

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Prior and Ms. Montagno rejoined the Board at this time.

## II. Other Business

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B. Election of Officers**

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

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

## **C. Approval of Minutes: April 15, 2025**

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

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

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

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

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

### III. **Adjournment**

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

Respectfully Submitted,  
Joanna Bartell  
Recording Secretary