

Town of Exeter
Zoning Board of Adjustment
March 18, 2025, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Esther Olson-Murphy, Robert Prior, Kevin Baum, Laura Montagno - Alternate and Mark Lemos - Alternate

Members Absent: Vice-Chair Theresa Page, Clerk Laura Davies, Martha Pennell - Alternate

Town Code Enforcement Officer Doug Eastman was also present.

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

I. **New Business**

- A. Continued public hearing on the application of J. Caley Associates for a variance from Article 5, Section 5.1.2. and Article 4, Section 4.4 to demolish an existing structure and rebuild in the same footprint (seeking relief from the required minimum side yard setbacks); and a special exception per Article 4. Section 4.4 Schedule III: Density and Dimensional Regulations-Non-Residential (Note #12) to permit the proposed construction of a structure fifty-feet (50') in height. The subject property is located at 97 Portsmouth Avenue, in the C-2, Highway Commercial zoning district. Tax Map Parcel #65-125. ZBA Case #24-11.

Attorney Josh Lanzetta of Bruton & Berube PLLC of Dover spoke on behalf of the applicant. He said we addressed the special exception and variance criteria at length last time but are providing new exhibits in response to questions. One is a building height exhibit and the other is a video. He also looked into the parking and easement question, which he believes is outside of this process but he does have an answer to. Regarding building height, he superimposed an elevation next to the surrounding properties so the Board could get a scale of the proposed building. The application is asking for 50 feet, but the parapet shown is only 48 feet. The height may change as part of the Planning Board process. It's only 6 feet taller than McClane Manor on the left. The trees behind the building are 70 feet tall so you'd still see the treetops, you just don't see them on this slide because of the angle depicted. The BankProv building is 34 feet tall.

Mr. Baum asked if the elevation shown is height above the entry grade in each case. Attorney Lanzetta said yes. Mr. Baum said it's not accounting for the ground level, and Attorney Lanzetta said that's correct. Mr. Caley said the apartment buildings are 9.7 feet lower than the entry of the proposed building. Attorney Lanza showed a slide with the elevations of other nearby buildings,

45 including the Hampton Inn which is 49 feet. The Hospital is 50 feet tall. There are
46 quite a few 3- and 4-story structures on the way into town.

47 Attorney Lanzetta said regarding parking, on the existing conditions plan,
48 there's a note that references deed 1712, which grants a broad, sweeping access
49 easement for this property and three others, and a broad right to park. It grants
50 the right to park at that time and for future development on the granted premises.
51 In his opinion, the easement is valid, legal, and broad, so he doesn't think the
52 parking will be an issue. It will be addressed in full at the Planning Board. Mr.
53 Prior asked how long ago that deed was from. Attorney Lanzetta said he thinks it
54 was from the 1960s. Mr. Prior said given the proximity of BankProv and McClane
55 Manor, the applicant will have to provide instructions to guests on where to park.

56 Ms. Olson-Murphy asked why the new drawing has a proposed multi-use
57 building. Attorney Lanzetta said it was proposed as a multi-use originally. Ms.
58 Olson-Murphy said she thought it was a micro-hotel. Attorney Lanzetta said it
59 also has a conference space. Mr. Prior asked if there is a restaurant included.
60 Attorney Lanzetta said we're trying to get multi-use. It could be possible but he
61 thinks that would be a Planning question.

62 Mr. Baum said the proposed elevation is a mockup and not final, but the
63 penthouse setback does soften the elevation. Attorney Lanzetta said if it steps
64 back, it provides less massing on the front of the structure, but there may be
65 another design the Planning Board finds more amenable. Attorney Lanzetta said
66 the lot is undevelopable if we don't build within the existing footprint, but the
67 height could be variable when we go through the Planning process. Mr. Baum
68 said once we give our relief, you have up to 50 feet. The Planning Board is pretty
69 much stuck with it. This is potentially the highest structure around, particularly
70 with the grade change. Attorney Lanzetta said regarding the setback, it would be
71 hard to define. Mr. Prior asked if the mechanicals would be below or above
72 grade. Attorney Lanzetta said we're not sure yet. Mr. Baum asked Mr. Eastman if
73 it's possible to go above 50 feet with mechanicals or cupolas. Ms. Montagno said
74 that can go over the 50 feet.

75 Ms. Olson-Murphy asked for public comment, but there was none. She
76 brought the matter back to the Board for deliberation.

77 Mr. Prior said he thinks the setbacks are appropriate because it's exactly
78 the size of the structure that's there now. Without the variance, you can't do
79 anything with the lot.

80 Mr. Prior went through the variance criteria related to the minimum side
81 yard setbacks. 1) The variance will not be contrary to the public interest and 2)
82 The spirit of the ordinance will be observed; yes, he has no problem with that. 3)
83 Substantial justice is done; yes, he sees no harm whatsoever with the variance
84 requested. 4) The value of surrounding properties will not be diminished; we
85 have no testimonies either way. He doesn't think there will be any damage to
86 BankProv or McClane Manor. 5) Literal enforcement of zoning ordinance will
87 result in an unnecessary hardship; yes, were we to enforce the side yard

setbacks, it would make the property undevelopable. Mr. Baum said there's nothing reasonable you could build on this property without the variance.

Mr. Prior made a motion to approve the request for a variance from Article 5, Section 5.1.2. and Article 4, Section 4.4 to demolish an existing structure and rebuild in the same footprint (seeking relief from the required minimum side yard setbacks). Ms. Montagno seconded. Ms. Olson-Murphy, Mr. Prior, Mr. Baum, Ms. Montagno and Mr. Lemos voted aye, and the motion passed 5-0.

Ms. Olson-Murphy asked the Board to consider the request for a special exception related to the height. Mr. Prior said he appreciates the additional information presented. 50 feet is high but it's appropriate for this area. The building across the street will exceed 50 feet once it's approved by Planning. Mr. Eastman said 50 feet is allowed without a special exception in this zone by the MUND, but this is not a residential building. Ms. Montagno said it's not mixed use. Mr. Baum said it's a similar size to the Hampton Inn. It's maxed out, but it's in line with the surroundings and what can be developed.

Mr. Baum went through the special exception criteria. A) The use is a permitted special exception as set forth in Article 4.2, Schedule I; yes, that is the case. 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, he doesn't think there are any concerns. C) That the proposed use will be compatible with the zone district and adjoining post-1972 development where it is to be located; yes, he thinks this is met here. The use is permitted and the height meets this criteria. D) That adequate landscaping and screening are provided; that will be dealt with in the site plan review process of the Planning Board. E) That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets; yes, there is parking and probably more than enough ingress and egress. That will be further reviewed at the Planning Board level. Mr. Prior said he questions Fire Department access but that will be part of the review as well. Ms. Montagno said there's an easement for them to go around the back. F) That the use conforms with all applicable regulations governing the district where located; yes. G) The applicant may be required to obtain Planning Board or Town Planning approval; yes, they will be getting site plan review. H) That the use shall not adversely affect abutting or nearby property values; yes, there's no reason to believe it would. I) and J) do not apply.

Mr. Baum made a motion to grant a special exception per Article 4. Section 4.4 Schedule III to permit the proposed construction of a structure fifty feet in height on the subject property. Mr. Prior seconded. Ms. Olson-Murphy, Mr. Prior, Mr. Baum, Ms. Montagno and Mr. Lemos voted aye, and the motion passed 5-0.

II. Other Business

131 A. Approval of Minutes: February 18, 2025

132 Mr. Baum moved to approve the minutes of February 18, 2025 as presented. Ms.
133 Montagno seconded. Ms. Olson-Murphy, Mr. Baum, Ms. Montagno and Mr.
134 Lemos voted aye, and the motion passed 4-0.

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136 B. Approval of Minutes: November 19, 2024

137 Ms. Montagno made a motion to approve the minutes of November 19, 2024 as
138 presented. Mr. Prior seconded. Ms. Olson-Murphy, Mr. Prior, and Ms. Montagno
139 voted aye, and the motion passed 3-0.

140 III. **Adjournment**

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142 Mr. Prior moved to adjourn. Mr. Baum seconded. All were in favor and the meeting was
143 adjourned at 7:45 PM.

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145 Respectfully Submitted,
146 Joanna Bartell
147 Recording Secretary
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