

## EXETER ZONING BOARD OF ADJUSTMENT JULY 16, 2013 MEETING MINUTES

### Present:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar and David Mirsky  
Alternate Members: Marc Carbonneau  
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 # 1454: Exeter Monument Works, LLC  
Special Exception and Variance – 8 Columbus Avenue
2. Case #1455: David and Teryn Allen  
Variance Request - 92 High Street

Chair Prior indicated that it had been suggested by another Board member that given the second application on the agenda (Case #1455) seemed to be fairly straight-forward, the Board may want to consider reversing the order in which the applications will be heard. Board members concurred; both Applicants agreed.

### NEW BUSINESS:

1. Case # 1455: David and Teryn Allen

*The application of David & Teryn Allen for a variance from Article 5, Section 5.1.2 and Article 4, Section 4.3 Schedule II: Density & Dimensional Regulations to permit the expansion of a non-conforming use for the proposed construction of a second-story addition to the existing structure located at 92 High Street. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #71-45. Case #1455.*

Mr. David Allen, property owner, addressed the Board. He acknowledged that his wife was also present with him this evening and they were requesting a variance to be able to add onto their home at 92 High Street. He indicated that the existing structure was located approximately six-feet (6') from the side property line and therefore non-conforming. Mr. Allen explained that there were no changes being proposed to the foot print of the building as the proposed expansion would be in a vertical direction only. He also noted that their home was located in the High Street Historic District and their proposal was scheduled to be reviewed by the Historic District Commission (HDC) at their meeting on Thursday, 7/18/13.

Mr. Carbonneau inquired as to the size of the addition. Mr. Allen responded it would be approximately 300 square feet, noting that it would actually fill in the space between the existing main house and garage. Mr. Allen also informed the Board that he had shared the plans with the abutters and there had been no objections.

There being no further discussion, Chair 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*

Mr. Hauschildt proceeded to review the variance criteria. In discussion the Board members determined that the Applicant's request was reasonable, the proposed expansion was consistent with the residential character of the neighborhood and the scope of the project was minimal. Consensus was that the application, as presented, had satisfied the criteria for granting the relief being sought.

**MOTION:** *Mr. Hauschildt moved to grant the variance, as presented, to permit the construction of a 300- square foot addition.*

*Mr. Thielbar seconded.*

**Discussion:** *Chair Prior asked if the Board wanted to mention the square footage as part of the motion, and if so, should it also include some reference to the Applicant's proposal being reviewed by the Historic District Commission. It was represented that it was a requirement for the Applicant to appear before the HDC for review prior to a building permit being issued. Chair Prior indicated that he would prefer to not include the specific square footage as part of the motion.*

*Mr. Hauschildt moved to amend his motion to exclude the reference to 'square feet'.*

*Mr. Thielbar seconded.*

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

#### 2. Case # 1454: Exeter Monument Works, LLC

*The application of Exeter Monument Works, LLC 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 single family 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 8 Columbus Avenue, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #73-148. Case #1454.*

Mr. Christian Smith, P. E. with Beals Associates, PLLC addressed the Board on behalf of the Applicant. He acknowledged that Mr. Jeff Gallant, of Exeter Monument Works, LLC and Mr. David Lemieux, of Lemieux Builders were also present in the audience. He indicated that Mr. Lemieux was currently developing the property to the west (former VFW site). He mentioned that the requests before the Board this evening were virtually identical to those granted for the adjacent site. Mr. Smith recalled for the Board the previous contention regarding the ownership of the 25' swath of land between the subject property and the abutting (former VFW) property. He indicated that the litigation had been resolved, and a lot line adjustment had been approved by the Planning Board (PB Case #21308) and recorded at the Rockingham County Registry of Deeds as Plan #D-37774 in June of this year. He noted that this adjustment had facilitated the proposed subdivision of the subject property.

Mr. Smith proceeded to explain the Applicant's requests, noting that the special exception request was for the residential use of the property, while the variance request was for relief from the minimum lot depth requirement. He identified the location of the parcel and noted that all of the abutting parcels and properties along Columbus Avenue were residential with the exception of the Exeter Bowling Lanes. He offered to review the justification for granting the special exception as outlined in the application and would answer any questions the Board may have.

Mr. Thielbar expressed some concern regarding the representation that it was comparable to the adjacent property being developed. He pointed out that there was a significant difference in the lot area, noting that the proposed lots were half the size of the adjacent properties. Mr. Smith responded that the building envelopes as shown on the plan would support the construction of smaller conservative three-bedroom homes.

Chair Prior inquired if the developer constructing the homes on the adjacent parcel (D. R. Lemieux Builders) had an agreement with the Applicant. Mr. Smith asked if a Purchase & Sale agreement was in place; Mr. Lemieux responded affirmatively. Chair Prior asked if the Applicant had explored the possibility of merging the properties and what impact that might have made. Mr. Smith responded that it would not be of any benefit given the parcel configuration and would not have resulted in being able to create larger building envelopes.

Mr. Carbonneau suggested that it would be beneficial to hear the Applicant's variance presentation before deliberating; noting that without the special exception the variance would be moot. All board members concurred. Chair Prior asked if the Board had any specific questions relative to the special exception request before hearing the variance request; there were none.

Mr. Smith proceeded to address the criteria for granting the variance. Mr. Hauschildt requested the Applicant to address the specific hardship of three lots v. two lots. He stated that the truncated shape of the parcel in itself was a hardship. Mr. Smith explained that relief from the minimum depth requirement would still be necessary even if only two lots were being proposed. He reiterated that the proposed lots complied with the minimum lot area density requirement (5,000 s.f. in C-1, Central Area Commercial district). Mr. Smith commented that one additional house would not over develop or create a density that would be out-of character with many of the surrounding properties. He stated that the resultant provided for 'clean' lots that would sustain the size of the residential structures being proposed.

There being no further Board discussion, Chair Prior opened the hearing for public testimony on both applications.

Mr. Chris Urner, 9 Columbus Avenue, addressed the Board and indicated that he was not opposed to the residential development of the parcel, but was opposed to 'three' lots for various reasons. He provided the Board with a map depicting the lot area sizes of the neighboring properties, noting that the average lot size was approximately 10,000 square feet in area. Mr. Urner expressed concerns relative to the loss of streetscape and the increase in the amount of impervious surface.

Mr. Gerry Hamel, owner of property at 14 Columbus Avenue, also expressed his concern regarding the proposed density with three (3) lots; he suggested that two (2) lots would be much more desirable.

Mr. Jim Boyd, 12 Columbus Avenue (corner of Veteran's Way and Columbus Avenue) indicated that he was in support of the residential proposal and commented on the nice job that Mr. Lemieux was doing with the former VFW site.

At this time, Mr. Smith presented his rebuttal to the Board. He indicated that the Applicant had done similar research regarding the lot area of surrounding properties and out of the 29 properties looked at, 13 of those properties were 5,000 s.f.(+/-) in area, approximately 44%. He reiterated that he did not see this proposal as being overly dense for the neighborhood. Mr. Smith stated that the individual lot development and landscaping being undertaken by D. R. Lemieux Builders will certainly be an aesthetic improvement from what is there today. With regard to the concern of increased impervious surface, Mr.

Smith indicated that he did not anticipate this to be an issue. He pointed out that the lot area of proposed Lot #3 was almost completely encumbered by compacted gravel (currently used for access drive, parking and storage area), and from a drainage perspective was considered impervious. He also noted that a large amount of existing pavement will be removed from proposed Lot #1 and a typical driveway will be installed. Mr. Smith noted that further review of this issue would be considered during the Planning Board review process, should the Applicant be successful in obtaining approvals this evening. In closing, Mr. Smith did mention that in accordance with the ordinance, this property could support a five-unit multi-family structure with associated parking or a different type of commercial use as a permitted use in the C-1 district without any relief from the Zoning Board of Adjustment (ZBA).

Mr. Mirsky asked for clarification on the reasoning for proposing three lots instead of two lots. Mr. Smith responded that the site will support three lots – it has the appropriate lot area and frontage and is considered a realistic business venture for Mr. Lemieux. Mr. Mirsky inquired as to the hardship to the Applicant if approval is not granted for three lots. Mr. Smith replied that it would not appear to be a doable situation based on what Mr. Gallant needs to get out of the land and business in order to move it.

Code Enforcement Officer Doug Eastman requested that a correction be made to the map received from Mr. Urner. He noted that the lot area of 14 Columbus Avenue was incorrect noting that it listed the lot size of the owner's property on Little Pine Lane. He questioned whether any of the other lot area calculations may be incorrect.

There being no further public comment, Chair Prior closed the public hearing and indicated that the Board would move into deliberations at this time.

#### *DELIBERATIONS*

Mr. Carbonneau began the discussion by reminding the Board that in this particular part of town the majority of the uses predated zoning which was adopted in the early 1970's, hence creating a very dense neighborhood with both residential and commercial uses. He stated that the Board needs to determine what is fair and reasonable. He pointed out that multi-family use is a permitted use in the C-1, Central Area Commercial zoning district. Mr. Carbonneau recalled there have been several applications before the Board in past years for residential development in this immediate area and the abutters have been in support of the residential use, although not necessarily the density. He cautioned the Board to keep their discussions of the criteria for each application being considered separated; he noted that the special exception was for a specific "use" and the variance was for specific dimensional relief. It was noted that there seemed to be more concern from the abutters regarding the density of the proposal than for the specific relief being sought.

Chair Prior pointed out that a special exception approval would still be workable for the Applicant if the variance were not to be approved by reconfiguring the layout in a way that would make the most financial sense. He indicated that in doing so, it may necessitate a return visit to this Board, or it may not require any additional relief and only Planning Board review would be required. The Board proceeded to review the special exception criteria.

**MOTION:** *Mr. Hauschildt moved to grant the special exception to permit residential use of the property at 8 Columbus Avenue.*

*Mr. Mirsky seconded.*

**Discussion:** *For clarification, Mr. Carbonneau indicated that the proposal would be subject to the Planning Board approval. .*

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

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

Deliberations continued and the Board addressed the merits of the variance request. Chair Prior clarified the lot depth measurements as represented by the Applicant. Mr. Hauschildt took the lead in guiding the Board through each of the variance criteria. There was considerable discussion with regard to the proposed density of the project and its potential impact on surrounding properties.

**MOTION:** *Mr. Hauschildt moved to approve the variance, as requested, to grant relief from the minimum lot depth requirement for all three of the proposed lots as depicted on the plan.*

*Mr. Carbonneau seconded.*

**Discussion:** *For clarification, it was represented that the relief being granted would be for up to 22-feet for Lot #1, up to 18-feet for Lot #2 and 8-feet for Lot #3, respectively.*

**VOTE:** *The motion passed 3-2. Messrs. Thielbar and Prior voting 'nay'.*

#### OTHER BUSINESS:

#### REVISIONS TO ZBA "RULES OF PROCEDURE"

Chair Prior recalled that there had been discussion at the May meeting regarding some minor changes to the Board's *Rules of Procedure*. Noting that this item had been appropriately posted on the agenda for discussion, he indicated that the two (2) minor revisions were 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.

**MOTION:** *Mr. Hauschildt moved to approve the revisions, as outlined, in the draft document dated 6/18/13.*

*Mr. Thielbar seconded.*

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

#### APPROVAL OF MINUTES: May 21, 2013

The minutes were not available for review and action was deferred until the Board's next meeting.

#### CHAIRMAN'S ITEMS: None

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

**MOTION:** *Mr. Mirsky moved to adjourn.*

*Mr. Thielbar seconded.*

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

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

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

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, August 20, 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