

Town of Exeter
Zoning Board of Adjustment
April 16, 2024, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Vice-Chair Esther Olson-Murphy, Clerk Theresa Page, Laura Davies, Joanne Petito - Alternate, and Mark Lemos - Alternate
Town Code Enforcement Officer Doug Eastman was also present.

Members Absent: Chair Robert Prior, Laura Montagno - Alternate, Martha Pennell - Alternate

Call to Order: Acting Chair Esther Olson-Murphy called the meeting to order at 7 PM.

I. **New Business**

- A. The continuation of the application of The RiverWoods Company of Exeter for a variance from Article 4, Section 4.3 Schedule II to exceed the maximum height requirement in the R-1, Low Density Residential zoning district for the proposed construction of a new health center building; and a variance from Article 6, Section 6.1.2.D to permit parking and portions of the driveway within the required 100-foot landscape buffer. The subject properties are located at 7 RiverWoods Drive, 5 Timber Lane, 6 White Oak Drive, 78 Kingston Road and 67 Kingston Road, in the R-1, Low Density Residential zoning district. Tax Map Parcels #97-23, #98-37, #80-18, #97-29 and #97-44 (all now merged via voluntary lot merger). ZBA Case #24-4.

Ms. Olson-Murphy said at the end of the last meeting, the Board had closed the public hearing and were ready to deliberate, but we were under a time crunch. We have received additional photos from RiverWoods showing the site in winter, as well as a letter from abutter Mrs. Hooten indicating that she was unable to attend the last meeting but was upset that it sounded like she approved of this construction. She met with RiverWoods but did not approve, and would like that corrected in the record.

Mr. Baum went through the variance criteria as pertaining to the height variance. 1) The variance will not be contrary to the public interest and 2) The spirit of the ordinance will be observed; he doesn't think there's any health, safety, or welfare issue. That's a blocking of light or inability for emergency services, and there's no evidence that either will occur. There is enough distance from abutting properties. This would not be taller than other buildings in town. Regarding the essential character of the neighborhood, it is largely residential. It's somewhat unique because of the campus and institutional buildings. If it's a question between the flat or gabled roof, he thinks the gabled roof fits in better

45 with the neighborhood but is taller than anything else in that area. Ms. Davies
46 said it's more massive; the length is also an issue. Mr. Baum agreed that that is
47 not consistent with the surrounding properties. Mr. Lemos said a length of 44 feet
48 that close to the road makes it very different. Ms. Page said given the length, the
49 added roof space for that continuous line does stand out. Exhibit 2 of the
50 additional materials depicts what looks like a block. Ms. Olson-Murphy said it's
51 gabled, but the peak of the roof is still flat. It doesn't look like a house. Ms.
52 Davies said in the public comments, more people didn't want to see it rather than
53 having architectural consistency. 3) Substantial justice is done; Mr. Baum said it's
54 a question of whether they have their preferred architecture and additional height
55 vs the aesthetic impact to the neighbors. Ms. Olson-Murphy said she doesn't
56 know if the preferred architecture outweighs the concerns of the neighbors. They
57 can still have their building without it [the gabled roof]. 4) The value of
58 surrounding properties will not be diminished; Mr. Baum said expert testimony on
59 this is not conclusive but cannot be ignored. There's an appraisal and evidence.
60 Ms. Davies said it wasn't an appraisal, since there was no evaluation of market
61 data; it was an opinion letter. She agrees with the general conclusion he came to
62 about property values. He also says it doesn't alter the essential character of the
63 neighborhood, but she doesn't agree with that conclusion. Mr. Baum said that
64 was beyond the scope of his evaluation. This criteria is met by the applicant. 5)
65 Literal enforcement of zoning ordinance will result in an unnecessary hardship;
66 Mr. Baum said there are special conditions of this property, given the size and
67 the layout. He has more trouble about the next prong. The purpose of height
68 restrictions are to avoid large, massive buildings blocking viewshed and looming
69 over other properties. Despite the size of this property - and he understands
70 about the restrictions from wetlands and conservation land - it's sited right in the
71 spot where it has the most impact to abutters. It can be constructed without relief,
72 so the primary reason for the relief is aesthetic. We're weighing the gables vs the
73 massing, and that massing is going to stick out. Ms. Page said the applicant
74 noted that just because they're asking for a variance doesn't make the use
75 unreasonable, but we have to look at the special conditions as related to the use.
76 The special conditions are the size of the property, which goes against the idea
77 that there isn't a way to work within the restrictions. Mr. Baum said there is
78 significant space to work with on this property.

79
80 Ms. Davies moved to deny the motion for a variance from Article 4, Section 4.3 Schedule
81 II to exceed the maximum height requirement based on not meeting variance criteria #1,
82 the public interest, based on altering the essential character of the neighborhood, and
83 #5b, that the proposed use is a reasonable one. Ms. Page seconded. Ms. Olson-
84 Murphy, Ms. Page, Mr. Lemos, Mr. Baum, and Ms. Davies voted aye. The motion
85 passed 5-0 and the variance was denied.

86
87 Ms. Olson-Murphy asked the Board to consider the request for a variance from
88 Article 6, Section 6.1.2.D to permit parking and portions of the driveway within the

89 required 100-foot landscape buffer. Mr. Baum said we were also talking about the dog
90 park and the pickleball courts being in the buffer. Ms. Page said there were a handful of
91 parking spaces on the side abutting the Hooten property as well as on White Oak which
92 would be moved. This is considered an access road. The loop would be considered a
93 service road within the buffer and has several parking spaces. Mr. Lemos said there's
94 parking by the pickleball courts currently. Ms. Davies said that parking is planned to go
95 away.

96 Mr. Baum went through the criteria for the buffer variance request. 1) The
97 variance will not be contrary to the public interest and 2) The spirit of the ordinance will
98 be observed; he said this doesn't have the same impact on the neighborhood. There's
99 some impact to the Hooten lot and to the Jolly Rand trail, but it will be fairly limited,
100 visually. The dog park and pickleball courts are already in the buffer, they would just be
101 relocated. There's no threat to the public health, safety, or welfare. The question is
102 whether it alters the essential character of the neighborhood. Ms. Page said Article
103 6.1.2.D gives us some information behind the purpose: providing adequate division or
104 transition from abutting land uses and having vegetation that's sufficient in size to shield
105 the development from abutting properties. No dwelling, accessory structure, collector or
106 service roads, or parking areas are permitted in the buffer, but access roads are
107 permitted to cross the buffer area. Ms. Olson-Murphy said that's what they're seeking a
108 variance for. Ms. Page said the ordinance is so specific that she worries about the
109 legality of approving a variance. Ms. Davies said this is a special exception use which is
110 much more massive in scale than other uses of the neighborhood, and the 100-foot
111 buffer was specifically included to prevent this type of thing. This isn't in the back corner
112 where it's not going to bother anybody. It's very near to the abutters. She's very opposed
113 to any development in the buffers. The entire parcel is supposed to have this 100-foot
114 buffer. Mr. Baum said because of the wetlands, there will be a natural buffer and
115 additional land preserved. Mr. Lemos said this request bothered him more than the
116 height variance. The actual building is almost encroaching on the buffer, it's about 9 feet
117 away. The road is only 17 feet from the property line. Mr. Baum said the access road is
118 permitted. This is about the service road and the parking. 3) Substantial justice is done;
119 Mr. Baum said the harm to the applicant is the loss of the parking space and the
120 perimeter service road. The benefit to the public is preservation of the buffer. Ms. Olson-
121 Murphy said they may be able to finagle the parking, but they can't put the building there
122 without that road around it. Mr. Lemos said they'd have to change the design. 4) The
123 value of surrounding properties will not be diminished; Mr. Baum said we have the
124 appraiser's opinion. No contrary evidence was presented. He thinks that criteria is met,
125 or at least we don't have enough to rebut the testimony. 5) Literal enforcement of zoning
126 ordinance will result in an unnecessary hardship; Mr. Baum said the special conditions
127 are met given the size and shape of this lot. The parking is limited by the gas easement
128 and the wetlands. Ms. Davies said there's space elsewhere on this very big campus,
129 which is a counter-balance to the gas line and the wetlands. This is a big development in
130 a small part of the site. Given the impact and harm to the neighborhood, this is not a
131 reasonable request. There was a desire to keep visual, noise, and other buffers to the
132 surrounding properties, including from the pickleball court which is surprisingly noisy.

133 Ms. Page said the gasline does contribute to the special conditions of this property, but
134 the buffer restriction does serve the purpose of the ordinance in a fair and substantial
135 way.
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137 Ms. Page moved to deny the variance requested from Article 6, Section 6.1.2.D to permit
138 parking and portions of the driveway within the required 100-foot landscape buffer, as it
139 fails to meet requirements of #1, the variance will not be contrary to the public interest;
140 #2, the spirit of the ordinance will be observed; and #5, unnecessary hardship. Ms.
141 Davies seconded. Ms. Olson-Murphy, Ms. Page, Mr. Lemos, Mr. Baum, and Ms. Davies
142 voted aye. The motion passed 5-0 and the variance was denied.

143
144 **II. Other Business**

145 A. Minute Approval: February 20, 2024

146 Mr. Lemos moved to approve the minutes for February 20, 2024 as presented. Mr.
147 Baum seconded. Ms. Olson-Murphy, Ms. Page, Mr. Lemos, Mr. Baum, and Ms. Davies
148 voted aye, and the motion passed 5-0.

149
150 B. Minute Approval: March 19, 2024

151 Ms. Davies said she doesn't see the statement read at the beginning about the impact of
152 the appeal. Ms. Page said she thinks that's in here. Mr. Baum said it's on line 333.

153 Ms. Page moved to approve the minutes for March 19, 2024 as presented. Mr. Baum
154 seconded. Ms. Olson-Murphy, Ms. Page, Mr. Lemos, and Mr. Baum voted aye. Ms.
155 Davies abstained as she did not finish reviewing them. The motion passed 4-0-1.

156
157 **III. Adjournment**

158 Ms. Davies moved to adjourn. Mr. Lemos seconded. All were in favor and the meeting
159 was adjourned at 7:50 PM.

160
161 Respectfully Submitted,
162 Joanna Bartell
163 Recording Secretary
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