

Town of Exeter
Zoning Board of Adjustment
1/21/2020, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Joanne Petito, Vice-Chair Robert Prior, Clerk Rick Thielbar, Laura Davies, Kevin Baum, 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 Petito called the meeting to order at 7 PM. Only the regular members will be voting.

II. **New Business**

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

Justin Pasay of Donohue Tucker & Ciandella spoke about this project, representing the Grisets. This is a concept for a 16 unit open space condominium development, which is permitted in the zoning ordinance, uplands of Gray Bird Circle. The goal is to convey more than 32 acres, the "Mendez Trust Property," to the town as conservation land. Mr. Griset has held neighborhood meetings and a design review with the Planning Board, which had few comments and seemed receptive. They've also had a preliminary review and sitewalk with the Conservation Commission. The issue is the Code Enforcement Officer Doug Eastman's decision on the proposed yield plan. If you apply the density requirements to the whole area, at 5000 square feet required per unit, dozens of units are possible.

Christian Smith of Beals Associates said the project is to use the Mendez Parcel plus 4.6 acres of Mr. Griset's parcel as the basis for the yield plan. There would be open space for the condominium development. An entire parcel would be conveyed to the town, which would provide connectivity to the town-owned Brickyard. The proposed development is 16 individual, single-family condominium residences, plus a separate single-family residence on Cullen Way; everything else would be protected. The wetlands impact would be under 3,000 square feet, just to get the driveway in. Regarding the traffic element and capacity of Tamarind Lane, this road is

45 28 feet wide, 4 feet wider than the standard road in town. They are proposing an additional 17
46 units, for a total of 51 units that that road would serve. He added that the road was designed for
47 the future development of this parcel.

48 Mr. Griset said that in 2003, he acquired the Mendez Trust property. They could build 67
49 residential units by the formula, but are restricted by all the environmental and access issues
50 involved. His goal is to maintain the wet meadow. He's looking to do R1 and have the matching
51 zoning of R1 for both parcels in the yield plan. Based on configuration of the wetlands, they
52 would only use 18 lots out of the total yield, 16 units, plus 1 existing home, and one single family
53 lot. There would be screening, with no visual or noise impact to the surrounding development. A
54 nature trail could be set up from an existing parking lot for public access to the conservation
55 land. Ms. Davies asked if these three parcels were all of his landholdings in the area and this
56 project will exhaust all of his development rights; Mr. Griset said yes.

57 Jim Gove of Gove Environmental Services said Scamman Brook passes through this
58 parcel from west to east, into the prime wetlands on the Mendez Trust, and on to Little River.
59 The National Heritage Bureau has not identified any rare, threatened or endangered species,
60 but his firm did find two vernal pools, which would be protected in this proposal. He also found
61 wildlife corridors. This is a shoreland protection district area for Scamman Brook. It's a forested
62 scrub shrub area, with the exception of the maintained grasslands. Clustering the development
63 will preserve the forested areas and wetland resources.

64 Mr. Prior said the pond is close to the access road. Mr. Gove said this is a man-
65 constructed pond, and he believes it was put in to mitigate stormwater. The pond and the large
66 swamp white oaks in that area will be maintained. Ms. Davies asked if there were wetland
67 impacts. Mr. Gove said yes, 2,500 square feet of impacts near the pond. The access road fills in
68 a slight portion of the pond but impacts more of the forested area adjacent to the pond. This
69 proposal is subject to DES approval.

70 Mr. Pasay said the proposal is part of a process that has taken decades to happen and
71 with a consideration of what's best for the Grisets and the town. The open space planning
72 process requires producing a yield plan, the depiction of a conventional subdivision in an area;
73 those conventional lots are translated into units and put into a cluster. The application would
74 then go to the Planning Board, who has to accept the yield plan. Here, the question is whether
75 or not it's appropriate for the Grisets to depict some of those conventional R1 lots in the
76 Neighborhood Professional [NP] zone of the Mendez Trust without a variance. Subdivision and
77 site review regulations section 7.13 states that yield plans must comply with conventional
78 subdivision regulations, and shall not require a variance from existing zoning regulations to
79 achieve the layout supporting the proposed density. It must be reasonably achievable, comply
80 with the subdivision regulations, and can't require a variance. Because they meet these
81 requirements, all that is required for the NP is a special exception to allow residential uses.

82 Mr. Baum said the issue is the dimensional regulations. Mr. Pasay said the yield plan
83 depicts R1 conventional lots over the whole parcel. Mr. Eastman's written response was "the
84 ability to transfer the density of residential units from the NP zoning district would first require
85 obtaining a special exception from the ZBA to permit residential uses in the NP zone." The
86 Grisets agree on that point. He quoted further: "this relief alone would not allow for the ability to
87 transfer the permitted residential density from the NP to the Grisets' property situated in the R1,
88 low density residential district, but only permit the use. It is my opinion that additional relief from

89 the ZBA by seeking a variance would be necessary for the requested transfer of density as
90 described.” Six of the lots are in the NP; the issue is whether they can use those lots for the
91 yield plan without a variance.

92 Ms. Petito asked how many units they would be able to do if they couldn’t use the six
93 lots. Mr. Pasay said 13 out of the 16 proposed under the yield plan. Mr. Thielbar said there are
94 three houses coming in from the north, but the regulations require 100 feet of frontage. Mr.
95 Pasay said his understanding was that the plan conformed with the site review regulations. Mr.
96 Smith said two of them have 100 feet of frontage on 111 and the third has it on the proposed
97 cul-de-sac. Mr. Thielbar asked if they could split frontage like that, and Mr. Smith said there’s no
98 regulation on having driveways on your frontage. Ms. Davies asked if he meant 150 feet of
99 frontage, which is the requirement, and Mr. Smith said yes.

100 Mr. Baum asked if he were asking for a determination that the yield plan could depict lots
101 in the NP. Mr. Pasay said he’s seeking a determination that they can proceed to the Planning
102 Board with their yield plan with only a special exception, but Mr. Eastman’s decision was that
103 they needed a variance. They want to use the NP area with residential lots depicted.

104 Mr. Pasay said there was a precedent in the Rose Farm case. On their yield plan, there
105 were higher density lots in multiple zoning districts that were counted. Mr. Prior said that that
106 case had different densities and different zones, but it was all residential, so not relevant to this
107 case. Mr. Pasay said that Mr. Eastman’s decision is about the transfer of the density, which was
108 done in the Rose Farm case.

109 Mr. Pasay said there’s other precedent in town in the 80 Epping Road case, which was
110 ZBA Case #14-86 from 2014. It’s not an open space development case, but the front of the
111 parcel is in C2 and the back is R4. They proposed 81 units, and needed to transfer units from
112 the front, where high density was allowed, to the back. The town granted the variance
113 requested, but one member commented that he didn’t think they even needed variance relief. At
114 the Felder-Cool property, off 80 Epping Road, there was a lot line adjustment that brought some
115 of the C2 into the R4.

116 Mr. Pasay said his firm looked into the intent of 674-21, which is a Planning tool that was
117 designed to encourage development the town considers favorable, and to protect property to be
118 conserved. The transfer of density and development rights allows those who own open space
119 property in outer parts of town to sell development rights to owners of property in denser areas.
120 That’s not the same as what’s being proposed here; they want to create open space in their own
121 development area.

122 Ms. Petito asked if any members of the public wished to speak.

123 Jason Reimers of BCM Environmental Land Law spoke representing abutters Patrick
124 and Ann Flaherty of 8 Tamarind Lane. They agree with Mr. Eastman’s decision that applicants
125 need both a special exception and a variance. Nothing in Article 7 allows density transfers
126 between zones. A single-family open space development is not permissible in the NP district per
127 7.5.3, which says “A single family open space development is permissible in the RU, R1, R2,
128 R3, R4 districts.” In order for a yield plan for an open space development to show lots in the NP
129 district, a variance is required. Even if the condos themselves are in the residential district,
130 they’re using density from the NP district. Getting a special exception merely allows the use; to
131 transfer the density outside of that district is beyond what the ordinance allows. The applicant

132 said that Rose Farm wasn't required to get a variance, but all three districts in that case were
133 residential.

134 Ms. Petito asked which subdivision of Article 7 required a variance. Mr. Reimers said
135 7.5.3; under this provision, an open space development is not permitted in this district. The yield
136 plan is not separable from the development. 7.7.1 also addresses the yield plan, which is an
137 integral part of the open space development.

138 Mr. Pasay said Mr. Eastman did not mention 7.5.3 as a part of the ordinance they
139 needed relief from. The opinion suggested that because single family open space developments
140 are only permissible in R districts, the yield plan is confined to the R districts. If that what was
141 intended, it would be in the language of the ordinance. Their development is in the R1, not in the
142 NP, which will be unimproved open space.

143 Ms. Petito asked if any of the precedents that Mr. Pasay cited had a yield plan that was
144 based in different zoning districts that were not residential. Mr. Pasay said no, they were not
145 open space developments; this type of development doesn't come up frequently.

146 Anne Moran of Tamarind Lane, an abutter, said that she has concerns about the density
147 of the project. Most of the lots on Tamarind Lane are one acre lots. There are a lot of young
148 families in the area, so traffic would be a safety concern.

149 Anne Flaherty of 8 Tamarind Lane asked for clarification that there would still be 13
150 single-family residences if this yield plan were rejected. Ms. Petito said it would depend on how
151 it moves forward, but it will not kill the plan.

152 Trevor Knott of 15 Tamarind Lane said that these designs assume that the Grisets have
153 the ability to construct a road through a private right of way. He asked that the ZBA not make
154 any decisions until this problem is addressed. Ms. Petito said they may revisit that if they get
155 through the appeal of the administrative decision. Mr. Knott said the Master Plan suggests
156 developing this land off of Kingston Road, but this plan is off of Tamarind Lane. The access
157 should not be through Tamarind Lane.

158 Jonathan Elliott of 6 Tamarind Lane said that a yield plan must be "reasonably
159 achievable in a conventional subdivision following town zoning ordinances." He asked that they
160 uphold Mr. Eastman's decision. A special exception is for a permitted use only and can't
161 transfer.

162 Ms. Petito closed the public session.

163 Mr. Prior said the safe way would be to deny the appeal and move on to the underlying
164 issue of the yield plan. The language of 7.5.3 does not anticipate the transfer of density between
165 zones. Mr. Baum said he still has questions about whether a yield plan can include an NP zone.
166 7.1.3 of the site plan regulations seems to say that if only a special exception is required, it
167 seems that a yield plan can include the NP zone. He asked what density gets applied for those,
168 R1 or NP? Ms. Davies said all the lots of the yield plan must be conforming lots, not requiring a
169 variance. It seems like it should be allowed. There's no access to this land through the NP zone.

170 Mr. Prior said the three aspects are reasonably achievable, it meets the subdivision
171 regulations, and no variance is required. Mr. Baum said "reasonably achievable" is a Planning
172 Board matter. They still need a special exception. If they could do a conventional subdivision on
173 the lots shown on the yield plan, that's permissible. Mr. Thielbar said there's an issue of density,
174 but Mr. Prior said they're using the R1 density, rather than the NP. As Mr. Reimer pointed out,
175 7.5.3 doesn't mention NP, which suggests Mr. Eastman was correct in his administrative

176 decision. Mr. Thielbar said they're not trying to build in the NP. Mr. Baum asked what's included
177 in an open space subdivision, just the buildings or the open space as well? Mr. Prior said the
178 NP is in the yield plan but not the development.

179 Ms. Petito asked what the variance would actually be from. Mr. Baum said 7.5.3 is
180 whether it's permissible at all. All of the actual development is in the R1. Mr. Prior said that they
181 should uphold the decision and move on to the underlying issues. Mr. Thielbar said they
182 shouldn't be overturning staff decisions.

183 Ms. Davies said if a property crosses a zoning line, you apply the lot dimensional
184 requirements and if they need to use a piece of another zone to meet requirements, it's never
185 been an issue. Doug Eastman countered that he wouldn't consider that permissible.

186 Mr. Prior made a motion to deny the appeal from an administrative decision, which would
187 uphold the Code Enforcement Officer's decision. Mr. Thielbar seconded. Mr. Thielbar, Ms.
188 Petito, and Mr. Prior voted yay. Ms. Davies and Mr. Baum voted nay. The motion passed 3-2.

189
190 B. The application of Brian Griset for a special exception per Article 4, Section 4.2
191 Schedule 1: Permitted Uses and Article 5, Section 5.2 to permit residential use of
192 a 30.76 acre parcel located within the NP-Neighborhood Professional zoning
193 district for the purpose of calculating density for a proposed open space
194 development. The subject properties are located on NH Route 111 (Kingston
195 Road) and Tamarind Lane in the R-1, Low Density Residential and NP-
196 Neighborhood Professional zoning districts. Tax Map Parcels #96-15, #81-57,
197 and #81-53. Case #19-18.

198 Mr. Pasay asked that they allow Brian White of White Appraisal to speak.

199 Mr. White said he prepared a 45 page opinion letter that addressed the variance and the
200 special exception. According to section 52H, the ZBA must conclude that the development will
201 not adversely affect neighboring property values. This property is made up of three adjacent
202 parcels with common ownership. They're proposing 16 single family units and one single family
203 lot. This is an open space development. According to the MLS data, single family homes in this
204 area have been selling for \$369,000 - \$615,000 over the last four years. In the Master Plan for
205 Exeter, the Kingston Road area is a transition area; the proposed open space development
206 would fit into a transition area. Property values will not be diminished. Regarding view, noise,
207 and use of the property, there is existing screening located between this property and
208 neighboring residences, and they will add 25 feet of buffer along Grey Bird Circle and Tamarind
209 Lane. In appraisals, they look for paired sales, but that data doesn't exist here; his opinion is
210 based on his experience. Any change will increase traffic and the use of the neighborhood, but
211 this proposal is much less intense than what could be done. Regarding distances from
212 properties, the first residence would be 350 feet from Tamarind Lane. There would be a total of
213 58 units from one access drive. The typical range in Exeter is from 42 to 111 units from an
214 access. There was no data from those sales that there was diminution in value. His conclusion
215 is that this development will not have a negative impact on the values of surrounding properties
216 and will enhance the neighborhood.

217 Mr. Pasay discussed the Special Exception criteria. He clarified that for the NP zone,
218 they're considering a small piece of Lot 3, Lot 6, and Lot 7, which are proposed to be accessed
219 from Cullen Way, and Lot 15, 16, and 17, which obtain frontage on the subdivision road but are

220 proposed to be accessed from the right of way. Regarding Criteria 1, the use is a permitted
221 special exception as set forth in Article 4.2 schedule 1; yes, residential uses are permitted by
222 special exception in the NP. Criteria 2, the use is so designed so that public health, safety,
223 welfare, and convenience will be protected; yes, the yield plan is the result of many years of
224 planning, and addresses issues of wetland impacts and access. The lots themselves are
225 insulated. There could be a more intensive development, but they are trying to honor the Master
226 Plan and leave open space. 32.4 acres will be conveyed to the town, as well as leaving 10.3
227 acres open as part of the development. Regarding Criteria 3, the proposed use is compatible
228 with the zoning district; yes, the weight of evidence shows that these six units are substantially
229 in compliance and are in keeping with the goals of the Master Plan, specifically page 30 and 31,
230 which talk about this parcel being a transition between the dense downtown and the more rural
231 western part of town. Regarding Criteria 4, adequate landscaping and screening provided; yes,
232 these lots are unimproved and wooded. Adequate offstreet parking and loading are provided
233 and ingress and egress are designed to create minimum interference with abutting streets. For
234 lots 3, 6, and 7, access is through Cullen Way; lots 15, 16, and 17, through the Brickyard, to
235 reduce traffic on either street. Regarding Criteria 5, the use conforms with code regulations
236 governing the district; yes, it does conform with NP, with a special exception. Regarding Criteria
237 6, as a condition of special exception approval, the applicant must undergo Planning Board
238 review and/or Planning Board approval of the site plan; this is largely an academic process to
239 create a yield plan, which plan will then be vetted by the Planning Board. Regarding Criteria 7,
240 use will not adversely affect property values; yes, by virtue of where they are located, they can't
241 impact surrounding property values, as they are so insulated. Mr. White's appraisal also
242 addressed this. Criteria 8 and 9 are inapplicable.

243 Ms. Petito opened the discussion to the public on the request for a special exception.

244 Jason Reimers spoke again on behalf of Patrick and Anne Flaherty. Regarding Criteria
245 3, the proposed use will be compatible with the zoned district; this size of residential at 30 acres
246 is not compatible with the NP zone. If this area is a transition zone, it would be incompatible to
247 turn it all into residential. Regarding Criteria 7, the use shall not adversely affect abutting
248 property values, Mr. White's appraisal seems to rely on the resulting 16 condo units not having
249 an impact, but the issue at hand is whether the yield plan would be granted as a special
250 exception. The yield plan, if built, has not been shown to not adversely affect nearby properties.
251 Mr. Baum asked if he had any specific concerns about diminution of value, and Mr. Reimers
252 said there are a lot of concerned neighbors.

253 Mr. White said that in his report, he identifies that the six lots in the NP would be
254 increasing the density to 16, but he still concludes that the granting of the special exception
255 would not have any effect on the value. Compared to the potential for 54 mixed-use units, 6 or
256 10 lots on this number of acres is a minimal difference.

257 Trevor Knott said the yield plan is inadequate and the appraisal only includes the final
258 design. Section 5.2 of the Zoning ordinances, the ZBA has the ability to require the Planning
259 Board and/or the Town Planner to approve the plan submitted, and he requests that this
260 proposal be submitted to the Planning Board prior to rendering approval. Decisions of this
261 magnitude should be submitted to the Planning Board first. They should also reject the
262 appraisal, because it's based on speculative evidence. The value of the proposed homes is
263 taken from the builders and is not adequate to determine the effect on values of homes in the

264 surrounding neighborhood. The Master Plan identifies Kingston Road as a transition area, but
265 transitions take place between areas, not in the middle of them in a clustered development.

266 Jonathan Elliott said that a special exception is required to change the use, and a
267 variance is required to allow for the transfer of density. This application says that a special
268 exception is required for the transfer of density. There's a lack of clarity on what's required.

269 Ms. Petito closed the public session.

270 Mr. Prior said they are not planning to hear other cases tonight, except the Great Bridge
271 Properties case.

272 Ms. Petito said the application goes through the criteria well.

273 Ms. Davies said one concern was that the appraisal didn't address the yield plan, but
274 she is satisfied with the appraisal. The potential lots, with the split access, wouldn't affect other
275 properties.

276 Mr. Prior said it's clear that they couldn't build this yield plan, due to wetlands issues.

277 Ms. Davies said that's for the Planning Board to decide, this is just for the use.

278 Mr. Baum went through the criteria for a special exception. Criteria 1, the use is a
279 permitted special exception; yes, that's clear. Criteria 2, the use is so designed so that public
280 health, safety, welfare, and convenience will be protected; yes, it's portions of six residential lots
281 on 30 acres, and there is access shown. A residential use is not going to impact health, safety,
282 welfare, and convenience. Regarding Criteria 3, the proposed use is compatible with the zoning
283 district; yes, these are permitted by special exception. It abuts a residential area. Regarding
284 Criteria 4, adequate landscaping and screening provided; yes, given the size of these lots and
285 their state, that won't be an issue. Regarding adequate parking and loading, yes, there's plenty
286 of offstreet parking and they have shown access. Regarding Criteria 5, the use conforms with
287 code regulations governing the district; yes, with a special exception. Regarding Criteria 6, as a
288 condition of special exception approval, the applicant must undergo Planning review and/or
289 Planning approval of the site plan; even if they went through with this plan, a subdivision review
290 would be done by the Planning Board, so an additional site plan review does not seem
291 necessary. Regarding Criteria 7, use will not adversely affect property values, the applicant has
292 presented an appraisal in support. Six lots on 30 acres will not have an adverse effect. No other
293 evidence or testimony was presented. The other two criteria do not apply.

294

295 Ms. Davies moved that they approve the application for a special exception as presented. Mr.
296 Baum seconded.

297 Mr. Baum moved to amend the motion with the words "for the sole purpose of calculating
298 density for a proposed open space subdivision." Mr. Prior seconded the amendment. All were in
299 favor of the amendment.

300 All were in favor of the amended motion.

301

302

303 C. The application of Brian Griset for a variance from Article 4, Section 4.3 Schedule
304 II: Density and Dimensional Regulations - Residential and Article 7, Open Space
305 Development to allow for the residential unit density permitted in the NP-
306 Neighborhood Professional zoning district to be transferred to an adjacent
307 property located in the R-1, Low Density Residential zoning district for the

308 purpose of creating an open space development. The subject properties are
309 located on NH Route 111 (Kingston Road) and Tamarind Lane. Tax Map Parcels
310 #96-15, #81-57, and #81-53. Case #19-19.

311
312 Justin Pasay asked that the Board incorporate the evidence they've heard thus far, and
313 to consider generally the nature of variance relief in NH, which is to ensure that zoning
314 ordinance is applied in a fair way and to preserve the rights of property owners.

315 He considered variance Criteria 1 and 2: whether it will be contrary to the public interest,
316 and whether the variance will observe the spirit of the ordinance. A variance is only contrary to
317 public interest if it conflicts with the zoning ordinance. This proposal does not. The Supreme
318 Court asks them to consider whether the essential character of the neighborhood will be
319 compromised and whether it will affect public health, safety, and welfare. The open space
320 development plan actually advances the objectives of the ordinance. It doesn't conflict with the
321 essential character of the neighborhood. This is a modest number of units with a significant
322 buffer from Tamarind Lane. The residents on Gray Bird Circle were informed that this
323 development would be coming when Mr. Griset conveyed their parcels to them. Criteria 3 is
324 whether substantial justice would be done; there must be some gain to the public that outweighs
325 the loss the Grisets if it were not to go forward. There's no discernable gain to the public to stop
326 the project. The impact will be minimal, and 42 acres of property will be conserved, which is a
327 great benefit to the public. Other alternatives which could be pursued are more of a detriment to
328 the public. Criteria 4 is whether the values of surrounding properties will be diminished; this will
329 not affect surrounding property values, as stated in the expert testimony. Criteria 5 is the
330 hardship criteria, and that the use is reasonable. The parcels are larger than any in the area.
331 There are significant wetlands on the site. The point of the NP is to have significant frontage on
332 town roads, but there is no frontage here, only access from Kingston Road via a right of way.
333 The property cannot be used in strict conformance with the zoning ordinance.

334 Mr. Griset said in regards to the hardships created by it being an NP property, when they
335 created the industrial zone in 1973, the line drawn ignored property lines and only went to
336 Scamman Brook. After issues, they redrew the property lines but ignored natural features and
337 made the whole area industrial. In 1994, it was changed from industrial to NP to make it more
338 compatible with the surrounding residential. In 2017, the Planning Board added residential uses,
339 as a "transition" property. The hardship is there in the history of this property.

340 Bob Lietz of 3 Tamarind Lane, an abutter, said that 16 condominiums there would affect
341 the character of the neighborhood. His home is on a two acre lot, and this is a cluster of homes
342 right across from his lot. A few homes would be consistent, but not that many.

343 Mr. Reimers said that a variance should not be easy to obtain. The applicant has stated
344 that the open space development itself meets the variance criteria, but he should be
345 demonstrating that the yield plan development meets the criteria. That said, both plans affect
346 the character of the neighborhood. There would be more traffic, noise, and his clients the
347 Flahertys would be affected by the proposed access road. Their property value would likely be
348 diminished. There are other ways that the property can be developed.

349 Ms. Petito asked what is between the Flahertys' property and the proposed
350 development. Mr. Griset said the corner point of the Flahertys' house is 20 feet from the
351 property line, and there's a vegetated buffer area. Anne Flaherty of 8 Tamarind Lane said there

352 would be 75 feet between her house and the nearest proposed building. Mr. Prior asked her to
353 comment on the impact of the access road on her property. Ms. Flaherty said that this plan
354 appears to show an access road separate from her driveway. Mr. Griset said the access drive is
355 12 - 15 feet from their lot, creating slightly more wetlands impact but avoiding their driveway.

356 Lisa Bleicken of 11 Tamarind Lane presented a neighborhood petition in opposition to
357 the project, reflecting concerns about potential property value impacts and lot size differences
358 affecting the neighborhood's character. She said that this may be a transition zone, but once
359 you're in the actual neighborhood the character is very different.

360 Trevor Knott of 15 Tamarind Lane said the zoning ordinance says that a variance must
361 not affect the public health, safety, or welfare, and the values of surrounding properties not be
362 diminished. This plan does not preserve the integrity of the neighborhood. He doesn't agree with
363 the appraisal; on the subject of diminished values, it sounds like a best guess.

364 Mr. Pasay said they're not looking for a variance to allow an open space development.
365 They're looking at whether the density of six of the lots in the NP zone can be transferred for the
366 purposes of the yield plan. Other issues can be considered in a Planning Board context. This
367 always had the potential to be developed, and the use is permitted by the zoning ordinance.

368 Mr. Prior said Mr. Pasay has stated several times that a parcel over 20 acres "must be"
369 open space development. Mr. Pasay said it's a footnote of Article 4.3, Schedule II, Footnote 19:
370 "Where lots of record have a total of 20 or greater acres, open space development is required
371 unless waived by the Planning Board."

372 Ms. Petito closed the public session.

373 Ms. Petito said that the applicant is looking to use the R1 density calculations for lots in
374 the NP zone. Mr. Prior said they're simply looking to put part of six residential units in the NP. If
375 they deny the variance, the applicant has to deal with the density they can get from the non-NP
376 portions of the property. The development will go forward, but at a smaller scale. Mr. Baum said
377 that the abutters' issues remain either way, and are largely the purview of the Planning Board.
378 Mr. Prior said that one of the abutters said that the increased transfer of density would alter the
379 essential character of the neighborhood. Mr. Prior said that he believes it changes the nature of
380 the neighborhood either way. Ms. Davies said the open space development is required for
381 parcels over 20 acres, and that's the Planning Board's issue.

382 Mr. Thielbar said if the area in question were R1, not NP, there wouldn't be an issue.
383 7.5.3 lists the specific districts where they can have an open space development, and the NP
384 parcel doesn't meet the criteria. What should have been requested is permission to use the
385 now-transferred residential use to meet the requirements of 7.5.3. Mr. Prior said it's still an NP
386 with residential uses, per the special exception which they granted. Mr. Baum said the
387 applicant's specific request is "a variance from Article 4.3 Schedule II and Article 7 to permit a
388 single-family open space development in the R1 Zoning District which draws density from
389 contiguous unimproved property in the neighborhood professional zone."

390 Ms. Petito went through the variance criteria. Regarding Criteria 1, the variance is not
391 contrary to the public interest, and Criteria 2, the spirit of the ordinance is observed, she said
392 that is addressed in the application. Mr. Prior said the large parcel will be preserved. Ms. Petito
393 said it will still be a residential neighborhood; she doesn't think the additional units alter the
394 essential character of the neighborhood, more so than the rest of the development. Criteria 3,
395 substantial justice: the benefit to the applicant should not be outweighed by the harm to the

396 general public or other individuals. Ms. Petito said the harm would be some increased traffic; the
397 views are buffered. Mr. Prior says it's a denser usage, and there are access issues the Planning
398 Board will consider. Criteria 4, values would be diminished; Ms. Petito said they heard anecdotal
399 evidence, but nothing to outweigh the expert testimony. Criteria 5, hardship: Ms. Davies said the
400 parcel is landlocked and there are wetland issues. Ms. Petito said it's favored by the Master
401 Plan to develop the property in this way. Mr. Prior said given the environmental nature, this is a
402 parcel of land that should be in conservation, which this development would allow. Mr. Baum
403 said it's consistent with the intent of the ordinance. Mr. Prior said it's going to be an open space
404 development, the question is how big it's going to be.
405

406 Mr. Baum made a motion to approve the requested variance from Article 4.3 Schedule II and
407 Article 7 to permit a single-family open space development in the R1 Zoning District which
408 draws density from contiguous unimproved property in the Neighborhood Professional Zoning
409 District as presented in the application. Ms. Davies seconded. All were in favor.

- 410
411
412 D. A rehearing on the application of Great Bridge Properties, LLC for a special
413 exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5,
414 Section 5.2 to permit the proposed construction of a "multi-use" structure on the
415 property located a 2 Meeting Place Drive; and a special exception from Article 4,
416 Section 4.4 Schedule III, Note #12 to allow an increased height of said structure
417 not to exceed fifty (50) feet. The Applicant is requesting a slight modification to
418 the condition of approval with respect to the reference that the residential
419 component of the property will be consistent with NH State Workforce Housing
420 Statute §674:58 et seq. The subject property is located in the C-2, Highway
421 Commercial zoning district. Tax Map Parcel #55-75. Case #19-15.

422 Laura Davies recused herself from this case. Alternate Chris Merrill will be voting.

423 Justin Pasay spoke on behalf of Great Bridge Properties. He said they received a
424 special exception from the ZBA in October for the multi-use and the height for the Meeting Place
425 parcel on Epping Road. Based on a misunderstanding, the condition that they agreed to on the
426 workforce housing statute was too cumbersome. They made a motion for rehearing in
427 November. This modification will allow them to comply with the workforce housing statute,
428 except that the development will not be at least 50% 2 bedroom residences. He is providing new
429 motion language, which also updates the description of the first floor use to add "non-
430 residential," because there will be residential storage on that level in addition to commercial
431 space. Ms. Petito said this would still be a commitment to the original intent, to comply with the
432 affordability criteria. Mr. Baum said that he drafted the original motion, and his intent was to
433 make it clear that the project was committed to keeping rents affordable. It's a rehearing, but
434 they can base it on the original hearing. Ms. Petito noted that there were no members of the
435 public present to speak. She closed the public hearing.

436 Mr. Prior made a motion to modify the conditions of approval previously granted on October 15,
437 2019, for the application for a special exception from Article 4, Section 4.2, Schedule I:
438 Permitted Uses and Article 5, Section 5.2 to permit the proposed construction of a "multi-use"

439 structure, with first floor commercial/non-residential, and three stories of residential rental
440 housing that is affordable in nature, using income and rent levels that are consistent with those
441 defined in RSA §674:58, on the property located at 2 Meeting Place Drive, Exeter NH; and a
442 special exception from Article 4, Section 4.4 Schedule III, Note #12 to allow an increased height
443 of said structure not to exceed fifty (50) feet, as presented. Mr. Thielbar seconded. All were in
444 favor.

445 E. The application of Carol Miller for an Appeal from an Administrative Decision
446 made by the Historic District Commission at their November 21st, 2019 meeting
447 regarding a request for replacement windows. The subject property is located at
448 30 High Street, in the R-2, Single Family Residential zoning district. Tax Map
449 Parcel #71-6. Case #19-20.

450 This case was tabled until the next meeting.

451
452 F. The application of Benjamin and Sarah Anderson for a modification to a
453 previously granted variance from Article 4, Section 4.2 which permitted the use of
454 the existing accessory barn on their property for community gatherings. The
455 Applicant is seeking relief to permit the operation of a nano-brewery and tasting
456 room, with limited hours, in the basement/ground floor of the barn structure. The
457 subject property is located at 66 Newfields Road, in the RU-Rural zoning district.
458 Tax Map Parcel #24-19. Case #20-2.

459 This case was tabled until the next meeting.

460
461 G. The application of Exeter Hospital, Inc. for a variance from Article 6, Section
462 6.16.2 Perimeter setback to permit a perimeter buffer setback of 25' from a
463 residential zone where 50' is required. The subject property is located on
464 Magnolia Lane, in the H-Healthcare zoning district. Tax Map Parcel #65-147.
465 Case #20-3.

466 This case was tabled until the next meeting.

467
468 H. The application of Seacoast Farms Compost Products, Inc. for a variance from
469 Article 4, Section 4.2 Schedule I: Permitted Uses to permit the expansion of the
470 current town composting and organic recycling services provided at the Cross
471 Road Transfer Station, in accordance with RSA 674:54 II a. The subject property
472 is located in the R-1, Low Density Residential zoning district, Tax Map Parcel
473 #100-4. Case #20-4.

474 This case was tabled until the next meeting.

475

476 **III. Other Business**

477 A. Approval of Minutes: November 19, 2019

478 1. The approval of minutes was tabled until the next meeting.

479

480 **IV. Adjournment**

481

482 Mr. Prior moved to adjourn. Mr. Thielbar seconded. All were in favor and the meeting was
483 adjourned at 11:37 PM.

484

485 Respectfully Submitted,

486 Joanna Bartell

487 Recording Secretary