

Town of Exeter
Zoning Board of Adjustment
November 19, 2019, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Joanne Petito, Vice-Chair Robert Prior, Clerk Rick Thielbar, Christopher Merrill - Alternate, Esther Olson-Murphy - Alternate

Members Absent: Kevin Baum, Laura Davies, Martha Pennell - Alternate and Hank Ouimet – Alternate.

Others Present: Doug Eastman

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

II. **New Business**

- A. The application of Carol and Richard Miller for an Appeal from an Administrative Decision made by the Historic District Commission at their October 17th, 2019 meeting regarding a request for replacement windows. The subject property is located at 47-49 High Street, in the R-2, Single Family Residential Zoning district. Tax Map Parcel #71-115. Case #19-16.

Anthony Beirsto of Window World NH spoke on behalf of property owner Carol Miller. Ms. Petito asked him what their issue was with the HDC decision. Mr. Beirsto said the HDC rejected vinyl windows.

Mr. Prior asked about the existing windows, and Mr. Beirsto said there are both wood and vinyl windows. Ms. Miller said the vinyl windows were installed about 15 years ago. At that time, she didn't know she had to go in front of the HDC. Mr. Thielbar asked them to clarify whether the new windows are basically identical other than the material. Mr. Beirsto said yes, but they are also more energy-efficient. Ms. Petito asked how many windows need to be replaced, and Mr. Beirsto said all but the existing vinyl windows, 6-12 windows per apartment, roughly 25 windows total. Ms. Petito asked if the windows they are intending to put in comply with the guidelines of the Historic District, and Mr. Beirsto said vinyl windows are probably not going to be compliant.

Mr. Thielbar said it appears that the current windows are not historic, they're just panes of glass the size of the whole window. Mr. Beirsto said that his company could do simulated divided lights. Mr. Thielbar asked if they would impact the shingles, and Mr. Beirsto said no. Mr. Thielbar said some of the existing windows appear to have storm windows, and Mr. Beirsto said there would be no need for storm windows after replacement. Mr. Thielbar said that would substantially improve the appearance of the building and make it more historically accurate. Ms. Olson-Murphy asked if the details of the sills would be lost, and Mr. Beirsto said no.

Ms. Petito closed the public hearing.

44 Mr. Thielbar asked if a member of the HDC was present or had sent a comment. Ms.
45 Petito said Julie Gilman submitted a memo as a member of the public, not as a member of the
46 HDC.

47 Mr. Prior said although he read the HDC minutes, he wasn't certain what happened at
48 the meeting. The HDC voted although the application was incomplete. There was nothing in the
49 minutes about the historic nature of the building or the significance of the windows. He doesn't
50 believe it's a significant structure, it's just in the district. He doesn't see the basis for a negative
51 decision. Mr. Thielbar asked when the HDC started, and Doug Eastman said around 2006. Mr.
52 Prior said he supports the goals of the HDC, but this seems like an overreach. Mr. Thielbar said
53 it seemed like the HDC had more concerns about the form of the application. Ms. Olson-Murphy
54 said it didn't seem like the HDC had a clear picture of the number and location of the
55 replacement. There are options other than just wood or vinyl, but it didn't seem like they tried to
56 find a middle ground.

57 Mr. Thielbar said the applicant will make a conscientious effort to make the new windows
58 similar to the old windows. Ms. Olson-Murphy said vinyl won't look like wood. Mr. Thielbar said
59 that's just an issue of the finish.

60 Mr. Prior said if this were one of the clearly historic homes in the area, he may say they
61 had to go back and do the application process right, but in this case, he doesn't see a benefit in
62 making them go back before the HDC. Ms. Olson-Murphy said this is the HDC's purview. Mr.
63 Prior said in cases where they've been asked to weigh in on an HDC decision, there was an
64 explanation given in the HDC minutes for the basis of the decision and the historical
65 significance. Here, there's no rationale other than not following procedures. Ms. Petito said they
66 can rule against the HDC's decision, but she doesn't know if they should. Mr. Thielbar said that
67 if the HDC hasn't said what they didn't like, they're not left with much to make a decision.

68 Mr. Prior said that although the HDC discussed that the application was incomplete, they
69 went ahead and denied the application. Their having said no means the ZBA has the obligation
70 to revisit their decision.

71 Ms. Petito asked if they applicant had considered options between repairing the existing
72 windows and installing new vinyl windows. Mr. Beairsto said his company only does vinyl
73 window replacement.

74 Mr. Thielbar said that if they'd installed vinyl windows before the HDC, they could make
75 the argument that the vinyl is grandfathered in. Mr. Prior said the new windows might look better
76 than the existing, because they would lose the storm windows.

77 MOTION: Mr. Prior moved to grant the appeal of the administrative decision made by the HDC
78 and allow the applicant to proceed with the replacement of the windows at 47-49 High Street.
79 Mr. Merrill seconded. Mr. Thielbar said they'd had verbal assurance that the replacement
80 windows would look like the existing, but no documentation of that. Mr. Prior said he would
81 amend his motion.

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83 MOTION: Mr. Prior moved to amend the motion to add that the applicant will make every effort
84 to make the replacement windows visually identical with the existing windows in the structure.
85 Mr. Merrill seconded. All were in favor.

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87 MOTION: Mr. Prior moved to grant the appeal of the administrative decision made by the HDC
88 and allow the applicant to proceed with the replacement of the windows at 47-49 High Street;
89 the applicant will make every effort to make the replacement windows visually identical with the
90 existing windows in the structure. Mr. Merrill seconded. All were in favor.

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- 92 B. A request for rehearing on the application of Great Bridge Properties, LLC for a
93 special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and
94 Article 5, Section 5.2 to permit the proposed construction of a “multi-use”
95 structure on the property located at 2 Meeting Place Drive; and a special
96 exception from Article 4, Section 4.4 Schedule III, Note #12 to allow an increased
97 height of said structure not to exceed fifty (50) feet. The Applicant is requesting a
98 slight modification to the condition of approval with respect to the reference that
99 the residential component of the project will be consistent with NH State
100 Workforce Housing Statute 674:58 et seq. The subject property is located in the
101 C-2, Highway Commercial zoning district. Tax Map Parcel #55-75. Case #19-15.
102

103 Justin Pasay from DTC Lawyers spoke on behalf of Great Bridge Properties. The project
104 involves a 3.2 acre unimproved parcel at 2 Meeting Place Drive off of Epping Road. The
105 applicant came to the ZBA in October for a special exception to permit multiuse and special
106 exception to permit up to 50 feet in height. The Board had discussed whether the residential
107 portion would be affordable, and he had confirmed that yes, all 28 units would be affordable.
108 The breakdown is 7 two-bedroom units, 13 one-bedroom units, and 8 efficiencies. The Board
109 went through the special exception criteria and determined that the criteria had been met. At
110 that time, the Board decided to impose the condition for affordable housing, and Mr. Pasay
111 worked with them to craft a condition that the residential component will comply with the whole
112 Workforce Housing Statute. However, while they will comply with the rent and income limits,
113 there’s also a provision that requires at least 50% or more two-bedroom units. He’s familiar with
114 the statute, but didn’t realize how the limitation would conflict with their plans. He’s crafted
115 another provision: “To permit the proposed construction of a multiuse structure with first floor
116 commercial and three stories of residential rental housing that is affordable in nature, using
117 income and rent levels that are consistent with those defined in the RSA 674:58, the Workforce
118 Housing Statute.”

119 Mr. Prior asked if changing their motion without a rehearing was legal. Mr. Pasay said
120 the law behind motions for rehearing is to allow them to correct errors in the record. Their
121 application already stated what they would be doing. Both he and the Board were talking about
122 affordable, but the way it was memorialized was incorrect. The Board has the authority to
123 correct their motion. Mr. Prior said that none of the Board members were aware that there was a
124 restriction on the percentage of two bedroom units in the statute, so there’s no question that
125 making the change is the right thing to do, but he wants to make sure it’s done legally. The
126 applicant had called it a “request for a rehearing.” They can approve a rehearing, but that
127 requires public notification and a meeting at a later date. He asked if that would affect the
128 applicant’s timeline. Mr. Pasay asked if a delay would affect their ability to go before the
129 Planning Board, and Mr. Prior said the Planning Board is not concerned with this issue. The
130 ZBA can rehear the case rapidly, since the proposal has already been heard. Ms. Petito said the

131 rehearing can also be limited to the specific issue. They don't have to take new input. Mr.
132 Thielbar said if they don't believe this is a Planning Board issue, they could add a statement that
133 the applicant could go ahead to the Planning Board. Mr. Pasay said he'd be looking for the
134 Board to confirm that the special exception that they received in October is still good and the
135 purpose of this limited rehearing is just to address the issue of the language of the original
136 motion.

137 MOTION: Ms. Petito moved to approve the motion for rehearing filed by Great Bridge Properties
138 LLC in ZBA Case #19-15 regarding Map 55 Lot 75 at 2 Meeting Place Drive to rehear the matter
139 for the purpose of requesting a slight modification to the language of the condition of approval
140 regarding compliance with the NH Workforce Housing Statute. Mr. Prior seconded. All were in
141 favor.

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144 The following three agenda items were tabled until the December 17th meeting at the request of
145 Brian Griset.

146 C. The application of Brian Griset for an Appeal from an Administrative Decision
147 made by the Building Inspector/Code Enforcement Officer on October 30, 2019
148 relative to the interpretation that Zoning Board of Adjustment relief would be
149 required for the proposed single family open space development being presented
150 to the Planning Board for review. The subject properties are located on NH Route
151 111 (Kingston Road) and Tamarind Lane in the R-1, Low Density Residential and
152 NP- Neighborhood Professional zoning districts. Tax Map Parcels #96-15, #81-
153 57 and #81-53. Case #19-17.

154 D. The application of Brian Griset for a special exception per Article 4, Section 4.2
155 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit residential use of
156 a 30.76-acre parcel located within the NP-Neighborhood Professional zoning
157 district for the purpose of calculating density for a proposed open space
158 development. The subject properties are located on NH Route 111 (Kingston
159 Road) and Tamarind Lane in the R-1, Low Density Residential and NP-
160 Neighborhood Professional zoning districts. Tax Map Parcels #96-15, #81-57
161 and #81-53. Case #19-18.

162 E. The application of Brian Griset for a variance from Article 4, Section 4.3 Schedule
163 II: Density and Dimensional Regulations - Residential and Article 7, Open Space
164 Development to allow for the residential unit density permitted in the NP-
165 Neighborhood Professional zoning district to be transferred to an adjacent
166 property located in the R-1, Low Density Residential zoning district for the
167 purpose of creating an open space development. The subject properties are
168 located on NH Route 111 (Kingston Road) and Tamarind Lane. Tax Map Parcels
169 #96-15, #81-57 and #81-53. Case #19-19.

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171 **III. Other Business**

172 A. Minutes of October 16th, 2019

173 Ms. Petito said in line 115 it states that she said “a commercial site plan would require
174 certification that all water stayed on site, and she doesn’t remember saying that. Mr. Prior said
175 he remembered that someone did say that.

176 Mr. Prior moved to approve the minutes of October 19, 2019 as submitted. Mr. Thielbar
177 seconded. All were in favor.

178 **IV. Adjournment**

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180 **MOTION:** Mr. Thielbar moved to adjourn. Mr. Prior seconded. All were in favor and the meeting
181 was adjourned at 8 PM.

182
183 Respectfully Submitted,
184 Joanna Bartell
185 Recording Secretary