

**EXETER ZONING BOARD OF ADJUSTMENT  
OCTOBER 15, 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.

AGENDA:

1. Case #1465: Leonard Novak, Jr., Trustee (of The LJM II Spendthrift Realty Trust)  
4 Prospect Street  
Special Exception for Residential Conversion
2. Case #1466: Katherine Churchill, DMD  
193 High Street  
Variance for Expansion of N/C Use for Addition

NEW BUSINESS:

**1. Case # 1465: Leonard Novak, Jr., Trustee (of LJM II Spendthrift Realty Trust)**

*The application for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Note #1 and Article 5, Section 5.2 to permit the conversion of an existing residential structure and a detached accessory building into two (2) dwelling units. The subject property is located at 4 Prospect Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #65-157.*

Attorney Elizabeth Bassett addressed the board on behalf of the Applicant, Leonard Novak. She identified the subject parcel located on Prospect Street noting that it was larger than most in the neighborhood. Referring to the vicinity ownership map submitted with the application, she pointed out that the subject property had frontage on both Prospect Street and Highland Street, and was approximately .25 acres in area. She identified several parcels (in the immediate neighborhood along Portsmouth Avenue) that currently had more than one dwelling unit on the property; she stated that allowing two units on the subject property would not be inconsistent with the density which already exists in the area.

Chair Prior asked for clarification with respect to the parcels identified by Attorney Bassett with more than one dwelling unit. It was clarified that the parcels had multiple units, although were within a single structure on the property. Attorney Bassett continued and reviewed the existing conditions plan. She indicated that there were two driveways located on the property, and that the footprints of the existing residence and old garage were 1,092 square feet and 420 square feet, respectively. She noted that the lot coverage was approximately 27%, therefore leaving more than 70% of the property for open space. She indicated that the Applicant did reside in the existing residence and the old garage had been previously used for storage. She represented that the garage structure was removed in the spring of 2012 after it had

been noticed that there had been extensive damage to the roof and some of the contents of the building had been destroyed. Currently, the Applicant is still in the process of cleaning up the property.

Attorney Bassett indicated that in hopes of replacing the building, Mr. Novak had spoken with Code Enforcement Officer Doug Eastman and also with a real estate agent. She explained that he was made aware that improvements could be made to the property which would enhance its value by seeking a residential conversion to permit a second dwelling unit on the property. Attorney Bassett stated that four off-street parking spaces would be required for the proposed two units and could easily be provided on the property. She noted that the Applicant was uncertain at this time as to where the new structure and parking may be located; she noted that given the size of the parcel it would be possible to create access and parking off of Highland Street. However, it was represented that the new structure would comply with the dimensional setbacks required for the district.

Attorney Bassett continued and addressed the individual requirements for consideration of the conversion as outlined in Article 4.2, Schedule I, Note #1 of the ordinance as well as the criteria for granting the special exception. She indicated that although the building could be reconstructed on the same footprint without any Zoning Board approval, it would only make sense to reconfigure the building and locate it in an area that complied with the dimensional setbacks given the Applicant's intention to utilize it as a residential unit.

Mr. Hauschildt inquired about the current status of the 'garage' structure. Attorney Bassett responded that for the most part the structure had been removed with the exception of the (wood) floor and a portion of the rear wall. It was represented that the demolition of the structure has been occurring over the last year. Mr. Hauschildt stated that the existing 'garage' structure was non-conforming, which was fine, however any expansion of or structural alterations to the structure and the proposed change in use would require a variance. Mr. Thielbar inquired whether the variance would be necessary if the Applicant were to construct the 'new structure' in compliance with the dimensional (setback) regulations. Mr. Hauschildt commented that if that were to be the case, a variance would not be required. However, he indicated that he was not comfortable granting a special exception for the conversion with this not being clarified.

Attorney Bassett responded that the legal property owner, LJM Spendthrift II Realty Trust (of which Mr. Novak is a Trustee) is intending to put the property on the market, so it is possible that Mr. Novak will not be the party developing the property. However, the Applicant felt that the property would be more marketable with such an approval in place. Mr. Hauschildt suggested that if the Board is so inclined to grant the special exception for the conversion, it should be done so with the understanding that it may require further relief (as previously discussed) or with the condition that the 'newly-constructed' detached accessory structure shall comply with the dimensional (setback) requirements for the R-2 district. Attorney Bassett acknowledged that she understood and represented that the Applicant would be willing to accept the condition that the 'new' structure would not exceed 420 square feet (footprint) and would be relocated in compliance with the required yard setbacks for the district.

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

Ms. Jennifer Shoey, 6 Prospect Street, inquired about seeing some type of picture or plan of the proposal. Chair Prior noted that there had been no detail submitted with that application and explained that the Zoning Board of Adjustment (ZBA) only had jurisdiction relative to the land use of the property.

Ms. Larissa Kiers, owner of the single-family residence at 15 Highland Street indicated that they abutted the rear of the subject property. She expressed her concern about the potential impact to Highland Street

resulting from this proposal. Chair Prior noted that a plan had been submitted with the application showing a proposed driveway onto Highland Street; he indicated that he did not believe there would be any prohibition to the access. He explained that the relief being sought was to permit a residential conversion (for two units) on the subject property, however, he noted that it was required that one of the units remains 'owner-occupied', therefore, restricting the property from becoming a multi-unit rental property. She expressed concern about the visual impact of the current situation and asked if there were any regulations

Mr. Jim Jackson, 7 Prospect Street, addressed the Board and mentioned that his father also owned the abutting property at 39-41 Portsmouth Avenue. He commented that he had no problem with the proposal being presented by Mr. Novak, and thought it would be an improvement to the property. He expressed his displeasure with the neighborhood becoming a commercial zone due to the parking situation (wreckers, ramp trucks, truck repair, etc.) with vehicles coming and going at all hours of the night. He stated that he had spoken with the Town and had been advised to contact the Police Chief regarding the issue. Chair Prior asked Mr. Jackson if he had any further remarks relative to the application. Mr. Jackson reiterated that his issue was parking and he acknowledged that Mr. Novak's proposal addressed his required parking satisfactorily. Chair Prior thanked Mr. Jackson for his comments and indicated that this meeting was not the appropriate forum to address his concerns about existing conditions on the Prospect Street.

In rebuttal, Attorney Bassett addressed the concerns raised by the abutters. She reiterated that the plan submitted with the application was conceptual, although was what the Applicant thought would be the best scenario for marketing the property. She represented that the Applicant had agreed to the condition that the footprint of the 'new' structure would not exceed 420 square feet and that it would comply with the required setback requirements.

Chair Prior recognized Ms. Kiers, and indicated that the Board would entertain her question, if relevant to the discussion. Ms. Kiers spoke of the significant difference in elevation between her driveway (on Highland Street) and the existing residence on the far end of the subject property. Chair Prior indicated that it was not an issue for consideration by the ZBA and noted that Attorney Bassett did not need to respond.

Mr. Thielbar commented that the relief being sought by the Applicant does not restrict the location of the second unit. He noted that provided the 'reconstructed' structure does not exceed 420 square feet and is in compliance with the required setbacks, it is possible that this structure could be built directly behind the existing residence.

Mr. Mirsky asked to briefly address Mr. Jackson's comments. He affirmed Chair Prior's earlier comments by explaining that the ZBA did represent the town however its' jurisdiction was limited to land use regulations and encouraged him to pursue his concerns with the appropriate town officials.

There being no further comment, Chair Prior closed the public hearing and the Board moved into deliberations. Mr. Ouimet excused himself at this time and took a seat in the audience.

#### *DELIBERATIONS*

Mr. Hauschildt commented that there were no substantial changes being proposed although the non-conformity of the existing building (proposed to be rebuilt) presented a slight obstacle. He indicated that by rebuilding the structure in compliance with the setback regulations would eliminate the need for any further relief (as previously discussed). Noting that he was familiar with the area, he concurred that the

subject parcel had less lot coverage and more open space than most properties in the surrounding area. He stated that given there was no increase in the density, he would consider it to be a relatively small change for the property and the proposed conversion would be in keeping with the character of the neighborhood. He commented that he understood the concerns of the abutters; however such concerns were not within the purview of the board to address. Mr. Hauschildt proceeded to review the criteria for granting the special exception. There was brief discussion relative to the process for obtaining a curb cut/driveway permit if access from Highland Street is to be utilized. It was represented that review and approval by the Highway Superintendent (Department of Public Works) would be required. Ms. Pennell suggested that the Applicant be required, as a condition of approval, to obtain Town Planner, or even possibly Planning Board review, given there is not a definitive plan for the proposed reconstruction and parking improvements, and particularly where the abutters have expressed concerns that the board can not address. Board discussion ensued; it was determined that imposing such a condition would be an unnecessary burden on the Applicant (or future property owner). It was noted that such a review is not typical for a single and/or two-family residence, provided all zoning requirements are met.

Mr. Ouimet (ex-officio Board member) requested to comment on a procedural issue. He referred to the Schedule I Notes pertaining to Conversions, specifically subsection (f) and indicated that it was completely within the Board's discretion to send the Applicant to the Planning Board if they choose to do so; however, he thought that it was pertinent that the Board satisfy themselves that subsection (g) speaking to expansion of 400 square feet or greater (footprint) would not apply. He suggested that the Board discuss this specific criterion to remove any ambiguity from the record. Mr. Hauschildt clarified that there was no expansion of square footage proposed, therefore, subsection (g) would not apply.

**MOTION:** *Mr. Hauschildt moved to approve the special exception application for the conversion of the existing residential structure and a detached accessory building into two (2) dwelling units, as presented, with the following condition:*

- *The existing 420 square foot building be demolished and removed from the premises; and a 'new' 420 square foot structure that is to be the second dwelling unit, be constructed in conformance with current dimensional regulations.*

*Seconded by Mr. Mirsky.*

**Discussion:** *Chair Prior suggested that the motion be modified to reflect that the footprint of the 'new' structure shall not exceed 420 square feet.*

*Chair Prior moved to amend the motion accordingly.*

*Mr. Hauschildt seconded.*

**VOTE:** *The motion to amend the original motion passed unanimously.*

**Discussion:** *Ms. Pennell commented that she thought the 'owner-occupied' requirement should also be included as a condition of the approval. She also indicated that she was concerned about the potential of someone wanting to subdivide the property in the future. It was represented that reference to the 'owner-occupied' could be included in the approval letter to the Applicant. It was also noted that any future proposal for subdivision of the property would have to comply with dimensional regulations and would be subject to Planning Board review.*

**VOTE:** *The motion to approve the special exception, as amended, passed unanimously.*

At this time, Chair Prior announced that Mr. Mirsky would be recusing himself and Mr. Ouimet would be seated as a voting member.

## **2. Case # 1466: Katherine Churchill DMD**

***The application for a variance from Article 5, Section 5.1.1 to permit the expansion of a non-conforming use for the proposed construction of a second floor over the main section of an existing office building located at 193 High Street. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #70-114.***

Attorney John Ratigan, of Donahue, Tucker & Ciandella, PLLC addressed the Board on behalf of the Applicant, and acknowledged that Dr. Katherine Churchill was present with him this evening. He commented that Dr. Churchill currently shares the practice with Dr. Boschetti at the High Street location and has done so for the last eight (8) years. He indicated that she was interested in purchasing the building and was hoping to expand the structure to accommodate their practice. He stated that as noted in the application, the need for additional handicap space in the waiting area and a larger handicap bathroom on the first floor had initiated the requested relief.

Attorney Ratigan explained that the lot was substantially narrower than any of the other lots in the neighborhood making expansion to either side of the existing building impossible. He added that expansion to the front and/or rear of the building was not practical as those areas provided the required parking for the facility. He indicated that sixteen (16) parking spaces were provided on the site. He represented that the parking was reviewed by Code Enforcement Officer Doug Eastman and Ms. McEvoy and found to be in compliance with the regulations. Attorney Ratigan stated that there would be no increase in the number of dental workspaces, nor did Dr. Churchill have any plans to increase the number of staff members.

Attorney Ratigan referred the Board members to the site plan and floor plans submitted with the application. He indicated that the proposed second floor addition would allow for office space for the dentists to meet with their patients in private, and would also include a kitchenette, a staff bathroom, a conference room, a lab and additional space for record keeping.

Attorney Ratigan proceeded to address the criteria for granting of a variance. He began by mentioning that the size and existing use of the property were special conditions that distinguished it from others in the area. He represented that granting of the variance:

- would facilitate building renovations that will accommodate enhanced access and use of the building by handicapped patients;
- would not alter the essential character of the neighborhood and would not threaten public health, safety or welfare
- would not create any loss to any individual; would be a gain to the general public
- would not diminish the value of surrounding properties, but in fact, would enhance their values given the proposed improvements to the property.

With respect to the ‘substantial justice’ criterion, Mr. Hauschildt asked Attorney Ratigan for clarification of his statement that “making the building more handicapped accessible was clearly a gain to the general public”. Attorney Ratigan responded that the federal government and the State of New Hampshire regulations have mandated that if businesses are going to be open to accommodate the public, they must comply with certain standards; one of those being handicapped accessibility (i.e. access, rest rooms, etc.). Mr. Hauschildt commented that many of the businesses in Exeter do not provide such accommodations. Attorney Ratigan stated that in today’s society, it was essential for medical/dental facilities to provide such accommodations as our population is living to an older age, and mobility is becoming more of an issue. Mr. Hauschildt commented that he was just curious what the rationale was for the statement. Ms. Pennell commented that being a resident at RiverWoods, she had become much more sensitive of the needs of people who are handicapped; she concurred that substantial justice would be done. Chair Prior clarified that Mr. Hauschildt agreed that substantial justice was done but was questioning the statement “which is clearly a gain to the general public”.

Attorney Ratigan concluded by stating that he believed the request was reasonable; it would allow Dr. Churchill to renovate the building to accommodate the needs of the practice's handicapped patients and other associated improvements for staff.

Mr. Hauschildt asked for clarification on the square footage of the existing building and the proposed addition. It was represented that the existing building was 1,933 s.f. and the proposed addition was 1,092 s.f. Mr. Hauschildt inquired about compliance with the parking requirements. Attorney Ratigan reiterated that the parking was reviewed with Code Enforcement Officer Doug Eastman and Ms. McEvoy and they were comfortable that the existing parking was adequate and no additional spaces would be required for the proposed addition.

Ms. Pennell inquired about the current number of staff. Dr. Churchill responded that currently they have eight (8) staff members – 2 office personnel, 2 dental assistants, 2 dental hygienists, and 2 dentists. She represented that they were not looking to change the number of staff members with this proposal. Ms. Pennell asked if the staff was full-time; Dr. Churchill indicated they worked 32 hours/week, Monday-Thursday, 8:00 AM-5:00 PM.

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 he felt the Applicant's counsel had addressed the variance criteria thoroughly and that it would not be necessary to review the criteria again. He stated that the proposal was clearly a positive proposal, with no intensity of use or detrimental changes at all.

***MOTION: Mr. Hauschildt moved to approve the variance application, as presented, for the proposed construction of a second-floor addition, as presented (up to 1,092 square feet in area).  
Seconded by Mr. Thielbar.  
VOTE: The motion passed unanimously.***

#### OTHER BUSINESS:

#### APPROVAL OF MINUTES:

The minutes from the two September meetings had not been completed and were deferred until the Board's next meeting for action.

#### CHAIRMAN'S ITEMS:

Chair Prior reported that he attended an interesting workshop last week on making motions. He offered to write up his notes and share them with the Board.

Mr. Hauschildt commented on subsection (e) of the conversion criteria and noted that the "owner-occupied" requirement only applied if the units were to be rental units; he noted that typically condominium units would have property owners. He pointed out that the condominium units could also be rented out unless there was a deed restriction or condominium declarations which prohibited such a

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

use. Chair Prior mentioned that it would be reasonable to maintaining the same threshold (of occupancy) for accessory dwelling units and conversions (regardless of proposed units being rental or condo). Mr. Hauschildt also mentioned that the language in subsection (b) of the conversion criteria which speaks to the density permitted is confusing. He stated that he considered these sections being worthy of discussion with the Zoning Ordinance Review Committee (ZORC) for further clarification; he noted he would do so at the subcommittee meeting and will report back to the Board.

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

**MOTION:**     *Mr. Hauschildt moved to adjourn.*  
                  *Ms. Pennell seconded.*  
                  **VOTE:**   *The motion passed unanimously.*

The meeting was adjourned at 8:20 P.M.

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