

Town of Exeter
Zoning Board of Adjustment
September 21, 2021, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

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

Members Absent: Laura Davies, Martha Pennell

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

I. **New Business**

- A. The application of Granite State Construction Services, LLC for a variance from Article 4, Section 4.3 Schedule II: Density & Dimensional Regulations-Residential to permit a proposed minor subdivision of the property located at 12 Little River Road with less than the required minimum lot width/frontage requirements. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #62-90. ZBA Case #21-10.

Christian Smith P.E. from Beals Associates presented to the Board, on behalf of the Applicant Sam Mukarkar (Granite State Construction). Mr. Smith said this project has 65.65 feet of frontage, and they are looking to divide it reasonably. The existing drive is half on one side and half on the other, resulting in 20.5 feet of frontage for the existing house and 45.15 feet for the existing church. The existing house will be renovated and rented.

Mr. Prior asked if they were allowed to use the private right of way as frontage, they would have enough? Mr. Smith said yes, they would have enough frontage for both lots.

Mr. Baum asked if this will be a shared driveway. Mr. Smith said yes, the driveway will serve both. Mr. Baum said regarding the subdivision regulations relating to shared driveways, will this project need a waiver? Mr. Smith said the town Planning staff didn't say a waiver would be required. Mr. Baum said according to the existing conditions plan, they will use an easement that affects this area, is that correct? Mr. Smith said yes, this area is still owned by the church, but the church granted an easement for the abutter to use it as a lawn area.

Mr. Thielbar asked if this variance is about the lack of 100 feet for the two properties, and Mr. Smith said yes..

Mr. Baum observed that there were no abutters present. Mr. Prior asked if there are no more Zoom meetings, and Mr. Eastman said that's correct. It was an IT decision.

For the Board alternates, Mr. Merrill will vote on this issue, and Ms. Surman will vote on the re-hearing.

45 Mr. Prior moved to close the public session and enter into deliberative session. Mr. Thielbar
46 seconded. Mr. Baum, Mr. Prior, Mr. Thielbar, Ms. Olson-Murphy, and Mr. Merrill voted aye, and
47 the motion passed 5-0.

48
49 Mr. Prior said this seems straightforward and a good use of the variance. Mr.
50 Baum said these are large lots with more than enough area to support the church and
51 residence. It would be difficult to access it any other way given the wetlands and Little
52 River.

53 Mr. Prior said the project does meet all of the criteria for a variance. Clearly there
54 is hardship here.

55 Mr. Prior made a motion to approve the application for a variance from Article 4, Section 4.3
56 Schedule II: to permit a proposed minor subdivision of the property located at 12 Little River
57 Road. Mr. Thielbar seconded. Mr. Baum, Mr. Prior, Mr. Thielbar, Ms. Olson-Murphy, and Mr.
58 Merrill voted aye, and the motion passed 5-0.

59
60 **II. Other Business**

61 A. Ben and Sarah Anderson - Case #21-8 - Request for Rehearing 66 Newfields
62 Road, Tax Map Parcel #24-29.

63 Mr. Baum said this is a request for rehearing for the variance application. There
64 is no one from the public present, and it's not a public hearing. The question is whether
65 the Board misinterpreted the law, overlooked facts, or made an error. If the Board
66 doesn't believe they made an error, they would vote to deny.

67 Mr. Prior said the Counsel for the applicant has completely missed what the
68 Board was talking about regarding hardship. The hardship, which the Board feels is self-
69 imposed, has to do with use, not the physical conditions of the property. The Andersons
70 have already been approved for a non-residential use on that property, so they have
71 fallen afoul of the definition of a bed & breakfast, which "shall not be used for any other
72 business use." Attorney Pasay has analyzed many prongs of the criteria, but the issue is
73 the use that exists on the property. It can't be both a bed & breakfast and the Word Barn.
74 The hardship was imposed by the combination of uses that the applicant wishes to have
75 on the property.

76 Mr. Thielbar said they're not applying for a rehearing on special exception for the
77 bed & breakfast issue, but they discuss that issue at length in the application. Mr. Baum
78 said what they have argued is that the bed & breakfast use is reasonable because it's
79 permitted in the RU zone by special exception. Short term uses, such as hotel/motel, are
80 not permitted. Mr. Prior asked where "short term rental" is in the code.

81 Andy Swanson of EXTV said that there is no Zoom, but abutters are trying to call
82 in. Mr. Baum said as it relates to this request for rehearing, there's no public comment,
83 so he's not that concerned.

84 Mr. Thielbar said they couldn't rent the space long-term because the noise made
85 by their first variance [The Word Barn] made it unrentable long-term. Mr. Prior asked
86 how they are renting it short-term in that case. Mr. Baum said in the short-term those
87 who stay there might consider the Word Barn use fun. The Andersons' attorney has

88 suggested in this motion that they were not arguing that was a hardship, and that the
89 information was just provided to give context, but he [Mr. Baum] does think they
90 presented it as a hardship. The Andersons have the right to have a long-term rental
91 there with the appropriate approvals. Mr. Prior said that's not a consideration that the
92 Board needs to take, it's a business decision.

93 Mr. Baum said it's self-created hardship. He doesn't see any error in their
94 decision. They considered it carefully. There's nothing in the motion for rehearing that
95 changes the analysis that the Board took. He disagrees with the description of how the
96 Board considered self-created hardship. The application stated that they read the wrong
97 purpose into the RU zone, but he disagrees. There is no clear purpose for why short-
98 term or transient rental use is prohibited in the RU zone, but the Board's reading and
99 interpretation of the ordinance was a reasonable one.

100 Mr. Prior made a motion to deny the request for a rehearing of Case 21-8. Mr. Thielbar
101 seconded. Mr. Baum, Mr. Prior, Mr. Thielbar, Ms. Olson-Murphy, and Ms. Surman voted aye,
102 and the motion passed 5-0.

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104 B. Approval of Minutes: August 17, 2021

105 Corrections: Ms. Surman said line 27, "the proposal is for four units, with a limited
106 common", should be "common area." Line 48, "Mr. Prior said asked," should be "Mr.
107 Prior asked." Ms. Olson-Murphy said line 115, "a previous case where they couldn't say
108 the owners couldn't rent," should be "they said the owners couldn't rent."
109

110 Mr. Prior made a motion to approve the minutes as amended. Ms. Surman seconded. Mr. Baum
111 and Mr. Thielbar abstained as they were not present at the Aug 17 meeting. Mr. Prior, Ms.
112 Olson-Murphy, Mr. Merrill, and Ms. Surman voted aye, and the motion passed 4-0-2.

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114 **III. Adjournment**
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116 Mr. Prior moved to adjourn. Ms. Surman seconded. All were in favor and the meeting was
117 adjourned at 7:30 PM.

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119 Respectfully Submitted,
120 Joanna Bartell
121 Recording Secretary