

Town of Exeter
Zoning Board of Adjustment
March 16, 2021, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Vice-Chair Robert Prior, Clerk Rick Thielbar, Laura Davies, Kevin Baum, Martha Pennell - Alternate, Christopher Merrill - Alternate, Esther Olson-Murphy - Alternate, Anne Surman - Alternate

Members Absent: Chair Joanne Petito, Hank Ouimet - Alternate

Call to Order: Acting Chair Bob Prior called the meeting to order at 7 PM.

Mr. Prior read a statement:

As Acting Chair of the Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet electronically.

Public notice of this meeting was posted on the town website and on the bulletin board of the town offices at 10 Front Street. As provided in that public notice, the public may access the meeting online and via phone.

Please note that all votes taken during this meeting shall be done by roll call vote. Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting and who that person is (son, daughter, spouse, etc...), which is required under the Right-to-Know law.

II. **New Business**

- A. The application of Nouria Energy Corporation for a special exception per Article 4. Section 4.2 Schedule I to permit the proposed construction of a gasoline station, a convenience store with drive-thru, a carwash and associated site improvements; and for two variances per Article 6, Section 6.8.2 for relief from the requirement that the second 25' of the front yard be landscaped and to permit a pylon sign to be located approximately 7' from the front property line, where a setback of 35' is required. The subject property is located on a portion of the property at 158 Epping Road and situated in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-1-2. Case #21-3.

John Arnold, an Attorney at Hinckley Allen; Tom Healey from Nouria Inc; and Project Engineer Chris Tymula from GPI, were present to discuss the application. Of the

45 alternates, Ms. Olson-Murphy will vote on the special exception, and Mr. Merrill will vote
46 on the variances.

47 Attorney Arnold said that the proposal is for 158 Epping Road, which is in the C3
48 Zoning District, and was until recently a Jaguar Auto Dealership. Nouria would demolish
49 the existing building and add a new 5,500 square foot convenience store, as well as a
50 fueling station and car wash. Mr. Healey said that Nouria has several locations in New
51 England under the brands Shell and Irving. Nouria operates its own stores, and has
52 1,300 employees throughout New England. This location fits well into their network
53 geography, and would be typical of their existing operations.

54 Mr. Tymula gave a presentation on the site layout. There will be 22 parking
55 spaces, 11 in the front and 11 on the side. There's a drive through component. There's a
56 car wash in the rear of the site, with seven additional parking spaces for the vacuums.
57 There's a fenced dumpster enclosure in the rear. The fuel storage tanks are in front of
58 the canopy. There would be a free standing sign on the corner, at 7 and 12 feet from the
59 property lines. The proposed access is a new curb cut on Continental Drive, and there
60 will be an additional curb cut between parcels.

61 Attorney Arnold noted that gas stations are not allowed by right in Exeter; they
62 are always a special exception. He discussed the specific exception criteria. 1) The use
63 is permitted by special exception; yes, that's the case in the C3 zoning district. 2) No
64 threat to public health, safety and welfare; no, gas stations are regulated by State and
65 federal law to ensure public safety and environmental compliance. There's nothing
66 inherently dangerous about this location, and it is accessible from Route 101 without
67 going through any residential areas. 3) Will be compatible with zoning district and
68 adjacent uses; yes, Tire Warehouse is to the north, and there's another gas station up
69 the street that was built in 2001, so this is consistent with the uses. 4) Adequate
70 landscaping and screening are provided; yes, there will be a dramatic improvement to
71 the site. Some of the paving will be changed to mowed landscaping. The proposed sign
72 will be in a very similar location to the existing sign.

73 Ms. Davies asked if the sign needs to be so close to the road, but Mr. Prior
74 suggested sticking to the criteria for now. Mr. Baum looking at open space numbers, is
75 that based on the full lot, rather than the leased area? Attorney Arnold said yes, the
76 calculation is for lot 1-2, including the area in the back. Within the leased limits, they
77 have 22% open space and 78% impervious, where 20% is required.

78 Mr. Thielbar asked why they didn't believe that question 9 of the application was
79 applicable to the buried gasoline storage tanks, per 2.2.33. Attorney Arnold said that
80 question 9 applies to a separate use category, for hazardous storage of material such as
81 pipelines and other storage, not for retail gasoline stations. He previously had a
82 discussion with the Code Enforcement Officer which confirmed this point. Mr. Prior said
83 they would be covered under 2.2.32, the gasoline or automotive service station
84 definition, rather than the hazardous storage definition. Mr. Prior said this is ultimately a
85 Planning Board question anyway.

86 Mr. Prior opened the discussion to public comment, but there was none. He
87 closed the public session. He asked if the applicants had further comment, but they did
88 not. Mr. Prior opened the deliberative portion of the meeting.

89 Ms. Davies asked whether there is a limit on the number of uses that can be on a
90 single parcel. Mr. Prior said the Mobil Station on Epping Road, which has the same
91 range of uses, sets the precedent. Ms. Davies said there's a completely separate use to
92 the rear in this proposal, which is leased to a wood processing operation. Mr. Baum said
93 he doesn't believe the ordinance prohibits multiple uses on one lot. It's likely something
94 Doug Eastman would have vetted.

95 Mr. Prior went through the special exception criteria. 1) The use is permitted in
96 article 4.2 schedule 1; yes, gas stations are permitted in the C3 Zoning District by
97 special exception. 2) That the use is so designed, located, and proposed to be operated
98 that the public health, safety, and welfare will be protected; yes. The design with two
99 separate entrances and exits is probably good. He has a minor concern with traffic from
100 the shared entrance on Epping Road taking a left, but that's a Planning Board issue. 3)
101 The proposed use will be compatible with the zoning and post-1972 development; yes,
102 it's entirely appropriate to have a gas station in this zone. 4) Adequate landscaping and
103 screening are provided as required; yes, they will have a development that is actually
104 more compatible with nearby locations, with a strip of grass. Overall it will be an
105 improved appearance. The screening would be from the use behind and next door, both
106 of which are being appropriately handled. 5) Adequate offstreet parking and loading is
107 provided, and ingress and egress are designed to create minimum interference on
108 abutting streets; yes, they're providing 22 parking spaces where 19 are required. Given
109 the constraints of the lot, the two entrances are appropriate. 6) The use conforms with all
110 applicable regulations governing the district where located; yes, the property is in a good
111 location where the use is permitted by special exception. They're allowed to have 36 gas
112 stations in Exeter based on the number of registered vehicles, and this is the only 5th or
113 6th. They're an adequate distance from the lot lines. There's no automotive service
114 besides the gas station. It meets all the requirements for gas stations. 7) This will go to
115 the Planning Board, where they should take into consideration the proposed entrance
116 and exit. There's a DOT and a town component to this issue. There's an existing curb
117 cut to this property. Ms. Davies said they need to get the modification approved, but she
118 doesn't see that being an issue. 8) The project will not negatively impact abutting
119 property values; yes, they've had no testimony to that effect. He thinks that cleaning up
120 and modernizing the property will help abutting property values. 9) N/A, this is not the
121 case, as this is not the storage of hazardous material, and 10) N/A, this is not a Tech
122 Park district.

123 Mr. Thielbar said Nouria Energy is not the owner of the property, so do they have
124 the authorization to apply? Mr. Prior said he assumes they will have a long-term lease
125 on the property. Mr. Baum said that owner approval is listed on page 7 of the packet,
126 and he's comfortable that this has been filed, although it's not the packet. Mr. Prior said
127 that before he, as acting Chair, signs the letter of approval, he will ask to see the owner
128 authorization.

129 Mr. Baum made a motion to approve the special exception for a convenience store with drive-
130 through gasoline station and carwash as presented. Ms. Davies seconded. Ms. Davies asked if
131 they should include a condition that the Planning Board review should particularly consider the
132 ingress and egress. Mr. Prior said the Planning Board are going to review it anyway, so he's fine

133 with that not being a condition. By a roll call vote, Ms. Davies, Mr. Baum, Mr. Thielbar, Ms.
134 Olson-Murphy, and Mr. Prior voted yes, and the motion passed 5-0.

135
136 Mr. Prior said they will now consider the two variances. Attorney Arnold said the
137 variance request relates to the front yard setback. Section 6.8.2 of zoning requires a 50
138 foot building setback, for the second 25 feet to be landscaped, and for the signs to be
139 set back 35 feet. The proposal complies with the building setback, but the landscaping
140 only covers 8 feet inside the property line, and the signage is 7 feet from the property
141 line. The right of way for Epping Road is unusually wide; there is 58 feet between the
142 edge of the pavement and the front property line. Some of that is currently paved, but
143 that will be removed and reseeded. Including the right of way, there's about 65 feet of
144 green space between the road and the parking lot, and the signage is 41 feet from the
145 road. Since this area is in the right of way, it doesn't count towards the setback, so they
146 require a variance.

147 Attorney Arnold went through the variance criteria. 1) The variance is not
148 contrary to the public interest and 2) the spirit of the ordinance is observed; yes, from the
149 edge of the road, you'll see 65 feet of green space and 40 feet of space before the
150 signage, which results in a more uniform and cohesive streetscape. The fuel canopy
151 aligns with the buildings on neighboring properties. The purpose of the ordinance is to
152 beautify the street and provide a buffer between the road and the development, which is
153 still observed. 3) No harm to the general public or 4) negatively impacting property
154 values; no, this will be a dramatic improvement to the property and will bring new
155 business to a vacant site, which will benefit surrounding businesses and the general
156 public. By allowing the reduced setbacks, it makes it easier for motorists to identify the
157 site. 5) Hardship criteria; yes, if they were forced to strictly comply with the setbacks,
158 they would need to shift the site back 50 feet, which would impact the public visibility and
159 the long-term success of this business. There's still ample green space provided
160 between the roadway and the edge of the site, so there's no need for the extra setback
161 to achieve those purposes.

162 Mr. Prior said Route 27/Epping Road is very wide in this area, much wider than
163 on other segments of the road. The signage in this area is consistent in its distance from
164 the roadway. This parcel will be similar to other properties in this area.

165 Mr. Thielbar said he has no problem with the setback from Route 27, but they're
166 only 12 feet from Continental Drive on the corner of the lot. Attorney Arnold said they
167 reviewed it with the Code Enforcement Officer, who determined that the 50 foot building
168 setback applied off of Continental Drive, but regarding green space and signage, the
169 only relief needed was that from Epping Road. Mr. Prior said they're discussing 6.8.2,
170 and 6.8 is specific to the front yard along Epping Road. There's no special consideration
171 in this district for the side yard. Ms. Davies said there's a 58 foot margin between the
172 pavement and the property line now. It would have been acquired as a right of way for a
173 reason, and it won't always be that way. They may add lanes and use some of that right
174 of way. Mr. Prior said there's a dedicated turning lane in front of this property, so it's the
175 only section with three lanes in this area. Attorney Arnold said there's 65 feet of green
176 space currently, so they could widen the road and still have a similar amount of

177 perceived setback. Mr. Lampert said they just put in a significant amount of investment
178 in creating the turning lane and signal, and they won't be taking that out anytime soon.

179 Ms. Surman said she likes their point about the consistency of the signs. She
180 agrees with the point that the intersection is really recent and won't be removed soon.
181 It's a commercial district, and this will be in keeping with the other properties.

182 Mr. Baum asked about the size of the proposed sign. Attorney Arnold said they're
183 looking to comply with the requirements of the area, and if they can't they'll come back in
184 the future for relief.

185 Mr. Prior opened the discussion to public comment, but there was none. He
186 closed the public hearing.

187 Mr. Prior first asked the Board to consider relief from the requirement that the 25
188 feet from the front of the property be landscaped. Ms. Davies said if the right of way is
189 extraordinarily wide and the setbacks are huge it makes it difficult to do business there.
190 She has no issue with this variance. Mr. Baum said this will create an equal streetscape.

191 Ms. Davies went through the variance criteria for the landscaping. 1) The
192 variance is not contrary to the public interest and 2) the spirit of the ordinance is
193 observed; yes, as the applicant described, this will be consistent with the neighborhood
194 and won't alter its character. The wide right of way will go a long way to fulfilling the
195 intent of the ordinance. 3) Substantial justice is done; yes, she doesn't see any harm to
196 the public or other individuals. This will be an improvement. 4) Values of surrounding
197 properties will not be diminished; yes, there's been no testimony to this effect, and this
198 will be an improvement to the property. 5) Literal enforcement of the ordinance will result
199 in unnecessary hardship; yes, she doesn't see any reason to pursue literal enforcement,
200 where there's so much green space in the right of way, and it's consistent with the other
201 properties. It would be a hardship on the applicant to have to comply with the literal
202 ordinance, and there's no benefit.

203
204 Ms. Davies moved to approve the application for variance for relief from Article 6
205 sections 6.8.2 for relief from requirement that the second 25 feet of the front yard be
206 landscaped. Mr. Thielbar seconded. In a roll call vote, Ms. Davies, Mr. Thielbar, Mr.
207 Baum, Mr. Merrill, and Mr. Prior voted yes, and the motion passed 5-0.

208
209 Mr. Baum went through the variance criteria for the sign. He said that there's no
210 other real place to put this sign, given the landscape and the shared driveway. 1) The
211 variance is not contrary to the public interest and 2) the spirit of the ordinance is
212 observed; yes, this does not threaten any of the objectives of the criteria. It's consistent
213 with the general character of the locality and there's no risk to public safety or welfare. It
214 will actually make it easier for motorists to see the sign without taking their eyes off the
215 road. The goal of the ordinance is to have some distance from the front of the lot to the
216 sign, which is achieved by the right of way. 3) Substantial justice is done; yes, there's no
217 benefit to the public in denial, and it would be a hardship to the applicant. 4) Values of
218 surrounding properties are not diminished; yes, they've heard no evidence to the
219 contrary, and it should improve the value of surrounding areas. 5) Literal enforcement of
220 the ordinance will result in unnecessary hardship; yes, because of the wide right of way

221 here. 6) The proposed use is reasonable; yes, a gas station is permitted in this zone by
222 special exception, and it's reasonable to have a sign visible from the roadway.
223

224 Mr. Baum moved to approve the variance application as presented for a variance from 6.8.2 to
225 allow a pylon sign to be located 7 feet from the front lot line where a 35 foot setback is required.
226 Mr. Thielbar seconded. In a roll call vote, Ms. Davies, Mr. Thielbar, Mr. Baum, Mr. Merrill, and
227 Mr. Prior voted yes, and the motion passed 5-0.

228
229 **III. Other Business**

- 230 A. Mr. Prior announced that Ms. Petito will not be continuing on the Board when her
231 term expires in April. One of the current five alternates will need to become a
232 regular voting member of the Board. His term expires in April, but he's asked to
233 be reappointed to the Board as a voting member. He thinks Mr. Ouimet will also
234 let his membership expire in April. Ms. Davies asked if any of the alternates
235 would like to become a voting member. Ms. Olson-Murphy said yes. Ms. Pennell
236 said she would only like to be a full member if necessary. Mr. Merrill and Ms.
237 Surman said they support Ms. Olson-Murphy becoming a full member.

238 Ms. Davies nominated Ms. Olson-Murphy for a full membership on the Zoning Board of
239 Adjustment, effective April 2021. Mr. Thielbar seconded. In a roll call vote, Ms. Davies, Mr.
240 Thielbar, Mr. Baum, and Mr. Prior voted yes, and the motion passed 4-0.

241
242 Mr. Prior said there will be an opening for an alternate, and encouraged
243 members of the public to apply.

- 244 B. Approval of Minutes - February 16, 2021

245 Corrections: Mr. Thielbar said in line 54, they should add "from the existing
246 second floor" for clarity.

247 By a show of hands, Mr. Prior, Mr. Thielbar, Mr. Baum, Ms. Pennell, Ms. Olson-Murphy, and Ms.
248 Surman were in favor of approving the minutes as amended, and the minutes were approved 6-
249 0.

250
251 **IV. Adjournment**

252
253 Ms. Davies moved to adjourn. Mr. Baum seconded. All were in favor and the meeting was
254 adjourned at 8:44 PM.

255
256 Respectfully Submitted,
257 Joanna Bartell
258 Recording Secretary