

Town of Exeter
Zoning Board of Adjustment
June 18, 2024, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Robert Prior, Vice-Chair Esther Olson-Murphy, Clerk Theresa Page, Laura Davies, Laura Montagno - Alternate and Mark Lemos - Alternate
Town Code Enforcement Officer Doug Eastman was also present.

Members Absent: Kevin Baum, Martha Pennell - Alternate

Call to Order: Chair Robert Prior called the meeting to order at 7 PM.

I. **New Business**

- A. The application of I.S. Realty Trust for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations - Residential to permit the subdivision of a 5.58-acre parcel into three (3) residential lots with two of the lots having less than the required minimum lot frontage. The subject property is located at 100 Linden Street (and Patricia Avenue) in the R-2, Single Family Residential zoning district. Tax Map Parcel #104-71. ZBA Case #24-5.

Henry Boyd of Millennium Engineering spoke on behalf of the applicant. He said years ago we went before the Planning Board to subdivide this parcel, and it was conditionally approved. That proposal would have subdivided out lot 3, which was called lot 5 at that time. In this plan, Patricia Ave was extended by 400 feet to produce 3 additional lots. The applicant decided not to proceed, partly because of the cost of the construction of the road and also because the applicant's father died of cancer. Their desire now is just to divide the parcel into 2 additional lots. There is an existing dwelling which is accessed from Linden Street. Currently, this property has a well and septic system, which would go away. Water and sewer have been run out here, which is nice because there are adjacent wetlands. The remainder of the parcel would be divided into 2 lots, lots 1 and 2, each of which would have houses built on them. These lots don't have adequate frontage without us producing a very expensive roadway. We only have 50 feet of frontage at the end of Patricia Ave. We're hoping the ZBA will grant a variance and the lots can share a driveway. Under this proposal, there's no need to fill any wetlands. We would be working within the buffer so we'd have to go to the Planning Board and the Conservation Commission. We think the Conservation Commission would be thrilled with this proposal as opposed to the impact of the previous proposal.

Ms. Davies asked if all three parcels would be hooked up to the sewer. Mr. Boyd said yes. When the condo was put into the next lot, they ran the sewer

44 through this parcel out to it. We would be placing a new sewer line to tie into that
45 existing line.

46 Mr. Prior asked if this proposal also went to the ZBA when it went to the
47 Planning Board several years ago. Mr. Boyd said he doesn't think that plan
48 needed relief. Mr. Eastman said all the lots had the minimum frontage under that
49 plan. Mr. Boyd showed Mr. Prior the previous plan, and Mr. Prior observed that
50 they were going to put in a cul-de-sac from Patricia Ave.

51 Ms. Davies asked if the existing dwelling would remain in the family and if
52 the two additional homes will also stay in the family. Mr. Boyd said they would
53 probably sell the existing home, as they have no need for it.

54 Ms. Page asked what the frontage will be. Mr. Boyd said it's 25 feet for
55 each lot. Mr. Prior said the only frontage is where Patricia Avenue abuts the lot.

56 Mr. Prior asked if the lot line between lot 3 and lots 1 and 2 is already
57 recorded in the deeds. Mr. Boyd said no, we never finalized that so that would be
58 a new lot line as well. That subdivision needs no relief as it has adequate
59 frontage.

60 Mr. Prior opened for public comment.

61 Alan Mayo of 1 Patricia Avenue, which is next to the property in question,
62 said when this came up a couple years ago, there was a question of whether this
63 portion of Patricia Ave was going to be renamed as a circle or if there would be a
64 renumbering of all the homes along Patricia Ave. Mr. Prior said Patricia Avenue
65 won't be extended; there will be a driveway at the end of Patricia. It was intended
66 to be a cul-de-sac but that's no longer the case. Mr. Eastman said when the 5-lot
67 subdivision was going to go in at the end of Patricia, that road would have had a
68 different name. The E911 Committee is responsible for the addressing. We know
69 Patricia Ave is not numbered correctly. We will have to work with the applicant on
70 how to address that to make sure it complies with E911. The numbering should
71 start at Court Street when you turn in, but it starts at the end of the road.

72 Mr. Prior closed the public session and entered into Board deliberations.

73 Mr. Prior said this is straightforward. We have no objections from
74 abutters. He doesn't see the need to go through each of the variance criteria. Ms.
75 Davies said this is a low-impact solution. Given that none of the abutters object,
76 she has no objection.

77 Ms. Page asked if being on municipal water and sewer should be a
78 condition of the approval. Mr. Eastman said they legally would have to because
79 of the size of the lots. They would not be able to do a septic field on the small
80 lots. Mr. Prior said hooking up on lot 3 is an option, should that be a condition?
81 Will the existing leach field end up as part of the lot line adjustment? Mr.
82 Eastman said no, it can't.

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84 Ms. Davies made a motion to approve the application as presented for the 100 Linden
85 Street and Patricia Avenue subdivision. Ms. Olson-Murphy seconded. Ms. Davies, Ms.
86 Olson-Murphy, Ms. Montagno, Ms. Page, and Mr. Prior voted aye. Mr. Lemos did not
87 vote. The motion passed 5-0.

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B. The application of Dennis Biery for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations - Residential to permit the subdivision of a 4.47-acre parcel into two (2) single-family residential lots with both lots having less than the required minimum lot frontage. The subject property is located at 165A Kingston Road, in the R-1, Low Density Residential zoning district. Tax Map Parcel #115-12. ZBA Case #24-6.

Bruce Scammon of Emmanuel Engineering and James Barrett & Associates spoke representing the applicant Dennis Biery. He said he has a letter from the applicant stating that he can speak for him. Mr. Prior said the letter said "Planning Board" and this is the Zoning Board, but we'll be ok.

Mr. Prior said this parcel had an application we saw several months ago, but he believes it was a different application. Mr. Scammon said he was not involved in that.

Mr. Scammon said currently the applicant runs his excavating business from here. It has a long right of way that comes in. It's a rear lot and is over 4 acres. It's non-conforming in the residential zone. It will be an upgrade to put in homes with similar uses as the properties around them. The existing driveways and right-of-ways will be accessed to get the frontage. The private right of way creates 2 lots. The lot to the left of the plan could have adequate frontage, but we're trying to avoid putting the driveway near wetlands and to use the existing driveway instead. The lot to the right only has 25 feet of frontage. Mr. Prior said the tax map shows that the parcel does not have any road frontage. Mr. Scammon said it does not have public right-of-way frontage, it has a private right-of-way frontage. Mr. Prior asked Mr. Eastman how that impacts the case. Mr. Eastman said the frontage for the existing lot is 50 feet, the width of the easement. Mr. Prior said they're proposing splitting that between the 2 lots. Mr. Eastman said this is like what we just did [Case #24-5] and we've also done it on Highland Street, where they had 30 feet of frontage and it was the same situation. Mr. Prior asked if there would be a private road from Kingston Road all the way in. Mr. Scammon said it's more of a private driveway than a private road.

Ms. Davies asked if there's easement access to Route 111 rather than fee ownership. Mr. Scammon said that's correct. Ms. Davies said the easement has been for the benefit of these parcels, but now they would like to add another lot to that. Mr. Scammon said yes, and we would change the use. We did this 2 decades ago on 111A for Mr. Atwood; we used a private right-of-way for the frontage.

Mr. Prior asked if in the deed, there would be a shared right-of-way that would be maintained jointly by the two owners. Mr. Scammon said there's already an existing right-of-way for commercial use by Mr. Biery, and instead of that there would be residential use for two owners. Putting a full town road on that 50-foot right-of-way doesn't make sense environmentally or economically. That would be the hardship that we would encounter if we had to put a road out there. Mr. Prior said it could also remain a single-family parcel.

132 Ms. Davies asked if Mr. Eastman had reviewed the language of the
133 existing access easement to make sure it's legal, and Mr. Eastman said yes. It's
134 not fee ownership, so someone owns the property underneath. Mr. Scammon
135 said our abutter comes down the same driveway. It's her property.

136 Ms. Page asked if this is going to be on municipal water and sewer. Mr.
137 Scammon said no. We have done test pits to identify possible well areas. We
138 would have to get Planning Board approval.

139 Mr. Prior said there was a question about a wetland in the top right corner
140 of the map. Mr. Scammon said yes, there's a pond offsite also. The setbacks are
141 not near them. Gove Environmental did a wetlands delineation.

142 Mr. Prior said we're happy to have the residential use. It's better than
143 what was proposed several months ago and what's there now. Is there mitigation
144 coming from the previous industrial use? Ms. Montagno said she doesn't
145 remember mitigation from the previous application. Mr. Scammon said there are
146 some existing stockpiles of soils and crushed stone that would be leveled out
147 during the construction process.

148 Mr. Prior asked Mr. Eastman if Planning Board review needs to be a
149 condition of approval. Mr. Eastman said no, it will go automatically.

150 Mr. Scammon asked if the Board wanted him to read the reasons for the
151 variance from the application. Mr. Prior said no, the Board has already read
152 them.

153 Mr. Prior opened for public comment.

154 Caren Vencis of 163 Kingston Road said you have to go off 111 on her
155 driveway to get to this property. She asked the Board to explain the 50 feet of
156 frontage. Mr. Prior said that is an easement, so you could not build on that 50-
157 foot strip because that would isolate the parcel behind you. Ms. Davies said an
158 easement is a property right to travel over a property. You can't do anything to
159 block them from traveling over your property. Ms. Vencis asked if her address
160 number will change. Mr. Eastman said we would probably do a 165 A and B.
161 [The owner of 165 spoke up at this time.] Mr. Prior said the only number missing
162 is 167, but that would put it out of order and would require 165 to be renumbered.
163 He thinks it was reserved because there is a little triangular parcel on the road.
164 Mr. Eastman said it will be worked out if there must be any changes.

165 Mr. Prior closed the public session and entered Board deliberations.

166 Mr. Prior said this is a vastly improved application to the last use, which
167 we were not able to approve a few months ago.

168 Ms. Page said the application says 150 feet would be required by the
169 zoning, but under footnote 1 in schedule 2, because this is not on municipal
170 water and sewer, the minimum lot frontage is 200 feet, so the relief sought is 150
171 feet, not 100.

172 Ms. Davies said this application should make the abutters happier. Mr.
173 Prior said they were out last time but not this time, so that's a good sign. Ms.
174 Page said this use is more consistent with zoning and with the Master Plan's
175 description of that area.

176 Ms. Page made a motion to approve the application of Dennis Biery for a variance from
177 Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations - Residential to
178 permit the subdivision of a 4.47-acre parcel into two single-family residential lots with
179 both having less than the required minimum lot frontage, which would be 200 feet in this
180 instance. The subject property is located at 165A Kingston Road, in the R-1, Low
181 Density Residential zoning district. Tax Map Parcel #115-12. ZBA Case #24-6. Ms.
182 Davies seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Lemos, Ms. Page, and Mr. Prior
183 voted aye. Ms. Montagno did not vote. The motion passed 5-0.

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185 **II. Other Business**

- 186 A. RiverWoods Company of Exeter – ZBA Case #24-4 7 RiverWoods Drive, Tax
187 Map Parcel #97-23 Request for rehearing – Variance from Article 6, Section
188 6.1.2.D to permit parking within the required 100-foot landscape buffer, in the R-
189 1, Low Density Residential zoning district.

190 Mr. Prior and Ms. Montagno recused themselves from this case. Ms.
191 Olson-Murphy assumed the Chairship at this time.

192 Ms. Olson-Murphy said we have all received their explanation of why they
193 feel they should have a rehearing. Ms. Davies asked if there's a representative of
194 the applicant here. Mr. Eastman said no, and there's no testimony in this process
195 anyway. Ms. Olson-Murphy said we need to decide that there has been new
196 evidence provided or the decision was made in error. She said she didn't see any
197 new evidence, and the other Board members agreed. She asked if anyone feels
198 that an error was made. Ms. Davies said no. The second item in the request for
199 rehearing, under D, hardship, says the ZBA committed an error in determining
200 that there was no fair and substantial relationship between the purpose of the
201 ordinance and its application to the facts at hand; the Board failed to
202 acknowledge that failure to allow 11 spaces in the area would require a redesign
203 and would likely lead to putting parking spaces in the wetlands. Ms. Davies said
204 the Board was clear that RiverWoods has alternatives. They could build a smaller
205 building or locate their health facilities elsewhere on their very large site. They
206 just don't want those alternatives. In item 3, they say we made an error in
207 concluding that the proposed limited encroachment was unreasonable, and that
208 we conflated it with their question about the size of the proposed health center,
209 no portion of which encroaches into the buffer and which use and location is a
210 matter of right. Ms. Davies said that's incorrect, it's allowed by special exception.
211 They say we failed to take into account the "modest" amount of buffer they were
212 requesting, and they've parsed out the request for the 11 parking spaces from
213 their total request in this rehearing, but it wasn't parsed out in their request from
214 variance from the buffer, which was quite ambitious. The premise of the buffer is
215 to protect a low-density single-family neighborhood from large scale
216 development. This portion of the parcel is the most active of the site, and it was
217 provided with the least amount of buffer. She feels that the buffer should be
218 respected. She also disagrees that we committed an error in failing to understand
219 that the request was driven by the lack of alternatives on the site. Ms. Davies

220 said they don't need to build a health center, and were denied a variance for it in
221 the first place, but now have the merged lots. We've identified alternatives
222 including a smaller building or renovating and utilizing existing spaces. We insist
223 that alternative locations exist and they insist that they don't, so we just disagree.

224 Ms. Page said in reviewing the minutes, it's clear that the effect of
225 encroaching on the buffer was the primary consideration; not just the visuals of
226 the building, but also sound and light. The decision rested on the effect of having
227 those parking spaces inside of the buffer. That aside, the ordinance references
228 sufficient buffer and vegetation to shield the development. It's appropriate to
229 consider that. The Board did a healthy job of going through the criteria as to the
230 buffer itself.

231 Mr. Lemos said during the initial presentation, the Board was told that the
232 abutter, Ms. Hooten, was alright with the encroachment, but we then found out
233 that that was not the case. There was some hardship created on the surrounding
234 properties.

235 Ms. Davies said the whole thing is to determine whether the entire
236 proposal alters the essential character of the neighborhood. The reason that they
237 need relief is because they want to build something that is too big to fit into the
238 area they want to build it in. You can't separate those issues, they are tied
239 together.

240 Mr. Lemos said there are requirements on parking because of the size
241 and the number of residents in a building. If you can't fit the parking, then you
242 need to limit the size of the building.

243 Ms. Page said the size of the building was the driver into the buffer, but
244 the buffer was the focus of the conversation, in her review. There was a lot of
245 time given in the presentation to the amenities of the building and the size of the
246 rooms as the reason they need this space. There was a lot of size in the
247 discussion, but she thinks the decision was appropriate.

248 Mr. Lemos said they had a variance for 11 additional feet up, so talking
249 about size was going to happen.

250 Ms. Page moved to deny the request for rehearing by RiverWoods, ZBA Case #24-4 at 7
251 RiverWoods Drive, Tax Map Parcel #97-23 with the original case being a variance from
252 Article 6, Section 6.1.2.D to permit parking within the required 100-foot landscape buffer,
253 in the R-1, Low Density Residential zoning district. Mr. Lemos seconded. Ms. Davies
254 seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Lemos, and Ms. Page voted aye. Mr.
255 Prior and Ms. Montagno were recused and did not vote. The motion passed 4-0.

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257 B. Election of Officers

258 Mr. Prior resumed the Chairship at this time and introduced the election of
259 officers. He said anyone can vote but only full members can hold office.

260 Mr. Prior nominated Esther Olson-Murphy as the Chair of the ZBA; Theresa Page as the
261 Vice-Chair; and Laura Davies as the Clerk, for the following year. Ms. Davies, Ms. Page,

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Mr. Prior, Ms. Montagno, Ms. Olson-Murphy, and Mr. Lemos voted aye. The nominations were approved 6-0.

Ms. Olson-Murphy assumed the Chairship at this time.

C. Approval of Minutes: April 16, 2024

Ms. Davies moved to approve the minutes of the April 16, 2024 ZBA meeting as presented. Ms. Page seconded. Ms. Davies, Ms. Page, Ms. Olson-Murphy, and Mr. Lemos voted aye. Mr. Prior and Ms. Montagno did not vote. The minutes were approved 4-0.

III. **Adjournment**

Ms. Davies moved to adjourn. Mr. Prior seconded. All were in favor and the meeting was adjourned at 8 PM.

Respectfully Submitted,
Joanna Bartell
Recording Secretary