

ZONING BOARD OF ADJUSTMENT
1/17/17
DRAFT MINUTES

1. CALL TO ORDER:

Chair Laura Davies called the session to order at 7:20 pm.

Members present were John Hauschildt; Rick Thielbar; Laura Davies, Chair; Kevin Baum; and Robert Prior. Staff present were Doug Eastman, Code Enforcement Officer; and David Pancoast, Recording Secretary. There were applicant(s), representatives and members of the public present as well.

2. NEW BUSINESS:

The application of Seacoast ShearWater Development, LLC for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the proposed construction of a ‘multi-use’ building on the properties located at 146 Portsmouth Avenue; and a special exception per Article 4, Section 4.4. Schedule III - Density and Dimensional Regulations-Non-Residential and Article 5, Section 5.2 to permit the proposed building to exceed the maximum height requirement. The subject property is located in the C-2, Highway Commercial zoning district. Tax Map Parcels #51-1, #51-3.3 and #51-3.4. Case #1516.

Craig Salomon, Esq., spoke for the applicant and introduced John Salin, principal of ShearWater Development; Linda Driscoll of ShearWater; Rob Haberson, Architect, Attorney Peter Lockland and Jonathan Ring from Jones and Beech Engineering in Stratham.

Mr. Ring introduced the project plans and pointed out the site is vacant now. He went over the 2013 prior plan of the site. In 2013 a 4800 sq ft building was proposed by Mr. Salin and others and approved by the Planning Board but never built. Now they propose a mixed use 5,000 sq ft building. There was no ZBA action required at that time. The Volvo dealers are next door. The brook runs to the rear of the property. It’s a horseshoe around MacDonald’s Restaurant next door. They are proposing a building with parking.

The Chair asked what the uses will be on the different floors. Mr. Taberson responded that it's not finally decided yet but most likely will be a bank on the first floor, office space, possibly medical offices, on the second floor and potential residential on the top floor. At the design review session in December the Planning Board suggested residential on the second floor as well. This is a multi-use proposal. The parking would be shared by mixed use tenants since residents would generally be at work during the day. There are cross-easements involved and MacDonald's has been involved in that since about 1998. The easements are in place since MacDonald's was built, and involve cross-easements. Plan references on the plan refer to the prior Planning Board approvals. The easements are on record. The Plan reference was June 10, 1998 for the easements involved.

The Chair asked for a discussion on the property lines. Mr. Ring went over the plan and said they aren't fully settled yet, there may be some lot consolidation coming up. They are still doing some planning on this project. Lot 3.3 is all in common ownership and the easements are all on that parcel.

The multiuse application is for the height of the building.

Mr. Haberson said they tried to be consistent with the scale of the buildings in Exeter, and they went with the brick exterior to conform to them as well. There will likely be two commercial lower stories and the top floor is set back a bit from the lower levels and a different color, to make it appear less tall and it is planned for residential use. There is an intentional gateway 'feel' to this design and the corner tower accents that. There are stair towers in the design.

If this was to become a bank a drive through would be involved. The aerial view shows a square building but plan indicates triangular. Mr. Haberson said it is a rectangle but the tower entry makes it appear different. There was discussion on building/lot configuration and perspective.

Mr. Salomon presented the application for two special exceptions on a permitted use if all the criteria are met. The site plan has been well thought

out. The criteria are: is this a proper subject matter for a special exception? The Applicant agrees that it meets the Town ordinance. The next question is: how does this proposal impact the public health, safety and welfare? The entrance will be on the rear and that's a good visual benefit to the site. We hope to keep the parking more limited with a Planning Board waiver. The residential use parking will be such that when they are home the lower floor businesses will be closed. We hope the parking will be minimal and the backyard will not have to be built.

There are wetlands to the rear of the property, assessed by Gold Environmental assessed those. The parking lot will be porous pavement and they are trying to control nitrogen loading and limit it. A roof drain will be tied into the drainage system. Some of these are Planning Board issues but they have thought it out per ZBA criteria. This project is consistent with the neighborhood.

The traffic pattern was thought out back when MacDonald's was built, there were cross-easements put in place to enable all the uses originally proposed. The 2013 site plan was approved but never got built because a planned MacDonald's double drive-through was never built.

We've clearly delineated the wetlands on this site for those considerations.

The next criteria is whether this is compatible with the area uses. There are banks, grocery stores, offices and also residential behind this site. Multi-use is contemplated in the area per the ordinance. Existing easements are meant to be compatible now as well as back then.

Landscaping and screening criteria are involved. This site has a lot of open space behind it. Landscaping in the front will be consistent with abutters MacDonald's and the Volvo dealership.

Parking is proposed in two phases. One phase is definite, and the second is for future needs if needed. History of the traffic pattern was established in 1998 and arguably reaffirmed when there was conditional approval by the Planning Board in 2013.

The next standard is impact on property values and the argument there is that it's a nice design and streetscape is enhanced. This is now a vacant overgrown lot, but this plan is consistent with Exeter's desires for design and planning.

The Applicant has given a lot of thought to traffic and parking and paid attention to wetlands and improving the nitrogen loading issue. Design review was well received by the Planning Board with some comments.

This is dimensionally consistent with C-2 zoning and uses, so the special exception would be to allow the height of more than 35 and less than 50 ft.

Ms. Davies asked about elevations in the back of the property and from what point the building height would be measured. Would there be a basement?

Mr. Haberson said it would be slab on grade, no basement.

Mr. Ring said they aren't in that level of detail yet on the building and all grades, but the building will be about a foot below street level and a couple of feet back farther than the plan shows. Concerns at the Planning Board design review session were that the Applicant might consider not going back so far with the building and pull possible future parking closer to the wetlands. While they haven't completed that analysis yet, he said that may happen.

The proposed retaining wall could be as high as 8 ft, which is the same as on the 2013 plan-they kept that same line. There is a wetlands nearby. The retaining wall allows for some fill that is necessary for the layout design.

Mr. Salomon offered that the 2013 plan did have a fill permit that is still valid and was assigned to ShearWater. Mr. Ring clarified that it's valid to 2020 and it could be modified which is likely, as to wetlands.

Ms. Davies said it looks like it's 15-20 ft below street level in spots and the 50 ft added to that would be 65 ft height from the ground level today.

Mr. Ring said the first floor footprint would be at about the 40 ft elevation. He explained that the 50 ft would be from about the pad height there. MacDonald's next door is at about 18-20 ft or so. A nearby proposal at the Getty Gas Station a few years ago was for a 50 ft multiuse project but it has not been approved or built yet. It was above 35 ft but less than 50 ft. Mr. Thielbar asked if there are other buildings on Portsmouth Ave that are 50 ft tall. Mr. Ring said there are some, Hampton Inn being one example.

Mr. Salin added that he is an urban design developer and doesn't like any parking in front of the building, so there is none proposed. The front is to be all landscaped.

Ms. Davies asked if anyone to the rear of the site will be able to see this proposed building? Mr. Ring said that there are a couple of houses back there and one abutter to the rear was at the Planning Board, but had no real concerns. Mr. Ring said that there aren't really any folks to the rear that will see this. Mr. Salin said the Water Treatment Plant back there might be able to see it. The rear of the building is designed to be attractive too. The parking is the biggest difference to the rear on this.

Mr. Baum asked how this height compares with surrounding properties? Mr. Haberson said the Fairfield Inn isn't the tallest, Hampton Inn appears to be the taller of the two. They are trying to be sensitive to the look of the area and also trying to make it look less tall architecturally. The design will feel visually akin to a pitched roof but won't be pitched.

There was discussion on whether the mechanicals on the roof would be within the 50 ft height request or not. Ms. Davies suggested that the height would be a maximum, including all. Mr. Salomon said his reading of the ordinance allows mechanicals above the maximum building height. Mr. Haberson said that some could go through the building sides if necessary.

Mr. Baum said the Applicant is not "held" to the building design at this Board, it's changeable afterward as this application is only for height. Mr. Haberson said they designed flexibility of uses into the design. There was discussion on building appearances and uses. Mr. Baum said they could theoretically come back with a solid mass appearance of the building.

Mr. Haberson said the Applicant doesn't want them to redraw the plan multiple times. There was discussion on these issues. Mr. Salomon said the Board can put conditions on any Special Exception approval. Mr. Salin said he had no problem with the Board doing that. He said the Tower is a key factor that was designed to be a gateway feature to Exeter. He asserted he would never be interested in developing a "mass" building because his intention is to market it successfully. Older shoe factories he has done are an example of poor mass structures but it was what he had to work with on those sites for redevelopments.

Mr. Haberson said he has a background in urban planning too, so wants streetscape to be the focus Mr. Salin wants. Mr. Thielbar asked about setback of top level, which is about 4 feet. Mr. Prior asked how much more height is needed for the mechanicals on the roof and top floor. Discussion by Mr. Haberson was that it could lead to a higher height on those components. Mr. Salomon said the submission letter was read wrong, that the necessary mechanicals are not included in the application for this Special Exception. His intent was to comply with the ordinance.

Mr. Thielbar said there is too much being crammed on to the site. The MacDonald's parking is closer to this building than their own parking, so folks might well use MacDonald's parking to get to this building. There was discussion about this building's customers parking up front but rear spaces would be for employees of businesses. Mr. Ring said that would be the future parking issue that they want to avoid. It's about 200 feet to the doors back there, which he said was not a lot of distance. Mr. Salin clarified the thinking/intentions on that issue. Mr. Thielbar asked if the applicant could live with an approval of only the one request not both. Mr. Salin said he really wants both due to the plan and planned uses in combination.

Mr. Prior clarified that he can't find any language in the Board's regulation that it doesn't exclude mechanicals, only architectural elements. Mr. Baum read the regulation into the record [not included here for brevity of minutes] and it did not appear to include exclusion of mechanicals in the language. Mr. Salin said they would be screened from the street and not visible. There was discussion on this concern and interpretation.

Mr. Haberson said that there will be nothing on top of the tower element. Mr. Theilbar said that the Board might consider approval of a maximum of 50 ft but only with chimneys and mechanicals included in that height.

Mr. Salin said something in the center of the building could be 52 ft high but people wouldn't see it. He said a condition that "no mechanicals would be visible from the street" would be acceptable to him.

Mr. Salomon said it's a multi-use so no mechanicals would be located on top of the residential areas. Discussion on specific language ensued. Mr. Baum said that they are asking for a multiuse special exception. Mr. Haberson he's trying to design flexibility into this building, not knowing what the businesses will be yet.

Ms. Davies said the "not visible from the street" proposal causes her to have concerns about views from the rear if anything should change. Mr. Salin said he owns everything to the rear, so the Board would catch it if he came back to do anything differently.

Mr. Ring explained the elevations. The building area is being filled about four feet for the pad. Mr. Thielbar said there is no limit on how high the ground would be to start the 50 ft height limit. Mr. Hauschildt asked what would keep them from building a 20 ft high pad there? There was discussion on that point. Mr. Haberson said costs would prevent it, and they need the driveways and parking to work, etc. Mr. Salin said it would be an abomination and he wouldn't do it. Drainage was part of that discussion.

The Chair opened the matter up to public comments. There were none. She closed the public hearing at that point for deliberations by the Board.

Mr. Hauschildt said some of the issues were not clearly part of the Board's decision-making on this matter. A similar proposal nearby was before the Board a while back and a residential area was located nearby and it had a 50 ft high component as well. Here there is nothing closer for residential folks to be concerned about, nor is MacDonald's present with any concerns. There are a lot of reasons to go up in height instead of outward, especially due to wetlands being located on the site. We are looking at this as the new

face of Portsmouth Ave. No infringements or disturbances on ingress/egress and it's good for Portsmouth Ave. He is in favor of the project with three conditions: 1) that parking ingress/egress be approved by the Planning Board, 2) the fourth floor living area have at least a 4 ft setback or a pitched roof and 3) no mechanicals visible from the street.

There was discussion on the elements of visuals and street views and the upper floor setback.

Mr. Prior asked about the second requirement and why it's needed. Mr. Hauschildt said that keeping it at a 4 ft setback would meet the Board's concerns. Mr. Baum said he liked the design but it's maxed out at the highest possible height and he is okay with it if conditioned on the design limits. He wouldn't use language of "living space" for that floor. Mr. Hauschildt said he's fine with "occupied space" on the fourth floor. Mr. Haberson clarified that they hoped it would be the fourth floor other than the tower. The Board discussed the language that might become a motion.

Mr. Thielbar said he is struggling with too much on the site. Parking will be a total mess. Mr. Hauschildt responded that was reason for a condition on the parking language. Mr. Baum said they would be stuck with parking problems and would have to come back to resolve them or live with them. He said the mixed use doesn't bother him at all.

Ms. Davies said no 'hardship' is required on this application. They have to do site plan review anyway, so no parking condition is required. Mr. Hauschildt explained that a loophole exists for parking otherwise, his language is simply closing that loophole.

Mr. Hauschildt moved to approve special exception and building height for mixed use as presented, with the conditions that parking ingress, and egress be approved by the Planning Board, the majority of the street-side fourth floor either be set back at least four feet or have a pitched roof, and no rooftop mechanicals could be visible from the street. Mr. Prior seconded. Discussion ensued. Mr. Salomon clarified that it's technically 'multi use' not 'mixed use.' Mr. Hauschildt rescinded his motion and moved it again with multiuse and same conditions, seconded by Mr. Prior. On

discussion Mr. Theilbar asked if there will be one vote for both use and height, or will they vote again on height. The conclusion was two votes. The vote to approve the use was unanimous.

Mr. Hauschildt then moved approval of the special exception for the building to be not more than 50 ft in height, as presented, with the same conditions that parking ingress, and egress be approved by the Planning Board, the majority of the street-side fourth floor either be set back at least four feet or have a pitched roof, and no rooftop mechanicals could be visible from the street. It was seconded by Mr. Prior and approved by the majority, all voting yes, except Mr. Thielbar who voted nay.

3. OTHER BUSINESS:

There was none.

4. APPROVAL OF MINUTES: December 20, 2017

There were no minutes to approve.

5. ADJOURNMENT:

There being no other business before the Board, the Chair adjourned the meeting at 8:35 pm.

Respectfully submitted by David Pancoast, Recording Secretary.