

EXETER ZONING BOARD OF ADJUSTMENT AUGUST 17, 2010 MEETING MINUTES

Present:

Chairman: Hank Ouimet.
Vice Chairman: Marc Carbonneau.
Regular Members: Steve Cole, John Hauschildt, Robert Prior.
Code Enforcement Officer: Douglas Eastman
Deputy Code Enforcement Officer: Barbara McEvoy.

The meeting convened at 7:02 PM.

Protocol: The Chairman announced that the board would hear the 2nd and 3rd cases first (out of order) this evening.

Agenda:

1. Case #1404: Variance & Special Exception requests. 77 Kingston Road – The Riverwoods Company.
2. Case #1405: Equitable Waiver request. 5 Stone Ridge Lane.
3. Case #1406: Variance request. 99 Washington Street.

New Business:

1. Case #1405:

The application of Jones & Beach Engineers, Inc. (on behalf of Persimmon Homes, LLC) for an Equitable Waiver of Dimensional Requirements to permit an existing single-family residential lot with less than the minimum lot width (frontage) required for an open space development. The subject property is located at 5 Stone Ridge Lane, in the RU-Rural zoning district. Tax Map Parcel #19-16.47.

Mr. Jon Ring of Jones & Beach Engineers approached the board to present. He stated that his firm was the engineer and surveyor of record for the Forest Ridge subdivision in Exeter. Mr. Ring then mentioned that there had been a survey mistake regarding the frontage for lot #16, 5 Stone Ridge Lane, and that was the reason he was applying for an equitable waiver.

Continuing, Mr. Ring gave a brief description of the history of the parcel in question. He mentioned that Forest Ridge was an open space development and that the subdivision was approved by the Exeter Planning Board in 2004. He mentioned that a review of the plan sheets shows that the lot frontage is .66' or 8" shy of the 50' frontage requirement. Mr. Ring then stated that he would address each of the findings the board needs to review for consideration of the Equitable Waiver. He also stated that the flaw was not discovered until six years later during a buyer's application for financing and the error was not discovered when Persimmon Homes purchased the lot from Sandy Brook/Chinburg Builders. Mr. Ring also mentioned that the subject lot shares a driveway with lot #17 and lot #17 is occupied and lot #16 is under construction.

Chairman Ouimet asked how the error would be corrected if the Equitable Waiver was not granted. Mr. Ring answered that in 2004, it could have been a lot line adjustment with lot #17 (lot #17 abuts open space land) or an adjustment of the right of way. (It was mentioned that DPW may have had an issue with that option).

At this time, Chairman Ouimet opened the hearing to public testimony and there was none. The public hearing was closed at this time with no rebuttal testimony.

DELIBERATIONS

**MOTION: Mr. Carbonneau moved to grant the Equitable Waiver as presented.
Mr. Hauschildt seconded.
The motion passed unanimously.**

2. Case #1406:

The application of Mollie C. Allen (RE Trust) for a variance from Article 4, Section 4.3 Schedule II Density and Dimensional Regulations-Residential to permit the proposed construction of a 20' x 24' garage with less than the required minimum rear yard setback. The subject property is located at 99 Washington Street, in the R-2, Single Family Residential zoning district. Tax Map parcel #62-4.

Ms. Allen approached the board at this time. She stated that she is applying to replace her original garage with a 20' x 24' garage and that this new size would bring the structure to 4' from the rear property line. She also mentioned that the rear setback in the R-2 zone is 25' and that the original structure was almost right on the property line. Ms. Allen also stated that a characteristic of the neighborhood is for garages to be set back behind the houses.

Mr. Prior asked if the garage would be further from the rear lot line than the previous garage and house.

Chairman Ouimet asked if it would be possible to move the proposed garage forward.
Ms. Allen answered that the garage would then crowd the lot and block sun light to the house.

At this time, the Chairman opened the hearing to public testimony and there was none. The public hearing was closed at this time and there was no rebuttal testimony.

DELIBERATIONS

Mr. Carbonneau mentioned that there were numerous homes in the area with the same scenario and that this proposal would not be out of character with respect to design and the nature of the surrounding properties. He also suggested that the board place a condition that the garage be maintained as a garage and not be turned into living space.

Mr. Prior mentioned that the request was keeping with the neighborhood.

Mr. Eastman stated that the lot was non-conforming and had a 10' side yard setback. He also mentioned that the lot was still grandfathered for the footprint of the existing garage.

At this time, Mr. Prior began a discussion of the criteria for a variance. The board determined that all of the criteria were satisfied.

**MOTION: Mr. Carbonneau made a motion to approve the variance request as proposed and subject to the following conditions:
1) The structure is maintained as a garage only, with no living space.
2) The structure to be constructed no closer than 4' to the rear yard setback.
Mr. Cole seconded.
The motion passed unanimously.**

3. Case #1404:

Notes: Mr. Prior recused himself from this case.

Mr. Hauschildt mentioned that he belongs to the Seacoast Artist Association, a non-profit, and the attorneys for the case are the association's landlord. He stated that he does not deal directly with Mr. Tucker. The board determined that there is no problem with Mr. Hauschildt remaining seated.

Chairman Ouimet announced that there would only be four ZBA members hearing the case. Attorney Chris Boldt of Donahue, Tucker & Ciandella approached the board and stated that the applicant was prepared to move forward with four members and the issue brought up by Mr. Hauschildt was not an issue for the applicant.

The application of RiverWoods Company of Exeter for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses to permit the property located at 77 Kingston Road to be developed for a proposed elderly congregate health care use in conjunction with the abutting RiverWoods facilities; and variance(s) from Article 6, Section 6.1.2 D. to permit encroachment of the proposed structure within the required 100-foot landscaped perimeter buffer (front and side yard) required for elderly congregate health care facilities. The subject property is located in the R-1, Low Density Residential zoning district. Tax Map Parcel #97-43.

Attorney Chris Boldt of Donahue, Tucker & Ciandella approached the board at this time and mentioned that he was standing in for Attorney Charlie Tucker of DTC. He stated that the property in question is known as the Reedy house and the proposal is to use the property for an administrative facility for RiverWoods and centralize RiverWoods, The Ridge and The Boulders. Clarifying, Attorney Boldt stated that there would be no residential units in the building. It would be purely for office use.

Continuing, Attorney Boldt mentioned that there is a 100' setback from all the perimeter property lines. He also mentioned that the existing house is much closer to the front of the lot than the proposed placement of the new structure. Attorney Boldt then stated that the main access to the office building would be through White Oak Drive and the driveway on Kingston Road/Route 111 would be maintained for the fire station. He then mentioned that Jeff Clifford from Altus Engineering, Mark Moeller (JSA), Mark Hepp and Dawn Barker from RiverWoods were also in attendance for the applicant. An informal presentation was given to the Heritage Commission per Attorney Boldt and a structural assessment by Emanuel Engineers was submitted.

Mr. Clifford approached the board and described the subject parcel as being 8.66 acres in size, with twenty existing parking spaces and access from White Oak Drive. He stated that the proposed building would be 51' from Kingston Road (it is only 19' now) and on the side, the existing is 52' and the applicant is proposing 71'. A variance is required for relief from the 100' buffer requirement. Mr. Clifford then described a series of setbacks associated with wetlands, an encroachment of the 40' buffer for the access road, which will be a Planning Board issue and Conditional Use Permit request. Continuing, he mentioned that the plan provides for a future satellite fire sub-station as required by Planning Board approval and the proposed structure has the same footprint as the existing, just more centralized.

Regarding parking, Mr. Clifford mentioned that the regulations call for one space for every 250 square feet of office area. He also stated that the maximum number of employees would be discussed with the Planning Board. Regarding the side setback, Mr. Clifford mentioned that 71' plus 16' (Jolly Rand Trail) is the distance to the next residential property.

Mr. Moeller of JSA Architects approached the board at this time. He stated that his firm engaged Emmanuel Engineers for a structural assessment of the current buildings on the site and it was found that there is degradation of the structural members due to lack of maintenance. The proposal would be to take down all four of the existing structures and construct a two-story office building. Mr. Moeller then mentioned that the proposed office building would have private offices, a conference room and a training room on the ground floor and very limited use on the second floor with less square footage.

Attorney Boldt addressed the special exception criteria at this time. He stated that the applicant will meet all the applicable regulations, with the exception of the relief being sought by variance. He also mentioned that the proposal will be reviewed by the Planning Board, including parking.

Regarding the variance criteria, Attorney Boldt stated that both the front and side 100' setbacks (for an elderly congregate care facility) will be adhered to for the building and parking. He then mentioned that the width of Jolly Rand Road is 16' and mentioned that a buffer is required and planned to screen and protect abutting properties from large institutional buildings. He clarified that the proposal before the board did not include a large institutional building.

Continuing, he mentioned that there would be no benefit to the public by upholding the setback as required and that the hardship criteria changed in January of 2010 and there is no longer a use or area distinction. He mentioned special conditions of the property and stated that the proposed building would be in keeping with the residential neighborhood. Attorney Boldt then stated that the proposal makes the setback situation better than the existing conditions and the use is permitted by special exception and it is a presumed reasonable use. Concluding, he mentioned that the application meets all of the criteria and he requests the board granting the applications.

Mr. Carbonneau asked what the reason was for the maintenance of the Rt-111 curb cut. Attorney Boldt stated that it must maintain in order to keep and not be abandoned (a request by the fire department) to carry through with future plans of the town for a fire sub-station.

Mr. Hauschildt mentioned that the approvals would run with the property and he questioned if the use being proposed was compatible with the surrounding area. A temporary trailer used for office space for contractors during construction and acquired three years ago was mentioned.

Chairman Ouimet asked for clarification of the request. He asked about the planting being proposed, acknowledged that it was more Planning Board related, and mentioned that he would like to know how they plan to satisfy the requirement regarding mitigation for encroachment. Attorney Boldt stated that this would be a condition of approval that the Planning Board addresses. He also stated that the appropriate transition is different for different styles of construction.

Chairman Ouimet asked if there was an alternative layout for parking and would it be possible to be able to comply.

Mr. Clifford responded by mentioning that there were property, soil restrictions, topography and storm water restrictions involved.

At this time, 8:20PM, the board took a recess. They re-convened at 8:25PM.

The Chairman opened the hearing to public testimony at this time. No one spoke in favor of the proposal.

Mr. Bob Prior of 16 Pickpocket Road approached the board at this time. He began a discussion regarding the history of the RiverWoods facility commercial development. He stated that RiverWoods owns a large number of acres and does not need to be located on the Reedy "footprint" specifically. He mentioned that the property has been a single family home with a home occupation with several outbuildings including

barns and a carriage shed. Mr. Prior mentioned that the home has been used as a residence by several LeCesse Contractors (builder of the Boulders) and used as an office most recently.

Continuing, he mentioned that the property is zoned R-1 and that zone does not allow for an office building and is not permitted by special exception. He also mentioned that all employees already have offices in the respective buildings even though they may not be centralized. He clarified that in the R-1 zone, a standalone office building is not allowed. Mr. Prior also mentioned that Pickpocket Road is a scenic road and that there are other viable alternatives for the office building in other RiverWoods owned locations.

Ms. Laura Davies of 20 Pickpocket Road approached the board at this time. She asked if abutter notification was appropriate and if the property was merged, would all abutters to the large parcel be noticed.

Attorney Boldt stated that the parcel in question was merged with the linear parcel adjacent to White Oak Drive.

Ms. Davies then asked about the square footage of the proposed building. It was mentioned that the footprint of the proposed building was 5,060 square feet and the total building would be 6800 square feet. It was also mentioned that 10,000 square feet of paving is planned, there will be eleven employees and one shift utilizing the new office building. Ms. Davies asked about marketing events and if there would be large amounts of traffic.

Ms. Barker of RiverWoods stated that it will happen as it does currently.

Ms. Davies then asked if there was potential for other uses of the office building or could other entities occupy the office building if it does not work out for RiverWoods.

Mr. Eastman stated that the proposed building is an accessory to the primary use.

Continuing, Ms. Davies stated that the expansion of RiverWoods has totally changed the character of the neighborhood. She also stated that the ZBA has not protected the community and the neighborhood.

Mr. Carbonneau stated that visually, per the rendering, there is no bearing on the residential neighborhood.

Ms. Sheila Roberge of 15 Pickpocket Road referenced the name of the corner as being Gooch's corner. She stated that the existing house on the subject parcel has significance, historically. She also stated that the parking lot will create drainage problems into Pennell Pond and the drinking supply.

Ms. Karen Prior of 16 Pickpocket Road addressed the board with questions relative to the issue of the Fire Department sub-station. She mentioned a June 5, 2008 letter from Sylvia von Aulock, the Town Planner, to Attorney Charlie Tucker and does not specify the location of the sub-station. Continuing, Ms. Prior mentioned that in regard to substantial justice criteria, issues have been re-hashed with RiverWoods and the neighborhood has been harmed over and over and over again.

Ms. Harriet Petrulio of 15 Runawit Road (Pickpocket Woods) approached the board at this time. She discussed the RiverWoods campus in the R-1, which is a low-density zoning district and mentioned that Pickpocket Road is a scenic road and 6800 square feet with parking is not consistent with the neighborhood. Ms. Petrulio also mentioned that there are four entrances to the facility and there does not need to be further impact to the neighborhood.

In rebuttal, Attorney Boldt mentioned that the Pickpocket Road and Blackford Drive accesses were required by the Town. He stated that the applicant is not requesting a zoning change, but requesting relief for the 100' setback. Attorney Boldt then mentioned that all persons speaking in opposition are not direct abutters but abutters to other property owned by RiverWoods. He also mentioned that all other land is required to be put into Conservation.

Continuing with rebuttal testimony, Attorney Boldt stated that a structural engineering report was completed with photos regarding the status/condition of the existing home on the parcel and that the applicant has entered into an agreement with the town to give the town \$150,000.00 toward the new fire sub-station. He also stated that RiverWoods has spent countless hours meeting with and attempting to work with abutters on various issues throughout the projects.

Chairman Ouimet asked if there was any evidence that RiverWoods owned property on which the substation would be located at the time the Boulders was approved. He then asked Mr. Eastman if there were other parcels considered.

Mr. Eastman stated that he did recall seeing a plan in discussions with the Fire Chief.

Attorney Boldt answered a question asked earlier, and stated that the proposed office building would not be used by third parties not associated with RiverWoods. He stated that it would solely be used for RiverWoods staff and residents for training and not rented out to third parties.

Mr. Hauschildt mentioned that in regard to the site being elderly congregate health care, the parcel could be used for more residential units and would not have to return to the ZBA.

Attorney Boldt stated that RiverWoods need was specifically for office space. The applicant could have requested a variance for an office, but chose to go with a special exception for elderly congregate healthcare facility accessory use.

At this time, the Chairman closed the public hearing.

DELIBERATIONS

Mr. Cole began a review of the Special Exception criteria. It was noted that the board was “stuck” on “A”, whereas there was no elderly congregate healthcare facility being proposed. “B” was okay, but regarding “C” Mr. Hauschildt stated that the use was not compatible, but the appearance was okay. The board determined “D” would have Planning Board review, “E” was okay, “F” conforms with all applicable regulations except for the encroachment of the 100’ landscape buffer. “G” and “H” were okay according to the board. It was mentioned that the applicant needs to revisit “A” and “C”.

MOTION: Mr. Hauschildt made a motion to deny the applicants request for not meeting Special Exception criteria “A” and “C.”
Mr. Cole seconded.
The motion passed unanimously.

Attorney Boldt asked the board to table the variance request without prejudice. He stated that he will advise the applicant to file an appeal and that he will notify the Planning & Building Department Office accordingly.

At this time, Mr. Prior re-joined the board as a voting member.

Other Business:

1. Minutes: July 20, 2010

MOTION: Mr. Cole made a motion to approve the July 20, 2010 ZBA minutes as written.
Mr. Prior seconded.
The motion passed unanimously. (Mr. Carbonneau abstained)

2. Administrative notes:

Chairman Ouimet suggested possible changes to the rules of procedure for the board. The first change would be to not begin/open any new applications after 10:00pm. The second change would be that the hearing would be heard in the order that the applications are received in the office. The board decided to adopt the two new unofficial rules of procedure and have them formally adopted at a later meeting.

Mr. Hauschildt mentioned the role of alternates. He began a discussion regarding whether alternates sit or not during hearings. It was also mentioned that the board will need to formally adopt this policy also. The board asked that the Planning Office send a copy of the ZBA by-laws to Mr. Cole to update for the board.

MOTION: Mr. Prior made a motion to adjourn.

Mr. Carbonneau seconded.

The motion passed unanimously.

The meeting adjourned at 10:25PM.

The next meeting of the Exeter Zoning Board of Adjustment will be held Tuesday, September 21, 2010 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully Submitted,

Christine Szostak, PT Secretary
Exeter Planning & Building Department