Town of Exeter

Zoning Board of Adjustment

September 17, 2019, 7 PM

Town Offices Nowak Room

Final Minutes

1. **Preliminaries**

**Members Present**: Chair Joanne Petito, Clerk Rick Thielbar, Laura Davies, Christopher Merrill - Alternate, Esther Olson-Murphy - Alternate

**Members Absent:** Vice-Chair Robert Prior, Kevin Baum, Martha Pennell - Alternate, Hank Ouimet - Alternate

**Others Present:** Barb McEvoy

**Call to Order**: Chair Petito called the meeting to order at 7 PM.

1. **New Business**
   1. The application of Keri J. Marshall, Esq. for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations - Residential to permit less than the required minimum yard setback between existing buildings and lot lines on the property located at 83 Main Street. The subject property is located in the R-2 Single Family Residential zoning district, Tax Map Parcel #63-250. Case #19-12.

Ed Woiccak spoke on behalf of Keri Marshall, whose office represents Sharon Goupil of 83 Main Street. Mr. Woiccak said that this property has a relationship with an abutting property on Jacks Court owned by Ryan Clark, which has easements across Ms. Goupil’s property and a property owned by a Mr. Hanken for access and parking. The owners would like to adjust the boundary line to eliminate the easements, but they need a variance for the setback on one building. The corners of Cottage Structure #4 at 83 Main Street are 25.5 feet from the setback on the west and 27.9 feet on the east. The proposed adjustment of the boundary line would reduce the setback to 18.8 feet and 18.9 feet. Dwelling structure 64 on Jacks Court would be made less nonconforming; it currently has 10 feet to the boundary line, but would have 15 feet under this proposal. The change will give Ms. Goupil more parking and Mr. Clark a larger backyard.

Ms. Davies asked if this must go to the Planning Board for a lot line adjustment, and Ms. McEvoy said yes. Ms. Davies asked if this would increase the impervious surface on the property, and Mr. Woiccak said there’s a shed that will be removed and paved for more parking. Ms. Davies asked if there would be any new structures proposed in the future, and Mr. Woiccak said no, it’s purely a lot line adjustment.

Ms. Petito asked if there were any public comment.

Eileen Flockhart of 7 Jacks Court, an abutter, said she is in support of the proposed changes.

Ms. Petito closed the public session and began deliberations.

Mr. Thielbar said this is a straightforward request to clean up a messy property line. This proposal shares more evenly the small space between the two structures. Ms. Petito and Ms. Davies agreed that this simplifies the situation. Mr. Thielbar pointed out that they haven’t requested parking in the submittal, they should clarify that the approval applies only to the lot line change. He said that this would solve the hardship of the unusual lot line between the properties. Mr. Merrill said that three property owners would get relief.

Ms. Davies went through the variance criteria. 1) The variance will not be contrary to the public interest: yes, per the case as stated, it will be removing an access easement. 2) Spirit of the ordinance is observed: yes, the distance between buildings will remain the same. 3) Substantial justice is done: yes, it will allow for more orderly use of the properties. 4) Values of surrounding properties will not be diminished: yes, this will actually enhance both properties, as well as the property on lot 251. 5) A literal enforcement of the provisions of the ordinance would result in unnecessary hardship: yes, the existing arrangement is a hardship, and required an easement to use the property. This proposal will actually eliminate a hardship.

MOTION: Ms. Davies moved to accept the application request for a variance due to not meeting the existing setbacks for the lot line adjustment for 83 Main Street as presented. Ms. Petito seconded. All were in favor.

1. **Other Business**
   1. Katherine Churchill, DMD - Case #1466
      1. 193 High Street, Tax Map Parcel #70-114 - Request for one-year extension of approval

Ms. Petito said this variance was granted in 2013 regarding 193 High Street, and this is the fourth extension request. The current extension expires October 15th, 2019. According to the letter, the applicant was planning on purchasing this property when they originally sought the relief but the sale didn’t go through, and only in the last few months did they manage to buy the property. They’re still planning to go ahead with the addition. Per the letter, this is proposed construction of a second floor over the main floor of an office building; there’s no new footprint.

Ms. Davies said this project has gone on for a long time, but they’re finally making progress, so she doesn’t have an issue with extending the approval. Ms. Olson-Murphy pointed out that the letter says it may be another year or two due to financial constraints, so there may be yet another extension request. Ms. Davies said she still doesn’t have an issue. Mr. Thielbar said the new abutters haven’t had a chance to speak on the issue, but Ms. Davies said that was their own due diligence, since there’s no notification of abutters for extensions.

MOTION: Ms. Davies moved to grant the one year extension from the existing expiration date for case #14-66 at 193 High Street as requested. Mr. Thielbar seconded. All were in favor.

Mr. Thielbar said the discussion in the previous meeting was that they shouldn’t give an extension until after the time of the approval has passed, but Ms. Davies also said they have to get approval before the extension expires. Ms. Petito said that the issue with that request in the previous meeting was that it was coming in too far in advance, over six months before the expiration.

Mr. Thielbar said they’ve also approved extension requests where the time had expired, and Ms. Davies said they had done that but it’s not best practice. Ms. Petito said it would affect abutters doing their due diligence, since the abutter would see an expired variance and think the project was not going forward. Ms. Davies said that her webinar recommended that once the approval is expired, the applicant has to start over. Mr. Thielbar wondered if they shouldn’t hear an extension request for an approval that had expired, and Ms. Davies said she didn’t know, but she could reach out to those that ran the webinar to ask them. Ms. Petito said she wouldn’t want to deny them a hearing if there’s a chance that they can take action against the Board.

Mr. Thielbar asked what the time span after expiration would be before they would no longer consider the extension, and Ms. Davies said that in real estate, obtaining zoning relief adds to the highest and best use of the property and it becomes a property right. Once it expires, it’s lost. If they applied this inconsistently, they’d be playing with people’s property rights in a way that isn’t a level playing field. If the applicant comes back after the expiration, the Board could be predisposed to re-grant, but it shouldn’t be an automatic extension. Mr. Merrill asked if they should re-notice abutters when the approval has expired. Ms. Petito asked how a property buyer would know if a variance were active on an abutting property, and Ms. McEvoy said the buyer should approach the Planning Department.

* 1. Approval of Minutes: August 20, 2019

Ms. Petito said that it was noted in the minutes that the applicant in case #17-11 had not yet gone to the Planning Board, but after the meeting Ms. McEvoy found that the applicant had contacted the Town Planner, and it was determined that they didn’t need to go to the Planning Board, and she would like that information added to the minutes.

Mr. Thielbar said he thought they’d decided there was no need to include the review of the minutes in the minutes, but Ms. Davies countered that the minutes are supposed to include anything they discuss in the meeting.

MOTION: Ms. Davies moved to accept the minutes as presented, with the addition of the information regarding case #17-11 as discussed. Mr. Thielbar seconded. All were in favor.

1. **Adjournment**

**MOTION:** Ms. Olson-Murphy moved to adjourn. Mr. Merrill seconded. All were in favor and the meeting was adjourned at 7:45 PM.

Respectfully Submitted,

Joanna Bartell

Recording Secretary