

ZONING BOARD OF ADJUSTMENT
August 15, 2017
FINAL MINUTES

1. Call to Order

The session was called to order by Chair Laurie Davies at 7:00 pm.

2. Introductions

Members present John Hauschildt, Rick Thielbar, Clerk, Laura Davies, Chair, Bob Prior, Kevin Baum, and Alternates Martha Pennell were also present. Staff present: Barbara McEvoy. Members of the public were present as well.

3. New Business

The application of Building Block School (Wren and David Hayes) for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5. Section 5.2 to permit an existing child day care facility to be converted to a private school offering classes to a maximum of 62 students through the elementary years (up to grade 6). The subject property is located at 125 Kingston Road, in the R-1, Low Density Residential zoning district. Tax Map Parcel #101-31. Case #17-21.

Wren and David Hayes appeared before the Board to discuss the project. They would love to see a very small local private school, that provides something different than what a public school can provide. They have 30 students currently. They are proposing a plan that would have rolling car pools, which they also currently have. Currently they operate out of two classrooms on a ranch on their property. They are proposing to convert a 2-car garage into two other classrooms on their property to be able to hold another 30 students. The maximum would be 62 students per licensing.

Ms. Davies said they were envisioning all the activity involving the road would only be at drop off and pick up. The rest would be on the back of the property. This was confirmed by Ms. Hayes. Ms. Davies asked how the drop off would work, it was explained that currently at 8:45AM there are 32 cars that do a drop off over a 15-minute period. They have a circle and they have the child get out and keep circling. They ask that people circle the block if the line is extending beyond neighbor's driveways. This is the existing situation; the new proposal would have rolling drop off from 8AM-8:30AM for older students. 8:45AM-9:15AM for drop-off, 11:45 first pick up, 12:30-1:00PM is a rolling pick up. 2:00-2:30 is another pick up and the final pick up is 3:00-3:30PM.

Mr. Prior did a full disclosure that his children attended this school and his wife worked here under previous ownership so he does not feel that applies here but he wanted to be honest about it. He knows the cars lining up here is not always a good situation. The parents would need to be carefully instructed they could not turn in going the Kingston side. Right turn in and a right turn out only. Mr. Prior also asked if the exterior size of the garage would change at all and it was confirmed it would not.

Sandra Swan, 128 Kingston Road: Her main concern is the traffic, they really need another lane on that side of the road to create a turn off. There is traffic already, and this will make it more so.

Ms. Hayes said the reason why they created the rolling drop offs and pickups was because she recognized the traffic congestion. Mr. Prior said she was almost doubling the number of drop offs. The numbers were explained that each rolling time frame would have the same number of cars as the current morning and afternoon time frames have. Mr. Prior asked if there were any other traffic mitigating offers that they had discovered were available to them. It was confirmed they had not found any. Mr. Prior said since each person did not have an assigned drop off time, they could all potentially roll in at the same time.

Ms. Davies said if there is a problem that they would have to invest in building a turn lane on the road. Ms. Hayes said her question was would it be rather than having to build this lane they readjust the new drop off since the others have been in existence for 30 years. Ms. Davies said she was surprised that this had been allowed to go on because usually you are not allowed to queue up cars on a state highway. Ms. Pennell asked if any thought had been given to redesigning the traffic circle. It was confirmed they had not because the area had a good turn around area.

The Board closed public session and entered deliberations. Mr. Thielbar felt the only real problem would be the traffic. Mr. Prior agreed with Mr. Thielbar that the use was acceptable but the only problem was traffic. He feels there already is an impact on traffic in the area. While the trips are spaced out, there will be an increase on the number of cars in the area. Ms. Davies concern was the traffic, this would probably have to be remedied. It affects a state route which is not their jurisdiction. Mr. Thielbar said they could organize a car pool for parents or they could be better organized and give parents specific time frames to drop off their children. Mr. Prior felt that Mr. Theilbar's second idea was good and could work. Mr. Hauschildt disagreed because they were approving the use, and they could request a traffic study but that would be onerous for the applicant. There has been no expert testimony that this is a problem or that it will be a problem in the future. He asked that they leave it to an expert and ask the town planner to look into this. He suggested that this be a condition. Ms. Davies asked if the town planner is not satisfied if it's conditioned on this it would not go through. This was confirmed.

MOTION: Mr. Hauschildt moved to approve the application as presented with the condition that the ingress and egress be reviewed and approved by the town planner. Mr. Hauschildt withdrew his motion.

Town council recommended that they request the town planner to review this and table the discussion until this could be completed. Ms. Davies requested that they reopen the public hearing so they could ask the applicant if this would be acceptable.

MOTION: Mr. Prior moved to reopen the public hearing to ask the applicant a question, Mr. Thielbar seconded. The motion passed unanimously.

Ms. Davies asked how this would impact them. Ms. Hayes said this would have a significant impact on them, as they had submitted their application to be heard for the July meeting. At the time, they were directed by Mr. Eastman that the July meeting was full and requested they wait till August. Mr. Hauschildt explained that council gave wise advice because if they vote on this tonight with the condition, if it was found that traffic would be problem they could never return with the same project. Ms. Davies said that having this worked out prior to the vote gives them a better feeling on what they are voting on and gives them an opportunity to look into choices. Ms. Hayes said with a better understanding of what this means, she agrees with this plan.

MOTION: Mr. Hauschildt moved to continue this application to the next meeting the third Tuesday in September and continue in public session, Mr. Thielbar seconded. The motion passed unanimously.

The application of Southern District YMCA for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 for the expansion of the use of the property to include a field house as part of YMCA activities. The subject property is located at 56 Linden Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #82-13. Case #17-22.

Mr. Thielbar said the YMCA received permission three years ago to build what is there, and a swimming pool and they have not built the swimming pool. Would they need to reapply and come back for the pool? This was explained by town staff.

Sharon Somers representing the YMCA appeared before the board to discuss the project. The aquatic center has been approved but not built yet, they do have documentation from Mr. Eastman about a significant completion issue. They are planning to build this when they finish the fundraising effort. Tonight, they are here is to discuss the request for a special exception to build a new field house. Ms. Somers explained how the presentation would move forward.

Rob McGregor, director of the YMCA appeared before the Board and provided an overview on the project. Is it necessary to go out into the community to raise funds for the project. Many people have been asking what the final plan is for when the YMCA is fully built out. They need a broader space for youth and families to spend time. The space as it is laid out and described is 28,000 square feet where they can have group activities throughout the year. Ms. Pennell asked if there would be activities for the senior citizens as well. This was confirmed that they would have group activities and fitness for the seniors in the area and all other citizens as well.

The hours of operation currently are 5AM-9:30PM, Saturday is 8-5PM and Sunday is 7AM-4PM. Mr. Hauschildt said they wanted to build the aquatic center first, and asked if they would be able to complete this first phase within a 3-year period. It was explained they have to raise the funds so they do not know if that's possible yet.

Robbie Woodburn appeared before the Board to discuss landscaping. She showed a plan to the Board. The proposed landscaping was explained at length to the Board. Mr. Prior asked the height of the existing building and what the proposed height would be. The field house is just a little bit shorter than the height of the original building. Ms. Davies asked that the landscaping would be on the sides that abut residential property and this was confirmed.

Stephen Pernaw, engineer for project appeared before the Board to discuss the studies that were completed for this potential project. A traffic study was performed and completed and included in a packet the board received with the application. This study was discussed at length. Ms. Davies asked how they determined capacity. The logic was explained by Mr. Pernaw and the software that they use. The equations were in the appendix of the packet supplied. Ms. Davies questioned that since it's a shared lot, during the weekdays the lot is used by the school next door. The parking spaces were included in the YMCA's projections but during weekdays these spots would be for the school. They were included, but they did a breakdown in the report that showed both buildings usages color coded. They included both buildings demand in their proposal. Mr. Thielbar asked how they determined how many spots they would need in the future. This was explained at length. Mr. Huaschildt tried to summarize

that currently the lot access and traffic is adequate to good and with these proposals it would remain adequate to good going forward. Mr. Pernaw said yes, but there will be an impact on traffic. Mr. Thielbar explained that there have been complaints about parking because YMCA users are parking in the school lot during the day, where they should not be parking. So, there are concerns that parking will not be adequate for the future. Mr. Thielbar said that these spots in the school lot would also be closer to where the proposed field house would be located.

Ms. Somers said she needed clarification on where YMCA patrons are parking that they should not be. This was explained by Mr. Thielbar. The parking involving the school next door was discussed at length. Mr. Prior asked the shared lot arrangement to be explained. Mr. McGregor explained that the deed states that the YMCA and SAU would have a shared driveway and parking. During the weekdays, the priority for parking would go to the SAU. Ms. Somers then discussed this agreement at length.

Ms. Somers went through how the YMCA meets each of the special exception criteria. They will conform to all applicable regulations.

Ms. Pennell asked to have more specifics about what activities are going to happen inside the field house. IT was explained it would have AstroTurf on the inside so there would be space for recreations for various sports.

Ms. Davies opened it up to public comment.

Margaret Callahan, Principal of the Seacoast School of Technology: She handed the Board members some information. She did not receive notice until January 27th of this year and the abutters meeting was set up for February 1st by the YMCA. The field house came as quite a shock and to others. She has concerns for capacity and student safety. She was told that they plan to fully build out on the 10 acres and this is a huge concern. They have about 750 students on campus and they see this growing. They have to be able to provide parking for students in the future. She has serious concerns about student safety.

Mr. Prior asked Ms. Callahan to be more specific in her concerns. Are her concerns about more than just the shared parking lot. Ms. Callahan explained that it's student safety in the shared lot and the potential comingling of students with YMCA patrons during the day. She also worries they will not have enough parking for students in the future. Mr. Prior asked if they had to provide a certain amount of parking spots for a school, would they have to limit students because of this. It was explained they do not have these kinds of regulations.

Stephen Falconer, 50 Linden Street: He purchased his property on May 9th and he knew about the pool but not the field house. He agrees with the YMCA's mission but he has a dozen or so trees between his property and the YMCA and he would like someone to promise him these trees would still be standing when construction was completed. They provide a nice buffer for his property. These trees are on the YMCA property.

Helen Joyce, Chairperson of the Exeter Cooperative School Board: She is not here tonight to speak for the Board on this. They have to have a conversation about whether or not the Board is in favor in writing for the shared parking lot. Her concern is that shared parking lot. The school board not in a formal way that guarantees parking spaces for the YMCA in that lot.

Albert Bernier, 52 Linden Street: This building is going to be huge, and he will be right on the corner. There is a lot of noise that comes from the YMCA currently towards his property. He has been through this before and seen the results, the building that sits there now is not what he saw at the planning board meetings. Changes were made where he had no invitation to speak to these changes as they were considered minor tweaks after the fact. This building will be about 30 feet from his property line. He is concerned about the noise as he is retired and home often. He has concerns about all the hot top in town and what this does to everything.

Joyce Tinker, 46 Linden Street: The Verani Real Estate Survey that states their property values won't be changed by this are incorrect. This new building will block sunlight and change the view for her as an abutter. She also has concerns with safety issues. The police department are down in the parking lot with their lights on during the night. If you can't see around the corner, which the police and others will no longer be able to do if this is built will cause problems in this lot with the children at night. As a property owner and an abutter to this monstrosity she does not feel this is advantageous for her property values to have this next door. She made a plea that what we see here is not what you are going to get in the end. She would like to ensure that abutters get a say in any changes, etc. She wondered if this could be left as a green space and they build on another property.

Works with the Exeter School District: A point of safety for him, he always thought the driveway would be moved so that people parking in certain lots would have to cross a street to get to the building. He thought this was part of the long-range plan. He has concerns about parking in the lots. He does not feel the traffic study took everything into account when it was performed. A lot of information was presented tonight, but abutters and others have not had a lot of time to digest it all. He also would like to know when the pool will be built and when the field house will be built. He feels there is too much of a lapse between them which allows other changes in the area to take place.

Ms. Somers appeared before the Board, the applicant acknowledges two area of concern. One was the new abutter who was not living in the area when the abutter meetings took place. He raises interesting questions about trees in the area remaining or not remaining. They will need to discuss this amongst themselves as a development team as to how they will address this or not address this. The other area of concern was the indication tat they need an opportunity to talk about this proposal and have the YMCA meet with them to discuss these details. She feels that at this point, she would like to ask the board to continue these proceedings. They would like to have quality interactions with abutters and adjourn tonight and go back and further discuss with others and reconvene at a later time.

MOTION: Mr. Hauschildt moved to continue this matter to the regularly scheduled meeting in October in public session.

Further discussion occurred between Ms. Sommers and the Helen Joyce about scheduling meetings prior to the next ZBA hearing. It was decided tow ait until November

MOTION: Mr. Hauschildt moved to continue this matter to the regularly scheduled meeting in November and to continue with the public session at that time, Mr. Thielbar seconded. The motion passed unanimously.

A rehearing on the application of Varsity Wireless Investors, LLC for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Article 5, Sections 5.2 and 5.4.2 F. to permit the construction

of a wireless communication tower and associated site improvements on the property at 8 Kingston Road. The subject property is located in the NP-Neighborhood Professional zoning district. Tax Map Parcel # 81-49. Case #17-16.

Francis Parisi representing the applicant appeared before the Board and explained the history of this application and what had occurred since the last time they had appeared before the Board. He does not plan to redo everything from the previous public hearings. They provided a PowerPoint presentation and other information to the Board with their application.

The previous application was denied due to not being an approved use for a special exception and for not having adequate screening and landscaping. Mr. Parisi explained why Varsity Wireless feels this is actually an essential service using information provided in a PowerPoint presentation. In regard to screening, there were some concerns that the base would be visible during the winter. They added a row of arborvitae around the compound. In speaking with Mr. Eastman they did not feel this screening applied to them as they are seeking a special exception for the use and height. Mr. Parisi explained at length why they believe they meet the special exception criteria for height.

Mr. Parisi also explained that this tower is located in a nonresidential zone, and they had been hampered on its location by the surrounding wetlands. Ms. Davies asked if they contacted the director of business of Brickyard Business Park and it was confirmed they had and they were interested but due to the wetlands in the area there was too small of an area to work with. Ms. Davies said it would have been preferred if it could have been built on an existing commercial lot as opposed to the commercial zone but abutting residents. Mr. Prior asked about the previous images of what the tower would look like once it was built, he asked if these were available for tonight's meeting. These images were brought up in the PowerPoint. Mr. Prior asked if there was anything they could propose doing to mitigate the view of the tower, especially for the residents who abuts this property. Residents who bought their house and all they could see were trees would not want to look out their windows and see this tower. Mr. Parisi said that after speaking with Mr. Eastman he did not feel that type of screening was applicable because it is hard to screen 130 foot anything. Mr. Parisi said they cannot go on private property but the best places to place trees to grow but he does not know if he can legally do this.

Mr. Prior said if they are unable to provide adequate screening, in his mind that means this may not be the right location for this tower and it doesn't meet the criteria. Mr. Parisi said there really are no other locations. Ms. Davies said the tower has to be above the tree line to work properly. Mr. Prior said he is not ok with the abutting residents in the westside drive neighborhood having to see this, there needs to be screening for them. Ms. Davies said they had the ability to talk to neighbors to try to come to an agreement with abutters on plantings on their property. Mr. Parisi said if they condition this they could initiate discussions.

Ms. Davies asked about the wetlands they looked at previously, and if there was any way to make it work. Why this location would not work was explained at length by Mr. Parisi. Ms. Pennell asked what the maximum number of carriers they could get on a tower, and the number was confirmed as 5. Ms. Pennell asked how many towers in town are currently maxed out. It was explained that most in town are maxed out. Ms. Pennell feels the single carrier is not as bad as the fully maxed out version.

Ms. Davies said they appreciated getting the numbers they had requested at previous hearings. Mr. Thielbar felt the intent of the laws both federal and state were to improve voice communication and by

their own submission and comments made along the way the need for this tower isn't driven by voice but is driven by data needs. This doesn't mean to him they can build anything they want because the company is telecommunications company. The reason he does not feel it is an essential utility is because it has not been demonstrated it is needed to enhance voice communication. Brian Grossman, outside council for Varsity Wireless appeared before the Board. He explained that this facility will provide 4G LTE and voice services are moving to LTE services. This site is a comingling site and it will be providing both. How this coverage would work was explained at length. Mr. Thielbar did not feel the telecommunications act allowed them to set up towers wherever for data, that it was only for voice coverage. The coverage footprint was explained that it covered both voice and data. The information they provided on signals and coverage were for both equally. This matter was discussed at length.

Mr. Grossman then described why they meet the special exception criteria, which also submitted in his request for a rehearing. Mr. Hauschildt appreciated the documents they provided for this meeting, it had been requested for previous meeting and would have been nice to see it at the previous hearings. He understands they have engineers who determine the gaps in coverage, and he asked if he could speak to the differences in some maps provided by T-Mobile online vs what was in the PowerPoint. This was explained that it is not that they are inaccurate it is just a difference in granularity. Mr. Hauschildt then asked if the Board requested they camouflage the tower to make it appear as a pine tree, would varsity wireless be open to this. It was confirmed that they were.

Chris Gurshin, 19 West Side Drive: He submitted a letter to the Board prior to the meeting. He does not feel this is an essential service, the part where it says "reasonably necessary", there is perhaps a gap in 4G LTE but he does not feel this is a public health hazard. The primary argument he keeps hearing is providing LTE coverage, indoors and in vehicle coverage. Homes have WIFI coverage so this is a moot point. He feels the voice coverage is adequate currently for cell phone coverage. Regarding the screening issue, he is a direct abutter and he has concerns about the decrease in value of his property and any extended sale times. He submitted articles on this matter with his letter. He feels the valuations provided by applicant were too small a sample base and many of the houses included were near a tower but did not have sight of it. He urges the Board to consider the reasonable doubt that this will not impact his home value. If there was another location that was less obtrusive that would be better a site.

David Walker, 21 Westside Drive: He feels just because of the FCC rules on essential services doesn't mean the town cannot limit how many appear in town and where. He has issues with the coverage maps provided, because T Mobiles online maps state the coverage in the area is good and service is throughout this area. If this tower is built much of Riverwoods still won't have coverage and that is a group that wants coverage. Regarding landscaping and screening, this tower simply cannot be adequately screened. What currently is a pristine view of a wetlands would become a view of the tower. Also, when it comes to real estate values, the study provide by the applicant indicates home values would increase, and he feels this study is seriously flawed. The sample size was very small and 1/3 couldn't even see a tower from their house. Mr. Walker feels the tower will is not essential in this location, cannot be adequately screened and will negatively impact property values. Because of this he requests the board denies the special exception.

Mr. Grossman discussed the property value statements and one of the articles provided by an abutter was from New Zealand and could not be associated with Exeter, New Hampshire. It has also been rejected in the courts. Mr. Grossman then explained the telecommunications act and what cannot be

used as evidence and studies. In terms of the real estate study this work was defended by the person who performed the study at previous meeting. Studies that do not take Exeter into account cannot be applied to a decision in Exeter. Mr. Grossman read some previous legal judgements for clarification for the Board. Mr. Grossman also discussed how Varsity would not be interested in planting trees on private property and being required to maintain them. They would be willing to open a fund to do this, but would not want to be responsible for dividing how the money is allocated from the fund to provide additional screening for abutters. If that is the major concern, they are willing to have some dialogue around this as long as they are working within the telecommunications act and the ordinance for reasonable ideas.

The Board closed the public hearing and moved to deliberations. Mr. Hauschildt sees three issues with this, they are in a position where the only evidence for and against coverage comes from the applicant. In regards to property values there has not been enough evidence testimony to rely on, but they also cannot take newspaper articles into account that have appraisals in other areas. He also feels taking only the evaluations provided by the applicant would be incorrect as well. Having no expert credible testimony one way or another it becomes a nonfactor. As for adequate screening, there is no way to put trees around the property to screen it and there is no way to screen it from the ground. The ones that are covered like trees are not noticed as starkly, but the unscreened version is shockingly out of character with the neighborhood. He likes the idea of this fund but it comes very last minute and is unsure if it's adequate for the abutters. The reason it is an issue here, it is in the commercial zone but it's so close to residential zone. This will essentially be in a residential zone.

Mr. Prior said in regard to the property values, he doesn't necessarily for them to only admit expert testimony. He fully agrees with Mr. Hauschildt comments on this, he is very willing to discount that. But he is not willing to say that they should ignore other evidence. Ms. Davies felt a lot depended on the methodology and availability of examples. Fortunately for Exeter other towers were in places that were less impactful but these types of locations no longer exist in town.

Mr. Prior also does not believe sufficient screening is possible in this zone and it certainly is not possible on this property. The fund proposed by the applicant would not go far enough to cover the cost of the appropriate landscaping. He does not feel we should approve this because he does not believe it meets the adequate landscaping and screening. He does not feel it is possible for the tower to be screened in this location. Ms. Davies believe adequate is the key here, and adequate does not mean the view has to be completely blocked. Mr. Prior said this application has to meet criteria A-H and he does not feel it meets criteria D. Ms. Davies thinks adequate means something else, if it is impossible to obtain then it needs to mean something else. The Board discussed this matter at length. Ms. Davies liked the offer to provide screening on the property of abutters with their permission. She does not feel comfortable with the fact that none of the details have been ironed out on this. This board is not administrative and they cannot set up a fund for this. This would have to be a negotiation between the abutters and the applicant. Ms. Pennell asked who gets to decide if landscaping is adequate? How is that determined. Mr. Thielbar felt the site was so fundamentally flawed in the first place a band aid could not be put on it. The Board continued to debate this.

Mr. Hauschildt asked if pretending it's a tree would help. Mr. Prior and Mr. Thielbar said no they did not feel this would help. Mr. Thielbar felt if they were going to deny this all the negative thoughts should be included. Mr. Thielbar still feels this fails also on section A.

MOTION: Mr. Prior moved to deny the application based on the fact that it does not meet criteria D the provision of adequate screening, Mr. Thielbar seconded. 2-3. Mr. Hauschildt, Ms. Davies and Ms. Pennell voted nay.

Mr. Hauschildt felt there were two ways to look at the adequate screening issues. One way is Mr. Prior thinking that it cannot be adequate screened. Then there is Ms. Davies felt adequate had to be relative to the situation at hand and adequate had to also be reasonable. This issue continued to be debated by the Board. Town Council advised the Board to take a recess and she would discuss options with them.

MOTION: Mr. Hauschildt moved to hold a brief recess, Mr. Prior seconded. The motion passed unanimously.

The Board returned from recess and Ms. Davies requested to pursue the idea of the offer of the screening on abutters property. Unfortunately, they do not feel like that can be decided on tonight so they would like to continue this to the next meeting. In the meantime, they can make headway on selective screening with direct abutters and report back. They can decide on item D based on the information requested. Mr. Hauschildt also requested the abutters be reasonable in the requests for screening. Ms. Davies also said that if they cannot come to an agreement amongst themselves, the Board will have to decide. Mr. Parisi asked a procedural question, they have been putting their Planning Board site plan review on hold due to this Boards hearing. They were supposed to have a meeting with them this upcoming Thursday. The Planning Board seemed to have similar issues and planned to do a site visit that day and requested that they defer to the Planning Board. Ms. Davies said, no they do not feel they can make a decision yet. Town council explained what is being requested and that the ZBA may want to join the planning board on their site visit and post a meeting agenda to do so. The Board and Mr. Parisi discussed some procedural date questions and Board meeting schedules.

MOTION: Mr. Prior moved to continue this hearing until the regularly scheduled September meeting, Mr. Hauschildt seconded. The motion passed unanimously.

Other Business:

Approval of Minutes:

Minutes were held for approval until the next meeting.

Adjournment

There being no other business before the Board this evening, Mr. Prior moved to adjourn at 11:45PM, seconded by Mr. Thielbar, and the vote was unanimous. The session was adjourned by Ms. Davies.

Respectfully submitted,

Jennifer Dionne
Recording Secretary