

Town of Exeter
Zoning Board of Adjustment
October 19, 2021, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Rick Thielbar, Martha Pennell - Alternate, Christopher Merrill - Alternate, Anne Surman – Alternate. Doug Eastman was also present.

Members Absent: Laura Davies, Esther Olson-Murphy

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

I. **New Business**

- A. The application of Amy and Nicholas Cregan for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit a residential conversion for one additional unit within the existing structure located at 14 Union Street; and a variance from Article 4, Section 4.2, Schedule I: Permitted Uses, Schedule 1 Notes 1.(b) to permit the proposed conversion with less than the required minimum lot area. The subject property is located in the R2, Single Family Residential zoning district. Tax Map Parcel #73-242. ZBA Case # 21-11.

Attorney Sharon Somers of DTC was present to represent applicants Amy and Nicholas Cregan, who were also present.

Mr. Baum said the voting alternates will be Mr. Merrill and Ms. Surman.

Attorney Somers said her office over-notified on abutters. There are actually only three abutters: Exeter School District, which owns the daycare area at 73/232; 73/254, which is the Hansell Lynn Revocable Trust; and the immediate abutter, the Senok Family, at 73/241, which is 12 Union Street.

Attorney Somers said she would address the variance application first.

This application is concerning a two-bedroom apartment in the basement which has been used as a short-term rental, which has caused some concern for the town. We met with the town to figure out a way to resolve this. We seek to have a second dwelling recognized and use that for long-term rental purposes only as part of an approved second dwelling. The primary dwelling will be owner-occupied. It will be marketed to professionals working nearby or parents of PEA students. The Cregans' intent is not to have this rented out at all times. To move forward, we need a special exception and a variance, the latter because the lot size is shy by 723.6 square feet of the requirement.

This property is at 14 Union Street in the R2 Zoning District. It has 8,276.4 square feet. It is a lot of record. The house is a 1.5 story building, with 1,400 square feet of living area, and 980 square feet of living area in the basement. The primary residence

45 is 3 bedrooms, and the basement is 2 bedrooms. The house was built in 2009, and
46 continuously used as a residence since that time. The backyard is fenced and has shade
47 trees. There are two driveways with parking for five cars, one more space than what is
48 required. There is a great deal of open space behind the structure, exceeding the
49 requirement: there is 5,895 square feet of open space where 3,310 is required. We
50 comply with all elements of the special exception other than lot size.

51 Regarding the variance criteria, 1) Granting the variance is not contrary to the
52 public interest; no, there is no threat to the public health, safety, and general welfare.
53 This is taking an existing single-family residence with bedrooms in the basement and
54 making it into a long-term rental unit. No modifications will be made, so there will be no
55 visible impacts. There is no alteration to the essential character of the neighborhood,
56 which already has other two- and three-family homes. 2) Whether the spirit of the
57 ordinance is preserved; yes, this point is generally considered with the public interest
58 criteria, which is satisfied. 3) Substantial justice is done; yes, the denial of the variance
59 will yield no gain to the general public, but will result in a loss to her clients. The clients
60 are looking to rectify the situation with the short-term rental. Denying the variance will
61 deprive the owners of the best use of this house and an additional income stream. 4)
62 The values of surrounding properties will not be diminished; yes, the property will have
63 no modifications, so the residential use will remain the same and have no impact to
64 surrounding properties. Two driveways already exist. There are other properties in the
65 neighborhood with multiple dwellings. The Cregans take seriously the obligation for the
66 property to be owner-occupied, and will be picky about their tenants. 5) Hardship; yes,
67 we believe that the property is unique and has specialized conditions. The layout and
68 location of the residence and garage, the number of off-street parking spaces, and the
69 locations of the driveways make this different from similar properties. This property is
70 also unique in that it's substandard in size relative to other lots, but it's clearly suited to
71 being a two residential unit property because it's innocuous, has two driveways, and has
72 lots of parking space. There is no fair and substantial relationship between the public
73 purpose of Note B - which was designed to lessen congestion and overcrowding - and
74 denying the variance. The property is 723.6 square feet short, but even if they had that,
75 it wouldn't do much towards meeting the spirit of that ordinance. The proposed use is
76 reasonable; residential conversions are permitted in the R2 district, and the proposed
77 use of a second dwelling is commonplace in the surrounding neighborhood. There are at
78 least six 2+ family residences on Union Street.

79 Mr. Baum asked why they didn't go for an accessory dwelling unit. One of the
80 differences is for an ADU, the dwelling unit must remain owner-occupied. With the
81 second dwelling unit model, if this became a condo, there could be two separate owners.
82 Attorney Somers said she wasn't involved in that decision. Ms. Cregan said they were
83 under the impression that it had to be owner occupied as a general rule.

84 Mr. Baum asked about the layout of the unit. Ms. Cregan said there are two
85 driveways: one driveway has a garage with a door to the upstairs, and one driveway with
86 a door to the basement.

87 Mr. Prior asked how we define long term vs short term rental. Doug Eastman
88 said he feels that anything longer than six months is a long-term rental. Mr. Prior said the

89 kind of tenants the applicants described, the parents of PEA students and traveling
90 nurses, sounds like the exact tenants of an Air BnB. Family members will be coming in
91 periodically. It does not sound like a long-term rental situation. Attorney Somers said the
92 apartment may simply not be rented out from time to time, for example during the
93 summer for a family member visit. Ms. Cregan said they had a traveling nurse this past
94 year for three months with a one month extension. The PEA parent stayed for a
95 semester. It would be a long-term but not permanent rental. Attorney Somers said
96 there's no definition in the ordinance with what a long-term rental is. Six months or three
97 months seem to be talked about as long-term, but it's kind of a judgement call.

98 Ms. Surman said she had an idea of a year lease, otherwise it sounds more like
99 a hotel or bed & breakfast. If they rent for one year or two years, that person becomes
100 part of the neighborhood. Mr. Baum said it's largely at Mr. Eastman's discretion,
101 because it's not defined. It could potentially be conditioned in the motion.

102 Attorney Somers asked to consult with her clients.

103 Mr. Baum opened to public comment.

104 Joanna Rahm, who lives at the corner of Front Street and Union, said she moved
105 to her house having spent time in the neighborhood and knowing it as a very special
106 street in town. Union Street does have some multi-families on the other end, but this side
107 of Union is all single-family homes. Amy and Nick are lovely neighbors, but she worries
108 about this change, which will stay with the property.

109 Barb Pollard of 8 Union Street said she agrees, as she's worried about the
110 character of the neighborhood. This half of the block is all single-family homes. She does
111 like having the Cregans as neighbors but is opposed to this change.

112 Abby Sparling of 13 Union Street said she's noticed additional traffic when there
113 are renters in this property. The rental is a two bedroom but there's only room on that
114 side for one car. The long-term rental sounds like a better scenario than short-term, but
115 she's concerned about what happens when the property is sold.

116 Mr. Baum said the Board received a letter in opposition from Barbara Pollard,
117 Joanna Rahm, and the resident at 11 Union Street, with similar comments.

118 Attorney Somers said but for the lot size issues, the applicant would be going
119 directly for the special exception, and she believes it meets those criteria. This is not a
120 multi-family, it's a two-family. Several of the comments indicated that there are no other
121 two-families in the area, but that's not true; lot 241, which is next door, and lots 243 and
122 250, are two-family. Lots 244 and 252 are three-family. This will not alter the
123 neighborhood. The driveway will allow parking for this apartment; if there are
124 occasionally people parking in the street, that could happen with any house. With the
125 owner-occupied issue, that's a requirement of the special exception. This will not turn
126 into an absentee landlord situation. "Long term" isn't defined in the ordinance, but we are
127 willing to agree to a six-month rental period. There is no evidence that this will change
128 the character of the neighborhood; all the physical aspects are there already, and there
129 are other 2 and 3-family houses.

130 Mr. Prior asked when the Cregans were renting to a traveling nurse, was the
131 contract with the individual or the company they worked for? Ms. Cregan said they

132 worked with a rental company specifically for traveling nurses, but the contract was with
133 the nurse themselves.

134 Ms. Surman asked if it was converted prior to their owning it, and Ms. Cregan
135 said yes. Ms. Surman asked if it was rented out previously, and Ms. Cregan said we
136 don't know what the previous owners did. Everything was there when we moved in.
137 When we purchased the home, we were told it was a legal apartment downstairs, but we
138 later found out that wasn't true. Mr. Eastman said it was built as an in-law apartment,
139 and it was inspected by the town. Mr. Thielbar asked if there is any connection between
140 the two apartments, and Ms. Cregan said there is a door to the basement, but it would
141 remain closed.

142 Mr. Baum closed the public session and the Board entered into deliberation.

143 Mr. Thielbar said it doesn't seem like a stretch in terms of the amount of space
144 they're short. Mr. Baum said the ZBA's focus relates just to that space. What is the effect
145 of having a 2-unit dwelling on a lot that is slightly undersized?

146 Mr. Merrill said if we turn this down, will whomever buys this house be back for
147 the same request? Mr. Baum says case law supports that the proposal or circumstances
148 have to be significantly changed to come back, even if it's a different applicant.

149 Mr. Prior said he'd like to put conditions in the motion. Mr. Baum said he'd prefer
150 to see the conditions as part of the variance.

151 Mr. Prior went through the special exception criteria. 1) The proposal is not
152 contrary to the public interest and 2) the spirit of the ordinance is observed; yes, the
153 applicant and their counsel have explained how the essential character of the
154 neighborhood would not be changed. There's no exterior change proposed. There is
155 sufficient parking, and there is no parking variance requested. Mr. Baum said the
156 ordinance requires 4 spaces and they have 5. 3) Substantial justice is done; yes, he
157 sees no harm to the public or other individuals. There is a benefit to the applicant. 4) The
158 values of surrounding properties are not diminished; yes, we have no testimony on
159 values, other than information from the applicant on property values in the area. There
160 are no external changes, so it doesn't seem like there will be an effect on value. 5)
161 Literal enforcement of the ordinance would result in unnecessary hardship; yes, the
162 property is 700 or so feet under. The hardship is in the way the lot was laid out. In his
163 opinion, it does meet the five variance criteria. Mr. Baum said there's an open
164 playground area next door, which provides an additional buffer to the residential abutter.

165 Mr. Thielbar said the folks they've been renting to haven't been families, they've
166 been single people. Mr. Baum said it doesn't matter, we're talking about dwelling units.

167 Mr. Prior made a motion to approve the application for a variance from Article 4, Section 4.2,
168 Schedule I: Permitted Uses to permit the proposed conversion with less than the required
169 minimum lot area, with the following conditions: 1) that the property must remain owner-
170 occupied and 2) that no rental of either unit on the property shall be for less than six months. Mr.
171 Merrill seconded. Mr. Thielbar said he's worried about setting a precedent of going beyond their
172 charge in setting the limit of six months. Mr. Baum said the applicant has offered it, and it's in
173 line with what the building inspector has suggested would be more than a short-term rental. Mr.
174 Thielbar asked if the town later defined short term rental as 8 months, would these folks still be
175 ok? Mr. Baum said they would be able to continue. It wouldn't prevent the town from making

176 that determination. Mr. Prior, Mr. Thielbar, and Mr. Baum voted aye, and Ms. Surman voted nay.
177 The motion passed 3-1.

178
179 Mr. Baum said the Board will now discuss the special exception request.

180 Attorney Somers said there are two components to the special exception criteria:
181 the criteria that are set forth in Article 5.2, and criteria that are unique to residential
182 conversions. Re 5.2, whether the use is a permitted special exception; yes, a residential
183 conversion is permitted by special exception in this district. The second re article 5.2 is
184 whether the use will protect the public safety, health, welfare, and convenience. Yes, the
185 use is already established, and there will be no interior or exterior modifications. Is the
186 proposed use compatible with the zoned district? Yes, the property is zoned for
187 residential use. This is compatible with the adjoining development as there are a number
188 of properties nearby that are 2 - and 3-family. Adequate landscaping and screening are
189 provided; there will be no modifications, so additional landscaping is not necessary, but
190 we do have adequate landscaping on the property. Is there adequate off-street parking
191 and loading? Yes, there are the two driveways and the garage. The use conforms with
192 all applicable regulations governing the district; yes, the lot is a substandard lawfully
193 nonconforming lot of record, and we comply with the various regulations. There will be
194 Town Planner review and site planner review if necessary; this is not relevant, as there
195 will be no modifications. Will the use adversely affect abutting or nearby property
196 values? No, this was covered in the variance discussion. The next two criteria are not
197 applicable, as there are no hazardous materials and none of the tax map/lot numbers
198 apply to this property. For a residential conversion, the number of offstreet parking
199 spaces are compliant; yes, we have 5 spaces. Have we applied for variance from
200 minimum lot size requirements; yes, we just dealt with that issue. Has the structure been
201 a residence for a minimum of 10 years? Yes, the structure was built in 2009 and has
202 been continuously occupied. Does this meet the open space requirements? Yes, it not
203 only meets but exceeds it. If the conversion is intended to create a rental unit, will the
204 second unit remain owner-occupied? Yes, this will remain an owner-occupied property.
205 Site review is unnecessary because there are no changes. The applicant does not
206 request an expansion of the existing structure. Are there adequate septic facilities? This
207 property is on municipal water/sewer, so this is not applicable.

208 Attorney Somers asked if the Board had any questions, but there were none.

209 Mr. Baum opened the discussion to the public.

210 Joanna Rahm of 105 Front Street said there are more single-family units in this
211 area of Union Street than multi-family. Many of the multi-family properties do not meet
212 these criteria, and the people that live there do not act like part of the neighborhood. The
213 constant rotation of people who live in them do bring down property values. These
214 properties are eye-sores. One of the approved two-family houses is not used as a two-
215 family.

216 Mr. Baum closed the public hearing and the Board entered into deliberation. Mr.
217 Thielbar said the ordinance makes provision for this kind of conversion. It's often the
218 case that abutters aren't pleased, but the Board has to follow the rules. The only way
219 those concerns can be addressed is by changing the rules, which the ZBA can't do. Mr.

220 Prior said the property will remain owner-occupied, so there's pressure on the owners to
221 maintain the stability of the property and the neighborhood, whether that's the Cregans
222 or the future owners.

223 Mr. Prior said he agrees with counsel that the application does meet all the
224 special exception and schedule 1 note conversions criteria.
225

226 Mr. Prior made a motion to approve the application of Amy and Nicholas Cregan for a
227 special exception per Article 4, Section 4.2 Schedule I to permit the residential
228 conversion for one additional unit within the existing structure located at 14 Union Street.
229 Mr. Thielbar seconded. Mr. Merrill asked if this property will still have to be owner
230 occupied after it's sold. Mr. Baum said that's correct. It's not on the deed but it's part of
231 the town records. Mr. Merrill said he's concerned about the way Front Street and Union
232 Street are changing. Mr. Prior, Mr. Thielbar, Ms. Surman, and Mr. Baum voted aye, and
233 the motion passed 4-0.

234
235 B. The application of CKT Associates for a variance from Article 4, Section 4.2
236 Schedule I: Permitted Uses to permit an age-restricted residential use (for the
237 proposed relocation of Building D in the Ray Farm Active Adult Community) to be
238 located on Ray Farmstead Road. The subject property is located in the C-3,
239 Epping Road Highway Commercial zoning district. Tax Map Parcel #47- 8.1. ZBA
240 Case #21-12.

241 Mr. Baum asked Mr. Prior to act as Chair for the consideration of this
242 application. Mr. Baum left at this time. All five of the members present will be
243 voting members.

244 Attorney Justin Pasay was present to discuss this application. Attorney
245 Pasay said we'd like to continue the hearing in order to supplement the
246 application prior to the first hearing of this application. When he filed this
247 application, Mr. Eastman reached out to Attorney Mitchell about the legal
248 implications and the future of the TIF road, which the Board may want to hear
249 more about. Mr. Prior said he'd also like Attorney Pasay to address the letter the
250 Board received today. Mr. Prior asked if he would re-notify the abutters of the
251 November 16th date, and Attorney Pasay said he can look into it, and also invites
252 the public to reach out to the applicants to discuss any questions outside of the
253 public hearing.
254

255 Mr. Thielbar moved to allow a continuance of the application of CKT Associates,
256 case 21-12, until the November meeting. Mr. Merrill seconded. Mr. Prior, Mr.
257 Thielbar, Ms. Pennell, Mr. Merrill, and Ms. Surman voted aye, and the motion
258 passed 5-0.

259
260 A resident of the Ray Farm condominiums said he wasn't notified as an
261 abutter. Mr. Eastman said the Association is the appropriate legal organization,
262 and it's the Association's responsibility to notify the residents. Attorney Pasay
263 said they will address the notification process prior to the November 16 meeting.

264 A resident asked if they could see the letter Mr. Prior mentioned, and Mr.
265 Prior said it was a letter from a legal firm in Portsmouth regarding a right of way.
266 Mr. Eastman said he will consult with an attorney to see if the letter is protected
267 by attorney-client privilege. Mr. Prior said there's an extensive list of abutters who
268 were notified, but they have no way of knowing who's the person in each unit.
269 The Association is not obligated to notify the residents, but the Association's
270 interests are the same as the residents in the eyes of the law.

271

272 **II. Other Business**

273 A. Approval of Minutes: September 21, 2021

274 Corrections: Mr. Thielbar said Line 92, is it a business "condition" or a business
275 "decision"? Mr. Prior said it should read "business decision."

276 Ms. Surman moved to approve the minutes of the September 21, 2021 as
277 amended. Mr. Merrill seconded. Mr. Prior, Mr. Thielbar, Ms. Surman, and Mr.
278 Merrill voted aye and the motion passed 4-0.

279

280 **III. Adjournment**

281

282 Ms. Surman moved to adjourn. Mr. Merrill seconded. All were in favor and the meeting
283 was adjourned at 8:41 PM.

284

285 Respectfully Submitted,

286 Joanna Bartell

287 Recording Secretary