

Town of Exeter  
Zoning Board of Adjustment  
October 15, 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, Martha Pennell - Alternate, Christopher Merrill - Alternate

**Members Absent:** Esther Olson-Murphy, Hank Ouimet

**Others Present:** Doug Eastman

**Call to Order:** Chair Petito called the meeting to order at 7 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 5.4.2F. 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

Ms. Petito read a letter from Brian Grossman of VWI Towers LLC requesting to withdraw their application without prejudice. Mr. Thielbar said if they want to come back, they need to start fresh with the application. The Board accepted the withdrawal but no motion was made.

- B. The application of Dawson's PPC, Inc. (on behalf of Jonathan and Alysa Franck) for a variance from Article 5, Section 5.3.1 A.2. to permit the proposed construction of a 12' x 16' enclosed porch within the same footprint of an existing deck which encroaches upon the minimum side yard setback. The subject property is located at 23 Spruce Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #63-81. Case #19-13.

Ms. Petito said the five permanent members of the Board will be voting.

Al Dawson and Greg Dawson of Dawson's PPC spoke on behalf of homeowner Jonathan Franck. Al Dawson said that they were hired to construct a 12x16 foot deck to replace an existing deck, which is in disrepair, with an enclosed porch. The Building Inspector determined that about half of the 12 foot side encroaches on the 10 foot property line setback, by 6" - 18".

Ms. Petito asked if this was intended to be living space or could be converted to living space in the future, and Al Dawson said no. Mr. Bauer asked where the encroachment is, and Al Dawson said the right rear corner of the property. Mr. Bauer asked about the height of the

45 covered porch. Greg Dawson said they won't go above the ridge line of the main house; it will  
46 line up with the dormer on the back side of the house.

47 Ms. Petito asked if any members of the public would like to speak on this application, but  
48 there were no comments, so she closed the public session.

49 Ms. Davies and Mr. Prior said this seems straightforward. Ms. Petito said they should go  
50 through the variance criteria.

51 Ms. Davies said that for criteria 1) The variance is not contrary to public interest and 2)  
52 The spirit of the ordinance is observed, this is an existing footprint, and the only changes are to  
53 add a roof and screening, so it doesn't seem like a problem. Ms. Petito added that the  
54 application addresses this. 3) Substantial justice is done; Ms. Davies said doesn't see harm to  
55 the general public, and it does benefit the occupant. 4) Values of surrounding properties are not  
56 diminished; Ms. Petito said it may actually improve them. 5) Literal enforcement of the  
57 ordinance would result in unnecessary hardship; Mr. Prior said it would. Ms. Petito added that  
58 the existing structure is in disrepair and needs to be replaced. Mr. Baum said the irregularly  
59 shaped lot forces the building to be at an angle, and is causing the issue with the setback. Ms.  
60 Davies said the applicant is trying to maintain the existing footprint, which is appreciated.  
61

62 MOTION: Ms. Davies moved to approve the application for 23 Spruce Street as submitted. Mr.  
63 Prior seconded. All were in favor.

64

65 C. The application of Joseph Falzone for a variance from Article 4.3 Schedule II;  
66 Density and Dimensional Regulations to permit the proposed subdivision of an  
67 existing 4.92 acre parcel on Brentwood Road (Tax Map Parcel #63-93) into five  
68 (5) single family residential lots, with four (4) of the lots having less than the  
69 required minimum lot width. The subject property is located in the R-2, Single  
70 Family Residential zoning district. Case #19-14.

71 Mr. Merrill recused himself from the discussion. Neither of the alternates will be voting.

72 John Krebs spoke, representing Harbor Street Limited Partnership. This is a 4.9 acre  
73 parcel, bounded by Brentwood Road and Spruce Street. It was taken to the Planning Board for  
74 subdivision approval, but there was overwhelming opposition from the abutters, who thought it  
75 was too dense, and disliked the proposed through road. The applicants revised the plan, and  
76 are now proposing five lots, each with its own frontage. They're seeking a variance for having  
77 less than the requisite 100 feet of road frontage, but this plan eliminates wetland impact and the  
78 need for a through road with town maintenance. They may also be able to help the abutters by  
79 transferring excess land to them to make their lots larger.

80 Mark Johnson of Johnson and Borenstein spoke about the proposal. He said that the lot  
81 is irregularly shaped. The access point could be a public road, but they're proposing that  
82 everything being private. Lots two and three would need a variance for having 20 feet of  
83 frontage where 100 feet would be required. Lots 4 and 5 would have 22 feet of frontage where  
84 100 feet is required. Lot 1 has sufficient frontage. This is an area of town that is primarily single  
85 family homes, so this plan is in keeping with the area.

86 Mr. Johnson went through some of the criteria. 1) Granting the variance would not be  
87 contrary to the public interest; this allows a five lot subdivision where they could have a greater  
88 number of lots. It creates less impervious area and more open space. He added that two other

89 properties in the R-2 Zone have been given similar relief. 5) Literal enforcement would result in  
90 an unnecessary hardship; yes, since this is an irregularly shaped lot with limited frontage.

91 Mr. Baum asked if they'd had a design review with this plan. Mr. Krebs said they showed  
92 this plan at the Planning Board meeting, and there were no issues beyond the variance. Mr.  
93 Baum asked if the access would be through the wetland, and Mr. Krebs said they could avoid it.  
94 Mr. Prior asked if they would have enough frontage if they put a road through. Mr. Krebs said it  
95 would have to be a town road, which the town was not interested in, and the abutters were very  
96 concerned about through traffic. It couldn't be a cul-de-sac because town regulations don't allow  
97 for "T" or "P" cul-de-sacs; it would have to be a full circle, which would take too much land.

98 Ms. Petito asked for public comment.

99 Dan Hummel, an Exeter resident, said that the plan wasn't the same as the one  
100 presented to the Planning Board. That plan only showed four homes, and there was no  
101 discussion about the manmade wetland being filled.

102 Peg Aronian of 68 Washington Street was concerned about drainage. Her property is  
103 down a slope from this property and is frequently flooded. Extra water would also impact the  
104 town by going into the storm sewers. She felt that the open spaces should be preserved.

105 Liz Canada of 58 Columbus Ave stated that there is significant water in her yard from the  
106 field where the development is proposed.

107 Lisa Reynolds of 6 Brentwood Road, which is directly adjacent to the wetlands,  
108 submitted photos of drainage issues she had prior to regrading her property. She said that  
109 disturbing the wetlands is very disconcerting to her.

110 Mr. Krebs responded to Mr. Hummel's comment that the plan presented at the meeting  
111 is not the plan from the Planning Board. They revised the plan after they heard concerns about  
112 the wetland at the Planning Board meeting. Although it's a manmade wetland and not subject to  
113 the setback, they don't want to deal with that issue. With regard to water, if they had pursued a  
114 10 lot subdivision with a town road there would be a lot more water. This is a compromise.

115 Ms. Petito said that for a commercial site plan, an approval would require certification  
116 that all water stays on site, and asked if they are required to provide the drainage so the water  
117 stays on site. Mr. Krebs said yes. He added that Mr. Hummel claimed there are wetlands along  
118 the boundary, but their plan was prepared by a certified wetlands scientist that does a lot of  
119 work in Exeter, who found no wetlands.

120 Mr. Prior asked if all of the proposed lots meet the lot size requirements. Mr. Krebs said  
121 yes; the smallest lot is 19,000 square feet, where 15,000 feet is required. The driveways would  
122 be 12 - 14 feet wide. Mr. Prior was concerned about the proximity of the driveway to the homes  
123 of the abutters. Mr. Krebs said the driveways would have a buffer with vegetation.

124 Katie LeMontagne of 4 Brentwood Road said there is currently no vegetation on her  
125 side. Her house is 11 feet from the property line. She is looking for vegetation or a privacy  
126 fence.

127 Peg Aronian of 68 Washington Street asked if there is a difference between a natural  
128 wetland and a manmade wetland. She felt that all wetlands are valuable. Ms. Davies said the  
129 Board members aren't experts on wetlands, but she believes that there are differing values for  
130 wetlands based on criteria. Mr. Baum said that the issue here is that Exeter regulations require  
131 a buffer from natural wetlands but not manmade wetlands. That's not a state requirement. This  
132 project would be open to preserving this wetland, so he's not sure it matters.

133 Mr. Prior asked Mr. Krebs about the wetland boundary versus a 75 foot setback from the  
134 wetland. In his understanding, no impact is being planned into the 75 foot setback. Mr. Krebs  
135 said that's correct. He added that they don't yet have a plan for retaining water on site, but that  
136 will be addressed once they get the variance.

137 Mr. Prior asked if they would accept as a condition on approval that they would seek no  
138 further setback variances than the envelopes as presented, for example if they sold the property  
139 to someone who wanted to build into their setbacks. Mr. Johnson said they would be agreeable,  
140 although they wanted to reserve the right to look for a variance in order to convey land to an  
141 abutter. Mr. Baum was concerned that this condition was unenforceable.

142 Mr. Baum asked if they would be open to a condition to provide screening along the  
143 driveways. Mr. Johnson said the Planning Board would look at this issue as well. Their variance  
144 doesn't give them anything other than the ability to go back to the Planning Board. Ms. Petito  
145 said the application said they will provide screening. Mr. Johnson said yes, but it didn't describe  
146 the nature of the screening.

147 Ms. Petito closed the public session.

148 Mr. Thielbar said the change to the frontage rules was specifically to prevent this kind of  
149 "pork chop" lots with a driveway. They heard another case this year where there was 90 feet of  
150 frontage and it was denied. Mr. Baum said the ordinance is to prevent creating a new lot that  
151 way, but here those little handles already exist, it's just a question of what they can do with the  
152 interior. These lots are large, and in line with the rest of the surrounding area. When these lots  
153 were carved out, they only left 40 feet of frontage. The neighbors' primary concern is drainage,  
154 and you can't do a full frontage without impacting the wetlands. Ms. Petito said the previous  
155 case didn't have the hardship; the hardship here is the access and the amount of frontage. Mr.  
156 Baum said they wouldn't be able to get 10 lots approved, but the parcel is big enough to fit 10  
157 lots. The frontage waiver is all they need. Ms. Petito said regarding hardship, the shape of the  
158 lot is more compelling.

159 Mr. Prior went through the variance criteria. 1) The variance is not contrary to the public  
160 interest, and 2) the spirit of the ordinance is observed. It must not alter the character of the  
161 neighborhood. He said that they have not heard from the abutters, other than in a very limited  
162 way, that this would alter the character of the neighborhood. It's a relatively small number of  
163 properties for the size of the property, so it is in keeping with the neighborhood. It meets criteria  
164 1 and 2. 3) Substantial justice is done; the benefit to the applicant should not be outweighed by  
165 the harm to the general public or other individuals. Mr. Prior said that the only harm would be to  
166 abutters, and their primary concern is drainage, which will not be touched. The Board should  
167 make mention of screening in any approval, and the Planning Board will have to weigh in. 4)  
168 Values of surrounding property are not diminished. Mr. Prior said that they've had no testimony  
169 on this either way. This plan will have less impact on abutters than a ten lot subdivision. 5)  
170 Literal enforcement of the ordinance would result in unnecessary hardship. Ms. Davies said the  
171 proposed use is a reasonable one. Mr. Baum said the purpose of frontage is to provide enough  
172 distance between homes for privacy and access. Privacy is not going to be an issue, since the  
173 houses will be far enough apart. Safety is not an issue. The applicant has indicated they'll  
174 provide screening. Mr. Prior said it seemed they have no issue with any of the five criteria.

175

176 MOTION: Mr. Prior moved to grant the application as presented, with the following two  
177 conditions: first, that the applicant and the Planning Board pay particular attention to the issue of  
178 screening for the abutters to both of the driveway entrances to the property, and second, that no  
179 further requests for variances regarding setbacks on any of the five lots proposed for  
180 development would be considered. Mr. Baum seconded.

181 Mr. Baum said he doesn't see the need for the second condition because he doesn't feel it's  
182 enforceable; he would rather see a wetlands condition, that there would be no driveways or  
183 homes within the wetland buffer. Ms. Petito said she didn't feel they can ask the applicant to  
184 give up future rights to apply for a variance in order to get approval.  
185

MOTION: Mr. Baum moved to amend the motion to remove the second proposed condition to restrict further variances and to add a condition that there be no driveways or buildings within the wetlands or the 75 foot wetland buffer as shown on the plan. Mr. Prior seconded.

The applicant said they have concerns about that motion, as there are manmade wetlands that they may encroach on. Mr. Baum said instead of the wetlands "as shown on the plan," the motion should be amended to "as shown on lots 1 and 2." Mr. Baum said any development near wetlands will need DES approval anyway. Mr. Prior asked why they are dealing with wetlands when that is a Planning Board issue. Mr. Baum said the presence of the wetlands is part of the hardship argument for this case.

All were in favor of the motion to amend.

186  
187 All were in favor of the amended motion.

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190 D. The application of Great Bridge Properties, LLC for a special exception per  
191 Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to  
192 permit the proposed construction of a "multi-use" structure on the property  
193 located at 2 Meeting Place Drive; and a special exception from Article 4, Section  
194 4.4 Schedule III, Note #12 to allow an increased height of said structure not to  
195 exceed fifty (50) feet. The subject property is located in the C-2, Highway  
196 Commercial zoning district. Tax Map Parcel #55-75. Case #19-15.

197  
198 Ms. Petito said one member of the Board has recused herself [Laura Davies]; one  
199 alternate, Chris Merrill, will vote. Ms. Pennell left at this time. Mr. Baum said his firm had done  
200 work with Great Bridge, but it has been concluded and was not related to this application. The  
201 Board and the applicant said they had no objection to him voting.

202 Justin Pasay from Donahue, Tucker and Ciandella spoke on behalf of Great Bridge  
203 Properties. They are proposing one floor of commercial space and three floors of affordable  
204 housing. This is the front of the Meeting Place development. This will make a valuable  
205 contribution to Exeter. Both special exceptions were already obtained in 2013, to allow multiuse

206 in the C-2 district, and to allow a building height up to 50 feet where 35 feet is the maximum. In  
207 2013, a nearly identical proposal was approved. At that time, they didn't have the funding, and  
208 got several extensions of the approval, but it expired in August 2019 and they were back at  
209 square one.

210 Mr. Baum asked about the differences between this and the previous proposal. Mr.  
211 Pasay responded that previously, 24 units were proposed, but there are 28 units now. They're  
212 also trying to whittle down the parking with Planning Board approval. Mr. Prior observed that  
213 they didn't state that this was affordable housing in the application. Mr. Pasay said it's not in the  
214 application, but that's what Great Bridge does. All 28 units would be affordable.

215 Mr. Pasay discussed the special exception criteria. 1) The use is permitted as a special  
216 exception as set forth in the zoning ordinances; he said this is. 2) The use is designed, located,  
217 and proposed so that the health, safety, and welfare of the public is protected; yes, this is relief  
218 that was already well vetted and approved, and is consistent with the area. 3) The proposed use  
219 is already compatible with the zoned district; yes, Meeting Place is directly behind it, and there  
220 are other commercial uses in the area. 4) Adequate landscaping and screening are provided;  
221 yes, the site plan depicts adequate landscaping, and it will be subject to Planning Board review.  
222 5) Adequate off-street parking; yes, it will comply with the regulations of the town of Exeter. 6)  
223 The use should conform with the applicable regulations governing the district where it's located;  
224 it does, this is the only relief that is required, and in all other respects it complies. 7) The  
225 applicant may be required to obtain town or Town Planner approval; yes, they will go before the  
226 Planning Board. 8) The proposal does not adversely affect abutting or nearby property values;  
227 yes, it would be consistent with the neighborhood and the residential use behind it. He stated  
228 that the last two requirements are not applicable, since they are not storing explosive material,  
229 and are not within the professional Tech Park district.

230 Mr. Baum asked if they plan to apply for statutory workforce housing funds. Mr. Pasay  
231 said yes, they plan to apply next year. Ms. Petito asked about the commercial use on the bottom  
232 floor, and Mr. Pasay said there's no tenant yet, but it will be commercial/office space, as well as  
233 having some mechanicals and amenities for the residential housing.

234 Ms. Petito asked for public comment, but there was none.

235 Mr. Prior said this is just extending previous applications that have expired. He asked  
236 whether they should say that this is intended to be workforce housing although those words  
237 aren't in the application. Mr. Baum said when they make a motion they should include that.

238 Mr. Baum went through the criteria. 1) The use is a permitted special exception; yes,  
239 both the height and multiuse are both permitted. 2) The use is designed, located, and proposed  
240 so that the health, safety, and welfare of the public is protected; yes, it's consistent with what's  
241 there, and he likes that it's mixed use. 3) Proposed use is compatible with the zoned district;  
242 yes, it's allowed by special exception. The commercial use is consistent with Epping Road.  
243 Similar mixed-use projects in this area have recently been approved. 4) Adequate landscaping  
244 and screening are provided; yes, it's shown on the plans, and will be vetted by the Planning  
245 Board. 5) Adequate off-street parking; yes, it meets the zoning requirements, and there's plenty  
246 of room on this parcel for parking. 6) The use should conform with the applicable regulations  
247 governing the district where it's located; yes, they're only asking for these two exceptions, no  
248 dimensional relief being sought. 7) Applicant may be required to obtain town or Town Planner  
249 approval; yes, they will go before the Planning Board. 8) The proposal must not adversely affect

250 abutting or nearby property values; yes, it's consistent with what's around it. He added that the  
251 last two requirements are not applicable.

252 Ms. Petito said this approval will last for three years, since the applicant is starting over,  
253 not for one year.

254

255 MOTION: Mr. Baum moved to approve the application of Great Bridge Properties, LLC for a  
256 special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section  
257 5.2 to permit the proposed construction of a "multi-use" structure with first floor commercial and  
258 three stories of residential workforce housing on the property located at 2 Meeting Place Drive;  
259 and a special exception from Article 4, Section 4.4 Schedule III, Note #12 to allow an increased  
260 height not to exceed fifty feet. Mr. Prior seconded. The applicant asked if the Board could state  
261 "in compliance with NH State Workforce Housing Statute § 674:58 et seq." Mr. Baum said he  
262 would amend his previously proposed motion to strike "workforce housing" and replace it with  
263 "housing pursuant to NH State Workforce Housing Statute § 674:58 et seq." Mr. Prior seconded.  
264 All were in favor.

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266 **III. Other Business**

267 A. Approval of Minutes: September 17th, 2019

268 MOTION: Ms. Davies moved to approve the minutes as presented. Mr. Merrill seconded. All  
269 were in favor.

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271 **IV. Adjournment**

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273 **MOTION:** Mr. Prior moved to adjourn. Mr. Baum seconded. All were in favor and the meeting  
274 was adjourned at 8:54 PM.

275

276 Respectfully Submitted,

277 Joanna Bartell

278 Recording Secretary