

Town of Exeter  
Zoning Board of Adjustment  
November 17, 2021, 7 PM  
Town Offices, Nowak Room  
Draft Minutes

**Preliminaries**

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

**Members Absent:** Chair Kevin Baum

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

**I. New Business**

- A. The application of CKT Associates for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses to permit an age-restricted residential use (for the proposed relocation of Building D in the Ray Farm Active Adult Community) to be located on Ray Farmstead Road. The subject property is located in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-8.1 and #47-9. ZBA Case #21-12.

Attorney Justin Pasay of DTC Lawyers; John Shafmaster and Bill Blackett, the owners; and Dennis Hamill from DM2 Engineering were present to discuss the application. Attorney Pasay said the application involves relocating Building D, the fourth building in the Ray Farm project. The original variance was issued in 2014 to a different entity, and the Willey Creek group took it over in 2017. There were to be four buildings total, three with 32 units and one, Building D, with 20 units, because the area was constrained. Buildings A and B and a clubhouse are completed, and we anticipate Building C's completion in 2022. We would like to move it away from Epping Road and the Mobil Station to the opposite edge of the site. Building D would be identical to the other three buildings. The proposal would take four acres of an upland area and combine it with the existing area. The overall development will be enlarged from 11.5 acres to 15 acres, and the density will decrease.

Mr. Prior said the parcel was approved for 116 units, and the reason the applicant is here is that they're taking property from other zoning districts and appending them, so the variance approval does not cover the new parcel. Mr. Prior asked if the 2014 decision referenced a specific number of units, and Mr. Pasay said yes, it was only 116 units.

Mr. Hamill discussed the original property line and the parcel being added for the new building. Access to it is from Building C, which avoids a larger area of wetland impact. It's 350 feet from Building A, where Building A to the original Building D was 380 feet. The original Building D required a wetland setback waiver, but the new Building D

45 does not. This building can connect to town water and sewer. It will look exactly like the  
46 other buildings, and will not be visible from Epping Road.

47 Ms. Davies asked about the easement. Mr. Pasay said the owner of the back  
48 parcel, Mr. Carlisle, has an easement for a private right of way, so he can use that and  
49 improve it to access his lot, but there's no requirement for Mr. Shafmaster to convey the  
50 fee interest of the land underneath the easement. Mr. Carlisle would have to obtain the  
51 relief necessary for frontage and wetlands and could improve his property.

52 Ms. Davies asked if the Fire Department has reviewed the circuitous access to  
53 Building D, and Mr. Hamill said they haven't yet gone to the FD, but they will be adding a  
54 turnaround for larger vehicles such as fire trucks. Mr. Prior asked about the length of the  
55 road. Mr. Hamill said 1,820 feet. Ms. Davies asked about the typical length of a cul de  
56 sac, and Mr. Prior said the Planning Board wants a max of around 1,250 feet. Mr.  
57 Thielbar asked whether it's possible to add a second access road. Mr. Hamill said it's  
58 physically possible, but there are sensitive wetland areas we'd have to cross. Mr.  
59 Thielbar said it's a long drive, and the extra people of Building D will add to the traffic  
60 along that route. They should consider having a circular access road instead. Mr. Prior  
61 said that's not the plan before us.

62 Mr. Shafmaster said Building D was not in a good building location, and required  
63 a waiver for setbacks from wetland. This new proposal would have a net increase of 12  
64 units and the wetland area would never be used for development. He would like to put in  
65 an enclosed dog area in this location for residents of the community. The first building  
66 and clubhouse were overbudget and he's been clawing his way back. This new building  
67 would be in keeping with what he's done before.

68 Mr. Pasay said these are unique properties and the use is reasonable. They  
69 have frontage on Epping Road and Ray Farmstead Road, awkwardly sized, and  
70 constrained by the wetlands. The remnant parcel, lot 9, is located in the C3 and viable  
71 for future commercial use, and this would avoid the impact of going through the  
72 wetlands. Attorney Pasay went through the variance criteria. 1) The variance will not be  
73 contrary to the public interest and 2) the spirit of the ordinance will be observed; yes, the  
74 proposal does not conflict to a marked degree with the ordinance, will not alter the  
75 essential character of the neighborhood, and will not threaten the public health, safety or  
76 welfare. The C3 district is intended to promote reasonable development. The relocation  
77 of Building D will accomplish better light and air for Building D, lessen the density of the  
78 overall project, and prevent overcrowding of land and undue concentration. It's good for  
79 the environment in that it avoids wetlands impact. It will make the remnant parcels  
80 available to be used consistently with the C3 District. This does not alter the essential  
81 character of the neighborhood, as it's identical to the other buildings on the property. It  
82 will protect public health and safety by avoiding impacts of direct access from Epping  
83 Road. 3) Substantial justice is done; yes, there is no gain to the general public from  
84 denying the variance. Granting the variance is in the public interest because we're  
85 promoting reasonable development of an upland area without the negative impacts of  
86 going through the wetland. 4) The proposal will not diminish surrounding property  
87 values; yes, the price of these units has gone considerably up (30-40%) since their  
88 purchase in 2018/2019. The condo declaration reserves the right to use this area in

89 future development, so any buyers were on notice that this would happen. There is a  
90 350 foot site distance, which is consistent with where Building D was supposed to be.  
91 The use is consistent with what was expected on the site. 5) Literal enforcement of  
92 zoning ordinance will result in an undue hardship; yes, it doesn't make sense to apply  
93 this zoning ordinance to this unique property. Lots 8.1 and 9 can accommodate the  
94 proposal, and are burdened by significant wetlands in the area of direct access. 8.1 is  
95 small and awkwardly shaped. The topography is a challenge. The purpose of the  
96 ordinance is being advanced because this will lessen congestion, increase light and air,  
97 and avoid undue concentration of population. They will also be preserving the areas of  
98 the parcel that are most suitable for commercial development. Special conditions mean  
99 that there's no reasonable use without relief given, and the only way to get to this  
100 property without wetlands impact is the means proposed.

101 Mr. Prior asked if they are prevented from putting Building D where it's currently  
102 located. Mr. Pasay said no.

103 Mr. Prior opened the meeting to public comment. He cautioned that the only thing  
104 under consideration is the residential use in this zone, not the location of the building or  
105 the access road.

106 Anthony Laburdi of 7 Willey Creek Road, Unit 202, Building A, said he and his  
107 wife moved to the development in 2019. He is a member of the Board of Directors of  
108 Ray Farm Associates, but he's only speaking for himself. The developer has been  
109 responsive to the residents. He met with us three weeks ago on why he's moving the  
110 building, and satisfied most of our questions. Mr. Laburdi said he and his wife are in  
111 favor of the petition to change the zoning. In two years his property has appreciated  
112 36%.

113 Marty Kennedy of 7 Willey Creek Road, Building A, said his concern with the  
114 original proposal was that the parking lot and access to Building C were on a disputed  
115 50 foot wide easement. This revised plan shows the lot pushed back off the easement,  
116 but it doesn't fully address his concerns. Mr. Carlisle, the owner of the lot in the back,  
117 plans to develop that property with access through the easement. The town views the  
118 easement as having access through that lot, but Mr. Shafmaster says that's probably not  
119 going to happen. The residents of Ray Farm are more than just abutters, we will own the  
120 lot after the last unit is sold. If the access to the rear parcel will be through the easement,  
121 the residents need to be aware of that. Why does there need to be a road between  
122 Building C and D? Building D could have access by extending Ray Farmstead Road. We  
123 need to consider pedestrian safety and mobility. The applicant should not be allowed to  
124 build anything on the original site of Building D in the future.

125 Mr. Prior said the right of way is not disputed. The Carlisle property is accessed  
126 only through this right of way, so in order to be developed, it will be through this right of  
127 way. Willey Creek Road is a private road and would not see an increase of traffic from  
128 any development of the Carlisle property; the access would be from Ray Farmstead  
129 Road.

130 Doug Minott of 7 Willey Creek Road said the residents will take over the new  
131 parcel. The right of way is Mr. Carlisle's to do with as he sees fit, and the residents  
132 shouldn't be absorbing that. He read a letter that he had submitted to the Board

133 regarding his view and the vegetated buffer they currently have. He is opposed to the  
134 application because he does think it will diminish surrounding property values and  
135 compromise their right to the undisturbed use of their property through the disturbance of  
136 the construction.

137 Rosemary Demarco of 24 Willey Creek, Building B, said she approves of the  
138 plans that Mr. Shafmaster has for Building D.

139 Adriana Christopher of 7 Willey Creek, Building A, said they're in favor of the  
140 proposal. The new location would be better than the original location. The development  
141 is wonderful to live in and the builder has done a fantastic job.

142 Mr. Pasay said some of the comments were Planning Board concerns. We have  
143 been transparent with the negotiations with Mr. Carlisle. Concerns about property  
144 values, but this area of the property is zoned C3, this use is the best possible use. The  
145 building will be 350 feet away from Building A, about the same as what was proposed for  
146 Building D. In every deed, there's a reference to the public document of the condo  
147 declaration which says that this property could be added to the condominium. The  
148 market analysis doesn't support the conclusion that it will diminish market value.

149 Bill Blackett, the CFO for Mr. Shafmaster, said he has data that says the value of  
150 the real estate is going up and will not be diminished. There's been a 26% increase from  
151 Building A to Building C. Putting in Building D, units there would be \$700,000, where  
152 Building A was originally \$490,000. Unit 301 in Building A was a recent resale, it was  
153 bought for \$466,000 and sold for \$605,000.

154 Mr. Shafmaster said he's had two meetings with 30-40 residents about his plans,  
155 and he addressed their concerns by moving Building D away. Regarding Mr. Minott's  
156 concerns about noise and blasting, during the second meeting he had his sitework guy  
157 give him a bid to do any work on this building coming in off Commerce Way and doing  
158 the construction work from behind, which would eliminate dust, noise, road issues, etc.  
159 so his concerns were addressed. Regarding value, where Building D was originally,  
160 there is a Mobil Station there that is lit nearly 24 hours a day. The original Building D  
161 would have had lesser value units because of this proximity, which would create  
162 confusion in the market.

163 Mr. Prior closed the public session.

164 Mr. Prior said this will require technical review and Planning Board approval. The  
165 only thing the ZBA is considering is whether residential use can be allowed on this C3  
166 parcel.

167 Ms. Surman said it goes against the grain to continue to make C3 properties on  
168 Epping Road residential. Folks have concerns about mixing residential and commercial  
169 and it's a slippery slope. However, now it's there and Mr. Shafmaster has done a  
170 fabulous job. The area is tough with a lot of wetlands. Going forward this area should be  
171 commercial, but this location for the new building is far superior to where it was. Mr. Prior  
172 said the original vote for allowing residential on this property was 3-2. In 2014 Epping  
173 Road was a different road than now. We are considering the residential use on this  
174 parcel and the increase in the number of units by 12, since the original application  
175 specified a certain number of units.

176 Mr. Thielbar went through the variance criteria. 1) The variance will not be  
177 contrary to the public interest and 2) The spirit of the ordinance will be observed; yes,  
178 there does not seem to be much negative side. The land in question is basically an  
179 island, and is difficult to access in any other way. It's not negative to the public interest  
180 and the spirit of the ordinance is observed. Mr. Prior said if not developed with Building  
181 D, that parcel, while difficult to access, could be developed commercially. It would be  
182 better for residents of buildings A, B, and C to abut another residential property rather  
183 than a commercial property. Mr. Thielbar continued with the variance criteria: 3)  
184 Substantial justice is done; yes, he can't see a downside to the proposal. It clearly  
185 benefits the applicant. An additional section of land will stay as it is now, and it's the part  
186 we all drive by, which is a benefit to the rest of the community. Mr. Prior said "harm to  
187 the general public" includes those who own condos there. People who live in Buildings  
188 A, B, and C will own in common the land underlying the property. This will increase the  
189 amount owned by 3.9 acres, which increases the value of the units. Mr. Thielbar  
190 continued with the criteria: 4) The proposal will not diminish surrounding property values;  
191 yes, there's no sufficient evidence that there will be a significant loss in value. It was  
192 unrealistic to think that the land in question was going to stay undeveloped. Mr. Prior  
193 said selling during construction may have a temporary setback in value, but ultimately  
194 the value will increase. Ms. Davies said in her opinion as a valuation professional, more  
195 units don't equal a lower value. This is a successful project and a few more units aren't  
196 going to change the unit values. Regarding the proximity, there's a good amount of  
197 distance from Building A to Building D. There will be some disruption to the existing  
198 buildings during construction, but they won't see it once it's done. Mr. Thielbar continued  
199 with the criteria: 5) Literal enforcement of zoning ordinance will result in an undue  
200 hardship; yes, the original location of Building D limits the capacity and is not in a good  
201 area. The land proposed to be used is difficult to access but here is a way to  
202 productively use it. Everything on this site had hardship due to the water. Mr. Prior said  
203 we have to consider the parcel as proposed. Is there hardship on the newly designed  
204 parcel? Yes, getting to that upland portion is extremely difficult. The special conditions of  
205 the property create a hardship which is access.  
206

207 Mr. Thielbar moved to accept the application of CKT Associates for a variance from Article 4,  
208 Section 4.2 Schedule I: Permitted Uses to permit an age-restricted residential use for the  
209 proposed relocation of Building D in the Ray Farm Active Adult Community to be located on Ray  
210 Farmstead Road as shown in the submitted documents, with the understanding that the project  
211 will go to the Planning Board. Ms. Surman seconded. Mr. Prior said we should add a comment  
212 that the number of units is also expanded.

213  
214 Ms. Davies made a motion to add an amendment that we would also be granting an increase in  
215 the number of units from 116 to 128. Mr. Thielbar seconded the amendment. Mr. Prior, Mr.  
216 Thielbar, Ms. Davies, Ms. Olsen-Murphy, and Ms. Surman voted aye and the amendment  
217 passed 5-0.  
218

219 Regarding the amended motion, Mr. Prior, Mr. Thielbar, Ms. Davies, Ms. Olsen-Murphy, and  
220 Ms. Surman voted aye and the amended motion passed 5-0.

221  
222 Mr. Prior called for a five-minute break. Ms. Davies left the meeting at this time.  
223 The meeting reconvened at 8:50 PM.

- 224  
225 B. The application of Roger Elkus for a variance from Article 5, Section 5.5.3 to  
226 permit the proposed construction of a second principal building (residential) on  
227 the property located at 181 High Street. The subject property is located in the R-  
228 2, Single Family Residential zoning district. Tax Map Parcel #70-119. ZBA Case  
229 #21-13.

230  
231 Attorney Sharon Somers of DTC Lawyers was present to discuss the application.  
232 She said the owners would like to put a proposed dwelling in the location that juts out  
233 onto Ridgewood. This building would be no larger than 2,128 square feet, or 56' x 38'. It  
234 would conform with the setbacks, height restrictions, etc.

235 Mr. Prior asked if this is a lot line adjustment, and Attorney Somers said no, only  
236 variance relief to allow two principal dwellings on one lot. Ms. Surman asked if it would  
237 become a condominium, and Attorney Somers said it could, but it wouldn't have to. The  
238 zoning calls for one principal dwelling on a lot, but we are proposing two principal  
239 dwellings on a lot. The property is too big for the owners right now. The existing dwelling  
240 could be better used by a larger family with kids, for example.

241 Mr. Prior asked if the proposed house would meet all the size, access, area, lot  
242 coverage, and setback requirements for a single-family dwelling? Attorney Somers said  
243 yes. It's allowed to have two driveways on a single lot, and the property next door, Map  
244 70 Lot 20, has two driveways.

245 Mr. Thielbar said the ZBA rejected a similar application regarding this property in  
246 2019. Attorney Somers said the application in 2019 was for frontage relief because there  
247 is only 90 feet of frontage on Ridgewood Terrace, and was done in connection with a  
248 subdivision proposal. The new application is not a subdivision, it's to have two dwelling  
249 units on a single lot.

250 Mr. Prior said he asked if this unit would meet all requirements for a separate lot,  
251 and she said yes, but it actually doesn't. Attorney Somers said it's correct that it wouldn't  
252 meet the requirements as a separate lot, but that's not what's proposed. It would  
253 conform to all building setbacks, height, open space, etc.

254 Attorney Somers went through the variance criteria. 1) The variance will not be  
255 contrary to the public interest. She said the purpose of the zoning in requiring one  
256 dwelling on a lot is to prevent overcrowding. There will be no alteration of the essential  
257 character of the neighborhood. The neighborhood is single family homes, and this is just  
258 an additional family home. They will be on a lot which is well-sized to support both of  
259 them. There are no public safety issues. This would be a small house, around 2,000  
260 square feet, and will not result in excess population or traffic concerns. Between the two  
261 houses, it would be equivalent to a five bedroom property on 1.7 acres, which is  
262 adequate.

263 Ms. Surman asked what the address of the second house would be, which could  
264 be an issue for the Fire Department. Attorney Somers said she didn't know, but that  
265 could be worked out if the variance were granted and the building permit was pulled.

266 Attorney Somers continued with the variance criteria: 2) The spirit of the  
267 ordinance is observed; this is usually considered together with criteria 1 about public  
268 interest. 3) Substantial justice is done; yes, there is no gain to the public if this variance  
269 were denied. The applicant has a variety of options about what can go into this large 1.7  
270 acre parcel, such as an accessory structure like a barn or garage, or with a special  
271 exception it could have an accessory dwelling unit. The loss to the applicant would be  
272 that they can't have a modestly sized dwelling in the location that they would like. 4) The  
273 proposal will not diminish surrounding property values; yes, there won't be any  
274 diminution in value. 5) Literal enforcement of zoning ordinance will result in an undue  
275 hardship; yes, the size and configuration of the lot creates the hardship. There is a fair  
276 and substantial relationship between this proposal and the public purpose of the zoning  
277 ordinance, which is to prevent overcrowding on the land or excess additional population.  
278 Putting a 2,000 square foot dwelling on this area would not constitute overcrowding. The  
279 proposed use is reasonable because the lot is big enough to contain the proposed use.  
280 Large accessory units could go in there already, this proposal is only slightly different.

281 Mr. Prior asked if there are other 2 family properties in the neighborhood.  
282 Attorney Somers said no, but in 2000 there was a subdivision to create lot 119/1; prior to  
283 that subdivision there were two units on the lot. Mr. Prior said the second unit wasn't a  
284 dwelling unit until after the subdivision. Prior to that, it was a garage.

285 Mr. Thielbar said this is essentially a resubmittal of their 2019 request which was  
286 rejected. Attorney Somers said under the Fisher test, this is a material change of the  
287 proposed use. Previously, it was a subdivision proposal, but this is one lot with two  
288 dwellings. An accessory dwelling unit is not on the table because it's too small and  
289 wouldn't be able to be condo'd. An addition doesn't work. If this Board were to allow a  
290 second dwelling unit on some other portion of the property, it still wouldn't maintain open  
291 space because a driveway would have to go in.

292 Mr. Prior opened the session to public comment.

293 Matthew Forsyth, the neighbor to the south, said his concern is that his house  
294 has severe water issues, and where the applicants are proposing to build a house also  
295 collects water. If they build up, it will put even more water in his basement. He would like  
296 to see the proposed size of the house and a runoff water plan that's signed off on by the  
297 neighbors be conditions of the variance.

298 Mr. Prior closed the public session and allowed the applicant to address the  
299 Board.

300 Mr. Elkus said he knows this proposal is similar to the request two years ago.  
301 The house is a lot to take care of. He and his wife want to stay in Exeter, but do it in a  
302 more modest way. Not a lot of thought was put into how this lot was subdivided. If it had  
303 100 instead of 90 square feet, we would be able to subdivide. There are nearby houses  
304 that are smaller than the lot they're looking at building on, but they were grandfathered  
305 in.

306 Attorney Somers said regarding Mr. Forsyth's concern, they may want to table  
307 the issue so that she can discuss with her client whether this is an amenable condition.  
308 Mr. Prior said if the variance is approved, it would be conditional on Planning Board  
309 approval, and the Planning Board could address that issue. Attorney Somers said that  
310 the Planning Board wouldn't have jurisdiction because it's not a multi-family; three  
311 homes is the cut off for that.

312 Ms. Surman said it would make more sense to create it as a condo or a rental,  
313 since by definition there is only one primary dwelling on a lot. Attorney Somers said we  
314 would be amenable to treating it as two condominium units.

315 Mr. Prior said before the Board goes through the variance criteria, he would like  
316 to hear the applicants further address "hardship."

317 Attorney Somers said she would like a five-minute break to speak with her client  
318 about the water issues, since this is the first she's hearing of it.

319 Mr. Prior called for a five-minute recess. The meeting reconvened at 9:25 PM.

320 Attorney Somers asked to table the application to give her client the opportunity  
321 to talk with his neighbors.

322 Ms. Olsen-Murphy made a motion to table this application until the next meeting. Mr. Thielbar  
323 seconded. Mr. Thielbar, Mr. Merrill, Mr. Prior, Ms. Olsen-Murphy, and Ms. Surman voted aye,  
324 and the motion passed 5-0.

325  
326 **II. Other Business**

327 A. Extension of Case 18-24.

328 Mr. Prior said nothing about the application or property have changed, so it's  
329 reasonable to extend for the requested time of one additional year.

330 Mr. Thielbar made a motion to grant the extension of Case 18-24 for one year. Ms. Surman  
331 seconded. Mr. Thielbar, Mr. Merrill, Mr. Prior, Ms. Olsen-Murphy, and Ms. Surman voted aye,  
332 and the motion passed 5-0.

333  
334 B. Minutes of October 19, 2021

335 Ms. Surman made a motion to accept the minutes of Oct 19, 2021 as presented. Mr. Thielbar  
336 seconded. Mr. Thielbar, Mr. Merrill, Mr. Prior, and Ms. Surman voted aye, and the motion  
337 passed 4-0.

338  
339 **III. Adjournment**

340  
341 Ms. Surman moved to adjourn. Mr. Merrill seconded. All were in favor and the meeting was  
342 adjourned at 9:30 PM.

343  
344 Respectfully Submitted,  
345 Joanna Bartell  
346 Recording Secretary