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**TOWN OF EXETER  
ZONING BOARD OF ADJUSTMENT  
JULY 17, 2018  
7:00 PM  
Draft Minutes**

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**I. Preliminaries**

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

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

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**Others Present:** Doug Eastman, Building Inspector; Barbara McEvoy, Deputy CEO

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**Call to Order**

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Chair Davies called the meeting to order at 7:03 pm.

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**Introductions by Roll Call**

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Chair Davies asked to identify the following members who were present by Roll Call: Laura Davies, Chair, Joanne Petito, Christopher Merrill, Esther Olson-Murphy, and Rick Thielbar. The active voting alternates for this hearing are identified as Mr. Merrill and Ms. Olson-Murphy.

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**II. New Business**

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**Hearings**

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Felder-Kuehl Properties, LLC – Tax Map #55-75 – 85 Epping Road  
Case #14-50  
Request for one-year extension of Special Exception approval

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Attorney Justin Pasay presented the request for a one-year extension of the Special Exception approved earlier in 2013 and previously extended in 2016. The Special Exception was for multi-use in Zone C2 and for height of 50' where 35' are required.

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Attorney Pasay stated that there had been delays in attempting to secure financing through NHFA for proposed workforce housing that persisted into 2017. The owner has since experienced family issues and changes in market circumstances.

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Attorney Pasay advised that the owner was unable to secure financing through NHFA and as a result changed his goal to market the property for sale, as is. The Planning Board approval has lapsed. This was for a four-story multi-use. The new owner will have to bring it before the Planning Board.

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Attorney Pasay cited Article 12.4 of the Ordinance which allows the requested extension for a period of twelve (12) months.

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Chair Davies asked if there were any questions from the public and being none closed the session to the public for deliberations at 7:08 pm.

37 Chair Davies stated that the request was straightforward and expressed sympathy that the  
38 timing was not right for the tax credit financing.

39 **Mr. Thielbar moved to grant the requested extension for a period of one year. Mr. Merrill**  
40 **seconded his motion, with all in favor, the motion passed 5-0.**

- 41 1. Application of the Porches at Exeter, Tax Map #72-75 & #72-77, 25, 29 Franklin St.  
42 R2 Single Family Residential District & C1 Central Area Zoning District  
43 Case #18-13  
44 Variances from Article 4, Section 4.3 Schedule II, Density & Dimensional Regulation-  
45 Residential **and Article 5, Section 5.5, yard regulations 22.9'**  
46 To permit the construction of a 4-unit multi-family structure with less than the required  
47 rear yard setback; and exceeding the maximum building coverage requirement

48 Chair Davies read out loud the legal notice.

49 Attorney Tim Phoenix of Portsmouth presented that he was here to represent Kathleen  
50 Mahoney to request two variances for the two-lots that Ms. Mahoney wishes to merge. The lots  
51 are currently vacant and a four-unit, town-house condominium style structure is proposed. The  
52 lots together will be 10,458 s.f. The variances are needed to allow the designer to include a  
53 usable garage for parking two cars off-street. The rear setback will be 22.9' where 25' are  
54 required in Article 5, Section 5.5 due to the projection of a balcony which may or may not count  
55 as a setback. The percentage of coverage will be 26% where 25% are allowed, a difference of  
56 1%.

57 Attorney Phoenix advised that Ms. Mahoney had appeared before the Board previously to  
58 present a different plan which was denied. The previous history of the parcel included two  
59 buildings which were removed.

60 Attorney Phoenix cited the "Malachy Glenn" Case (Malachy Glen Associates, Inc. v Town of  
61 Chichester 2007) in support of the application not being Contrary to Public Interest and being in  
62 the Spirit of the Ordinance. There is minimal conflict. Attorney Phoenix stated that the property  
63 rights were balanced and that the structure would be similar to others in the neighborhood. It  
64 would be new, in code and not affect Values of Surrounding Properties or interfere with health  
65 and welfare and be in the Public Interest with no adverse effects or alteration to the essential  
66 character. There would be Substantial Justice owing to there being no benefit to the public by  
67 denying the project and it would be beneficial to have a home for four families in walking  
68 distance to the center. Owing to special conditions of the property are that it is a corner lot with  
69 two fronts and two backs. Attorney Phoenix cited Walker v. City of Manchester in that it is a  
70 similar non-conforming neighborhood. Two balconies would not violate the purpose of the  
71 setback ordinance and the use is a reasonable one.

72 Chair Davies asked what the object sticking out was that was shown on the plan set, Exhibit 3.

73 The object was identified as a proposed pergola, shown on the plan to be used for parking a car  
74 underneath which Chair Davies identified as being without an impervious surface as it has no  
75 top. The applicant stated that she wished to withdraw the pergola from the application after Mr.  
76 Eastman identified it as a structure which may pose an issue and Chair Davies advised that it  
77 may require conditions to be attached to the decision.

78 Chair Davies asked if there were any questions from the public and being none, closed the  
79 hearing to the public for deliberations at 7:32 pm.

80 Mr. Thielbar stated that the applicant was probably correct about the balconies. Chair Davies  
81 agreed that that was a gray area. Mr. Thielbar stated that the size should not impact neighbors  
82 and if it were smaller, the height of the structure may increase which would be a greater impact.  
83 Chair Davies agreed that in general the applicant had made efforts to respond to comments  
84 abutters had last time and the five points were adequately presented so there was no need to  
85 go over those one by one.

86 **Mr. Thielbar motioned to approve the request to reduce the rear setback requirement**  
87 **from 25' to 22.9' for the balconies and to approve the 26% total lot coverage where 25% is**  
88 **required. Mr. Merrill seconded his motion, with all in favor, the motion passed**  
89 **unanimously 5-0.**

90 2. Excel Construction Management, LLC for Freedman Realty, Inc.  
91 Tax Map #64-50, 173-179 Water Street in the WC – Waterfront Commercial District  
92 Case #18-14  
93 For variances from Article 5, Section 5.6.6 and Article 4, Section 4.2, Schedule I –  
94 Permitted Uses and Article 2, Section 2.2.55 Multi-Use (definition)  
95 To permit less parking than required and residential use on the first floor of a multi-use  
96 building in the Waterfront Commercial District.

97 Chair Davies read the legal notice out loud.

98 Michael Todd of Excel Construction Management, LLC who was present advised that Attorney  
99 Durbin of Portsmouth would present his revised application in accordance with his July 5  
100 narrative. His initial application was presented in March and denied, and this application is  
101 completed different. The “Smith” building was built in 1850 and is one of the larger buildings  
102 and properties being redeveloped. The two-story structure proposed to increase to three  
103 stories, the front being retail, the second floor being offices and the finished back facing the  
104 Swampscott River would be residential.

105 Attorney Durbin clarified that the applicant was not seeking relief from parking any longer and  
106 wished to withdraw that from the application.

107 Attorney Durbin continued, that the reason for the variance was that residential use was not  
108 permitted in this district on the first floor.

109 Mr. Thielbar stated that he disagreed concerning the relationship to the use and the parking  
110 which had different requirements for shoppers who would be in a space for less than two hours  
111 versus the needs of a resident. Mr. Thielbar stated that ensuring adequate residential parking  
112 was available would be crucial to the consideration of the mixed use of the premises as well as  
113 to make it marketable to residents. The change in use could would eliminate any grandfathering  
114 as relates to use.

115 Mr. Freedman stated that he had sufficient parking with 25 spaces on his property and an  
116 additional two that he was working to get permission to use as they are half on his lot. There  
117 will be no guest parking on the premises. Chair Davies asked if there was a status to the  
118 easement request and Mr. Freedman stated that it had not yet reached resolution but would  
119 ensure that parking conformed to the ordinance and was not seeking relief from that.

120 Ms. Petito asked how many units there would be. Mr. Freedman responded that there would be  
121 18. Chair Davies referred to a letter dated July 2<sup>nd</sup> which indicated 30 spaces with 5 for guests  
122 were required and asked what had changed. With the parking spaces at ground level beneath  
123 the building and the additional parking outside the building but on the premises, it was  
124 determined that there would be one more space than was required. Chair Davies directed that  
125 Attorney Durbin should go over the five points.

126 Attorney Durbin stated that the multi-use to the rear of the premises on the first floor as a  
127 residence in the Waterfront Commercial District would be representative of the Spirit of the  
128 Ordinance which is to promote the vitality of an established downtown. The front of the  
129 premises will be commercial with retail storefront in front and no one will notice the residences  
130 in the back which will be accessed by the residents from the rear. There is no threat to public  
131 safety, health or welfare and no public interest in denying the application while denial would be  
132 detrimental to the applicant as many proposals have been brought forth in an attempt to  
133 redevelop such a large, costly, odd-shaped parcel. The Values of Surrounding properties would  
134 not be diminished because of residential use to the rear of the building and the architectural  
135 style blends in well with other buildings on Water Street. The age, size and configuration  
136 distinguishes it from other properties. Residential use on the first floor to the rear of the building  
137 with retail storefront is a reasonable use.

138 Chair Davies asked if there were any questions or comments from the public.

139 Mr. Freedman read a letter from Mike Dolly who expressed that with shopping malls  
140 disappearing due to e-commerce, zoning would need to meet the demands necessary to keep a  
141 downtown viable. To have a 14,000 s.f. building exclusively commercial would be detrimental to  
142 the viability of the downtown.

143 Hans Wriredt stated that he was an abutter and believed that the proposed project would  
144 severely impact residents and found the presentation itself objectionable and disorganized.  
145 When the use changes the grandfathering that benefits it goes away. There is no off-street  
146 parking at or close to the Smith building. There is no residential street level on Water Street and  
147 that was reaffirmed by the Town in 2007.

148 Mr. Wriredt added that he did not believe any of the five criteria were satisfied and that the  
149 Smith building was mostly remodeled in 1951, reading an excerpt from "*History of Exeter 1888-*  
150 *1998*" page 238 (no copy provided) the large addition for the large Woolworth space by  
151 Freedman in 1951 for his own personal gain and has been an eyesore and hardship of his own  
152 making.

153 **(inaudible)** lives on second floor below Hans. Expressed concerns about the sunlight and air  
154 and diminished value with multi-family next door. They use our back driveway now, where will  
155 the egress be? Will there be stack parking, that's not allowed. Concerns with flooding which  
156 could be a problem and sewer.

157 **(inaudible)** 163 Water Street, expressed concerns with loss of green space and open space  
158 adjacent the River being lost to parking spaces. Don't understand the shared parking, where is  
159 that shown on the proposal? Concerned spaces will be lost that are used in day and overnight.  
160 Will those remain?

161 Mr. Freedman stated that the spaces will stay or go and would lose one of the five spaces on  
162 street. The building was renovated in 1969 not 1951, retail has not changed. The residential  
163 units on the first floor are elevated in the rear, not actually at ground level but up a story.

164 Chair Davies asked about the 10' removed from the back of the existing building. Mr. Todd  
165 stated that was from the addition to alleviate concerns with loss of air, etc., with the increased  
166 height of the building. The building is long and narrow and difficult

167 Mr. Merrill added that the rear ground level is parking, not residents. The height increase is  
168 within their rights with existing zoning. Chair Davies stated that the maximum height is 35.'

169 Chair Davies clarified that we are here tonight to discuss relief sought for the residential use in  
170 the back on the first floor. Mr. Thielbar stated that it still has to go before Planning Board.

171 Mr. Wriredt stated that for transparency, Article 8, on page 8-6 in the historical section of the  
172 ordinance states that additions or new construction to existing not be greater than 10% within  
173 250' radius center of the parcel and will not likely comply and have to be addressed later.

174 Chair Davies stated that a separate committee will look at that later in the week. Don't have  
175 enough information to discuss that tonight.

176 Charles Travers stated that he and his wife, Julie live at 183 Water Street and are in favor of the  
177 project. It's a good use with residential in back. Understand the hardship, have 3,000 of retail  
178 ourselves and struggle also.

179 Mr. Todd stated that the Merrill block is much taller. Chair Davies added that there are plenty of  
180 tall buildings in downtown.

181 Chair Davies closed public hearing for deliberations at 8:50 pm.

182 Chair Davies stated that parking is a stumbling block which needed to address the proposed  
183 mix, not sure how to word that. The deep building is unique. Is reasonable. Mr. T agreed it is  
184 reasonable. The residences are well away, not on Water Street. Does it include handicapped  
185 spaces? Chair Davies responded yes. Consider numbering the spaces and signs.

186 Ms. Murphy asked about the requirement for guest spaces. Chair Davies explained that the  
187 building inspector whose decision they must respect considers it a trade off for not losing more  
188 retail space. The back is retail already. Commercial use would only augment the parking  
189 problem, it would be greater than with residential use. Not here to discuss parking, concentrate  
190 on use, which is change to residential use on the rear of the first floor.

191 Ms. Petito stated that it was not Contrary to the Public Interest. The Spirit of the Ordinance is  
192 observed. Does not alter the essential character or threaten public health, welfare or safety.  
193 Chair Davies added that because of the building's depth it's not feasible to keep the entire first  
194 floor commercial without having the need for more parking. Ms. Petito continued, it does not  
195 change the character of the neighborhood. Ms. Murphy added that additional cars could cause  
196 more movement back there which could threaten public safety. Chair Davies advised that the  
197 Planning Board would address those concerns.

198 Ms. Petito continued...Substantial Justice is the weighing of benefit to harm to the public or  
199 other individuals. Chair Davies agreed that the only harm discussed was relative to the height  
200 of the building which did not require zoning relief.

201 Values not Diminished. No evidence has been provided added Ms. Petito, an abutter raised the  
202 issue but with nothing specific. Ms. Murphy asked if the adjacent building had inadequate  
203 parking and the Smith building had adequate parking wouldn't that lower the value to the Merrill  
204 building? Chair Davies explained that you can't compare a building like Merrill that has  
205 inadequate parking to one that does.

206 Hardship. The space cannot be reasonably used in strict conformance with the ordinance  
207 because retail space would be a hard find and you won't see it from the street. They initially  
208 came in for a restaurant and abandoned that project to do what they could after many more  
209 complaints.

210 **Mr. Thielbar moved to request to allow first floor residential use behind commercial use**  
211 **with the understanding that dedicated spaces for each dwelling be provided in**  
212 **accordance with Article 5.6.6. Chair Davies added "on site." "Unit only." To exclude**  
213 **guest without confusing the issue. Ms. Olson-Murphy seconded his motion.**

214 **Mr. Thielbar moved to amend his motion to add "Dedicated parking on site for each**  
215 **dwelling unit only as called for in Article 5.6.6." Mr. Merrill seconded his motion. Chair**  
216 **Davies clarified we are voting on the amendment, not the motion. All were in favor, the**  
217 **motion passed 5-0.**

218 Mr. Thielbar read the amended motion out loud.

219 **Mr. Thielbar moved to approve the request to allow first floor residential use behind**  
220 **commercial use with the understanding that dedicated parking spaces for each dwelling**  
221 **be provided in accordance with Article 5.6.6. Mr. Merrill seconded his motion, with all in**  
222 **favor, the motion passed 5-0.**

223 3. River Woods Company at Exeter, Tax Map Parcel #97-44, 67 Kingston Road  
224 R-1 Low Density Residential Zoning District  
225 Case #18-15  
226 Variance from Article 6, Section 6.1.2.D to allow an accessory structure and parking  
227 Within the 100' landscape buffer

228 At 9:16 pm Chair Davies announced that she would be recusing herself for conflict as well as  
229 Ms. Murphy who stated that family worked there. They stepped from the meeting table to sit  
230 with the public.

231 Ms. Petito read the legal notice out loud and informed the applicant that because of recusals the  
232 Board was now seated with only three members and the applicant could postpone consideration  
233 until there was a full Board.

234 Attorney Sharon Somers, from Donahue, Tucker, and Ciandella stated that Rob Sullivan of  
235 River Woods gave the authority to proceed.

236 Ms. Somers provided handouts and a letter from an abutter, labeled photos and advised that a  
237 survey was in progress, so the drawings were conceptual.

238 Ms. Somers advised that the property consisted of residence, garage, horse paddock, and pool  
239 of which the house encroaches within 100' along with the pool, garage and horse paddock.

240 The addition, for administrative staff, is shown in yellow on the plan. The pool and barn will be  
241 removed and reconfigured for employee parking. There are 11 employees who work normal  
242 business hours, none sleep there. Some visitors would be cleaning people, IT, delivery people.  
243 May need a conditional use permit and there could be a connector road to White Oak.

244 Mr. Thielbar stated that he looked at the drawing and it did not appear to be outside the buffer.  
245 Ms. Somers said she did not have the exact figures, the plan was conceptual. Ms. Petito asked  
246 how far it would encroach. Ms. Somers advised that the parking would be to the North of the  
247 structure, where the barn was, but was not sure of the extent of the encroachment and would  
248 like to be able to come back and amend that because of not having the information available  
249 tonight.

250 Ms. Somers stated that it was not Contrary to the Public Interest because it was for elder care  
251 and the applicant owned one of the abutting properties and Ms. Hooton who owned the other,  
252 wrote a letter in support and her property wraps around to the East and North. If none of the  
253 abutters object the intent is not violated.

254 Spirit and I are now one in the same. Substantial Justice, the benefit to the applicant is more  
255 added space and increased efficiency with not detriment to the public or loss of Value since the  
256 structure already exists and is a modest addition with the old barn and pool being removed.

257 Ms. Petito stated that a small portion of existing structure and taking away the barn and pool,  
258 with parking for the employees North of the structure where the garage is. Ms. Petito asked if  
259 the spaces were covered and Ms. Somers said no.

260 Mr. Thielbar stated that there was a lot of parking in the buffer zone and asked why not to the  
261 South?

262 Ms. Somers stated that the site location to the North of the house was better while to the South  
263 has not been ruled out. The North location would interfere less with the connector road.

264 Mr. Thielbar stated that you're letting your neighbor absorb your buffer zone. Ms. Somers  
265 stated that the Planning Board will likely ask them to screen the parking area.

266 Mr. Thielbar stated that the house exists, 4' corner is in the buffer. The parking can go  
267 anywhere. There is a lack of measurement.

268 Ms. Somers requested to Table consideration of the application to provide additional  
269 information.

270 **Ms. Petito moved to continue the hearing. Mr. Merrill seconded her motion, with 3 in**  
271 **favor and none opposed, 3-0, motion carried.**

272 4. Margaret Tilton and Robert Leatherbee, Tax Map Parcel #72-144, 33 Court Street  
273 R2 Single Family Residential Zoning District  
274 Case #18-16  
275 Special Exception per Article 4, Section 4.2, Schedule I (Permitted Uses) and  
276 Article 5, Section 5.2 to permit a single-family residence conversion to a two-family home  
277 Variance from Article 4, Section 4.2, Schedule I Notes: 1.(b) with less than the required  
278 lot size for the conversion in this district

279 Chair Davies read the legal notice out loud.

280 Mr. Leatherbee stated that he and his wife, Margaret Tilton were the owners of a single-family  
281 home on the lower end of Court street across from the Recreation Center. Mr. Leatherbee  
282 stated that they had included four sets of plans as well as 3-D views of different angles. The  
283 couple desires to continue to live on the property and use the upstairs as a second apartment  
284 after raising 5 kids and 21 years it has become a large empty nest.

285 Mr. Leatherbee stated that it was not Contrary to the Public Interest as Court Street has many  
286 two-family and multi-family lots smaller than theirs.

287 Ms. Petito asked what size their lot was, and Mr. Leatherbee was unsure but explained that they  
288 were required to have 30% per unit of the 15,000 s.f. required, so 4,500 x 2 would equal 9,000  
289 s.f. and they were close to that which is why the Spirit and Intent of the Ordinance were  
290 observed. Substantial Justice. Mr. Leatherbee stated that in addition to providing a first-floor  
291 unit for themselves, they would be able to have a 2<sup>nd</sup> floor rental with affordable housing, which  
292 Exeter needs very badly and means a lot to them personally.

293 Value of Surrounding Property. Mr. Leatherbee stated that would not diminish values, because  
294 many two families are in the surrounding area and the exterior will not change much. They  
295 would add a second driveway and remove a tree. Mr. Thielbar stated that they would need to  
296 apply for a driveway permit for the second driveway.

297 Chair Davies asked if the property had water and sewer and Ms. Tilton stated that it did.

298 Hardship. It would allow them to economize their home while providing affordable housing to  
299 another family.

300 Mr. Thielbar asked how they would move about from room to room and separate out the tenants  
301 from accessing their living space. Ms. Tilton explained that the front door would be for upstairs  
302 and there are two side doors, for use with the first-floor entrance and a hallway.

303 Chair Davies asked if they would put this in a deed and Ms. Tilton stated that they did not want  
304 to restrict future owners.

305 Chair Davies asked if there were any questions from the public, and being none, closed the  
306 hearing to the public at 10:06 pm for deliberations.

307 The lot size was determined to be .18 acres or 7,840 s.f. per GIS mapping records.

308 Mr. Thielbar stated that he was okay on all five points.

309 **Mr. Thielbar moved to approve the application to permit the single-family conversion to a**  
310 **two-family home. Ms. Petito seconded his motion, with all in favor, the vote was 5-0,**  
311 **motion carried.**

312 5. 9 Clifford Street Development, LLC, Tax Map Parcel #62-39, 9 Clifford Street  
313 C-1, Central Area Commercial Zoning District  
314 Case #18-17  
315 Variance from Article 5, Section 5.1.2 A for the expansion of a non-conforming use to  
316 permit the proposed enlargement of an existing foundation within the required minimum  
317 rear yard setback

318 Chair Davies read the legal notice out loud.



319 Henry Boyd with Millennium Engineering introduced that he was presenting the application on  
320 behalf of Geno Renaldi. The lot size was .18 acres or 7,842 s.f. and previously had two  
321 structures which were torn down. The lot abuts the municipal parking lot, is irregular in shape,  
322 with a strange jut-out in the foundation at one corner making it difficult to rebuild on, where a  
323 square foundation is preferable.

324 Mr. Renaldi stated that the historical committee had reviewed it and it previously had four  
325 additions.

326 Mr. Boyd stated that the Spirit and Intent were observed because there are many existing non-  
327 conforming structures in this area, abutting the fenced parking lot makes it barely visible.  
328 Substantial Justice is that many others exist that are similar with no harm. Values would not be  
329 affected, it is an improvement over what was there. The hardship is the odd shape of the lot  
330 with the 20' setback and it would reasonably resemble other structures in the area. It is a  
331 reasonable request.

332 Chair Davies asked if there were any questions and closed for deliberations at 10:19 pm.

333 Chair Davies asked if the criteria looked good. Mr. Thielbar stated that the presentation was  
334 well done.

335 **Mr. Thielbar moved to approve the application as requested. Ms. Petito seconded his**  
336 **motion, with all in favor, the Vote was 5-0, motion carried.**

### 337 **III. Approval of June 19, 2018 Minutes**

338

339 Chair Davies thanked Barbara for her help with transcription and recommended the following  
340 corrections:

341

- 342 • Switch Introductions and Call to Order as #1, with New Business #2 and #3 Approval of
- 343 Minutes
- 344 • Change "motioned" to "moved"
- 345 • Change "amendment to amend"
- 346 • Capitalize "Crossing"
- 347 • Insert "District" following Professional Technology Park
- 348 • Change "relieve" to "relief" pg. 3
- 349 • Change "continuity" to "continuity within the building"
- 350 • Change "25k" to "\$25,000"
- 351 • Change "uniformed" to "uniform"
- 352 • Change "modify that by increasing the number 68 to 69 units" to "modify that by
- 353 increasing the number **from** 68 to 69 units"

354 Ms. Petito asked if they had agreed to add the conditions and Chair Davies advised that they  
355 had.

356 **Ms. Petito motioned to accept the June 19, 2018 minutes, as amended. Mr. Merrill**  
357 **seconded her motion, the vote was 2 in favor (Chair Davies and Mr. Thielbar) and 3**  
358 **abstaining due to absence (Ms. Petito, Mr. Merrill and Ms. Olson-Murphy) motion carried.**

### 359 **IV. Adjourn**

Note: Subject to changes proposed at a subsequent meeting.

360 **Ms. Olson-Murphy motioned to adjourn the meeting at 10:27 pm. Mr. Merrill seconded**  
361 **her motion, with all in favor, the vote was 5-0, motion carried.**

362 Respectfully submitted,

363

364

365

366 Daniel Hoijer  
367 Recording Secretary

DRAFT