

Town of Exeter
Zoning Board of Adjustment
September 20, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Rick Thielbar, Martha Pennell - Alternate

Members Absent: Laura Davies, David Mirsky - Alternate, Joanne Petito – Alternate. Chris Merrill is no longer a member.

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

I. **New Business**

- A. The application of 131 Portsmouth Avenue LLC for a variance from Article 5, Section 5.1.2 to permit the expansion of a non-conforming light industry use on the property located at 131 Portsmouth Avenue. The subject parcel is located in the C-2, Highway Commercial and CT-Corporate/Technology Park zoning districts. Tax Map Parcel #52-112. ZBA Case #22-12.

Attorney Justin Pasay of DTC Lawyers was present to discuss the application. This proposal would clean up the zoning demarcation between C2 and CT. Holland Way is in the CT district, and a portion of Portsmouth Ave is in the C2 District. Osram Sylvania was a large 32 acre site with a zoning line that split the property down the middle. Since it was split, there have been subdivisions which make the zoning line arbitrary. There are two buildings on the property: a larger building of 135,000 square feet, and a smaller building of 74,000 square feet. At the 2019 Town Meeting, voters decided to change the PP District along Holland Way to the Corporate/Technology Park (CT) District, in order to attract light industrial applications. In 2020, the first subdivision of the Osram site occurred. This created two lots, one of 16.5 acres and the big building, and a second lot of 15 acres with the smaller building. Subsequently, 131 Portsmouth Ave LLC bought the 15-acre site with the smaller building. Last month a further subdivision was approved: the applicants intend to sell a 9 acre lot to CA Design, a company which produces products for the fence industry, a light industrial use. CA would put an addition to the 74,000 square foot building to create a 114,000 square foot building. This building is split by the zoning district; most of it in CT, but the proposed addition is in C2, where light industrial use is not allowed. That's why they need a variance.

Mr. Prior asked about access from Holland Way rather than access from Portsmouth Ave for the new subdivision. Mr. Pasay said it will be up to CA Design to go before the Planning Board and discuss those types of issues. A DOT permit has been obtained for access onto Holland Way.

45 Mr. Prior asked if any further requests would come forward, such as parking or
46 access. Attorney Pasay said this plan doesn't require any additional relief.

47 Attorney Pasay went through the variance criteria. 1) The variance will not be
48 contrary to the public interest and 2) The spirit of the ordinance will be observed; yes,
49 there is no conflict with the purpose of the zoning ordinance. The proposal advances the
50 purpose of the governing body and of the Master Plan. Town meeting in 2019 rezoned
51 the CT District to attract more light industrial development. This use is compatible with
52 the existing surrounding uses, such as Osram. More jobs, more prosperity, and more tax
53 revenue are in the public interest. There's no threat that this proposal will alter the
54 essential character of the neighborhood. The proposal is consistent with intent of the
55 zoning ordinance. 3) Substantial justice is done; yes, there's no identifiable public gain
56 from the denial. If the variance is denied, the intent of the 2019 zoning ordinance change
57 and the Master Plan will be frustrated. 4) The value of surrounding properties will not be
58 diminished; yes, we don't foresee any detriment. If anything, this expansion will increase
59 the value of this property, which will increase the value of surrounding properties. 5)
60 Literal enforcement of zoning ordinance will result in an undue hardship; yes, the special
61 circumstances are that the property and the building itself are bifurcated by the zoning
62 line. The purpose of the zoning ordinance, which is to advance the public interest,
63 facilitate reasonable development, and limit incompatible development, would not be
64 observed by applying it to this property. Granting the variance actually advances the
65 public interest and accomplishes reasonable and compatible development. The
66 proposed use is reasonable by virtue of the uses on the property for years and town
67 meeting's intent to facilitate this type of use on this property.

68 Mr. Thielbar said he's not clear on what the variance should say. Is the applicant
69 asking for all of the green area on the map to be zoned CT, or just to make sure they
70 can build a building? Attorney Pasay said the variance is to permit the expansion of a
71 non-conforming use with the 40,000 square foot addition to the existing building. It's not
72 requested to re-zone the property. Mr. Baum said it's to permit the expansion as
73 proposed, nothing additional. Attorney Pasay said the proposal was designed to
74 encompass what CA Design plans to do with the building.

75 Mr. Prior asked if 131 Portsmouth Avenue is the address only for the green
76 portion of the map. Attorney Pasay said that was the address for the pre-subdivision
77 parcel, and he doesn't know of any reassigning of address. Doug Eastman said that lot
78 has not been numbered yet. Both parcels are currently considered 131 Portsmouth. Mr.
79 Prior said we can refer to it as 131 Portsmouth Ave lot A.

80 Mr. Baum read a memo from the Economic Development Director in support of
81 the application, which he said could bring up to 200 jobs to the town.

82 Mr. Baum opened the discussion to the public, but there was no comment. Mr.
83 Baum brought the discussion back to the Board.

84 Mr. Prior said he believed that the general consensus of the Board was that the
85 proposal meets the variance criteria. Ms. Pennell said her only possible concern would
86 be a potential future exit to Holland Way, but that doesn't have anything to do with this
87 application.

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89 Mr. Prior made a motion to approve the application of 131 Portsmouth Avenue LLC for a
90 variance from Article 5, Section 5.1.2 to permit the expansion of a non-conforming light
91 industrial use on the property located at 131 Portsmouth Avenue, aka Map 51 Lot 112A, as
92 proposed. Mr. Thielbar seconded. Mr. Baum, Mr. Thielbar, Ms. Olson-Murphy, Ms. Pennell, and
93 Mr. Prior voted aye. The motion passed 5-0.

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95 B. A request for rehearing the August 16 Zoning Board decision for 81 High Street,
96 the Phillips Exeter application, to permit the property be used for multi-family
97 without the over-55 restriction.

98 Mr. Baum said the rehearing would only take place if there were an error
99 made or if there were facts not known at the time of the decision. This is purely
100 deliberative and not open for public discussion. He was not present for the
101 meeting but reviewed the minutes and is prepared to vote.

102 Mr. Thielbar said when the original variance was issued, there was a
103 historic building that was falling down. Through a lot of discussion, we decided
104 that by having an age-restricted use, we would have very little impact on the
105 surrounding territory and would permit the upgrade of the structure. That facility
106 has been run successfully for a number of years. The hardship no longer exists.
107 The essence of the applicant's argument was that since the variance allowed
108 multi-family housing, any condition on that use is not enforceable, but he [Mr.
109 Thielbar] doesn't think that's true. The current owner having to raise the prices in
110 order to run the facility may be a hardship for the residents, but not a hardship for
111 the property.

112 Ms. Olson-Murphy said they didn't give us anything new to work with,
113 they're just restating the argument. Mr. Baum said it says that the Board found
114 that hardship existed in 2011, so it still exists, but he doesn't agree. When the
115 Board made its decision in 2011, the over-55 restriction was part of it.

116 Ms. Pennell said she read the minutes and got the impression that the
117 house back then couldn't sell, because there was no market for such a large
118 single-family house. This seemed like the only way to go. Ms. Olson-Murphy said
119 a 12,000 square foot building is never going to be a family home. Ms. Pennell
120 said she's not sure that still true. If you put it on the market now, it may sell.

121 Mr. Prior said he was not present, but he's read the minutes and is ready
122 to make a vote.

123 Ms. Pennell asked if part of the applicant's argument was that we should
124 not be considering the variance, but consider the property without the variance?
125 Ms. Olson-Murphy said even if we did, we would come to the same decision,
126 because it's not a dilapidated building that needs work. It's a nice building now
127 that could be sold as a 14 unit building. Ms. Pennell said he could probably sell it
128 as a single-family. Mr. Prior said that's immaterial.

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130 Mr. Thielbar made a motion to deny the request to reconsider. Mr. Prior seconded. Mr. Baum,
131 Mr. Thielbar, Ms. Olson-Murphy, Ms. Pennell, and Mr. Prior voted aye. The motion passed 5-0.

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II. Other Business

A. Minutes of August 16, 2022

Corrections: Mr. Baum said there were some references to “Attorney Wilson,” but was that Attorney Roy Tilsley or Steve Wilson, the property owner? The Board reviewed the minutes and decided that each reference should read “Attorney Tilsley.”

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Ms. Olson-Murphy made a motion to accept the minutes with updating the mentions of “Attorney Wilson” in lines 177, 185, and 191 to be “Attorney Tilsley.” Mr. Thielbar seconded. Mr. Thielbar, Ms. Olson-Murphy, and Ms. Pennell voted aye. Mr. Baum and Mr. Prior abstained because they were not present at the August 16 meeting. The motion passed 3-0-2.

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B. Mr. Prior and Ms. Pennell said they must recuse themselves from the Riverwoods application to be considered at the next meeting.

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III. Adjournment

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Mr. Prior moved to adjourn. Mr. Baum seconded. Mr. Baum, Mr. Thielbar, Ms. Olson-Murphy, Ms. Pennell, and Mr. Prior voted aye. The motion passed 5-0 and the meeting was adjourned at 7:50 PM.

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Respectfully Submitted,
Joanna Bartell
Recording Secretary