

**TOWN OF EXETER
PLANNING BOARD
JUNE 11, 2020
VIRTUAL MEETING
DRAFT MINUTES**

Zoom ID: 87028074341

Phone: 1 646 558 8656

I. PRELIMINARIES:

BOARD MEMBERS PRESENT BY ROLL CALL: Chair Langdon Plumer, Vice-Chair Aaron Brown, Pete Cameron, Clerk, Gwen English, Jen Martel, Molly Cowan, Select Board Representative, Robin Tyner, Alternate, Pete Steckler, Alternate, and Nancy Belanger, Alternate.

STAFF PRESENT: Town Planner Dave Sharples

II. CALL TO ORDER: Chair Plumer called the meeting to order at 7:04 PM and read out loud the meeting preamble which indicated that an emergency exists and the provisions of RSA 91-A:2 III (b) are being invoked. As federal, state and local officials have determined gatherings of ten or more people pose a substantial risk to the community and the meeting imperative to the continued operation of Town and government and services which are vital to public, health, safety and confidence. This meeting will be conducted without a quorum physically present in the same location and welcome members of the public accessing the meeting remotely.

Chair Plumer indicated Alternate Pete Steckler would be active.

III. OLD BUSINESS

APPROVAL OF MINUTES

May 28, 2020 - Tabled

Mr. Cameron motioned to table approval of the May 28, 2020 minutes. Ms. English seconded the motion. A roll call vote was taken, Vice-Chair Brown abstained, Cameron – aye, Plumer – aye, English – aye, Martel – aye, Cowan – aye, Steckler - aye. With 6 in favor, approved 6-0-1.

IV. NEW BUSINESS

PUBLIC HEARINGS

1. The continued public hearing on the application of Brian Griset for review of a Yield Plan in conjunction with a proposed 16-unit single-family condominium open space development and associated site improvements on property located off of Tamarind Lane and Cullen Way.

42 R-1, Low Density Residential and
43 NP-Neighborhood Professional zoning districts
44 Tax Map Parcel #96-15 and #81-53
45 Case #20-2
46

47 Mr. Sharples noted the applicant appeared at the May 14, 2020 Public Hearing and it was tabled to give
48 them more time for supplemental materials. A letter of support is provided. Three letters all dated June
49 11, 2020 were received, one from the Attorney for the Exeter Green Subdivision. Recommend going
50 through waiver criteria. Perimeter buffer waiver criteria is given for that section. The applicant has
51 enclosed an argument toward one waiver which they feel is not necessary.
52

53 Attorney Pasay indicated he is present with Brian Griset and Christian Smith. They filed a letter after the
54 last meeting partly to address UEI and waiver. Don't believe a waiver is needed for 7.13. A final Yield
55 Plan was provided and an updated financial analysis. The plan is to summarize our view on four issues
56 and would like to start with 7.13. Have variances to use this Yield Plan for this case.
57

58 Attorney Pasay indicated the plan conforms with regulations, is viable and achievable. Proposing 32
59 plus acres be conveyed to the Town. The process has taken over a year. Received a letter from the
60 Attorney who represents several on Tamarind Lane asking to completely start over and disregard all
61 permitting, and relief granted. No appeals were made. Put Planning Board in a tough spot. In early
62 stages met with Mr. Sharples and Doug Eastman. Learned we needed a Special Exception and relief for
63 transfer of density. Petitions again plan were proposed. Filed an application with the ZBA and
64 requested Administrative Decision with Doug Eastman to determine what relief we needed. The Town
65 has a history of approving similar Yield Plans. Mr. Eastman responded giving guidance. The decision
66 states that variance relief is needed to transfer density. There is a process to appeal Administrative
67 Decision. Filed appeal that asked we did not need variance to use density. Relief requested was
68 intentionally very broad. No provisions were returned that we needed relief from. Lost Administrative
69 Appeal closely. Granted variance to use this plan and Special Exception was statutory process to appeal.
70 None was done. 7.13 issue is language within regulation. Says shall not require variance. Does not
71 prohibit acceptance from plans that benefit from variance relief. All lots comply with R-1. This would
72 contradict ZBA and DES decisions. Variance relief is highest form of relief other than a Court Order.
73

74 Attorney Pasay indicated the Town told us to get a variance and now the argument is that regulations
75 say Yield Plans can't require a variance. Think intent is to say can't throw together plan that does not
76 comply at all. Next argument is that challenges are being made. Appeals did not happen. Disagree with
77 assertions made about ZBA's authority. Comments made by UEI questioned buildability. She clarifies
78 she meant "desirable" instead of "buildable."
79

80 Mr. Sharples indicated he has received a legal opinion addressing 7.13 issue. If close Public Hearing is
81 just deliberation of regular active members.
82

83 Mr. Steckler noted the rundown was helpful. There are a lot of gray areas in decision making. This
84 section (7.13) seems black and white. Mr. Cameron indicated each issue should be resolved on their
85 own, are very complex.

86 Ms. English indicated the process has been thorough. The language in 7.13 is questionable, particularly
87 the use of the word "shall." "Shall" means may and refers to future. Think in our regulations "shall" was
88 meant to mean "must." ZBA has already weighed in. The attorney's letter references Yield Plan density
89 where land belongs to Town.

90

91 Mr. Pasay noted he was not trying to over complicate this. Have tried to be clear about the whole
92 process. Disagree with relief needed but sought it anyway. Planning Board can't ignore the decision
93 made by the ZBA. The issue is remaining land on Exeter Green Subdivision. The Grisets have a contract
94 with the Town and conveyed 9.3 acres to Town. Property is now Exeter Park. Agreement said could
95 develop remaining land and allow use of Town land for density. Mr. Eastman verifies this in his decision.

96

97 Mr. Pasay indicated the Grisets reserved the right to use that land for density. Also said didn't need any
98 more recreational space or land conveyed but it is.

99

100 Mr. Sharples indicated this was reviewed by the TRC and all were in agreement it was usable for
101 determining more density.

102

103 Mr. Steckler noted the ZBA approval process was approval for transfer of density referenced for purpose
104 of Yield Plan or just in general? Attorney Pasay indicated the variance request was this exact Yield Plan.
105 The purpose of the variance was to state that we don't need a variance but if we do, we have a variance
106 request for this exact project. As presented referenced this exact proposal. Intent is to prevent people
107 from showing up with plan that has not been engineered or reviewed. If applicant gets this relief the
108 Planning Board has to recognize those processes.

109

110 Chair Plumer opened the hearing to the public for comments and questions at 8:10 PM.

111

112 Attorney Tim Britain indicated he represents 14 families whose property abuts or is in the
113 neighborhood. There is no question that this Yield Plan depends on transfer of density throughout
114 properties. The appeal is only arguable if the ZBA had authority to allow the transfer of density.
115 Conserved innovative land use control. Zoning Ordinance has never adopted these controls allowing
116 transfer of density. Fact that variance was received is pointless. The ZBA did not have the authority and
117 entire plan relies on that variance. The Yield Plan is invalid and violates 7.13. The language is quite
118 clear. Trying to wordsmith that provision.

119

120 Attorney Britain noted "shall not require a variance." the Section is to compare density to that which is
121 permitted. Would have liked to have been better involved in this plan longer. The argument relies on
122 language applying to future tense. Yield plan requires additional variances that were not granted. Land
123 in NP zone is not eligible for open space development. Trust property not being developed but still
124 being used to determine density. Ask to deny Yield Plan as presented.

125

126 Patrick Flaherty indicated he retained counsel for a year and raised a lot of similar questions. Supplied
127 letter of support for Yield Plan and buffer requirement. Are more directly impacted neighbors.

128

129 Nancy Belanger stated she read agreement between Town and Grisets. Attorney Britain spoke about
130 how the combined properties are determining density. Does agreement pertain to Trust property or
131 just Griset property?
132

133 Mr. Sharples indicated it said the remaining land may be developed and 9.3 acres would be conveyed.
134

135 Mr. Pasay noted the trust property was purchased in 2000. Point of agreement was that any remaining
136 land could be developed. Does not include Mendez property.
137

138 Ms. Belanger asked if it didn't address agreement with Town in Attorney Britain's letter? Attorney
139 Britain noted he does not have the agreement before him. The purpose was to allow the remaining land
140 to be developed for nine lots.
141

142 Mr. Sharples indicated 9 lots were in reference to something else. Those nine lots already exist.
143

144 Attorney Britain noted it still depends on Mendez lot and on the variance granted.
145

146 Attorney Pasay indicated the Yield Plans become arduous to get through. Remind me of point of Zoning
147 Ordinance. Planning Board job is to adopt regulations to go with Yield Plans. These regulations do not
148 supersede all of Article 7. Mr. Eastman gave no article or section we needed relief from, so we got
149 general relief from all of Article 7. By definition, open space subdivision transfers density. Are not
150 arguing over processes that have happened months prior to this. This is not transfer of density. NP
151 District allows high density. Average lot size is 150,000 SF. Point here was to be very conservative.
152 Rose Farm is a perfect example. Did not require variance for transfer of density. Acknowledged
153 complexity. Very deliberate process to be transparent with Town and neighbors, not legal gymnastics.
154 Is point of law that permits people to file for Declaratory Judgement without going through appeal
155 process. In those cases it almost has never worked. If review of ZBA was standard across court states
156 ZBA should be the first body to look at this. Exeter has a permissive Zoning Ordinance.
157

158 Attorney Britain agreed that the legal issue is outside administrative process. Is a question of the ZBA's
159 authority. Draws density. Purpose was to draw from one lot to another. The trust property is in the NP
160 zone, not listed in allowable zones. Perhaps Board can't resolve this issue.
161

162 Mr. Sharples indicated abutter's letters are part of record.
163

164 Laura Knott stated the point of Yield Plan is to determine logical density, what is proposed is above the
165 logical density. It seems that land was never meant for this development. There is no record of phased
166 plan, was excluded from covenants because did not have a house on it at the time. Private rights of way
167 are required. Wetlands are not accurately portrayed but included in density. The majority of property is
168 in the flood zone. Encourage Board to look at total wetland impact. Buffer waiver is required. No
169 reason to include standard waiver. Property being discussed is not part of protective covenants.
170 Question whether density is viable. Applicant is trying to get as much financial benefit as possible.
171

172 Lisa Bleicken indicated she submitted a letter as well. Concerned with Yield Plan. Believe inherent
173 features of site plan should be mentioned. Drainage and wetlands concerns have been had for many
174 years with this plan. Development would require wetland CUPs, “reference another Yield Plan. Concern
175 about flood zones. Are special construction requirements necessary in these zones.

176
177 Mr. Flaherty indicated there is a right of way that would access part of property. Is off of our property.
178 Would apply more at site plan discussion.

179
180 Attorney Pasay noted if the Grisets use proposing this development and it matched all criteria would
181 expect approval because it conforms to regulations. Yield Plan has a different purpose to see if it is
182 possible. Proposed are massive lots across portion of NP zone. Is determination of open space
183 development.

184
185 Christian Smith noted Laura Knott’s letter has inconsistencies. Required 40,000 feet? In this zone of
186 building space 45% can be wetland. Have every setback labeled. Perimeter buffer strip is shown. Only
187 lot requesting reduction is Lot 5. Does meet all code. Are two access ways not private rights of ways.
188 Are three pairs of lots accessed by a common driveway. The permissible building envelope is actually
189 proposed house box. Determined to be standard. Every envelope could sustain larger houses than
190 planned. Flood Zone – A zone is a guess without elevation. AE is with elevation and not a single house
191 within that zone. Ms. Knott noted Christian Smith was referring to a prior letter. Believes arguments
192 are still valid.

193
194 Chair Plumer asked to discuss the other waiver request. Buffer strip. Get consensus on 7.13.

195
196 Attorney Pasay indicated he believes no waiver is required. If Board disagrees can move to waiver
197 request.

198
199 Mr. Sharples noted it is recommended to have a waiver. Mr. Cameron agreed the Board should proceed
200 forward assuming a waiver is required. Ms. Martel agreed. Is hard to say if is required if don’t know the
201 full request.

202
203 Vice-Chair Brown noted he doesn’t think we can hear the waiver just to hear the argument. Ask if you
204 think a waiver is required and feel we should vote to determine as such.

205
206 Mr. Steckler noted he was curious how waivers work with 7.13. What guides us at that point?
207 Mr. Sharples indicated there is always a safety valve, the ability to waiver. Need to meet criteria to
208 grant.

209
210 Mr. Sharples recommended voting on need for waiver, then listen to waiver requests. After all
211 information is obtained the Board could go into deliberations.

212
213 **Mr. Cameron motioned to require waiver from Section 7.13. Vice-Chair Brown seconded the motion.**

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215 Mr. Steckler expressed concerns about language of motion, suggests amendment.

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A roll call vote was taken Plumer – aye, Brown – aye, Cameron – aye, Steckler – aye, English – aye, Martel – aye, and Cowan – aye. With all in favor, the motion passed unanimously.

Vice-Chair Brown recommended a time limit on meeting. Chair Plumer agreed to limit the meeting to 10:00 PM.

Attorney Pasay presented his request for a waiver from 7.13. Attorney Pasay stated he believes the denial would go against what has already been decided. The ZBA granted relief to use the Yield Plan. Criteria along with statutory variance confirm with ZBA. Variance has more authority (reading criteria). Variance relief is constitutional protection. Would have to prove why this variance doesn't fit plan. Look at if it threatens public health or safety. Developing open space. Preserves character of neighborhood through various uses. Have support from closest abutters. Also have appraisal which has not been rebutted. Unique wetland and uplands. Mendez property has no frontage. Plan benefitted from variance. Has detrimented owner. Unique property in area. Spirit of regulations similar to spirit of ordinance. Does not cause a public threat. Would not vary provisions. Satisfies all other zoning requirements.

Mr. Steckler indicated a request for a waiver has more to do with zoning of properties than with slope and topography? Attorney Pasay indicated the point of a Yield Plan is to depict a reasonable subdivision. Property features are unique. Landlocked and zoned in weird way and ZBA agreed.

Attorney Britain noted the Board determined a waiver was required. Seems to be seeking a waiver in entirety. Don't know how can request waiver of Yield Plan. By waiving are asking to throw out only provision for a Yield Plan. Mendez property is part of this project but only in transferring density. By ordinance cannot be part of this project without another variance. The variance request has to be very specific not for a whole article. The Board should focus on a few things. No unique conditions of property, it comes down to economics. Can develop open space here just not at density desired by applicant. A waiver granted would be contrary to 7.13 and the Zoning Ordinance.

Mr. Sharples indicated are only considering one sentence from 7.13. Would only waive that one part in a motion. Not a blanket waiver for 7.13. Now determine if have info needed to enter deliberations then table to next meeting and not suggest closing public hearing.

Ms. Martel wanted to request seeing potential driveway layouts. Ms. Sharples noted all are shown on the plan.

Mr. Steckler indicated he had enough information to deliberate. Vice-Chair Brown noted he agreed with Mr. Sharples' advice.

Vice-Chair Brown moved to table to July 9, 2020 at 7:00 PM. Mr. Cameron seconded the motion. A roll call vote was taken Plumer – aye, Brown – aye, Cameron – aye, English – aye, Martel – aye, Steckler – aye, and Cowan – aye. With all in favor, the motion passed unanimously.

260 **V. OTHER BUSINESS**

261

262 Garrison Glen, LLC – PB Case #17-29

263 Request for extension of conditional approval for 24 Continental Drive

264 TM #56-3.1

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266 Mr. Sharples indicated the applicant is asking for a one-year extension of the site plan and conditions of
267 approval approved in 2018.

268

269 *Ms. English motioned to grant a one-year extension for Planning Board Case #17-29 to be valid*
270 *through July 11, 2021. Ms. Martel seconded the motion. A roll call vote was taken Plumer – aye,*
271 *Steckler – aye, Brown – aye, English – aye, Cowan – aye, Cameron – aye and Martel – aye. With all in*
272 *favor, the motion passed unanimously.*

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274 **VI. TOWN PLANNER’S ITEMS**

275 **Field Modifications**

276 **Announcements**

277 **VII. CHAIRPERSON’S ITEMS**

278 **VIII. PB REPRESENTATIVE’S REPORT ON “OTHER COMMITTEE ACTIVITY”**

279 **IX. ADJOURN**

280 *Chair Plumer moved to adjourn at 10:05 PM. Vice-Chair Brown seconded the motion. A roll call vote*
281 *was taken, Cameron – aye, Plumer – aye, Belanger – aye, English – aye, – aye, Cowan – aye, Steckler -*
282 *aye. With all in favor, the motion passed unanimously.*

283 Respectfully submitted,

284 Daniel Hoijer,

285 Recording Secretary