

Town of Exeter
Zoning Board of Adjustment
March 21, 2023, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Vice Chair Robert Prior, Clerk Esther Olson-Murphy, Theresa Page, Joanne Petito - Alternate, Dave Mirsky - Alternate, and Laura Montagnano - Alternate. Town Code Enforcement Officer Doug Eastman was also present.

Members Absent: Chair Kevin Baum, Laura Davies, Martha Pennell - Alternate

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

I. **New Business**

A. Mr. Prior said that Riverwoods would like to table their request for a rehearing.

Ms. Olson-Murphy moved to table the discussion on the request for rehearing on ZBA Case #22-15 and #22-16 to the Board's next meeting on April 11 as requested by the applicant. Ms. Montagnano seconded. Mr. Prior recused himself from the vote. The motion passed 5-0-1.

B. The application of Jim Ouellet and Jane Woodward for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of an existing single-family residence into three residential condominiums. The subject property is located at 155 Court Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #104-36. ZBA #23-3.

Applicants Jane Woodward and Jim Oullet were present to discuss the application. Ms. Woodward said they have one multi-family property on Carroll Street and bought this property in September 2022. There's a forested area across the street. There are a few homes next to it, but it's more rural than a neighborhood. They're not looking to change the building's footprint. They would like to convert a single-family residence into two apartments. The existing accessory dwelling unit would be the third residence condo/apartment. Mr. Prior asked if it would be a condo or apartment, and Ms. Woodward said a condo.

Ms. Woodward went through the special exception criteria. A) The use is a permitted special exception as set forth in Article 4.2, Schedule I; yes, the proposed use is to convert it to three condominiums. Multi-family units are on the list of permitted special exceptions. B) That the use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience would be protected; yes, this is already a residence, so there would be no change to the public health, safety, welfare, and convenience. C) That the proposed use will be compatible with the zoned district and adjoining post-1972 development where it is to be located; yes, this is compatible with the residential nature of the zoned district. D) That adequate landscaping and screening are

45 provided; yes, we've already begun cleaning up the landscaping, and will
46 continue to do so. We're not taking anything down. E) That adequate off-street
47 parking and loading is provided and ingress and egress is so designed as to
48 cause minimum interference with traffic on abutting streets; yes, there remains
49 adequate parking. There are already seven spaces and we have plans to pave it.

50 Mr. Prior asked if she's looked at the parking guidelines. Ms. Woodward
51 said there will be three units, and it's required to have two spaces per unit plus
52 one, which is seven.

53 Ms. Woodward continued with the special exception criteria. F) That the
54 use conforms with all applicable regulations governing the district where located;
55 yes, it does conform with the relevant regulations for the R2 zone. G) The
56 applicant may be required to obtain Planning Board or Town Planning approval;
57 Mr. Prior said that the applicant didn't need to address this. H) That the use shall
58 not adversely affect abutting or nearby property values. Ms. Woodward said that
59 when we tried to get a loan for this property, the appraiser said the house was
60 uninhabitable, so the value of the property was pretty low. We've already put
61 \$40-50,000 into it to make the first apartment habitable. We're intending to
62 increase the value of the property dramatically. Mr. Prior said that I) and J) do not
63 apply.

64 Mr. Prior said there are six Board members, but only five will vote on this
65 case. Mr. Mirsky volunteered to not vote.

66 Ms. Montagno asked how many bedrooms are in the accessory dwelling
67 unit. Ms. Woodward said there's one bedroom in the ADU, two bedrooms on the
68 first floor in the main house, and one bedroom on the upper floor of the house.
69 Mr. Eastman clarified that it's not an Accessory Dwelling Unit, it's an in-law
70 apartment.

71 Ms. Page asked if the application is for three units, does it need to go to
72 the Planning Board automatically? Mr. Prior said it does not need to go
73 automatically; the only reason to do it would be a change to the footprint of the
74 building.

75 Ms. Montagno asked if the property shares a driveway with the home
76 behind it. Ms. Woodward said the neighbor has a right of way, but they also have
77 their own driveway. They haven't used it since we bought it.

78 Mr. Prior asked if this property and the one behind it were carved out from
79 a one-family. Mr. Eastman said yes, it was split off. The house in the rear was
80 formerly a family member. He added that the right of way was more about utility
81 easements.

82 Ms. Montagno said she went to the site and it appeared the right of way
83 was being used. Without having a site map with the designated parking spaces,
84 it's not clear to her where the cars will park. Ms. Woodward asked Mr. Ouellet to
85 respond to the concern.

86 Mr. Ouellet said a paving company dug out seven full spaces in gravel in
87 the backyard. We could park 10 cars there. Mr. Eastman said the Board can
88 make a site plan a condition of approval. Mr. Ouellet said with regard to the right

89 of way, he's spent hundreds of hours at the property, and he's never seen the
90 other house use the driveway. One of the residents of that back house was sick
91 and needed deliveries, so they asked us to keep that open, but we haven't seen
92 anything recently. They seem to use their own driveway. Mr. Prior asked if they
93 were to park seven cars, would it impede access to the back? Mr. Ouellet said
94 no. Ms. Page asked if any of the seven cars could get out or if there would need
95 to be shuffling around. Mr. Ouellet said there's a 15-20 feet wide driveway that
96 goes all the way to the back building. On the right, in the backyard, is where the
97 parking spaces are. We will have it paved and lined in the fall.

98 Mr. Prior asked for public comment, but there was none.

99 Mr. Prior closed public comment and brought the discussion to the Board.

100 Ms. Petito went through the special exception criteria. A) The use is a
101 permitted special exception as set forth in Article 4.2, Schedule I; yes, she
102 believes that it is. B) That the use is so designed, located and proposed to be
103 operated that the public health, safety, welfare, and convenience would be
104 protected; yes, she doesn't think that's an issue. The parking situation seems to
105 have been taken care of. The neighbors have the right of way, but they also have
106 their own drive. Mr. Prior said there would be no additional curb cuts or anything
107 going into Court Street, so that should be ok. Ms. Petito continued with the
108 criteria: C) That the proposed use will be compatible with the zone district and
109 adjoining post-1972 development where it is to be located; yes, she doesn't think
110 this is an issue. Mr. Prior said we had a request for a conversion to two
111 condominium units at 2 Riverbend Circle, so there are other multifamily units in
112 the area. It is compatible. Ms. Petito continued with the criteria: D) That
113 adequate landscaping and screening are provided; yes, there is landscaping with
114 trees and shrubs there. E) That adequate off-street parking and loading is
115 provided and ingress and egress is so designed as to cause minimum
116 interference with traffic on abutting streets; yes, she doesn't think there's any
117 interference. It doesn't go to Court Street. Mr. Prior said it does go to Court
118 Street, but there are no additional curb cuts requested. Whoever makes a motion
119 should add a condition that the applicant provide visual evidence of the correct
120 number of parking spots. Ms. Petito continued with the criteria: F) That the use
121 conforms with all applicable regulations governing the district where located; yes,
122 it's a residential area, so a condo multifamily conforms. G) The applicant may be
123 required to obtain Planning Board or Town Planning approval; the Board said
124 that that's not an issue. Mr. Prior said he doesn't believe we need it as a
125 condition of approval because there's no exterior change to the property. Ms.
126 Petito continued with the criteria: H) That the use shall not adversely affect
127 abutting or nearby property values; yes, given that it fits in with the other types of
128 residences that are in the area, and we haven't heard any testimony to that
129 effect, she doesn't think it would adversely affect nearby property values. It's a
130 rundown property that's being restored. I) and J) do not apply.

131

132 Ms. Petito made a motion to approve the application of Jim Ouellet and Jane Woodward for a
133 special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section
134 5.2 to permit the conversion of an existing single-family residence into three residential
135 condominiums, subject property located at 155 Court Street, in the R-2, Single Family
136 Residential zoning district, Tax Map Parcel #104-36, with the condition that the applicant
137 provide a map or other visual aid to show that adequate parking has been provided for the
138 adequate number of spaces. Ms. Olson-Murphy seconded. Mr. Prior, Ms. Olson-Murphy, Ms.
139 Page, Ms. Petito and Ms. Montagno voted aye, and the motion passed 5-0.

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141 **II. Other Business**

142 A. Request for Rehearing, Samuel Lightner, #ZBA Case 23-5

143 Mr. Prior said there is a request for rehearing from an abutter to the Samuel
144 Lightner property on 25 Clover Street, an application that was heard last month.

145 Ms. Petito said she would not vote on this request.

146 Mr. Prior said if approved, the applicant would be forced to come back next
147 month and re-present an application. There would have to be new evidence that has
148 arisen or the Board feels that an error was made.

149 Mr. Mirsky said he thinks a rehearing is appropriate because he doesn't think the
150 evidence that came in about safety was accounted for in the Board's decision. The
151 abutter should have the opportunity to present their side of this and the applicant should
152 have the opportunity to prepare for that criticism. It's a good use of the rehearing. From
153 his perspective, any time safety is raised the Board should be careful about it.

154 Ms. Montagno said if we bring it back, the Board should look closely at what the
155 regulations are for it to be a safe corner. She understood from what Mr. Eastman said
156 that there had to be 30 feet from both corners on a diagonal for visibility. She's walked
157 that street many times, and there's a big tree on the corner blocking the view, not the
158 building or the proposed addition.

159 Mr. Mirsky said we should look at the case based on this neighborhood, not just
160 the regulations. The Board is asked to examine the facts. Ms. Montagno said this is one
161 person's opinion. We need to do it within the constructs of what is considered a safe
162 corner, not just "I don't think it's safe." Mr. Mirsky said that's the language that this
163 person used, but it wasn't strictly a matter of the rules. The abutter was talking about
164 something that he has also been concerned about in that neighborhood. The public
165 interest, the spirit of the ordinance, and substantial justice are all addressed by the
166 testimony that this person gave regarding her concerns. While the issues of these
167 regulations came up at the hearing, he doesn't think the Board can strictly apply the
168 regulations. We have to consider how this proposed project will affect these
169 considerations.

170 Mr. Prior said we have to put it in the context of the variance criteria. Did we err
171 because the applicant does not meet criteria 1, 2, and 3? Mr. Mirsky said yes, and there
172 was also the issue of the value of surrounding properties, but he doesn't think they
173 brought in that evidence.

174 Ms. Petito asked if there was an issue about the height of this structure. Ms.
175 Olson-Murphy said there was an issue about it being distracting because it would be

176 taller than surrounding properties. Mr. Prior said the majority of houses are one-story,
177 but this house already has a significantly peaked roof, so he doesn't think it's about the
178 height. It's about how far towards the street it would go and whether that blocks the
179 visual. There's a stop sign at the corner that would not be impeded, but is the line of
180 sight obstructed by the approved construction?

181 Ms. Olson-Murphy said she doesn't see new evidence in the letter. The abutter is
182 raising the same concerns about safety she discussed in the meeting, and four out of
183 five of us did not agree with that. If we want a rehearing, we can't do it based on new
184 evidence.

185 Ms. Page said the justification for the request was that the Board erred on the
186 decision in the hardship criteria, since there were other options for the addition, but that
187 issue was given a healthy amount of discussion with the tree to the side and the child's
188 play area in the back. She agrees that new evidence wouldn't be the basis for rehearing,
189 and she's having trouble with the reasons they've given.

190 Mr. Mirsky moved to grant a rehearing of the application of Samuel Lightner, ZBA case #23-5,
191 25 Clover Street; the request for rehearing was by the abutter. The motion was not seconded.

192

193 Ms. Olson-Murphy moved to not grant a rehearing of the application of Samuel Lightner, ZBA
194 case #23-5, 25 Clover Street. Ms. Page seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Page, and
195 Ms. Montagno voted aye, and Mr. Mirsky voted nay. The motion passed 4-1.

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197 B. Approval of Minutes: February 21, 2023

198 Mr. Mirsky moved to approve the minutes of February 21, 2023 as presented. Ms. Olson-
199 Murphy seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Montagno, and Mr. Mirsky voted aye, and
200 the motion passed 4-0.

201

202 **III. Adjournment**

203 Mr. Mirsky moved to adjourn. Ms. Olson-Murphy seconded. All were in favor and the meeting
204 was adjourned at 7:37 PM.

205

206 Respectfully Submitted,

207 Joanna Bartell

208 Recording Secretary