

Town of Exeter
Zoning Board of Adjustment
April 16, 2019, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Laura Davies, Vice-Chair Joanne Petito, Robert Prior, Christopher Merrill - Alternate, Esther Olson-Murphy - Alternate

Members Absent: Kevin Baum, Rick Thielbar, Martha Pennell - Alternate, Hank Ouimet - Alternate

Others Present: Doug Eastman

Call to Order: Chair Davies called the meeting to order at 7:02 PM.

II. **New Business**

- A. The application of Roger Elkus for a variance from Article 4, Section 4.3, Schedule II - Density & Dimensional Regulations - Residential to permit the creation of a residential single-family lot with less than the required minimum lot width. The subject property is located at 181 High Street in the R-2, Single Family Residential zoning district. Tax Map Parcel #70-119. Case #19-05.

Henry Boyd Jr. of Millennium Engineering spoke about the application on behalf of owners Roger Elkus and Sue Argue. Mr. Boyd said that at 74,000 square feet, their lot is large enough to encompass five lots of the requisite size. However, their proposed subdivision doesn't have the required 100 feet of frontage, it only has 90 feet of frontage. The proposed lot complies with the ordinance in every other aspect, and would require no setback or other variances. He argued that the lot would fit well in the neighborhood; he found 50 lots in the tax map which were not conforming, mostly created prior to zoning control.

Mr. Boyd briefly discussed the five variance request criteria. Criteria 1) and 2) The variance will not be contrary to the public interest and the spirit of the ordinance is observed: yes, because the variance will allow a good and reasonable use, and more than adequate lot width is provided at 90 feet. Criteria 3) Substantial justice is done: yes, as discussed in his response to 1), 2), and 5); there are no problems with access or visibility. Criteria 4) The values of surrounding properties are not diminished: yes, because this lot would be the same size as most lots in the neighborhood, and larger than some. Criteria 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: yes, because it would deny a good use of the property, with 90% of the required width.

Chair Davies opened the discussion to the public.

Robbi Lynn Ward of 179 High Street stated that she opposes the requested variance due to its potential effect on her property value. She consulted a 1981 NH real estate book on the definition of property value, and it said that if there is a quiet, serene, park-like abutting

45 property and a single family or multi family home is put in its place, that will have a diminishing
46 effect on the direct abutting property. There is a deck on her house that overlooks the green
47 space of the lot, and taking that away would affect her resale value.

48 Ms. Ward continued that prior to purchasing her property, she researched 181 and 179
49 High Street, which was a nonconforming lot at the time; the rules have been in place since
50 1973. The current owners of 181 High Street came to the town and asked to make a change to
51 the lot, but it was not pursued and she assumed they could not subdivide it.

52 Ms. Ward felt that this proposal does not meet criteria 1),4), and 5), and a denial would
53 not be a hardship for the owners.

54 Chris Dowd of 3 Ridgewood Terrace, which is across the street from the lot, said that
55 when he purchased the house in July 2018, he learned that the apparently vacant lot across the
56 street was part of an existing nonconforming lot. They assumed that that part of the lot would
57 always be green space. He added that it provides privacy to their property.

58 Matt Forsyth of 4 Ridgewood Terrace, a direct abutter, said he would prefer not to grant
59 the exemption in order to maintain the spaciousness of the neighborhood they're accustomed
60 to. Mr. Boyd's argument about similar sized lots is specious, since those were created before
61 the regulation was enacted. A decision was made to change that ordinance, so they shouldn't
62 use standards from before the regulations were in place.

63 Mr. Boyd rebutted that the owners have the right to build a structure where they're
64 proposing to build the structure, so whether a variance is granted or not, they have the right to
65 build a separate structure on the property. There could be a house there anyway, and it might
66 have to be a condominium. A nicely built, single-family house on its own lot will not diminish the
67 values of abutting property, and it's not contrary to the spirit of the neighborhood. He argued
68 that no benefit would be gained by the public by denying this application.

69 Ms. Petito asked what the hardship to the owner would be in building a house that does
70 fit within regulations. Mr. Boyd said that in his experience, banks are reluctant to lend on
71 condominiums. Ms. Petito asked why it would need to be a condo, and Mr. Boyd said that the
72 owners can't keep two houses. Mr. Prior said they'd purchased a single family home on a large
73 lot, and nothing has changed since they purchased, so where's the hardship? Mr. Boyd said the
74 hardship is in the inability to do much with the land. Mr. Prior responded that they bought a
75 piece of property that way, and there's no hardship. Chair Davies suggested that not being
76 allowed to use their property could be a potential hardship.

77 Chair Davies closed the session to the public.

78 Chair Davies asked that the Board go through and discuss the criteria.

79 Mr. Prior said that he doesn't see a problem with criteria 1) or 2). The variance will not
80 be contrary to the public interest, and the spirit of the ordinance is observed. It would be a single
81 family home on an empty lot on Ridgewood Terrace, which is appropriate. Criteria 3) Substantial
82 justice is done: Yes. He understands the reservations of the abutters in seeing a house where
83 they currently see trees, but it's not a conflict with the spirit of the neighborhood. Chair Davies
84 added that it's not the abutters' land; the owners can clear cut or do anything they wish with
85 their land. Mr. Prior continued with criteria 4), Values of surrounding properties are not
86 diminished. Chair Davies said that value is dependent on circumstances. Whether greater
87 density brings up values or drops them down depends on whether it's appropriate or appealing.
88 Both High Street and Ridgewood Terrace have high density and high value, and additional

89 density would not affect values to the general market. Good quality homes in keeping with the
90 neighborhood will not cause any property value loss in the neighborhood.

91 Mr. Prior continued with criteria 5), Literal enforcement of the ordinance would result in
92 unnecessary hardship: no, he doesn't see a tremendous hardship in this case. The applicants
93 purchased a large single family home on a large piece of property. There are three lots which
94 were formerly all one parcel. The garage for 181 High Street was converted to a single family
95 home as 179 High Street. It should have been carved out differently at the time, but wasn't. It's
96 a very large lot, but it's the nature of that large, attractive house that it be on a large lot. It's not
97 an existing parcel of land that is burdened with a hardship because of constraints like wetlands.
98 Chair Davies said that if you consider hardship as not using the property to its potential, that's
99 the hardship. Mr. Prior responded that none of that language is in the definition. Ms. Petito said
100 that it addresses special conditions where the property can't be reasonably used; reasonable
101 use is not necessarily the use that the owners want. Ms. Olson-Murphy pointed out that they
102 could still build on the lot.

103 Chair Davies said there's a thin case for hardship, but it would be a shame if it doesn't
104 get developed, since it's a good use for that area. She addressed those who like seeing the
105 trees by pointing out that it's not their property, and it can and likely will be developed at some
106 point. Mr. Merrill asked for confirmation that the Board can't do anything with the idea that the
107 use of the property could be worse later than as proposed now, and Mr. Prior said that was
108 correct. Chair Davies said they're only dealing with the variance in front of them. At some point,
109 there will be some creative use of this lot, but that's not under the Board's control. Mr. Prior
110 observed that a vote against this variance may result in a worse situation for the abutters.
111

112 **MOTION:** Ms. Petito moved to deny the application of Roger Elkus for a variance from Article 4,
113 Section 4.3, Schedule II - Density & Dimensional Regulations - Residential to permit the
114 creation of a residential single-family lot with less than the required minimum lot width for the
115 property located at 181 High Street. Mr. Prior seconded. All were in favor.

116
117 B. The application of Seacoast Mental Health for a variance from Article 5, Section
118 5.1.2 A.& B. for expansion of a non-conforming use to permit the proposed
119 construction of a 6,000 square foot addition to the existing structure located at 30
120 Prospect Avenue. The subject property is located in the R-2, Single Family
121 Residential zoning district. Tax Map Parcel #65-146. Case #19-06.
122

123 Monica Kieser, president of the Board of Directors of Seacoast Mental Health, spoke
124 about their variance application. They are bringing forward a new proposal that addresses some
125 of the concerns of the ZBA and the abutting neighbor who spoke at the November 2018
126 meeting. At that time, they were proposing a larger, 8,100 square foot addition to the property,
127 configured like a T, which protruded more towards the residential area. One abutter had
128 expressed her concern about the expansion toward her property, the dumpster, and the HVAC
129 system, and the ZBA members had been concerned about parking populations. In response,
130 they looked at a way to configure the interior space of the expansion differently to create a
131 smaller proposal that did not extend further back toward the residential neighborhood than the
132 current building.

133 Ms. Kieser said that Chris Rice of TFMoran looked at the parking calculation with Doug
134 Eastman, and Mr. Eastman said the professional office space category is appropriate, and also
135 did not think that basement space needs to be part of the calculation. If you adopt Mr.
136 Eastman's analysis, they have more parking than what they need with the 48 spaces there now.
137 In the proposal, they've reconfigured the parking in a way to pick up 9 spaces (not 10 as in the
138 application), for a total of 57 spaces, 10 more than required. The abutter also stated at the last
139 meeting that she had not noticed issues with parking.

140 Chair Davies said that one concern from the abutter was noise and vibration from the
141 mechanicals. Ms. Kieser said there is already a fence screening all sides; they've proposed
142 additional screening, but will also be getting newer mechanicals which should create less noise
143 and vibration. They could additionally move them closer to the building, to the extent that the
144 utility companies would allow.

145 Chair Davies said that they had done a good job of taking feedback and coming back
146 with new plan. She asked Ms. Kieser to go through the criteria on the requested expansion of
147 nonconforming use.

148 Ms. Kieser discussed criteria 1) and 2) together, the variance will not be contrary to the
149 public interest and the spirit of the ordinance is observed. She said that obviously the use does
150 conflict with the ordinance, but it doesn't conflict with the ordinance in a way that undermines
151 the ordinance's basic objective, part of which is to lessen congestion and ensure safety. Parking
152 is adequate. The expansion will accommodate 6 - 8 new employees with new office visits.
153 Parking will be increased by 9 spaces, which is more than enough. They are along a COAST
154 bus route, and people also walk to the office. There are office staff based in Exeter who don't
155 see clients at the center; they go out to school systems, pediatric practices, and the hospital,
156 and make home-based visits. Not everyone comes into the center for services.

157 Ms. Kieser continued by saying another objective of this ordinance is to promote health
158 and general welfare. She said that the new addition does not threaten public safety; it actually
159 promotes welfare, because with it they can provide more services. Promote adequate light and
160 air: it conforms to all required yard setbacks, and it does not protrude toward residential area
161 further than existing. Avoiding undue concentration of population: it's consistent with the
162 historical use of property. There would be a little more traffic/clients but not an undue
163 concentration, particularly in this area with commercial spaces, the hotel, and the hospital. It's
164 not impacting transportation and provision of solid waste, and would have no effect on natural
165 resources. Granting the requested variance does not conflict with the ordinance's basic zoning
166 objectives, alter the essential character, or threaten public safety or welfare.

167 Ms. Kieser continued on to criteria 3), substantial justice will be done by granting the
168 variance. She said that there is no benefit to the public by denying the variance that would
169 outweigh the hardship to the center. Regarding criteria 4), the surrounding property values are
170 not diminished by granting the variance, she said that there is a generous open buffer area and
171 fencing, and no one is going to suffer a negative effect to their property value. On criteria 5),
172 denial of the variance results in an unnecessary hardship, she said that the Center is subject to
173 special conditions. They have a property that straddles different zones: it's located in R-2 but
174 abuts the Hospital Zone and the Commercial-2 Zone. It's accessed by a right of way, and has
175 no frontage of its own. It's a single story building, with mechanicals in the eaves, so they can't
176 simply build up and avoid expansion on the ground. They'd have to shut down during the

177 construction, which is not possible, because they have a contract with the state to provide these
178 services. They can't relocate the Center because they need to respond to the hospital for
179 emergent cases. She discussed the point that no fair and substantial relationship exists
180 between the general public purposes of the ordinance and its specific application in this
181 instance by saying that the proposed use is reasonable. This is a scaled down and more
182 sensitive proposal. They're adding 9 spaces, for 10 more spaces than they need, and this will
183 cover the small increase in traffic.

184 Ms. Petito asked if increased numbers of people are seeking the types of treatment they
185 provide. Jay Couture, the Executive Director of Seacoast Mental Health, affirmed that there is
186 an increased demand for services. Currently, they can't accommodate extra staff, so there are
187 no openings for first time appointments in Exeter for adults, and the soonest children's
188 appointment would be in late June. She said that they need additional space to meet the need.

189 Chair Davies opened the discussion to the public.

190 Tom Montgomery spoke on behalf of Kim Montgomery, the owner of 14 Highland Street,
191 which is a direct abutter but not listed on the plan. He said that she spoke at ZBA in November
192 about her concerns on noise and trash removal. There are also floodlights on the back side of
193 the property not connected to motion detectors. She's asking the board to consider that
194 Seacoast Mental Health is nonconforming to the R-2 district, and 45% of property line abuts
195 private residences. Ms. Montgomery wrote that section 5.1.4 of Exeter zoning ordinance says
196 that a non-conforming use shall be allowed to continue as long as the purpose, manner or
197 extent does not change, but this would be a change to extent with facility, staff, and patient load.
198 She argued that with its proximity to the hospital, it should be considered a healthcare facility,
199 not a professional center. Ordinance 5.2.b on special exceptions requires that the use is so
200 designed to be operated so that public wellbeing will be protected, but the abutters' wellbeing is
201 a concern. Highland Street is a residential area with many families, and Seacoast Mental Health
202 patients travel through these densely populated streets. 5.2.c, permitted use shall not be
203 considered in determining the compatibility for proposed use; her statement asked if the
204 variance for nonconforming would be granted today if they proposed to build a new facility. The
205 structure is 5 - 6 times the size of the residences in the area. 5.2.e, there is adequate onstreet
206 parking, and loading causes minimal interference with abutting streets. Ms. Montgomery has
207 witnessed the center's parking lot at full or nearly full conditions. 5.2.h, use shall not adversely
208 affect abutting or nearby properties, but she argued that the parking overflow will have a
209 deleterious effect. Ms. Montgomery's argument concluded by saying Seacoast Mental Health
210 would be better served by relocating than expanding. Chair Davies pointed out that ordinance
211 5.2 doesn't apply. The proposal doesn't have to meet the special exception criteria, because
212 this is a zoning exemption.

213 Rachel Trabelsi of 12 Highland Street said that traffic and parking are her main
214 concerns. The only entrance is from two residential streets. She's seen overflow parking on both
215 left and right side of Prospect Avenue, causing safety issues. Also, there used to be a motion
216 detector for the lights, but floodlights were recently installed that light up the inside of her house.
217 She's tried to get this addressed but has not gotten a response. She has also seen clients
218 leaving the Center and cutting through private property. She agreed that Exeter is underserved
219 for mental health, but suggested that there could be other solutions than expansion, such as
220 office sharing.

221 Janice Booth, a longtime resident of 28 Prospect Street, which is at the corner of
222 Prospect Street and Prospect Avenue, said that this used to be a nice residential area but now
223 is like Route 1. Originally, traffic to the Center was intended to go through a cutoff from the
224 hospital property, but they closed off that road and now the neighborhood is stuck with all the
225 traffic. She would like Seacoast Mental Health to at least impress on their clients to be mindful
226 of the residential area. Parking is an issue as well.

227 Gerry Hamel of 17 Little Pine Lane, who owns 26 Highland Street, said that Seacoast
228 Mental Health has been a good neighbor, but he can see the concerns about parking. He added
229 that the road going into the facility is only 22 feet wide, and asked if they were planning to
230 expand it. With an increase in the size of the building, he felt that the driveway would need to be
231 altered in the future. Chair Davies said that there was a 40 foot right of way, but that's not
232 necessarily the width of the pavement. There's no indication that it will be changed.

233 Chris Rice of TFMoran said that traffic is a Planning Board purview item, and they will
234 conduct a traffic study for that situation, including information such as parking counts and
235 anticipated demand. Ms. Kieser said that they could address the lighting issue, for example by
236 putting them on a timer. She will speak to administrative staff so that they can filter such issues
237 to the correct people more directly. There was once access to the Center through the hospital,
238 but the hospital expanded and the access changed. The hospital has told them they can't go
239 back. She pointed out there's some conflicting information about parking on streets from
240 abutters. If people are parking in a no parking zone, this is an enforcement issue that can be
241 addressed outside of this process. They don't own the right of way, so they likely won't be
242 modifying it. Chair Davies asked that they determine who owns the right of way and look at that
243 issue with the Planning Board. Gerry Hamel suggested it was owned by the town. Doug
244 Eastman clarified that the town owns access to where the water tower used to be, but it's not
245 necessarily town property.

246 Mr. Prior asked if there a hole or gate in the fence allowing some people to travel on foot
247 off of the property not through the right of way. Ms. Kieser said she had walked the property that
248 day and that it has a tall fence in good condition, but there's a ledge that drops off at a steep
249 grade they may be using for access. Mr. Prior said the abutters would appreciate them doing
250 anything possible to prevent clients from cutting through private property to access Highland
251 Street.

252 Phil Shaput, Senior Director of Facilities Planning and Project Management at Exeter
253 Hospital, said the hospital has no opposition to their proposal. Regarding the gate, there was a
254 fair amount of traffic cutting through this gate from Portsmouth Ave to High Street, so it was
255 closed years ago. The hospital would be happy to trim trees, although there is sensitivity along
256 that route because the ED is there. Mr. Prior asked if the hospital could offer parking spaces to
257 staff at Seacoast Mental Health. Mr. Shaput responded that he can discuss it, but there's tight
258 parking now and they're talking about some growth on campus.

259 Doug Eastman stated for the record that the proposal shall comply based on the use
260 with the number of parking spaces. He has determined the use as professional office and done
261 the calculations.

262 Chair Davies closed the session to the public.

263 Chair Davies asked if the Board had any concerns about the code enforcement officer's
264 determination on the parking, but all accepted his determination. She said if that were the case,

265 there is more than adequate parking for the use. Other concerns from abutters were traffic and
266 lighting. The applicants indicated they'd be willing to address the lighting concern. She would
267 like to request that the Planning Board pay special attention to that, since it's more their
268 purview. Mr. Prior suggested that enforcement might be lacking on traffic and parking in that
269 neighborhood, and perhaps the Police Department could pay extra attention, but that's also
270 outside their purview. Chair Davies said that the applicant has expressed a willingness to
271 address concerns.

272 Ms. Petito went through the variance criteria again for the Board. Criteria 1) and 2) are
273 that the variance is not contrary to the public interest and the spirit of the ordinance is observed.
274 It must not alter essential character of neighborhood, threaten public safety or welfare or
275 otherwise injure public rights. Chair Davies said that abutters may wish there were not this
276 nonconforming use, but it's already there. She asked the Board to consider whether the
277 expansion of the nonconforming use would affect the neighborhood in the ways described. Ms.
278 Petito agreed that they have to consider the incremental effect, not the whole. Chair Davies said
279 that the new part of the building is on the side closest to the hotel. They haven't encroached
280 further towards residential side, so it's not a concern here. Ms. Petito said they are adding six to
281 eight staff and some corresponding office visits. Mr. Prior stated that this doesn't change the
282 essential character, but it does add traffic, so a traffic study is appropriate. This is the Planning
283 Board's purview. Chair Davies suggested they mention traffic in the approval.

284 Ms. Petito discussed criteria 3), substantial justice: the benefit to the applicant should not
285 be outweighed by harm to the general public. Chair Davies said that the applicant does provide
286 a benefit to the public. This use should not provide harm to immediate neighbors if the lighting,
287 parking, and traffic are addressed. Ms. Petito said that they provide a service to the community
288 by nature of what they do, which will be increased by this application. Chair Davies said some of
289 the testimony was about the neighborhood in general, not about this existing or proposed use.
290 Mr. Prior added that there have been issues with Highland Street in front of the Planning Board
291 before.

292 Ms. Petito continued with criteria 4), values of surrounding properties are not diminished
293 by granting the variance. Mr. Prior said they'd heard no testimony on property values.

294 Ms. Petito discussed criteria 5), denial of the variance results in an unnecessary
295 hardship. She said the proposed use is a reasonable one. Chair Davies added that she sees
296 legitimate need for the expansion, and they are providing a public service. They can't close
297 down to build up, and they need to be near the hospital. This is a fully developed area. Mr. Prior
298 said they're burdened by being in an R-2 Zone but abutting more the compatible Commercial
299 Zone and hospital district. Chair Davies said this is a dependent use; it needs to be near the
300 hospital, which grew in a residential neighborhood. This causes some stress with abutting uses.
301 Mr. Prior concluded by saying there's no evidence that the application does not meet any of the
302 five requirements for a variance.
303

304 **MOTION:** Mr. Prior moved to approve the application of Seacoast Mental Health for a variance
305 from Article 5 as proposed, with the note that they expect that this will go to the Planning Board
306 for site approval, to pay particular attention to issues of lighting and traffic on site. Ms. Petito
307 seconded. All were in favor.

308

309 **III. Other Business**

310 A. Approval of Minutes: January 15, February 19 and March 19, 2019

311 1. January 15th 2019 - The Board determined that these minutes were
312 previously amended but not approved.

313 **MOTION:** Mr. Prior moved to approve the minutes of January 15th meeting. Mr. Merrill
314 seconded. Ms. Petito abstained as she was not present at that meeting, and the motion passed
315 4-0-1.

316 2. February 19th 2019 - The Board determined that these minutes were
317 previously approved.

318 3. March 19th 2019 - Ms. Petito asked that in lines 137-151, regarding the
319 abutters' notice, they add the information that the abutters list was not
320 distributed to the Board.

321 **MOTION:** Mr. Merrill moved to approve the minutes of March 19th as amended. Ms. Esther-
322 Olson seconded. Mr. Prior abstained as he was not present at that meeting, and the motion
323 passed 4-0-1.

324
325 Chair Davies said that she attended a training session on the Right to Know Law
326 regarding a non public session. They have to vote to go into a non public session, and they
327 need to cite the reason why it needs to be a non public session before they go into it. They must
328 keep separate minutes on the non public session. They have to vote to go out of the non public
329 session, and once in public session, they must discuss whether the minutes will be public or not.
330

331 **IV. Adjournment**

332
333 **MOTION:** Mr. Prior moved to adjourn. Ms. Esther-Olson seconded. All were in favor and the
334 meeting was adjourned at 9:34 PM.

335
336 Respectfully Submitted,
337 Joanna Bartell
338 Recording Secretary