

EXETER ZONING BOARD OF ADJUSTMENT
July 19, 2016 FINAL MEETING MINUTES

PRESENT:

Regular Members: Rick Thielbar, Robert Prior, Laura Davies, and John Hauschildt

Alternate Members: Marc Carbonneau

Deputy Code Enforcer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chair Davies introduced the Board members and explained the protocol for the meeting. She said they would first discuss Felder Kuehl Properties, LLC – Case #1450.

OTHER BUSINESS:

Felder Kuehl Properties, LLC – Case #1450

Michael Donahue was at the meeting representing the applicant Bob Felder, and was there to discuss an extension of a special exception that was previously approved.

Mr. Donahue said they have met all the conditions that the ZBA had placed on the application. They are seeking an extension so they can participate in a funding opportunity which is next month. He requested favorable action on this extension.

Mr. Hauschildt asked what percentage of work has been completed. Mr. Donahue said the property subject to this is on a separate lot. He said it is not part of the condo association. Mr. Felder undertook the environmental restoration of the property. The whole entrance road is done and the environmental work is done. Other than that, Mr. Donahue said no work has been done because they need to build the building. He added that this property meets all parking requirements.

Chair Davies asked for any public comment. With none, she closed the public session.

Motion: A Motion was made by Mr. Carbonneau and seconded by Mr. Thielbar to approve the administrative extension for one year as proposed by the applicant. Motion carried – all in favor.

AGENDA:

1. Case #1510: Variance Request – 31 Portsmouth Avenue, LLC

New Business:

1) The application of 31 Portsmouth Avenue LLC for a variance from Article 6, Section 6.7.1 to allow a “drive in” commercial use to occupy a portion of an existing building which is located within 300 feet of a residential district. The subject property is located at 31 Portsmouth Avenue, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #65-176. Case #1510.

Todd Baker said his company owns property at 31 Portsmouth Avenue. The property was the former Rogan’s. Mr. Baker’s company bought the property in April.

He has a proposed tenant which would be another restaurant where a drive-thru would be important for their breakfast service. The building is 5200 square feet. He showed a map of the area. There are 56 parking spaces currently, but with the drive-thru they would go down to 43 spaces. He is still looking for a tenant for the other side of the building, as this proposed tenant would only take 1700 square feet of the building. He showed a sketch of how the flow would go for the drive-thru. There will not be a speaker, so it will be less intrusive.

Mr. Baker went through the variance criteria. He said this proposal is in common with other businesses in the area. He thinks substantial justice is done as this is a reasonable use for the property.

Mr. Baker went on to say this will not impact residential neighbors or decrease property values. As far as hardship, Mr. Baker said no public benefit would outweigh this request.

Mr. Baker said Nancy Sinclair, a direct abutter to this property, asked for a few conditions upon this approval. First, she asked that he maintain a fence between her property and the proposed property. Next, she asked Mr. Baker to pay attention to drainage. He agreed to both of these requests.

Mr. Prior asked Mr. Baker if they grant this variance as proposed, and the lessee was to change, if he would be okay with a condition of no speaker service for any approval. Mr. Baker said he would be fine with that.

Chair Davies asked Mr. Baker to go to the tax map and point out the properties within 300 feet. Mr. Baker explained the area on the tax map.

Mr. Carbonneau asked Mr. Baker and the Board if they had any objections with him sitting in, as he knows Mr. Baker on a business standpoint. There were no objections.

Mr. Thielbar asked if they will need to change any curb cuts. Mr. Baker said they will not.

Mr. Baker had a letter from the Southside abutter which is 21-23-25 Portsmouth Avenue. The letter said they are in support of this proposal on the condition it doesn't disrupt the entrance to their property. Mr. Baker said it wouldn't disrupt anything.

Mr. Carbonneau asked what the hours would be. Mr. Baker said the business would be open from 5am-9pm, with their busiest time being between 7am and 10am.

Mr. Prior said the Board had a similar application a year ago which they did approve but he didn't recall if they put hours on that restriction.

Mr. Hauschildt said his first concern is with idling traffic and pollution. His second concern is the traffic from 7am-10am. Mr. Baker said this is a larger property than Dunkin Donuts with better queuing. Mr. Hauschildt said there would potentially be one car per minute making a left turn southbound. Mr. Baker said they are prepared for that. He said there is a lot of parking on both sides. Mr. Hauschildt said he was worried they would have the same issue as Dunkin Donuts. He asked Mr. Baker to let the Board know if he would be opposed to a traffic study or having the Planning Board look for adequate ingress and egress before making a decision. Chair Davies said she was also concerned about traffic because a drive-thru would cause a lot more traffic in and out of there.

Mr. Hauschildt said noise is not an issue, idling pollution might be a problem, but the impact on traffic on an impaired part of Portsmouth Avenue is a problem. He said this is a problem because there is an impossible remedy later on.

Mr. Baker said later on they will discuss traffic more at the site plan level. He said he has hired traffic studies before. He went on to say if he doesn't get an approval in the next month or two, they will probably lose the tenant. He gave an example of another property where he hired a traffic engineer. He said he is willing to do that, but a full traffic study might be difficult.

Mr. Prior said his concern was not as large as Mr. Hauschildt's because there is a lot of room on the property to queue. Mr. Hauschildt said he brought this up to see if Mr. Baker was willing to do a study.

Mr. Baker said he the Board is concerned with people taking a left turn, Rogan's was a busy place and had lots of customers in and out of their lot.

At this point, Chair Davies opened public comment.

Nancy Sinclair, of 22 Auburn Street, said in order for her to not oppose this, there needs to be some problems addressed. She said he biggest concern was the nuisance of sound, but was relieved to hear there wouldn't be a speaker. She showed where her property is on the map, in relation to the applicant's property. She said her potential privacy violation has increased. She went on to say Rogan's had a fence they maintained, but let the fence fall down and now a cut through has been formed from the proposed property to her property. She said she has had loiterers in her back yard who have been in her shed. Mr. Prior asked if this is since Rogan's has left, or before. Ms. Sinclair said the fence fell down about 5 or 6 years ago.

Ms. Sinclair went on to say she would appreciate the dumpsters not being in her backyard and that fencing would also help with lighting early in the morning (headlights). She wanted assurances that there would be a solid barricade (tall solid wall structure). She said the drainage pipe on Mr. Baker's property, previous to improvements on Portsmouth Avenue, needs to be maintained. She wants the drainage ditch to be accessible in case of an emergency.

Mr. Baker said he would be happy to put up a fence. He said he also takes the drainage seriously. He said he might be able to move the dumpsters as long as there is still adequate turning radius. He will try to find the least intrusive area.

Chair Davies closed public session and moved to deliberations.

Mr. Hauschildt suggested they go through the criteria. He read them and stopped at #1 saying he was not sure this was in the public interest without understanding the impact of traffic. He said there are conflicts with ingress and egress, which is his issue. Mr. Prior said he is less concerned about whether this will create a hazard. Mr. Hauschildt said it would not cause a hazard, but it would cause a major inconvenience.

Chair Davies asked if they can put a condition on this that it goes to Planning Board or there is a traffic study done. Mr. Hauschildt said he would be fine with an additional condition that Planning Board or the Town Planner approve impact on the left turn in the southbound lane. Mr. Prior said the thinks this problem will take care of itself.

Mr. Hauschildt went back to the criteria, saying he had no real problems with the rest of the criteria.

Motion: A Motion was made by Mr. Hauschildt and seconded by Mr. Prior to approve the application for relief from sections 6.7.1 to include a drive-in use within 300 feet of a residential zone

with the following three conditions attached: 1) that adequate screening and fencing be provided to prevent people and vehicles from moving between this property and the abutting residential properties, to minimize noise, and minimize any car pollution, 2) that there are no electronic speakers outside of the building, and 3) that the ingress and egress to the property be reviewed by Town Planning and Building Departments staff, with particular attention paid to ingress and egress to and from the southbound side.

Amendment: An amendment was made by Mr. Prior and seconded by Mr. Hauschildt to change “adequate fencing” to “adequate solid fencing”. Chair Davies called the vote on the Amendment. Amendment passes, 5-0 vote. Chair Davies called the vote on the Motion. Motion passes, 5-0 vote.

Other Business:

All Boards Meeting Discussion

Chair Davies said she was the only ZBA member to attend. She said there was discussion and a presentation from the Town Planner regarding his work with a flow chart for the planning review process. Mr. Hauschildt said he didn’t want to criticize, but recommended whoever put this flow chart together to work with someone who knows about flow charts. Ms. Davies said this is just the first draft and that the staff will take any suggestions anyone has.

Chair Davies said there was also a presentation by the Economic Development Director and she has a copy of that presentation. She went on to say that items that were discussed that pertains to the ZBA are that training materials be put together for new members so they get a full understanding. Mr. Hauschildt said he started on this process and he will bring his first draft in August. He thinks this will be a good process for everyone to learn. Chair Davies said a single document that has RSAs and such would be nice to have too.

Chair Davies said there was also a discussion at the meeting of how to get a better understanding about the different land use boards and their processes. Mr. Hauschildt said this might be better integrated into the training materials.

Approval of minutes: 5/17/16

Mr. Prior had a few amendments, and said he would like to see those amendments before approving these minutes.

Mr. Hauschildt brought up some new information he learned about changes in the State laws pertaining to accessory dwelling units. The Board had a discussion on this.

Adjournment

Chair Davies adjourned the meeting at 9:01pm

Respectfully submitted,
Nicole Piper
Recording Secretary