

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

## **EXETER ZONING BOARD OF ADJUSTMENT AUGUST 19, MEETING MINUTES**

### PRESENT:

Regular Members: Vice Chair John Hauschildt, Clerk Rick Thielbar, Laura Davies and Kevin Baum.

Alternate Members: Hank Ouimet

Building Inspector/Code Enforcement Officer: Doug Eastman

Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:03 PM. Vice Chair Hauschildt stated that he would be chairing the meeting in Mr. Prior's absence. He introduced the Board members and explained the protocol for the meeting.

### AGENDA:

1. Calamar Enterprises, Inc. – Variance Requests – Epping Road
2. Slania Enterprises, Inc. – Variance Request – 29 Front Street
3. Jennifer Briggs – Special Exception Request – 100 High Street

### NEW BUSINESS:

#### **1. Case #1476 – Calamar Enterprises, Inc.**

*The application for a variance from Article 4, Section 4.2, Schedule I to permit the proposed development of an age-restricted multi-family use in the I-Industrial and C-3 Epping Road Highway Commercial zoning district; and if permitted, to allow such development to be constructed in accordance with the density and dimensional requirements for the R-5, Multi-Family zoning district. The subject property is located on the easterly side of Epping Road, Tax Map Parcels #47-8 and #47-9.*

Vice Chairman Hauschildt announced that correspondence had been received from legal counsel representing the Applicant requesting that the application be withdrawn without prejudice.

#### **2. Case #1477 – Slania Enterprises, Inc.**

*The application for a variance from Article 4, Section 4.4, Schedule III: Density and Dimensional Regulations (Non-Residential) to permit the proposed construction of a three-unit residential structure on the property at 29 Front Street with less than the required minimum lot area per dwelling unit. The subject property is located in the C-1, Central Area Commercial zoning district. Tax Map Parcel #72-220.*

Mr. Thomas Christie, President of Slania Enterprises, Inc. addressed the Board. He explained that he was seeking relief for proposed redevelopment of the former Presbyterian Church lot into three residential units. Mr. Christie indicated that he had obtained a driveway permit from the Town for access to the property from Center Street. He stated that the subject property was an existing lot of record and that it did not comply with the dimensional requirements for the C-1, Central Area Commercial zoning district. Mr. Christie indicated that the relief being sought was for density (lot area/dwelling unit); he proceeded to address the variance criteria as outlined in his application.

Vice Chairman Hauschildt asked Mr. Christie if he anticipated any additional relief being necessary to develop the property as presented. Mr. Christie responded that he did not. He indicated that he had met with Code Enforcement Officer Doug Eastman to discuss the setback requirements prior to submission of the application to confirm if any dimensional relief would be necessary. Mr. Christie reviewed the setbacks as depicted on the plan, and noted that the property actually extended out into Center Street.

Mr. Thielbar inquired about the paved driveway to the rear of the site and whether it was a right-of-way (ROW). Mr. Christie responded that it was not a ROW and that it actually belonged to the abutter, Jeff Salisbury.

Mr. Ouimet asked about the height of the proposed structure. Mr. Christie indicated that he had met with Mr. John Merkle, of TMS Architects, to discuss the project. He stated that the size and scale would be in keeping with the adjacent buildings and would most likely be 2 – 2½ stories. He noted that he had spoken with Mr. Rick Russman, owner of the property at 14 Center Street, regarding the height of the building and to ensure that it would not interfere with the efficiency of the solar panel installation on the roof of his building.

Mr. Baum asked for clarification of the side yard setback along Center Street. Code Enforcement Officer Doug Eastman indicated that each side yard setback was determined separately; he clarified that it was zero feet as the abutting structures are directly adjacent to the sidewalk. He explained that the side yard of the abutting Salisbury property varied from in distance from two-feet (2') to eleven-feet (11'); Mr. Eastman stated that an average of six-feet (6') was determined to be the side yard setback.

Mr. Thielbar inquired about the proposal being reviewed by the Historic District Commission (HDC). Mr. Christie indicated that if he was successful in obtaining the requested variance this evening he would then move forward with the HDC and Planning Board review process.

Mr. Ouimet presented the question of hardship. He stated that the size of the parcel would restrict a feasible project; however, a single family home was permitted by special exception. Mr. Baum pointed out that the abutting Salisbury property was both residential and commercial. Mr. Hauschildt asked what would keep the proposed building from being a mixed-use building. Mr. Christie responded that there was not a large demand for office space in the downtown and that it would be more feasible to develop the property for residential use. He further noted that given the subject property was situated on the corner of Front and Center Streets; he did not believe it was an appropriate location for a single-family home. Mr. Christie stated that he intended to occupy one of the units. Mr. Baum inquired about the proposed square footage of the units. Mr. Christie indicated that the two main units would be in the 1,800 s.f. range and the third unit would most likely be smaller (i.e. studio unit). He commented that the size of the units was also driven by the parking requirements.

There was brief discussion about the status of the subject property. Mr. Baum asked if a variance was necessary for development of the property given the lot area was less than 5,000 square feet. Mr. Christie replied that it was a non-conforming lot; however, it was an existing lot of record. Ms. Davies inquired as to the length of time the property had been vacant; it was represented Messrs. Christie and Salisbury that it had been approximately nine (9) years. Mr. Eastman confirmed that the property was an existing lot of record and that it had been marketed subsequent to the fire; therefore deemed as evidence of intent to continue the use.

There being no further questions at this time, Vice Chairman Hauschildt asked if there were any abutters or interested parties who wished to speak on the application.

Attorney Sharon Cuddy-Somers, with Donahue, Tucker & Ciandella, PLLC addressed the board on behalf of her client, Jeff Salisbury. She stated that her client had concerns relative to the dimensional side yard setback requirements; she noted that the footprint of Mr. Salisbury's building was situated between one-foot (1') and eleven feet (11') from the property line in different locations. She indicated that her client was concerned about the proximity of the proposed building to the property line, particularly given the history of the fire. She referenced footnote #3 of the Schedule III: Notes (Article 4.4) and expressed that ten feet (10') would be a more reasonable setback and would provide a greater distance between buildings for safety purposes. She also stated that possibly the footprint of the building could be reduced to provide an adequate buffer between the buildings.

In rebuttal, Mr. Christie stated that by right, he would be in compliance with the zoning regulations at the one-foot (1') side yard setback; however, after discussion with Mr. Eastman he had agreed to provide a minimum six-foot (6') side yard setback. He stated that a ten-foot (10') side yard setback would significantly impact the

project. Mr. Christie indicated that he would like to duplicate the landscaping across the front of his building similar to that of Mr. Salisbury's. He concluded by stating that if safety was the main concern of his neighbor, the building could be sprinkled.

Mr. Thielbar suggested that possibly the parking layout could be reconfigured (i.e. piggy-back parking) to provide some additional space for the building to be relocated.

#### *DELIBERATIONS*

Board discussion ensued relative to the purpose and intent of residential uses being permitted in the C-1, Central Area Commercial zoning district and the significance of the dimensional and density requirements. It was noted that density requirements for residential use in the WC-Waterfront Commercial were much less restrictive. The board proceeded to review the criteria the variance criteria and became engaged in lengthy discussion regarding 'hardship'.

**MOTION:** *Mr. Ouimet moved to deny the application on the basis there was no special condition that warranted hardship that was demonstrated by the Applicant.  
Mr. Hauschildt seconded.  
VOTE: 2-3 Motion failed. (Ms. Davies and Messrs. Baum and Thielbar voting nay.)*

**MOTION:** *Mr. Baum moved to grant the variance, as requested.  
Ms. Davies seconded.*

**Discussion:** *Mr. Ouimet suggested that an argument needed to be presented as to why the variance should be granted. Mr. Baum stated that multi-family use was a permitted use in the C-1, Central Area Commercial zoning district, however it appeared to be in conflict with the dimensional requirements for minimum lot area and lot area/dwelling unit. He stated that it was not possible to develop a multi-family structure on a 5,000 s.f. lot. Lengthy discussion followed on the purpose and intent of 'multi-family use' being a permitted use with such restrictive dimensional requirements.*

**MOTION:** *Mr. Baum moved to amend his previous motion to include "subject to the proposed construction being in compliance with all dimensional setbacks as indicated on the plan, as presented."  
Mr. Thielbar seconded.  
VOTE: Motion passed unanimously.*

Vice Chairman Hauschildt asked if there was any further discussion of the motion on the floor; he called for a vote of the original motion, as amended.

***VOTE: 3-2 Motion passed. (Messrs. Ouimet and Hauschildt voting nay.)***

*(At this time the Board took a short recess (8:40 PM); the meeting was reconvened at 8:50 PM.)*

### **3. Case #1478 – Jennifer Briggs (d/b/a A Place to Grow, LLC)**

***The application for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit a child day care center to occupy Unit #4 of the property at 100 High Street. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #71-51-4.***

Ms. Jennifer Briggs addressed the board and began her presentation by providing a brief explanation of her background in the child day care profession and indicated that she was the owner of "A Place to Grow, LLC" currently located in Brentwood. She stated she was looking to relocate her business to Exeter as the building she presently occupied was being sold. She indicated that the business was a well established facility and served many Exeter and Brentwood clients so she would like to remain in the area. Ms. Briggs stated that the

building she was looking to occupy was Condominium Unit #4 on the subject property and noted that it had been previously utilized for office use. She indicated that some minor modifications would be required, including the addition of an outdoor play area and fencing which would be located at the rear of the building and an exterior staircase from the second floor for a second means of egress.

Mr. Thielbar inquired about adequate parking being provided. Ms. Briggs responded that nine (9) spaces were dedicated to Unit #4, and there were 40+ spaces of private parking to the rear of the site which belonged to the Exeter Hospital. Mr. Ouimet reviewed the parking requirements noting that one (1) space per employee (at the maximum shift) plus one (1) space for every three (3) students based on the facility's capacity was required. He inquired as to the number of staff there would be on the maximum shift. Ms. Briggs replied that full staff would be five (5) employees. It was represented that a total of nineteen (19) spaces would be required for the proposed child care facility.

Mr. Eastman confirmed that in accordance with the certificate of occupancy previously issued for the building, Unit #4 only had the right to six (6) of the parking spaces on the site. Vice Chairman Hauschildt stated that the Applicant would also need relief from the parking requirements noting that there was a deficiency of thirteen (13) spaces. Ms. Briggs asked if she could verbally amend her application to include the second variance request for relief from the Off-Street Parking regulations.

Mr. Ouimet explained that it was necessary for the legal notice of the application to be advertised properly. He recommended that Ms. Briggs request to withdraw her application without prejudice and re-apply for the appropriate relief necessary. Ms. Briggs asked if the Board could act on her special exception application for the use this evening and she would return next month with an application for the parking relief. Vice Chairman Hauschildt explained that if the Board were to deliberate on the application, as presented, the specific criterion for "adequate off-street parking and loading is provided" would not be satisfied and would result presumably in the denial of the application.

Ms. Briggs acknowledged the Board's advice, thanked them for their time and subsequently requested to withdraw her application without prejudice. She indicated she would return with the proper applications for the Board's next meeting.

#### OTHER BUSINESS:

At this time, Mr. Baum excused himself noting that he had previously recused himself from the application being considered under other business. He stated that he would be leaving for the evening and indicated for the record that the meeting minutes were acceptable as presented and he had no changes.

#### **Porches of Exeter, LLC – 1 Franklin Street - Case #1471**

Vice Chairman Hauschildt indicated that a request for rehearing/clarification of a condition of the variance approval granted for this application had been received from Mr. John DalSanto, President of the Long Block Condo Association. He also indicated that an e-mail had been received from Ms. Kathleen Mahoney (Applicant), dated today, informing the Board that the parties had still not come to an agreement with respect to the 'deeded easement' parking issue; the e-mail was read for the record. He acknowledged that Long Block Condo Association representatives were present and asked they could provide the Board with an explanation. Mr. Ouimet stated that given there was no one present on behalf of the Applicant, he would be reluctant to engage in any discussion of the issue with the interested party present, and recommended the other Board members concur.

Vice Chairman Hauschildt stated that there seemed to be some confusion as to what the request was for. He clarified that the request came from the abutter and not the Applicant or property owner. He indicated that he wanted to understand the nature of the request from the Long Block Condominium Association.

Attorney Sharon Rondeau, representing the Long Block Condo Association, addressed the Board and acknowledged that Mr. John DalSanto was also present in the audience. She explained that they took issue with the wording of the condition outlined in the ZBA letter of decision (dated July 14, 2014) to Attorney Timothy Phoenix which specifically addressed the “*easement rights for the use of eleven (11) parking spaces ....*”. She stated that Long Block’s perspective was that it should actually be “*eleven (11) delineated spaces plus one (1) space for overflow*” (as currently exists). She stated that the deeded parking was an easement right exclusively for use by the Long Block Condominium Association.

Mr. Thielbar commented that it was his understanding that as long as the agreement regarding the deeded parking rights between the Long Block Condominium Association and Ms. Mahoney (Applicant) was acceptable to both parties and subsequently recorded at the Rockingham County Registry of Deeds, the condition imposed by the board would be satisfied. Board members concurred.

APPROVAL OF MINUTES: June 17 and July 1, 2014

**MOTION:** *Mr. Thielbar moved to approve the minutes of the June 17<sup>th</sup>, 2014 meeting, as presented.*

*Ms. Davies seconded. .*

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

**MOTION:** *Mr. Thielbar moved to approve the minutes of the July1, 2014 meeting, as presented.*

*Mr. Ouimet seconded.*

**VOTE:** *The motion passed unanimously. Ms. Davies abstained.*

CHAIRMAN’S ITEMS: None

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

*Mr. Ouimet seconded.*

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

The meeting was adjourned at 9:20 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, September 16, 2014 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