

Town of Exeter  
Zoning Board of Adjustment  
January 18, 2022, 7 PM  
Town Offices Wheelwright Room  
Final Minutes

I. **Preliminaries**

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

**Members Absent:** Martha Pennell - Alternate

**Call to Order:** Chair Kevin Baum called the meeting to order at 7 PM. The alternates will be participating in the discussion but not voting.

I. **New Business**

- A. The application of Scott Mitchell Real Estate LLC for a variance from Article 5, Section 5.1.2 for the expansion of a non-conforming use to permit the proposed construction of a 2,400 square foot banking facility and associated improvements. The subject property is located at 46 Main Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel # 63-1. ZBA Case #22-2.

Attorney John Arnold of the law firm Orr & Reno and Jim Mitchell from Scott Mitchell Real Estate were present to discuss the application.

Attorney Arnold said abutter's list contained a typo: for lot 72 map 21, the "1" was left off, so a property owner across town was notified, and Phillips Exeter wasn't. However, PEA has reviewed the application, and sent in a written notice of a waiver for the public hearing.

This property currently has an auto facility on it, which is a non-conforming use. The proposal is to tear down the existing facility and build a new bank building in its place. The site hasn't been fully designed, and may change from the presented plan in the site plan review process. The proposed building square footage is 2,400. Just up Main Street the zoning changes to commercial. This property is near the Main Street School and some PEA properties. There are some single-family residences nearby, but most are multi-family housing. This variance would be to change an existing non-conforming use, an auto facility, to a bank.

Mr. Mitchell said we think we can dramatically enhance the look of this property. The current building needs modernization, such as having a pitched roof and shakes that follow the New England feel. This was a service station and fueling station at one time. We're looking to demolish the building and replace it with a bank. This plan is based on a rendering the bank did for another location. We'd do necessary greening and landscaping. Currently, the whole property is a curb cut, but we'd have two defined curb cuts. Ultimately, the use will be much

45 quieter than the auto use. It would close around 5 in the evening and have limited  
46 weekend hours.

47 Attorney Arnold went through the variance criteria. 1) The variance will  
48 not be contrary to the public interest and 2) The spirit of the ordinance will be  
49 observed; yes, this will be a non-intensive use, and there aren't any inherent  
50 dangers associated with a bank, particularly compared to the use that's already  
51 there. The essential character of the neighborhood will not be altered, as there's  
52 been a commercial use here for decades, and there used to be a commercial use  
53 across the street with the flower shop. The project will clean up the site. We will  
54 be focusing on attractive screening and buffering to provide separation for the  
55 neighbors. 3) Substantial justice is done; yes, this project will rejuvenate this  
56 worn-out property and raise the town tax base. 4) The value of surrounding  
57 properties will not be diminished; yes, if anything it will raise surrounding property  
58 values. 5) Literal enforcement of zoning ordinance will result in an undue  
59 hardship; yes, the property is unique in that it's relatively large compared to the  
60 properties around it, which allows enough room to put a modest commercial use  
61 there while still having adequate buffering. Although the property is zoned R-2,  
62 the properties around it have multiple different uses. It's a transitional area  
63 between a commercial area and the downtown, making it a good area for a low-  
64 intensity commercial use such as a bank. The current use is non-conforming, so  
65 it's just a change to another non-conforming use.

66 Mr. Baum asked if they've done any traffic analysis on this site. Right now  
67 it's a pretty sleepy use. It's right next to Main Street School, and there's a lot of  
68 traffic that goes by during pick-up and drop-off. Attorney Arnold said we would  
69 plan to do more extensive research as part of site plan review. This use is likely  
70 to have more traffic than the auto garage, but the traffic volume generated isn't  
71 going to be dramatic compared to what's already going on there. Mr. Mitchell  
72 said we don't have information on traffic yet, but he reached out to the bank and  
73 they said they opened a branch within 15 minutes of here and they only get  
74 about 50 customers a day. The ATM use is less than 25 per day, some of which  
75 overlaps with the customer count.

76 Mr. Baum said there's a good amount of vegetation there currently, and  
77 the plan shows a significant amount of it removed. Mr. Mitchell said he doesn't  
78 have a calculation on the open space requirement, but his engineer looked at the  
79 requirements and said we meet all of them. This would be the 7th or 8th bank  
80 branch we've done. We would treat it as if we were the residents living behind  
81 the property. There would be a 6-foot privacy fence, likely vinyl, with arbor vitaes  
82 on either side. The vegetation along the roadside would be reflective of the  
83 corridor.

84 Ms. Davies said with the drop-off line at Main Street school, there is some  
85 stacking of cars in front of this property. There's also a lot of pedestrian activity  
86 before and after school. Are two access points necessary for this use, instead of  
87 just one, placed further from the school? Mr. Mitchell said you'd be putting extra

88 traffic on a single cut. For the flow of the site, we felt that this was best, but we'd  
89 want to look for guidance from a traffic expert.

90 Mr. Prior said this current use was grandfathered in. He's all in favor of  
91 the property being improved, but maybe it should go back to a residential use.  
92 Have they investigated whether a residential use is economically viable? Mr.  
93 Mitchell said based on their review of the site, he doesn't think they could do a  
94 single family. Mr. Prior asked about a multifamily, and Attorney Arnold said that  
95 would also be a non-conforming use. Mr. Prior said it's allowed by special  
96 exception, which makes it closer to meeting the zoning ordinances than a  
97 commercial use. Mr. Mitchell said we've seen a 20 - 25% increase in material  
98 costs, so we would need to get four units there to make something palatable in  
99 pricing. That would maximize the usage of the site. We don't see that as the  
100 highest and best use of the property.

101 Mr. Prior asked what a 21E report is. Mr. Mitchell said that's a tank  
102 closure report, since there were gasoline tanks in the ground there. It shows that  
103 no further action is required. If we were to demolish the building, there would be  
104 a plan spelled out if anything was found, but we've been told there's a clean bill  
105 of health for the property. There are no environmental use restrictions on this lot.

106 Ms. Surman asked if it would stay as an R-2 and it would stay as non-  
107 conforming. Mr. Baum said yes, we'd only be granting a variance to have it be  
108 commercial use. This is a new variance for a non-permitted use, not an extension  
109 of an existing non-conforming use. This doesn't give blanket commercial use, just  
110 for the use they've requested. If a restaurant wanted to come in later, they'd have  
111 to get another variance.

112 Mr. Baum opened the discussion to the public.

113 Tim Upton of 45 Main Street, which is diagonally across from the gas  
114 station, said that traffic is an issue at pick up and drop off. There are lines up  
115 almost to the other gas station, and kids are walking back and forth. He  
116 anticipates more cars than 75 added to that property, because how is it  
117 economically feasible to open a bank that only has 75 customers? It may be  
118 more than 100 a day. His basement floods every spring, and this impervious  
119 surface drives water into his house.

120 Dave Essensa of 44 Main Street, the house behind the property, asked  
121 the name of the bank. Mr. Mitchell said they're currently not in Exeter, but that's  
122 all he can say. Mr. Essensa said the town made a promise to this neighborhood;  
123 the zoning ordinance tries to gradually eliminate non-conforming use. Mr. Prior  
124 asked where it says that. Mr. Essensa said it's under variance criteria #2, the  
125 spirit of the ordinance is observed. His other concerns are that it will increase  
126 traffic, add 24-hour lighting, and reduce privacy and safety. The plan also shows  
127 the removal of vegetation that's on his property.

128 Ann Essensa of 44 Main Street said she agrees that the gas station  
129 needs some help, but we don't want to be completely surrounded by a parking  
130 lot. This would change the whole value of our home. There would be drive-

131 through traffic all night long. It will destroy the feel of our house and the whole  
132 neighborhood.

133 Paul Markey of 10 Ash Street, a house behind the property, said it's been  
134 a gas station as long as he can remember, so they should be careful when  
135 they're digging there. In his yard, plants will not grow in one area. The plan has  
136 two drive-up lanes; this is the only building that has a drive-up that abuts  
137 residential property. This will create noise and light pollution. At 5 PM, the gas  
138 station shuts his lights off and goes home. He's been a good neighbor.  
139 Regarding the traffic, he can't get out of his street at 8 AM, and it will be the  
140 same with their driveway. The financial industry is going digital, so why put in a  
141 bank that only has 50 transactions a day?

142 Sara Goulet of 49 Main Street said all of her family's bedrooms are on the  
143 front of the house, and 24-hour lights are a big concern. She's concerned about  
144 traffic, especially during construction. People coming up Main Street don't slow  
145 down. She would like to see the property fixed up, but she doesn't see a bank  
146 there.

147 Lisa Jennings of 60 Main Street said she's concerned about the 24-hour  
148 lighting. The noise problems referenced in the application don't exist, she's never  
149 had a problem. Regarding landscaping, their plan is to replace mature trees with  
150 a fence and arbor vitae, which will not provide the same screening. The  
151 application doesn't address why they're trying to make it a more attractive  
152 commercial property when it's in the middle of a robust residential neighborhood.

153 Christy Frazier of 10 Ash Street said she has the same concerns that  
154 have been brought up.

155 Kevin Blair of 55 and 59 Main Street, which was the flower shop, said he  
156 sees a problem with the traffic. Over the years, the school system has fixed the  
157 parking lot and talked to him about the traffic problem. Many intersections in this  
158 town are archaic. There should be a three way stop sign at the intersection. The  
159 fact that the parents have to stay in the car during school drop off is a good thing,  
160 it's an improvement over when they were outside, but it's not enough. There  
161 should be stop signs to slow people down as they come into town. Mr. Baum said  
162 there's no question the traffic is a mess there.

163 Mr. Mitchell said he heard the residents loud and clear. There are  
164 concerns about arbor vitae and that may not be the proper screening. He would  
165 like to see a privacy fence. Arbor vitae can grow up to 40 feet for screening.  
166 He's not opposed to other trees there. Regarding lighting, we would do dark-sky  
167 compliant lighting, which are designed to cast light down so it doesn't go out.  
168 We'd work with the Planning Board to design the best low-level lighting we could.  
169 Mr. Baum said there would have to be 24-hour lighting for the ATM. Mr. Mitchell  
170 said yes, 24 hours and lighting in that area, but it would be downcast lighting, and  
171 there would be vegetation at the front of the property so no light is shining in the  
172 road. Regarding traffic, we'd look to our traffic engineer and the Planning Board  
173 to design the best flow for the site.

174 A resident asked if there would be lit signage, and Mr. Mitchell said he  
175 would tell the bank no way no how. He would recommend a carved wood sign.  
176 The intention is to be as respectful as we can.

177 Mr. Thielbar said we should figure out what we're really deciding and how  
178 the public comments are applicable to our discussion. Ms. Davies said she thinks  
179 it's a new use, not an expansion of an existing use. Mr. Baum agreed, saying it's  
180 not an expansion of the garage, it's a new commercial use. Mr. Prior said we can  
181 take into consideration the abutter issues because they are relevant to criteria 1  
182 and 2 about the essential character of the neighborhood.

183 Mr. Prior said there was a robbery at the drive-up bank on the other side  
184 of the railroad tracks that resulted in a lock-down at Main Street School. Banks  
185 get robbed. He has a strong concern about having a bank next to a school. He's  
186 surprised there's no one here from the School Board, but maybe they didn't know  
187 about it.

188 Ms. Davies said the site is on a curb with fairly high exposure, which  
189 lends itself more to commercial use than residential, but she does have concerns  
190 about the traffic. Mr. Baum said there are other residential buildings that are right  
191 on the road in that area. There's no way to come on and off that lot without  
192 affecting nearby residences. He doesn't feel like some of these issues are  
193 addressed enough in the application.

194 Mr. Prior went through the variance criteria. 1) The variance will not be  
195 contrary to the public interest and 2) The spirit of the ordinance will be observed;  
196 this doesn't say anything about the existing use. He thinks the new use does not  
197 meet 1 & 2. He's concerned about altering the essential character of the  
198 neighborhood with a drive-through bank facility. He's concerned about the safety  
199 of having a bank near a school. All of the abutters mentioned a concern about  
200 traffic. The applicant addressed some of the other issues, such as lighting and  
201 noise, but not traffic. The applicant's estimate of 75 people per day must be low,  
202 otherwise why would they build a bank? Clearly they would want more traffic than  
203 that. Mr. Baum said his concerns are more the lighting and privacy. Although  
204 those can be addressed, they haven't been fully addressed in the application. Mr.  
205 Prior continued with the variance criteria: 3) Substantial justice is done, the  
206 benefits to the applicant should not be outweighed by harm to the general public  
207 or other individuals; no, we have testimony that this plan would harm abutters, in  
208 terms of noise, light, privacy, and other things. 4) The value of surrounding  
209 properties will not be diminished; we have no expert testimony regarding that.  
210 He's surprised by the abutters' acceptance of the property that's there, but  
211 apparently it's a fairly low-impact business. He doesn't believe that the bank as  
212 proposed would have anything but a negative impact on the abutters' property  
213 values. Ms. Davies said she doesn't totally agree. The existing use won't  
214 continue, so at some point there will have to be a change in use. It doesn't have  
215 to be a bank, but it's unlikely that it will be a single-family home, especially with  
216 its history of being a gas station. A bank is a pretty quiet use and it might not be  
217 the worst option for this neighborhood. Mr. Baum said there have been specific

218 concerns expressed about this particular use. Mr. Prior asked Ms. Davies if she  
219 thinks it meets criteria 4, and she said yes. Mr. Baum said he agrees, it's a tough  
220 site right now and he feels this criteria is met. 5) Literal enforcement of zoning  
221 ordinance will result in an unnecessary hardship. The ordinance says there are  
222 no commercial uses in this zone. If this was not already a commercial use,  
223 there's no way we would be considering it for a commercial use. He doesn't see  
224 hardship on the applicant here. Mr. Baum said he's concerned about the second  
225 prong, the relationship between the restriction and the application here. The  
226 purpose of a residential district is to segregate residential from non-residential  
227 uses. The flower shop is a small shop that looks like a residence. Lincoln Street  
228 is a separate zone. There's Main Street School and the Academy, but the  
229 Academy property is mostly residential. The testimony has been clear that this is  
230 a residential neighborhood.

231 Mr. Thielbar said the proposed parking lot is way more than you need for  
232 75 cars a day. You could have one lane of traffic going around the building. You  
233 don't need all this space. They could change the plan to have a larger buffer  
234 area. If they want to put a bank in that's inaccessible at certain times of the day,  
235 that's their problem. Ms. Surman said this property will change, but the bank  
236 doesn't seem like the best use for that area. There should be something that  
237 would be 9 - 5 and then shut down completely. Ms. Davies said if this doesn't go  
238 through, and another similar automotive use goes in and the use goes up  
239 considerably, which wouldn't require a variance, is the neighborhood protected?  
240 The use wouldn't continue in the quiet way it has. Mr. Baum said we have to  
241 work with what's been presented to us.

242 Mr. Prior moved to decline the application for a variance from Article 5, Section  
243 5.1.2 for the expansion of a non-conforming use on Tax Map Parcel # 63-1 on  
244 the basis that it does not meet variance criteria 1, 2, and 5. Mr. Thielbar  
245 seconded. Mr. Prior, Ms. Davies, Mr. Thielbar, Ms. Olson-Murphy, and Mr. Baum  
246 voted aye. The motion passed 5-0 and the variance request was denied.

247 **II. Other Business**

248 A. Approval of Minutes: Dec 21, 2021

249 Corrections: Ms. Surman said that line 268 should read "Ms. Surman *said* this is  
250 a big change for that intersection."

251 Ms. Olson-Murphy moved to approve the minutes of Dec 21, 2021 as amended.  
252 Mr. Prior seconded. The motion passed 7-0.

253 **III. Adjournment**

254  
255 Ms. Davies moved to adjourn. Mr. Thielbar seconded. All were in favor and the  
256 meeting was adjourned at 8:22 PM.

257  
258 Respectfully Submitted,  
259 Joanna Bartell  
260 Recording Secretary