

EXETER ZONING BOARD OF ADJUSTMENT JANUARY 15, 2013 MEETING MINUTES

Present:

Chairman: John Hauschildt

Regular Members: Bob Prior, Martha Pennell

Alternate Members: Steve Cole, Marc Carbonneau and Rick Thielbar

Building Inspector/Code Enforcement Officer: Doug Eastman

Deputy Code Enforcement Officer: Barbara McEvoy

The meeting convened at 7:00 PM. After introducing Board members, Chairman Hauschildt noted that all members were able to participate in the discussion of the application, although only five members could deliberate and vote on the application. Mr. Cole offered to step down from the deliberations, and therefore would not be voting.

AGENDA:

1. Case # 1445: Special Exception and Variance Request – MON-KAL, LLC
10 Columbus Avenue

NEW BUSINESS:

1. Case # 1445: MON-KAL, LLC 10 Columbus Avenue

The application for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the creation of a proposed three-lot residential subdivision; and a variance from Article 4, Section 4.4 Schedule III: Density & Dimensional Regulations for relief from the minimum lot depth requirement. The subject property is located at 10 Columbus Avenue, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #73-149.

Mr. Christian Smith, P.E. with Beals Associates, PLLC addressed the Board and acknowledged that his client, Mr. Sam Mukarkar was also present. He began the presentation with a brief history of the approvals granted for the subject property. He noted that the ZBA had previously granted a special exception for residential development of the property in July 2007 (ZBA Case #1334). This approval consisted of nine (9) detached single-family condominiums situated on a single parcel and associated site improvements. He noted that a subsequent variance had been granted in October 2010 (ZBA Case #1410) for the extension of this special exception approval. Mr. Smith indicated that the proposal had been through the technical review process at which time the density was decreased to seven (7) single-family units. He stated that the project received a conditional approval from the Planning Board in November 2010, a one-year extension of that same approval in November 2011, and final plans were signed in January 2012.

Mr. Smith indicated that his client believed the new proposal being presented would be more marketable and would be more compatible with the surrounding neighborhood. He pointed out that both a special exception and variance were being requested. He explained that the special exception was being requested due to the proposed use now being a single-family residential use, whereas the previous approval was for a multi-family residential use. Mr. Smith stated that the new proposal provided for a

reduction in the number of residential units and therefore increased the area of buffer and green space. He also reiterated that the new proposal would be more compatible with the surrounding properties. Mr. Smith indicated that the variance being sought was for relief from the dimensional lot depth requirement. He explained that the relief being requested was specific to the proposed Lot #3; he noted that dimensionally it could meet the required lot depth but granting the relief would provide for a better layout of the right-of-way and access to the lot.

Board discussion ensued as to whether a special exception approval was necessary, as the use was remaining 'residential'. Mr. Smith responded that he believed it would be applicable as a different residential use was being proposed, and would make for a cleaner approval. He indicated that his client would be agreeable to withdrawing the application if that was the Board's pleasure.

Mr. Thielbar inquired about the density of the parcels. Mr. Smith responded that the smallest lot was approximately 9,600 square feet (slightly less than a quarter-acre in area).

Ms. Pennell asked if the Applicant would be required to relinquish the current approval in place if the Board chose to approve the applications this evening. Discussion ensued as to whether it would be necessary to do so. Mr. Smith responded that his client would not be willing to relinquish the current approval until such time as Planning Board approval of the proposed three-lot subdivision was obtained. It was noted that the current ZBA approval expires in July 2013. Mr. Smith indicated that subject to approval this evening, a subdivision application for Planning Board review would be forthcoming.

Mr. Carbonneau asked if the property would revert to R-2 zoning (single family residential) should the application(s) be approved. Mr. Eastman responded that the zoning would remain C-1, Central Area Commercial with the residential uses being permitted. He also noted the minimum lot area in the C-1 district was 5,000 square feet. With respect to condominium v. single-family ownership, Mr. Carbonneau commented that he concurred that lot ownership was definitely more marketable.

Ms. Pennell requested clarification of the private right-of-way (ROW) and which properties, other than the three lots being proposed, were entitled to use it. Mr. Mukarkar indicated that a portion of the private ROW was deeded to abutting property owner Boyd (TM # 73-150) and an easement for the right to pass was granted to Hamel (TM #73-152). He stated that the proposed ROW, as depicted on the plan, will remain "private" and will be owned in common by each of the property owners of the subdivision (1/3 interest). Reference to said ownership would be reflected in the individual lot deeds. Chairman Hauschildt asked if there would be a Homeowner's Association; Mr. Mukarkar responded affirmatively.

Mr. Smith proceeded to present the variance application. He indicated that the proposed subdivision plan being presented depicted Lot #3 being deficient in lot depth; he noted that 75.85' was being provided and that 100' was required. He provided a plan showing that subdivision layout could comply with the minimum lot depth requirement, however the proposed plan (with the deficient lot width) provided for a better right-of-way layout and more suitable building envelopes. Mr. Smith commented that the shape of the parcel presented a hardship in that the lots would be less developable and would have far less flexibility to home styles and layouts if relief were not granted. He added that the geometric layout of the proposed ROW would be much cleaner and more logical if the requested relief were to be granted. In closing he stated that he would expect the proposed plan to be more well-received by the abutters than the previous proposal (7 condominium units).

Mr. Carbonneau inquired if any further Zoning Board of Adjustment relief was contemplated. Mr. Smith responded that he did not believe that any additional relief would be necessary, noting that the proposed lots were similar in size to most of the surrounding residential properties and would support the

construction of residences keeping with the character of the neighborhood. Mr. Prior inquired about the structural setbacks. He commented that the proposed structures shown on the previous 'seven-unit' approval were rather close to the setbacks. Mr. Smith responded that the density of that project dictated the proximity to the setbacks and therefore reducing the potential for any further development.

There being no further Board discussion, Chairman Hauschildt opened the hearing for public testimony. He asked if there were any interested parties who wished to speak on the application

Mr. Jeffrey Gallant, owner of the abutting "Exeter Monument Works" property at 8 Columbus Avenue addressed the Board. He informed the Board that the Quiet Title process which Mr. Smith had mentioned was pending in litigation as he was contesting the property line between the two properties. He alleged there had been a scribe's error on the plan filed with the Quiet Title action documents. He described the area in contention as a strip of land (the resultant of a former paper road calculation), measuring approximately 104' x 25' (2,600 s.f.), and running along the Exeter Monument Works property line. Mr. Gallant read an excerpt from a publication authored by Mark Dunn, Esquire (an attorney/real estate professional located in Concord, NH) on the topic of how the ownership of 'paper' roads is determined. He provided a copy of his "Motion to File Notice of Lis Pendens", dated July 2012 and filed with the NH Superior Court, and the "Notice of Decision" received from the NH Superior Court, dated September 14, 2012, granting his motion with a Court Order for a trial on the matter scheduled for April 12, 2013 at 10:00 AM. Mr. Gallant also provided a copy of the plan from his surveyor with the correct dimensions of the property lines and a copy of the original Leavitt subdivision plan dated 1897 which depicted the location of the paper roads. In closing, he expressed that he was not opposed to the project, although did have an objection with the project moving forward without resolution of the boundary line issue. He stated that if the Board determines the criteria has been satisfied for granting the application(s), he would request that any approval granted be subject to a final resolution being reached on the area in contention.

Ms. Stephanie Roundy-Knights, 83 Winter Street, expressed her concern about an adequate well-vegetated buffer being provided on the proposed Lot #2 which directly abuts her property. She noted that the site plan for the previous approval had provided for additional landscaping along the property line.

Mr. Chris Urner, 9 Columbus Avenue, indicated that he was not a direct abutter but lived across the street. He expressed concern regarding there not being adequate site distance on Columbus Avenue from the proposed access drive.

There being no further public comment, Chairman Hauschildt indicated that the Board would entertain a rebuttal from the Applicant.

Mr. Smith indicated that plantings and/or landscaping on Lot #2 could be accomplished and would be addressed in further detail during the Planning Board review process. He referred to the plan for the previous approval noting that five (5) plantings had been proposed adjacent to the Roundy-Knights property. He explained that the proposed access road, currently known as Veteran's Way, was being proposed as a separate parcel and would be owned in common by the owners of the three (3) lots. Mr. Smith stated that it was intended that the road would remain private and that the Homeowner's Association would be responsible for its maintenance.

With respect to the lot line issue with Mr. Gallant, Mr. Smith indicated that a slight reconfiguration of the right-of-way (ROW) may be necessary if the boundary line in question becomes adjusted. He noted that

even if the total lot area is reduced as a result of the pending litigation, the proposal would still remain conforming.

Code Enforcement Officer Doug Eastman confirmed that the lot would still be in compliance even without the 2,600 square-foot area in contention. He indicated that he had spoken with Town Counsel regarding the issue and was advised that the Board could proceed to hear the request and act accordingly.

Chairman Hauschildt read a letter from Mark and Carole Ann Standish, owners of property located at 10 Morrow Street, into the record.

Mr. Mukarkar addressed the Board and explained that he had sought Quiet Title of the property from the New Hampshire Superior Court in September 2007. He provided the Board with a copy of the "Proposed Final Decree To Quiet Title" recorded at the Rockingham County Registry of Deeds on April 27, 2009. He indicated that the plans previously approved, as well as those being presented this evening were prepared in accordance with this decree. He continued and provided a brief summary of the benefits of the new proposal, v. the previous approval, as follows:

- A large portion of the proposed impervious surface (pavement) disappears
- Density decreased and more green space is provided
- Number of dwelling units is reduced from seven (7) to three (3)
- Development becomes single-family and more consistent with neighborhood
- The proposed lots exceed most surrounding residential lot sizes
- The size of the homes will be in keeping with the character of the neighborhood
- A proposed buffer will be maintained around the property

Mr. Smith addressed the concern relative to the site distance. He explained that a previous agreement had been negotiated during the Planning Board review between his client and the abutting property owner of TM#73-150 (Boyd) to relocate the lilac bushes in front of the utility poles and to trim landscape bushes to provide better site distance. He indicated that he would expect this agreement would remain a condition of any further approval granted by the Planning Board.

There being no further public comment, the public hearing was closed and the Board proceeded to deliberations. At this time (7:55 P.M.), Mr. Cole stepped down from the Board and was seated in the audience.

DELIBERATIONS

Mr. Carbonneau commented that the proposal overall would be reducing concerns relative to ground water, drainage and density. He indicated that the Board should request that the Planning Board give special attention to an adequate buffer being provided for the abutters. Mr. Prior proceeded to guide the Board through the special exception criteria.

Ms. Pennell noted that should the Board approve the Applicants' request, there would be two approvals in place for the same property. She asked if that was acceptable. Mr. Eastman responded that it was acceptable; otherwise, the Applicant would have been advised accordingly. Noting that the current ZBA approval (for the 7 units) was due to expire in July of this year, he explained that the Applicant still had to go through the Planning Board process for the subdivision associated with the application(s) heard this evening. He noted that it had been represented that upon obtaining subdivision approval, the Applicant would then consent to relinquishing the previous ZBA approval.

MOTION: *Mr. Thielbar moved to grant the special exception to permit the residential use of the property, as presented, for the proposed development of a three-lot subdivision.
Mr. Carbonneau seconded.*

Discussion: *It was represented that the approval would be valid so long as the court decision did not create the need for any further Zoning Board of Adjustment relief. It was also mentioned that the Board wanted the Planning Board to give special consideration to the buffer and landscaping being proposed as it related to abutting properties and this should be part of the motion.*

MOTION: *Mr. Thielbar amended his motion to include: “and that special attention be given to the buffer and landscaping being proposed during the Planning Board review process.”*

Mr. Carbonneau seconded the amended motion.

VOTE: *The motion passed unanimously.*

DELIBERATIONS

Mr. Thielbar proceeded to review the variance criteria for relief from the minimum lot depth requirement. It was represented that the relief being sought was specific to proposed “Lot #3” only, as depicted on the plan submitted with the application(s). Board members concurred that the project could move forward regardless of the lot line dispute as the area in contention would not render the project non-compliant. Mr. Carbonneau commented that it did not appear that any additional relief would be necessary for citing buildings on the proposed lots.

MOTION: *Mr. Thielbar moved to grant the variance request permitting a lot depth of 75.85’, as depicted on the concept subdivision plan for 10 Columbus Avenue, as presented.*

Mr. Prior seconded the motion.

Discussion: *The Board affirmed that granting of said relief for proposed “Lot #3” would not have any impact on the pending litigation issue.*

VOTE: *The motion passed unanimously.*

APPROVAL OF MINUTES: December 18, 2012 .

MOTION: *Mr. Prior moved to approve the minutes of December 18, 2012, as presented.
Ms. Pennell seconded.*

VOTE: *The motion passed unanimously. Messrs. Carbonneau and Thielbar abstained.*

OTHER BUSINESS:

The proposed zoning amendments for the upcoming 2013 Town Meeting were distributed to Board members. Chairman Hauschildt indicated that the Zoning Ordinance Review Committee (ZORC) had reviewed the majority of them, the Planning Board had conducted public hearings on them and they were now in final form to be presented for residents to vote on at Town Meeting in March. Mr. Prior inquired about the proposed rezoning of an area of Portsmouth Avenue/High Street. Chairman Hauschildt provided the Board with a brief summary of the purpose and intent of the proposed zoning change.

CHAIRMAN’S ITEMS:

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

Chairman Hauschildt indicated that a “regular” board member position had now become vacant as Mr. Driscoll is no longer a resident of Exeter. He asked if any alternate members were interested. Messrs. Cole and Carbonneau asked to remain status quo while Mr. Thielbar expressed an interest in becoming a regular member. Board consensus was to recommend to the Board of Selectmen that Mr. Thielbar be elevated to a “regular member” status to fill the remainder of Mr. Driscoll’s term (through 4/30/2014), and they seek a replacement for the alternate position. Ms. McEvoy agreed to prepare a memo for Chairman Hauschildt to sign.

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

MOTION: *Mr. Prior moved to adjourn.*
 Mr. Carbonneau seconded.
 VOTE: *The motion passed unanimously.*

The meeting was adjourned at 8:35 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, February 19, 2013 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

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