

Town of Exeter
Zoning Board of Adjustment
May 20, 2025, 7 PM
Town Offices Nowak Room
Approved Minutes

I. **Preliminaries**

Members Present: Chair Esther Olson-Murphy, Vice-Chair Theresa Page, Clerk Laura Davies, Robert Prior, Kevin Baum, Laura Montagno - Alternate and Mark Lemos - Alternate

Town Code Enforcement Officer Doug Eastman was also present.

Members Absent: Martha Pennell - Alternate

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

I. **New Business**

- A. 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.

Board members Robert Prior and Laura Montagno recused themselves from the discussion.

Ms. Olson-Murphy asked the applicants to speak. Mr. Prior of 16 Pickpocket Road, an abutter to RiverWoods and member of the ZBA, said he is speaking on behalf of the group of over 100 Exeter residents which is appealing the decision of the Exeter Planning Board to approve the RiverWoods combined Health Center without the applicant first having applied to the Zoning Board for a special exception. He said he's never seen a project of this magnitude - or any magnitude - allowed to move forward in clear violation of the Exeter Zoning ordinance. We are not here to talk about the merits of the building, it's about the process of approval for the building. There are three campuses that RiverWoods purchased and merged in the R1 Zoning District, where congregate health facilities are permitted only by special exception. RiverWoods has never applied for a special exception for their proposed merged health care facility. Regarding scale, the proposed RiverWoods Health Care Facility will have 126 beds and be 176,000 square feet in size, with 100 parking spaces, 70 employees, and cost \$150M to build. It's hard to believe something of this magnitude could be built

45 without a special exception. It is in the best interest of Exeter and RiverWoods to
46 get this process right. The appellate group is composed of over 100 abutters,
47 RiverWoods residents, and neighbors. RiverWoods has expanded many times
48 over the years and clearly plans further expansion on property they own, and this
49 could be used as a precedent for further expansion without a special exception.
50 This could change the future of zoning in Exeter and perhaps even the State.

51 Mr. Baum said there are two issues: timeliness in jurisdiction, and the
52 merits of the case. Should those be addressed separately? Ms. Olson-Murphy
53 said yes.

54 Attorney Brian Bouchard of Sheehan, Phinney, Bass and Green spoke
55 representing the abutter and resident group. He noted that abutters are afforded
56 automatic standing to file this appeal; the Weeks case and its progeny create a
57 broader understanding of "standing" if the individuals will be impacted by
58 development. The purpose of this appeal is not to stop the development, but to
59 ensure the processes of this town are followed and ordinances are upheld. There
60 are two issues: jurisdiction and merit. This Board has jurisdiction over this matter
61 pursuant to RSA 675.5 because we are appealing a decision of the ZBA that
62 made the determination in approving the application that the RiverWoods
63 expended health care facility does not require a special exception. He is not
64 appealing Mr. Eastman's letter of March 5, 2024. The letter declared that the
65 expanded health care center doesn't require a use variance, but makes no
66 mention of whether a special exception is required.

67 Attorney Bouchard said that in Derry, an abutter filed an appeal with the
68 ZBA, which converted that appeal to an appeal from the Planning Board decision
69 on whether or not the proposed project was compliant with the ordinance
70 [Accurate Inc vs Town of Derry]. In making that conversion, the ZBA noted they
71 didn't have jurisdiction to consider the Zoning Officer's decision from 11 months
72 earlier because of the time factor, but it did have jurisdiction to consider the
73 Planning Board's determination whether or not the project required approval or
74 was already compliant with the ordinance. That is what the Supreme Court held:
75 that the Planning Board process creates grounds for appeal.

76 Exeter's site plan regulations prohibit the Planning Board from granting
77 site plan approval if the project doesn't comply with the ordinance. The Planning
78 Board must make an affirmative determination that the project is in compliance.
79 The Planning Board considered the project in two meetings, in January and
80 February, and considered whether it could impose review of the ZBA as a
81 condition of approval, but that vote was denied, which creates the basis for this
82 appeal.

83 RiverWoods contends that this appeal was untimely because the
84 Planning Board accepted the binding decision of the Code Enforcement Officer,
85 but that's not what the Planning Board voted on. There's no motion to accept the
86 decision of Mr. Eastman. The motion they voted on was to consider whether
87 RiverWoods must go before the ZBA relative to the needs of a Special
88 Exception. RiverWoods' argument doesn't pass muster under the Accurate case,

89 which involves a Code Enforcement Officer decision, a Planning Board decision,
90 and an appeal of the Planning Board decision in front of the ZBA which the State
91 Supreme Court said was properly before a Zoning Board. RiverWoods' position
92 ignores the site plan regulations of this town, particularly 8.3. Agreeing to accept
93 Mr. Eastman's position, which the Planning Board didn't, is itself a decision.

94 RiverWoods' position is a misreading of the letter from Mr. Eastman
95 because that letter doesn't mention a process or review of whether a special
96 exception is required. RiverWoods would argue that when you ask a Code
97 Enforcement Officer for what you need, it would be abnormal for him to say what
98 you don't need, but Mr. Eastman made a determination of what was not needed,
99 which was a use variance. We also don't know what RiverWoods asked Mr.
100 Eastman to decide. If RiverWoods only asked Mr. Eastman if they required a use
101 variance, it would be normal for him to issue a letter saying you do not need a
102 use variance because you've merged the lots.

103 Finally, regarding jurisdiction, the 22 Lenox Ave vs Town of Derry case is
104 an unpublished opinion from the NH Supreme Court so not eligible for any
105 precedential value, but it's instructive on this issue. In that case, in May 2013, a
106 Code Enforcement Officer issued a decision saying that a project was permitted
107 in the medium-density zone in the town of Derry. On May 15, 2013, the Planning
108 Board rejected a site plan application because the Planning Board disagreed with
109 the Code Officer and decided this project was not compliant. On June 14, 2013,
110 the developer appealed the Planning Board's decision to the Superior Court, not
111 the ZBA, and the town filed a motion to dismiss, saying the developer had not
112 exhausted his administrative remedies. In response, the developer argued the
113 exhaustion issue is moot because nobody appealed the Code Enforcement
114 Officer's decision in May, therefore the decision is binding on the Planning Board
115 and ZBA; there was no requirement to go to the ZBA because the ZBA was
116 powerless to do anything about it. The Court rejected that argument, saying it
117 was the province of the ZBA to consider the decisions of Code Enforcement
118 Officer and Planning Board when it involves the application of the Zoning
119 Ordinance. If you "flip the script" on this case, if the Planning Board decided that
120 Mr. Eastman had erred and this project requires a special exception, and
121 RiverWoods appealed that to the ZBA, RiverWoods could not argue that Mr.
122 Eastman's decision was binding on this Board because no one had appealed the
123 private letter of March 5, 2024. This case is the contra-positive of that.
124 RiverWoods is making arguments about jurisdiction that the Supreme Court has
125 already rejected in the Accurate case.

126 Mr. Baum said that Attorney Bouchard indicated that Doug Eastman's
127 letter does not address whether a special exception is required, but it does state
128 that the proposed use is permitted by right. Attorney Bouchard said he's not
129 appealing Mr. Eastman's letter. His point was to counter what RiverWoods is
130 saying. Mr. Eastman's letter does say that, but in the context of that paragraph,
131 the substance is whether a use variance is required. It's a decision about the use
132 variance, not a decision writ large about the ordinance. There's nothing in that

133 letter related to a special exception. It's not an opinion of an Administrative
134 Officer if the issue is not being considered in that letter. We are appealing the
135 decision of the Planning Board on whether or not this project was compliant with
136 the ordinance or needed to come before the ZBA first for a special exception.

137 Ms. Page asked about the Accurate case. The Code Enforcement Officer
138 had given a letter of opinion in that case; is that distinguishable from this item,
139 which is styled as a "decision"? Attorney Bouchard said no; in the Accurate case,
140 the Code Enforcement Officer gave an opinion that the project was compliant
141 during a Technical Review Committee meeting 11 months before the Planning
142 Board picked this up. The Planning Board picked that up and then an abutter
143 appealed the Planning Board decision to the ZBA.

144 Mr. Baum suggested taking public comment on the jurisdiction issue. Ms.
145 Davies asked if we typically take public comment on jurisdiction issues. Mr.
146 Baum said in this case, in fairness to the public, it's worthwhile. That would
147 include comments from RiverWoods as well. Typically it hasn't been argued
148 before us, it's come up and we've determined we don't have jurisdiction. We can
149 adjourn and confer with counsel if we wish. Ms. Olson-Murphy said she'd like to
150 go into non-public session.

151 Mr. Baum moved to adjourn public session to speak with Legal Counsel
152 regarding procedural questions. Ms. Page seconded. Mr. Baum, Ms. Page, Ms.
153 Davies, Ms. Olson-Murphy, and Mr. Lemos voted aye. The motion passed 5-0
154 and the meeting entered non-public session at 7:36 PM.

155
156 The Board reconvened at 8 PM, and Ms. Olson-Murphy asked to hear
157 from RiverWoods. Attorney Chris Boldt of Donohue, Tucker, and Ciandella said
158 the ZBA does not have jurisdiction. Attorney Bouchard is wrong on the
159 interpretation of the Accurate case. The key fact there was that the Town's
160 ordinance expressly required a written opinion, and there was none in that case,
161 so the trigger event had not occurred. That does not apply to the case here. We
162 have an express decision by Mr. Eastman in March of 2024 that was followed by
163 an appeal of Mr. Prior that was before this Board and you found that it was too
164 late then. What you have in the minutes that Sharon Cuddy-Somers provided you
165 in her April letter are minutes from the March and April 2024 ZBA meeting. In the
166 first meeting, it's expressly referenced that it was as a matter of right. Three of
167 the abutters, Mr. Prior, the Goodnoughs and Mr. Theodore, were there and made
168 comments. Those are people who would have had standing to bring challenge to
169 this Board within 30 days of Mr. Eastman's decision, and did not. We have
170 statutes for a reason. The issue of abutter status has changed as of September
171 1, 2024, that removed the old standard under the Weeks case that Attorney
172 Bouchard discussed. It creates abutters in a more limited class, anybody across
173 the street or stream plus 50 feet on either side of the extension of the property
174 lines. We no longer have the "party aggrieved" type of standard. The 112
175 [appellants] is limited down to the 10 or so [abutters] that Attorney Somers lists in
176 Exhibit 6. The decision from Mr. Eastman was known by the parties that could

177 have brought an appeal to this Board at the time, and instead they sat and waited
178 to see what the Planning Board would do. The Planning Board approved the
179 project. There was a decision for one of my towns, Thornton NH, Andrews V.
180 Thornton, which is “on all fours” with the present case. That was a situation
181 where an abutter did not like construction in a lot next door and filed a complaint
182 with the town. The Selectmen in that town are the equivalent of Mr. Eastman;
183 they issue the building permits and they act as the Code Enforcement Officer. In
184 that case, the Select Board investigated and made a determination that there
185 was no violation of the Zoning Ordinance. They wrote a letter to the abutter and
186 the abutter did not appeal. The contractor said he wanted to get a minor site plan
187 approval so everything was on record. The Planning Board said that they had the
188 Selectmen’s decision and we are granting the site plan. The abutter appealed the
189 Planning Board decision, and sued the Planning Board and ZBA. The issue was
190 if the appeal was timely. The Court found that the ZBA properly held it did not
191 have jurisdiction, and that there was no interpretation of the Zoning Ordinance by
192 the Planning Board in relying on the underlying decision. The Andrews case
193 supports your determination that you do not have jurisdiction.

194 Attorney Boldt said RiverWoods specifically went through the merger
195 process after having the variance denied as a means of accommodating what we
196 thought was the improper interpretation of the Zoning Ordinance. Mr. Eastman
197 issued his letter in March, and there was an appeal by Mr. Prior in that time
198 frame. If there was to be a challenge to Mr. Eastman’s letter, it should have been
199 done in April 2024, not in 2025. He added that 22 Lennox Street is based on prior
200 law that was changed in 2015, and was overruled by implication in the Bartlett v.
201 Manchester Case, which says you don’t have to bring an appeal of administrative
202 decision if you’re coming before the Board for a variance or special exception,
203 because inherent in each is that you need the relief that is being sought.

204 Mr. Baum said regarding standing, is Attorney Boldt indicating that the
205 appellants do not have standing? Attorney Boldt said no, he means that there are
206 fewer appellants that have standing, only 10 or 12.

207 Ms. Davies asked Attorney Boldt to clarify his point regarding abutters.
208 Attorney Boldt asked her to refer to Attorney Somers’ May 8, 2025 letter, which
209 attaches certain minutes and transcripts of the tape of the hearings, and the first
210 set of minutes from March 19, 2024. Eight pages in, Bob Prior makes comments;
211 on the next page, Susan Goodnough makes comments; on the next page, Glenn
212 Theodore makes comments; on the next page, Bill Goodnough makes
213 comments. At that meeting, the March 5 letter from Mr. Eastman was discussed.

214 Ms. Olson-Murphy asked for public comment specifically regarding
215 jurisdiction, not regarding the merits of this case. There was no public comment
216 at this time. Mr. Baum suggested letting the applicant rebut.

217 Attorney Bouchard said regarding the amendment to RSA 672-3 about
218 the abutter standard, it abrogated a case from Seabrook where the Supreme
219 Court said somebody diagonally across the street wasn’t considered an abutter.

220 We do have standing and RSA 674-33 says "anyone aggrieved." Mr. Baum said
221 there hasn't been any statement that there hasn't been standing.

222 Attorney Bouchard said he disagrees with Attorney Boldt's reading of
223 Accurate that there was a critical issue as to "written." Star 110-111 says the ZBA
224 denied the appeal based on the lack of jurisdiction because it deemed the appeal
225 untimely, not because it was written or unwritten. In the Andrews case, the Board
226 seems to have made an affirmative decision to rely on the decision of the Code
227 Enforcement Officer. In the minutes, the Exeter ZBA is considering whether to
228 reopen the entire application process so they can hear from Mr. Eastman. They
229 are not relying on his interpretation. Mr. Baum said the Planning Board
230 specifically discusses whether to condition the motion to require a special
231 exception. Attorney Bouchard said the motion ultimately voted on is whether
232 RiverWoods should have to go to the ZBA for the special exception. In the
233 Andrews case, there is an explicit vote on whether to accept the decision of the
234 Select Board. Mr. Baum said on page 4, line 51, it says "Mr. Greuter noted the
235 Building Inspector said they don't need it." Attorney Bouchard said on page 4,
236 line 35, Ms. Martel questioned whether the request could be reopened to request
237 a letter from Mr. Eastman that the project is compliant.

238 Attorney Bouchard said this issue has not been appealed before. Mr.
239 Prior and a group of abutters appealed the decision to merge lots as an end run
240 around the ZBA's determination that the project would not receive a use
241 variance. What would have been reasonable is that there was some
242 determination that a special exception was not required. RiverWoods applied for
243 a use variance and was denied. If you're in opposition, you're not going to appeal
244 this, you were victorious. RiverWoods then merged all its properties - which he
245 thinks was improper because it's bifurcated by a highway - and then applied for a
246 variance from the height and setback requirement, which was denied as well. If
247 you're opposed to this project, what indication are you receiving that it doesn't
248 need a special exception as well? Zoning can be iterative. Mr. Baum said he
249 doesn't think he buys that. Once RiverWoods was going forward with the relief
250 for dimensional requirements, how could you say you didn't know about the use?
251 Attorney Bouchard said there's nothing in the ordinance to require an applicant to
252 bring every request at once. Just because you're talking about dimensional
253 issues doesn't mean that everything else has been approved. With respect to Mr.
254 Eastman's letter, we're not appealing that. We're appealing the decision of the
255 Planning Board. They have an obligation to make sure that what they're
256 approving is compliant with the zoning ordinance. Under 676-13, a building
257 permit cannot be issued unless it's compliant. He sees nothing in Mr. Eastman's
258 letter that it's compliant from a special exception requirement or that would give
259 RiverWoods any type of municipal estoppel defense. RiverWoods has expended
260 capital going through the site review process, but he's not sympathetic to that. It's
261 inconceivable that RiverWoods didn't know about the special exception issue and
262 chose not to address it.

263 Attorney Boldt indicated that he wished to speak. Mr. Prior said the
264 normal procedure is to open to public comment and then the applicant has an
265 opportunity to rebut. This is not a debate. Mr. Baum said if we choose to hear
266 more we certainly can. Ms. Olson-Murphy allowed Attorney Boldt to speak briefly.

267 Attorney Boldt said Mr. Prior has just made his point, he [Mr. Prior] knows
268 what processes the town goes through. He should have timely brought his
269 concern about Mr. Eastman's letter back a year ago and chose not to. He has
270 passed on the jurisdiction. He takes umbrage with trying to distinguish Accurate.
271 The Court emphasizes a "written decision." In that case, the Code Enforcement
272 Officer never made a decision. That is different from what we have here with Mr.
273 Eastman's letter. Attorney Boldt said he agrees that this matter was not appealed
274 before, but it should have been and could have been. Our case law clearly says
275 that if you do not timely bring an appeal of administrative decision, it is barred.
276 We say that you have no jurisdiction.

277 Mr. Prior said Attorney Boldt does not know what he [Mr. Prior] thinks or
278 knows. We are not appealing the March 4 letter. It only dealt with the use
279 variance. Further downstream, he appealed the merger. He never imagined that
280 a project of this scale in the R1 zoning district would be requested and acted
281 upon without a special exception from the ZBA.

282 Ms. Olson-Murphy closed the public session and brought the discussion
283 back to the Board for deliberations.

284 Ms. Davies said she can't pretend to know which attorney is correct here.
285 She feels that jurisdiction has been used to shut down every step of this process
286 throughout. She doesn't know legally the way through these arguments. Mr.
287 Baum said there has to be finality. That's the point of this jurisdictional issue,
288 whether there was a timely appeal. They're not appealing the administrative
289 decision, but it all goes back to that. In the Planning Board minutes, it does seem
290 to line up with the Andrews case. There was a statement made that the Planning
291 Board didn't rely on Doug Eastman's decision, but it seems like they did,
292 although there wasn't an express vote. On page 3, line 125, Ms. Belanger says
293 Mr. Eastman would have spoken up if it was needed and felt they could move on.
294 Line 129 says Mr. Kennedy was hearing staff say it was not required. Page 4,
295 line 131, says Mr. Sharples said he didn't have anything in writing but it was
296 discussed, no one missed it, the ball was not dropped. Mr. Baum said it seems to
297 him that the majority of that Board decided, on reliance of that letter, that a
298 special exception wasn't needed. Those are the facts presented in Andrews. We
299 had an administrative appeal, it was decided it was untimely, it went to court and
300 that was upheld. There has to be some finality. This is a de facto appeal of Doug
301 Eastman's determination, which we have already determined is untimely. Ms.
302 Olson-Murphy said she agrees.

303 Ms. Page said the Accurate case is distinguishable from what we have
304 here. We had an appealable decision when it was issued by Code Enforcement.
305 It's different from the Accurate case, which was an opinion that wasn't ripe for

306 appeal until it made it to the Planning Board. She doesn't think standing is an
307 issue here that would prevent us from moving forward. Mr. Baum said he agrees.

308 Mr. Baum made a motion to deny the appeal based on a lack of jurisdiction; this is
309 ultimately a de facto appeal of the administrative decision and the determination was
310 that the use was permitted by right. The administrative decision was appealed and that
311 was dismissed as untimely, and that dismissal was approved by a Superior Court. The
312 Planning Board relied on Mr. Eastman's administrative decision, which was no longer
313 appealable at that point. This is pertaining to jurisdiction only; we are not making any
314 determination on the merits on whether a special exception would be needed in the
315 future, it's just on the specifics of this case. Mr. Lemos seconded. Ms. Davies said it was
316 not clear to her that Doug Eastman's letter has anything to do with a special exception.
317 Mr. Baum said given the context of the opposition and that there had already been a
318 fight and denial, coming forward after that, everyone knew that RiverWoods had merged
319 to avoid a use variance. Ms. Davies said that they would be successful in avoiding a use
320 variance was not clear to her. She met with Dave [Sharples] and Doug [Eastman] twice
321 about it and it was still not clear. Ms. Page, Mr. Baum, Ms. Olson-Murphy and Mr. Lemos
322 voted aye; Ms. Davies voted nay. The motion passed 4-1 and the appeal was denied.

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324 Mr. Prior and Ms. Montagno rejoined the Board at this time.
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328 II. Other Business

329 A. Request for rehearing - J. Caley Associates - ZBA Case #24-11 97 Portsmouth 330 Avenue, Tax Map Parcel #65-125

331 Ms. Olson-Murphy asked Mr. Eastman to discuss this request. Mr.
332 Eastman said the Board granted a variance on side yard setback for an
333 expansion of existing non-conforming use and a special exception for the height.
334 If you increase the height in an existing encroaching footprint, that's an
335 expansion. The applicant heard of the MUND [Mixed Use Neighborhood
336 Development] zoning which the town adopted years ago and decided that they
337 were going to go with the MUND now.

338 Mr. Baum asked if this is still a valid and active variance approval. Mr.
339 Eastman said he thinks they withdrew that. Mr. Baum said they withdrew the
340 second request, but the original one was still valid. Mr. Prior said last month, they
341 asked for a variance from the front yard setback under the MUND, but that was
342 withdrawn. We're back to the original approval. Mr. Eastman said under the
343 MUND, they can go right to the front property line, but they can't go more than 20
344 feet back. The people who own the mall, who are not abutters, found out about it
345 and decided to file an appeal on the original request. Mr. Prior said the applicant
346 mentioned parking and that they have an agreement with the owner of the mall to
347 provide additional parking. Ms. Montagno said there was an easement
348 referenced in the application. Ms. Davies said the appeal attorney doesn't offer
349 us a copy of the easement language which was recorded in the registry. We

350 need to know what the easement says. But the decision was not about parking, it
351 was about height. Ms. Montagno said if there's not enough parking, they should
352 be coming forward for a variance on parking. Mr. Baum said he agrees. Mr.
353 Eastman said it's under a MUND so the parking requirements go way down. It
354 goes directly to the Planning Board.

355 Mr. Baum said the request for rehearing talks about use, but we didn't
356 grant a use variance, we granted dimensional relief. They're claiming it was an
357 error because there's not enough parking, but this is a private dispute over the
358 scope of an easement and whether it was overburdened. The only thing they
359 raised that was relevant was the concern about Fire Department access, which
360 was relevant to height and non-conforming use of setbacks, but that also seems
361 like a Planning Board issue. Ms. Davies said they also raised the issues of
362 safety, traffic, and crosswalks, which are also Planning Board issues. The
363 Planning Board should have a copy of the easement presented to them to
364 understand what the rights are, but none of this is related to the decision about
365 height and setbacks.

366 Mr. Prior asked if the fact that we heard testimony about parking a
367 mitigating factor for anyone, even though we didn't make a decision on it? Mr.
368 Baum said if we heard testimony that was relevant to our decision, that would be
369 a different issue. They said they have an easement that allows parking, and
370 that's still an accurate statement. What the petitioners are saying is that they will
371 overburden the easement with their use, not that there isn't an easement. We did
372 ask questions about traffic flow and parking but that wasn't what we hung our hat
373 on for a decision. Mr. Prior said the intended use of the property will place a
374 considerable burden on parking. The expansion of non-conforming use is not just
375 about square footage. If we hadn't heard that they had parking, he may have
376 made a different decision. We were told not to worry about parking because
377 there is an easement.

378 Ms. Olson-Murphy said no one is denying that there is an easement and it
379 does grant some parking. It's just the extent was unclear. Ms. Davies said we
380 don't have the easement document. Ms. Montagno said they didn't come forward
381 to us for a variance for parking because of MUND. Planning looks at parking as
382 well. If the easement doesn't give enough parking, the applicant would have to
383 come back to the ZBA for a variance on parking. Ms. Davies said Mr. Eastman
384 said the MUND doesn't have extensive parking requirements. Mr. Eastman said
385 if the Planning Board determines they don't have enough parking, it could come
386 back. Mr. Baum said we didn't address the issue of use. Mr. Prior said the
387 application was for a use that was different than the existing use. This was going
388 to be a "micro hotel." Ms. Davies said the height variance allowed that use. This
389 is an aggrieved party that owns the parking lot. When it goes to the Planning
390 Board, they're going to say the ZBA said it was ok and the MUND doesn't allow
391 us to restrict based on parking. Mr. Prior said case 24-11 doesn't refer to the
392 MUND, so we should not be talking about the MUND. If they withdraw 24-11 and
393 go to the MUND, this goes away. Mr. Baum said if we deny this and the variance

394 stands, they have that variance for 2 years. They can make up their mind later
395 about whether to use it or not. Mr. Eastman said if they get Planning Board
396 approval to do what they want to do, those variances go away. Mr. Baum said
397 them filing a completely different application with the Planning Board that doesn't
398 require relief doesn't extinguish those variances. He's not sure it matters. He said
399 he prefers to tread lightly when dealing with private disputes like the scope of an
400 easement because we can't adjudicate that. If REL Commons says this
401 overburdens their easement, that's for a court to determine. It was tenuously
402 discussed but for him at least, the decision didn't rely on the parking.

403 Mr. Prior said this is also not timely. Case 24-11 was decided March 18.
404 Ms. Olson-Murphy said the appeal came in April so it was just in time. Ms. Page
405 said the appeal stated that the client [REL] did not receive notice of the
406 application. Ms. Olson-Murphy said they're not abutters. Mr. Prior asked if they
407 have standing to request a rehearing. Mr. Eastman said because it's associated
408 with a document that affects all four properties he would err on the side of
409 hearing them. Margarita's has parking issues because of overflow from the
410 Thirsty Moose. Mr. Baum said we don't know enough to feel comfortable to say
411 they don't have standing. We just heard two attorneys with very different opinions
412 on what the new statute means. He thinks it would have been up to the applicant
413 to say that the appellants don't have standing.

414 Mr. Prior said if we grant the rehearing and the applicant could say we
415 don't need the approval because we're going in under the MUND. If we deny this,
416 we leave ourselves open to a question of interpretation. We agreed that REL
417 Commons has standing to request a rehearing. He would be concerned about
418 not giving them an opportunity to speak.

419 Ms. Page said she preferred not to vote on the issue as she was not
420 present for either meeting. Ms. Davies said she wouldn't vote either.

421 Mr. Baum said the standard for the motion for rehearing is whether there
422 is an issue of fact that we overlooked, or was there an error in our interpretation
423 of the ordinance. Mr. Prior said the former applies because this is new
424 information that we did not have at that time. Mr. Baum said we knew the
425 easement existed. If it's a question of what are the rights under the easement.
426 That's for them to fight out and a court to decide or come to some agreement.
427 Mr. Prior said he still thinks the Board's decision on the non-conforming use was
428 somewhat based on the existence of the easement. Ms. Olson-Murphy said it still
429 exists. Ms. Page said the applicant gave a summary of the easement and said it
430 wasn't dependent on numbers and did provide for expansion based on the
431 development. Mr. Baum said we granted a special exception for the height and a
432 variance to go vertical within the setback. Once we granted the height, we didn't
433 have concerns about going up within those side setbacks. Concerns about
434 shading and privacy really aren't impacted by the parking.

435 Ms. Montagno said according to the minutes, "Attorney Lanzetta said
436 regarding parking, on the existing conditions plan, there's a note that references
437 deed 1712, which grants a broad, sweeping access easement for this property

438 and three others, and a broad right to park. It grants the right to park at that time
439 and for future development on the granted premises. In his opinion, the
440 easement is valid, legal, and broad, so he doesn't think the parking will be an
441 issue." Mr. Lemos said they're not saying that there isn't an easement, they're
442 saying that because we granted so many spaces, it will be a burden on them, but
443 is that for us to decide? Mr. Eastman said yes. Ms. Davies said no, we can't
444 decide that. Mr. Prior said that Ms. Montagno reading the minutes flipped him.

445 Ms. Davies said what's in the minutes is only a characterization of the
446 document, we never saw the document. Ms. Olson-Murphy said there's no new
447 information. It still doesn't say what the easement says. Ms. Page said they're
448 not taking issue with the characterization of the easement by the applicant. Ms.
449 Davies said she thinks it's up to the Planning Board to take up issues of access,
450 crosswalks, and parking, not us. Mr. Baum said the request talks about the
451 development of surrounding properties raising safety concerns, but that's all
452 Planning stuff. Mr. Lemos said if the existing dry cleaners had more business
453 coming in, they could have the same issue. Ms. Page said if the presentation
454 said that parking would overflow into the lot, all the potential problems were
455 known at the time. Mr. Baum said the only thing specific to height that they talk
456 about is access for fire trucks, and that's a matter for technical review and
457 Planning.

458 Mr. Prior made a motion to deny a request for rehearing on ZBA case 24-11. Ms.
459 Montagno seconded. Mr. Prior, Ms. Montagno, Mr. Lemos, Mr. Baum, and Ms. Olson-
460 Murphy voted aye. The motion passed 5-0.

461
462 **B. Election of Officers**

463 Ms. Olson-Murphy said Ms. Page is leaving Board. Ms. Olson-Murphy
464 asked Ms. Davies if she wanted to continue as Clerk. Mr. Baum said he could be
465 Clerk but he misses a lot of meetings due to work conflicts. Ms. Olson-Murphy
466 said she wants to move on from being Chair and give it to Mr. Prior or Ms.
467 Davies. Mr. Prior said he would be Chair, Ms. Davies agreed to be Vice-Chair,
468 and Ms. Olson-Murphy agreed to be Clerk. Mr. Baum asked what a Clerk does.
469 Ms. Davies said you're third in line to run the meeting. Ms. Page said she thinks
470 it's if there's an issue with the minutes it's up to the Clerk to resolve. Mr. Prior
471 read the definition of Clerk: "Clerk will preside in absence of the Chair and Vice-
472 Chair. Clerk is responsible for the meeting minutes in the absence of the
473 Planning Department Clerical Supervisor or Office Clerk," but that's never
474 happened because the minutes are taken from the tape.

475 Mr. Baum moved to elect the following slate of Officers: Bob Prior as Chair, Laura
476 Davies as Vice-Chair, and Esther Olson-Murphy as Clerk. Ms. Page seconded. Mr.
477 Baum, Ms. Davies, Mr. Prior, Ms. Olson-Murphy, and Ms. Page voted aye. The motion
478 passed 5-0.

479
480 **C. Approval of Minutes: April 15, 2025**

481 Corrections: Mr. Prior said the date is wrong. On line 173, he doubts that
482 he made a motion to continue his own application. We did agree to continue to
483 next month but he didn't make the motion. Mr. Baum said it was probably him.

484 Ms. Davies said line 80 should read "There is already an attached three
485 car garage." Mr. Prior said the point was that they already had a garage. Ms.
486 Davies said once the law is passed on accessory dwelling units, there could be a
487 bunch of them on this property. Mr. Eastman said they can do a conversion by
488 right. Ms. Davies said he wanted to put the garage five feet from his abutter's
489 property line, which makes no sense. If an abutter agrees that storage could be
490 on the property line, that's different from a family being there.

491 Ms. Davies said on line 160, it references the application of the
492 Pickpocket abutter group for an appeal from an administrative decision, but it
493 was a Planning decision. Mr. Prior said it was an administrative decision made by
494 the Planning Board. No correction was made to this statement.
495

496 Ms. Davies moved to approve the minutes of April 15, 2025 as amended. Mr. Prior
497 seconded. Ms. Davies, Mr. Prior, Mr. Baum, Ms. Page, and Ms. Olson-Murphy voted
498 aye. The motion passed 5-0.

499
500 Mr. Prior mentioned that he would not be present at the June meeting and
501 Ms. Davies would have to Chair the meeting.
502

503 **III. Adjournment**
504

505 Mr. Prior moved to adjourn. Ms. Page seconded. The motion passed 5-0 and the
506 meeting was adjourned at 9:15 PM.
507

508 Respectfully Submitted,
509 Joanna Bartell
510 Recording Secretary
511