

**EXETER ZONING BOARD OF ADJUSTMENT
JULY 15, 2014 MEETING MINUTES**

PRESENT:

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

Building Inspector/Code Enforcement Officer: Doug Eastman

The meeting was convened at 7:00 PM. Chairman Prior explained the protocol for the meeting.

1. Application of Tuck Realty Corp (new) AND Highland Street Tuck Realty (continuation from the previous) to be addressed jointly.

Case #1475: Variance from Article 4, Section 4.3, Schedule 2, for relief from lot area, lot width, lot depth, front side, rear setbacks to permit 8 single family residential lots in the R2 zoning district. The subject properties are located on Highland Street and Portsmouth Avenue, and are located within the R2 single family residential and C2 commercial zoning districts. Tax Map Parcel #65-Lots 138, 139 and 142 are involved.

Case #1469: Application of Highland Street, Tuck Realty Corp. for a variance from Article 4, Section 4.2, Schedule I and Section 4.2, Schedule 3 of the Exeter Zoning Ordinance to permit 12 dwelling units in the R2 zoning district and a variance from Article 5, Section 5.5.2 to allow more than one principal building on a lot in a residential district. The subject properties are located on Highland Street and Portsmouth Avenue, and are within the R2 single family residential area and C2 highway commercial zoning districts. Tax Map Parcel #65, Lots 138, 139 and 142, Case #1469, which is a continuation from the June 3, 2014 meeting.

Chairman Prior asked Mr. Radigan to address the Board.

Mr. John Radigan with the law firm of Donahue, Tucker and Ciandella, PLLC, addressed the Board. With him, is Michael Garrity from Tuck Realtor Corp., who Mr. Radigan represents. Last month, they presented a proposal for a 12 unit condominium project (Case #1469) which they have reduced to 9 units after feedback from the abutters, and additionally they have a new application for 8 units. On June 30, 2014, Mr. Radigan presented the board with a letter outlining the new proposal, with requirements that are substantially the same as the pending Case #1469, with minor differences.

A letter dated July 15, 2014 from Mr. Nathan Dickey was given in hand to the Board at this time. He has offered his opinion that if these requested variances are granted, they will offer no diminishment in value to the surrounding properties. Chairman Prior asked for clarification if the Applicant was withdrawing the old application at this time.

Mr. Michael Garrity spoke to that question that, depending on the outcome of the first Case #1475, it is possible they may withdraw Case #1469. At last month's meeting, feedback from the Board, and subsequent feedback from the abutters, suggested that perhaps their proposal was somewhat aggressive for the area and that a single family scenario is more in keeping with the area. Thus they went from 12 duplex units to 9 single family detached units as a revision of that plan.

Mr. Garrity said that they would like to discuss Case #1475 in detail first, getting feedback and suggestions from the Board and the attending abutters. This project consists of eight single family units, varying between 5000 to 6000 square feet in size and is consistent with the C1 size buildings in the area, adjacent to this proposal. This property is surrounded by commercial development, including a medical facility and a hotel, and they believe this is a good buffer zone transitional development moving between residential and commercial areas. Thus, if this proposal is acceptable, they would withdraw Case #1469 in favor of this new Case #1475.

After a discussion on June 15 with the Exeter Code Officer Doug (last name not provided), they are not requesting density variances, based on the residential section of the Ordinance, Doug believes conversion would be the eight

units they are requesting at this time. They are not requesting something new, rather to reconfigure what is already in existence on the property in the form of vacant lots, a duplex, and some older structures to be taken down at some point. They believe this layout to be consistent with the residential area, and the commercial lot sizes, and they best layout for the area they can present.

Chairman Prior asked to clarify that the project is eight units on a 50,000 square foot site, and the variances requested in Case #1475 are the same as those requested in Case #1469. The answer was that essentially they are transferring an odd size portion of one lot to another, and moving part of the odd size lot to a newly delineated parcel to make it a cleaner space. Mr. Prior then asked to see the delineation between the residential and commercial areas on the proposed site plan. Mr. Garrity drew out those lines to the left and rear of the site plan. He also commented that the medical facility was allowed as a variance to the R2 zone approximately 20 years ago. He also commented that the C2 zone is not on the plan, but his recollection is that it is just south of Highland Street and does not abut the property.

Mr. Radigan then spoke to the proposal again, commenting that while they could go before the Planning Board for this proposal, variance relief obtains the same result and is appropriate for this property.

Chairman Prior clarified that the new Case #1475 was for single family units as opposed to Case #1469 being for four 4-unit structures.

Mr. Hauschildt asked about the variance for 5-6000 square feet when current requirement is 12,000 square feet. Mr. Garrity said that at the last meeting, the Board had asked about how many units they could achieve without going through the variance criteria. This is a residential conversion process, wherein a lot of the homes in the area went through conversion from single to multi-family. This formula works for new construction as well, and is why they developed this revised site plan. They converted a four-unit structure to four separate units, and added a vacant lot area and vacant structures (former residences and a barn) to develop the remaining four units to the rear of the proposed site. Mr. Garrity believes there is a similar density between the two scenarios of a four-plex and a tri-plex to convert to 8 single standing homes. He also believes the neighborhood would benefit from having single family homes as opposed to multi-family homes. Mr. Hauschildt then asked about side setbacks, which information was not readily available. Mr. Prior asked about length of time for existing structures as a 10 year minimum is required for variance. That information will have to be researched. Mr. Garrity believes variance can grant him 8 units with relief, or 7 units without relief.

Ms. Davies asked about the rear lot, and if there was frontage to consider it a buildable lot on its own after the lot line adjustment requested. It does have frontage on Portsmouth Avenue and a right of way on Highland Avenue.

Mr. Thielbar commented that the 5,000 square foot lots have 2000 square foot structures, which gives 40% coverage. Mr. Garrity stated that the structures would probably be 2-story bungalow type, and the building "envelope" allows flexibility to position the home on the best spot for the lot. Discussion on this took place. Mr. Garrity said that if the board wanted to propose a maximum footprint size for the lots, he would be happy to consider that. They are proposing homes in a target market range of \$300,000 and believes the market would support that. Mr. Thielbar commented that the Ordinance requires not more than 25% of a lot be used for structures, which is a 1,250 square foot structure and expressed his comfort in Mr. Garrity restricting the buildings to that size. Mr. Garrity commented that he could work with that, and asked some clarification questions. Chairman Prior inquired as to Mr. Garrity's willingness and ability to restrict home size and was answered in the affirmative and discussion about this took place. Chairman Prior asked if with a 1,250 requirement, would Mr. Garrity still require set back variances. Mr. Garrity responded that it may be required on an individual lot basis depending upon structure placement to provide flexibility for each home with regard to drainage, landscaping, etc. which is usually covered at the Planning Board level.

Mr. Thielbar then commented that no plans were shown for vehicles. Mr. Garrity stated that driveways and garages for off street parking were planned for each home, even though that is not shown on the proposed plan. They are willing to make any parking restrictions the Board requires.

Mr. Bruno asked about how they would maintain the private road. Mr. Garrity stated it would be maintained by the association of owners and talked about specifics for that. He stated he would be willing to put in the deed restrictions that this road would not become a Town burden and would remain private.

Mr. Hauschildt inquired about conformations for each lot for setbacks. Mr. Garrity discussed this.

Mr. Bruno inquired about setbacks with regard to future expansion. Mr. Radigan stated they could address that once the building plans are completed and that setbacks could be revised or limited. He stated he would need to explore the best way to pursue that to reset the setbacks once the building placement on the lot has been determined. Discussion continued on how this would ensure that any expansion or addition to an existing home after the buildings are in place would conform to the zoning requirements for the town. Mr. Garrity pointed out that setback variances primarily impact the commercial and medical zones, and the development's own private road.

Chairman prior opened the Public Comment portion of this matter.

Mr. Pete Coletti (spelling?) of 21 Highland Street asked about the conversion as he doesn't understand the process and doesn't understand how one could convert a 2 family to a 4 family. He expressed that residential and commercial properties abut each other all the time and doesn't understand why that should require a variance.

Mrs. Cathy Coletti of 21 Highland Street read a letter to the Board expressing objections to the 8 unit proposal and the reasons for those objections. Attached are letters from other residents expressing objections to this proposal. They all express objections to the variances requested and object to the increase of density, stating that they believe they should be protected by law, and the buildings for the project in question should be limited to 3 single family homes.

Ms. Melanie Drohan of 6 Highland Street asked about height of the proposed buildings. She is also concerned about her abutting stone wall and removal of trees which ensure privacy. Chairman Prior noted that her questions were better addressed by the Planning Board at a later stage in the development process. Ms. Drohan stated that she is also opposed to the density for this project.

Another gentleman spoke (Mr. Wyman?); his voice was over-modulated and I was unable to understand much of his objections or his name. He requested justification for the variance, stating the developer fails to express hardship in this matter. He further commented to the sloping land interfering with 8 houses being built, the stone wall holding the land in place, the narrow street and the dead-end turn around. He objected to parking issues, road size and home size. He also objected there would be no room for decks, garages, landscaping or equipment that residents would want and submitted a letter with information for the Board to consider.

David Jones of 17 Highland Street spoke of the agreement he and his wife have to the objections against the project. Chairman Prior asked him to clarify that his agreement was with the opposition to the project, and Mr. Jones stated that he is opposed to the project.

Jerry Hamel (?) of Pine Avenue spoke in objection to the project, stating he is a developer and he knows the problems with this area, including the sloping land, water runoff issues, and the density exacerbating these issues.

Rod McKee of 8 Highland Street expressed his opposition to the project based on the density requests and preference that anything built would conform to existing zoning laws. Also expressed issues with snow removal and drainage landing on his property.

Ray Tarkington (?) of Geosphere on the corner of Portsmouth Avenue/Highland Street (business) spoke to concerns for drainage and snow removal due to the street sloping. His business' driveway enters from Highland Street. He object to the project. Other concerns were for street congestion, parking and school bus difficulties.

Mr. Garrity then had an opportunity to address concerns of the neighbors. He showed a satellite picture of the area for density concerns to the Board; he disagreed with the abutters concerning space between individual homes as shown by the satellite photo; he also spoke to 4,700 square feet being the lot average in the neighborhood, not 15,000; he invited people to speak with his attorney regarding the conversion issues to get a clearer understanding

of how that works; he noted that in addition to the existing duplex, there is a cottage on site; he indicated that the setbacks didn't appear to be an issue for most people. He also spoke to his experience as a land planner for Rockingham County for five years, and his experience as a planner for several communities, and his belief that this is a good plan for the area. He agreed that he is a company looking for a profit in his development but doesn't believe that should be an issue. He further stated that the hardships on this project are composed of the unique contour of the land to be developed, rather than his company's personal hardship. He offered to speak with the neighbors about their concerns after the meeting.

Chairman Prior closed the Public Portion of this Hearing to move into deliberations.

DELIBERATIONS

The Board reviewed the presentation and discussed the requested variances for this project. They agreed that the applicant did a good job in restructuring the project, but still fell short in meeting the criteria, and that the zoning restrictions have not been met.

MOTION: *Mr. Hauschildt moved to deny the variance request Case #1475 due to failure to adequately meet the Boards criteria specifications 1, 2, 3 and 5. Second by Mr. Baum.*

VOTE: *The Motion passed unanimously.*

The Applicant then asked to withdraw his application Case #1469 without prejudice. The Chairman agreed to that and thanked the Applicant and the members of the public for attending this meeting.

2. Application of David Reyes

Case #1472: Variance from Article 4, Section 4.3, for an accessories building with less than required setbacks and a variance from Article 5, Section 5.1.2.A for expansion of a non-conforming use to permit the construction of a 120 foot addition to the existing residence located at 11 Ash Street. The subject property is located in the R2 single family residential zoning district. Tax Map Parcel #73-312, Case #1472.

Mr. Rayas addressed the Board; he is the owner and resident of the single family dwelling subject. He does not believe his proposed project harms the abutters or the neighborhood as evidenced by the fact that none have shown up to speak against his variance. He mentioned a couple of neighbors offered to come in support of it, and that he didn't feel their participation was necessary at this time. His proposed addition is for an additional bathroom and a laundry area which would make the house more livable by replacing an outdated bathing facility in the home and bringing the existing laundry out of the basement of the home. His proposal for an outbuilding is larger than a standard shed, but smaller than a barn and would sit in a corner of the property lot and be behind the rear abutters existing outbuilding structure thus being less noticeable from that property. His side neighbors have a small garage abutting that corner, again minimizing the impact of the structure he is proposing.

Mr. Rayas said he was concluded with his presentation and Mr. Hauschildt asked questions about location setbacks requested. Mr. Rayas replied that without the setback variances, locating the outbuilding within setback guidelines would make the yard area unusable for recreational purposes for the family (including children). Mr. Thielbar had questions about the drawing submitted for dimensional accuracy which the applicant clarified. Mr. Thielbar then asked about setback for the abutting properties and Mr. Rayas could only provide estimates which seemed to provide setback variances in at least one instance. Mr. Rayas noted that the garage on the opposite side seems to be on Mr. Rayas property line, and that the structure was older and stated that he has no intention of asking his neighbor to move the garage.

Mr. Thielbar asked about fencing on the subject property and Mr. Rayas noted his property is enclosed by a fence. Mr. Thielbar enquired about visibility by the neighbors, and was told that neighbors would be able to see the proposed structure, but that at no time would the structure seem out of place, rather in keeping with what else is visible in the area. Further, meeting the setback requirement would essentially put the structure up against the back of the home and seem like an addition to the home, instead of an outbuilding, which is what happened to the current property shed 40 or 50 years in the past. He proposes to remove that old structure.

Ms. Davies inquired about the distance in the rear of the outbuilding from neighboring structures; Mr. Rayas suggested that 5 feet was more than adequate to be able to mow, there is currently a small garden/shrubbery area, with a granite curbing at the 5 foot border; his plan was to continue that behind the structure and something similar along the side and keep a walkway space to the side of the home where the bathroom addition is proposed. Removal of the existing shed will allow the family to directly access the yard and give them more usable yard space.

Mr. Bruno had questions about the fence height, shed height and home height. Mr. Rayas responded with his best approximations. Chairman Prior asked if there were further questions from the Board; there were none. He then asked for public comment – there was none.

Chairman Prior closed the Public Portion of this Hearing to move into deliberations.

DELIBERATIONS

Mr. Hauschildt suggested that at this time no further deliberations were necessary.

MOTION: Mr. Hauschildt moved to accept the variance request Case #1472 due to the reasonable proposal, in keeping with the neighborhood and that it meets all 5 criteria for approval. Second by Mr. Thielbar.

VOTE: The Motion passed unanimously.

3. Application of In Home, LLC, (Anna Hardy Evans)

Case #1473: Variance from Article 5, Section 5.1.2.A for expansion of a non-conforming use to permit the proposed construction of an attached barn to the rear of an existing structure and the proposed construction of a second floor addition to an existing structure.

Subject property is located at 129 Front Street, in the R2 single family residential zoning district. Tax Map Parcel #73-212, Case #1473.

Ms. Evans presented that she would like to purchase an antique barn to be dismantled and then reassembled on the subject property. The barn will be used for storage of furniture relative to the business and will be added to the back of a residence and requires setback variances. The existing residence would then be remodeled to include a second story addition and since a business is run out of that residence, the variance is required and requested. The attachment of the barn increases the footprint of the building.

Ms. Evans purchased the existing building two years ago and has turned an eyesore into a nice property which is appreciated by the neighbors. She had photos of other buildings in the neighborhood which are in keeping with her proposed upgrades. She also had photos of her existing storage, showing the need for additional storage.

Chairman Prior asked for clarification of the existing storage. Ms. Evans replied that it is a metal shipping pod, inconvenient, “ugly” and difficult to open, especially in cold conditions. Chairman Prior then asked about the size of the proposed barn, and Ms. Evans stated approximately 25’ x 26’, which is in keeping with the existing building footprint and doesn’t encroach on the sides. The barn will also have a 2nd story to be used for storage.

Mr. Holmes, the barn “expert”, presented his plan for the barn structure, including setbacks. The height of the building will be between 29 and 35 feet at the peak. The barn height will be a little higher than the residential structure for business visual presentation. Mr. Whitney Brown was present to answer questions about air conditioning and engineering structure.

Mr. Hauschildt asked about bedrooms in the residential unit and was answered 3. He then asked for clarification on the 2nd story addition to the residence and additional square footage being added, and about parking space elimination by new construction (there is none) and no impact resulting. The side setback variance being requested is actually in line with the existing building and not encroaching further on abutters. That setback is currently 15 feet.

Chairman Prior asked for public comment or questions. Ms. Rose Bryant is an abutter and expressed approval for the proposal as the applicant has done a lot of good for the neighborhood. Her renovations have added to the property values for the neighbors, she's added green space, and the property is always "well kept" and pleasant to look at. Ms. Bryant expressed the opinion that the proposal to raise the height of the barn and residence will cut down some of the noise from Front Street and make the neighborhood quieter. She and her husband are in support of the project.

There being no further public comments, Chairman Prior closed the Public Portion of this Hearing to move into deliberations.

DELIBERATIONS

Mr. Hauschildt spoke to the proposal and commented that he believes the applicant has done a fantastic job improving the property and is an asset to the neighborhood. He said the applicant meets all the boards criteria and therefore made the following Motion.

MOTION: *Mr. Hauschildt moved to approve the application to expand the non-conforming use request for a 25 x 26 foot barn at the rear of the existing building because it meets all 5 criteria for a variance. Second by Ms. Davies.*

Discussion on the Motion: Mr. Bruno requested for clarification purposes that this continue to be subject to existing conditions that were given on the use variance pursuant to prior case 1433.

MOTION: *Mr. Hauschildt moved to amend the proposed Motion as follows: to approve the application to expand the non-conforming use request for a 25 x 26 foot barn at the rear of the existing building because it meets all 5 criteria for a variance, subject to the existing conditions given on the use variance pursuant to prior case 1433. Second by Mr. Thielbar. All in favor.*

VOTE: *The Motion to amend passed unanimously.*

MOTION: *Mr. Hauschildt moved to approve the application to expand the non-conforming use request for a 25 x 26 foot barn at the rear of the existing building because it meets all 5 criteria for a variance, subject to the existing conditions given on the use variance pursuant to prior case 1433. Second by Mr. Bruno.*

VOTE: *The Motion passed unanimously.*

4. Application of Michael Whitcher, of Whitcher Builders

Case #1474: Application for Special Exception from Article 4, Section 4.4, Schedule 3, Number 13 and Article 5, Section 5.2 to permit the reduction of a rear yard setback and a variance from Article 6, Section 6.7 to permit a drive-through coffee shop to be located at 57 Portsmouth Avenue The subject property is located in the C2 highway commercial zoning district , Tax Map Parcel #65-137, Case #1474.

Jonathan Ring from Jones & Beach Engineers presenting with Gary Blake of Blake Properties. Proposal for 57 Portsmouth Avenue with a copy of the plan for view as well as in the Board's packets. This property is approximately a quarter acre on the east side of the street. There is an existing vacant house on the property. Mr. Whitcher proposes to construct an "Aroma Joe's" on the property, which is a coffee shop with a drive through, and approximate dimensions of 910 square feet. The property in the C2 highway commercial zone requires some property relief in addition to Planning Board site plan review if the proposal makes it that far. The plan allows full access to Portsmouth Avenue with the building parallel to the street. There are 4 parking spaces between Portsmouth Avenue and the building for employees, allowing for full traffic flow around the building with the drive up windows on the back (one for placement of order and one for pick up of order). There is a walk up window on the front for customers. There are no seats inside the building. It's strictly take out service for drivers and pedestrians. There is no speaker intercom planned for any windows. The property will be buffered for visibility and sound with a retaining wall at the back with landscaping and a possible fence. The property slopes upward to the

residential property in the rear which is off Highland Street, which is why there is a retaining wall to the back. Again that will provide a barrier to sight and sound on the property.

Relief needed from the Board is for two aspects – special exception for the rear building setback from 50 feet to 20 feet which is permitted by Footnote 13 on the dimensional regulations article 4.4, Schedule 3 and secondly the variance from Article 6, Section 6.7.1 to permit the drive through within 300 feet of the residential zoning district.

Mr. Ring then detailed the proposal provisions detailed on Page 7 and 8 of this application for special exception by reading aloud the specified pages. NOTE: Due to the length, those pages are not recreated here. Mr. Ring noted that approvals will be needed from the Planning Board, City Planner, and possibly a site review will be needed.

Mr. Ring then moved into the variance specifications by reading aloud from the application, again not recreated here. He also cited the businesses in the area. He provided an aerial view photo of the area to depict the property. He also pointed out that there is full and separate access into and out of the property.

Mr. Hauschildt commented on the possibility of Planning Board requiring right turn only exit from the property and there was some discussion on this with the developer, Mr. Witcher, stepping forward to answer. He noted that the Aroma Joe's business model is much smaller than a Dunkin Donuts and that traffic will be lighter.

Mr. Hauschildt then asked about current setback numbers and this was discussed with Mr. Ring. Mr. Bruno had questions about another drawing and the "300 foot ring" and that was discussed. Mr. Bruno then asked what the driveway configuration is currently and Mr. Ring replied that one driveway exists and will be slightly reconfigured. The other will be put in.

Mr. Prior asked about certain criteria requested for both variances with regard to traffic and trucks making deliveries to the proposed project. Mr. Witcher stated that they are a small operation, and deliveries are by small trucks and at their other operation is twice a week, with deliveries occurring mid-afternoon, at their "slow" period of operation. Mr. Prior then inquired as to hours of operation: proposed is 5 am to 9 pm.

Ms. Davies asked about the height of the retaining wall; Mr. Ring replied the property has not been surveyed yet, but they are planning on 8 to 10 feet. She then inquired as to the rough height of the building: 16 to 18 feet is the rough quote, same as the prototype Concord store. (Plans shown of a residential type one story structure.)

Mr. Prior asked for comments from the public. The owner of the property across the street (no name given) spoke for the project.

There being no further public comment, Mr. Prior closed the hearing and moved to deliberations.

DELIBERATIONS

The Board reviewed the presentation and discussed the requested special exception for this project. There was some minor discussion and then Mr. Hauschildt suggested the property meets their criteria A through H and remaining criteria do not apply.

MOTION: *Mr. Hauschildt moved to approve the request for a special exception because it meets criteria A through H. Second by Mr. Bruno.*

VOTE: *The Motion passed unanimously.*

The Board moved onto the variance requested for this case.

MOTION: *Mr. Hauschildt moved to approve the request for a variance to allow construction of a retail building with drive through to within 30 feet of the rear property lines because it meets all 5 criteria. Second by Ms. Davies.*

Discussion on speaker system and whether or not that would be a limitation needed.

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

VOTE: *The Motion passed unanimously.*

Board discussed Minutes and that there are none to discuss.

MOTION: *Mr. Thielbar moved to adjourn. Second by Mr. Bruno.*

VOTE: *The Motion passed unanimously.*

Meeting adjourned at 9:36 pm

Respectfully submitted,

Catherine M. Bardwell