting it, whether it is publicly maintained, and whether there is an absence of signs prohibiting public access.

The Bylaw in Article V Dimensional Requirements, § 185-19 A. (2) (a), (b), and (c) provide clarity of the characteristics a Street requires to qualify as a way for purposes of calculating Street frontage as "... a way which is:

- (a) A public way or a way which the Town Clerk has certified is maintained and used as a public way; or
- (b) A way shown on a plan approved and endorsed in accordance with the Subdivision Control Law, MGL, c. 41, §§ 81K through 81GG, and either has been constructed on the ground or construction of which has been adequately secured; or
- (c) A way in existence on the date when the Subdivision Control Law, MGL, c. 41, §§ 81K through 81GG, became effective in Dover and 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 building or buildings to be erected thereon;"

**Discussion:**

As can be seen in the accompanying photographs, it is clear that the Town-owned land is not a public way, since, in its current state it would never be considered a thoroughfare for travel or transportation. Nor is there any evidence such as "*.. whether it is paved, whether it has street lights, street signs, traffic signals, curbing and fire hydrants, whether there are abutting houses or businesses, whether it has any crossroads intersecting it, whether it is publicly maintained...*" *Massachusetts General Laws c.90, § 1*

In fact, in the over 100 years since it was laid out and in the 26 years since it's taking at Town Meeting in May 1998, no maintenance, tree trimming, groundskeeping, snow plowing, or construction of any kind whatsoever has been undertaken by the Town.

Finally, Dover bylaw § 248-12 Streets sets out certain minimum requirements for undeveloped land to be constructed for use as a public way (Street), including:

- C. Widths. The minimum width of streets shall be as follows, exclusive of berms:
  - (1) Minor streets: right-of-way of 52 feet, and pavement, exclusive of berms of 22 feet, and

D. Grades.

(2) The maximum center line grade shall be as follows:

(a) Minor streets: 10%.

E. Dead-end streets. Dead-end streets are not permissible except in extraordinary circumstances. If such circumstances exist, a waiver will be required. For any dead-end street allowed, a turnaround with an outer curb radius of 45 feet and a landscaped, ellipse-shaped center shall be required. Layout and engineering shall be determined on a case-by-case basis.

The Town-owned parcel does not meet any of the above requirements should the town decide it wanted to develop it into a street. At 40 feet wide it does not meet the minimum width requirement of 52 feet. The grade is well over the minimum 10% required and it would create a prohibited dead-end street.

**Conclusion:**

Bylaw § 185-23 does not apply to 15 Park Avenue since the undeveloped Town-owned land does not meet any of the criteria to be considered a "Street" per § 185-19 A. (2).

Furthermore, the land does not meet the current minimum requirements of § 248-12 to be constructed on the ground today or in the future.

As such the western lot line at 15 Park Avenue is not a front lot line (a line separating a lot from a street), but rather it is a side lot line (a line separating a lot from other lots or from land in a different ownership and which is not a front or a rear lot line).

The minimum side lot line setback requirement for an accessory building is therefore 7.5 feet.

## **Appendix 1 – Neighbors’ letters & comments in support of the project**

Jim & Mary Ann Coughlin, 9 Oakley Road, letter received Feb 10, 2025

- “As abutters, we support [the] proposed plan to build the garage at 15 Park Ave.”

Marc & Beth Conrad, formerly 6 Park Ave., letter dated Jan 25, 2025

- “As a contractor with over 40 years of experience working in Dover, I believe [the garage] will fit into the property nicely and have a positive impact on the neighborhood.”

Nathaniel Panek, 100 Dedham Street, letter dated Jan 22, 2025

- “I am writing to express my support for Christine and Thomas Heer’s proposed construction of a new garage on their property at 15 Park Avenue...”

Deborah Harrison, 10 Oakley Road, letter dated Jan 20, 2025

- “I have no concerns regarding the [garage] structure. I hope they receive approval for the building.”

Kathleen Ballou, 5 Oakley Road, letter dated Jan 19, 2025

- “I have no objections or concerns about the building of the garage and fully support their application for a building permit.” “The design and location they are proposing are also consistent with other garages that have been built in the neighborhood.”

Elizabeth Marsten, 9 Park Ave, letter received Jan 19, 2025

- “Ever hoping for the win/win, I am in support of the Heers being able to erect a garage that will satisfy both existing Planning and Zoning regulations AND neighbors’ concerns about placement, the size/scale of the structure in this small quiet neighborhood...”

Ted Mosher, 6 Oakley Road (personal conversation with Christine Heer on Jan 7, 2025)

- “I have no problem with you building a garage but I do have a problem with a commercial business and how that could affect all of our property values.” Christine again assured him that there is no commercial business, nor would there be. And he asserted again that he does “...not have a problem with the garage.”

Kathleen Mitchell, 4 Oakley Road (Planning Board Site Plan Review call on Dec 9, 2024)

- “I have no interest in acrimony about someone building a garage.” “I have no interest in blocking the Heer’s vision of building a garage.” “Garage is great.”