EXETER ZONING BOARD OF ADJUSTMENT
December 9, 2014 MEETING MINUTES

PRESENT:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar, Laura Davies and Kevin Baum
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chair Prior introduced the Board members and explained the protocol for the meeting.

AGENDA:

1. Case #1487: Tuck Realty Corp. –Variance Request – Highland Street
2. Case# 1488: James Murphy – Special Exception – Tax Map parcel 52-52
3. Case# 1489: Tuck Realty Corp. - Variance Request - 80 Epping Road

NEW BUSINESS:

1. Case #1487: Tuck Realty Corp.

The application of Tuck Realty Corp. for variances from Article 4, Section 4.3 Schedule II for relief from lot area, lot width, lot depth, front, side and rear setbacks to permit six (6) single family residential lots in the R-2 zoning district. The subject properties are located on Highland Street and Portsmouth Avenue, and are within the R-2, Single Family Residential and C-2, Highway Commercial zoning districts. Tax Map 65, Lots 138, 139 & 142. Case # 1487

Mike Garrepy from Tuck Realty Corp. showed a map of the proposed area. He gave some history of the application. He said this was his third time in from the ZBA. Last time he was there, he said the neighbors were not in favor of his proposal. The neighbors thought the area would become too dense. He went back to the drawing board and came back with this proposal. He is looking for a relief in lot size. He said the average lot size in the area is 6600 square feet to 7400 square feet. He is proposing a right of way and a roadway. The proposed lots are comparable to the lots in the area. He said there is an existing duplex dwelling on the front lot - lot 142- and the rear lot has many small storage like buildings. He met with Mr. Eastman before coming in front of the ZBA tonight. He said he is here tonight to ask for a configuration of units. There are three letters in the file showing objections by the abutters. The first is the Wyman property at 143 Highland which is a .17 acre lot. There are three units in this structure. The second letter is a .23 acre lot with two 4-bedroom homes. The third letter is from the Jones property and there is a single family home on the lot with 7800 square feet. These existing lots are comparable to the lots being proposed. This proposal will blend in with what is there. He went on to say there are proposing a roadway off Highland with single family housing that will have their own driveways and garages. There is ample room for snow storage. He said drainage was a concern with some neighbors but this will go through many meetings with the Planning Board to get that addressed. Chair Prior asked Mr. Garrepy to cover specific relief being sought. He said the parcel could support a conversion plus a new building for six residential units without a variance. Mr. Garrepy said the existing front lot has the duplex and by town ordinance the conversion could

happen to accommodate four units. Chair Prior said four units without an expansion of the building, however. Mr. Garrepy said it does actually allow for an expansion of the building or for the use of an additional building. He also said the back parcel can also easily support his proposal. He said they meet all criteria for the special exception process, so they can achieve the six unit density. He also commented that they would like to preserve as many trees in the back of the property as possible.

John Rattigan, representing Tuck Realty Corp., spoke next. He talked about the variance criteria. He said the arguments this time in front of the ZBA do not change. There will be no effect on health, safety and welfare if the proposal passes, and the sizing is consistent with the current character of the neighborhood. The housing pattern and appearance of the neighborhood will not be altered. The request by the applicant is a reasonable request. There is no indication that the proposal will diminish the value of the surrounding properties.

Laura Davies said they were asking earlier what specific relief from the setbacks the applicant was anticipating needing. Mr. Garrepy listed the setbacks that are listed in the R2 zone. He would be asking for a 15 foot setback in the front, a side setback of 10 feet, and a rear setback of 15 feet. They would also be asking for a 30 foot private ROW with an 18 foot wide trail way. Ms. Davies asked the applicant if they are proposing onsite parking. Mr. Garrepy said yes, there will be ample parking to meet the requirement.

Chair Prior opened the discussion to the public for comments.

Larissa Kiers, 15 Highland Street, voiced her objection. She had some concerns with the comments the applicant was making. She said last time they proposed this she thought it was three units in the front, and now he is saying four. She doesn't see the need to expand. She said the applicant has not met all the criteria. Traffic will substantially increase with the six units. Highland Street is a narrow street. She said there are a lot of factors to think about, i.e. the bus route, small children in the neighborhood, doubling the traffic. She doesn't think the character of the neighborhood needs to be changed. She also was concerned and thinks the new development may alter the values of the existing houses. John Hauschildt asked if she would be in favor of a four family apartment building versus the six single family homes. Ms. Kiers said she would. She thinks six families is too many. She thinks the four family apartment building is more consistent with the neighborhood.

Gerry Hamel spoke, saying this project would be a waiver for everything. He thinks you could fit not quite four houses on the whole lot. It has roughly 15,000 square feet on an R2 area. He doesn't agree with the conversion as far as doing a major expansion. He said they are looking at a lot of things here. He thinks there are a lot of other things that could be done with the property. The density for six units is too much. He said this was a non-conforming in the beginning and it was done before zoning regulations were done and that's why the properties are smaller.

Melanie Drohan, 6 Highland Street, said the neighbors feel the density is too great. She thinks 3-4 units would be the max. She is concerned with parking. She read a letter from other abutters who oppose the project because of the density becoming too great.

Pete Coletti, 21 Highland Street, also objects to the proposal because of it adding too much density. He said six houses is too much and they are asking for too many variances.

Mr. Garrepy reminded that there will be ample parking with driveways and garages. He said they are asking for the same as what the neighbors have in terms of setbacks. The proposal is consistent with the neighborhood. He is hoping each home will be between 1700 and 2200 square feet. He said they could look at modifying the variances if that is what the Board is struggling with here. Mr. Hauschildt asked if six houses could go on the land by right. Mr. Garrepy said yes, by right through special exception. Mr. Hauschildt said there is no frontage on the rear lot, which means no access. Mr. Garrepy said there is a small amount of frontage on Portsmouth Avenue. He talked about adjusting the lot lines so there is frontage on Highland. He added that he is committed to working with the neighbors on this.

Chair Prior closed the public session to move into deliberations. He said he wanted to begin by addressing the issue of what they can do by right, as far as residential conversion. He read the language about Residential Conversion. He does not believe they have the ability to tear down the existing building and put up a much larger one under the guidelines. Ms. Davies said under Conversions on page 4-7, it says they would need approval. She said there is some provision for expansion, but it is not unlimited.

Mr. Hauschildt said he really likes the proposal, but can't see himself voting for it because he does not think it meets substantial justice. He said every abutter talked about negative impact on the neighborhood. He thinks adding six units would do more harm to the abutters than it would benefit the property owner. The Board agreed. They said there is just too much change. They said if there were only four units, it would be easier to give some kind of relief.

MOTION: ***Mr. Hauschildt moved to deny the application because it fails to meet criteria #3 Substantial Justice because it does more harm to the public, specifically the neighborhood and abutters, than it does benefit the applicant.***
Motion seconded by Mr. Thielbar.
Discussion: *Mr. Baum said it fails to meet #1 and #2 as well based on overcrowding. Ms. Davies agreed, and said she likes the idea of similar density to the existing neighborhood. She said adding a street when the existing street is narrow and has some traffic issues already will overcrowd. She said they need to do a little better with new development to mitigate some of these factors. Mr. Hauschildt agrees, and agreed to add #1 and #2 to his Motion.* ***A Motion was made by Mr. Baum and seconded by Mr. Hauschildt to amend Mr. Hauschildt's motion to include that the Board deny the application for failing to meet the purposes of the ordinance, therefore that variances contrary to the public entrance does not meet the spirit of the ordinance.***
VOTE: ***5-0, the motion passed unanimously.***

2. Case #1488: James Murphy

The application of James Murphy for a special exception per Article 5, Section 5.2 and Article 4, Section 4.2, Schedule I-Permitted Uses to allow the proposed construction of a 'multi-use' structure on the property located at 108 Portsmouth Avenue; and a special exception per Article 4, Section 4.3, Schedule III, Note #12 to allow a fifty-foot (50') structure height for the proposed building. The subject property is located in the C-2 Highway Commercial zoning district. Tax Map Parcel # 52-52. Case #1488.

John Rattigan, who represents the applicant, introduced the applicants, who currently own the lumber yard on Portsmouth Avenue. Mr. Rattigan said the applicants are requesting two special exceptions, which he said the Board is familiar with. He turned the floor over to John King to do an overview of the proposal of the property.

John Ring, from Jones Engineers, spoke about the proposal. He said this property is almost an acre in size. It is the former Getty gas station. The applicants are proposing a building which is 5400 square feet. It is three stories high. It is in a C2 Highway Commercial zoning district. There are two curb cutouts on Portsmouth Ave. that are being proposed. The applicants do meet the lot building setbacks. The first floor will be retail, the second will be business, and the third residential. They are proposing two 2-bedroom units and three 1-bedroom units. There are no wetlands on site.

Mike Keane, from Michael Keane Architects, talked about the building and how the building will be used. There will be exterior balconies. The building will have a residential look with eclectic architecture. It will have a modern, New England look. There will be a separate entrance for the residential. The retail businesses will be in the front of the building.

Mr. Rattigan talked about the criteria for the Special Exception. He said Criteria A is met. He submits that the description that was provided is consistent with the use allowed in the ordinance by special exception. The applicants meet all the setbacks and parking requirements. They believe it will be operated consistent with the public safety, health, welfare, and convenience. He said they submit that the building is New England style, which is consistent with the area. He went on to talk about Criteria B-H, saying they have all been met. He said Criteria I & J are non-applicable. Chair Prior asked if there are any environmental issues. Mr. Rattigan said it is a site subject to an environmental monitoring requirement by the DES, so they have to observe that. Mr. Hauschildt said there is a deed restriction put on by Getty that there will be no residential use for 50 years. Mr. Rattigan said yes, that is a matter of title, which is not in the Board's jurisdiction. Matters of title are private property interests. He said they have every reason to believe that they can deal with this. He said DES has no residential restrictions on this property. They have a monitoring requirement and there are certain restrictions for how long they can go about development. He said if they can't get it release, there will be no residential.

Mr. Hauschildt said the architect mentioned adequate ingress and egress. He said if parking, ingress, and egress are set in stone on the project or if it is flexible. Mr. Rattigan talked about several meetings with the Planning Board about this.

Mr. Baum asked how the height of the building fits in with the surrounding properties. Mr. Keane said obviously this building is taller that it's surrounding buildings, but it is in keeping close to the height of the Fairfield Inn, Hampton Inn, and Provident Bank. He said it is taller than the houses in the back, but they tried to put the building as far forward as possible.

Kathleen MacDougall, who is an abutter and lives behind the proposed property, said this building is huge. She said the three story building will be looking into her backyard. She is also concerned with the parking in the back. Mr. Hauschildt asked if it was the building or parking that bothered her most. She replied it was the building.

Darren Winham, Exeter Economic Development Director, said this is exactly the project Exeter wants to see from an economic development standpoint. He urged the Board to approve this application.

Chair Prior said they should address Criteria D, adequate landscaping and screening provided. Mr. Keane said they can address the use of landscaping barriers. He said it would take a substantial amount of landscaping and time. He said they have taken into consideration there are abutters in the back. He said they have a lot of windows right now, but they could eliminate some of them. Sean Murphy, one of the applicants, said they do have a good relationship with the MacDougall's through the lumber yard and are happy to work with them as much as they can.

Chair Prior closed the public portion of the meeting and moved into deliberations.

Mr. Hauschildt said this is a fantastic proposal. They only heard one concern from abutters. Chair Prior said he would like to go through the special exception criteria and see if they are all met. He read all the criteria.

MOTION: ***A Motion was made by Mr. Hauschildt to approve the application as presented. Mr. Baum seconded.***

Discussion: *Mr. Hauschildt just wanted to make sure when the Planning Board does review this, that the applicant work on parking arrangements and ingress and egress.*

VOTE: ***The motion passed unanimously.***

3. Case #1489: Tuck Realty Corp.

The application of Tuck Realty Corp. for a variance from Article 4, Section 4.3, Schedule II to exceed the dimensional height regulations for the proposed construction of two (2) four-story buildings with a height of fifty feet (50') on the R-4 (Multi-Family) zoned portion of the property located at 80 Epping Road. Tax Map Parcel #55-3 and a portion of Tax Map Parcel #62-111. Case #1489.

Chair Prior read the application. He said at the October 21st meeting there was a misinterpretation. He talked about 18 of the 28 units abutting Epping Road which were granted. That would have resulted in a total of 81 residential units in the rear and 10 in the front and what he said he sees now is all 91 residential units combined in transfer to the rear, yet there is still a 3-story building in the front with 3 stories of commercial use. The concern that has been raised is that this is an expansion rather than a transfer and it is his impression that the intention of the Board and motion approved by the Board was to allow flexibility between the two parcels. He said it is not two parcels, it is one parcel of land that has a zoning line run through it. He said he would like to be able to discuss the change from three buildings to two without having the issue clouded by the expansion issue. Mr. Garrepy said he sent a letter seeking clarification on this matter.

Mr. Garrepy went on to say he had presented this plan in October. It showed a 9000 square foot footprint for a multi-use building with residential on the third floor and houses on the rear of the property. He had asked to be able to transfer density by variance and it was said that it didn't seem like he needed a variance but the Board granted one anyways just to make it clear. He went on to say what he was presented now is they have transferred all the residential density to the rear of the property which is the R4 section of the parcel. He said there is still a building in the front but it is going to be limited in the front based on the parcel. He said the Planning Board has made some suggestions, for example turning the building, so there are a lot of anticipated changes. He said parking will play a huge role. Chair Prior said Mr. Garrepy did not address his issue. He said his issue was that when the residential was pushed to the rear, the size of the building was supposed to decrease. He said Mr. Garrepy has added to the number of residential in the rear, but haven't taken away anything in the front. Mr. Garrepy said they have just taken residential in the front and moved it to the rear. Chair Prior said yes, but not the square footage. Mr. Garrepy said he had left the last meeting with a feeling that he was encouraged to look at more opportunities for commercial in the front of the parcel, but said that may not have been what was intended. Chair Prior said he has no problem what is being presented, just that it is different from what was voted on last time. Attorney Rattigan said at the last meeting there was discussion about transferring residential to provide additional opportunities for offices on the third floor of the building. So, he added, that is what they were seeking to do.

Mr. Hauschildt said taking residential out of the building no longer makes it multi-use, which is what was presented last time. He said now they have to deal with the parking issue. Mr. Garrepy said yes, he stated before that parking would be the limiting factor in the front. He said they may not end up with a three story building after he meets with the Planning Board. He added this plan is still in flux. Mr. Hauschildt said Mr. Garrepy had proposed ten units in the front, a multi-use building, and benefits from shared parking. He said he doesn't want to get to a point that Tuck Realty is benefiting from a multi-use, but not providing multi-use.

Mr. Thielbar said he had expressed at the last meeting that he didn't agree. He said Mr. Garrepy was talking in terms that everybody was in the front. He said now 18 of the 28 units have been moved to the back and space required for the residential portion is greater than the land area per unit. He said Mr. Garrepy needs to be consistent with the land requirements.

Chair Prior said the Motion was to approve the variance for a transfer of the permitted unit density from the portion of the subject properties on the C2 to the rear portion of the property on R4. He said it does not specify a quantity, so there is a difference between the application and the language in the application and the language in the Motion. Mr. Garrepy said his application was looking for flexibility and the Motion was made after a long discussion, so through that discussion came the vote. Mr. Rattigan said the notice given is consistent with the Motion.

Mr. Garrepy went on to talk about the back of the parcel. He said this is the purpose of the request this evening; two rear buildings. He said they are going to work with neighbors to reconfigure the back to relocate buildings. So, there will be two buildings that are compliant with zoning requirements, but he is seeking a variance for height and the number of stories.

Mr. Hauschildt said he still wants to go back to parking. He said there has been a change in the use of shared parking. Mr. Garrepy said parking in the front will be compliant with whatever the requirements are for whatever buildings are proposed. He said they are currently compliant with the regulations. He said the rear is based on 1 & 2 bedroom units, and they are meeting requirements for parking. Chair Prior just wanted to make sure that "mixed-use" is not a reason for reduced parking anymore because that is not the case. Mr. Garrepy understood.

Chair Prior asked the Board if there were any more questions from the Board for the applicant. With no more comments from the Board, and none from the public, Chair Prior closed the public portion of the discussion and moved into deliberations.

Mr. Hauschildt said he would be in favor of the applicant's proposal. Ms. Davies agreed. Mr. Thielbar said he thinks they need to specify that the dwellings in the front are no longer mixed-use because the parking requirements are different. Chair Prior said what if they decide they want to bring some of the residential units back in front and they have parking to support it. Mr. Thielbar said but if they don't do that the parking needs to be consistent with it not being mixed-use. Chair Prior said if they decided that putting ten apartments in the front is the best use of the property, he doesn't think they should restrict that. He thinks Tuck Realty has the right to do that.

MOTION: ***A Motion was made by Mr. Hauschildt to approve the application to allow a variance for height restrictions for two buildings in the R4 section of the lot to extend no more than 50 feet, and no more than four stories.***

Ms. Davies seconded.

Discussion: *Mr. Thielbar said this has moved the buildings away from the neighbors which is good. Chair Prior said yes, and it has reduced the impervious surface by quite a bit. Mr. Thielbar said yes, this is great, but if all they do is grant two buildings at 50 feet, they could end up being back where the now*

missing building is without coming back to see the Board. Mr. Baum said his expectation of the Board is that these two buildings stay in the same location. Chair Prior asked what the approximate distance would be from the building #2 to the nearest abutting property. Mr. Garrepy said it was an approximate distance of 275 feet. Chair Prior said he would accept an amendment to the Motion.

MOTION: ***Mr. Hauschildt moved to amend the Motion to restrict the number of buildings in the R4 section to two, neither of which shall be less than 275 feet from the Colcord Pond neighborhood boundary to the property and neither of which shall encroach on existing wetlands.***
Mr. Baum seconded.
VOTE: ***The motion on the amendment passed unanimously.***

Acknowledging that the amendment had passed, Chair Prior called for discussion on the original motion on the floor.

MOTION: ***Mr. Hauschildt moved to amend his amendment to amend the language citing "275 feet from the Colcord Pond to" to "250 feet from the Colcord Pond.***
Ms. Davies seconded.
VOTE: ***The motion on the amendment passed unanimously.***

Acknowledging that the amendment had passed, Chair Prior called for a vote on the original motion on the floor, as amended.

VOTE: ***The Motion passed unanimously.***

Other Business: At this time there was discussion amongst the Board about the Rules of Procedure. They discussed "day-of" submissions and Mr. Baum said he would be hesitant to deny anyone to submit the day of a deadline. At the last meeting, the Board was presented with a 24 page opposition to an application, which is what prompted the discussion. There was more discussion about the Board saying they might have to reconsider applications if they are submitted the day of, because they haven't had time to absorb it. Chair Prior said he could count on the Planning Dept. to tell people they should submit applications a week in advance for the application to be considered.

MOTION: ***Mr. Hauschildt moved to adjourn.***
Ms. Davies seconded.
VOTE: ***The motion passed unanimously.***

The meeting was adjourned at 8:51 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, January 20, 2015 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

Nicole Piper
Recording Secretary

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