

Town of Exeter  
Zoning Board of Adjustment  
August 18, 2020, 7 PM  
Town Hall Great Room  
Final Minutes

I. **Preliminaries**

**Members Present:** Acting Chair Robert Prior, Clerk Rick Thielbar, Kevin Baum, Laura Davies, Anne Surman - Alternate, Esther Olson-Murphy - Alternate

**Members Absent:** Chair Joanne Petito, Christopher Merrill - Alternate, Hank Ouimet - Alternate, Martha Pennell - Alternate

**Others Present:** Doug Eastman, Barbara McEvoy

**Call to Order:** Acting Chair Robert Prior called the meeting to order at 6:30 PM. Benjamin and Sarah Anderson requested a continuance for Case #20-2, so there will be three cases heard at this meeting. Of the alternates, Ms. Surman will vote on the first two cases and Ms. Olson-Murphy on the third.

II. **New Business**

A. The application of Patricia Duval for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations--Residential to permit the subdivision of an existing 3.2 acre parcel at 105 Brentwood Road into two (2) lots with less than the required minimum lot area. The subject property is located in the R-1, Low Density Residential zoning district. Tax Map Parcel #60-24. Case #20-10.

Sharon Somers of the DTC Law Firm spoke on behalf of the owner, Patricia Duval. Henry Boyd of Millennium Engineering, the surveyor of the property, was also present.

Ms. Somers said this project is looking for subdivision approval from the ZBA and Planning Board. They are looking to form two lots, one of one acre, one of two acres. The lot has 720 feet of frontage, and has the capacity to have two dwellings. The test pit passed. Septic and well service is possible. The driveway will need DOT approval, but they believe there is adequate sight distance.

Ms. Somers went through the variance criteria: 1) Not contrary to the public interest and 2) Spirit of the ordinance is observed; yes, the creation of these two lots will not unduly violate the zoning. There are varying lot sizes in this area, at least one of which, at 0.5 of an acre, is smaller than the proposed lots. They are all single family homes. This does not alter the fundamental character of the neighborhood or threaten the public health, safety, or welfare. It has private water, septic, and driveway. Lots 25 and 25.1 enter onto Brentwood road, so there is no interference with those properties, they will continue to exit their property as now. 3) Substantial justice is done; yes. The applicant will benefit because it's a large lot and the applicant doesn't need that acreage.

45 She would like to retain her home and sell the other lot. There is no apparent harm to  
46 individuals. They received only one letter, that did not object. 4) Values of surrounding  
47 properties are not diminished; yes, it's designed such that they are striving to create one  
48 lot that is fully conforming, the 2 acre lot, and one as conforming as possible. Both will  
49 be used for single family residences. This is a residential neighborhood where lot sizes  
50 vary. The size of the lots won't stand out enough to cause any diminution in property  
51 value. 5) Unnecessary hardship; this lot has special conditions, this is a long large lot  
52 with 720 feet of frontage, and is ideally suited for a subdivision. 6) The proposed use is a  
53 reasonable one; yes, this a new house on land which would be able to support an  
54 accessory structure or condominium.

55 Mr. Boyd said they haven't done a full boundary survey yet, so the plans are  
56 based on the tax map. He felt there was sufficient evidence to apply for the variance, so  
57 they don't end up out the cost of a full survey, but they can't guarantee that the parcel is  
58 3.2 acres without it. According to the witnessed test pits, the parcel could support a  
59 second septic system. He added that there's an old dwelling foundation there. Mr. Prior  
60 said they could put in a condition that if the full survey came in under a minimum, they  
61 couldn't do it. Mr. Thielbar said he wants to ensure that both lots are over one and two  
62 acres.

63 Mr. Baum asked about the approximate frontage for each lot. Mr. Boyd said he  
64 thought 300 and 400 feet. Mr. Prior said DOT approval is not guaranteed under 400 feet.  
65 Is that a constraint they're willing to accept, rather than saying the line can be flexible?  
66 Mr. Boyd said he would prefer that be handled at the Planning Board.

67 Ms. Davies asked about bedrooms based on the septic. Mr. Boyd said there is  
68 good soil absorption, so they could do up to a four bedroom. If a lot is without sewer,  
69 according to NH subdivision rules, it has to be a minimum of 1 acre.

70 Mr. Prior opened the meeting for public comment.

71 Chad Everbeck of 99 Brentwood Road, an abutter, said they don't feel adding  
72 this subdivision is in their long term interest, and will likely affect their property value.  
73 The lot in question is too close to their existing home and will affect their privacy.

74 Ms. Somers said she doesn't believe it will affect property values. It will be  
75 another single family house. If the owner wished to, she could construct a single large  
76 structure as a matter of right that would affect them similarly. Landscaping and fencing  
77 could be used to address their concerns.

78 Mr. Prior closed the meeting to public comment.

79 Mr. Prior asked if they could put conditions of screening on the subdivision. Mr.  
80 Baum said that was more for the Planning Board to decide.

81 Mr. Prior said the screening is good there and the road is straight. He would be  
82 generally in favor of granting the variance. Ms. Davies said that the shape of the lot and  
83 the frontage, as well as the history of the lot, go in favor of the application.

84 Mr. Prior went through the variance criteria. 1) Not contrary to the public interest  
85 and 2) spirit of the ordinance is observed; yes, this is intended to keep a consistency to  
86 neighborhoods, and there is nothing here inconsistent with that goal. 3) Substantial  
87 justice is done; with the exception of the abutter with privacy concerns, he doesn't see  
88 that there is mismatch here with the welfare of the public. 4) Values of surrounding

89 properties are not diminished; they heard anecdotal evidence, but no legal testimony. He  
90 doesn't feel it will diminish property values. Mr. Baum said the issue is the distance  
91 between the homes, which is covered by setbacks. 5) Unnecessary hardship; Mr. Prior  
92 said asking the owner to retain the full property is not necessarily a hardship, but he  
93 wouldn't want to force them to sell the property because they couldn't subdivide it. Mr.  
94 Baum said it's a long, narrow lot, and other lots in the area have equivalent frontage,  
95 which will have the greatest impact on the character of the neighborhood.  
96

97 Mr. Thielbar moved to approve the request for a variance for subdivision of the existing parcel,  
98 the division to be 2 acres in lot A and a minimum of 1 acre in lot B. Ms. Davies seconded. The  
99 motion passed unanimously.

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101 B. The application of William Curtis for a variance from Article 6.10 Home  
102 Occupations, Section 6.10.2 "Evidence of Use" to permit more than one  
103 commercial vehicle to be parked overnight on the property located at 99 Beech  
104 Hill Road. The subject property is located in the RU-rural zoning district. Tax Map  
105 Parcel #13-7. Case #20-11.

106 Mariah and William Curtis spoke about the application. They run a part time  
107 business, Curtis Tree Care, and have lettered commercial trucks they'd like to park in  
108 their yard. They have a gravel road around their house. They don't use the house or the  
109 yard for tax write-offs. Mr. Thielbar asked how many trucks they have, and Mr. Curtis  
110 said a maximum of 4, one of which is a pickup truck that is not lettered. Mr. Baum said  
111 he would prefer screening or something that would limit the view of the business. Ms.  
112 Curtis said you can't see the trucks from the front, and there's a fence on both sides.

113 Mr. Prior asked Mr. Eastman if this were to be a full time business, would it  
114 change anything. Mr. Eastman said the commercial permit allows not more than one  
115 commercial vehicle.

116 Mr. Curtis said he's tried to be considerate of his neighbors. All but one abutter  
117 don't have an issue. Mr. Baum said he's more comfortable knowing there's a dedicated  
118 screened area for the trucks. Ms. Curtis added that the vehicles are clean, non-rusted,  
119 and well-maintained. Mr. Curtis said his biggest truck is GVW [Gross Vehicle Weight] of  
120 19,000, and he's ok with never exceeding that number.

121 Phylis Wentworth of 103 Beech Hill, an abutter, said she's lived there for 60  
122 years and the area has always been rural residential, not commercial. The applicant has  
123 three trucks, but it varies. It's usually quiet, but in July there were back-up beepers going  
124 from 7 AM to 3PM. Traffic has increased in the area with the High School within half a  
125 mile. HS students and families use the road. The applicant's business continues to grow  
126 every year. She first spoke to Mr. Eastman on this issue in 2013. The business is  
127 detrimental to her property and the neighborhood.

128 Emily Scarita of 109 Beechwood Road, an abutter, said she has never seen or  
129 heard any commercial vehicle parked in the back of their property. She is in support of  
130 the applicants.

131 Mr. Prior said they received two abutter letters in support of the variance, from  
132 Jerry Start and Judith Nichols

133 Mr. Curtis said they didn't move in until 2015, so there can't have been a  
134 complaint from their neighbor in 2013. Ms. Curtis said they're also concerned about  
135 speeders and traffic on the road.

136 Mr. Prior reopened the discussion to the public.

137 Bob Webb, the owner of the surrounding land, said these people should get a  
138 variance. They run a neat property and are good neighbors.

139 John Heisey of 105 Beech Hill, an abutter, said he's in favor of the variance. He's  
140 never had any noise issues.

141 Mr. Prior closed the hearing to the public.

142 Mr. Prior said this is four vehicles, none to exceed 20K GVW, which is just over a  
143 modern pickup truck, not large commercial vehicles. They're lined up next to the house  
144 facing the road. Ms. Davies asked if there are screening options to address the abutter's  
145 concerns. Mr. Prior said the vehicles are on the opposite side of the house from the  
146 abutter. The conditions should be the weight and no parking of vehicles behind lots 103,  
147 105, and 109. This is a part time business. Mr. Baum said they should assume that it  
148 could grow into a full-time business. Mr. Prior said the vehicles and property are well  
149 maintained, but the variance request runs with the land. If you run a business in Exeter,  
150 you have to find a commercial location to store them, to maintain residential  
151 neighborhoods as residential. If the applicant owned 12 pickup trucks, he could park  
152 them there, but these are commercial vehicles. Ms. Davies said they need to think about  
153 conditions to protect the neighborhood. Mr. Prior said he's concerned that needing to  
154 rent a space will squash the business, but he's also uncomfortable with forever granting  
155 a variance for a commercial business to this property. Do additional weight restrictions  
156 and location on the property restrictions address the concerns?

157 Mr. Thielbar addressed the variance criteria. 1) Not contrary to public interest and  
158 2) Spirit of the ordinance is observed; one neighbor is not in support, but on balance, it  
159 doesn't seem to threaten the public safety or welfare. If 12 pickup trucks can park now  
160 by right, and the only difference is the lettering, it doesn't seem to alter the essential  
161 character. Ms. Davies and Mr. Prior said they were on the fence about essential  
162 character. Mr. Baum said with GVW conditions he thinks they get there. 3) Substantial  
163 justice is done; he believes that to be true, with the conditions they are discussing. 4)  
164 Value of the surrounding property is not diminished; they've heard no expert testimony  
165 on that, just opinions. Ms. Davies agreed, saying it's a home business and shouldn't  
166 diminish the value, with the conditions. 5) Literal enforcement of the ordinance would  
167 result in unnecessary hardship; Mr. Prior said there's nothing special about the property.  
168 Mr. Baum said the size of the property is large, which provides an additional buffer, and  
169 which gets at special conditions. Mr. Prior said there are other home commercial  
170 businesses on Beech Hill Road.

171 Mr. Thielbar moved to approve the request for a variance to allow four commercial  
172 vehicles at the site, with the provision that these vehicles will not be above 20,000 GVW  
173 and no vehicles will be parked behind the property. Mr. Baum seconded. Mr. Thielbar  
174 and Mr. Baum voted yes, and Ms. Surman, Ms. Davies and Mr. Prior voted nay. The  
175 motion failed 2-3.

176

177 C. The application of Benjamin and Sarah Anderson for a modification to a  
178 previously granted variance from Article 4, Section 4.2 which permitted the use of  
179 the existing accessory barn on their property for community gatherings. The  
180 Applicant is seeking relief to permit the operation of a nano-brewery and tasting  
181 room, with limited hours, in the basement/ground floor of the barn structure. The  
182 subject property is located at 66 Newfields Road, in the RU-Rural zoning district.  
183 Tax Map Parcel #24-29. Case #20-2.

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185 This case was deferred because the applicant requested a continuance.

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187 D. The application of Phillips Exeter Academy for a special exception per Article 4,  
188 Section 4.2, Schedule I, Permitted Uses and Article 5, Section 5.2 to permit a  
189 private school use; and a variance from Article 4, Section 4.3, Schedule II,  
190 Density & Dimensional Regulations-83 Residential to permit the proposed  
191 construction of a new building which will exceed the maximum height  
192 requirement in the R-2, Single Family Residential zoning district. The subject  
193 property is located on Front Street, Tax Map Parcel #72-209 (the site of the  
194 former Fisher Theater building). Case #20-12

195  
196 Heather Taylor, Campus Planner and Architect at PEA, spoke about the  
197 application, along with Mark Leighton, Director of Facilities; SLAM collaborative Jeff  
198 Gaunt and Neil Martin; and Jeff Clifford and Corey Belden of Altus Engineering. This is a  
199 dormitory project at the intersection of Tan Lane and Front Street. They intend to convert  
200 a vacant theater building into a 60 bed dorm with five faculty apartments and academic  
201 space in lower level. It will be three stories, but look like a two story building on Front  
202 Street; access to the lower level will be from the back due to the grade. This structure  
203 will incorporate Dow Barn, an old barn that will be moved slightly and used as two faculty  
204 apartments. They're not planning on increasing enrollment or the boarding student  
205 population. In 2018, over-enrollment highlighted a shortage of beds; they have 836 beds,  
206 where 850 is the goal. When they renovate buildings, they lose dorms due to larger  
207 bathrooms and meeting ADA requirements. They're not looking to build immediately.  
208 This project is in design/development, and they want to ensure they have the permits to  
209 go forward in order to put funding in place.

210 Jeff Gaunt said adding 60 beds and 5 faculty apartments will improve the safety  
211 and accessibility of all dorms. They tried to maintain the face of the existing buildings on  
212 the north and west side. Ingress and egress is along an existing drive. There will be two  
213 parking spaces for each faculty apartment. Everything related to students will be on the  
214 east, away from abutters. The Fire Department approved the layout of the drive.  
215 Regarding the landscape, there will be some regrading and replanting along the south  
216 elevation.

217 Mr. Prior asked Mr. Gaunt to focus on the height of the building, which is the  
218 focus of the variance. Mr. Gaunt said on the third floor, they worked to get all dorm beds  
219 out of the South facade area, to reduce the scale and have the building fit within the  
220 context. Neil Martin of the architect team said the appearance is that of a two story

221 building with two equal gables. The building has a significant setback from the street.  
222 Max zoning height is 35 feet, but the project max is 45 feet. There's a sloped roof that  
223 goes back. Mr. Prior was concerned that if they give them the height variance, the  
224 massing of the design could change. Mr. Gaunt said they could restrict the approval to  
225 the plan proposed. The primary facades are hardy plank; on the barn itself, they will  
226 replace some of the existing siding to repair it.

227 Ms. Taylor said the existing peak is 44'6"; the perceived peak of the new building  
228 will come across the same. Ms. Davies asked about the area of the proposed building.  
229 Mr. Gaunt said 42,000 square feet total. The footprint of the building is 13,700 square  
230 feet; the existing Fisher Theater was 12,000. They've included the barn in the new  
231 building, which is 1,200 on each floor. The southern side of the footprint will extend over  
232 the existing footprint, but it's still 200 feet from the curb.

233 Mark Leighton said they are restricted on three sides by the footprint. The north  
234 side is the wetland setback. The west is the property line and driveway. The east is a  
235 utility yard. The south is the Historic District line boundary. This footprint maximizes what  
236 they have; if they can't get a variance, they will shift to a different style of architecture to  
237 get below the height, but this is a better fit with the surrounding buildings. Mr. Prior  
238 pointed out that they were only three inches out of the HDC line. Mr. Leighton said  
239 they're trying to stay out of it. They are going to the HDC anyway because of the Dow  
240 Barn proposal.

241 Mr. Prior opened the discussion to public comment, but there was none.

242 Mr. Prior asked the Board to discuss the special exception first, which is to permit  
243 a school use. Mr. Baum went through the criteria. A) The use is a permitted special  
244 exception; yes. B) Public health, safety, and welfare is preserved; yes, it's in an existing  
245 campus, and sited to fit with the campus. C) Compatible with the zoned district; yes, it's  
246 compatible with the underlying zoning, and consistent with the other buildings of the  
247 campus. Mr. Prior said mostly residential use anyway. D) Adequate landscaping and  
248 screening; this will go to Planning Board review, but the siting and landscaping seem  
249 appropriate. E) Adequate offstreet parking and loading; this is a private school use, but  
250 they've considered traffic flow and met with the Town Planner. They're not asking for a  
251 parking variance. They also discussed the fire access. F) The use conforms with  
252 regulations governing the district; yes. G) Yes, they're getting site plan review. H)  
253 There's no impact to surrounding property values, it's consistent with existing use

254 Mr. Baum moved to grant a special exception to permit private school use. Ms. Davies  
255 seconded. All were in favor.

256 Mr. Prior asked the Board to move on to the height variance. There were no  
257 questions from the Board members. Mr. Prior opened the discussion to the public, but  
258 there was no comment. Mr. Prior closed the public session and opened deliberations.

259 Mr. Prior said the specific height relief being sought is roughly 10 feet. Ms.  
260 Davies said she appreciates the way they oriented the side facing the town to scale it to  
261 appear more like a two story building. Mr. Baum said it's roughly in the same footprint  
262 and very close to the existing height. Mr. Prior said the peak of the existing building is  
263 about the same height as the variance. Mr. Baum said the Fisher Theater is unobtrusive,  
264 which speaks to the layout and topography of that area.

265 Ms. Davies went through the variance criteria: 1) Not contrary to public interest  
266 and 2) Spirit of the ordinance is observed; yes, this will not result in any harm to the  
267 general public. 3) Substantial justice is done; yes, there's no evidence of harm to the  
268 general public. They've attempted to stay within the existing footprint. 4) Values of  
269 surrounding properties are not diminished; no, they own most of the surrounding  
270 properties. There's only one abutter, who would probably benefit from this transition. 5)  
271 Literal enforcement would result in unnecessary hardship; yes, this is a unique property  
272 and a unique use. There are buildings that exceed the height restrictions already. Mr.  
273 Baum said the purpose of this criteria is to prevent issues with massing and shading with  
274 surrounding buildings, which is not an issue here. The elevation change affects the  
275 perceived height. 6) The proposed use is a reasonable one; yes, it's in keeping with  
276 existing uses on the property.  
277

278 Ms. Davies moved to approve the variance for height as presented within the  
279 application. Mr. Baum seconded. Mr. Thielbar, Mr. Baum, Ms. Olson-Murphy, Ms.  
280 Davies and Mr. Prior voted yes. The motion passed unanimously.

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282 **III. Other Business**

283 A. Approval of Minutes:

284 1. January 21, 2020

285 Mr. Baum moved to accept the minutes of January 21, 2020 as presented. Ms. Davies  
286 seconded. Mr. Prior, Mr. Thielbar, Ms. Davies, Mr. Baum, and Ms. Olson-Murphy voted  
287 yes. The motion passed unanimously.

288 2. February 18, 2020

289 Ms. Davies moved to accept the minutes of February 18, 2020 as presented. Mr. Prior  
290 seconded. Mr. Prior, Mr. Thielbar, Ms. Davies, and Ms. Olson-Murphy voted yes. The  
291 motion passed unanimously.

292 3. July 21, 2020

293 Ms. Davies moved to accept the minutes of July 21, 2020 as presented. Mr. Baum  
294 seconded. Mr. Thielbar, Ms. Davies, Mr. Baum, Ms. Olson-Murphy, and Ms. Surman  
295 voted yes. The motion passed unanimously.

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299 B. Election of Officers

300 Mr. Prior said that typically at the May ZBA meeting they elect the Chair, Vice Chair, and  
301 Clerk for the coming year. Ms. Davies asked if anyone had heard about Ms. Petito's  
302 capacity to continue as Chair or as another officer, as she doesn't want to elect her for  
303 anything she doesn't want. Mr. Prior suggested leaving the offices as-is for now, and if  
304 Ms. Petito is unable to serve they can fill in.

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Mr. Prior moved to retain the existing candidates, with Ms. Petito as Chair, Mr. Prior as Vice Chair, and Mr. Thielbar as Clerk, for another year. Ms. Davies seconded. With all members and alternates voting, the motion passed unanimously.

**IV. Adjournment**

Ms. Davies moved to adjourn. Mr. Baum seconded. All were in favor and the meeting was adjourned at 9:43 PM.

Respectfully Submitted,  
Joanna Bartell  
Recording Secretary