

Town of Exeter  
Zoning Board of Adjustment  
August 20, 2019, 7 PM  
Town Offices Nowak Room  
Final Minutes

I. **Preliminaries**

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

**Members Absent:** Martha Pennell - Alternate, Hank Ouimet - Alternate, Christopher Merrill - Alternate

**Others Present:** Barb McEvoy

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

II. **New Business**

- A. A request for a rehearing on the application of VWI Towers LLC for a special exception per Article 4, Section 4.2, Schedule I - Permitted Uses and Article 5.2 to permit the proposed construction of a wireless communications facility and associated improvements; and a special exception per Article 5, Section 5.4.2 F for said tower to exceed the height regulations for its location within the R-1, Low Density Residential zoning district. The subject property is located on Kingston Road, Tax Map Parcel #100-004 (Town of Exeter Landfill Property). Case #19-04.

The applicant requested a postponement to October 15th, 2019. Mr. Prior asked if this were the second time they had requested an extension, and Ms. Petito said yes, they were scheduled at the June meeting originally. No reason was indicated for the delay. Ms. McEvoy said the reason is they don't have a carrier. She added that the Warrant Article on this issue, which was approved by residents at Town Meeting, did specify an expiration date. However, as long as VWI are in the permitting process, the expiration would not take place. She suggested to VWI that they could withdraw the application without prejudice and come back later, but that would negate the approval they got at Town Meeting, so they would prefer to take another 60 day extension and try to get a carrier, then go ahead with the rehearing.

Mr. Prior felt that if the Board lets the case go until October, that should be the last extension, saying that continued extensions are unfair to the Board and the public. Ms. Petito said that she wants everyone to have a fair opportunity to be heard. VWI is not here tonight, but if the Board extends it to October, VWI needs to send someone in person to discuss the extension requests. Ms. Davies was not sure legally where they stand. The case hasn't started. They have been granted a rehearing, but if the applicant doesn't want to take advantage of that, does it expire? Ms. Petito said the Board should investigate what the time limits should be and what factors they should consider. Mr. Baum said the Board can make it clear that they don't want to entertain another continuance without good reason, but he hesitates to say absolutely

45 not, since they have routinely given extensions in the past. Mr. Prior said they should ask that  
46 abutters be renotified for the October meeting at the applicant's expense.  
47 Ms. Olson-Murphy did not vote, as there was a quorum of regular members.

48 MOTION: Mr. Prior moved to grant the extension to the ZBA meeting of October 15th, with the  
49 conditions that a representative of the applicant be present, that the Board is disinclined to grant  
50 further extension in the absence of a convincing reason it should be extended, and that the  
51 abutters should be renotified at the applicant's expense of the Oct 15th meeting. Ms. Davies  
52 seconded. All were in favor.

53 B. The application of Nancy G. Merkle Living Revocable Trust for a variance from  
54 Article 5, Section 5.1.2A for the expansion of a non-conforming use to permit the  
55 proposed construction of an addition to the existing residence located at 63 Park  
56 Street which currently encroaches within the required minimum side yard  
57 setback. The subject property is located in the R-2, Single Family Residential  
58 zoning district. Tax Map Parcel #63-150. Case #19-11.  
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60 Ms. Petito disclosed that she is family friends with the Matlacs, who are abutters not  
61 present at this meeting. She said that this relationship does not require her recusal, since she  
62 felt she could make an impartial decision. Mr. Thielbar asked if she had talked to the abutters  
63 about the issue, and she said no. Mr. Prior and Ms. Davies said they were fine with her not  
64 recusing herself.

65 John Merkle of 63 Park Street spoke about the application, first mentioning that he had  
66 no problem with Ms. Petito not recusing herself. He told the Board that there was a fire in this  
67 house on April 16th, which gutted a one-story, 7.5' x 15' kitchen addition as well as other areas  
68 of the interior. When they repair the damage, they want to add a bathroom upstairs and give  
69 more closet space to one of the second floor bedrooms. A tiny corner of the existing addition  
70 encroaches on the 15 foot setback. They're not looking to enlarge the current footprint, just build  
71 up. He added that what they are asking for is not unreasonable, and will not hurt the neighbors.

72 Ms. Davies asked how old the house is. Mr. Merkle said it's an 1852 Gothic Revival  
73 cottage, the best example of that style in Exeter. Mr. Baum asked Mr. Merkle if the new roof  
74 would be lower than the other roof peak, and Mr. Merkle said yes. Mr. Baum also asked if it  
75 would have no window, and Mr. Merkle said yes, they left out the window because of the  
76 proximity to the setback line. Ms. Davies asked if the materials were consistent with the rest of  
77 the house. Mr. Merkle said yes, it's wooden clapboards and trim. Mr. Baum said it's only 12.3  
78 square feet, but Mr. Merkle corrected that it's actually less than 10 square feet. Ms. Petito said  
79 she had no concerns. There were no abutters present to speak.

80 Ms. Petito closed the public session.

81 Ms. Davies said this is the tiniest request, since the addition is on top of an existing  
82 structure, and there's no change to the footprint. Mr. Baum said this is in a neighborhood with  
83 other encroaching setbacks, so it seems reasonable. Ms. Davies asked if they should go  
84 through the criteria, but Mr. Prior said he didn't feel that was necessary. Ms. Petito said they  
85 should simply refer to the application which addresses the variables. She questioned #5,  
86 "unnecessary hardship." Mr. Baum said the size and narrow shape of the lot is the hardship,  
87 and along with the existing longstanding house that's sufficient. There are no windows, and no  
88 encroachment of air or light.

89 MOTION: Mr. Prior moved to grant the variance as proposed in the application for the building  
90 at 63 Park Street. Ms. Davies seconded. All were in favor.

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92 **III. Other Business**

93 A. Approval of Minutes: July 16, 2019

94 Mr. Baum said that in line 30, the name is Jon Ring, not John Ring. No other members  
95 had corrections.

96 MOTION: Ms. Petito moved to accept the minutes of July 16th with the correction of deleting the  
97 "h" from Jon Ring's name. Mr. Thielbar seconded. Mr. Baum and Ms. Davies abstained as they  
98 weren't at the last meeting, so Ms. Olson-Murphy voted. All were in favor and the minutes were  
99 approved 3-0-2.

100 B. Jeremy D. & Dianna J. Russman - Case #17-11 Special Exception approval  
101 granted for residential conversion at 10 Highland Street, Request for one-year  
102 extension of approval.

103 Ms. Petito said this application was approved in 2017, but there had been a serious  
104 family health issue for the applicant. She pointed out that they have some time before the  
105 approval expires, so they didn't actually need this request. Ms. Davies said that they're not  
106 supposed to grant extensions to approvals that have already expired. Mr. Baum said they  
107 typically grant extensions as long as there's no change to the zoning; his only objection is that  
108 it's so far in advance, something could change at Town Meeting. Mr. Prior suggested granting  
109 the extension with a note that further extensions would be subject to scrutiny of the underlying  
110 zoning. Mr. Baum said that it would be up to the Planning Board to put a time frame for renewal  
111 into the ordinance, and he would like to raise that with Dave Sharples. Early renewal is not a  
112 problem, but they don't want people to try to get ahead of zoning ordinances, although that  
113 doesn't seem like the motivation here. Given past practice, he didn't feel inclined to make them  
114 come back.

115 Mr. Thielbar said this application is for four units, so the applicant may be required to go  
116 to the Planning Board. Ms. McEvoy said yes, but they haven't yet. [However, it was later found  
117 that the applicant had approached the Town Planner, who determined that there was no need  
118 for the case to go before the Planning Board.] Mr. Thielbar said they should have gone right  
119 away. The Board should grant the extension but highlight the fact that the project needs  
120 Planning Board approval. They only have a year to get the project done. Mr. Baum corrected  
121 that it doesn't have to be done, only have substantial completion. Mr. Prior said they have to  
122 break ground. Ms. Davies said it wouldn't hurt to include in the letter that they require Planning  
123 Board approval.  
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125 MOTION: Ms. Davies moved to approve the request for an extension for the application at 10  
126 Highland Street, Case #17-11, for a one year extension from the date that the approval expires,  
127 and she requests that a note be made to the applicant that reminds them that their application  
128 also requires Planning Board approval. Ms. Petito seconded. Mr. Thielbar said the Board could  
129 give them an extension for a year from today's date, rather than expiration. Ms. Davies said she  
130 thinks the ordinance states that it's a year from when the approval expires. Mr. Baum said that's  
131 what they've done in the past. All were in favor.

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C. Webinar on ZBA practice

Ms. Davies said that she watched a webinar given by two attorneys at the New Hampshire Municipal Association. Her main takeaway was that the Board must be consistent in its practices. If they go through the variance criteria one by one on a project, they need to do it consistently. If they just discuss the applications in general, they can continue to do that. They need reasons for their decisions. It's a chore but they could do it in summary format, and refer to the application. They need to be clearer in verbalizing reasons for accepting. Mr. Thielbar asked if an applicant goes through the exceptions, could the Board simply say that sounds good? Ms. Davies responded that they can say they agree with the reasoning for each criteria. Mr. Baum suggested "for the reasons stated in the application," and added that it's good to give the reasons. At an appeal that a judge reviews, the standard is whether their decision was reasonable, so they should at least articulate the basis for it.

Mr. Thielbar said if something isn't straightforward, or when there's not full agreement amongst the Board, that's when they should carefully go through each step. It doesn't make sense to do it all the time. Ms. Davies reiterated that they should treat each case consistently. That was the recommendation of the attorneys. Practically speaking, they would only have a problem if someone doesn't like their decision. If they don't have a consistent practice for your level of rigor, they're opening themselves up to challenges. Mr. Prior said that in his 12 years on the board, the times that they haven't articulated the reasoning were very few. Tonight, they had a case that was very straightforward. Most often they do go through the criteria. Mr. Baum said he served on a board where there was no real opposition to an application, but an abutter was not able to make it and filed for a rehearing. In that case, the judge didn't think there was enough discussion of hardship. Just because no one was there to speak doesn't mean there won't be an appeal. Ms. Petito agreed that the reasons must be in the record. If they're spelled out clearly in the application, the Board can mention the application. Ms. Davies said that courts don't tend to overturn on matters of judgement, but on matters of procedure or law. She added that one other takeaway was to not grant extensions of approvals that have expired. Ms. Davies will send the webinar link to Ms. McEvoy to share with the Board.

**IV. Adjournment**

**MOTION:** Mr. Prior moved to adjourn. Mr. Baum seconded. All were in favor and the meeting was adjourned at 7:44 PM.

Respectfully Submitted,  
Joanna Bartell  
Recording Secretary