

**EXETER ZONING BOARD OF ADJUSTMENT  
SEPTEMBER 17, 2013 MEETING MINUTES**

Present:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar, Martha Pennell and David Mirsky

Alternate Members: Hank Ouimet

Building Inspector/Code Enforcement Officer: Doug Eastman

Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chairman Prior introduced the Board members and explained the protocol for the meeting. Prior to moving into the Board's business for the evening, Chair Prior announced that there were alternate positions open on the Board if any residents would be interested in volunteering.

AGENDA:

1. Case # 1458: Yvette Kuzirian  
Variance for Expansion of Non-conforming Use/Change in Use for Restaurant – 115 Court Street
2. Case #1459: David F. and Jennifer Woodford  
Special Exception for residential conversion – 87 Kingston Road
3. Case #1460: Sharon Gill  
Variance request for relief from Multi-family Density Requirements – 35 High Street
4. Case #1461: Jeff Turner and Lori Whitney (d/b/a Green Bean on Water)  
Variance for Expansion of Non-conforming Use (Parking Requirements) – 33 Water Street

NEW BUSINESS:

1. Case # 1451: Yvette Kuzirian

***The application for a variance from Article 5, Section 5.1.2 B. for the expansion of a non-conforming use and change in use to permit the structure located on the property at 115 Court Street to be utilized as a restaurant. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #83-51.***

For clarification, Chair Prior noted that the information in the application had indicated the property was located in an R-1, Low Density Residential zoning district, when in fact; it was an R-2, Single Family Residential district. He commented that the error was due to incorrect information being listed on town records. He explained that the differentiation between the two residential districts was not germane to the relief being sought; however he wanted the record to reflect the proper zoning designation.

Mr. Ouimet disclosed that he lived in proximity to the subject property; however felt that he could consider the application without bias. Ms. Pennell stated that she had been a lifelong resident of Court Street up until recently and did have passionate feelings about development in this neighborhood; she asked to recues herself from discussion. Mr. Mirsky also disclosed that he lived in the surrounding neighborhood, but had no issue with considering the application.

Chair Prior suggested that where Ms. Pennell had specifically asked to be recused, he would have her step down and if the Board agreed, Messrs. Ouimet and Mirsky would remain seated as voting members. Board members concurred.

Ms. Sally Cockerline addressed the Board on behalf of the Applicant. She indicated that she had been working with Ms. Yvette Kuzirian in preparing the application and would be presenting on her behalf this evening. She noted that she herself had previously been a member of the Kingston Zoning Board of Adjustment for twelve (12) years.

Ms. Cockerline began her presentation by stating that the subject property has always been non-conforming and that various businesses have occupied the building over the years, noting that most recently by a mail packaging/copy center business and a cooking school. She proceeded to review the justifications for the variance criteria as outlined in the application.

Ms. Cockerline stated that Ms. Kuzirian currently operated her business of preparing home-cooked meals out of her home and has done so for the last four years. She indicated that the established business, *Alouette* has been successful and Ms. Kuzirian is now pursuing to relocate into a space where she can not only prepare the meals but also provide seating for customers. Ms. Cockerline represented that Ms. Kuzirian was proposing to operate a family-oriented restaurant, with ten to twelve (10-12) small tables – and a take-out counter at this location. She indicated that the proposed hours of operation would be 11:30 AM to 9:00 PM. and that delivery service would be available.

Ms. Cockerline stated that they did not believe the proposed restaurant use would generate any more traffic or require any more parking than the previous copy center use. She noted that the building was already equipped for restaurant use given the improvements made by the previous tenant (cooking school). She also indicated that the property, as it exists, would not be suitable for residential use.

Mr. Hauschildt stated that it appeared the property has been used for retail purposes for the last several years, and for non-residential use for quite some time. He asked the Applicant how many seats were being proposed. Ms. Cockerline responded that with ten tables, each with four seats would be a total of forty (40) seats. Mr. Hauschildt indicated parking requirements are based on the number of seats being provided, and that one parking space would be required for every three (3) seats.

Ms. Kuzirian represented they had measured the available area for parking and calculated it to be 3,640 s.f. in area and that it would be able to provide approximately twenty-one (21) parking spaces. She indicated that they were proposing some parallel parking in front of the building and some diagonal parking next to the building. Mr. Hauschildt indicated that some of the paved area would have to provide adequate space for entering and exiting the site. He stated that fourteen (14) spaces would be required for ten tables, and it appeared from what was being presented that more than enough parking could be provided, although he noted that no physical documentation of the property layout depicting the proposed parking (i.e. site plan) had been provided with the application.

Noting that variance was for change of use, Mr. Hauschildt indicated that there was no physical expansion of the building being proposed; he stated that he did not believe any relief was necessary given it was going from one retail use to another retail use, however there still remained the question if it may need relief for parking. He commented that if the application is acted upon by the Board, and approval granted, it would have to be subject to Planning Board review for parking compliance.

Mr. Ouimet maintained that the variance would be appropriate due to the increased intensity of the proposed change in use. He recalled similar discussions the Board has had in the past relative to changes in retail uses.

Chair Prior clarified the nature of the Board discussion for the Applicant, and noted that part of the difficulty in considering the application was the lack of adequate documentation including the history of the property and parking (i.e. site plan).

Ms. Pennell asked if the building was currently vacant; Ms. Kuzirian responded that it was and had been for approximately a month and a half. Ms. Pennell also expressed her concern relative to the parking issue and adequate room being provided for vehicles to safely enter and exit the site.

Mr. Ouimet inquired about any proposed changes to the exterior of the building. The Applicant represented that the property would be cleaned up and landscaped and the building would be painted. It was also noted that the site was in need of new paved surface.

Mr. Ouimet also asked if Ms. Kuzirian intended to serve beer and wine. Ms. Kuzirian responded that she did not.

There being no further discussion, Chair Prior asked if there were any interested parties who wished to speak on the application.

Chair Prior acknowledged receipt of e-mail correspondence from Mr. Aaron Cass, of 110 Court Street, and read it into the record. Mr. Cass' e-mail expressed concerns with regard to lighting, increased traffic, noise and the current mold issues within the building.

Mr. Dave Taylor, 117 Court Street, also expressed concerns about the lighting and the existing conditions of the building, as well as proposed signage and dumpster location.

Chair Prior clarified that the existing conditions of the building were not an issue within the ZBA's jurisdiction, and suggested that such an issue would be addressed with the Health Department.

In rebuttal, Ms. Cockerline stated that they did not expect there to be excessive light pollution coming from the property and any exterior lighting would be shaded. Ms. Kuzirian represented that the existing sign would be utilized. With respect to the concern of increased traffic, Ms. Cockerline indicated that they would anticipate the traffic to be staggered and would doubt if all 21 parking spaces would be utilized at the same time. She reiterated the fact that the proposed restaurant would be family-oriented and would not become a hang-out for kids. Ms. Cockerline indicated that the mold issue had been addressed with both the property owner and the town's health department and would be eradicated. She noted that the area in question was in the rear of the building and was not part of the proposed restaurant area.

Mr. Hauschildt stated that he understood the Applicant would be cognizant of minimizing the lighting impact given the surrounding neighborhood is solely residential, but wanted to clarify that the lighting must be compliant with the dark-sky lighting regulations. He mentioned that the Planning Board had recently adopted new outdoor lighting regulations to ensure that new lighting or changes/additions to existing lighting will meet specific requirements to avoid negative impacts resulting from excessive outdoor lighting.

Chair Prior inquired about permitted signage for a non-conforming use in a residential neighborhood. Mr. Eastman indicated that a non-conforming use was permitted a maximum of twenty-four (24) square feet of sign area for the site. Ms. Cockerline reiterated that the sign would be the same size and mounted on the building in the same manner as the existing sign. It was clarified that there would be no additional signs on the street.

There being no further comment, the public hearing was closed and the Board moved into deliberations.

#### *DELIBERATIONS*

Mr. Hauschildt stated that he would suggest that any approval the Board may decide to grant should require a review of the dumpster location, the parking issue, and lighting for compliance with the town's regulations.

Prior to reviewing the criteria, Mr. Ouimet inquired as to how the Board was going to address the number of seats permitted, if it was going to be driven by the number of parking spaces available on the site, and if so, review and approval of a plan depicting parking would be necessary.

Mr. Hauschildt led the Board through the variance criteria. Board members concurred that there were multiple issues (i.e. parking, landscaping and/or screening, lighting, abutter concerns) that needed further review. The question arose whether the Applicant should be required to go the Planning Board or if a site plan review could be provided by the Planning Department (Town Planner). The Board determined that a site plan review by the Planning Department would be appropriate.

***MOTION:*** *Mr. Hauschildt moved to grant the variance, as requested, subject to the following conditions:*

- *A site plan depicting parking, landscaping and/or screening, lighting and dumpster location shall be submitted to the Planning Department for review and approval; and*
- *The number of seats permitted in the restaurant shall be determined by the number of parking spaces that can adequately and safely be provided on the site. The total number of seats shall not exceed forty-two (42).*

*Motion seconded by Mr. Thielbar.*

***Discussion:*** *For the record, Mr. Ouimet pointed out that the Planning Department review would also encompass review of ingress and egress to the site in addition to those issues specifically outlined in the motion.*

***VOTE:*** *The motion was passed by unanimous vote.*

Ms.Kuzirian and Ms. Cockerline thanked the Board members for their time and suggested they would be offering a 10% discount for their patronage. The Board extended their greetings for a successful business.

*(At the conclusion of this application, Ms. Pennell was reseated as a voting member of the Board.)*

#### *2. Case # 1459: David F. and Jennifer Woodford*

***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 conversion of the existing single family residence (with an in-law apartment) at 87 Kingston Road into two residential dwelling units. The subject property is located in the R-1, Low Density Residential zoning district. Tax Map Parcel #97-36.***

At this time, Chair Prior recused himself, noting that he was an abutter 'once removed', and indicated that Mr. Hauschildt would take over as chairman for this application. Mr. Ouimet

Mr. David Woodford addressed the Board. He explained that in January 2009, a second floor was added to the original single-family ranch home, and was subsequently used as an 'in-law/extended family use' apartment. Mr. Woodford indicated that their son and his family occupied the first floor of the home which consisted of three (3) bedrooms, kitchen, living room and two (2) bathrooms; and that he, his wife and daughter occupied the upper unit which consisted of two (2) bedrooms, kitchen, dining area, living room and two (2) baths. He noted that there were two (2) driveways on the property which provided access and adequate parking for each of the dwelling units. Mr. Woodford indicated that the existing septic system has been adequate for the current use of the structure. He represented that the septic plans for the home were updated as part of the building permit process.

Mr. Woodford continued and explained that in May 2011, his son and family had moved to Canada and since that time the apartment has remained vacant. He also indicated that he had retired in December 2012, therefore decreasing their income considerably. He stated that they were requesting a special exception to permit the conversion of the single-family home into two (2) dwelling units so the apartment could be occupied by others, and not be restricted to 'family members' occupancy only. Mr. Woodford represented that by doing so, it would assist them in making the appropriate life decisions. He mentioned that if there were any concerns from the Board regarding this request or the previous construction improvements on the home, he would be more than happy to make arrangements to address them.

Mr. Ouimet inquired if any exterior changes were being proposed as part of the conversion. Mr. Woodford replied there were none. Mr. Woodford stated that they had considered down-sizing, but have decided to stay in their home and noted that one of the units would remain 'owner-occupied'. He indicated that his wife was employed at Phillips Exeter Academy and they planned on staying in town as long as they can.

There being no further questions from the Board, Acting Chairman Hauschildt asked if there were any interested parties who wished to speak on the application. There was no public comment, the public hearing was closed and the Board moved into deliberations at this time.

#### *DELIBERATIONS*

Mr. Ouimet offered to briefly review the criteria noting that there were no changes planned to the property and the request was to basically make the existing situation legal. Acting Chairman Hauschildt indicated that it was not necessary to go through the criteria if all the Board members were comfortable with the application meeting the criteria. Board consensus was to move forward with a motion.

***MOTION:*** *Mr. Ouimet moved to approve the variance request, as submitted, to permit the conversion of the existing single family residence into two residential dwelling units.*

*Motion was seconded by Ms. Pennell.*

***Discussion:*** *Mr. Thielbar*

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

*(At the conclusion of this application, Mr. Prior resumed as Chair for the remainder of the meeting. Mr. Ouimet was dismissed for the evening -- 8:00 PM)*

### 3. Case # 1460: Sharon Gill

***The application for a variance from Article 4, Section 4.4 Schedule III: Density and Dimensional Regulations (Non-Residential) to permit one additional dwelling unit to be constructed within the existing footprint of structure located at 35 High Street. The subject property is located in the C-1, Central Area Commercial zoning district. Tax Map Parcel #71-117.***

Ms. Sharon Gill, of the Bean Group, addressed the Board on behalf of the property owner, 35 High Street Exeter LLC. Ms. Gill acknowledged the recent zoning change in March 2013 which encompassed this property has resulted in the property now having a C-1, Central Area Commercial zoning designation. She noted that the building has been utilized as a mixed use with commercial /office on the first floor and three (3) residential on the second floor; however, the commercial space has been vacant for quite some time. Ms. Gill explained that she was requesting a variance to allow for the reconfiguration of the commercial space to create three (3) additional residential units. She noted that all improvements would be within the footprint of the existing structure.

Ms. Gill went onto explain that the lot area of the subject property was .47 acres, and that the density calculations for the C-1 zoning district would allow for 5.8 residential units. She indicated that the relief being sought was to permit a total of six (6) units to occupy the structure. Ms. Gill indicated that a local contractor was involved in the project and had provided the plans accompanying the application.

Chair Prior asked for clarification of traffic pattern on site – ingress and egress. Ms. Gill indicated that there was a trip-loop light at the intersection of High Street and Portsmouth Avenue which provided for signaled access in and out of the property. Ms. Gill indicated there was ample parking on the site and noted that fifteen (15) spaces were required. She indicated there were two (2) spaces immediately to the right (in front of the ell) as you enter the property and that the vast area to the rear of the building was utilized for parking, although it was not striped, but measured approximately 61'x 78'in area. Mr. Hauschildt represented that this area (approx 4,200 s.f.) could provide more than twenty (20) spaces.

Chair Prior clarified that the specific relief being sought was for density, noting that the acreage (lot area) of the site only allows for 5.8 units. Deputy Code Enforcement Officer Barb McEvoy clarified that the number of units were calculated using 3,500 s.f. per dwelling unit as required in the C-1 district. Chair Prior inquired as to intensity of the use, and asked long the downstairs had been vacant. Ms. Gill responded for approximately two (2) years. She indicated that she had been the listing agent for the property for the last two years and there is simply no interest in the commercial use of the first floor given it is so out-dated and needs improvements.

Mr. Hauschildt asked what the unit mix (i.e. bedrooms) was going to be. Ms. Gill responded that there would be a total of six (6) residential units with the first floor to consist of two (2), two-bedroom units and one (1), one-bedroom unit. She represented the existing residential units were two (2), one-bedroom and one (1), two-bedroom units. The Board determined eleven (11) parking spaces would be required (included two spaces for guest parking).

There being no further questions from the Board, Chair Prior asked if there were any interested parties who wished to speak on the application. There was no public comment, the public hearing was closed and the Board moved into deliberations at this time.

#### *DELIBERATIONS*

Mr. Hauschildt commented that this property was one of the properties that were subject to the recent zoning change in March being rezoned from an R-2, Single Family Residential district to a C-1, Central Area Commercial district. Chair Prior clarified that the relief being sought was not a 'use' issue, but was

a density issue, basically rounding up by 2/10<sup>ths</sup> of a unit. Mr. Hauschildt stated that it would be a large improvement of the property and a benefit to the residential community with very minimal impact.

Chair Prior commented that given Mr. Hauschildt's comments, and the fact that the Applicant addressed the variance criteria in detail, he would suggest that it may not be necessary for the Board to reiterate that discussion. Board members concurred. Chair Prior added that he was pleased that there were no members of the community present to speak in opposition to the request.

**MOTION:** *Mr. Hauschildt moved to approve the application, as presented, to permit six residential units (consisting of three 2-bedroom units and three 1-bedroom units), as presented, with the specific relief being granted for a density increase of 2/10<sup>ths</sup> of a unit.*

*Motion was seconded by Ms. Pennell.*

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

*(At this time, the Board took a short recess; the meeting was reconvened at 8:20 P.M.)*

4. Case #1461: Jeff Turner and Lori Whitney (d/b/a Green Bean on Water)

*The application for a variance from Article 5.1.2 for the expansion of a non-conforming use to permit a proposed increase of eighty (80) seats to the existing restaurant with less than the required number of parking spaces being provided. The subject property is located at 33 Water Street in the WC-Waterfront Commercial zoning district. Tax Map Parcel #72-37.*

Mr. Jeff Turner acknowledged that his wife Lori was also present, and they as the owners of the Green Bean on Water were present to address the Board with respect to their proposal to expand the existing restaurant use of their property. He explained that their plans included interior renovations, the installation of a brand new kitchen and expansion into the space previously occupied by 'Trends Gift Gallery'. He noted that 'Trends' was moving to another location on Water Street. Mr. Turner explained that their new kitchen would be relocated in the rear portion of the former 'Trends' space and by doing so, it would provide for space for an additional thirty (30) seats in the Green Bean restaurant and provide for fifty (50) seats to serve a proposed 'full-service' restaurant in the adjacent space (the remainder of the 'Trends' space).

For clarification, Mr. Prior asked if this was a single contiguous property although divided by an interior wall separating the current restaurant space from the former retail space. Mr. Turner indicated that was correct. Mr. Turner referred to the plans which were submitted with the application noting that the floor plans depicted how the space would all be connected. Chair Prior recognized that extensive interior renovations were proposed and asked if any exterior renovations were proposed. Once again Mr. Turner referred to the plans and indicated that a facelift was proposed to the façade of the former 'Trends' space and noted that he was scheduled to present his plans to the Historic District Commission at their September 19<sup>th</sup> meeting.

Chair Prior clarified that the specific relief being sought was for twenty-seven (27) parking spaces required for the proposed seating expansion. He indicated that there were no issues with the use noting that it was previously a retail use and would remain a retail use. Mr. Hauschildt commented that there was no increase in the density as the former retail use was a high-traffic use. He also indicated that although this would certainly be an expansion, retail to retail, there would be no difference in the intensity of the use.

Mr. Hauschildt asked for clarification of the interior layout; Mr. Turner referred to the plans and explained that the existing kitchen was being relocated into the rear portion of the former 'Trends' space to allow for the existing Green Bean seating to be increased by thirty (30) seats; the proposed use of the front portion of the former 'Trends' space would provide the seating (50 seats) for a proposed "full-service" restaurant. He noted that both restaurant uses would be serviced by the same kitchen.

Mr. Mirsky asked the Applicant to address why granting of the variance would not be contrary to the public interest. Mr. Turner responded that a large portion of the current Green Bean customers are local business people, Phillips Exeter Academy (PEA) students/faculty and residents of the Mill, and arrive via foot. He noted that for those customers who do require parking, the business is located directly across the street from the municipal parking lot, and therefore reduces the impact on the Water Street parking. Mr. Mirsky asked the Applicant about how many parking spaces he thought he would need. Mr. Turner responded that it was really difficult to say, but thought maybe eleven (11).

Chair Prior inquired about any proposed expansion of hours. Mr. Turner indicated that currently they were open till 9:00 PM on Thursday, Friday and Saturday evenings, and until 8:00 PM other evenings, and he did not expect that would change. He represented that the "full-service" restaurant might be open until approximately 9:30 PM, but indicated that he did not envision the kitchen staying open any later than 10:00 PM.

Mr. Hauschildt commented that based on the square foot calculation of the 'Trends' space (approx. 2,436 s.f.); nine (9) spaces would be required. He asked if they were approved; Code Enforcement Officer Doug Eastman replied that the retail use was grandfathered for nine (9) parking spaces. Mr. Hauschildt then clarified that the actual relief being sought by the Applicant was for eighteen (18) parking spaces, and not twenty-seven (27) as previously mentioned.

There being no further questions from the Board, Chair Prior asked if there were any abutters or interested parties who wished to speak on the application.

Mr. Dennis Welcome, owner of the property next to the Green Bean (currently "The Chocolatier") at 27-31 Water Street. He indicated that he was speaking in favor of the Applicant's proposal, however had considerable concern relative to the parking issue in the Downtown. He represented that the municipal parking lot was already at its max, and he thought that other alternatives should be sought by the Applicant for providing the necessary parking required by the proposed expansion. He mentioned that the vacant lot adjacent to his property could provide some additional parking, and possibly approaching the developer working on the Franklin Street redevelopment proposal may be beneficial. He commented that the lot on the corner of Franklin & Clifford Street (currently occupied by the concrete block building) could possibly provide for an additional forty (40) parking spaces and should be considered by the developer and the Town. Mr. Welcome noted that the main complaint received from patrons of the downtown businesses is the lack of adequate parking.

Chair Prior thanked Mr. Welcome for his comments, and noted that unfortunately it was not something that the Board could address. He did acknowledge that the parking deficiency in the downtown area was something the Board had heard multiple times. He indicated that the Board has been consistent in approving changes of use in the downtown area and allowing variances with respect to the parking requirements, again with the tendency to fall back on the municipal parking lot.

Ms. Marcia Markie, owner of the Curtain Shop, spoke in support of the Applicant's expansion and also shared Mr. Welcome's concern relative to the parking issues in the downtown.

For the benefit of those present and for the viewers at home, Chair Prior announced that the Board would be meeting again tomorrow evening to consider three applications filed by Allen Lampert Trust regarding the potential redevelopment of multiple Franklin Street properties.

Mr. Hauschildt indicated that if he understood correctly, the abutters were in favor of the proposed restaurant expansion however did have concerns relative to parking. He asked if either of them would like to give any indication if one outweighed the other, and to what extent, if any.

Mr. Welcome commented that it was difficult to understand how a business can expand without providing adequate parking for its customers; he indicated by allowing it to happen affects all of the downtown businesses. He mentioned that during the holiday and summer seasons the lack of parking is most prevalent and it creates a strong negativity when patrons approach business owners and store employees with such concerns. He emphasized that this was a problem that needed to be addressed sooner than later, and that the town cannot just continue to move on by using the municipal lot for the parking needs of all businesses.

Mr. Hauschildt commented that there isn't anything the Zoning Board of Adjustment does to provide extra parking or to suggest to someone to provide parking. He indicated that he was not certain whose responsibility that would be.

Code Enforcement Officer Doug Eastman approached the microphone and stated that he understood parking was a concern for everyone in the downtown area. He commented that short of building a parking garage (which is not anticipated at this time), he did not see any immediate resolution to the concern. He indicated that the Town had recently purchased the former Getty station on the corner of Court & Bows Streets for additional parking, and it is currently used by the Fire Department during the day. He noted that the town was still working on organizing how to maximize the number of spaces on the site. He also noted that the potential for public use of the lot, particularly in the evening hours, was being considered.

Mr. Hauschildt asked if the issue of eighteen (18) virtual spaces by the proposed expansion of the restaurant would that be a greater negative than the potential increase of business in the downtown.

Mr. Welcome stated that as each business comes along, the Board asks the same question. He indicated that the relief being granted may seem minimal as each request is considered, but collectively it has created the problem we have today; and he stated "How far do we go with this?" He stated that it is going to reach a point in time when this just will no longer work. Mr. Welcome noted that he was aware of the Town's recent purchase of the former Getty station site and commented that it is full every morning when he arrives in town. He reiterated his earlier suggestion and encouraged the business owner and the town to work the developer (of the Franklin Street site) to possibly negotiate some public parking at that site. He also suggested that if it was within the purview of the Board that some consideration should be made to address this issue in the future.

Mr. Hauschildt stated that there have been cases where parking restrictions have been placed on other restaurant uses in the downtown. He also mentioned that at some point the "Ioka" will be reopened and that will have a major impact on parking as the use is grandfathered for a couple hundred spaces.

Mr. Hauschildt stated that he was not clear if Mr. Welcome was in favor or opposed to the application being considered this evening. Mr. Welcome responded that he was in favor of the Green Bean expansion provided that some parking be provided for it; Ms. Markie also concurred.

Chair Prior asked if Mr. Turner wished to respond to the public comments.

Mr. Turner stated that he appreciated his abutters support as well as their concerns. He commented that they (the businesses) had been there for a long time and he was confident that they shared the same customers, so in a sense the parking was also being shared. He anticipated that the proposed expansion would be a benefit to the other businesses as well.

There being no further public comment, Chair Prior closed the public hearing, and the Board moved into deliberations.

#### *DELIBERATIONS*

Mr. Thielbar commented on the parking concern raised by the abutting business owners and noted that the ordinance required a specific number of parking spaces for a restaurant use based on the number of seats. Mr. Hauschildt pointed out that the ordinance did not define 'restaurant' and clearly there are various types of 'restaurant' uses (take-out to fine dining types) that would warrant different parking requirements. He indicated that this was the first time the Board was hearing some serious concerns about the parking downtown; he acknowledged Mr. Welcome's concern that this issue is close to a breaking point, although he did believe there was a sharing of parking that would compensate for some of the deficiency. Mr. Hauschildt stated that relief being sought for eighteen (18) spaces was not realistic.

Mr. Mirsky commented that the ZBA was not the appropriate body that was going to decide to make the municipal parking lot into a parking garage, or whether other property owners and/or developers should be required to provide for public parking. He indicated that it was necessary for the Board to determine if the specific request was contrary to the public interest. Mr. Mirsky did agree that the parking issue needed to be addressed; however, he believed this was a very beneficial project and would be in the public's interest. He noted that the parking issue has increased over time due to the positive contributions of the business people in the downtown and their thriving businesses.

Chair Prior made mention of the invitation board members had received to join the Board of Selectmen and participate in an "All Boards" discussion relative to the town's economic development. He indicated that he had planned on attending and would be prepared to present the need for this issue to be addressed. He also agreed that the proposed expansion was a positive thing for the downtown, and he was pleased that the abutters, despite their concerns regarding the parking, were also in favor of the expansion.

Mr. Hauschildt apologized for not requesting this information during the public hearing, but wanted to ask the Applicant if the proposed eighty (80) seats was the minimum number of seats required to make the project financially feasible. Chair Prior asked if the Board members had any issue with re-opening the public hearing. There was no issue; Chair Prior invited Mr. Turner to address the question.

Mr. Turner indicated that the proposed renovation was a substantial financial investment in the property. He indicated that the thirty (30) additional seats in the Green Bean would really not change the business plan. He indicated that the proposed renovations to the facade of the Trends' space were necessary regardless of which use may occupy this space. He represented that rent received for retail use of the space would not cover his monthly expenses for the proposed renovations. Mr. Turner stated that he considered 50 seats was a fair assessment to make project work.

Mr. Hauschildt inquired that if the Board were to limit the seating to forty (40) seats, would such a condition put a kybosh on the project. Mr. Turner responded that it would change things; he stated that he

had no come prepared to answer detailed financial questions and that there was a lot to take into account to do so.

There being no further public comment, Chair Prior closed the public hearing and the Board resumed deliberations.

Ms. Pennell commented on the previous businesses that had been granted relief for parking most recently. Mr. Hauschildt noted that the only difference was that the Board had not heard any public comment from abutting property owners (of those previous applications) with respect to adversely impacted by the lack of adequate parking being provided. He recalled that the relief granted for the Blue Moon on Clifford Street was somewhat less than what the Applicant had originally requested.

Mr. Mirsky commented that the Board was not hearing opposition from the abutters regarding the proposal, although they were expressing significant concern with respect to the parking issue as a whole in the downtown. Mr. Hauschildt stated it was important that the concern be acknowledged as it could become an increasing problem going forward.

Ms. Pennell asked for clarification on the approval granted for the Gardner House (12 Front Street). Chair Prior noted that the application had been withdrawn. Mr. Eastman indicated that the Applicant had indicated he would not be moving forward with the proposal; however, the approval was still valid.

Mr. Welcome reiterated that they were in favor of the application, but stated that the Board cannot continue to grant such relief without requiring the Applicant to provide some parking (in an adjacent location) to help relieve the situation. Chair Prior commented that the challenge for the Board was to balance that against the individual needs of the property owner.

Chair Prior began the discussion of the variance criteria. He commented that the public interest in this case would have to do with the crowding of the downtown and the availability of parking. He noted that the Applicant had made the case of sharing parking with adjacent businesses, noting that the parking need is spread throughout the day and that access to the municipal parking lot was very positive given its location directly across the street. Chair Prior indicated that there was ample evidence from abutters, as well as their own personal experiences, that the Town is quickly approaching a saturation point with respect to its ability to provide parking in the downtown. It was determined that the benefit to the Applicant was not outweighed by harm to the general public or to other individuals.

Chair Prior noted that the Board had not heard any testimony with respect to diminution of surrounding property values. He commented that actually the surrounding properties would be enhanced given the exterior improvements being proposed and the foot traffic generated by the additional seating. He continued and reviewed the criteria for hardship. Mr. Hauschildt represented that numerous businesses in the downtown are literally unable to provide any parking on site and therefore are restricted from maximizing the value or functionality of their business due to parking requirements. He stated that literal enforcement of the ordinance in this case would constitute a hardship.

**MOTION:** *Mr. Hauschildt moved to approve the expansion of a non-conforming use to grant relief for eighteen (18) parking spaces to allow for a proposed increase of eighty (80) seats to the existing restaurant, as presented.*

*Motion seconded by Mr. Mirsky.*

**VOTE:** *The motion passed 4-1, with Mr. Thielbar voting in the negative.*

**OTHER BUSINESS:**

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

APPROVAL OF MINUTES: May 21, 2013.

It was noted that reference to a date and a case number had been omitted on page 2 of the minutes (under Case #1452). It was suggested that given the minutes had not been included in the recent mailing, and only received via e-mail, that action be deferred until tomorrow evening's meeting to give members the opportunity to review.

APPROVAL OF MINUTES: July 16, 2013.

**MOTION:** *Mr. Thielbar moved to approve the minutes of July 16, 2013, as written.  
Mr. Hauschildt seconded.*

**VOTE:** *The motion passed 4-0, with Ms. Pennell abstaining.*

CHAIRMAN'S ITEMS:

Chair Prior announced that the Board would be in session again tomorrow evening, Wednesday, September 18<sup>th</sup>, 2013 at 7:00 P.M. and would be considering several requests from Allen L. Lampert Trust for proposed redevelopment of several properties on Franklin Street.

There being no further business, Chair Prior indicated he would entertain a motion to adjourn.

**MOTION:** *Mr. Thielbar moved to adjourn.  
Ms. Pennell seconded.*

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

The meeting was adjourned at 9:10 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Wednesday, September 18, 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