

Town of Exeter
Zoning Board of Adjustment
February 18, 2020 7 PM
Town Hall
Final Minutes

I. **Preliminaries**

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

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

Others Present: Doug Eastman and Barbara McEvoy

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

II. **New Business**

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

The applicant requested a continuance to the March 17, 2020 meeting.

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

The applicants requested a continuance to the March 17, 2020 meeting.

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

Alternate Chris Merrill will be voting on this issue.

Sharon Somers of Donahue, Tucker and Ciandella spoke representing Exeter Hospital. This variance request is driven by a Purchase and Sales agreement that the Hospital entered into with the town in September. They need a variance to confirm that the property can be used for their intended purpose, a Facilities building. Without the variance, they will not move forward with the sale.

45 There is only one R2 lot which this parcel abuts, the property owned by Seacoast Mental
46 Health. They are requesting a 25 foot setback here, rather than the standard 50 foot setback. If
47 they can acquire this variance, they will purchase the property and merge it with the existing
48 Hospital property. They have no objection to such a merger being a condition of the variance
49 approval.

50 Phil Chaput, the Senior Director of Facilities Planning for Exeter Hospital, said they can't
51 support the Hospital's physical growth with the existing Facilities Building as-is; they would like
52 to construct a larger Facilities Building, incorporating this property. This property was sold by the
53 Hospital to the town in the 1940s for \$1, with the condition that only a water tower could go on
54 that lot. Now they'd like to purchase it back.

55 Ms. Somers discussed the variance criteria. 1) The variance is not contrary to the public
56 interest and 2) the spirit of the ordinance is observed: yes, a 25 foot vs a 50 foot setback does
57 not violate the spirit of the ordinance. There will be no parking lot in the buffer area. The height
58 of the proposed building will be conforming, and landscaping and screening will be included as
59 the Planning Board recommends. Activities inside this building won't have the impacts as other
60 Hospital functions, such as ambulances arriving at the ER. The lot is adjacent to an already
61 existing configuration of H and R2 zones. The siting of this building with a 25 foot setback is not
62 going to threaten the public health, welfare, or safety. 3) Substantial justice is met: yes, because
63 this is a balance of interests. There is benefit to the hospital, since if the variance is not granted,
64 the Hospital will likely not proceed with the sale. No harm will come to individuals from the
65 variance, and there will be a benefit to the public from the sale proceeding. 4) Values of
66 surrounding properties will not be diminished: yes, the only property directly impacted is
67 Seacoast Mental Health, which has no objection to this proposal. The hospital will conform with
68 height restrictions and provide landscaping and screening. 5) Hardship: yes, this is a very small
69 parcel surrounded by other property owned by the hospital on three sides. The lot is a knoll
70 surrounded by slopes, and there is a gas line along the property line which cannot be moved
71 without significant expense and disruption of hospital services. The proposed building is 60x120
72 feet, which is as small and narrow as possible while being consistent with industry standards for
73 a hospital facilities building. Without a variance, it could only be 38 feet wide, which would not
74 meet the Hospital's needs. The proposed use is a reasonable use, and if the variance is granted
75 it will go before the Planning Board for further review.

76 Ms. Davies asked if they have a rendering of the proposed building. Ms. Somers said no,
77 they haven't yet reached the design phase, only determined the proposed footprint. Mr. Chaput
78 said that they're looking at a two story building, about 7,200 square feet per floor, within the
79 height limitation of 35 feet. There would likely be garage doors on the side facing the hospital.
80 The upper level would have windows, but the lower level where the equipment is stored
81 probably wouldn't. They would store generators and fuel, and have Facilities offices in this
82 building. The generators are currently stored outside, so there will be no more noise or vibration
83 than currently, and possibly less. Right now, they only have emergency power from the
84 generators, but this would allow them to operate as normal in an outage.

85 Mr. Prior asked if they could build over the gas line, and Mr. Chaput said it's not best
86 practice. Mr. Prior observed there was an existing road and asked if there would be traffic, but
87 Mr. Chaput said that, it's closed with a gate now, and will remain closed. Mr. Prior asked why
88 they are treating this as an individual lot, rather than viewing it as part of the Hospital campus,

89 and doing a setback that incorporates the whole property. Ms. Somers said it's an issue of
90 timing; they don't want to buy it and merge it until they know they have the ability to put the
91 building on it that they want. Ms. Davies said they would still need to abide by the 50 foot buffer
92 even if the parcel were merged, and would probably still need a variance.

93 Mr. Thielbar said that in three years, the variance will expire. Ms. Somers said the
94 Hospital should be able to move forward with the project in that timeline.

95 Jonathan Ring from Jones and Beech Engineers spoke about the location of the gas
96 line. It creates an issue on the corner of the property which pushes them into the required 50
97 foot setback. Ms. Petito asked how much space would be between the proposed building and
98 the gas line; Mr. Ring said about 10 feet, although it's underground so they don't know its exact
99 location.

100 Mr. Merrill asked what will run the generators. Mr. Chaput said there will be fuel in the
101 garage, with the tanks in the back right corner away from the gas line. They're looking at two
102 tanks, given the generators' consumption. Mr. Merrill asked why they can't use the gas from the
103 gas line, and Mr. Chaput said the generators can't rely on a utility that could be interrupted.
104 According to code, they're required to have 96 hours of fuel on site for emergency needs. It will
105 be diesel fuel.

106 Ms. Petito asked if the proposed building is enough for the Hospital's needs. Ms. Somers
107 said yes, that's the determination they've made.

108 Mr. Prior said storing this fuel near the residential zone may impact the abutting property
109 if Seacoast Mental Health were to sell. Could they store it elsewhere? Mr. Chaput said the
110 topography of the land drops off radically, which makes the siting of the fuel a challenge. If it's
111 inside, it can be monitored. Ms. Davies asked if would be contained and monitored with alarms.
112 Mr. Chaput said they're double walled tanks with three levels of monitoring. Mr. Prior asked him
113 how many gallons were involved, and Mr. Chaput said 27,000 gallons.

114 Ms. Petito asked about the noise that would be generated, and what steps they would
115 take to minimize that. Mr. Chaput said the existing ones are outside; when they're in the
116 building, the Hospital can control the noise better. They would end up doubling the existing
117 generators from two to four. They're tested once a month for 30 minutes; every three months,
118 they do a four hour test; and during an outage, they would run as needed.

119 Ms. Petito asked if any members of the public would like to speak.

120 Jack Stole, the Facilities Manager of Seacoast Mental Health, spoke in support of the
121 project. That side is low-visibility for the public, with a parking lot and utility shed on that side.

122 Ms. Petito closed the public session.

123 Mr. Thielbar said if they absorbed this property into their existing property, they could
124 have a 50 foot buffer. They're only looking to get the variance to go forward with the sale. Is
125 \$50,000 of value to the town enough to grant a variance? Ms. Davies said the setback is from
126 the residential zoning line, and they'd still have to get a variance to site the building there,
127 whether it was part of the Hospital property or not. If it were further to the south, it would be
128 impacting homes, so they've done a good job of siting it in a low-impact area given the
129 constraints.

130 Mr. Prior went through the variance criteria. 1) The variance is not contrary to the public
131 interest and 2) The spirit of the ordinance is observed: yes, the entity that would be impacted
132 the most is the Hospital itself, so they'll do everything necessary to protect themselves and

133 others. He's concerned about having so much diesel fuel near a residential district, but the
134 abutters at Seacoast Mental Health do not object. He believes it meets criteria 1 and 2. 3)
135 Substantial justice will be done; yes, they have not been presented with any evidence that there
136 would be harm to the general public or abutters. 4) Values of surrounding properties will not be
137 diminished; yes, they've had no testimony regarding property values, and the main abutter did
138 not object. 5) Literal enforcement of the ordinance will result in unnecessary hardship: he's not
139 as convinced on this point, but it's an unusual parcel, and constrained by the buffer from the gas
140 line. It would be preferable if the gas line could be moved, but it would be at considerable cost.
141 Ms. Petito said the hardship is that they would have to move the gas line. The benefit is to
142 increase the generator capacity beyond emergency services. Mr. Prior said they could do that
143 without this building.

144 Mr. Prior moved to grant the application as presented with two conditions: 1) that there be no
145 further setback or height requests for this building, and 2) that the proposal go through Planning
146 Board approval. Mr. Thielbar seconded. Ms. Davies said the height requirement in this district is
147 86 feet, so she'd like to condition it to the two-story/35 foot maximum. Doug Eastman said it's
148 already restricted to 35 feet. Ms. Davies said an amendment was not necessary in that case. All
149 were in favor.

150
151
152 D. The application of Seacoast Farms Compost Products, Inc. for a variance from
153 Article 4, Section 4.2 Schedule I: Permitted Uses to permit the expansion of the
154 current town composting and organic recycling services provided at the Cross
155 Road Transfer Station, in accordance with RSA 674:54 II a. The subject property
156 is located in the R-1, Low Density Residential zoning district, Tax Map Parcel
157 #100-4. Case #20-4.

158 Alternate Esther Olson-Murphy will be voting on this issue.

159 Bob Kelly, the owner of Seacoast Farms Compost Products Inc, spoke about the
160 proposal. His company provides organic compost to households and businesses along the
161 Seacoast from their location in Fremont. Their site there is being redeveloped, and they are
162 looking for another property for their operation. They propose to take over the existing area of
163 the leaf composting at the Transfer Station, which is approximately 3-4 acres, and run this
164 function for the town in addition to running their operation. This would be a more desirable and
165 central location for his business; it would also save the town money, expand the operation's
166 hours, and provide a better compost material to residents. The Select Board approved trying
167 this for one year and reviewing to see if both parties would like to continue. Instead of using the
168 Cross Road entrance, they would open up the Kingston Road entrance to divert traffic off of
169 local roads. They are looking for a variance so that a private business could operate on public
170 land.

171 Mr. Prior said a variance granted by the ZBA doesn't have an expiration date, so there
172 would need to be some constraint on it, to address the concern that it could be sold. Mr. Kelly
173 said he has no intention to sell, but they could agree to make it non-transferable. Mr. Prior
174 asked how many trucks would be coming into the operation. Mr. Kelly said 15 or so per day at
175 peak times of the year, but more like 4-5 at other times. He typically gets to a point in the fall
176 where he stops taking in material for a period, although he would not shut it to residents.

177 Ms. Davies asked if there were materials other than leaves that would create an odor for
178 the residents. Mr. Kelly said one option for material is a small amount of horse manure, but that
179 could be subject to negotiation. However, that would not create odors. They wouldn't take any
180 sludge or similar materials. They wouldn't be expanding the scope of the current operation, so
181 there shouldn't be any additional odors.

182 Ms. Petito opened the discussion to the public.

183 Sheila Mullen of 4 Cross Road said she viewed the Seacoast Farms property in
184 Fremont, and it is a wooded site, not surrounded by homes as with the Transfer Station. This is
185 a low density residential zoning area. This is not a farm or an essential service, which would
186 permit a special exception in this district. The public health, safety, and welfare will not be
187 protected, and it would affect property values in this area. They say the benefit to the town is to
188 get a free cubic yard of compost per year, but they already have the right to that. It's a conflict of
189 interest for Mr. Kelly, who is the chair of the Budget Recommendations Committee, to run
190 business on town property.

191 Teresa Kolb of 10 Cross Road said she was disappointed that residents were not invited
192 to give feedback at the Select Board meeting that led to the Memorandum of Understanding
193 with Seacoast Farms Products. This composting operation, with its expanded days of operation,
194 would have a large impact on their neighborhood; even if they opened a different entrance,
195 people would still come into her neighborhood looking to enter that way.

196 Travis Sawyer, also of 10 Cross Road, said they'd discussed acreage but not how high
197 the compost would be piled. The trucks would create noise, and put wear and tear on the road.

198 Clark Burns of 13 Cross Road said he'd only learned about this a few days ago. He
199 never would have moved there if he knew that a commercial compost operation would be
200 moving into the Transfer Station. It's a conflict of interest to have Mr. Kelly be the chair of the
201 Budget Recommendations Committee and to run this operation.

202 Richard Carr of 4 Cross Road said he's concerned about any commercial business
203 moving into a residential area. He also questioned the process that led to this agreement.

204 Frederick Renz of 1 Connie Road said the town was not forthcoming in alerting the
205 abutters of this proposal. He asked about the liability for the town if someone is hurt or killed in
206 this commercial venture.

207 Mark Galante of 5 Farmington Road said he's opposed to the project because of the
208 potential for smells, noise, and rodents, as well as the effect on his property value.

209 Marye Carr of 4 Cross Road said manure does smell and that will affect property values.
210 Regarding the trucks, she said the original proposal said 10-15 18 wheelers coming in from 111
211 daily, and they would be turning on a blind curve on a steep hill. There's an aquifer located on
212 the property and that restricts what can be done there. It seems like corruption to have Mr. Kelly
213 on the Budget Committee and running this operation.

214 John Gezzer of 16 Cross Road said he has concerns about smells and traffic, but his
215 main concern is his daughter, who has Down Syndrome and associated respiratory issues.
216 Compost creates bioaerosols which can contain fungi, bacteria, and viruses which could affect
217 her.

218 Travis Grieb of 1 Farmington Road said he was concerned about the trucks, smells, and
219 the conflict of interest of putting this through. It sounds like they will grow the business. This
220 would be more a benefit to the business than a benefit for the town.

221 Cathy Edison of 12 Connie Road said her family enjoys the outdoors and the river, and
222 this will impact their ability to be outdoors. She doesn't want the smell of manure in the
223 neighborhood. She only recently heard about this proposal and is concerned about the process
224 followed.

225 Charles Deon of 140 Kingston Road said if this expands after it is approved, it's hard to
226 restrict that without a legal fight. The steep hill would cause loud braking sounds from the trucks
227 coming in. There's no definite number of trucks that they've agreed to. There are health hazards
228 from composting. They need more answers before any variances are granted.

229 Dan Jones of 181 Kingston Road said they've been there since the 70s and fought
230 against a dump going in there. He's very concerned about this application saying only "organic
231 materials," as that could encompass many different materials, not just leaves. There's no time
232 limit on a variance, it runs with the land. One of the requirements is a hardship on the
233 landowner, and they haven't heard any of that. They haven't heard about any pollution controls
234 or monitoring. Composting should be on an impervious surface in an industrial area.

235 Dianne Hefford of 22 Greystone Road said they live in a residential area and don't want
236 a manure smell in her area. The water table is high, and when it gets wet the smell would be
237 even worse. She suggested looking at the size of the trucks shown on the Seacoast Farms
238 website to get an idea of the impact they would have.

239 Sheila Mullen read a letter from Hayley Gallagher of 157 Kingston Road, who is
240 concerned about heavy traffic, noise, smell, and small animals. This is a neighborhood for
241 families that needs to be peaceful and safe.

242 Rob Kereage of 13 Great Hill Court said this is a residential area and they don't want to
243 see a commercial operation going in. He's concerned about traffic, big trucks, the smell, and
244 noise. He wouldn't have moved in if there were a compost business there at the time, so he
245 does think it will affect property values.

246 Bill Rousseau at 2 Great Hill Court said when people miss the entrance on Cross Road,
247 they turn around in his driveway. If they move the entrance to Kingston Road, the big trucks will
248 still turn around in his cul de sac. It's dangerous for his family.

249 John Deon from 11 Cross Road said as a truck driver he's not as concerned about the
250 trucks, but smells and rodents will be a problem. The neighbors weren't notified about this
251 proposal. They're running out of room at the dump, so why would they expand operations? It will
252 affect his property value. He expressed his dissatisfaction with the ZBA over this process, but
253 Mr. Prior and Ms. Davies said that if people have concerns about process their issue is likely
254 with the Select Board, not this board. Ms. Davies emphasized that they are considering this
255 case for the first time, and haven't made any decisions. Mr. Prior said that the town has latitude
256 to do as it wishes with town land, but that does not apply to a commercial operation. While the
257 Select Board may have created a Memorandum of Understanding, it could not begin operations
258 without going through the zoning process.

259 Gail Nickerson of 14 Cross Road said her property is directly across from the Transfer
260 Station, and she will be seriously impacted by the traffic and smell of this operation. She won't
261 be able to sell her house if this goes through.

262 Sheila Mullen clarified that those complaining that they were not notified are likely not
263 direct abutters, but everyone is impacted by this proposal. Mr. Prior asked if she were a direct
264 abutter and as such was notified, and she said yes, she was notified. Several other abutters

265 stated that they were direct abutters and were not notified. Mr. Eastman said the definition of an
266 abutter is someone whose property directly abuts town property. Someone on the other side of
267 the road would be considered an abutter, but anyone one property removed is not. Everyone
268 required to be notified legally was notified. He will investigate any direct abutters with claims that
269 they were not notified.

270 Dan Jones said that the Transfer Station property is a separate parcel of land from the
271 former landfill, so the Connie Road properties do not abut the property in question.

272 Ms. Petito asked if the applicant would like to respond to the points raised.

273 Mr. Kelly said there were some points made that are untrue. For example, there would
274 be no food waste or garbage, only leaves. The proposal to compost food was a town initiative
275 and not his. Leaves would not attract rodents. Regarding the expansion of the operation, it can't
276 get any bigger than it already is, it's constrained by the existing footprint. This has been a leaf
277 composting area all along. If there's a concern about horse manure, they don't have to take it. It
278 would have been a small piece of the materials anyway. He wants to help the town run the leaf
279 dump. Regarding noise, they're bringing in the same type of equipment. The time frame of six
280 days of operation is intended to spread out the traffic from the intensity on Saturday morning,
281 when neighbors are actually home. As part of the memorandum, he's required to have
282 insurance. Regarding odor, some people say they never smell anything, some say they do. In
283 Fremont, he asked people to call, email, or text him if there were any problem. The Select Board
284 wanted to make this a one-year thing and see if it's working. Regarding bioaerosols and dust,
285 they would keep the piles managed and the process small to minimize this. Regarding traffic, it
286 is a state road; if the larger trucks are a concern, they can limit the kind of trucks they will bring
287 in. Regarding the aquifer, leaves don't generate much nitrogen. The landfill was closed properly,
288 and the town has monitoring wells. Their operation is a fraction of what the landfill was. He is a
289 volunteer on the Budget Recommendation Committee, but there is no way that he could
290 influence the decision about his business by the Select Board or other town entities.

291 Ms. Petito asked what the hardship is for his business if he were not able to operate at
292 this site. Mr. Kelly said he was trying to operate his business somewhere, and the town had a
293 need. The hardship is that the town would lose an opportunity to improve their recycling
294 program. The Sustainability Committee is trying to get the town to do things more sustainably,
295 and this would be a "freebie" in that effort.

296 Sheila Mullen asked if the Board received the geophysical survey, and they said yes.

297 Ms. Petito closed the discussion to the public and after a short recess the Board began
298 deliberations.

299 Ms. Davies said she has concerns about the GZA Memorandum which raises issues like
300 the formal treatment of run-off, the need for a construction permit from the EPA, and a
301 stormwater pollution prevention plan, which weren't addressed as part of the application. Mr.
302 Thielbar said it's not clear what's proposed to be done or the scope of it. The town brings in
303 contractors to grind brush at the Transfer Station, but this is having a commercial operation set
304 up on town land and goes beyond running town activities. He doesn't see how the town would
305 manage the operation to ensure the business would follow the scope of the agreement. Mr.
306 Prior agreed and added that there is no hardship involved (criteria #5). The town is the owner,
307 not Mr. Kelly, and there's no hardship to the town. The MOU between Seacoast Farms Products
308 Inc. and the town is a draft and has not been signed, and should not be signed. Ms. Olson-

309 Murphy said that there would need to be controls, and there aren't any. Mr. Prior said that he
310 believes this operation would be a positive thing, but the ZBA makes permanent decisions that
311 run with the land, and if they decided to sell the business there would be no controls on the
312 scope, sending towns, etc. Ms. Petito agreed, saying she shares the abutters' concerns about
313 the effect of the operation on the neighborhood.

314 Mr. Thielbar proposed that rather than going through the variance criteria, they should
315 reject it as not having enough information. Mr. Prior disagreed, saying that left it open for the
316 proposal to come back by carefully crafting the language, but he doesn't believe it will ever meet
317 the hardship criteria.

318 Mr. Prior went through the variance criteria: 1) The variance is not contrary to the public
319 interest and 2) the spirit of the ordinance is observed: no, the spirit of the ordinance is whether
320 this is an appropriate use in a residential zone, and he does not think it's appropriate. If it were
321 identical to the use on the property now, it may be acceptable, but the application specifically
322 mentions an increase in scope. It would change the character of the neighborhood and threaten
323 public health, safety, or welfare. 3) Substantial justice is done: no, they've heard testimony that
324 the proposal has the potential to offer benefit to the applicant but it is outweighed by the harm to
325 the general public. 4) Values of surrounding properties will not be diminished. They generally
326 only accept expert testimony on this, but they had substantial input from abutters, and he does
327 believe the properties closest to this usage could be impacted. 5) Literal enforcement of the
328 ordinance would result in unnecessary hardship: no, the town as the owner of the property may
329 continue to do the work they've been doing on composting. They heard no testimony that
330 there's a literal hardship in denying this application. Ms. Petito said his alternative would be to
331 lease another property at market value, which is not considered a hardship.
332

333 Mr. Prior made a motion to deny the application because it does not meet variance criteria 1 - 5.
334 Ms. Olson-Murphy seconded. All were in favor.

337 **III. Other Business**

338 A. Approval of Minutes: November 19, 2019 and January 21, 2020

339 Ms. Petito, discussing the November 19, 2019 minutes, asked that the spelling of Anthony
340 Beirsto's name in line 24 be checked. [It is correct, he spelled it for the record during the
341 meeting.] In line 131, "they don't have to take new input," she would like to add "on other
342 issues".

343 Mr. Thielbar moved to accept the minutes to the November 19th meeting as amended. Mr.
344 Merrill seconded. All were in favor.

345 The January 21, 2020 minutes were tabled until the next meeting.
346

347 **IV. Adjournment**

349 Ms. Davies moved to adjourn. Ms. Olson-Murphy seconded. All were in favor and the meeting
350 was adjourned at 9:50 PM.

351

352 Respectfully Submitted,
353 Joanna Bartell
354 Recording Secretary