

## EXETER ZONING BOARD OF ADJUSTMENT MAY 21, 2013 MEETING MINUTES

### Present:

Regular Members: John Hauschildt, Bob Prior, Martha Pennell, Hank Ouimet and Rick Thielbar  
Alternate Members: Steve Cole and David Mirsky  
Building Inspector/Code Enforcement Officer: Doug Eastman  
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chairman Hauschildt introduced the Board members and explained the protocol for the meeting. He indicated that Vice Chairman Prior would be chairing the meeting for the first application as it was a continuation from the April meeting. He also stated that although he was not present at the last meeting, he had viewed the video of the meeting and attended the site walk earlier this evening, and would be participating in the discussion of said application in accordance to RSA. He noted that by doing so, it would give the Applicant the benefit of a full board; he indicated that Mr. Mirsky would not be voting on this application.

Chairman Hauschildt also announced that Case #1450, the application of Felder Kuehl Properties, LLC had been rescheduled at the Applicant's request for the Board's August 20<sup>th</sup>, 2013 meeting.

### AGENDA:

1. Case # 1449: Martin B. Stollar and Terry Eustis  
Equitable Waiver of Dimensional Requirements – 157 Court Street
2. Case #1452: Peggy Ann Darwin  
Special Exception Request - 35 Hampton Road
3. Case #1450: Felder Kuehl Properties, LLC  
Special Exception Requests for Multi-Use building and Height Regulations 85 Epping Road
4. Case #1453: Felder Kuehl Properties, LLC and Felkon, Inc.  
Variance Request for use and density regulations 10 Industrial Drive

### NEW BUSINESS:

1. Case # 1449: Martin B. Stollar and Terry Eustis

***The continued public hearing on the application for an Equitable Waiver of Dimensional Requirements to permit an existing structure (shed) that encroaches within the required minimum side yard setback to remain as situated. The subject property is located at 157 Court Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #104-36-1.***

Acting Chairman Prior indicated that the Board had conducted a site visit of the subject property this evening just before the meeting. He re-opened the public session and clarified that the building depicted as "Barn A" was the building in question and that the building depicted as "B" was not part of the application being discussed. The Board members had no further questions of the Applicant.

Mr. Hauschildt stated that it was apparent from the site walk that building "B" also encroached within the setback and indicated that the Code Enforcement Officer would be addressing this issue with the Applicant. He also acknowledged the receipt of correspondence from Mr. Andrew Stollar, dated April

29, 2013, in which he withdrew his objections to the application as stated in earlier correspondence and stated at the previous meeting. Mr. Hauschildt indicated that although the objections from the abutter had been withdrawn, the Board was still required to address the application for the equitable waiver.

There being no further discussion, Acting Chairman Prior asked if there were any interested parties who wished to speak on the application; there were none. He closed the public hearing and the Board moved into deliberations.

#### *DELIBERATIONS*

Vice Chairman Prior represented that Messrs. Ouimet and Mirsky would not be voting on this application.

***MOTION:*** *Mr. Hauschildt moved to grant the Equitable Waiver of Dimensional Requirements, as submitted, reflecting that “Barn A”, as depicted in the photographs provided by the Applicant, was approximately four feet (4’) from the property line.*  
*Mr. Cole seconded.*  
***VOTE:*** *The motion passed unanimously.*

*(At this time, Mr. Cole excused himself for the evening, and Mr. Mirsky became a voting member.)*

#### 2. Case # 1452: Peggy Ann Darwin

***The application for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses (and Note #1-Conversions) and Article 5, Section 5.2 to permit the conversion of an existing single-family residence into two dwelling units. The subject property is located at 35 Hampton Road in the R-2, Single Family Residential zoning district. Tax Map Parcel #87-20.***

Ms. Darwin addressed the Board and indicated that she currently had a purchase and sale agreement pending with the owners subject to obtaining approval of her application for the proposed conversion. She stated that the property was currently a single-family home, and noted that the owners had previously operated a child day care facility there as a home occupation.

Code Enforcement Officer Doug Eastman clarified that it was a single-family home, and that there had never been a second dwelling on the property. He also noted that the owners had obtained a special exception approval allowing the day care facility as a home occupation ( 1983, ZBA Case # ). Mr. Eastman explained that the second floor above the area occupied by the former day care was to be converted to a dwelling unit. He proceeded to clarify the difference between the “conversion” provision permitted by special exception and the “two-family” use, also permitted by special exception in the R-2 zoning district. He pointed out that the “conversion” criterion requires one of the units to be ‘owner-occupied’ while there are no occupancy restrictions on the “two-family” use. He noted that as an example, a “two-family” structure could be purchased (or constructed) as utilized as an investment property.

Chairman Hauschildt inquired about the special exception for the day care facility being relinquished. Ms. Pennell commented that if the property were to be sold, the approval would run with the property. Mr. Eastman indicated that all of the options (i.e. accessory dwelling unit, conversion, and two-family) were discussed with the Applicant prior to the application being submitted. Mr. Prior asked for clarification that all of the proposed changes were internal; Ms. Darwin confirmed that was correct.

There being no further discussion, Chairman Hauschildt opened the hearing for public comment.

Ms. Patti Visconte, realtor with the BH&G/Masiello Group, spoke in support of the request.

There being no other public comment, the public portion of the hearing was closed and the Board proceeded into deliberations.

*DELIBERATIONS*

Mr. Prior led the Board through the review of the special exception criteria. Board consensus was that the Applicant had satisfied the criteria for conversion, as well as the criteria for granting the special exception.

***MOTION:*** *Mr. Prior moved to approve the special exception request for the conversion of the existing single-family residence into two (2) dwelling units, as presented.*  
*Mr. Thielbar seconded.*  
*Discussion: Ms. Pennell requested that the motion be amended to include the language “one of which must remain owner-occupied”.*  
*Mr. Prior accepted the amendment.*  
*Mr. Thielbar seconded.*  
***VOTE:*** *The motion on the amendment was passed unanimously.*  
*Chairman Hauschildt called for a vote on the motion, as amended.*  
***VOTE:*** *The motion, as amended, passed unanimously.*

3. Case #1450: Felder Kuehl Properties, LLC

***The application for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Article 4, Section 4.4 Schedule III: Density and Dimensional Regulations- Note #12 and Article 5, Section 5.2 to permit the proposed construction of a multi-use building not to exceed fifty feet (50’) in height on the property located at 85 Epping Road. The subject property is located in the C-2, Highway Commercial zoning district. Tax Map Parcel #55-75.***

Attorney Donahue, with Donahue, Tucker & Ciandella, PLLC approached the microphone and explained that his client was requesting a postponement of this application until the Board’s August 20<sup>th</sup>, 2013 meeting. He indicated the reason for the continuance was to allow his client additional time to work with the Planning Board’s Technical Review Committee. He noted that the relief being sought from the Zoning Board of Adjustment (ZBA) would not change, however, a more definitive plan will be provided for review at that time.

***MOTION:*** *Mr. Prior moved to grant the Applicants’ request and reschedule discussion of the application at the August 20, 2013 meeting (as previously announced).*  
*Mr. Thielbar seconded.*  
***VOTE:*** *The motion passed unanimously.*

4. Case #1453: Felder Kuehl Properties, LLC and Felkon, Inc.

***The application for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses to allow the lot area of the property located at 10 Industrial Drive (zoned “Industrial”) to apply to density calculations for the existing multi-family residential project, “The Meeting Place” located in the adjacent R-4 zoning district. Tax Map Parcels #54-2 and #55-75-1.***

Attorney Michael Donahue, with Donahue, Tucker & Ciandella, PLLC was present to address the Board on behalf of the Applicant. He acknowledged that his client, Mr. Bob Felder and Project Engineer Dana Lynch of CivilWorks, Inc. were also present with him this evening. Attorney Donahue began by providing a brief history of the development plan for this site which commenced in 2003. He explained that the property had been marketed for several years with an approved site plan for the proposed construction of a 5,800 s.f. manufacturing office building. He noted that multiple extensions of the conditional approval had been granted by the Planning Board during that time. Attorney Donahue represented that due to the significant constraints of the lot due to its topography and the prevalence of wetlands, the property owner has not been successful in marketing the property. He noted that it had also been offered to the owner of an abutting parcel for expansion of its facility without success. It was represented that the Town's current wetland regulations together with the parcels' unique characteristics essentially make this industrially zoned property unbuildable.

Attorney Donahue proceeded to explain the intent of his client's proposal and justification for the relief being requested. He stated that the variance was being sought to allow the area of the subject property (industrial lot) to be used in the density calculations for the existing multi-family residential development, *The Meeting Place*, located in the abutting R-4, Multi-Family Residential zoning district. He indicated that no construction or building would take place within the industrial zoned land except for the proposed extension of the current public trail network and the creation of a small gravel parking area to facilitate public use of the trail network.

Attorney Donahue represented that by allowing the area of the subject property to be applied to the density calculation for the existing development, it would support twenty-two (22) additional residential units. He stated that his client was proposing to add eighteen (18) additional units within buildings #3 and #4 of the previously approved site plan, all of which would fit within the buildings' approved and vested footprints.

Attorney Donahue stated that they had presented their most recent plans for this proposal to the Exeter Conservation Commission at their meeting earlier this month and received a very positive endorsement from the Commission. He indicated that they propose to place the subject property into conservation through a conservation deed to the town. Attorney Donahue stated this would be done by amending the existing conservation easement which protects the area surrounding *The Meeting Place*. He indicated that this would then allow for the proposed improvements to expand the current public trail network and for the construction of the gravel parking area along Industrial Drive.

Chairman Hauschildt inquired if the Applicant was amenable to merging the two properties; Attorney Donahue responded affirmatively. Mr. Ouimet clarified that it was a 'use' variance being sought and Attorney Donahue concurred noting that it was for density purposes only. Mr. Prior asked if additional parking would be necessary. Attorney Donahue responded that due to the number of bedrooms being proposed that actually less parking was required.

Mr. Felder addressed the Board and provided a brief presentation of the proposed changes, including the proposed interior layouts (i.e. # of bedrooms) to Buildings #3 and #4. He noted that he was proposing that one of the buildings to be for 'seniors'.

Mr. Dana Lynch, P.E. continued the presentation and reviewed the topography of the site noting that the parcel was split by a substantial wetland system. He presented various justifications for the property being extremely difficult to develop; he commented that the proposed development of the site prior to the wetlands regulations being amended in 2010 was really not marketable. Mr. Lynch indicated that the

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Town's current regulations are even more restrictive, therefore, making the lot unsuitable for industrial purposes as zoned.

There being no further discussion, Chairman Hauschildt asked if there were any abutters or interested parties who wished to speak on the application. There was no public comment, the public portion of the meeting was closed and the Board began deliberations. It was noted that Attorney Donahue provided the Board with a list of proposed conditions for consideration during deliberations.

#### *DELIBERATIONS*

Mr. Prior began the discussion addressing the criteria for granting the variance. Board members represented they were satisfied with Attorney Donahue's justification of each of the criteria and concurred that the subject property was undevelopable by the current regulations and therefore constituted a hardship for the property owner.

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

- *Tax Map Parcel #54-2 to be combined with Tax Map Parcel #55-75-1 and approved by the Planning Board;*
- *Approval by the Planning Board of the amended site plan for Tax Map Parcel #55-75-1 adding additional residential units in the existing area previously approved for development and incorporating the trail network to be constructed by the Applicant;*
- *Execution and recording by the Applicant of an amendment to the Conservation Easement incorporating the entire area of the former Tax Map Parcel #54-2 into the area subject to the easement in a form and substance acceptable to the Conservation Commission.*

*Motion seconded by Mr. Thielbar.*

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

**APPROVAL OF MINUTES:** February 19, 2013

Chairman Hauschildt asked if everyone had the opportunity to read the February 19<sup>th</sup>, 2013 meeting minutes and if there were any changes. Mr. Thielbar recalled that the Board opted to table action on them at last month's meeting, in Chairman Hauschildt's absence, noting that he had requested some additional detail to be included.

**MOTION:** *Ms. Pennell moved to approve the minutes, as presented.*

*Mr. Thielbar seconded.*

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

**ELECTION OF OFFICERS:**

**MOTION:** *Mr. Hauschildt moved to nominate Mr. Prior to serve as Chairman for the upcoming year.*

*Motion seconded by Mr. Thielbar.*

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

**MOTION:** *Mr. Prior moved to nominate Mr. Hauschildt to serve as Vice Chair for the upcoming year.*

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***Motion seconded by Mr. Thielbar.***

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

***MOTION: Mr. Hauschildt moved to nominate Mr. Thielbar to serve as Clerk for the upcoming year.***

***Motion seconded by Mr. Prior.***

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

#### **CHAIRMAN'S ITEMS:**

Chairman Hauschildt commented that periodically the Board has revised its “*Rules of Procedure*”, noting that they were last revised as of April 2011. He indicated that he would like to have the Board consider two (2) minor revisions, as follows:

- **Section 3) Officers:** Amend subsection ii) by changing the month in which elections are held from “*April*” to “*May*”. He indicated that the Board traditionally holds the election of officers after re-appointments have been made (terms expire on April 30<sup>th</sup> of the year).
- **Section 4) Meetings:** Amend subsection iii) by deleting the third sentence as it is not necessary (and made no sense) and add the phrase “*A minimum of*” to the beginning of the last sentence.

Chairman Hauschildt asked that the revised document be included in June’s meeting materials and placed on the agenda for Board action.

#### **OTHER BUSINESS:**

Mr. Thielbar and Mr. Prior indicated they would not be available for the June 18<sup>th</sup>, 2013 meeting. Chairman Hauschildt indicated that he would be available to chair the meeting in Mr. Prior’s absence.

Chairman Hauschildt extended a ‘welcome’ to the Board’s newly appointed member, David Mirsky, noting that he was a familiar face to some as he served on the Board several years ago.

Mr. Ouimet stated that he had been delinquent in returning his paperwork, but understood that he had been re-appointed for another three-year term. He indicated that he wished to change his status to an alternate member. Ms. McEvoy indicated there were currently three (3) alternates; she noted that Messrs. Cole and Carbonneau had previously expressed their desire to remain as alternates in February. Chairman Hauschildt asked Mr. Mirsky, that if after several hours of participation this evening, he would be interested in becoming a ‘regular’ member; Mr. Mirsky accepted. Ms. McEvoy indicated that she would prepare a memo to the Board of Selectmen (BOS) with the Board’s recommendations, as discussed, and notify the Chairman when ready to be signed.

“*Kudos*” was extended to Chairman Hauschildt for his knowledgeable guidance as Chairman for the last two (2) years. Mr. Hauschildt thanked the Board and also extended his appreciation to the office staff --- Barb, Chris and Doug, for the tremendous amount of work they do behind the scenes.

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

***MOTION: Ms. Pennell moved to adjourn.***

***Mr. Ouimet seconded.***

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

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Exeter Zoning Board of Adjustment meeting.*

The meeting was adjourned at 8:30 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, June 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