



TOWN OF EXETER, NEW HAMPSHIRE

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www.exeternh.gov

LEGAL NOTICE EXETER PLANNING BOARD AGENDA

The Exeter Planning Board will meet virtually via ZOOM (see connection info below*) on Thursday, February 11, 2021 at 7:00 P.M. to consider the following:

APPROVAL OF MINUTES: January 28, 2021

NEW BUSINESS: PUBLIC HEARINGS

Continued discussion on the application of Brian Griset for review of a Yield Plan in conjunction with a proposed single-family condominium open space development and associated site improvements on property located off of Tamarind Lane and Cullen Way. The properties are located in the R-1, Low Density Residential and NP-Neighborhood Professional zoning districts. Tax Map Parcel S #96-15 and #81-53. PB Case #20-2.

OTHER BUSINESS

EXETER PLANNING BOARD

Langdon J. Plumer, Chairman

Posted 01/29/21; Exeter Town Office and Town of Exeter website

***ZOOM MEETING INFORMATION:**

Virtual Meetings can be watch on Channel 22 and on Exeter TV's Facebook and YouTube pages.

To access the meeting, click this link: <https://exeternh.zoom.us/j/86024856182>

To access the meeting via telephone, call: +1 646 558 8656 and enter the Webinar ID: 860 2485 6182

Please join the meeting with your full name if you want to speak.

*Use the "Raise Hand" button to alert the chair you wish to speak. On the phone, press *9.*

More instructions for how to access the meeting can be found here:

<https://www.exeternh.gov/townmanager/virtual-town-meetings>

Contact us at extvg@exeternh.gov or 603-418-6425 with any technical issues.

TOWN OF EXETER

PLANNING BOARD

January 28, 2021

VIRTUAL MEETING

APPROVED MINUTES

Zoom ID: 89070728836

Phone: 1 646 558 8656

I. PRELIMINARIES:

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

STAFF PRESENT: Town Planner Dave Sharples

II. CALL TO ORDER: Chair Plumer called the meeting to order at 7:00 PM. Chair Plumer 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.

The members introduced themselves by roll call and in accordance with the Right to Know Law noted they were alone in the room.

III. OLD BUSINESS

APPROVAL OF MINUTES

January 14, 2021 – Special Meeting at 6:30 PM

Mr. Cameron motioned to approve the January 14, 2021 Exeter Planning Board 6:30 PM Special Meeting minutes. Mr. Grueter seconded the motion. A roll call vote was taken Grueter – aye, Martel – aye, English – aye, Cowan – aye, Cameron – aye, Brown – aye and Plumer – aye. The motion passed 7-0-0.

January 14, 2021 – Regular Meeting Minutes at 7:00 PM

Mr. Steckler recommended edits.

Ms. English motioned to approve the January 14, 2021 Exeter Planning Board regular Board meeting minutes, as amended. Mr. Grueter seconded the motion. A roll call vote was taken Cowan – aye, English – aye, Martel – aye, Grueter – aye, Brown – aye, Cameron – aye and Plumer – aye. The motion passed 7-0-0.

IV. NEW BUSINESS

PUBLIC HEARINGS

1. Continued discussion on the application of Brian Griset for review of a Yield Plan in conjunction with a proposed single-family condominium open space development and associated site improvements on property located off Tamarind Lane and Cullen Way. The properties are located in the R-1, Low Density Residential and NP-Neighborhood Professional zoning districts.

Tax Map Parcel S #96-15 and #81-53

Planning Board Case #20-2

Chair Plumer read the Public Hearing Notice out loud and indicated the Board had received a request from the applicant to continue the discussion to the February 11, 2021 Planning Board meeting at 7:00 PM and had asked about meeting in the Nowack Room of Town Hall.

Mr. Sharples indicated the Town is not conducting meetings in the Nowack Room of Town Hall at this time due to COVID-19. The Board agreed the meeting could be rescheduled virtually.

Vice-Chair Brown motioned to continue the discussion on the application of Brian Griset for review of a Yield Plan, Planning Board Case #20-2 to the February 11, 2021 Planning Board regularly scheduled virtual meeting at 7:00 PM. Mr. Grueter seconded the motion. A roll call vote was taken Brown – aye, Cameron – aye, Cowan – aye, English – aye, Martel – aye, Grueter – aye and Plumer aye. The motion passed 7-0-0.

2. The application of RiverWoods Company At Exeter for a minor site plan review for the proposed construction of a 3,378 square foot addition to the existing administration building and associated site improvements to the property located at 6 White Oak Drive. The subject property is located in the R-1, Low Density Residential zoning district.

Tax Map Parcel #80-18

Planning Board Case #20-4

Chair Plumer read the Public Hearing Notice out loud.

Mr. Cameron recused himself as he is a resident of RiverWoods. Chair Plumer indicated Alternate, Nancy Belanger would be active for this hearing.

Mr. Sharples indicated the application was complete and ready for review purposes.

84 ***Ms. Belanger motioned to accept the application of RiverWoods Company At Exeter (Planning Board***
85 ***Case #20-4) as complete for review purposes. Vice-Chair Brown seconded the motion. A roll call vote***
86 ***was taken Belanger – aye, Grueter – aye, English – aye, Cowan – aye, Brown – aye, Martel – aye and***
87 ***Plumer – aye. The motion passed 7-0-0.***

88
89 Mr. Sharples noted the applicant is seeking a minor site plan review for the proposed construction of a
90 3,378 square foot addition to the existing administration building and associated site improvements.
91 The applicant submitted a minor site plan and supporting documents dated March 3, 2020 and revised
92 April 15, 2020 (plans dated stamped December 22, 2020) which were provided to the Board. The TRC
93 meeting was cancelled due to COVID but materials reviewed independently by Town Departments and
94 UEL. Comments dated March 18, 2020 and April 30, 2020 are provided. UEL stated their comments
95 were addressed and DPW has no further comments as well.

96
97 Erik Saari of Altus Engineers appeared on behalf of the applicant and noted Deb Riddell and Bob Lietz of
98 Riverwoods were present as well as two architects, Michael Miller & Russell McLaughlin from AG
99 Architects and Attorney Sharon Somers.

100
101 Mr. Saari posted the aerial plan depicting RiverWoods three campuses and indicated the project site is
102 at the existing "Ridge" Continuing Care Retirement Community located off Kingston Road (NH Route
103 111). Mr. Saari noted this would solve what he referred to as internal space issues by relocating some of
104 the administrative staff. The project would be a small, one-story, addition of 3,185 SF to provide a
105 common room, kitchen, bath, connecting hallway and outdoor improvements such as patios grill, fire
106 pit, a shaded area and connecting sidewalks. There would be no new parking. The drainage system
107 would handle the 2,200 SF of additional impervious surface. The underground system would provide
108 pretreatment and retention before discharge. It will not alter the AOT permit and no other permits will
109 be required. Mr. Saari posted architectural renderings of the interior and exterior and floor plans.

110
111 Ms. English asked if there would be any stone drip edge and Mr. Saari indicated no, there would be
112 gutter systems capturing water and sending it to the drainage system.

113
114 Ms. English, Ms. Martel and Mr. Grueter asked about the 13 mature trees being removed and Mr. Saari
115 indicated all of the trees being removed would be replaced on the campus if they could not be
116 transplanted. Vice-Chair Brown indicated he would like to see a condition that there be the same
117 number of trees post project.

118
119 Ms. English asked about landscaping and Mr. Saari indicated the residents do plantings. Mr. Sharples
120 noted no formal plan is required for minor site plan review. Ms. Riddell noted the community has an
121 Arboretum Committee and resident driven team. The trees will be replaced and the goal of RiverWoods
122 is to have beautiful, thoughtful landscaping and to work with the residents.

123
124 Ms. English asked about the differing sidewalk widths and Mr. Saari indicated the narrower sidewalk is
125 for employees only.

Ms. English asked about lighting and Mr. Saari indicated there would be low level landscaping lights and sconces at the doors.

Ms. English asked about the back of the building and buffering the generators and mechanical equipment and Mr. Saari indicated the administrative employees' offices will be on the aesthetically pleasing side of the building.

Ms. English asked about parking and visitors and Mr. Saari noted the addition is for internal administrative use and not for use with the general public so there will be no additional parking.

Ms. English asked about the two jut-outs off the pool and Mr. Saari indicated they would deal with condensation issues if necessary but likely will not be used.

Chair Plumer opened the hearing to the public for comments and questions at 7:35 PM and being none closed the hearing to the public for deliberations.

Mr. Sharples noted there are no standard conditions (other than the tree condition specified) as the Board has received everything already.

Vice-Chair Brown motioned that the request of RiverWoods Company at Exeter (Planning Board Case #20-4) for Minor Site Plan approval be approved with the condition that the same number of trees removed are planted on or near the project location.

Ms. English amended the motion to substitute the words "on the campus" for "project location" and Vice-Chair Brown accepted the amendment which was seconded by Ms. Belanger. A roll call vote was taken Martel – aye, Grueter – aye, Brown – aye, Belanger – aye, Cowan – aye, English – aye and Plumer – aye. The motion passed 7-0-0.

Ms. Belanger stepped down as Alternate for Mr. Cameron and Mr. Cameron rejoined the meeting.

V. OTHER BUSINESS

Great Bridge Properties LLC – PB Case #19-19
Epping Road
Tax Map Parcel #55-75
Request for extension of Planning Board Conditional Approval (granted 1/23/20)

Chair Plumer read the Public Hearing Notice out loud.

Mr. Sharples noted the applicant submitted the request dated December 21, 2020 for an extension of the conditional approval granted on January 23, 2020 for construction of a multi-use development to include a four-story building with office space and non-residential uses on the first floor, multi-family residential use (28 units) on the upper floors, parking and associated site improvements at 2 Meeting Place Drive. The property is 3.22 acres in area located in the C-2 Highway Commercial zoning district.

Chris Davies of Great Bridge Properties presented the request and noted there were many hurdles to affordable housing and the applicant did not get funding yet. The application process is submitted in the fall, late November or early December and takes months to close. Mr. Davies requested a two-year extension but clarified he had no inconvenience returning to request another extension after one year which Vice-Chair Brown noted is customary for the Planning Board. Mr. Sharples indicated there is no fee for applying for an extension.

Vice-Chair Brown motioned that a one-year extension to the conditional approval granted for the site plan for Great Bridge Properties LLC (Planning Board Case #19-19) be approved. This conditional approval will now be valid through January 23, 2022. Mr. Cameron seconded the motion. A roll call vote was taken Cowan – aye, English – aye, Cameron – aye, Martel – aye, Brown – aye, Grueter – aye and Plumer – aye. The motion passed 7-0-0.

VI. TOWN PLANNER'S ITEMS

VII. CHAIRPERSON'S ITEMS

VIII. PB REPRESENTATIVE'S REPORT ON "OTHER COMMITTEE ACTIVITY"

IX. NON-PUBLIC SESSION PURSUANT TO NH RSA 91-A:3(II)) (consideration of legal advice)

Ms. English motioned to go into non-public session pursuant to NH RSA 91-A:3(II)) consideration of legal advice. Ms. Martel seconded the motion. A roll call vote was taken Grueter – aye Martel – aye, English – aye, Cowan – aye, Cameron – aye, Brown – aye and Plumer – aye. The motion passed 7-0-0.

Mr. Sharples indicated to Exeter TV that the Board would exit but not end the virtual meeting and sign onto a separate virtual meeting and then return to adjourn and seal the minutes in public session.

The meeting was closed to the public at 7:55 PM.

Vice-Chair Brown motioned to come out of non-public session and seal the non-public meeting minutes indefinitely. Mr. Cameron seconded the motion. A roll call vote was taken Brown – aye, Cameron – aye, Cowan – aye, English – aye, Martel – aye, Grueter – aye and Plumer – aye. The motion passed 7-0-0.

The meeting was reopened to the public at 8:48 PM.

202 **X. ADJOURN**

203 ***Vice-Chair Brown motioned to adjourn the meeting. Ms. Martel seconded the motion. A vote was***
204 ***taken, all were in favor, the motion passed unanimously. The meeting adjourned at 8:48 PM.***

205
206 Respectfully submitted,

207 Daniel Hoijer,
208 Recording Secretary



TOWN OF EXETER

Planning and Building Department

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Date: February 4, 2021
To: Planning Board
From: Dave Sharples, Town Planner
Re: Brian Griset Yield Plan PB Case #20-2

The applicant submitted a Yield Plan in advance of an Open Space Development as required per Section 7.7.1 of the Zoning Ordinance that states: "The dwelling unit density shall be determined using a "Yield Plan" which shall be provided by the applicant and reviewed and accepted by the Planning Board prior to proposing an Open Space Development Plan." The subject parcel is located off of Tamarind Lane and Cullen Way, in the R-1, Low Density Residential district and is identified as Tax Map Parcel #96-15.

The Applicant appeared before the Board at the January 14, 2021 meeting and presented a revised yield plan for the Board to review. There were several abutters who voiced concerns and spoke in opposition to the plan. The public hearing was closed and the Board subsequently voted to table further discussion of the application until the January 28th, 2021 meeting. The Applicant provided additional/updated information for the Board to review prior to the January 28th, 2021 meeting which resulted in the public hearing having to be re-opened for public comment at this meeting. Correspondence was also received from abutters prior to the meeting and was forwarded to all board members via e-mail (copies of abutter correspondence are enclosed). Subsequently, at the meeting on January 28th, 2021, the Applicant requested a continuance to the next Planning Board meeting on February 11th, 2021.

After speaking with the Chair and Vice Chair, I will provide a brief presentation on conventional subdivision design and Open Space Development design and highlight why we go through a yield plan process and what the purpose and intent of this exercise is. I believe that this short presentation will aid the board and the public in understanding the yield plan process and why we use it to determine density for a future Open Space Development.

The Applicant is requesting a waiver from Section 7.13 of the Board's Site Plan Review & Subdivision Regulations as was noted at the last meeting. I have enclosed a copy of the correspondence received from Attorney Pasay addressing the waiver request, dated December 4, 2020.

In the event the Board decides to act on the application, I have provided motions below for your convenience.

Waiver Motions

Yield Plan waiver motion: After reviewing the criteria in Section 13.7 and Section 9.6.1.2 for granting waivers, I move that the request of Brian Grisct (PB Case #20-2) for a waiver from the requirement to provide a Yield Plan that shall not require a variance from existing zoning ordinances be APPROVED / APPROVED WITH THE FOLLOWING CONDITIONS / TABLED / DENIED

Planning Board Motions

Yield Plan Motion: I move that the request of Brian Grisct (PB Case #20-2) for Yield Plan approval of a ____ unit Single Family Open Space development be APPROVED / APPROVED WITH THE FOLLOWING CONDITIONS / TABLED / DENIED.

Enclosure(s):

- Letter to PB dated 1/26/21 on behalf of residents of Tamarind Lane and Cullen Way submitted by Peter Lennon, resident at 20 Cullen Way
- Letter to PB dated 1/28/21 (with e-mail attachments) from Mark Paige, resident of 13 Tamarind Lane
- Engineering Report from Steven B. Keach, P.E. (Keach-Nordstrom Associates, Inc), dated 1/28/21, submitted by Neil Bleicken, resident of 11 Tamarind Lane
- Letter to PB dated 1/28/21 from Lisa and Neil Bleicken, residents of 11 Tamarind Lane
- Letter from Attorney Justin Pasay, on behalf of the Applicant, dated 1/28/21, requesting a continuance to the 2/11/21 PB meeting
- Correspondence from Gove Environmental Services (GES), dated 2/3/21, provided by the Applicant regarding the wetland/floodplain crossings concerns

Thank You.



GOVE ENVIRONMENTAL SERVICES, INC.

Memorandum

Date: 03 February 2021

To: Brian Grisct

From: Jim Gove 

Re: Residential Development, Tamarind Lane, Exeter, NH

Subject: Preliminary Yield

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FEB -3 2021

EXETER PLANNING OFFICE

I have reviewed the latest yield plan for your project located off Tamarind Lane in Exeter.

It has come to my attention that representations have been made to the Planning Board that viable uplands cannot be accessed if the access has to cross either wetlands or floodplains, particularly as it relates to lots 5, 6, 15, 16 and 17 as depicted on the yield plan. This is not an accurate interpretation. The State of New Hampshire and the Town of Exeter have routinely permitted wetland crossings and floodplain crossings to access uplands for development. The only criteria for such crossings are that the impacts be minimized. In fact, the State of New Hampshire and the Town of Exeter, to my knowledge, have never denied access to uplands that are viable sites for either residential or commercial projects.

The crossing impacts depicted on the yield plan would be assessed on the same basis as all wetland impacts. In order to obtain a permit, the applicant must apply avoidance and minimization. If the uplands can be accessed without impacts, then the applicant must do so. But, if the uplands are not accessible without a direct impact, then the applicant must use the least impacting alternative. However, it does not mean that the applicant will be denied access to viable uplands. It does mean that the applicant must use the alternative with the least amount of impact.

In reviewing the yield plan, there are three direct impacts. The first two are on land of Grisct and have a combined impact of 4,727 square feet. The third crossing is within a right-of-way on land adjacent to the Mendez Real Estate Trust property and is 7,430 square feet. None of these impacts are considered excessively large for wetland crossings. In fact, they are typical and on the smaller side of wetland crossing impacts.

Impact 1 relates to Wild Apple Lane which would provide access to the largest portion of upland on the Grisct land. Wild Apple Lane would provide access to five lots (Lots 7, 8, 9, 10 and 11) and legal frontage to several more (Lots, 3, 5, 6, 13, 15, 16, 17). Due to the right of way which it must cross to access the upland area from Tamarind Lane, Wetland Impact 1's location is constrained and wetland impacts are required to reach the upland. At 2,702 square feet, it is a typical small wetland

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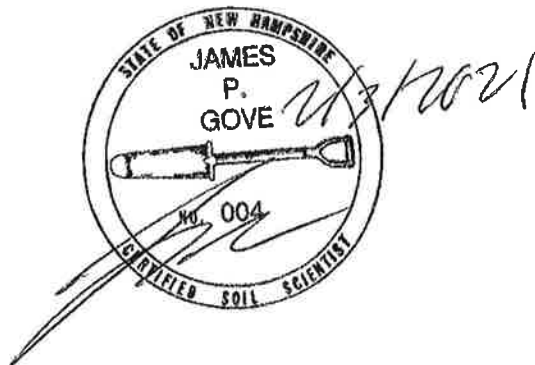
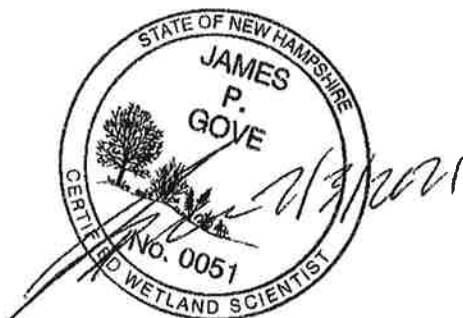
impact crossing, and, in my opinion, would be granted a conditional use permit from the Town of Exeter and a State wetland permit.

Impact 2 is to provide a combined access to two upland lots (Lots 5 and 6). Making one crossing to access two lots is a minimization measure that is often suggested by the DES Wetlands Bureau. The impact is 2,025 square feet and crosses the wetlands at narrowest point to access the uplands. It is my opinion that this wetland crossing would be granted a conditional use permit from the Town of Exeter and a State wetland permit.

Impact 3 is 7,430 square feet and is also constrained by the location of a right of way. Impact 3 would provide access to three lots (Lots 15, 16, and 17). This area of impact has already been altered by grading to create a path in the right of way. These would be considered altered wetlands that have low function and value. Per avoidance and minimization, wetlands that have already been altered should be the ones that are impacted, particularly where, like here, there is no other alternative to gaining access. Again, it is my opinion that this wetland crossing would be granted a conditional use permit from the Town of Exeter and a State wetland.

In summary, after review of each of the proposed wetland impact areas, it is my professional opinion that permits would be granted for all of them. As a result, and from a wetlands perspective, all of the lots depicted on the yield plan appear reasonably achievable, viable and feasible.

The impacts to flood plain by the access crossings are even less problematic in my opinion, though I am not an engineer. These are very minimal fills that would provide virtually no discernible change to the flood storage volume. The Town of Exeter's flood zone ordinance allows for crossing impacts. Christian Smith will confirm this conclusion in accordance with the applicable Exeter ordinances.





CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

28 January 2021

Langdon Plumer, Chairman
Town of Exeter Planning Board
10 Front Street
Exeter, NH 03833

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JAN 28 2021

EXETER PLANNING OFFICE

Re: Continuance Request, Planning Board Case #20-2

Dear Chairman Plumer and Members –

The Applicant respectfully requests a continuance from the 28 January 2021 Planning Board meeting in the above referenced case such that it is taken up by Planning Board at its Thursday, 11 February 2021 meeting at 7:00 PM. We understand that this meeting will be held virtually but if the Board is to conduct the meeting in public, we ask that this matter, in addition to be continued to the date and time referenced above, be continued to the appropriate physical location for the meeting, presumably the Nowak Room of the Town Office Building at 10 Front Street. We understand that no attendance at tonight's hearing is required for this continuance request but Brian Griset will be present virtually to the extent any questions arise.

Thank you very much for your time and attention.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sc

Cc: Brian Griset
Christian Smith, P.E., Beals Associates, PLLC

DONAHUE, TUCKER & CIANDELLA, PLLC
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83 Clinton Street, Concord, NH 03301

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January 28, 2021

JAN 28 2021

Langdon Plumer, Chairman
Town of Exeter Planning Board
10 Front Street
Exeter, NH 03833

EXETER PLANNING OFFICE

Re: Planning Board Case #20-2

Dear Chairman Plumer and Planning Board Members:

We appreciate the opportunity to comment and wish to highlight a few points as the Board considers the latest yield plan.

1. The transfer of density that this yield plan requires has not yet been adopted by Town Meeting as an innovative land use control in Exeter.¹
2. Irrespective of the above, the Town and the Grisets agreed in 1991 to the maximum number of lots to be built on the Griset parcel.² According to the agreement, no more than 10 lots remain for a cluster subdivision, inclusive of the lots from Brickyard Park, following the development of the Exeter Green subdivision and Greybird Farm Circle.
3. The lots yielded from this current plan depend on expansive floodzones, wetlands, and prime wetlands. By acreage, more than half, almost two thirds of this yield plan is wetlands. One wonders about the construction and flood insurance costs, the desirability of a home in an AE flood zone, and the impacts of building on these lots.³ Is this yield plan design with 16 lots utilizing every bit of upland and a good portion of the flood zones and wetlands actually feasible and viable?

As described in the Zoning Ordinance, an open space development aims to "promote the conservation of open space and the efficient use of land in harmony with its natural features".⁴ It would be an unfortunate, inefficient outcome for the land, its inhabitants, and its neighbors to ultimately be overburdened beyond its capacity, by this theoretical yield plan design and in its ultimate design.

We recognize the Grisets' right to develop their properties. We hope what is planned and ultimately built is viable, feasible, sustainable, and appropriate for the Griset and Mendez Trust parcels, within the letter and spirit of Exeter's regulations and ordinances, and tolerable, ideally even beneficial, for the surrounding parcels, habitats, and neighborhoods.

¹ Letter from Attorney Britain, Cleveland, Waters and Bass, P.A. to Town of Exeter Planning Board July 9, 2020

² Letter from Attorney Britain, Cleveland, Waters and Bass, P.A. to Town of Exeter Planning Board September 9, 2020

³ Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. Base Flood Elevations (BFEs) are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply. <https://www.fema.gov/zone-ae-and-a1-30>

⁴ Exeter Zoning Ordinance – Amended March 2020. 7.1 The purpose of this Open Space Development article is to encourage flexibility in design and development of land in order to promote the conservation of open space and the efficient use of land in harmony with its natural features.

Thank you again for the opportunity to comment.

Sincerely,
Lisa and Neil Bleicken
11 Tamarind Lane

RECEIVED

JAN 28 2021

Memo

EXETER PLANNING OFFICE

To: Neil & Lisa Bleicken

From: Steven B. Keach, P.E.

Date: January 28, 2021

Subject: Exeter Planning Board Case No. 20-2 (Brian Griset Yield Plan)
Property Located off Cullen Way & Tamarind Lane
Exeter, New Hampshire
KNA Project No. 20-0626-1

Recall that on September 10, 2020 the Exeter Planning Board approved a yield plan, pursuant to authority of Section 7.7.1 of the Zoning Ordinance and Section 7.13 of the Subdivision Regulations, which effectively established the measure of residential density (12 lots) of an Open Space Development (OSD) contemplated by the owner/applicant at that time. It is our understanding that to date, the owner/applicant has yet to advance an application for final approval of this OSD. Rather, we understand the owner/applicant currently seeks to expand the extent of OSD land, and corresponding residential density, through addition of 30.76-acre Lot 81-53, now or formerly owned by Mendez Real Estate, to the future OSD project. At your request we have reviewed materials accessible via the Planning Board page on the Town of Exeter municipal website pertaining to this current request and offer the following remarks:

1. Supplemental land to be added to this OSD application (Lot 81-53) is situated in the Neighborhood-Professional (NP) District. We understand the owner/applicant received both a special exception and variance on January 21, 2020 for the purposes of enabling this parcel to be used in the calculation of residential density of an OSD otherwise situated in the Low Density Residential (R1) District. The current application for Yield Plan amendment relies on these prior actions of the Zoning Board of Adjustment in seeking approval to increase OSD density from 12 to 17 lots.
2. As shown on a series of drawings and exhibits submitted with the current application for Yield Plan amendment, the majority of the reported 30.76-acres at Lot 81-53 is comprised of land identified as jurisdictional wetland, including several acres of prime wetland. Further, the same drawings and exhibits suggest an even greater portion of Lot 81-53 is situated at or below base flood elevation. In general, land comprised of wetland and/or situated below base flood elevation

Civil Engineering

Land Surveying

Landscape Architecture

is constrained and precluded from development under applicable local, State and Federal land use regulations, ordinances and/or administrative rule. We also note that Lot 81-53 does not enjoy benefit of direct frontage and access on a Class V or better public street. Although not submitted with the current application for Yield Plan amendment, we presume any incremental density awarded by the Exeter Planning Board will ultimately be used in order to correspondingly increase dwelling unit density on upland portions of the OSD situated on Lot 96-15 such that no building or development will occur on Lot 81-53.

3. Again, as we acknowledged in a letter report prepared by this office on July 08, 2020 applicable controls and standards governing Open Space Development are established under Article 7 of the Exeter Zoning Ordinance. These controls include Section 7.7.1 entitled "Density" which reads in part: *The dwelling unit density shall be determined using a "Yield Plan" which shall be provided by the applicant and reviewed and accepted by the Planning Board prior to proposing an Open Space Development Plan. The Yield Plan is used to determine the density that is **reasonably achievable under a conventional subdivision** following the requirements of the Zoning Ordinance and Site Plan Review Regulations of the Town.* Although it appears each of the 17 Yield Plan lots illustrated on the current Yield Plan satisfy basic zoning requirements, such as minimum lot area and frontage, it is abundantly clear that residential construction on several Yield Plan lots, including Lots 5, 6, 15, 16 & 17 in particular, would be precluded due to need for a series of significant impacts to land situated in the Wetlands Conservation District and/or governed by the Floodplain Development Ordinance that would be needed in to provide driveway access and utility accommodations for the construction of dwellings situated remotely from future and existing streets intended to provide these lots access and frontage. Although we continue to have serious reservations as to the true feasibility and viability of several of the 12 Yield Plan lots accepted by the Planning Board this past September, primarily due to limited land area available for lawful construction of homes and related improvements (see letter report dated July 08, 2020), the extent of wetland and flood hazard area impacts and associated relief from established provisions of the Zoning Ordinance required in order to simply gain access to current Yield Plan Lots 5, 6, 15, 16 & 17 alone serves to demonstrate that creation of these five lots would not be reasonably achievable under a conventional subdivision proposal. Correspondingly, in our opinion none of the five aforementioned Yield Plan lots satisfy the requirements of Section 7.7.1 of the Zoning Ordinance as presented.
4. Lastly, as information submitted to the Planning Board for Yield Plan consideration demonstrates, whatever the extent of OSD density ultimately awarded is, that number of dwelling units will likely be situated on limited upland area generally situated in the vicinity of Yield Plan Lots 1 through 4 & 7 through 10. Although public discussion and dialogue which has occurred to date in response to the owner/applicant's pursuit of OSD approval has for the most part

properly focused on Yield Plan considerations, it must be recognized that approval of an overly aggressive Yield Plan has potential to invite overutilization and crowding of those limited areas of upland available for development at this location. In our view it is important to be mindful that the resulting measure of approved Yield Plan density must ultimately be sited on two limited areas of upland that are further constrained by need for compliance with applicable provisions of the Zoning Ordinance requiring buffering of immediately adjoining residential neighborhoods and wetland. Given lack of land upon which to properly site and construct residential dwellings together with streets, drainage improvements and utility infrastructure, we fear the currently proposed Yield Plan may seek approval of a greater measure of density than the limited area of land available for construction can reasonably be expected to support. Although proper determination of Yield Plan density is a necessary first step in advancement of an OSD application under Article 7 of the Exeter Zoning Ordinance, it must be recognized that the measure of residential density that is the outcome of that determination must ultimately be sited and constructed in a manner consistent with all other applicable requirements of the Town's adopted land use regulations and ordinances including stated Purposes and Objectives of the Zoning Ordinance in general (Article I – Section 1.2) and Open Space Development Ordinance (Article 7 – Section 7.2).



Barbara Mcevoy <bmcevoy@exeternh.gov>

Re: Engineer's Rpt for Tonight's PB Meeting re Griset YP

1 message

Neil Bleicken <neil.bleicken@gmail.com>

Thu, Jan 28, 2021 at 3:32 PM

To: David Sharples <dsharples@exeternh.gov>

Cc: Barbara Mcevoy <bmcevoy@exeternh.gov>

Many thanks Dave.

Neil

On Thu, Jan 28, 2021 at 3:09 PM David Sharples <dsharples@exeternh.gov> wrote:

Hi Neil,

Got you VM and all set. This will be part of the file.

Thanks,

Dave

On Thu, Jan 28, 2021 at 2:49 PM Neil Bleicken <neil.bleicken@gmail.com> wrote:

Hi Dave,

Attached is a report from our engineer Steven Keach that we are submitting to the Planning Board for this evening's meeting as it review's Brian Griset's new Yield Plan. Would you please let me know that you've received this note and plan and also forward it to the members of the Planning Board for their consideration this evening.

Many thanks for your assistance with this matter.

Best,

Neil Bleicken

11 Tamarind Lane

RECEIVED

JAN 28 2021

28 January 2021

VIA EMAIL

Exeter Planning Board
10 Front Street
Exeter, NH 03833

EXETER PLANNING OFFICE

Re: PB Case # 20-2

Dear Members of the Exeter Planning Board:

I request that the Board revisit the Town-contracted engineer's (Underwood Engineering) comments regarding the building envelope (25' x 25') depicted in the Yield Plan in the above-referenced case. I have attached the engineer's comments to this letter.

1. Town-contracted Engineer's Comments.

The Town's engineer reviewed the Applicant's Yield Plan and *initially* concluded that:

Although in practicality, some of these lots would not be buildable, on paper they appear to meet the requirements.¹

A plain reading of these initial comments suggests that while the plan may meet certain objective requirements, some of the depicted lots are not realistic or viable. But based on these initial comments, the yield plan fails under a subjective assessment of reasonableness of the plan.

The engineer later revised her comments at "the request for clarification" by the Town Planner. The amended comments read:

In response to your request for clarification of my comment...I would like to amend my choice of the word 'buildable' to the word 'desirable.'²

Even the amended characterization of the envelopes in certain lots (from would "not be buildable" to would "not be desirable") questions the overall reasonableness, viability, and feasibility of the Plan.³

2. There are no Town Regulations regarding building envelope minimums.

The Town contracted engineer's clarifying comments (e.g., lots would "not be desirable") arose on suggestions that the Board previously approved similar building envelopes in Rose Farm.⁴ Her

¹ Email from Allison Rees to Dave Sharples. (March 5, 2020).

² Email from Allison Rees to Dave Sharples. (June 5, 2020).

³ The engineer contracted by abutters reached the same conclusion and his report is part of the record of this case. Letter from Keech-Nordstrom Engineers to Jon Elliott, p. 3. (July 8, 2020).

⁴ Email from Christian Smith to Allison Reese. (March 5, 2020).

amended comments reflect a view that if the Board approved building envelope size in Rose Farm it *must* do so in every subsequent case.

But, to my knowledge, there is no codified regulation governing minimum building envelope that, if satisfied, would "check the box" of a yield plan approval. The question is open to a case-by-case assessment. A reasonably achievable yield plan or building envelope in Rose Farm may be unreasonable in this case.

Here, the Town engineer's comments on the building lots (*both initial and revised*) with respect to this proposal, call into doubt the overall reasonableness, feasibility, and viability of the Applicant's plan.

Very truly yours,

Mark Paige

13 Tamarind Lane
Exeter, NH 03833

Encls.

Subject: RE: Tamarind Lane yield plan



Allison M. Rees <arees@underwoodengineers.com>
to David Sharples

Thu, Mar 5, 10:57 AM

Dave,

Although in practicality, some of these lots would not be buildable, on paper they appear to meet the requirements. I have no further comments.

Thank you,
Allison



Allison Rees, P.E.
Senior Project Engineer
Underwood Engineers
99 North State Street
Concord, NH 03301
(603) 230-9898

From: David Sharples [mailto:dsharples@exeternh.gov]
Sent: Thursday, March 5, 2020 10:43 AM
To: Allison M. Rees <arees@underwoodengineers.com>
Cc: Christian Smith <CSmith@bealsassociates.com>
Subject: Re: Tamarind Lane yield plan

Hi Allison,

Our regulations do not stipulate a building envelope for yield plans. However, on two prior applications (Rose Farm and 98 Linden St), the PB discussed this issue and decided that a minimum of a 25' x 25' building envelope is what needs to be shown. I understand that most homes do not fit into this footprint and likely every home that gets built if this project gets that far will be larger than that but that is what the PB settled on as a minimum building envelope acceptable for yield plan purposes.

Thanks,
Dave

On Thu, Mar 5, 2020 at 10:36 AM Allison M. Rees <arees@underwoodengineers.com> wrote:

Dave

On Thu, Mar 5, 2020 at 10:36 AM Allison M. Rees <arees@underwoodengineers.com> wrote:

Thanks, this is definitely easier to see.

Dave, please confirm the 25' outside dimension square house size. That leaves about 500 SF of living area per floor (after taking out some space for walls) if there is no garage, which is smaller than an average 1-bedroom apartment size of 714 sf.

Zoning limits heights to 35', which is a 2-story house. So it could be about 1,000 SF of living space with no garage. Just want to make sure this is okay.

Thanks,
Allison



Allison Rees, P.E.
Senior Project Engineer
Underwood Engineers
99 North State Street
Concord, NH 03301
(603) 230-9898

From: Christian Smith [mailto:CSmith@bealsassociates.com]
Sent: Thursday, March 5, 2020 10:24 AM
To: Allison M. Rees <arees@underwoodengineers.com>
Cc: 'David Sharples' <dsharples@exptornh.gov>
Subject: RE: Tamarind Lane yield plan

Allison, I have provided a red hatch in the buildable areas for the lots as well as the 25'x25' house boxes that Dave suggested we add yesterday. As I understand it, the Planning Board determined that the 25'x25' was a reasonable depiction of a smaller home for lots with tight building envelopes during the Rose Farm application proceedings.

Christian O. Smith, P.E.
Principal

Beals Associates, PLLC
csmith@bealsassociates.com

Stratham, NH Office
70 Portsmouth Avenue
Stratham, NH 03885
Tel: 603-583-4860
Fax: 603-583-4863

Tel: 603-583-4860

Fax: 603-583-4863

Cell: 603-234-2180

Land Planning Civil Engineering Landscape Architecture
Offices in Boston, MA and Stratham, NH

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From: Allison M. Rees <arees@underwoodengineers.com>

Sent: Thursday, March 5, 2020 10:07 AM

To: Christian Smith <CSmith@bealsassociates.com>

Cc: 'David Sharples' <dsharples@exeternh.gov>

Subject: Tamarind Lane yield plan

Hi Christian,

I'm having a tough time deciphering all the different wetlands, buffers, setbacks, etc. on the revised yield plan. Can you please indicate the buildable upland area (not including buffers) on each lot for clarity? Even if it's just by hand, that's fine. Any way that clearly indicates the buildable upland portion – shading, highlighting, clouding, etc.

Thanks,

Allison



Allison Rees, P.E.

Senior Project Engineer

Underwood Engineers

99 North State Street

Concord, NH 03301

(603) 230-9898

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This electronic mail transmission is privileged and confidential and is intended only for review of the party to whom it is addressed. If you have received this transmission in error, please notify the sender immediately by reply e-mail and delete this transmission.



Barbara Mcevoy <bmcevoy@exeternh.gov>

Fwd: Tamarind Lane yield plan

1 message

David Sharples <dsharples@exeternh.gov>
To: Barbara Mcevoy <bmcevoy@exeternh.gov>

Fri, Jun 5, 2020 at 10:20 AM

----- Forwarded message -----

From: Allison Rees <arees@underwoodengineers.com>
Date: Fri, Jun 5, 2020 at 9:59 AM
Subject: RE: Tamarind Lane yield plan
To: David Sharples <dsharples@exeternh.gov>

Dave,

In response to your request for clarification of my comment which I highlighted below, I would like to amend my choice of the word "buildable" to the word "desirable".

Thank you,

Allison

**Allison Rees, P.E.***Senior Project Engineer***Underwood Engineers**

99 North State Street

Concord, NH 03301

(603) 230-9898

From: Allison M. Rees <arees@underwoodengineers.com>
Sent: Thursday, March 5, 2020 10:57 AM

To: 'David Sharples' <dsharples@exeternh.gov>
Subject: RE: Tamarind Lane yield plan

Dave.

Although in practicality, some of these lots would not be buildable, on paper they appear to meet the requirements. I have no further comments.

Thank you.

Allison



Allison Rees, P.E.

Senior Project Engineer

Underwood Engineers

99 North State Street

Concord, NH 03301

{603} 230.9898

From: David Sharples [mailto:dsharples@excternh.gov]
Sent: Thursday, March 5, 2020 10:43 AM
To: Allison M. Rees <arees@underwoodengineers.com>
Cc: Christian Smith <CSmith@bealsassociates.com>
Subject: Re: Tamarind Lane field plan

Hi Allison,

Our regulations do not stipulate a building envelope for yield plans. However, on two prior applications (Rose Farm and 98 Linden St), the PB discussed this issue and decided that a minimum of a 25' x 25' building envelope is what needs to be shown. I understand that most homes do not fit into this footprint and likely every home that gets built if this project gets that far will be larger than that but that is what the PB settled on as a minimum building envelope acceptable for yield plan purposes.

Thanks,

Dave

On Thu, Mar 5, 2020 at 10:36 AM Allison M. Rees <arees@underwoodengineers.com> wrote:

January 26, 2021

(updated letter
- new signatory)
added

**Exeter Planning Board
Town Offices
10 Front Street
Exeter, NH 03833
Case #20-2 Yield Plan Review**

Dear Chairman Plumer and Members of the Exeter Planning Board:

The undersigned residents of Tamarind Lane and Cullen Way, Exeter want to express our strong objection to the proposed Yield Plan and subdivision development as presented in Case #20-2 now before you.

We raise this objection for the following reasons:

- (1) This Yield Plan and proposed sub-division represent a significant expansion over the Yield Plan approved by the Planning Board last year for this general location. The approved plan contemplated the placement of 12 houses with a limited access road from Tamarind Lane and no significant access road from Cullen Way.

The new plan envisions as many as 17 houses and significantly longer access roads from both streets that appear to intrude into wetlands. This plan severely taxes beyond its reasonable capacity the R-1 Low Density Residential land on which these houses are to be built.

- (2) Despite the applicant's claim to the contrary, this latest Yield Plan represents the third iteration to be brought to the Planning Board. Each plan represents an attempt by the applicant to increase the number of contemplated houses, despite the fact that each increase would not only change the very nature of our neighborhood, but also would increase the negative impacts of the construction period and the post-construction period, especially with respect to expanded traffic and lower pedestrian safety.

This is especially significant since both Tamarind Lane and Cullen Way are heavily used pedestrian walkways that experience a high volume of children at play.

- (3) The variance and special exception granted to the applicant on January 21, 2020 were specific to the Yield Plan presented at that time. They are invalid precedents for this different Yield Plan.
- (4) This Yield Plan, like the Yield Plan approved on January 21, 2020, relies on a density transfer granted by the Exeter Zoning Board of Adjustment (ZBA) that the ZBA lacks the authority to give. This is so because Town voters have never granted the ZBA such authority. In addition, this latest Yield Plan requires another zoning variance that would violate Site Plan Regulations. These deficiencies are unlikely to survive a court challenge.
- (5) The applicant relies on a 1991 agreement signed by the Planning Board at that time to support the density transfer that enable his Yield Plan. Despite the applicant's claim otherwise, there is a serious legal question whether a 30-year-old agreement under now outdated conditions and assumptions remains valid.

- (6) Despite our serious attempt to engage the applicant in negotiations to reach a realistic compromise that would reduce the impact on our neighborhood, the applicant has made no real attempt to negotiate in good faith. His only response has been to reiterate the outlines of his varying proposals that accomplish 100% of his objectives.
- (7) The redrawn lot lines in the latest Yield Plan, especially with respect to locations only 50 feet from frequently active rail tracks, undercuts the applicant's claim that the contemplated sub-division is realistic, feasible, and financially viable.

We would ask that this entire letter be placed before the Planning Board and incorporated into the official record of this Case.

Thank you in advance for your consideration of these views.

Cordially,

Larry Arlen
Jacqueline Arlen
23 Cullen Way

Chris Benevides
Courtney Benevides
9 Cullen Way

Lisa Bleicken
Neil Bleicken
11 Tamarind Lane

Jason Conway
Patricia Conway
5 Tamarind Lane

Kelsey Cosgrove
Terrence Cosgrove
21 Cullen Way

Susan Desjardins
Peter Lennon
20 Cullen Way

Dawn Ebbetts
Douglas Sharek
18 Cullen Way

Jon Elliott
Colene Elliott
6 Tamarind Lane

Maury Fremont-Smith
Jean Fremont-Smith
19 Cullen Way

David Hadden
Amie Hadden
12 Tamarind Lane

Laura Knott
Trevor Knott
15 Tamarind Lane

Chris Lewis
Molly Lewis
6 Cullen Way

Ed Liptak
Anne Bennett
10 Tamarind Lane

Maggie Loranger
16 Cullen Way

Terry Moran
Anne Moran
14 Tamarind Lane

Mark Paige
Laura Paige
13 Tamarind Lane

David Priestley
Katheryne Priestley
8 Cullen Way

Patricia Prue
David Wright
10 Cullen Way

Thomas J. Smith
Linda D. Smith
7 Tamarind Lane

Anne Surman
Tom Seidenberg
14 Cullen Way

Bob Lietz
Rebecca Lietz
3 Tamarind Lane



Barbara Mcevoy <bmcevoy@exeternh.gov>

Fwd: Updated Letter

1 message

David Sharples <dsharples@exeternh.gov>
To: Barbara Mcevoy <bmcevoy@exeternh.gov>

Wed, Feb 3, 2021 at 2:51 PM

----- Forwarded message -----

From: Peter Lennon <orvamdogs@gmail.com>
Date: Mon, Feb 1, 2021 at 9:16 AM
Subject: Updated Letter
To: David Sharples <dsharples@exeternh.gov>
Cc: <orvamdogs@gmail.com>

Dave,

Hope all goes well this about to be very snowy Monday.

We had two more signatories to our letter re: Case 20-2 (Griset (How could we forget?)) come back to us about an hour after I delivered the letter to you by email.

Would it be possible, please, to circulate the latest version to the PB, asking them to delete the previous one as there are new signatories? The new signatories are Bob and Rebecca Lietz at 8 Tamarind Lane. They added in the bottom right corner of the second page.

Thanks in advance for your consideration.

Cordially,

Peter

Peter D. Lennon

Susan Y. Desjardins

20 Cullen Way

Exeter, NH 03825

603-583-5950 (v)

603-583-5974 (f)

719-325-8685 – Peter's Cell



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

4 December 2020

Town of Exeter Planning Board
Attn: David Sharples, Planner
Town of Exeter
10 Front Street
Exeter, NH 03833

Re: Planning Board Case #20-2

Dear David --

Enclosed please find a final revised 17-lot yield plan for review and consideration by the Planning Board at its January hearing. We anticipate a short, 15-minute presentation to highlight the minor differences between this yield plan proposal and previous iterations of same. A single waiver from Section 7.13 of the Site Plan Review and Subdivision Regulations for the Town of Exeter (the "Regulations"), as previously presented, is requested to permit a yield plan which previously obtained a variance from the Zoning Board of Adjustment (the "ZBA").

The Grisets' return to this yield plan results from the Planning Board's 10 September and 22 October denials of the Grisets' Section 9.6.1.2 perimeter buffer waiver request for lot 5 (the "Lot 5 Waiver"), which denial is the difference between a financially viable and inviable project. The enclosed yield plan, which does not include Lot 5 per the direction of Planning Board, has been reviewed and vetted by the Town Planning Staff and Technical Review Committee ("TRC"). It meets all of the Town's technical Regulations. It is reasonably achievable, viable, and feasible as evidenced by Grisets filings and presentations to the TRC and Planning Board over the last 11 months, and it has obtained all ZBA relief needed to proceed. This yield plan should be accepted. Should the Planning Board decline to accept this yield plan, we ask that it approve a motion to deny the Grisets' applications in Planning Board Case #20-2.

Requested Waiver, Section 7.13

The Grisets have followed the guidance and instruction from the Town in this matter from the beginning. The yield plan before the Planning Board benefits from an Administrative Decision, special exception and a variance from the ZBA that permits this precise yield plan to be utilized in this case, as presented. This yield plan has been reviewed and vetted by the Town's Planning Staff and TRC. It is reasonably achievable, feasible, and viable. Opposition to the Grisets' proposal, not the Town, raised the Section 7.13 issue at the 11 June 2020 hearing. In

DONAHUE, TUCKER & CIANDELLA, PLLC

16 Acadia Lane, P.O. Box 630, Exeter, NH 03833

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1-800-566-0506

83 Clinton Street, Concord, NH 03301

www.dtcclawyers.com

response, we have briefed the Planning Board at length, verbally and in writing, regarding the basis for this waiver request.¹ The Grisets' have provided the entirety of the Administrative Decision and ZBA records to the Planning Board for its consideration and review.² The Grisets have presented a comprehensive waiver argument to the Planning Board for why a waiver from Section 7.13 should be granted.³ Finally, we understand Town Counsel has provided a legal opinion to the Planning Board regarding this issue. The Grisets submit that a waiver from Section 7.13 should be granted for the reasons previously provided. We ask the Planning Board to re-acquaint itself with the filings and arguments the Grisets have previously made in advance of the January Planning Board hearing.

Procedural History

The Grisets also ask the Planning Board to consider the procedural history and local review of their proposal to date, which should inform its review and consideration of the Section 7.13 waiver request. As noted above, the Grisets have made every effort to be as transparent as possible, have involved the Town from the beginning of the process, and have followed and relied upon the advice of the Town through the process, to include obtaining the ZBA relief the Town indicated was necessary to utilize this precise yield plan. We summarize that process below.

1) Pre-Filing Efforts

- In the spring of 2019 the Grisets began the process of permitting the Giset Property (Town Tax Map 96, Lot 15) in the R-1 District and the abutting Mendez-Trust Property (Town Tax Map 81, Lot 53) in the Neighborhood-Professional ("NP") District (collectively, the "Properties").
- The Grisets developed an 18-lot yield plan depicting R-1 size lots across both Properties and a corresponding conceptual site plan depicting a single-family condominium development on the upland area of the Giset Property.
- Then, like now, the Grisets proposed to convey the entirety of the Mendez-Trust Property to the Town's Conservation Commission.
- The Grisets met with the Town Planning Staff and the Town's Code Enforcement Officer ("CEO"), with and without counsel, several times in the summer of 2019 to vet their yield plan and conceptual site plan.
- One of the primary results of that process was the guidance from the Town that the Grisets needed a special exception to depict residential uses in the NP District to proceed with the yield plan.

2) Planning Board Design Review

- In an effort to vet its yield plan and conceptual site plan and identify any problems, the Grisets appeared before the Planning Board on 26 September 2019 for a design review. Part of the Grisets' presentation included summarizing the ZBA relief it planned to

¹ See Ltr to Planning Board, dtd 3 June 2020.

² See Ltr to Planning Board, dtd 10 July 2020 (the "10 July 2020 Letter").

³ See 11 June 2020 Planning Board Hearing.

pursue. Though solicited, the Planning Board offered no critical review of the yield plan or conceptual plan, no substantive review of the design, and did not mention §7.13 of the Regulations or the Grisets' planned ZBA filings. Rather, the response of the Planning Board appeared positive. A contingent of neighbors from the Exeter Green neighborhood appeared to vehemently oppose the project based on unsubstantiated claims.

3) Administrative Decision

- Notwithstanding the original interpretation from the Town that the Grisets only needed a special exception to proceed with the yield plan, in October, the Grisets learned that variance relief may also be required.
- On 28 October 2019, the Grisets filed a request for administrative decision with the CEO to confirm whether variance relief was necessary to utilize its 18-lot yield plan before the Planning Board.⁴
- On 30 October 2019, the CEO issued an Administrative Decision which determined that to utilize the yield plan, the Grisets required:
 - o A special exception to depict residential uses in the NP District on the yield plan.
 - o A variance to "transfer density" from the NP District to the R-1 District.
- The CEO's Administrative Decision also determined that the Grisets reserved their development rights over the Town-owned property identified as Town Tax Map 81, Lot 57 (the "Town Property") (the "Administrative Decision").⁵
- In response to the Administrative Decision, the Grisets asked the CEO from which zoning ordinance they needed variance relief from. The CEO's response was that "there is nothing in our ordinance that allows density transfer between zones, therefore it is not permitted so any request would require a variance."⁶
- The Administrative Decision was not appealed by anyone.

4) ZBA Relief

- In reliance on the CEO's Administrative Decision, on 4 November 2019 the Grisets filed an appeal of the Administrative Decision, a broad variance application seeking relief from the entirety of Article 4.3, Schedule II of the Zoning Ordinance, which is the Town's Density and Dimensional Regulations, and the entirety of Article 7, which is the Town's Open Space Development Ordinance, to permit what the CEO described as the "density transfer between zones." The Grisets also filed a special exception application to depict residential uses in the NP District on the yield plan.⁷
- On 12 November 2020, after a site walk with the Planning Board and Conservation Commission, the Grisets' presented their yield plan and conceptual site plan to the Conservation Commission which unanimously approved a motion to express the

⁴ See Request for Administrative Decision, enclosed with the 10 July 2020 Letter.

⁵ See Administrative Decision, enclosed with 10 July 2020 Letter.

⁶ Id.

⁷ See Grisets' Appeal of Administrative Decision Application, Variance Application, and Special Exception Application enclosed with 10 July 2020 Letter.

Conservation Commission's support of the Town holding a conservation interest in the Mendez-Trust property.⁸

- On 21 January 2020, the ZBA denied the Grisets' appeal of Administrative Decision by a 3-2 vote in Case #19-17 but unanimously granted the Grisets' variance requests "to permit a single-family open space development in the R-1, Low Density Residential zoning district which draws density from contiguous unimproved property in the NP-Neighborhood Professional zoning district, as presented" in Case #19-19, and also unanimously granted the Grisets' special exception application in Case #19-18 (the "ZBA Approvals").⁹
- None of the ZBA Approvals were appealed.

5) TRC Review

- On 23 January 2020, the Grisets yield plan was reviewed by the Town's TRC.
- All of the responses and recommendations of the TRC were incorporated by the Grisets into the yield plan.
- Additionally, the Grisets, through their legal counsel, provided the Planning Board a substantive analysis addressing the reasonableness, viability, feasibility, and achievability of the yield plan under the applicable regulations, including a detailed cost estimate to develop the same.¹⁰

6) Planning Board Review

• May Hearing

- On 13 April 2020 the Town Planner provided a Memorandum to the Planning Board which confirmed that the yield plan met all Regulations by stating, among other things, that "[t]he applicant has addressed all staff and UEI comments and we have no further comment on the Yield Plan as currently proposed."¹¹
- On 14 May 2020, the Grisets appeared before Planning Board for yield plan review at which time Case #20-2 was accepted for review. The Grisets' proposal included the Lot 5 Waiver request. A contingent of the neighborhood was present to object to the development across several grounds. Many of these individuals raised technical objections which directly contradicted the review and vetting conducted by the Town Planning Staff and TRC, which found that the Grisets had addressed all technical comments. These allegations continue to this day. Also at the May hearing, a member of the public argued that the Grisets' yield plan was improper in light of Section 7.13's statement that yield plans "shall not require a variance from existing zoning ordinance..." The May hearing was continued to June to give the Grisets an opportunity to supplement its filing.
- On 3 June 2020, the Grisets filed a comprehensive analysis of the issues raised during the 14 May 2020 hearing to include, among other things, an analysis of the Section 7.13 issue

⁸ See Minutes of Conservation Commission Public Hearing, 12 November 2020.

⁹ See Minutes to 21 January 2020 ZBA Hearing and ZBA Notice of Decision, enclosed with 10 July 2020 Letter.

¹⁰ See Ltr to Planning Board, dtd 26 February 2020.

¹¹ See Town Planner Memo to Planning Board, dtd 13 April 2020.

and a formal waiver request from Section 7.13 to permit use of the yield plan which benefited from a variance, per the Planning Department's guidance.¹²

- **June Hearing**

- The next Planning Board hearing occurred on 11 June 2020. A few hours before the hearing, the Grisets were provided a copy of a letter filed by Attorney Timothy Britain on behalf of the neighborhood opposition group. In the letter and at the hearing, Attorney Britain argued that the Grisets' yield plan was illegal and the Grisets' variance was "pointless" because, according to Attorney Britain, the ZBA acted illegally in approving the variance. Attorney Britain urged the Planning Board to deny the yield plan.
- At the same hearing, the Planning Board approved a motion to require a waiver from Section 7.13. As a result, the Grisets presented their waiver request. The hearing was continued to the July meeting due to the late hour.

- **July Hearing and 10 July 2020 Letter**

- In light of the neighborhood opposition to the use the Mendez-Trust Property on the yield plan, the rising expenses associated with the permitting process, and to seek peace, the Grisets amended their yield plan to draw density *only* from the Griset Property. The revised yield plan still required the Lot 5 Waiver, but no waiver was required Section from 7.13.
- A few hours before the 9 July 2020 Planning Board meeting, the Grisets were once again forwarded a letter filed with the Planning Board by the opposition to the project the same day. Attorney Britain's 9 July 2020 letter argued that the revised yield plan was also illegal because it draws density from the Town Property pursuant to an alleged illegal contract between the Town and the Grisets from 1991 whereby the Grisets conveyed to the Town of Exeter 9.3 acres for use as a baseball park in exchange for the Grisets' right to utilize said 9.3 acres for density purposes in future open space development. Attorney Britain argued that the Town was without authority to enter into that contract in 1991, and that the Planning Board should deny the revised yield plan on that ground. Attorney Britain's letter also forwarded a letter from Steven B. Keach, P.E., of Keach-Nordstrom Associates which alleged technical errors in the Grisets' yield plan. The Grisets continued the July hearing to address Attorney Britain's filing.
- On 10 July 2020, the Grisets filed a comprehensive legal analysis regarding Attorney Britain's latest arguments with the Planning Board and asked that the Town Attorney review and comment on same.¹³ That filing incorporated the entirety of the Grisets' ZBA file. We understand that subsequent to this filing, Town Counsel provided a legal analysis to the Town regarding Attorney Britain's arguments.
- On 14 July 2020, the Grisets filed a partial waiver request from Section 9.6.1.2 to permit a perimeter buffer adjacent to the proposed subdivision road cul-de-sac less than the required 100' (the "Road waiver").

¹² See Ltr to Planning Board, dtd 3 June 2020.

¹³ See 10 July 2020 Letter.

- **August Hearing**

- The Grisets' revised yield plan was next reviewed at the Planning Board's 27 August 2020 meeting during which the Grisets presented their revised yield plan and addressed the comments and arguments made by Attorney Britain and Mr. Keach. None of the technical arguments raised by Mr. Keach amounted to actual discrepancies between the Regulations and the yield plan and were refuted by the Grisets and their civil engineer. Due to the late hour, the Planning Board did not address the Lot 5 Waiver or Road Waiver. The hearing was continued to 10 September 2020 due to the late hour.

- **September Hearing**

- In advance of the 10 September 2020 Planning Board meeting, the Town Planner provided a memorandum to the Planning Board with proposed waiver motions for the two partial perimeter buffer waivers.¹⁴ That memorandum references the waiver criteria contained within Section 9.6.1.2, not the Regulations' standard waiver criteria found in Section 13.7.
- During the 10 September 2020 hearing, after a non-public session to consider legal advice, the Planning Board unanimously voted to approve the Road Waiver but unanimously voted to deny the Lot 5 Waiver. There was very little deliberation on either waiver. Despite the Planner's recommendation to apply the waiver criteria found within Section 9.6.1.2, the Planning Board loosely referenced only the standard waiver criteria contained within Section 13.7 of the Regulations. Further, the Board's decision to deny the Lot 5 Waiver without discussing or referencing the 9.6.1.2 waiver criteria appears to be rooted in its agreement with Member Brown's statements, memorialized in the minutes as follows:
 - o Vice-Chair Brown noted he believed the criteria has not been met for this lot and is not in the spirit of the ordinance. Have a 100' buffer for a reason. Usually will consider for minor encroachments. One less unit is not unreasonable for a yield plan. It meets criteria for #1 but don't think it is unique enough to meet #2. There is not a particular hardship for this unit.
- The Planning Board's denial of the Lot 5 waiver despite the considerable amount of evidence and analysis regarding the merit of the same constitutes a loss of \$175,000 in projected revenue and is the difference between a financially viable and inviable development.
- In light of the Planning Board's mistaken application of the waiver criteria in Section 13.7 instead of the criteria found within Section 9.6.1.2, the Grisets reached out to the Town Planner via email during deliberation in an effort to redirect the deliberation, all to no avail.¹⁵
- The following day, the Town Planner acknowledged via email the Planning Board's mistake and indicated that the Grisets could either have the issue addressed at the next Planning Board meeting, or have the issue taken up during site review.¹⁶ The Grisets

¹⁴ See Town Planner Memo to Planning Board, dtd 3 September 2020.

¹⁵ See Justin Pasay email to Dave Sharples, dtd 10 September 2020 at 8:24 PM.

¹⁶ See email from Dave Sharples to Justin Pasay, dtd 11 September 2020 at 11:16 AM.

indicated a desire to have the issue taken up at the next hearing.

- **October Hearing**

- Unbeknownst to the Grisets, the Town Planner then decided to obtain a legal opinion regarding the application of the two aforementioned waiver criteria and, apparently based on that opinion, concluded contrary to the Town's position throughout the duration of the permitting process, that the waiver criteria contained in *both* sections of the Regulations had to be met to obtain said perimeter buffer waivers.
- The Grisets learned of this new interpretation three days before the 22 October Planning Board meeting. In response, on 21 October, the Grisets filed a comprehensive analysis detailing the waiver criteria in both Section 9.6.1.2 and 13.7 for both perimeter buffer waivers.¹⁷
- After a presentation on the respective waiver requests at the 22 October hearing, without any deliberation or reference to either of the waiver criteria sections, the Planning Board voted once again to grant the Road Waiver and Deny the Lot 5 Waiver for "reasons previously stated in the record" as reflected in the minutes to that meeting.¹⁸

Conclusion

The procedural history of this case makes clear the Grisets' efforts to comply with all guidance and direction provided by the Town. As that record reflects, the Section 7.13 waiver and current yield plan, as modified by direction of the Town, should be approved by the Planning Board because the yield plan meets the Town's Regulations and because the Grisets previously obtained the ZBA relief necessary to use it in this case. The opposition's anticipated arguments to the contrary, voiced consistently over the last seven months, are rooted in an effort to unwind an Administrative Decision, special exception and variance they did not appeal and a 30-year old contract which the Grisets have performed under, which the opposition has no standing to challenge. These arguments are meritless.

Please do not hesitate to contact me with any comments, questions or concerns.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC



Justin L. Pasay
JLP/sac

Enclosures (1)

¹⁷ See Ltr to Planning Board, dtd 21 October 2020

¹⁸ See 22 October 2020 Planning Board Meeting Minutes.

Cc: Brian Grisct
Christian Smith, P.E., Beals Associates, PLLC

Please see additional
plan attachments under
“Supporting Documents”
posted for this meeting