

**ZONING BOARD OF ADJUSTMENT
February 21, 2017
DRAFT MINUTES**

1. Call to Order

The session was called to order by Chair Laura Davies at 7:03 pm.

2. Introductions

Members present: Rick Thielbar, Clerk, John Hauschildt, Laura Davies, Chair, David Mirksy and Robert Prior. Staff present: Doug Eastman, Building Inspector/Code Enforcement Officer, Barbara McEvoy, Deputy Code Enforcement Officer and Jennifer Dionne, Recording Secretary. Members of the public were present as well.

3. New Business

The application of Sherman E. Chester, Jr. for a variance from Article 5, Section 5.1.2 and 5.3.1.A.2 for the expansion of a non-conforming use to permit the proposed construction of a 300 square foot addition to the rear of the existing structure with less than the required side yard setback. The subject property is located at 3 Webster Avenue, in the R-3, Single Family Residential zoning district. Tax Map Parcel # 55-22. Case #17-10.

Sherman Chester appeared before the Board to present the project. He would like to add an addition to his house including a master bedroom and a bathroom. This would be contained within the existing fence line. It would mean a great deal to him to expand the house and bring it up to date. He has grown up in this house, and lived in Exeter for his entire life. Configuring the house this way ended up being the most economical for him. Mr. Hauschildt asked Mr. Sherman if he was moving his house back 10 feet to conform with other houses in the neighborhood. Mr. Sherman explained that this wasn't the case, other houses on the street had completed additions. Mr. Hauschildt felt other houses in the area had built up rather than out, he wondered why he could not also build up. Mr. Sherman said that it would be cost prohibitive to build up due to the age of the home and bringing it up to code. He would like his house to remain one level so he can age in place. Mr. Hauschildt said he understands this, but the problem is setting a precedent for other houses in the neighborhood.

Ms. Davies closed public session to deliberate. She said looking at this lot, it is nonconforming but not in a big way. Mr. Thielbar said the size of the extension is not what the variances is for, it's for the proximity to the property line. If you go to the site you can see that both the house and the garage next door are parallel to one another and askew to the property line. He felt the extension being put in would be totally blocked from view for the neighbors by the garage. Mr. Hauschildt didn't feel that there was a hardship, but that this is still well within reason for the people who are living there.

MOTION: Mr. Hauschildt moved to approve the application as presented, Mr. Thielbar seconded. The motion passed unanimously.

The application of Tuck Realty Corp. for a special exception per Article 4, Section 4.2 Schedule I and Article 5, Section 5.2 for a fourteen (14) lot subdivision for the proposed construction of duplex dwelling units on the properties located at 98 Linden Street and 3 Vintage Drive. The subject

properties are situated in the R-2, Single Family Residential zoning district. Tax Map Parcel #104-70 and #95-51-2. Case #17-8.

Mr. Mirsky wanted to say that he knows Jon Ring but it would not affect his decision-making process, he is not a direct abutter but lives in the area and just wanted this to be clear on that.

Attorney Tim Phoenix representing Tuck Realty appeared before the Board. The two parcels are L shaped and totals a little over 11 acres. The front piece is a little over 7 acres. They showed two plans one with 14 units and another with 28 units. The plan with 28 units is required to be shown to get approval for the open space plan that they are seeking. The open space plan would be preserving around 5 acres in the back. They would also have a 50-foot vegetated buffer around the entire project. He would like the Board to consider the open space concept, and this is done in this instance because they are taking land that would be used for duplex lots in the back and keeping this as open space. This would also provide alternatives to the existing methods of home ownership in the area as these would-be condos. This entire project would also be vetted fully by the Planning Board. Mr. Phoenix said that he understands abutters have concerns about water, and that they would be presenting a storm water management plan to the Planning Board. These would be reasonably priced duplex units, this development is desired to be private, but the developer would be open to working with the town to create easements and conservation areas, etc. The conceptual yield plan requires an exception because duplex-type units require special exceptions to be permitted in town. Ms. Davies would like to go back to item C, the proposed use for the district. Just being one of the proposed usage of the criteria does not meet this requirement. Mr. Hauschildt explained that this requires them to be compatible with the zoned district and the post 1972 construction. He asked Mr. Phoenix to speak to how this development would be compatible with this ordinance. Mr. Hauschildt asked how many of the adjoining properties were residential, it was confirmed they all were except for one church. This also would not be the proposal of the first non-single family homes in the area. Mr. Hauschildt also asked if they were combining 3 lots and Jon Ring explained this is not 3 separate parcels, there will in affect be 2 parcels and an open space component. Mr. Hauschildt asked who would manage the conservation space, Mr. Phoenix said usually this is the home owner's association that requires this maintenance. Mr. Prior felt it was important to have the deed restrictions on further development which they are proposing. Mr. Hauschildt explained that they could also have a public body maintain the conservation land because home owners association is only if the land remains private. Mr. Prior felt on one other than the home owners association would be interested because of its landlocked status.

Sandy Cortright, 7 Thelma Drive, Wanted to know what affect if any this would have on her property. Ms. Davies didn't feel it would have any. She is concerned because she is the third house in, and what does this will do with her property in general.

Don Clement, 5 Thelma Drive, is an abutter to this project. Wanted people to understand he is not opposed to increased density, he also wanted to commend the developer on being creative here. But he feels there are some issues around it. First, looking at the conceptual yield plan the number of units on the open space plan is dependent on the yield plan. In his opinion the vegetative buffer has a road through it. Lots 8 and 9 in the yield plan are in a very wet area, and he feels it would be difficult to get viable building lots in that part of the property. Also, the private road has to go through a corner of the wetland. Mr. Clement felt it makes it tentative they can get the number of units they are proposing. In another part of the property a piece of the road infringes on the buffer area. Is the 50-foot buffer part of

the open space plan. Mr. Clement would also like them to do a conservation restriction rather than an easement as it would be more binding.

Miles Falvella, 11 Thelma Drive, He had no idea that this was in the works. He is not necessarily for or against the proposal but he has dozens of questions. Will it be town water and sewer, will it be controlled by the Exeter Police Department. If they are using an abutters land in the opens space will they be maintaining it. He feels he is at a loss at how his will affect his property and wishes the company had spent time with abutters as he had no idea about this until last week. He has a sheet with 30-40 questions that he would like answers to. Mr. Hauschildt explained that some of his questions may be Planning Board related and he should hold these for that. The zoning board is restricted in what they can view.

Gary Morrisette, 102 Linden Street: His family owns the whole south side of the parcel, and he feels that the lot will not fit what they want to do with it. There are water issues here, lots of them. If all the trees are cut down they are going to get hit hard. He also has a boundary dispute with this, there are some spots where they are on his property. His biggest issue is the water and he understands this is a Planning Board issue. Safety wise, he feels Linden Street is pretty well built up already. He also owns a business in this area with large trucks and tractors and he doesn't want to run over anyone and would want a fence in this area for sure.

Bruce Hussey, 13 Thelma Drive: Wanted to know about the vintage Drive house that comes up past his property has this been sold. Mr. Prior said they have permission to be here from the owner so they would assume there is a purchase of sale. Ms. Davies explained that this Board cannot really discuss ownership of land as part of their decision but their decision assumes they have ownership of this land somehow. Mr. Hussey asked if you can give up your right to develop land in this area and if that is what is being done here. It was confirmed that yes this was the case. Mr. Hussey also wanted to know why they couldn't just use the existing zoning and not ask for a special exception. Ms. Davies explained that the duplexes are allowed in this zone, it's just a use that is not permitted by right without appearing before the Board. Many of Mr. Hussey questions were for the Planning Board.

Nick Morrisette, 102 Linden Street: Strictly comparing this to the previous plan from the Exeter Housing Authority they were going to build houses to the North on the land, and he would like to bring up the fact that the land in this area was all wetlands which is why they were trying to hold it closer to open side of Linden Street. He also has issues with the amount of traffic this would add to the area.

Leona Nelson, 12 Peach Street, Said the traffic situation would be increased, this is a blind curve where this will be located. She feels there are way more than 500 residents in the area here.

Debra Morrisette, 102 Linden Street: The previous plan presented by Exeter Housing Authority had open lots by her house, and now they are adding more units to this area. The area is too wet and they won't be able to have basements. She feels like this will decrease the value of her home, because they have total privacy right now which they will lose if this goes through.

Sandy Cortright, 7 Thelma Drive, even though this is away from her home, once the ground is disturbed what will this do the water levels in the area, and where will they go from there. What guarantees does she have? Ms. Davies suggested she go to the Planning Board meeting.

Mr. Garrepy felt the takeaway from the neighbors' concerns; he wanted to be clear most of these things would be vetted out at the Planning Board level. The Zoning Board is really just here to clear the use. Mr. Mirksy asked if there would be a septic system it was confirmed they wanted municipal water and sewer. Ms. Davies said the concerns raised by the Morrisette's about the existing business there and the property line. The applicant would be presenting all of these items at the Planning Board meeting. They could also include the information that there is a business next door in the homeowner's association documents. Mr. Hauschildt asked about the yield calculations and whether the road can cross the wetland buffers. Mr. Ring said that lots 8 and 9 have wetlands in the area, and they do show the road coming through this area. If the plan moves forward which it's not intended to, it's just to prove out the density for the Planning Board and they would need a wetland permit. They are not planning to do this, they just need to show this plan for approval. Mr. Prior said they may be allowed but the adequate screening is still required. He is questioning the conceptual yield plan. He understands that conceptually this can be presented but he just does not feel that this is something that could actually be built. It was explained that they don't actually want to build this plan, this is just to prove the density and they will actively work with the Planning Board on a lot of these issues. They are not asking this Board to put a number on the density, they are just asking for the duplexes and the small scale open space special exception.

Ms. Davies closed the public session. Mr. Hauschildt said in order to move this along, there are two issues there is the use of the property and the open space of the property. He hasn't heard of anyone having an issue with the duplexes

MOTION: Mr. Hauschildt moved to approve the duplex use on the property Parcel #104-70 and #95-51-2. as it meets all the criteria for special exception . Mr. Prior seconded. The motion passed unanimously.

Mr. Hauschildt felt the big issues on the open space plan have to deal with the yield plan and the problems that may come about because of storm water management disturbing the wet area. He knows this is not something that is under their purview. This will be going before the Planning Board and they are going to have storm water management and will be dealt with at their level. Ms. Davies does not want to commit to a number of lots but would be open to an open space development. Mr. Hauschildt said in respect to the yield plan, their system is what they show on this plan is what they can do. He would like to put one condition on approval and that is that the density and amount of units be limited to the lesser of 28 units or what the Planning Board will approve in the yield plan. Mr. Thelbar asked if he was saying they would not allow more than 28, this was confirmed. Mr. Thelbar asked if they could say the maximum of 28 and confirmation from the Planning Board meets all the requirements of article 7. Ms. Davies asked what the advantage was even addressing the density, and Mr. Prior was uncomfortable even putting the number 28 in here. He didn't feel this number was even possible. Ms. Davies said, they are only looking at the use. Mr. Prior had concerns that if the plan was in the public record they would need to possibly explain themselves in the future.

MOTION: Mr. Hauschildt moved to approve the plan for special exception for small scale residential open space development. Ms. Davies seconded.

Mr. Prior commented that he was getting hung up on the fact that they have 8 special exception criteria they are supposed to judge this by. These include a specific plan they are supposed to view. He inquired if there was a problem with just approving the concept of the plan. Ms. Davies explained this is just the zoning part of this process. They still have to appear before the Planning Board for the rest of it. Mr.

Prior felt it was worded that implies the specific application they are making a judgement on and it is the one they are being presented. He feels they are saying forget the details. Ms. Davies said she is not saying forgot about it, it's just not flushed out yet. Mr. Hauschildt disagreed that the plan was part of the criteria. Mr. Prior felt that they were abdicating their responsibility. Mr. Mirsky said they are not, the plan is not raising issues on the zoning request. Mr. Hauschildt asked if one of the conditions Mr. Prior might apply is that 100% of the development is within the Linden Street access to keep no development on one side. Mr. Prior felt this was extraordinary amount of development for this area. He is concerned because they have submitted specific yield and development plan that he feels does not meet the criteria of protecting public safety, health and welfare. He is considered about water flow to the neighbors. He is concerns about a very dense development if this is approved. He is not nervous about the open space development, but the density. Ms. Davies would like to see the motion amended to state the density to be approved by the planning board. Mr. Thelbar said he does not like the density but they are playing within the rules.

Suggested Motion: be based on planning board approval of their own conceptual yield plan and subsequent open space plan. Mr. Hauschildt withdrew his motion.

MOTION: Mr. Hauschildt moved to approve the plan for special exception for small scale residential open space development, with the condition that the density be limited to the smaller of 28 units as presented or the number of the units calculated by the planning boards own yield calculations. Mr. Mirsky seconded. The motion passed unanimously.

The application of Soaring Hawk LLC for a variance from Article 5, Section 5.1.2 and Section 5.6.6 seeking relief for the expansion of a non-conforming use to permit a proposed increase of ninety (90) seats for a restaurant use with less than the required number of off-street parking spaces being provided; and a variance from Article 5, Section 5.1.2 for the expansion of a nonconforming use to permit the proposed construction of a second-story deck within the rear yard setback. The subject property is located at 1-9 Water Street in the WC-Waterfront Commercial zoning district. Tax Map Parcel #72-41. Case #17-9.

Steve Kaneb, representing Soaring Hawk, LLC, stated that they recently purchased the building and they have entered into a deal with Sea Dog Brewing Company in Portland, Maine. They are seeking a variance for two reasons, which has to do with the nature of Sea Dog and also put an additional deck on the back which will be the same foot print that the current deck is on which provides more outside seating. They have a letter of support from the abutter, Kathleen Mahoney (Porches at Exeter – development under construction on Farnklin Street). Mr. Kaneb feels they meet the five criteria are mentioned in the application which is part of the public record. In addition, he wanted to point out that right next door to Town Hall is the Gardner House which has approval for a restaurant and some recreational use. There is some precedent in the area. Also, there will be an apartment upstairs in this building so it has a residential use in that building. In the course of the approvals last week, the historic district commission approved the expanded deck area. Mr. Kaneb was pretty selective about who they chose to lease to. Mr. Prior said the application states that Sea Dog would occupy all 3 floors of the building but he just indicated the top would be an apartment. Mr. Kaneb explained that there was a below ground level that was not used previously and this is in this calculation.

The original certificate of occupancy for Loaf and Ladle was for 96 seats. At first, they were going to have 3 apartments in the upstairs, which would require 2 spots per unit. This brought down the number of

seats. Since this has changed, it's now only needing 2 spaces for the residential unit so they are covered. Historically the town has not recognized the seating outside as permanent seating due to it being seasonal. Loaf and Ladle was allowed 32 parking spaces, 96 seats. They are looking for an additional 30 spaces, 90 seats.

Jim Bunting, Operations Director for Sea Dog Brew Pubs, indicated that they operate 5 other restaurants and they are typically in smaller towns. The Sea Dog is well suited for Exeter because it is an iconic town and they are very active in the community. He explained they are requesting so many seats because the brew pubs have a lot of environments in them. There will be a private room upstairs, there will be a room in the basement, and a small pub on the 1st and 2nd floor. This will attract people at different times. Mr. Bunting wanted to emphasize that this property is smaller than their usual properties. This building really fits their model on how they operating. They are assuming risks but they are very much a residential based type of building. They do not have loud bands that come in and play and they try to be appropriate for all ages. They encourage staff to become part of the community they are located in. They need this number of seats because they have to support the staff if they don't have the ability to conjure up the sales they would need.

Mr. Hauschildt asked if they do the majority of their business in the evening, and it was confirmed that yes but there could be days they are full at lunch. Mr. Hauschildt asked what they could reduce it down to if they had to. Mr. Bunting said it's a different type of business, but they don't want to limit the restaurant during some hours. Mr. Prior asked how many jobs this would bring. Mr. Bunting said that several of their locations are more seasonal, this location would be different. He thinks they would be employing 30-35 full time and 15-20 part time.

Mark Sinclair, 18 Pleasantview Drive, he is in favor of the development he is pro-growth in the downtown area. He feels this is a big opportunity for the town. To address the number one issue, which is parking which is not new in Exeter. He is sure that if he goes downtown at 10:30Am on a Saturday parking will be tight. In the evenings, he can usually find a spot downtown. The deck would be a nice attraction.

Ian Smith, 7 Carroll Street, is on the EDC, he is very much in favor and is here as a citizen. They are very active downtown users, and they understand the need for the vibrancy downtown. They leave Exeter to eat because there is limited restaurants variety and no outdoor space. Sea Dog would bring this into town.

Dennis Smith, owner of Puddle Jumpers stated that he and his wife were in favor of this development and see nothing but positive for the businesses in the neighborhood. As for parking issues, there are certain times of day in many communities where it is difficult to park and he does not see it being any different here. He would be thrilled to have Sea Dog two doors down from him.

Elliot Berkowitz, 139 Water Street commented that he would be very happy to have this restaurant open, as he and his wife walk to dinner often. He does not feel that parking is an issue, and that this will be another great addition. Exeter is a vibrant town, he loves it here.

Paul Royal, 3 Pumpkin Circle: What is a worse problem to have, having a problem finding a parking space or having it be easy to find a parking spot.

Jason Proulx, 154 High Street, he wanted to speak to the walkability to this community, he can't count how many people walk past his house to walk to downtown. That should be taken into consideration for parking here. They have a very active community and he walks 90% of the time when he goes downtown.

Chris Surette, 32 Captains Way moved to town 6-7 years ago and he thought the train could be an affordable way to come into town and bring more people to Exeter. Having more options here would be fantastic. He does have a question about the outdoor deck, is there any consideration on how late they can be on the deck for the neighbors. Mr. Prior wanted to be clear that this application is not for a specific restaurant, but to the expansion of the deck and the parking spaces.

Todd Duleca, President of Exeter Area Chamber of Commerce and wanted to acknowledge the development of the building and finding a great tenant.

Andrew Cameron, speaking in favor of this and this is wonderful and thanked the applicant for investing in this community.

Dan Chartrand, Chair of Selectboard and owns Water Street Book Store, 63 Jady View Ave, urges the Board to approve this and thanks the Board for all of their work. He would like to see this move forward, because as a retailer in the 90's they had a peak of businesses. There has been less vibrancy recently in downtown and this is an opportunity to get some of this back. He didn't want to see a great applicant turned away due to parking limitations.

Greg Colling, 8 High Street, although he thinks the developers have done a great job restoring the building and is supportive of the brewery being there, he has concerns that his house faces the second floor deck. He also has concerns with number of seating outside and the lighting and potential noise. He feels they can be successful and address some of these concerns. He also felt the town could possibly look into resident parking on Pleasant Street because many who live here do not find parking. Mr. Hauschildt asked what he considered late. Mr. Colling said past 10 would be a problem and he was mainly considered about the outdoor spaces past a certain time.

Sharon Rondeau, Franklin Street, they have many professionals including psychologists, etc who work here. Many have hours that go past regular business hours. Parking is a major concern for them. She has clients who drive around the block to try to find parking spots. Parking is a problem. She applauds the improvements, but parking is an issue especially when you are an abutter.

Bill Campbell, 111 High Street, he has a couple of concerns including parking and he questions what do they do with Station 19. When they were approved they had to give up the parking in the Green Bean. If they do approve this, does that mean that the Green Bean can then be open in the evening. He feels this should be considered. Another thing, he wonders if this restaurant is too large for Exeter. Most restaurants have under 100 seats, and he wonders if the Sea Dog would be out of place here. Once something is granted, it gets harder to say no to the next one. His concern is for the size of the restaurant.

Paul Royal, 3 Pumpkin Circle, Concerns are well thought out and valid. They have heard about noise, size, hours etc. The parking is do they have enough space for what goes in there, these issues do not play into parking. Parking is a separate variance from the deck.

Dan Gustein, 2 Moore Lane, appreciates this proposal and feels Sea Dog will be a fantastic addition to the town. He would love to see us attracting businesses like Sea Dog. Exeter is made up by the strength of our community. This creates more opportunity for the community to come together.

Beth MacDonald, 131 Court St. also on EDC, one of the things that Exeter has that has not been taken full advantage of is the water front. This is a marquis property and the idea of a deck there should excite everyone. They can discuss noise ordinances in the future and this should be embraced.

Maureen (last name unknown) 156 Front Street has eaten at Sea Dogs other location; they are really a family place. It is never overly crowded and comfortable when she has been there. She is tired of having to leave town to go to restaurants and she thinks it's time for the town to get more vibrant.

Greg Colling, High Street, the issue here is the hours of use due to residents in the neighborhood. He would hate to have loud noise across from him house and also doesn't feel that the scale is appropriate for the town.

Chris Surette, 32 Captains Way he wanted to say he thinks it's a mistake to start looking at how much larger Sea Dog is then other businesses. As far as parking goes, h

Rachel Vila 10 Chestnut Street would like to support the businesses that are downtown she would like to see more people downtown. There is a wait at station 19 so to give people more opportunities to travel to Exeter would be a great thing.

Sam McCloud, 30 Charter Street commented that he frequently eats downtown, and he feels they need more restaurants in town.

Steve Kaneb wanted to state that since the dam is gone it has totally changed the soundscape to the back of the building. There is a natural white noise from the river now. They are sensitive to being good neighbors, and they do view this as the chance of a lifetime. They do not want to blow it by being a bad neighbor. Mr. Bunting said the deck operations in terms of sound, this is not a dive bar this is not the nature of the business. There is different type of seating and usage throughout the spaces. Most importantly about the deck, they are talking about relationship with the community. They are not the type of business that is super loud all the time. They are shallow decks, and they use muted lighting. Also, he wanted to say their door is open they do not want to create a disturbance and encouraged contact. Mr. Thielbar asked about normal hours of operation, and it was confirmed whatever is permitted legally. Mr. Kaneb said the outdoor seating is more a dinner thing.

Ken Scarpetti noted that he had contacted the code enforcement officials in other towns where the Sea Dogs have their establishments located and indicated that they had nothing but positive comments.

Ms. Davies closed public session. Mr. Prior would encourage the Board to forget everything about how wonderful Sea Dog is because they are only being asked about the expansion of the deck and the parking. Ms. Davies said this is a building that has already been a restaurant in the past. Mr. Hauschildt said what is different this time, is that only the Franklin block is stating issues with parking. The only other worry they have is the noise and light factor. He feels this is addressed in their code. If you are living in downtown you have to expect some of these issues. Ms. Davies said this deck is not a huge deck. One deck is there already, and it will be 40 seats combined between the two. Mr. Hauschildt felt

that you want to have a parking problem downtown. The abutters seem to be tipped in favor of this application.

MOTION: Mr. Hauschildt moved to approve the application as presented for use of the deck as restaurant space and up to 180 seats inside the restaurant because it meets all 5 criteria for variances, Mr. Prior seconded. The motion passed unanimously.

Mr. Prior feels expansion of the deck makes perfect sense and the applicant is not asking for expansion of the building it's just change of scope of the use and is keeping with downtown. This is not about Sea Dog, it is about the space. He feels the space can accommodate the number of seats requested. Ms. Davies has noticed that there are places around here that have opened a restaurant bigger than what is expected in town and have been surprisingly successful places. She thinks this could be that thing for Exeter. Mr. Mirsky said this is not being voted on specifically for this tenant, but this is a high-quality tenant. Mr. Thielbar asked are they stepping beyond their power. Mr. Hauschildt said no, because if they went word for word on parking no business could be on Water Street.

Adjournment

There being no other business before the Board this evening, Ms. Davies moved to adjourn at 10:28PM, seconded by Ms. Prior, and the vote was unanimous. The session was adjourned by Ms. Davies.

Respectfully submitted,

Jennifer Dionne
Recording Secretary