

Town of Exeter
Zoning Board of Adjustment
April 15, 2025, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Esther Olson-Murphy, Clerk Laura Davies, Robert Prior, Kevin Baum, Laura Montagno - Alternate and Mark Lemos - Alternate
Deputy Town Code Enforcement Officer Barb McEvoy was also present.

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

Call to Order: Chair Esther Olson-Murphy called the meeting to order at 7 PM. She announced that the application of J. Caley Associates has been withdrawn at the applicant's request.

I. **New Business**

- A. The application of Peter and Tracy Robitaille for a variance from Article 4, Section 4.3, Schedule II-Density and Dimensional Regulations-Residential for the proposed construction of a 28'x 40' detached garage with less than the required minimum side yard setback. The subject property is located at 46 Oaklands Road in the RU-Rural zoning district. Tax Map Parcel #11-10. ZBA Case #25-1.

Attorney Chris Hawkins of DTC Lawyers spoke representing applicant Peter Robitaille, who was also present.

Attorney Hawkins went through the variance criteria. 1) The variance will not be contrary to the public interest and 2) The spirit of the ordinance will be observed; yes, the primary purpose of setbacks is to avoid overcrowding of lots. We don't see any instance where the construction of a detached garage would threaten the public health, safety, or welfare. Regarding the essential character of the neighborhood, there are other houses in the area that have garages toward the front of the house. The proposed garage would be architecturally consistent with the house and attractive. Given the garages in the area, we don't believe there would be any alteration to the essential character of the neighborhood. 3) Substantial justice is done; yes, this location is significant to the Robitailles because it's the most convenient and accessible location and would require the least sitework. Other locations would require significant tree cutting, which would be more likely to have a detrimental effect than a garage in the setback. The area has larger lots which are heavily wooded, but to the north and northwest, there is an attractive view of pastureland, and the proposed location would not impinge that view. The immediate abutter's property is a narrow strip of land to the south which we believe is not buildable, so there's no risk of overcrowding. 4) The value of surrounding properties will not be diminished; yes, this is a detached garage used primarily for storage purposes, and there will be

45 no traffic noise or disruption. There's a letter from the abutter to the south that he
46 supports the application and does not think there will be impact on the
47 surrounding properties. 5) Literal enforcement of zoning ordinance will result in
48 an unnecessary hardship; this property has special conditions because it is a
49 long narrow lot which is heavily wooded to the west and northwest. There are
50 also some wet areas that we're trying to avoid impacting. The purpose of the
51 ordinance is to prevent overcrowding, but there's no danger of overcrowding
52 here. Within a half mile there are other properties with detached garage
53 structures closer to the road. We think it's consistent with the neighborhood. The
54 proposed use is reasonable because there are others in the area and a detached
55 garage is a reasonable accessory use in the RU zone.

56 Ms. Montagno asked if there are garages or dwellings in the area that are
57 not within the 30-foot setback. Attorney Hawkins said he's not sure, but there are
58 many properties where the garages are very close to the road which presents a
59 more overcrowded experience than the Robitaille proposal. Ms. Montagno asked
60 if the ones not within the setback have variances or are non-conforming because
61 the zoning laws have changed. Attorney Hawkins said he doesn't know.

62 Ms. Montagno said there's only one area of wetland setback on the map
63 but the application references wet soils and wet areas. Is there a more detailed
64 map that shows soil elevations? Attorney Hawkins said the lot is basically level.
65 The wet areas are towards the back and wooded area. Mr. Robitaille said we had
66 a preliminary wetland study done that looked at the front area. The
67 Environmental Engineer said generally that the whole back area is wet, but we
68 never had it formally surveyed.

69 Ms. Davies said the 28x40' dimensions give a 1,120 square footprint for
70 the building. 40 feet is much longer than a typical garage. Could you comment on
71 the intent for the space? It appears to be a story and a half or $\frac{3}{4}$. Mr. Robitaille
72 said the intent is storage for vehicles like snowmobiles, tractors, and ATVs or
73 recreational stuff. The upstairs is an unfinished area for storage of Christmas
74 decorations etc. Ms. Davies asked if it would be all unfinished area. Mr. Robitaille
75 said he's picturing drywall for the garage area. Ms. Davies asked if there would
76 be electricity and heat. Mr. Robitaille said there would be electricity for lighting.
77 Ms. Davies asked if there would be water and septic service. Mr. Robitaille said
78 no. Ms. Davies said this is a big building within the setback and very close to the
79 property line. In the future, someone could come back about converting this to
80 living space. There is already an attached three-car garage, which is fine, but it
81 seems like there might be potential here for additional uses. She suggested a
82 condition that it not be turned into finished space in the future, unless further
83 relief were sought. Attorney Hawkins said the immediate purpose is storage. Mr.
84 Robitaille recognizes that if he ever wants to change the use of it, that would be a
85 whole separate process. The applicant's preference would be not to have his
86 hands tied at this moment. Ms. Davies said if the intent is truly for storage,
87 maybe that should be included in the application or conditions. Attorney Hawkins
88 said we're requesting there not be a hard and fast condition. The law has been

89 evolving rapidly in this area and none of us knows what the future will hold. We'd
90 like to keep this open in case it's something the Robitailles decide to pursue.

91 Mr. Baum asked about the wetland shown on the plan, which was
92 determined by Gove Environmental. Was that a formal wetland delineation or an
93 initial rough determination? Mr. Robitaille said Gove came out to walk and flag
94 the property and gave him the overlay. The intent was to identify where there
95 was wetland and understand if it would even be possible to have a structure. Mr.
96 Baum said your argument is that your neighbor's southerly lot is unbuildable so
97 the impact is less but he's trying to understand what we know about that lot and
98 how precise the wetlands information is. He asked the applicant to give more
99 information on the site conditions. He's concerned about the amount of land on
100 this lot and space available to meet the setbacks. From the pictures, it appears
101 that there is sufficient area without pushing towards the existing driveway. He
102 wants to better understand the special conditions and how they create a hardship
103 on the property. Attorney Hawkins said the other potential locations would be
104 less advantageous and more likely to impinge upon wet areas of the property
105 identified by Gove and would require more extensive work. We believe it would
106 be less attractive and more likely to have an impingement on the view towards
107 the pastureland towards the west and northwest of the property. The property is
108 quite long and narrow relative to the other properties in the area. We believe
109 these circumstances create a hardship. Mr. Baum said looking at their aerial
110 view, there seems to be space between the existing driveway and proposed area
111 of the garage that would be in front of a large tree and wouldn't impinge on the
112 view. If you shifted the proposed garage directly north towards the driveway, it
113 appears that there's space in that area without cutting trees or impacting the
114 viewshed. Mr. Robitaille said this isn't perfectly to scale. This is showing more
115 space than there truly is between the corner of the proposed location and the
116 driveway. If you were going to move the structure left along the property line, it
117 gets closer to that wetland that they laid out and you wouldn't have the 50-foot
118 wetland buffer. Mr. Baum suggested moving it north, which would be further from
119 the wetlands and would get it out of the setback. Attorney Hawkins said there's
120 not as much space as there appears in the plan. Mr. Robitaille said if you were at
121 the property line and walked straight towards the driveway, there couldn't be a
122 structure there with the full setback. Mr. Baum said if you're asking for
123 dimensional relief, we need to understand the layout. It's difficult to understand
124 without a scaled plan. Attorney Hawkins said the last photograph in the package,
125 "subject property showing garage location," will give you a better sense of scale.
126 The southern part of the garage would be within 5 feet of the fenced property
127 line. There's not that much room to move the garage north of its proposed
128 location. Mr. Prior said the photograph shows it will be crowded between the
129 property line and the very large proposed structure. Moving it opposite the
130 garage entrance to the large patch near the existing 3-car garage would not
131 impinge on the views of the pasture and would move it away from the property
132 line. It's difficult to make a case for a hardship when you have this much

property. Attorney Hawkins said the area behind the existing garage is more likely to impinge on wet areas of the property. Ms. Davies asked where the report from Gove is in the packet. Mr. Prior said it's a sketch.

Ms. Olson-Murphy said the variance goes with the land. If in 20 years someone buys the property, they can build anywhere on the site 5 feet from the property line. Mr. Baum said we can restrict it to this particular structure. We don't have a full sense of what's on that neighboring lot, but it's already impinged. There are wetlands here, so the likelihood of being able to build on that southern lot is low, but there's very limited space to build anything there, and they do have the right to build. Mr. Prior said there is a house at the bottom center on lot 11/9, which is not an abutter, and there's a strip of land between that and 11/10. 11/7/1 does have buildable property, barring wetlands. Only that strip is not buildable.

Mr. Baum said there may be site conditions that require the proposed garage to be where it is, but he doesn't think the Board has enough information based on what's been provided. Attorney Hawkins said he would like to either table or continue this so that Mr. Robitaille can do more wetlands mapping. Mr. Prior said continuing the application means you would submit the same application at a later date. Withdrawing the application, which can be done without prejudice, means you could bring another application with a different location or more information. Attorney Hawkins said the applicant would like to withdraw the application without prejudice.

Mr. Prior made a motion to allow case #25-1 to be withdrawn without prejudice. Ms. Montagno seconded. Mr. Prior, Mr. Baum, Ms. Olson-Murphy, Ms. Davies, and Ms. Montagno voted aye. The motion passed 5-0.

- B. The application of the Pickpocket Abutter Group for an Appeal from an Administrative Decision made by the Planning Board on February 13, 2025 for the approval of the demolition of the existing administrative building and the proposed construction of the new supportive living health center along with associated site improvement on the property located at 5 White Oak Drive (Planning Board Case #24-16). The subject property is located in the R-1, Low Density Residential zoning district and is identified as Tax Map Parcel #97-23. ZBA Case #25-2.

Mr. Prior and Ms. Montagno recused themselves from this application. Mr. Baum said that results in less than a 5-member Board. The applicant said we would request a continuance, since we require 3 votes to be successful. Mr. Baum said that's allowed. We should have another member next month that is not recused.

Mr. Baum made a motion to continue this application to the May 20 meeting. Ms. Olson-Murphy seconded. Ms. Olson-Murphy, Ms. Davies, Mr. Baum, and Mr. Lemos voted aye. The motion passed 4-0.

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177 C. The application of J. Caley Associates for a variance from Article 6, Section
178 6.19.3.B.2. for relief from the maximum front yard setback requirement (under the
179 MUND-Mixed Use Neighborhood Development Ordinance) for the proposed
180 construction of a structure on the property located at 97 Portsmouth Avenue, in
181 the C-2, Highway Commercial zoning district. Tax Map Parcel #65-125. ZBA
182 Case #25-3.

183 This case was withdrawn at the applicant's request.

184
185 **II. Other Business**

186 A. Approval of Minutes

- 187 1. Corrections: Ms. Olson-Murphy said on line 30, she doesn't remember
188 there being a video. Mr. Baum said it was a PowerPoint. He thinks the
189 applicant probably said "video." The Board agreed to leave it as-is.
190

191 Mr. Prior made a motion to approve the minutes of the March 18, 2025 ZBA meeting as
192 presented. Ms. Olson-Murphy seconded. Ms. Olson-Murphy, Mr. Prior, Mr. Baum, and
193 Mr. Lemos voted aye. The motion passed 4-0.

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195 **III. Adjournment**

196
197 Mr. Baum moved to adjourn. Mr. Prior seconded. All were in favor and the meeting was
198 adjourned at 7:30 PM.
199

200 Respectfully Submitted,
201 Joanna Bartell
202 Recording Secretary