

## EXETER ZONING BOARD OF ADJUSTMENT JUNE 19, 2012 MEETING MINUTES

### Present:

Chairman: John Hauschildt.

Regular Members: Patrick Driscoll, Martha Pennell, Bob Prior.

Alternate Members: Rick Thielbar.

Building Inspector/Code Enforcement Officer: Douglas Eastman.

Deputy Code Enforcement Officer: Barbara McEvoy

The meeting convened at 7:00 PM.

### AGENDA:

1. Case # 1432: Variance request. 4 Laperle Avenue - Pool.
2. Case # 1433: Variance request. 129 Front Street – Change of Use.
3. Case # 1434: Variance request. 9 Ridgewood Terrace – Pool.
4. Case # 1435: Variance request. 155 Water Street – Parking.

### NEW BUSINESS:

1. Case # 1432: Variance request. 4 Laperle Avenue – Pool.

*The application of Lisa and Darrell Chichester for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Requirements-Residential to permit the installation of an above-ground pool with less than the required minimum side and rear yard setbacks. The subject property is located at 4 Laperle Avenue, in the R-2, Single Family Residential Zoning district. Tax Map Parcel #74-49.*

Mr. Chichester approached the board and presented his application for installation of an above-ground swimming pool. He described the pool and deck proposal and discussed the criteria for variance.

Ms. Pennell asked about the number of swimming pools that have been recently installed. It was mentioned that several ZBA approvals were granted for swimming pools.

Mr. Driscoll inquired about the width of the proposed deck, which was clarified as being 2' wide and the height would be 52", the same as the pool. It was mentioned that fencing would be around the pool deck and that there is an existing fence around the yard.

Ms. Pennell asked if the existing shed on the property was within the setback. Mr. Prior asked about the construction of the subdivision.

At this time, the chairman opened the hearing to public testimony.

A resident of 6 Laperle Avenue (pool side abutter) approached the board and had no objection to the proposal.

### DELIBERATIONS

Mr. Eastman clarified for the board that the applicant has a non-conforming lot and that it has a 10' side yard setback.

Mr. Thielbar mentioned a possible noise issue.

Mr. Prior mentioned that quite a bit of relief is being sought.

Ms. Pennell inquired about the building and lot coverage. It was also mentioned that this is an accessory structure and that the applicant already has a shed.

At this time, Ms. Pennell led the board in a review of the criteria for variance.

**MOTION: Ms. Pennell moved to approve the variance request, as presented.  
Mr. Prior seconded.**

In discussion, Chairman Hauschildt asked for clarification of setbacks. He then offered an amendment to the motion to clarify the required setbacks for the proposal.

The proposed amendment adds the following language to the original motion:

**“subject to the pool and decking being constructed no closer than six feet (6’) from the side property line and no closer than seven feet (7’) from the rear property line.”**

**The amendment passed 3-2.**

**The motion, as amended, passed 3-2. (Mr. Thielbar and Mr. Driscoll voted nay.)**

2. Case # 1433: Variance request. 129 Front Street – Change of Use.

*The application of In-Home LLC (Anna Hardy Evans) for a variance from Article 5, Section 5.1.2.B for a proposed change of an existing non-conforming use. The applicant is seeking permission to operate a retail furniture showroom and refinishing workshop in the existing structure located at 129 Front Street. In conjunction with this request, the applicant is also requesting to modify the current restriction on the hours of operation for the site. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map parcel #73-212.*

Chairman Hauschildt disclosed that he resides within close proximity to the subject parcel, but is not an abutter. There was no objection from the board for him to remain seated.

Ms. Hardy Evans approached the board and presented her proposal. She stated that she wants to run a furniture retail store and workshop at 129 Front Street. She mentioned that the proposed hours would be Monday through Saturday, 9:00AM – 6:00PM, with the exception of Thursdays until 8:00PM and Sundays 12:00PM until 4:00PM.

Ms. Hardy Evans also mentioned that there is a hardship involved, whereas she would not be able to purchase the building with restricted hours. It was mentioned that the downtown merchants are open until 6:00PM.

Chairman Hauschildt asked about the refinishing and how the fumes and noise would be addressed. Ms. Hardy Evans explained that it is a concrete building and she will be using a paint booth.

Mr. Prior inquired about 177 Water Street, Ms. Hardy Evans' current business. Ms. Hardy Evans also mentioned that she has a workshop on Rockingham Street.

A discussion ensued regarding the interior layout of the building. It was mentioned that there is a garage door in the rear for loading. It was confirmed that there were no plans for exterior changes in the gravel parking area for the parcel.

Parking was discussed at this time and it was mentioned that there are twelve (12) parking spaces. Ms. Hardy Evans was asked about maximum number of employees and she answered it was unknown at this time. When asked about the use of the workshop after business hours, she answered that it was possible, as a job warranted. The board then discussed operational issues, noise and parking.

At this time, the Chairman opened the hearing to public testimony. The manager of 177 Water Street, and a resident of Front Street Tower, addressed the board and mentioned that this proposal would be positive for the empty building. A description of the intensity of the business and clientele began and limited retail hours on the other end of town was mentioned.

Mr. Dan Chartrand of 63 Jady Hill Ave., and a member of the Board of Selectmen, Economic Development Commission and HERON, addressed the board on behalf of the applicant at this time. He mentioned that the subject parcel was empty due to the restriction on the hours and that he was in support of the application. Mr. Chartrand then urged the board to find a way to expand the hours. He also mentioned that he has known Anna for years.

Also speaking in support of the proposal was Anne Burke from Gallery One and Mr. Ed Doris, owner of Good Karma Café at 56 Lincoln Street. He stated that Anna is concerned about Exeter as a community and had been very helpful with the opening of his café and the outside preservation of the building.

Mr. Lin Grant, of 127 Front Street, addressed the board and mentioned that he had no objection to the proposed hours, but he was concerned about fumes, etc., but those issues were addressed by the applicant.

## DELIBERATIONS

The board discussed hours of operation. Mr. Prior mentioned that allowing Sunday hours is quite an extension.

Ms. Pennell stated that she was concerned that the next applicant would turn the site into a workshop with manufacturing.

Mr. Prior mentioned that there is a potential for noise after hours. He asked for clarification on the 1979 approval with restricted hours. Mr. Prior then mentioned that he had a problem with noise out of the workshop in the evening hours and on Sunday due to the manufacturing/industrial component. He also stated that he had no problem with the extended retail hours.

Ms. Pennell stated that she had a problem with the “workshop.”

At this time, a long discussion ensued regarding possible hours of operation, and retail vs. workshop hours etc.

Mr. Prior lead the board on a review of variance criteria at this time.

**MOTION: Mr. Hauschildt made a motion to approve the variance request for retail use subject to hours of operation being limited to Monday – Saturday 9:00AM until 6:00PM and Thursday until 8:00PM. Hours would be limited to 12:00PM until 4:00PM on Sundays. Also, no machinery can be operated after 6:00PM Monday through Saturday and none on Sunday. Mr. Driscoll seconded. The motion passed 4-1. (Ms. Pennell voted Nay.)**

*At 8:55PM, the board took a break and reconvened at 9:00PM.*

3. Case # 1434. Variance request. 9 Ridgewood Terrace – Pool.

*The application of David Lilienthal for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Requirements-Residential to permit the installation of an above-ground pool with less than the required minimum side and rear yard setbacks. The subject property is located at 9 Ridgewood Terrace, in the R-2, Single Family Residential zoning district. Tax Map Parcel #85-53.*

Mr. Lilienthal approached the board to present his case. He stated that he needed a variance for relief to install a swimming pool on his property. He is unable to place the pool in his desired location without violating setbacks.

Mr. Thielbar mentioned that the applicant could reduce the side yard relief being requested.

Mr. Prior asked why four (4') feet is being asked for. The applicant responded that it was to provide ample room to get around the pool.

Mr. Eastman stated that the homeowner declared Ridgewood Terrace as his property frontage as found previously with an addition/garage.

At this time, the Chairman opened the hearing to public testimony and there was none.

#### DELIBERATIONS

Chairman Hauschildt mentioned that this case was similar to the earlier case they heard.

Mr. Driscoll led the board on a review of the criteria for variance.

**MOTION: Mr. Prior moved to approve the variance request, as presented. Ms. Pennell seconded. The motion passed 3-2. (Mr. Driscoll and Mr. Thielbar voted Nay.)**

3. Case #1435. Variance request. 155 Water Street – Parking.

*The application of Daniel T. Demers for a variance from Article 5, Section 5.6.6 seeking relief from the Off-Street Parking Schedule to permit additional seating for a coffee shop located at 155 Water Street. The subject property is located in the WC-Waterfront Commercial zoning district. Tax Map Parcel #72-18.*

Attorney Sharon Somers approached the board and described the parking relief her client was seeking. She mentioned that her client is requesting parking for 24 seats for their coffee shop. It was stated that there are currently 9 seats which required three parking spaces and they now need relief for five spaces as required for 24 seats in the coffee shop.

Attorney Somers began a review of the variance criteria and mentioned that early morning hours would be the peak business time for her client and that the request would not cause a conflict with existing parking. She also stated that a coffee shop is an appropriate use in the WC district, “food” would be produced off-site and only sold as retail items.

Continuing, Attorney Somers mentioned that there is parking in the rear of the building which is not designated for the coffee shop unit. She also mentioned that Elliott Berkowitz has provided a letter regarding parking dedication for his units. Attorney Somers reiterated that the proposal is a reasonable use of the property and stated that the hours of operation would be 7:00AM until 8:00PM Monday through Saturday and 8:00AM or 9:00AM until 6:00PM on Sunday. She also stated that there would be approximately three employees each shift.

Mr. Prior mentioned the abutters’ list that was provided to the Planning Office for the case and that abutters’ across the street were not notified. It was stated that a “waiver” of notification was received by Exeter Realty Trust/Nathan Szantan and from both abutter’s. It was mentioned that the Code Enforcement Officer was satisfied that the notification requirement was met with the inclusion of the “waiver’s.”

At this time, the Chairman opened the hearing to public testimony.

Mr. Dan Chartrand of 63 Jady Hill Avenue and a member of the Board of Selectmen, Economic Development Commission and HERON approached the board and described the downtown as “urban space” in which merchant’s share. He also stated that he was in support of the proposal, the hours were great and it would keep the downtown active. Mr. Chartrand concluded by urging the board to approve the variance request.

Mr. Elliott Berkowitz, owner of the subject property, approached the board and stated that he lives upstairs, he had to turn down numerous requests for full “food” establishments and that he supports the proposal.

Mr. Thielbar began a discussion with the board regarding retail vs. restaurant parking requirements. He then led the board in a review of the criteria for a variance.

**MOTION: Ms. Pennell moved to approve, as presented, to provide relief to allow for 24 seats.**

**Mr. Prior seconded.**

**The motion passed 4-1. (Mr. Thielbar voted Nay.)**

OTHER BUSINESS:

Mr. Chartrand mentioned to the board that July 21 would be the opening of the American Independence Festival.

**MOTION: Mr. Thielbar made a motion to adjourn  
Mr. Prior seconded.  
The motion passed unanimously.**

The meeting adjourned at 9:40PM.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, July 17, 2012 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully Submitted,

Christine Szostak  
Planning/Building PT Secretary