

Town of Exeter  
Zoning Board of Adjustment  
August 20, 2024, 7 PM  
Town Offices Nowak Room  
Final Minutes

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7 **I. Preliminaries**

8 **Members Present:** Chair Esther Olson-Murphy, Clerk Laura Davies, Kevin Baum, and  
9 Mark Lemos - Alternate

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11 Town Code Enforcement Officer Doug Eastman and Town Attorney Joe Driscoll were  
12 also present.

13  
14 **Members Absent:** Vice-Chair Theresa Page, Robert Prior, Martha Pennell - Alternate,  
15 Laura Montagno - Alternate

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17 **Call to Order:** Chair Esther Olson-Murphy called the meeting to order at 7 PM. She  
18 asked if the applicant is okay with going forward with only four ZBA members, and the  
19 applicant said yes.

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21 **I. New Business**

- 22 A. The application Robert V. and Karen C. Prior and Kenneth Brown for an Appeal  
23 from an Administrative Decision made by the Town Building Inspector/Code  
24 Enforcement Officer on March 5, 2024, that as the result of a recent lot merger,  
25 the entirety of RiverWoods Exeter will now be located on one site and therefore,  
26 the presence of one on-site healthcare center providing skilled nursing will satisfy  
27 the requirement of Article 6, Section 6.1 of the Zoning Ordinance. Tax Map  
28 Parcel #97-23. ZBA Case #24-7.

29 Ms. Olson-Murphy appointed Mark Lemos as a voting member for this  
30 meeting.

31 Ms. Olson-Murphy said she wanted to discuss the jurisdiction, given the  
32 30 day timeline, as the Board received this appeal on July 29 and the decision  
33 was granted on March 5. Mr. Baum said he doesn't think we have jurisdiction to  
34 hear this. His understanding is that the statute calls for a reasonable time or as  
35 set forth in the rules of the ZBA, and our rules state that appeals have to be filed  
36 within 30 days of the decision. He doesn't know of any ability to stray from that.  
37 The Board has not done so in the past. It was a letter of determination without  
38 public notice, but that's no different than a building permit or other administrative  
39 decision. Even if that wasn't the case, there was notice because the merger was  
40 discussed at the ZBA meeting in March.

41 Ms. Davis said this isn't about the merger, it's about the administrative  
42 decision to let the merger bypass the zoning process. The Zoning Board had  
43 already ruled to deny this application. This is about the decision saying that one  
44 change is enough to negate that ruling.

45 Attorney Sharon Somers of DTC Lawyers, representing RiverWoods of  
46 Exeter, asked that Ms. Davies recuse herself from the discussion based on her  
47 comments at the June 27 Planning Board hearing.

48 Ms. Davies said that at the Planning Board meeting she said she was  
49 shocked that a project of this magnitude and impact could happen without a  
50 zoning process. She discussed her confusion with Doug [Eastman] at the time  
51 and he told her about the lot merger and that it could be appealed, but never  
52 mentioned that there was an administrative decision. How could an entire public  
53 process over the course of months be wiped away with the stroke of a pen? How  
54 were abutters supposed to appeal if there was no notification?

55 Attorney Somers read from the Planning Board minutes of June 27:  
56 *[Laura Davies] stated that she did not feel this project was in keeping with the*  
57 *Special Exception approval. She opined that this was bypassing zoning with the*  
58 *lot merger.* Attorney Somers argued that Ms. Davies is not capable of making an  
59 impartial decision on this.

60 Ms. Davies said she has a position on this issue through a public process.  
61 She's entitled to her position. If she had known there was an administrative  
62 decision, she would have made it known that she was unhappy with it. The  
63 notification part of this is very questionable. She feels strongly about this, but that  
64 doesn't disqualify her. She's experienced the RiverWoods approval process for  
65 many years and it has left an impression.

66 Mr. Baum said the question is whether she can be objective about the  
67 decision tonight. Ms. Davies said she was objective about the decision she made  
68 before but now she's very concerned about this process. The RSA that talks  
69 about recusal talks about how knowledge of a situation is not adequate grounds  
70 for recusal. She has knowledge of this situation over a long period of time. She  
71 has no direct pecuniary or otherwise impact from this. She just has an opinion,  
72 formed over years. She doesn't believe she has to recuse herself.

73 Ms. Olson-Murphy asked if the Board should go into a non-meeting. Mr.  
74 Baum said if we need clarification on the process for recusal it might be a good  
75 idea.

76  
77 Mr. Baum moved to enter into non-meeting for discussion with legal counsel. Mr.  
78 Lemos seconded. Mr. Baum, Ms. Davies, Ms. Olson-Murphy, and Mr. Lemos  
79 voted aye. The motion passed 4-0.

80  
81 The Board left the room for a non-meeting at 7:10 PM and resumed the  
82 meeting at 7:35 PM.

83 Ms. Davies said she has decided not to recuse herself. She feels she can  
84 be fair and she has no direct interest.

85 Mr. Baum said he thinks there is no jurisdiction. Once a decision is made,  
86 there's 30 days to appeal it. He's not aware of any way to waive from that, and  
87 we have not in the past. Even if it was a question of notice, the applicants had  
88 notice of the merger in the March meeting. In the minutes of March 19th, it says

89 all lots are now merged via voluntary lot merger. Ms. Davies said the lot merger  
90 was noticed but the administrative decision granting no need for a variance was  
91 not noticed. Mr. Baum said once the application came in for the March meeting,  
92 it's still more than 30 days from then to July 29th.

93 Ms. Davies said the lot merger was public but the administrative decision  
94 was not. Mr. Baum said the lot merger allowed them to come forward with the  
95 variances for height and buffer. Ms. Davies said the administrative decision that  
96 the lot merger was enough for the project to not require a special exception or  
97 variance for this change was made by Doug [Eastman]. That was a separate  
98 thing that was not public. Mr. Baum said he thought that was known when they  
99 came forward. Why would they be coming forward for the project? Ms. Davies  
100 said that's what she kept asking. It wasn't just not noticed, it was almost  
101 concealed. This was a decision that is overturning an already-made decision by  
102 this Board.

103 Ms. Olson-Murphy said we made a decision when it was separate lots.  
104 Once the lots were merged, now it's a completely different application. They  
105 came back and applied for the needed variances. They didn't need the variances  
106 for one unit anymore, because it was one parcel. Ms. Davies said the choices  
107 before us were a height variance and a buffer relief variance. There was never a  
108 discussion of whether this project meets the special exception criteria. Ms.  
109 Olson-Murphy said there was no special exception they needed to meet.

110 Ms. Davies said when RiverWoods built their office building in 2010, they  
111 came before us and presented their application to make an addition to their  
112 campus. The rationale was this was part of a campus and the special exception  
113 should extend to that. It wasn't automatic. This is 40x as big, so why wouldn't this  
114 need to be brought before the Board for consideration of how it fits into the  
115 special exception criteria? Our decision wasn't just predicated on the fact that  
116 there were multiple lots. Mr. Baum said that was the variance at issue, which was  
117 denied. It was whether they could have a healthcare facility without having a  
118 healthcare facility on each property.

119 Mr. Baum said the job of the Code Enforcement Officer is to interpret the  
120 code. Mr. Eastman said he did not determine that. He made that decision based  
121 on a letter from Dave Sharples and the Mitchell Group. Ms. Olson-Murphy said  
122 this is the discussion we would have if we decide we have jurisdiction to hear the  
123 appeal.

124 Mr. Baum said our rules say it has to be filed within 30 days of the  
125 decision in question. It may not be fair. There is no public notice for a building  
126 permit, and that can be very impactful for people who have a project going up  
127 next door. He doesn't think it makes any difference. Even if there could be an  
128 exception, there was constructive notice that this was going forward. It was clear  
129 to him when they came for the variance for the height and the buffer that they  
130 weren't coming for the use variance anymore. Ms. Davies said knew that but she  
131 couldn't understand why. The abutters deserve to know why.

132 Ms. Olson-Murphy said we need to determine if we have jurisdiction  
133 before we can discuss this. Ms. Davies said you can't separate whether notice  
134 was required from the scope of the decision and the fact that the Board had  
135 already made a decision.

136 Mr. Lemos asked Attorney Driscoll if there is a legal requirement that a  
137 notification be made to abutters when an administrative decision is made.  
138 Attorney Driscoll said no. Planning and Zoning decisions are statutorily provided  
139 for. Administrative decisions are made throughout municipalities, that's what your  
140 officers do.

141 Ms. Davies asked if there is any discussion about the scope of  
142 administrative decisions within the law. Attorney Driscoll said this is an  
143 interpretation of the Zoning Ordinance like any case that comes in front of you.  
144 There is an application received by a staff person, who has likely been involved  
145 in the discussion with the applicant as to what would be necessary. These  
146 happen regularly. This is just a determination of an applicable use for this  
147 application. Ms. Davies said she doesn't understand the point of a Board if a  
148 decision can be made by a single individual.

149 Mr. Baum said he understands the unfairness of it, but that's the way the  
150 statute works. We have rejected people on the 31st day and this has been  
151 months. Statutorily and under our rules, he's not seeing anything that would allow  
152 us to distinguish this.

153 Mr. Lemos said he can't see how we can hear something outside of our  
154 purview and our rules and regs. Title 2 of section 7 says it has to be made in 30  
155 days. If we start running outside of that, we run the risk of making bad decisions  
156 that won't hold up.

157 Ms. Olson-Murphy said if there's something wrong with the rules, there  
158 are processes to change them.

159 Mr. Baum made a motion to find that the Board does not have jurisdiction to hear this  
160 administrative appeal because it was filed beyond the 30 day requirement of our rules.  
161 Mr. Lemos seconded. Ms. Olson-Murphy, Mr. Baum, and Mr. Lemos voted aye, and Ms.  
162 Davies voted nay. The motion passed 3-1.

163  
164 **II. Other Business**

165 **A. Approval of Minutes for June 18, 2024**

166 Mr. Lemos made a motion to approve the meeting minutes of June 18, 2024 as  
167 presented. Ms. Olson-Murphy seconded. Ms. Davies, Ms. Olson-Murphy, and Mr. Lemos  
168 voted aye. Mr. Baum abstained. The motion passed 3-0-1.

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170 **III. Adjournment**

171 Mr. Baum moved to adjourn. Ms. Olson-Murphy seconded. The motion passed 4-0 and  
172 the meeting was adjourned at 6:50 PM.

173  
174 Respectfully Submitted,

175 Joanna Bartell  
176 Recording Secretary  
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