

## EXETER ZONING BOARD OF ADJUSTMENT *SEPTEMBER 18, 2012 MEETING MINUTES*

### Present:

Chairman: John Hauschildt

Regular Members: Hank Ouimet, Martha Pennell, Bob Prior and Patrick Driscoll

Alternate Members: Rick Thielbar

Building Inspector/Code Enforcement Officer: Douglas Eastman

The meeting convened at 7:00 PM.

### AGENDA:

1. Case # 1438: Variance Request - 75 Portsmouth Avenue - Signage
2. Case # 1439: Variance Request - 2 Hampton Road – Change of Use
3. Case # 1440: Variance Request - 15 Walter’s Way – Setback Encroachment

Chairman Hauschildt announced that the application of ***Tyler Dean (Site Enhancement Systems), Case #1438*** for a variance request for signage at 75 Portsmouth Avenue had been withdrawn at the Applicant’s request.

Noting that there were six Board members in attendance, he explained that all members could participate in discussion, although only a five-member board was permitted deliberate.

Ms. Pennell disclosed the she was a resident of the RiverWoods community which is a continuing care facility. She inquired if anyone thought it necessary for her to recuse herself from discussion of the application for ND Acquisitions. Chairman Hauschildt asked the Board members and the Applicant if anyone took issue with Ms. Pennell participating. There was no opposition and Ms. Pennell remained seated. After a brief procedural discussion, it was determined that Mr. Driscoll could be excused.

### NEW BUSINESS:

1. Case # 1439: Variance Request for Change of Use – 2 Hampton Road

***The application of ND Acquisitions, LLC for a variance from Article 4, Section 4.2, Schedule I: Permitted Uses to permit the proposed construction of a healthcare and assisted living facility along with associated site improvements on the property located at 2 Hampton Road. The subject property is located in the PP-Professional/Technology Park zoning district. Tax Map Parcel #69-3.***

Ms. Sarah Barnat, Vice President of Development National Development (ND) Acquisitions, LLC addressed the Board. She stated that ND Acquisitions was a full-service real estate investment, development and management firm located in Newton, Massachusetts. She acknowledged that local attorney, Mark Beliveau with Pierce Atwood, LLC was also present with her this evening and would be addressing the criteria for their variance request. She noted that her company has been an innovator in the senior housing field for over twenty years and developed over 1,600 units of independent, assisted living and memory care assisted living in more than twenty (20) different communities.

Ms. Barnat continued and identified the subject property as an 11.7 acre parcel with frontage at 2 Hampton Road. She stated that their proposal was for the construction of a one-story, approximately 43,000 square foot building with 38 parking spaces. She explained that the building would have three (3) wings of “households” with 16 units each for a total of 48 units. Each “household” would be organized around shared living, dining and kitchen facilities. She indicated that meals would be prepared on site in a central kitchen and delivered to each “household” dining area. The facility would include 24-hour staffing, housekeeping services, a beauty/barber salon, and activity and fitness areas and will have full access to enclosed outdoor gardens and walking areas.

Ms. Barnat stated that the proposed facility would be licensed by the State of New Hampshire and there would be licensed healthcare providers working regular shifts, in addition to on-call licensed healthcare practitioners available on a 24-hour basis. She explained that the proposed development, “The Bridges at Exeter” would be the third in a series of projects by her company to address the need for quality memory care assisted living facilities in the New England region. She added that the project would provide a type of housing and healthcare facility in Exeter that meets a need and expands the variety of residential choices for people desiring to live in Exeter. She noted that it would also provide employment opportunities for area residents.

Attorney Mark Beliveau continued the presentation and addressed the criteria for granting a variance, as outlined in the variance application.

At this time, Chairman Hauschildt asked if there were any abutters or interested parties who wished to speak on the application. There being no public testimony, Chairman Hauschildt closed the public portion of the hearing and the Board moved into deliberation. It was noted that a letter in support of the proposal had been received from Brooks Properties, the immediate abutter across the street, as indicated by Attorney Beliveau.

### *DELIBERATIONS*

Consensus of the Board was that Attorney Beliveau had addressed the criteria for granting the variance in considerable detail leaving no reason to review it again. Chairman Hauschildt asked if there were any questions from the Board.

Mr. Prior inquired that if someone were interested in doing so, could the concrete plant be reactivated today. Mr. Eastman responded that he was uncertain as to whether the property had been actively marketed for such a use all of these years, noting that it had been approximately twenty (20) years or more since the plant was active. He stated that in his opinion, the use would be considered abandoned. Chairman Hauschildt commented that more than likely modifications would have to be made to reactivate such a use, which would result in the need for a variance given the use was non-conforming.

**MOTION:**        *Mr. Ouimet moved to grant the variance, as presented.*

*Ms. Pennell seconded.*

**VOTE:** *The motion passed unanimously.*

2. Case # 1440: Variance request. 15 Walter’s Way - Setback Encroachment for pool

***The application of Glen Trueman for a variance from Article 4, Section 4.3, Schedule II: Density and Dimensional Regulations-Residential to permit the proposed installation of an in-ground swimming***

***pool with less than the required minimum rear yard setback. The subject property is located at 15 Walter's Way, in the RU-Rural zoning district. Tax Map Parcel #35-3-8.***

Ms. Pennell requested clarification on the determination of the lot lines (i.e. side and rear) of the subject property. Mr. Eastman responded that the Walters Way subdivision clearly depicted a fifty-foot (50') setback which denotes a rear setback distance in the RU district in accordance with the dimensional chart. He indicated that the staff had been over the issue several times with the Applicant, and although it does not appear to conform to the definition (of side and rear 'lot lines') set forth in the zoning ordinance, the subdivision plan was reviewed and approved by the town. Mr. Eastman stated that it was an official document and could not be changed. Mr. Ouimet commented that the setback depicted on the subdivision plan accepted by the town was more stringent in this case. Mr. Eastman concurred; he indicated that in his capacity as Code Enforcement Officer he was not able to allow the Applicant to move forward without seeking the appropriate relief.

Attorney Mary Ganz addressed the Board on behalf of the Applicant. She acknowledged that Mr. Glen Trueman, her client's contractor was also present with her this evening. She provided the Board members with a larger copy of the plan included in the application. Ms. Ganz stated that her client wished to construct a 20' x 40' in-ground swimming pool in the area as depicted on the plan. She agreed that it appeared to be a side yard of the subject property, as Ms. Pennell mentioned, although acknowledged the restrictive 50' setback. She explained that the proposed location of the pool would encroach upon the required setback by approximately twenty-feet (20') as depicted on the drawing. She also identified the location of Rocky Hill Brook and noted there was a required 150' setback from the brook in accordance with the Exeter Shoreland Protection Ordinance, Article 9, Section 9.3.4. C. (Building Setbacks). She added that the topography of the parcel (steep slope to rear of property and wetlands also imposed a restriction on further development of the property. She stated that with such restrictions the lot has a very small building envelope, and therefore has resulted in their request for zoning relief.

Attorney Ganz proceeded to address the criteria for granting of the variance. She stated that when protecting the rights of individuals to provide a reasonable use of their property, you, in turn, affect and protect the rights of the public at large. She indicated that the proposed addition of the swimming pool was not contrary to the spirit of the ordinance and would do substantial justice by allowing her client to place the pool in the desired location. She noted that the proposed addition of this pool would enhance the surrounding property values. Ms. Ganz presented justification, as outlined in the application, as to why literal enforcement of the provisions of the ordinance would cause unnecessary hardship to her client. She concluded by stating that the proposed use of a portion of the subject property for an in-ground swimming pool was a reasonable one.

Mr. Glen Trueman introduced himself as the general contractor for the property owner, Mr. Joe King. He reviewed the site plan and identified the location of the existing residence, the leach field and septic system area in the front yard, the dimensional setbacks including the 150' shoreland protection setback from the brook, and the natural features of the site. He indicated that given the steep slope and the required shoreland building setback extending 150' on both sides of the brook, the entire rear of the property was unusable. He indicated that the proposed pool would be located within the fenced area of the yard and that it would not be necessary to remove any trees for the proposed installation.

Mr. Ouimet inquired if the land behind the subject property was in conservation. Ms. Ganz responded affirmatively, noting that it was privately owned with a conservation easement. It was represented that the abutting property would not be developed.

Mr. Prior stated that the abutters list indicated that Mr. King also owned the adjacent property; Ms. Ganz confirmed that was correct. Mr. Prior inquired if there was an advantage or disadvantage relative to the

possibility of a lot line adjustment. It was represented that Mr. King planned to develop the property for family at some point in the future and wished to maintain the abutting property as a buildable lot. It was noted there were also shoreland building setbacks and natural feature restrictions limiting the development on that site as well.

Ms. Pennell inquired if there were any other homes in the subdivision that had swimming pools. Mr. Eastman represented that the owners of Lot #020-10 had a lap pool installed and were also somewhat restricted but did not require any zoning relief. Mr. Thielbar inquired as to when the residence was constructed. It was represented that Mr. King was not the original owner of the property, but it was understood that construction took place during 2000-2001.

At this time, Chairman Hauschildt asked if there were any abutters or interested parties who wished to speak on the application.

Mr. Tom Chamberlin, 54 Newfields Road, inquired as to the Applicant's intent with respect to the existing fence abutting his property. It was represented that it would be necessary to remove a portion of the fence during construction but that it would be replaced upon completion of the improvements. Mr. Chamberlin also asked for clarification about use of the abutting lot.

There being no further public testimony, Chairman Hauschildt closed the public hearing and the Board moved into deliberations.

#### DELIBERATIONS

**MOTION:** *Mr. Ouimet moved to grant the variance request, as presented, to permit the proposed installation of an in-ground swimming pool to within thirty-feet (30') of the rear yard property line, as the Applicant had demonstrated compliance with the criteria.*

*Mr. Thielbar seconded.*

**VOTE:** *The motion passed unanimously.*

#### **OTHER BUSINESS:**

Chairman Hauschildt reminded the Board that the 2012 LGC Fall Municipal Law Lecture Series was coming up quickly with dates in September and October. He indicated that members could register on-line, and select to have the Town invoiced for the registration costs, and Ms. McEvoy would take care of the payment.

**APPROVAL OF MINUTES:** August 21, 2012.

Chairman Hauschildt pointed out that the "**VOTE**" for each of the applications heard at the meeting was depicted as "*Unanimous*" and it was unclear whether the motion passed or failed. He asked that the minutes be amended to describe a more definitive vote in accordance with the action of the Board. (i.e. "*Motion passed unanimously*").

**MOTION:** *Mr. Thielbar moved to approve the minutes of August 21, 2012, as amended.*  
*Mr. Ouimet seconded.*

**VOTE:** *The motion passed unanimously Mr. Prior abstained.*

These minutes are subject to possible corrections/revisions at a subsequent  
Exeter Zoning Board of Adjustment meeting.

There being no further business, Chairman Hauschildt indicated he would entertain a motion to adjourn.

**MOTION:** *A motion was made and seconded to adjourn.*

**VOTE:** *The motion passed unanimously.*

The meeting adjourned at 8:15 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, October 16, 2012 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully Submitted,

Barbara S. McEvoy  
Deputy Code Enforcement Officer  
Planning & Building Department