

**ZONING BOARD OF ADJUSTMENT  
March 20, 2018  
FINAL MINUTES**

**1. Call to order**

The session was called to order at 7:00 p.m. by Ms. Laura Davies - Chair.

**2. Introductions**

Members present Laura Davies – Chair, Robert Prior – Vice-Chair, Rick Thielbar – Clerk, Martha Pennell - Alternate, Joanne Petito – Alternate. Staff present: Barbara McEvoy – Deputy Code Enforcement Officer and Members of the Public were also present.

**3. New Business**

**Application for Porches at Exeter LLC for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations (Residential) to permit the construction of a multi-family structure with less than the required rear yard setback; and variance from Article 4, Section 4.3 Schedule II for the proposed construction to exceed the maximum lot coverage requirement. The subject property is located at 25 & 29 Franklin Street, in the R-2 Single Family Residential zoning district. Tax Map Parcel #72-75 and #72-77. Case# 18-01.**

Mr. Jeff Coban representing TF Moran Co appeared before the Board today to present and discuss the proposed changes from the original project of 4 smaller Units with parking in the back of the building which was approved in 2014. Mr. Coban is presenting a revised Plan with eliminating the parking in the back of the proposed building. He states this is taking in consideration of not to disturb the residents when cars come in and out. He informed the Board that this is the last portion of a 4 piece project including 1 duplex, a 5 Unit Residential Building across the street and what is called the Bungalow Club 2 lots up. The current proposal is for slightly larger Units with Garages driving under rather than behind the building similar to what is currently across the street. The current proposal is 2 combined lots. The applicant is asking for a variance from Section 4.3 to reduce the rear setback from 25 ft to 9.8 ft and a variance from Section 4.3 to increase the maximum building coverage by 33% not including the cantilevers. The setback is from the roof to the property line, but the building coverage is the actual building foot print as it sits on the ground. This was discussed at length.

Ms. Davies – Chair opened up the discussion for the public.

Ms. Caroline Field – Property owner on the corner of South and Franklin St – Ms. Field raised concern about traffic and parking. She is particular concerned about the possibility of other’s using her tenants parking spots. Ms. Field also feels that the traffic will increase on Franklin St. especially since the center lane has been removed, which in the past has made it easier to turn

onto Franklin St. Ms. Field also feels that the proposed building will take away from the view and “forget about historic Exeter”

Mr. Coban responded by stating that as far as the parking, they have provided onsite parking and a guest spot as per requirements. And as for the Traffic they have went down from 5 Units to 4 Units and it should not create more traffic than originally.

**There were no other Public speakers and Ms. Davies - Chair closed the Public session.**

**The Board entered deliberations.**

Mr. Prior – Vice Chair stated that the previous approved plan was for approx. 3960 sqft and the exact same number of parking spots which was 9, based on bedrooms. He states we are now being presented with 7433 sqft of building and same parking spots. And while he approves the concept of parking of one half in front and one half under, however the previous plan from 2013 called for 4 units. It does not matter that there was 5 then and 4 now it is not that there is a 20 % reduction. The proposal coming before us today is a significantly larger structure and we have not been asked for a height variance but the applicant has volunteered that the building is taller than originally proposed. Mr. Prior – Vice Chair feels the only reason it seems is none other than selling a more expensive property. A 1900 sqft unit will command a much higher price than a 990 sqft unit. He is concerned about the mass of the structure that is being requested and firmly believes all of the proposed parking can be accomplished with a smaller building.

Mr. Thielbar asked for clarification on the 25 % variance.

Ms. Davies then pointed out that on R2 it is 25% of building coverage and the applicant is requesting 33%.

Mr. Prior – Vice Chair responded that this is merely a number that is visually not consistent with what is being presented to the board.

Ms. Davies then pointed out that the orange on the map represents walkways, stairs, driveways and decks which are not meant to be included in building coverage ratio and agrees with the perception.

Mr. Prior – Vice Chair says the previous approved proposal is off the table it has expired back in 2016.

Ms. Davies – Chair feels there would be a demand on larger Units and not everybody has to like it.

Mr. Prior – Vice Chair states there is no hardship here.

Mr. Thielbar feels the reduction of the building from 33 to 25 is not a very big reduction and on the street it would look exactly the same, it just would not come as close to the back. Maybe it would be a good thing.

Ms. Pennell stated that she agrees with Ms. Fields comments on parking and the traffic on Franklin St and South St. Ms. Pennell also would hate to see the neighbor hood be taken over by big buildings like this.

The Board then moved on to a brief discussion and motion on the various Criteria's.

Ms. Davies motioned to deny the variance for the requested setback on the basis it does not meet Criteria #5, second by Ms. Pennell, the motion passed. The Variance failed.

Ms. Davies - Chair motioned to deny variance request for percentage of building coverage on the basis it does not meet Criteria # 1, 2 and 5. The motion was seconded by Mr. Thielbar, the motion passed. The variance failed.

#### **New Business Continued:**

**The Application of Excel Construction Management, LLC (on behalf of Friedman Realty Inc.)for a variance from Article 4, Section 4.4 Schedule III Density & Dimensional Regulations (Non-Residential) and Article 5, Section 5.1.2 for the expansion of a non-conforming use to permit the proposed construction of an addition to an existing building with less than the required rear yard setback; and a variance from Article 5, Section 5.6.6 to permit less parking than required for the multi-use building. The subject property is located at 173-179 Water Street, in the WC-Waterfront Commercial Zoning district. Tax Map Parcel #64-50. Case #18-02**

Mr. Michael Todd representing Excel Construction Management appeared before the Board today to present and discuss the proposed project of site plan and foot print.

Mr. Derek Durbin representing Durbin Law in Portsmouth appeared before the Board to give the Board an overview on the property. The property is located at 173-179 Water Street called the Smith building and was originally constructed in 1850. It is primarily used for retail space and one of the largest buildings on the downtown Waterfront. Mr. Durbin pointed out that this project will develop the Waterfront and vitalizes this particular area of downtown. Mr. Durbin is asking the Board to approve the variance.

Mr. Barry Gier – Vice President of Jones & Beach Engineers Inc. appeared before the Board today to discuss the requested 2 variances Article 4, Section 4.4 to allow a rear setback of 15 ft where 25 ft is required and Article 5, Section 5.6.6 to allow onsite parking of 27 spaces and existing offsite parking of 59 spaces for a total of 86 spaces where 105 are required, the 105 include 4 required visitor parking spaces. There are currently no outdoor parking spaces. There is currently no residential use of the building. Per Mr. Durbin the applicant is seeking deviance from the 105 parking spaces to the 27 parking spaces. Mr. Durbin also states they are currently

59 parking spaces short as it currently exists. If the proposal goes thru then they will be 78 spaces short. Out of the 78 parking spaces 27 would be dedicated to the residents and guest parking. Mr. Derek Durbin agrees that by the zoning regulations they will be short of 3 spaces for the residents.

Ms. Davies – Chair opened up the discussion for the public.

Ms. Dana Deniro- Business Owner approached the Board voicing her concern about the lack of current parking and what this proposal will do to her business and the surrounding businesses. Ms. Deniro states that she has watched the Traffic over the years turning into a major problem. Ms. Deniro says her and her family love Exeter and does not see how this proposed project will improve the parking and she is asking the Board for consideration.

Mr. Dan Hoefle, Attorney out of Portsmouth representing Julie and Charlie Travis, appeared before the Board today to ask the Board to consider such a huge project and the grid lock it will create. Mr. Hoefle states that the access to the back behind Water Street is thru Trends alleyway the Alleyway between Julie and Charlie's and Burt's property and the road down by the Boathouse. There will be grid lock behind and in front. It will be a completely inadequate solution to what is already a congested area of the town. Mr. Hoefle is asking the Board to deny the application on the grounds that it will cause gridlock and hardship on the nearby bordering property owners.

Mr. Hans Wriedt – Business Owner of Unit A-5 right next to the Smith Building appeared before the Board today voicing his concern. Mr. Wriett states that he and Mr. Friedman have been neighbors for 27 years. Mr. Wriedt is concerned with Mr. Friedman's decision to alter the building and feels it will stick out like a sore thumb, effect the light and Water view from the Swasey Park. Mr. Wriedt is asking the Board to take in consideration and deny Mr. Friedman's request.

Mr. Elliot Berkowitz of Water Street appeared before the Board today to voice his concern about the proposed 2 variances by Mr. Friedman. Mr. Elliot says that there is just not enough parking and thanks the Board form their consideration.

Mr. Wendell Wren of Unit B1, appeared before the Board today to voice his concern about him loosing light and fresh air and feels he will be imprisoned by surrounding big buildings. He states that it will affect his health and welfare. Mr. Wren says he has trust in the Zoning Board and feels that they will do what's right.

Mr. Ritchie Bowles Owner of Exeter Music appeared before the Board today. Mr. Bowles states that he is losing business due to the existing lack of Parking. Mr. Bowles says he owns 2 parking spaces out back and at least once a month he has to find someone that is parking in his spot, just so that he can park. Mr. Bowles is asking the Board to consider the proposal.

Mr. Eric Frohn of 183 Water Street appeared before the Board today voicing his concern about the current shortage of parking. Mr. Frohn says come spring there is an increase in traffic and wants to know where is all that traffic going to go. Mr. Frohn says there is a parking lot down by the Boat ramp and if there is high tide there will be flooding in that parking lot. Mr. Frohn is asking the Board to take a good look at the proposal and consider the outcome and affect it will have on the public.

Ms. Diane St. Martin President of Philips Wharf Condominium Association appeared before the Board today, Ms. St. Martin is representing the Philips Wharf Condominium Association and states that the majority of the Philips Wharf Condominium Association which are business owners are highly opposed to the proposal. The owners feel that it will have a detrimental impact on current business owners and the current lack of parking and is asking the Board to consider the Proposal they feel will infringe on the current Sewer line and have a negative effect of the surrounding properties.

Ms. Jessica Christopherson Business Owner appeared before the Board today voicing her concern of the parking proposal. Ms. Christopherson voices her concern that she has continues problems in finding a parking spot near her business and so are her customers. Ms. Christopherson is asking the Board to consider the Proposal.

Ms. Holly Garrison Property Owner appeared before the Board to make a brief statement. Asking the Board to please not make property owners collateral damage in the name of progress.

Mr. Burt Friedman Owner of 173-179 Water Street appeared before the Board today. Mr. Friedman States that there are several open parking spaces throughout the day. Mr. Friedman also explains that he is in the business to make money to provide for his Family and their future. Mr. Friedman addressed the Sewer Line concerns and stated that they will be replacing the Sewer Line in that area.

Ms. Davies closed the Public Session.

Ms. Davies – Chair would like someone to address the legal aspect of the rear access from the applicants point of view.

Mr. Friedman pointed out that the private road starts further to the east and everything else is public.

Ms. Davies – Chair states there are 2 Items. Rear setback of 15 ft, 25 feet is required and the existing footprint is to stay the same and the parking.

Ms. Davies pointed out that the applicant can go all the way up if they stepped it back 25 ft. and They have a right to go up 3 floors according to the zoning laws.

The Board then moved on to a brief discussion and motion on the various Criteria's.

Mr. Prior voiced his concern about the size of the building being too massive to fit on a scale for the part of town that it is in and that the large size of it will interfere with the abutters, therefore a smaller building would be much more appropriate for the location.

Mr. Prior – Vice Chair motioned to deny the total Rear setback of 15 ft to the existing situation based on the fact that it does not meet Criteria #3, substantial justice is not being done and the benefit to the applicant is in fact outweighed by the harm that might be done to the public and other individuals.

Mr. Thielbar seconded the motion.

The Board denied the motion.

The Board continued to discuss the variance request. During that discussion Ms. Petito sought clarification on the vote had just occurred asking if the prior vote was on #3, substantial justice or 4, diminution of property values. Upon hearing that the motion was related to substantial justice, she indicated that she misunderstood that. She did not think that the substantial justice prong was met. She then made a motion to deny the variance based on failure to meet 2.2.81B (3), that substantial justice be done. The motion was seconded and passed 3-2.

Ms. Davies feels that there should be more parking for the residents and that the proposal is very ambitious given the area and circumstances.

Mr. Prior – Vice Chair motioned to deny the request for the parking variance based on the fact that it does not meet Criteria #3 Substantial Justice and Criteria # 5 the proposed use is not reasonable. Mr. Thielbar seconded the motion and the motion passed unanimously.

Approval of Minutes: January 16, 2018

The Board discussed amendments to be made to the January 16, 2018 Minutes.

Mr. Prior – Vice Chair motioned to approve the minutes for January 16, 2018 as amended.  
Mr. Thielbar seconded the motion. The motion passed unanimously.

M. Davies - Chair would like to take the opportunity to speak to the public at large regarding the vacancies on the Zoning Board of Adjustments. We would like to seek new Alternates if anybody is interested. It is a nice way to get familiar with the Board and it is fairly low keyed on the beginning. Please contact the Code Enforcement Board. Also Ms. Joanne Petito offered to become a full time member of the Board. The Board welcomed and congratulated Ms. Petito.

Ms. Petito motioned to adjourn the meeting. The Motion passed and the Session was adjourned by Ms. Davies at 10:45pm

Next Session is scheduled for April 17, 2018

Respectfully submitted,

Melody Hypolite  
Recording Secretary

