

EXETER ZONING BOARD OF ADJUSTMENT
May 19, 2015 MEETING MINUTES

PRESENT:

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

Alternate Members: David Mirsky and Martha Pennell.

Building Inspector: Doug Eastman

Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chair Prior introduced the Board members and explained the protocol for the meeting.

AGENDA:

1. Case #1494: BakerProp, LLC –Variance Request – 170 Epping Road

OTHER BUSINESS:

Chair Prior indicated that there were many sets of minutes that needed amending and/or finalizing. He stated that the Board would be going over minutes before addressing the agenda item. The minutes in subject are as follows:

ZBA Minutes of October 21, 2014:

Chair Prior had an amendment to page 6, paragraph 4, first sentence, changing “loathed” to “loathe”. He also had an amendment to page 10, Other Business paragraph, changing “Chair Prior said they should make an acceptance for the applicant...” to “Chair Prior said they should make an exception for the applicant...”.

Mr. Thielbar had an amendment to page 4, paragraph 8, changing “She said eventually is the variance...” to “She said eventually if the variance...”.

Ms. Pennell had an amendment to page 1, naming herself as an Alternate Member in the introductory paragraph.

Vice Chair Hauschildt had an amendment to page 1, paragraph 3, changing “The deck will be for his families use only.” to “The deck will be for his family’s use only.” He also had an amendment to page 2, paragraph 9, changing “...anyone livability...” to “...anyone’s livability...”. He also had an amendment to page 5, paragraph 10, questioning the discussion that was had. He had an amendment to page 6, paragraph 3, sentence 7, changing “slightly” to “sightly”. He had an amendment to page 7, paragraph 5, changing “...if you talk about age restricting housing...” to “...if you talk about age restrictive housing...”. Lastly, he had an amendment to page 9, last paragraph, changing “Chair Prior said that would be Planning Board stuff.” to “Chair Prior said that would be Planning Board’s concern.”

The Board decided to table the approval of these minutes until all corrections are made.

ZBA Minutes of November 18, 2014:

Chair Prior said Mr. Ouimet had emailed some amendments to page 4, paragraph 2. Vice Chair Hauschildt said no change was necessary. However, Vice Chair Hauschildt had an amendment to changing all of “Chairman Hauschildt” to “Acting Chair Hauschildt”. There are two instances of this on page 2, and one on page 3. He also had an amendment to page 4, paragraph 2, changing “...reviewed the application and found acceptable for...” to “...reviewed the application and found it acceptable for...” Ms. McEvoy would make these corrections and bring them back for approval at the next meeting.

ZBA Minutes of December 9, 2014:

Vice Chair Hauschildt had an amendment to page 3, adding a vote for the amended Motion. He also had an amendment to page 4, paragraph 5, changing “...this building is taller that it’s surrounding buildings...” to “this building is taller than its surrounding buildings...”

A Motion was made by Vice Chair Hauschildt to approve the minutes as amended, but with no second, Motion failed. The Board decided to look over the minutes and revisit for approval.

ZBA Minutes of January 20, 2015:

A Motion was made by Vice Chair Hauschildt and seconded by Mr. Thielbar to approve the minutes of the January 20, 2015 ZBA meeting. Motion carried – all in favor.

ZBA Minutes of March 17, 2015:

Vice Chair Hauschildt had an amendment to page 1, changing Martha Pennell and David Mirsky to Alternate Members in the introductory paragraph. He also had an amendment to page 6, paragraph 1, changing “Master Phillips” to “Mr. Phillips”. He also had an amendment to page 7, paragraph 3, adding “Not” to the beginning of sentence 4. He also had an amendment to page 8, paragraph 1, changing “...and education outside of work.” to “...and education outside of work, and the applicant said they provide this service.”

Chair Prior had name spelling corrections. One on page 4 changing “Donna Schlackman” to “Donna Schlachman” and one on page 5 changing “Frank Hefferin” to “Frank Heffron” and one on page 7 changing “Jay Lotico” to “Jay Lodico”.

A Motion was made by Vice Chair Hauschildt and seconded by Mr. Mirsky to approve the minutes of the March 17, 2015 ZBA meeting, as amended. Motion carried – all in favor.

ZBA Minutes of March 31, 2015:

Vice Chair Hauschildt had an amendment on page 1, last paragraph, changing “...he doesn’t think that it what they...” to “...he doesn’t think that it is what they...”. He also had an amendment to page 2, paragraph 5, adding “Mr. Hauschildt” to the beginning of the second sentence.

Mr. Mirsky had an amendment to page 1, changing his introduction to read “Alternate Member Dave Mirsky”. He also had an amendment to page 2, paragraph 2, changing “...is because they are serving outsiders, who can be dangerous.” to “...is because they are serving “outsiders”, as stated by the applicant, who can be dangerous.”

The Board decided to table the approval of these minutes.

ZBA Minutes of April 21, 2015:

Vice Chair Hauschildt had an amendment on page 1, paragraph 1, sentence 1, changing “retail” to “rent”.

Mr. Mirsky changed his introduction to say “Alternate Member David Mirsky”.

Ms. Davies had an amendment to page 1, paragraph 1, changing “It is causing a hardship on his because...” to “It is causing a hardship on him because...”

The Board decided to table the approval of these minutes.

At this time, Mr, Mirsky excused himself from the Board given the five regular board members were present.

NEW BUSINESS:

1. Case #1494: BakerProp, LLC

The application of BakerProp, LLC for a variance from Article 4, Section 4.2 to permit multi-family residential development in the rear of portion of a property which is located in the C-3, Epping Road Highway Commercial zoning district. The subject property location is 170 Epping Road (and adjacent parcel) and is identified as Tax Map Parcels #47-7 and 47-6. Case #1494.

Attorney John Ratigan, who represents the applicant, spoke first. He said this is a 62 acre site. They are proposing to allow multi-use in the rear of the property. It is currently zoned commercial. This property has been on the market for many years. There are pockets of wetlands on it. There is also ledge on the property. He said the property is less desirable for commercial. It is in the TIF district. He said this project will allow the TIF to “take off”.

Barry Geyer said this is in a C3 district. He said the property has 543 feet on Epping Road. It is located right off Rt.101, but there is conservation area between the proposed lot and 101, which limits visibility. He said wetlands is another limitation. There are 20.5 acres of wetlands on the property. He showed a map of the proposal. They tried to utilize 101 frontage. There are six residential buildings being proposed.

Jim Gove said he did a delineation out on the property. He said the project has been discussed with DES, who looked at the design layout and said it would be a permissible project, especially since there will be protection to conservation land and vernal pools. Chair Prior asked if all the wetlands were equal on the property. Mr. Gove showed the areas of wetlands on a map. Vice Chair Hauschildt asked about crossing on the wetlands. Mr. Gove said there will be a single road to get to the back of the property. They will maintain the protection area. They are looking at one significant crossing to get across. Vice Chair Hauschildt asked what the impact will be of bisecting the wetlands. Mr. Gove said the majority of wildlife is in the back anyways. He said there will remain a connection between the wetlands. Mr. Baum asked about permits. Mr. Gove said they don’t have permits yet, until a site walk is done. He said this proposal is not a final plan, it is conceptual. Ms. Davies asked if there is a total wetlands impact figure. Mr.

Gove said he does not have that yet. Chair Prior said they were there to talk about residential, and asked if there is anything that is different because it would be residential. Mr. Gove said the benefit of residential is a smaller footprint and it is more environmentally pervious. Chair Prior said there are 849 parking spaces proposed which is more than required. Mr. Gove said there may be large trucks which would warrant more impervious surface. Mr. Geyer said they are going to utilize under-building parking and they anticipated lesser impact of impervious area.

Kevin King, property owner, said he got permitting to log the lot a few years ago. He said the back of the property is quiet which is good for residential. He said the biggest thing with past potential developers is the cost to do anything on the site. He said this proposal's developer has the know-how to do this work. The logging made it look impressive and like a park. He stated that he has had the property on the market for 10 years, off and on and has had several interested parties; however, they have gone away because of the cost.

Todd Baker, from BakerCorp, LLC, talked about his company. He said they try to find neglected lots and redo them for human use. He said it is a benefit for the town. This property is close to the exit ramp to 101, and Epping Road, which both have a lot of traffic. He said this is a prime site, which is why he wants to start work on it. He does want some commercial business on the site, so it would be mixed-use. Water/Sewer will make it a really prime site. Because of the wetlands, development is limited. He said there is a small space for commercial. The demand for office space in Exeter is not that strong. Retail and office need visibility from the road. There is a demand for these proposed condominiums (multi-family).

John Ratigan addressed the criteria. He said this proposal will not be contrary to the public interest and will not alter character of the neighborhood. He said this is the same use as the other side of the highway. Granting the variance will not threaten the public's health, safety or welfare. It will not be contrary to the spirit of the ordinance. As far as substantial justice goes, denial of the variance gains the public nothing and water/sewer would not be extended. The surrounding property values would not diminish if the variance was granted. The proposed properties will be invisible to abutters. Development will not be visible. Lastly, with regards to hardship, he said Mr. Gove stated it well. The property hasn't had any interest in the marketplace for all these years. The sub-criteria says there must be a reasonable use, and he says this is a reasonable use. Chair Prior asked how having 192 additional residences won't be an impact. Mr. Ratigan said apartments this size tend to not have any children. He doesn't think there will be an impact on the school system. Each unit will pay an impact fee. Vice Chair Hauschildt asked what the limits are of the proposed residential units. Mr. Geyer said they are asking for an R4 density. He said 266 units would be allowed, but they proposal is only for 192 units. Vice Chair Hauschildt asked what the minimum would be. Mr. Baker said they would still need to go to the Planning Board. He said if it is less than 100 units he would be surprised. He said 192 units makes sense. The proposed hotel would be 92 units. Mr. Baker said the point is they need residential use to move forward. Vice Chair Hauschildt asked how small the units would be. Mr. Baker said they would be 2-3 bedroom units. Vice Chair Hauschildt asked Mr. Baker if he would be comfortable with restrictions and Mr. Baker said he would.

At this time, Chair Prior opened the discussion to the public.

Peter Francese, professional demographer, said NH has lost 25,000 kids because of age-restrictive housing. NH is the third “oldest” state. Families with children will shop local and spend all year here, versus going to Florida for months at a time. This development will have an economic benefit. The school population in SAU 16 is declining in every other town except Exeter. He urged the Board to approve this development.

Bill Campbell talked about how the proposed area was supposed to be commercial. He asked how adding residential will achieve this goal. If this is approved, he said it may cause more developers to come try to put residential in a commercially zoned area. He gave some stats for the schools and the amount of children that could potentially go into the development. He wondered why they wouldn’t extend the road and put industrial out there. He thinks Exeter needs more commercial and industrial development.

Gerry Hamel does not agree with all the residential. He said he has been for the TIF for many years. As far as residential, he said he would expect to see it at the end of the development in the TIF district, not the first project. He said Exeter needs commercial growth. He said the tax bills will go up.

Frank Ferraro said he supported the TIF and Article 8. He wants to see Mr. King sell his property, but the town did not vote for this. He said the Selectmen’s goal is to lower taxes by adding non-residential development. He said if they wanted mixed-use, they would have put a zoning change in when the TIF went in. He gave examples where visibility is not an issue for commercial development. He talked about how granting the variance would not meet the criteria. He hoped the Board would deny this request as it does not meet criteria.

Daniel Longcope said he doesn’t want to see more commercial places like Petco and Michael’s that would make the area look like any place in the country. He said this lot is a perfect commuter location for people to come to this area. He said people want to come to the area and start families, and he was for granting this variance.

David Choate, real estate broker, said a mixed-use project will spur other commercial uses on Epping Road. He said there is no demand for office space.

Attorney Thomas J. Leonard, a lawyer from Nashua who represents Mr. Monahan, an abutter to the proposed property, said Mr. Monahan has industrial on his 75 acres. This project presents concern to Mr. Monahan. Mr. Monahan’s land is zoned industrial. He is concerned about compatibility within the districts. He said in the big picture the town needs to be careful to protect zoning that the town has worked to get the way it is. He commented on the criteria of this variance. He explained that industrial is a direct abutter to the proposed residences. In regards to unnecessary hardship, he said there are possibilities for development on the land. This is not a reasonable use. He said there is no reason to move from commercial to residential.

David Wilson said the overpass was designed for industrial. He said if you start mixing uses, the Board needs to be selective on the density of residential. He talked about the traffic issues that already exist in this area. He said the big issue here is putting residential next to that overpass.

Jason Proulx said this is a great project. He said there are not a lot of mixed-uses in Exeter. He said there are a lot of young couples that will move into this development, and that there is little demand of office space.

Darren Winham, Exeter Economic Development Director, said the residential development behind commercial development drives commercial onto 27. Chair Prior asked if all the taxed generated in the mixed-use will go to the TIF. Mr. Winham said yes, they will. Chair Prior asked if the taxes could go anywhere else. Mr. Winham said everything in the TIF would go in to pay off the TIF. He said there is a buffer on this property between Mr. Monahan and Mr. King. He believes residential is appropriate. He thinks both Mr. Baker's proposal and Mr. Monahan's will be tremendous assets.

Tom Monahan, abutter, said he actively marketed his land 1.5 years ago. One of the great interests in the land is it is convenient to get to Rt 101 and I95. He said saying Mr. King has a hardship would only cause hardship on abutters who are using their properties with correct zoning. He hoped the Board considered abutting properties. Vice Chair Hauschildt asked if Mr. Monahan feels there will be a diminishing of his property. Mr. Monahan said yes, but he doesn't know for sure. He said it could adversely affect him signing a lease with a potential lessee.

Peter Francese talked about how adding kids will not affect costs and taxes.

Frank Ferraro said the co-op school talked about adding modules because they need more space.

Chair Prior closed the public session and asked if the applicant wished to provide any rebuttal comments.

Mr. Gove said the distance from Mr. Monahan's property to the first unit proposed is 350 feet. There would be wooded land in between forever. He said the Planning Board would look at this buffer.

Mr. Baker said the commercial is the key component to this project. He thinks the buffer is also important in considering this. He showed a map of the two abutting parcels of land. He said the distance of the proposal is far from Mr. Monahan's land and building.

Ms. Davies said she entertains the idea of commercial first, then residential second. Mr. Baker said they would build one building and sell the units, then build the second building, and so on. Each building would take about a year to build. He said he is guessing there will be roughly \$1.25 million in tax revenue a year once the buildings are all up and running, which is a substantial tax benefit.

There being no further Board discussion, Chair Prior indicated the Board would move onto deliberations.

Prior to deliberations commencing, Chair Prior noted that as the time was getting late he wanted to briefly discuss how to address the remaining agenda items.

Vice Chair Hauschildt said he would rather continue the “Other Business” at a later time. Chair Prior wondered if that endangered the 30-day limit in regards to the rehearing requests; however, he wasn’t sure they should start down the road for the rehearsings given the hour. Vice Chair Hauschildt suggested that these rehearing discussions be put on the calendar for the first agenda item for next meeting.

A Motion was made by Vice Chair Hauschildt and seconded by Mr. Thielbar to continue the two rehearing requests to the June ZBA meeting and that they be heard before any new business. Chair Prior requested they hold a meeting on June 2 to hear the two rehearsings. Mr. Baum requested that the same members are present that participated in the past two meetings regarding Seacoast Family Promise. Vice Chair Hauschildt preferred they meet on June 16. With a Motion on the table, the Board vote, Motion carried – all in favor.

(At this time, the Board continued with deliberations on Case #1494.)

DELIBERATIONS

Mr. Baum said he likes the project, but he was stuck on the hardship part. He was having trouble seeing what the hardship was. He thinks there are other options for development on the land.

Vice Chair Hauschildt said he does not have an issue with the hardship. He liked the project overall. His two issues are the traffic impact and the abutters’ concerns about incompatible land use.

Mr. Thielbar said he agreed with Mr. Baum. He thinks it is an important point that the TIF has not been in place that long. His inclination would be to not accept this request.

Ms. Davies said Mr. Monahan’s development is starting to happen. She said it could change the outlook for what is possible on this property. The proposed property has developmental potential. She also did not see the hardship here. She is not ready to give up on the TIF commercial idea.

Chair Prior said they need to make their decision based on zoning. He said the big concern is the incompatibility of zoning between the two properties.

Next, the Board went through the criteria. Chair Prior said he doesn’t believe the spirit of the ordinance is being observed by putting these two uses next to each other. Vice Chair Hauschildt said the buffer is approximately 640 feet of wooded land. Chair Prior said that is not definite. Vice Chair Hauschildt said the wetlands impact is going to be substantial. He said there is no desire for office space. He said retail will be tough without residential. Residential is a way of making commercial street feasible. Ms. Davies said right now this is a the place for commercial development to occur. She said it is not the right time for this application. It is not in the public interest. Chair Prior said it was never mentioned that the TIF was going to include residential. The voters did not approve the TIF so residential could go in on Epping Road. The TIF has only been in place for two months. Vice Chair Hauschildt said substantial justice is done. Ms. Davies said she doesn’t know if it’s optimal. She said this area is highly suitable for commercial development. She said they have worked hard to get the elements in there for

commercial development. Vice Chair Hauschildt questioned the diminishment of surrounding properties. Chair Prior said they have had this possibility. Mr. Thielbar said the impact could be significant. Chair Prior said residential creates the demand for commercial, but having all three zones right next to each other is a problem. Regarding criteria 5, Chair Prior said the ordinance is quite clear. He doesn't think there is a hardship. Vice Chair Hauschildt, however, saw a hardship. He wondered if commercial and retail will rent out. Chair Prior said that is not a hardship, but just how the market is. Ms. Davies said the market can cause hardship. Mr. Baum said he is hesitant to grant relief when there are other permitted feasible uses.

A Motion was made by Vice Chair Hauschildt to approve the application as presented. But with no second, the Motion fails.

A Motion was made by Mr. Thielbar and seconded by Mr. Baum to reject the application on the basis it doesn't meet criteria 1, 2, 3, 4 and 5. Ms. Davies said she had trouble with criteria 1, 2 and 4. Mr. Baum felt strongly about 5.

A Motion was made by Mr. Baum and seconded by Vice Chair Hauschildt to amend the original Motion by saying the Board denies the variance request on the basis of not meeting criteria 1, 2, 4 and 5. Amendment to Motion granted – all in favor.

Original Motion, as amended, granted with a 4-1 vote, Hauschildt opposed.

Other Business:

Election of Officers:

Mr. Hauschildt proposed Mr. Baum be Chair, Ms. Davies be Vice Chair, and Mr. Thielbar be Clerk. Mr. Baum said he is not prepared to be Chair. Ms. Davies also had some discomfort with being Chair. *Mr. Hauschildt's new proposal was Mr. Thielbar be Chair, Ms. Davies be Vice Chair, and Mr. Baum be Clerk. The Board voted this was a good proposal.*

A Motion was made by Mr. Hauschildt and seconded by Mr. Baum to continue using the current Rules of Procedure (as revised and adopted June 18, 2013), noting that the "review and adopted" date be changed to reflect the 5/19/15 vote of the Board. Motion carried – all in favor.

A Motion was made by Mr. Hauschildt and seconded by Chair Thielbar to adjourn the meeting. Motion carried – all in favor.

The meeting was adjourned at 11:00 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, June 16, at 7:00 P.M. in the Exeter Town Offices.

Respectfully submitted,
Nicole Piper
Recording Secretary