

Town of Exeter
Zoning Board of Adjustment
May 21, 2019, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

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

Members Absent: Martha Pennell - Alternate, Hank Ouimet - Alternate

Others Present: Doug Eastman, Barb McEvoy

Call to Order: Chair Davies called the meeting to order at 7:04 PM.

II. **New Business**

A. Request for Rehearing on the application of VWI Towers LLC, case #19-04 Kingston Road, Tax Map Parcel #100-004

Chair Davies decided to address this matter first. She said there was a glitch in the abutter notification process, and since that's a necessary component of the approval process, there had been favorable input to consider this request for rehearing.

MOTION: Ms. Petito moved to approve the request for rehearing the application for VWI Towers LLC, case #19-04 because it has come to their attention that some abutters were not notified. Mr. Prior seconded. Chair Davies said that the five full time members of the Board will vote. All were in favor. The motion passed 5-0-0, and there will be a rehearing.

B. The application of Gateway at Exeter, LLC for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.3 Schedule II: Density and Dimensional Regulations (residential) to permit a multi-family residential complex as part of a mixed use development plan for property located on Epping Road (former King property). The subject property is located in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-6 and #47-7. Case #19-07.

Thomas Leonard, a lawyer representing Tom Monahan, the principal at Gateway at Exeter LLC, spoke regarding the variance request. He said that this is a request for a mixed-use development at the former King property; the variance is specifically to allow a 224 unit multi-family residence. The balance of the project is a permitted use.

Mr. Leonard gave some facts about the property. It's 62 acres total; to the north is exit 9 of Route 101, to the east is Epping Road, to the south is Continental Drive, and to the west is town-owned property referred to as the Bloody Brook/Little River area. This property is in the C-

44 3 Zone. Epping Road's infrastructure is being improved; the area is a Tax Incremental Financing
45 [TIF] area identified for improvements, and this is one of the sites to be improved.

46 The proposal only involves the 15 acre front portion of the lot, the eastmost portion,
47 closest to Epping Road. There are substantial wetlands throughout the property, but the least
48 valuable wetlands are in the easterly portion. The tract is wooded, and it was timbered in 2014.
49 There's one single-family home in the southeast corner, lot 47-6, which will probably be coming
50 down; otherwise the property is vacant. Mr. Leonard presented the Board with a December
51 2016 study from Gove Environmental which concluded that easterly portion of the site lacks
52 significant wetland features; the areas of the property to the west are of far greater value.

53 Mr. Baum asked if the project had gotten through design review, and Mr. Leonard said
54 no. Mr. Monahan added that they had submitted a conceptual plan to the Planning Board and
55 done some engineering. They held a conceptual hearing and listening session in which they
56 showed a large assisted living facility, and folks appeared not to be in favor. Town Meeting this
57 year actually took the assisted living use out of this zone; their project would be grandfathered,
58 but they backed off from that development plan last October. Mr. Baum summarized that they
59 have gone through design review with the Planning Board, but this new proposal doesn't
60 represent that work.

61 Mr. Leonard said that 15 acres would have the project and any improvements
62 associated with the project, and the back 45 acres will be open and preserved, not developed,
63 in perpetuity. They would be willing to sign a covenant with the town to that effect. Mr. Prior
64 asked if they did the density calculations using the 62 acre figure. Mr. Leonard responded that
65 residential is not permitted, so he didn't know whether R-4 or R-5 would be the correct
66 guideline. R-5 allows for one unit for every 3,600 or 3,700 feet, and R-4 every 7,000 feet. If the
67 project is in the R-5 zone, which he thinks is reasonable, about 20 acres would be appropriate
68 under R-5. They have 15, but there are three or four acres of wetland on the 15 acre site, so
69 they can't count that acreage. They could make the argument that they can include the 62 acres
70 in the calculation, since they plan on preserving it, and that would be well within density. This
71 would be 224 units; they are interested on doing it on 15 acres, but if the Board thought 20
72 acres was more appropriate, they could add the other five.

73 Mr. Leonard presented a schematic of the design. There are four buildings proposed:
74 one building would be commercial, with two stories, for a total of 48,000 feet square feet, and
75 the other three buildings would be residential. They will comply with the height requirements of
76 the C-3 Zone, so the project is not asking for a height variance. Making the buildings taller
77 creates a smaller footprint, which will reduce the impact to wetland areas. They're proposing
78 224 residential units, 50% of them one bedroom and 50% two bedroom, and with 25% of each
79 unit type being workforce housing rental units.

80 Ownership workforce housing is defined by the state and town as the mortgage plus
81 utilities equaling 30% of the median income for a family of four. The proposed project is for
82 workforce rentals, which have a lower threshold: rent and utilities are 30% of 60% of the median
83 income for a family of three. Chair Davies asked if they could guarantee that it will be rentals,
84 not condos. Mr. Leonard said they will make that commitment. They recently did a workforce
85 rental project in Londonderry, and there's a covenant that says that project will be rental for 30
86 or 40 years. They would work with Town Planning staff as to how that would be administered in
87 Exeter. Mr. Baum asked if they would be following the Exeter Subdivision Regulations; there's a

88 process in place, with bonuses in certain areas. Mr. Leonard said yes, they will follow the
89 regulations, but they are not seeking bonuses.

90 Mr. Thielbar asked if the 56 workforce apartments would be in a separate building or
91 mixed in. Mr. Leonard said mixed in, that's one of the requirements. There would be
92 approximately 25% workforce rentals in each building. Each building has a footprint of 17,500
93 square feet. How many floors depends on the parking needed; they want to minimize
94 impervious surface but have to provide 1.75 spaces per unit. All the roads will be private roads.

95 Mr. Leonard presented a rendering, pointing out that they would like to have some kind
96 of courtyard. Mr. Prior said that renderings are not pertinent to their review; they're only
97 approving their commitment to 224 units and that the development would be limited to 15 out of
98 62 acres, with the rest left as open space permanently, as well as the guarantee that there
99 would be rental units for 30 - 40 years and the commitment to workforce housing. Mr. Leonard
100 said the renderings are relevant because they're making a commitment to buildings with several
101 stories to minimize impact. If they put in a 100,000 square foot warehouse, there would be a
102 much greater impact. Mr. Merrill said they will need a public road to get to the offices. Mr.
103 Leonard said they can do it without public roads, but it would be a Planning Board matter.

104 Mr. Leonard said that zoning has several purposes: it attempts to accomplish the Master
105 Plan, to allocate infrastructure and resources, to prevent incompatible uses, to ensure the
106 protection of wetlands, and to encourage a diverse supply of housing. The standards for
107 granting a variance, according to the statutory reference, require an unnecessary hardship,
108 which is based in the relationship between the C-3 Zone and the purposes of the Town of
109 Exeter. This is an unusual piece of property with substantial wetland. The Town wants to
110 develop the site in a reasonable manner, but the zoning districts don't address the concerns of
111 the property. They don't accomplish the goals that this property wants to accomplish: wetland
112 preservation, especially that of higher value, and the availability of housing. A strict application
113 of the rules at this site would be an unnecessary hardship. This use is consistent, and is not at
114 variance with anything proposed in the area. No incompatible use could be in the CT-1 zone,
115 with a 45 acre buffer. Permitted uses don't address many questions intended to be addressed
116 by zoning. The location of this property is unique: it's at an intersection of Route 101, and has
117 infrastructure as good as the rest of the Town. These features make it particularly useful for
118 multi-family residential, since they can't do it without that infrastructure. NH has supported the
119 idea that the specific location of the property is a special condition that is permitted to support a
120 variance. The size of the property is also unique. The Town doesn't have large tracts to support
121 a project like this. The Housing Advisory Committee has identified smaller units as important,
122 and this will have workforce housing of one and two bedroom units. Mr. Leonard concluded by
123 saying that under present statutory conditions, the real question is "Is the use reasonable?" This
124 is a reasonable use.

125 Mr. Leonard then presented letters in support of the project from representatives of
126 Osram Sylvania, Sig Sauer, Exeter Health Resources, Cobham, and from Russell Dean, the
127 Exeter Town Manager. The letters spoke about the difficulties of hiring and having young people
128 move into the area. Small rentals are an important first step to the life cycle of housing.

129 Mr. Leonard then spoke regarding the other criteria. Granting the variance will not be
130 contrary to the public interest; in fact, there is strong public interest in establishing and
131 maintaining a community with a broad and diverse housing stock. The criteria that the use of

132 infrastructure for important projects and important purposes is in the public interest is
133 accomplished here. The proposed use will observe the spirit of the ordinance, and the variance
134 won't alter the essential character of the neighborhood. This does not interfere with the
135 neighborhood; there's residential going in across the way. This is an arterial road and not
136 interfering with the zoning scheme. There are no incompatible uses to worry about. Substantial
137 justice will be done; this is a win-win, since it affords the owner of this property a reasonable
138 opportunity of development. There will be no adverse impact to any surrounding property
139 owners. There is no benefit to the town to prevent this use. There's a suggestion that the project
140 would take a site away from a manufacturing plant, but there are more sites for that purpose
141 than for rental housing. This will not have any adverse impact on surrounding property values.
142 This is an area identified by the town as one to develop and to take advantage of new
143 infrastructure.

144 Chair Davies said she was concerned about the abutters list, which was not in the
145 package. Mr. Leonard said he does have one, and Barb McEvoy said she also does have it. Mr.
146 Prior said that the abutter's list is usually part of the application. Chair Davies added that it's
147 helpful when there are comments from the public. Ms. McEvoy asked Mr. Leonard if someone
148 had verified the list, and Mr. Leonard said he thinks so. Chair Davies said she was ok with it if
149 Ms. McEvoy had verification that all the letters were sent out. Ms. McEvoy said 10 out of 11
150 certifications have been returned. Mr. Eastman said the verification is done by the assessing
151 department.

152 Chair Davies closed the session to the public, and said the five regular members will be
153 voting.

154 Chair Davies said that rental housing is in short supply, which is a big concern. She's
155 pleased at this project's commitment to a minimum of 30 years as rental housing.

156 Mr. Prior said he had been concerned about hardship, but he finds the argument made
157 by the applicant very compelling. If they want to accomplish multifamily use and workforce
158 housing, it needs to be on a property like this. Because of the access to the highway and artery
159 to downtown, water and sewer, this is the perfect location for this type of a use. He would love
160 to see more jobs in town and more commercial uses, but this location is optimized for this type
161 of use more than commercial.

162 Chair Davies said that the wetlands have been an impediment in the past, and large
163 commercial and industrial uses take up a larger footprint. Sometimes there are concerns about
164 a conflict between industrial and residential, but the way this is laid out addresses that. Mr.
165 Baum agreed, saying mixed use development is important. There are other types of permitted
166 uses under C-3 such as a business office, professional office, or hotel. The reason for this zone
167 is that it makes sense to have those along a heavily travelled corridor. This project is still
168 consistent with the purpose of the C-3. Any conflicts between industrial use on Continental and
169 residential use here are mitigated by the fact that they're willing to put so much of this land into
170 undeveloped use.

171 Mr. Prior asked if there is a legal precedent for the 60% number in the calculation about
172 workforce housing. Mr. Leonard was allowed to speak in response to a direct question from the
173 Board, and said that RSA 674 58-61 is the NH workforce housing statute which defines
174 "affordable," with regards to rental property, as rent plus utilities being 30% of 60% of a three

175 person family's median income. In Exeter, it is approximately \$1,270 a month for both rent and
176 utilities. Mr. Prior suggested just saying they abide by the statutory standard.

177 Mr. Thielbar pointed out that there are two different sized apartments for the workforce
178 housing, so they must not charge the same price for them. Mr. Monahan said that they do
179 charge different workforce housing rents for one or two bedrooms; it depends on the number of
180 people in the apartment as well.

181

182 MOTION: Mr. Baum moved to approve a variance to permit a multifamily residential project as
183 part of a mixed use development plan within the area shown as the site on the display plan
184 submitted with the application. The variance is conditioned on the remaining approximately 45
185 acres to the rear of the site remaining undeveloped, and that 25% of the residential rental units
186 qualify as workforce housing rental units as defined under the NH State workforce housing
187 statute, and that the restriction for workforce housing rental shall be for not less than 30 years,
188 and that the residential portion shall remain rental for not less than 30 years, and shall include
189 not more than 224 residential rental units. Mr. Prior seconded the motion.

190 Doug Eastman asked about the density calculations, and Mr. Prior said that they weren't
191 tying it to any R-4 calculations. Mr. Eastman suggested they could have used the 62
192 acres to calculate the density. Chair Davies said she doesn't know how the wetlands
193 play into the zoning, but thinks that they're safe. Under the R-5, the project would require
194 18.67 acres, but they're not tied to the R-5, and the project has 67 acres to work with.
195 Mr. Prior said he's comfortable with 224 units. Mr. Eastman asked if they needed to
196 consider the variance criteria amongst themselves, and Mr. Prior said they decided it
197 was unnecessary.

198 All were in favor and the motion passed 5-0-0.

199

200 **III. Other Business**

201 **A. Election of Officers**

202 MOTION: Mr. Prior nominated Joanne Petito as Chair of the Zoning Board of Adjustment. Mr.
203 Baum seconded. All were in favor.

204

205 MOTION: Mr. Baum nominated Mr. Prior as Vice-Chair of the Zoning Board of Adjustment. Ms.
206 Petito seconded. All were in favor.

207

208 MOTION: Ms. Petito nominated Mr. Thielbar to be the Clerk of the Zoning Board of Adjustment.
209 Mr. Prior seconded. All were in favor.

210

211 **B. Approval of Minutes: April 16, 2019**

212 MOTION: Ms. Petito moved to approve the minutes of the April 16th meeting as submitted. Mr.
213 Prior seconded. Mr. Baum and Mr. Thielbar abstained, as they were not present at the meeting,
214 and the motion passed 3-0-2.

215

216 **IV. Adjournment**

217

218 MOTION: Mr. Prior moved to adjourn. Mr. Baum seconded. All were in favor and the meeting
219 was adjourned at 8:55 PM.

220

221 Respectfully Submitted,

222 Joanna Bartell

223 Recording Secretary