

EXETER ZONING BOARD OF ADJUSTMENT
May 17, 2016 FINAL MEETING MINUTES

PRESENT:

Regular Members: Rick Thielbar, Robert Prior, Kevin Baum, and John Hauschildt
Alternate Members: David Mirsky
Deputy Code Enforcer: Barbara McEnvoy

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

AGENDA:

1. Case #1508: Variance Request – San Juan Realty Trust of NH
2. Case #1509: Variance Request – San Juan Realty Trust of NH

New Business:

1) The application of San Juan Realty Trust of NH for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses to allow the development of multi-family residential use on the property located at the corner of High Street and Holland Way. The subject property is situated in the PP-Professional Technology Park zoning district. Tax Map Parcel #70-101. Case #1508.

Engineer Christian Smith spoke on behalf of Lou Gargiulo, of the San Juan Realty Trust. He told the Board that residential would be a better fit on this property. He said at the time he came up with this concept with Mr. Gargiulo, they came up with a building with 40 units.

Chair Thielbar asked what the original proposal for this lot looked like. Mr. Smith said map 70, lot 101 was always its own parcel. He said that in 2005 when they got their original site plan approval there was a parking easement. Mr. Prior said on the chart with the application, it shows existing parking on lot 101. Mr. Smith agreed that there is. Mr. Prior asked if that would be removed with the new proposal, as there is enough parking on the abutting property also owned by Mr. Gargiulo. Mr. Smith said yes, and that there were cross easements. Mr. Prior told the applicant that parking is not based on two spots per unit, but is based on the total number of bedrooms in the proposal. Mr. Smith said he would need to revisit the parking issue.

Mr. Prior said it would be helpful to see the maximum number of units that this parcel will support. Mr. Smith said Mr. Gargiulo would be comfortable with the Board putting a condition on the Motion of a 40 unit cap.

Mr. Smith next talked about the hardship criteria. He said there hasn't been enough interest in the current space for the past 11 years. He said the abutters are residential. Mr. Baum said he doesn't understand the hardship. He said he didn't see why they couldn't utilize this parcel as commercial/ Mr. Smith said the hardship is not being able to have a street view.

Chair Thielbar opened Public Comment.

Gerry Hamel, Exeter resident, said he loves seeing development in Exeter, but the problem he is seeing is that everything is turning residential. He said the town has residential areas where residential should go. He did not see the consistency here with abutting properties. He said he does not like seeing residential continually going into zones they are not zoned for.

Anthony Pansley, abutter to the subject property, said granting this variance would create overcrowding in the area. He said the value of his home would go down. He agreed that he did not see the hardship here.

Mark Sullivan, Exeter resident, said the idea of a hardship here is not a reality. He said there is no real pressing reason why the applicant can't put a business building in this area and not a residential building.

Bob Root, Exeter resident, said he is concerned with the additional traffic this project would produce. He is also concerned with the additional noise.

Mike Dawley said this application fails on two criteria. The first is hardship. He said that corner on Holland Way is the best place in town to have a professional building. He said there is a lot of activity out there. He said that lot is well suited for what it is zoned for. Secondly, he said this application is not in the public's interest. He said there is a lot going on in town and this would be the worst time to make a change like this. He suggested they let the dust settle on all the housing units going in.

Bill Campbell, Exeter resident, said there are 531 units on plans to be built in Exeter already. He urged the Board not to approve this. He said the Master Plan committee is going to try to look at this sort of thing, i.e. whether Exeter needs more housing, and, if so, if Exeter needs more single family or multi-family units. He said they do need more non-residential development. He again urged the Board to wait on this and see what Exeter needs.

Tim Willis, Exeter resident, said he does not know if hardship can be considered with this application.

Terry Schracose, abutter to the subject property, also agreed with the hardship issue. He said he thinks it will affect the cost of his house.

Chair Thielbar asked Mr. Gargiulo if he had any rebuttal. He said he has made an effort to find occupants for this land. He said if this application isn't granted, the land will stay vacant and the town will not benefit from tax revenues. He said the proposed building would be attractive and buffers would protect the abutters.

Mr. Hauschildt said he did not hear any rebuttal for traffic, hardship, or noise.

Mr. Smith first addressed traffic and noise. He said traffic will not be that different, but he has not run those numbers. He said there would not be much additional noise, except for on weekends as there would still be residents on the property.

Mr. Smith said as far as altering the characteristic of the neighborhood, residential would be a better abutter to residential. He said this would be a smaller footprint which would be less of an impact to vegetation and leave larger buffers.

With regards to the hardship issue, Mr. Smith said that all tenants are interested in is a street view. He said lot 70/101 no longer has frontage on Holland Way.

Mr. Prior asked if there are any business opportunities for combining Mr. Gargiulo's two adjoining lots. Mr. Smith said a large sewer easement divides the parcels from Holland Way. He said there is also a large wetland system.

Mr. Thielbar closed the Public Comment.

Mr. Baum said he struggled with the hardship issue because right next door the applicant is proposing a commercial use. Also, he said the Board does not have the information they need to see how the abutters will be affected. He said they do not know the size of the proposed building or the buffer size. The Board needs more development plans.

Mr. Hauschildt said he sees Mr. Baum's point. He said visibility isn't there for the parcel, but said there are lots of professional parks not right on the road. He said they could put signs out at the road.

Mr. Prior said retail needs visibility, not professional parks. He said the issue here is that the applicant's intent originally was to create a professional park in Exeter. He said he did not agree that residential was a bad idea here compared to commercial. He said he thought they had moved into the realm of needing to change zoning, not granting variances.

Mr. Mirsky said he didn't believe the applicant made their case clear enough, and added that there are some serious concerns by abutters.

Motion: A Motion was made by Mr. Hauschildt and seconded by Mr. Prior to deny the application because it fails to meet criteria 1, 3 and 5. Before the Board voted, Mr. Gargiulo asked if he would withdraw his application.

Chair Thielbar reopened Public Comment.

Mr. Gargiulo stated that based on the Board's guidance, he would like to withdraw his application.

Chair Thielbar closed the Public Comment.

Mr. Mirsky said they were conserving resources of Exeter by letting the applicant withdraw.

Mr. Prior said procedurally, he was uncomfortable with the way they had just dealt with that Motion.

Mr. Hauschildt withdrew his Motion and Mr. Prior withdrew his second.

Mr. Prior said he did not want the Board to have an open Motion that had been seconded.

Motion: A Motion was made by Mr. Prior and seconded by Mr. Baum to reopen the Public Session. Motion carried by majority vote of 4-1. Mr. Mirsky voted nay.

Chester Willy, Exeter resident, was upset with the Board for letting someone interfere with a closed public deliberation.

Mr. Gargiulo spoke, saying he had no intent on bringing back this application anytime soon.

Mr. Dawley asked at what point is it too late to withdraw an application. He asked the Board to verify that with town counsel.

Mr. Mirsky said everyone acted together to do the fairest thing here. He said the Board didn't do anything they didn't want to. He said they should maintain procedure that is fair to everyone and beneficial to the town.

The applicant withdrew his application, the Board accepted his withdrawal, and Public Session was closed.

2) *The application of San Juan Realty Trust of NH for a variance from Article 4, Section 4.4 Schedule III: Density & Dimensional Requirements (Non-residential) to permit the proposed construction of an office building on the property with less than the required minimum setbacks. The subject property is a newly created parcel located at the corner of High Street and Holland Way in the PP-Professional Technology Park zoning district. Tax Map Parcel #TBD. Case #1509.*

Chair Thielbar read the application.

Christian Smith spoke on this application as well. Mr. Gargiulo had purchased this parcel of land, which is 1.6 acres, from the DOT. The lot number is TBD. Mr. Gargiulo had hired a surveyor to create the parcel. The BOS voted to sell this parcel to San Juan Realty. Mr. Smith said this proposal will go through the Conservation Commission and the Planning Board in regards to the wetlands on the parcel. This use is allowed in this zone. Mr. Smith said it is in the spirit of the ordinance to allow this proposal. He said everything is in compliance here, except the setbacks.

Mr. Prior said the setbacks are from Mr. Gargiulo's own land, as he owns the abutting property. He asked Mr. Gargiulo why they don't just create one parcel out of the three abutting parcels he owns. Mr. Prior said it strikes him as a non-common sense approach the way Mr. Gargiulo is handling his land. Mr. Smith said this parcel "doesn't pass the litmus test" with relocation and property lines.

Mr. Baum said it seems a lot line adjustment would be an easy fix to setback issues. Mr. Smith said if they push back 25 feet they will be on top of the utility easements. He said they will encroach into two different parcels and there would be a much larger wetland impact.

Mr. Prior said he did not understand why there is not an integrated plan here. He said property lines are not walls.

Mr. Hauschildt said it looks like their plan has the building and parking over wetlands. He said the applicant is not meeting zoning, so they would need a variance. He explained that the Board does not know enough about wetlands without hearing from Conservation Commission or a wetlands scientist. Mr. Smith asked what the additional variance would be needed for. Mr. Hauschildt said they would need one for a wetlands encroachment.

Mr. Smith asked the Board if they thought this application should be withdrawn as well. Mr. Baum said the application needs to be amended. Mr. Hauschildt told Mr. Smith that the wetlands issues need to be addressed. He said they are also encroaching on a no-cut buffer.

Mr. Smith said they have not been to the Planning Board, but the DES has been engaged.

Mr. Baum encouraged the applicant to come back with more descriptive plans. He said there are ways to avoid coming to the ZBA for relief and he recommended the applicant look into that.

Per the request of Mr. Gargiulo, Mr. Smith withdrew this application.

Other Business:

Approval of minutes: 11/17/15 and 4/19/16

11/17/15 Minutes: A Motion was made by Mr. Hauschildt and seconded by Mr. Prior to approve the minutes of the November 17, 2015 ZBA meeting, as amended. Motion carried – all in favor.

4/19/16 Minutes: A Motion was made by Mr. Prior and seconded by Mr. Hauschildt to approve the minutes of the April 19, 2016 ZBA meeting, as presented. Motion carried – 4-1 vote. Mr. Mirsky abstained.

Election of Officers:

Motion: A Motion was made by Mr. Hauschildt and seconded by Mr. Baum to continue with the rules of procedure, unchanged, and update the effective date as of today. Motion carried – all in favor.

Motion: A Motion was made by Mr. Hauschildt and seconded by Mr. Prior to appoint Laura Davies as Chair, Kevin Baum as Vice Chair, and Rick Thielbar as Secretary, of the Exeter ZBA. Motion carried – 4-1 vote. Mr. Thielbar voted nay.

Adjournment

A Motion was made by Mr. Prior and seconded by Mr. Baum to adjourn the meeting at 8:37pm. Motion carried – all in favor.

Respectfully submitted,
Nicole Piper
Recording Secretary