

Town of Exeter  
Zoning Board of Adjustment  
September 15, 2020, 7 PM  
Remotely via Zoom  
Draft Minutes

I. **Preliminaries**

**Members Present:** Vice-Chair Robert Prior, Clerk Rick Thielbar, Laura Davies, Christopher Merrill - Alternate, Esther Olson-Murphy - Alternate, Anne Surman - Alternate

**Members Absent:** Chair Joanne Petito, Kevin Baum, Martha Pennell - Alternate, Hank Ouimet - Alternate

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

**Call to Order:** Acting Chair Bob Prior called the meeting to order at 7 PM. Of the alternates, Mr. Merrill and Ms. Surman will vote and Ms. Olson-Murphy will not vote.

II. **New Business**

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

Benjamin and Sarah Anderson requested a continuance for Case #20-2

Mr. Thielbar moved to continue case #20-2, the application of Ben and Sarah Anderson, to the October meeting of the ZBA. Mr. Merrill seconded. In a roll call vote, the motion passed 5-0.

- B. William Curtis – 99 Beech Hill Road, Case #20-11 Request for rehearing under Mr. Prior said that according to RSA 677:3, a request for a rehearing letter must state every reason why the decision was unlawful or unreasonable, but he saw no new information in the letter. Their decision was based on the idea that any such variance would run with the land. By allowing the home occupation on that property, they would be opening a large window for Mr. Curtis and future occupants. Ms. Davies said it sounds like they are asking for something different, such as fewer vehicles. Mr. Prior said the issue was the existence of commercial property there, not the number of vehicles. Ms. Davies suggested they file a new application, rather having than a rehearing. Mr. Prior asked Mr. Curtis to comment. Mr. Curtis said they are looking for one more vehicle than the one he is allowed to have. He's required to put letters on that personal vehicle which makes it commercial. It would not be a diesel truck. Ms. Davies

said they should ask Mr. Eastman, and Mr. Eastman said yes, they should deny the rehearing and advise the applicant to submit a new application.

Mr. Thielbar moved to deny the rehearing of #20-11 and recommend that the applicants submit a new application specifying what they would like to do on the property. Ms. Davies seconded. In a roll call vote, the motion passed 5-0.

- C. The application of IOKA Properties LLC for an Appeal from an Administrative Decision made by the Historic District Commission at their July 16, 2020 meeting relative to proposed improvements to the existing structure located at 53 Water Street. The subject property is located in the WC-Waterfront Commercial zoning district. Tax Map Parcel # 73-34. Case #20-13. HDC #20-3.

Mr. Prior said that when the ZBA hears the appeal of an HDC decision, it's a de novo application. They're not second guessing what the HDC did. This appeal is only related to the marquee, and it's not necessary to review other items from the original application. According to the RSA, the ZBA should hear abutters, as well as non-abutters who state that they are directly affected by the proposal under consideration, and other input only as the Board deems appropriate. Mr. Thielbar asked if a member of the HDC is participating, and Mr. Prior said no, and he doesn't think it would be appropriate for them to participate.

Attorney Sharon Somers spoke representing Ioka Properties LLC. They are appealing the decision of the HDC, which included a condition of approval requiring they keep the marquee and letterhead in place. They request that the ZBA remove that condition of approval and grant the certificate of appropriateness for the application in total as presented on July 16, 2020. She introduced David Cowie and Jay Caswell, the principals of Ioka Properties LLC, and Adam Wagner and Christina O'Brien of Market Square Architects.

Mr. Wagner gave a slide presentation on the Ioka project, including historic photos of the building. The original building did not have a marquee, it had a simple blade sign that read "Ioka Theater" and a rain canopy over the front door. They looked to create a new version of the original blade sign, to bring back what the architect intended a hundred years ago. They also plan to add a canopy similar to the historic one. They're looking to move the precast elements and sign to the parapet and add windows to the third floor to accommodate the new purpose of living space. This was done with regard to Exeter Zoning Ordinance. Section 8.8.2b of the ordinance requires them to maintain or reestablish the basic appearance of the building at the time that the facade attained architectural significance. The marquee was not an original component of this facade. The point at which this building gained architectural significance is when it was constructed, not when the sign was added years later. They chose to remove the marquee in the design, due to the change of use. It's no longer needed to announce anything, as the building is no longer a theater, and it would obstruct the three windows on the front which are needed due to the change of use. One of the HDC's initial concerns was that the building would lose its iconic

presence, and they returned to the HDC with a revised plan that addressed that by adding a sign that retained the IOKA iconography by using the original letters from the marquee. They also added new canopies to reflect the original purpose of the canopy of the building, as a shelter from the rain, not as a signage component. This design is sensitive to the history of the building but also functional to the new purpose. They received approval of this design, but with the exception that the marquee had to stay. Should the restoration of the marquee outweigh the restoration of the building? It wasn't part of the original architect's vision of the building, and no longer serves a function, as the use of this building is changing.

The building is in rough shape after being vacant for a long time. The owners are undertaking a financial risk with the restoration. A structural engineer from JSN Associates evaluated the marquee, and he had concerns about the structure and its attachment to the building. This is a public safety concern. If they had not been allowed to take down the marquee, they would have requested to block the sidewalk for safety purposes. Now it's been taken down for safety and is in storage. Estimates on restoration of the marquee are well into six figures. The adaptive reuse includes residential units on the second floor, and the marquee would obstruct any view from those windows, which would be a detriment to the ability to rent or sell a residential unit.

Regarding precedent, Mr. Wagner showed slides from neighboring Water Street buildings, showing overall changes such as shutters which were removed and changed signage. If the use is changing, the signage should change to be more appropriate to the new use. He also showed examples of other converted theaters nationally.

Attorney Somers said the HDC considered this application according to the Design Guidelines and Secretary of the Interior Guidelines, which include language like "when feasible" and "where possible". She asked the ZBA to consider the decision in a broader context, as the ordinance also requires the consideration of the town Master Plan, which states that the town needs to examine ways to remove barriers to the occupation of empty spaces and any other conditions that would make the area somehow less attractive to investment. The Ioka Theater building is discussed at length in the Master Plan in this context. This property was on the market for six years before her clients purchased it, and was in deplorable condition. It will no longer be used as a theater. Their proposal does comply with the Zoning Ordinance and the Downtown Master Plan. Keeping the marquee would make the project more financially difficult because of the structural support required and the restoration of the marquee, which has been estimated at over \$200,000. The financing will turn on their ability to sell the units and repay the loan, and the view from the second floor residential units would be compromised by the marquee. Keeping the marquee does not fit with their vision of the project, and is a detriment in up front costs and opportunity costs in getting a full return on the residential units, as well as the day to day operational issues with maintaining the marquee. To the

argument that it is iconic, she said that iconic is in the eye of the beholder. Abutters have either been silent or in support of the proposal. Those who think it is iconic should consider that the ordinance itself and the guidelines say “when feasible” and “as possible,” and the Master Plan recommends being supportive to developers. The developers believe it is not feasible or possible to keep the marquee in place, and there’s no purpose for a marquee to remain on a building when it is no longer a movie theater. To save this building, it needs to be a successful business venture. They will honor the history of that sign.

Attorney Somers presented a letter from Elliot Berkowitz, who lives and has an office on Water Street, in support of the proposal to remove the marquee.

Mr. Prior said much of Attorney Somers’ argument was that it was too expensive to maintain the marquee, but the developers must have been aware of the presence and condition of the marquee when they bought the building. They knew that the building was in the Historic District and any change would be subject to HDC approval. Ms. Somers said yes, they did preliminary due diligence prior to purchase, but a lot of the more detailed construction information came in after the purchase. Even though it’s in the Historic District, they did not believe that keeping the marquee would be a condition of their approval. The marquee is of extremely questionable historic or architectural value.

Ms. Davies asked about the discussion of adaptive reuse in the application. It’s her understanding that there should be an attempt to maintain character-defining features, but the guidelines are not intended to block the new use. Ms. Somers said they were attuned to keeping the character defining elements of the building in place. The proposal took the Mayer Building parapet and moved it to the top of the building to preserve and showcase it. The building was constructed in 1915, not the 20th century era in which marquees became available.

Ms. Surman asked if the HDC guidelines allow you to pick and choose which historic time period is preserved. This proposal seems like the more original design, so she doesn’t understand why what came later would be more authentic. Shouldn’t they be using the older version? Mr. Prior said it doesn’t matter what the HDC did, this is a de novo hearing. The ZBA is looking to section 8.8.2b: “If there are to be changes, it shall be to maintain or reestablish the basic appearance as of the time of construction, or to another period when the facade attained architectural significance.” Attorney Somers agreed, saying the Board’s determination is whether removing the marquee will reestablish the basic appearance. The Board can determine when the facade attained architectural significance.

Mr. Prior opened the discussion to public comment.

Julie Gilman of 96 High Street, a member of the Select Board and the Select Board rep to the HDC, said that the building being empty for a number of years was not a reflection of lack of interest from other parties, but a reflection of the owner’s decision. The packet for the ZBA meeting was not available to the public, which she finds problematic under RSA 91A. The Secretary of the Interior

standards do not require a building to be replicated to the original; they recognize that change and adaptive reuse can happen. Anything over 50 years old can be a historical contribution. What's there should be repaired and renovated if possible. The obstructed view from the 2nd floor is no different from a view over a parking lot. She does not believe that out-of-state examples are relevant. This building is an icon, and she doesn't agree that the only ones who should be allowed to comment are abutters and residents.

Patrick Gordon of 10 Front Street, the HDC Chair, said that Article 8.9 of the Exeter Zoning ordinance states the Secretary of the Interior standards as guidance in the HDC's decision making. They don't look to recreate history but to preserve the existing history. That was the primary reason why they didn't want to recreate the blade sign from 1915. He believes that the marquee should stay on the building. The HDC met their burden to review and hear the applicants and all abutters, and their decision was in compliance with Article 8 of the Zoning Ordinance. Section 8.2.1 states that the HDC should safeguard the heritage of the town. The loka marquee is an iconic sign to the town's heritage, and was specifically showcased in the 1940s film "The March of Time" about Exeter's history. On the question of preserving property values, they believe that the loka is a draw to residents and businesses, and the owners can draw additional revenue by renting out the marquee for advertising. On the question of drawing civic pride, the loka marquee is the only loka theater in the country, and the only place that "loka" shows up in the town, which refers to the "Indian Playground" moniker given to the local area upon settlement in 1636. The only sign of 1940s/1950s art deco in the town. Article 8.8.2F demolition removal or relocation, none shall be without the approval of the commission. HDC guidelines, 01-4, it is important that renovations do not radically alter or destroy character defining features, materials, or finishes. Once resources of the buildings that contribute to the heritage of the community are destroyed, they cannot be replaced. Demolition is rarely considered an appropriate option and is strongly discouraged by the HDC. Mr. Prior said this is not a building that can be demolished. Mr. Gordon said it's a structure. The applicant said the marquee was a threat to the public, but the HDC did not believe they had done a sufficient review. A structural engineer and Doug Eastman reviewed it, but the bottom panels were not removed to see how it was attached to the building. It's now visible that there were fourteen staggered bolts that connected it to the building. Change of use has no relevance to whether a building should be saved or not saved. The marquee staying does not prevent the reuse of the building. He suggested that the HDC members are more qualified than the ZBA to make historically appropriate decisions, and he would like to see them uphold the decision not to remove and destroy the marquee.

Laurie Couture, a former resident of Exeter and current resident of Newmarket, and the person bringing forth the legal objection to removing the marquee. Mr. Prior said she no longer lives in Exeter or has any direct contact with the property, and asked the members of the Board whether she should be

allowed to speak. By a roll call vote, Mr. Merrill, Ms. Surman, and Mr. Theilbar said no, and Ms. Davies and Mr. Prior said they would prefer to hear other residents first. Mr. Prior asked Ms. Couture to stay in the meeting until the end where they might revisit the decision.

Florence Ruffner of 5 Pine Street is a resident and business owner downtown. Mr. Prior allowed her to speak. Ms. Ruffner said she applauds the developers for taking on this project. Their proposal still honors that it was the loka. She's been in real estate for 30+ years, and doesn't see the merit of retaining the marquee for a building that will not be a theater. The condos' view on the non-functional sign would definitely affect their value.

Tyler Livermore of 7 Exeter Falls Drive said that the marquee is a bauble that was added on at some point and has no historical value, only iconic value, and that's questionable. The property has been deteriorating for years.

Dawn Jelley of 4 Nelson Drive said the loka marquee has been part of the Exeter downtown since the 1940s, so it clearly follows within the historic district guidelines of being constructed more than fifty years before the building permit application. 8.2.1 Section B of ordinance, to preserve and reflect elements of the town's history; the loka has been important in our social lives past and present. In the past, it symbolized the heart of the downtown arts culture. It's iconic and uniquely Exeter.

Maired Carr of 4 Cross Road said that the marquee has been part of the loka since at least 1940; anything that's been around since then definitely has historic significance. Without it, the downtown looks bare. The marquee is not just a sign, it's an architectural point.

Joe Leweck of 12 Exeter Highlands Drive and a business owner in Exeter, and formerly involved with the Exeter Theater company, said he knows that things change. One of the things holding this building back has been the sign. What burden do we really want to place on a business owner? He wants people to think about the tax base and the contribution this economic development opportunity will make. We need to live with this and move forward.

Kristin Poulin of Kingston NH, owner of two abutting properties 39-43 Water and 42B Water Street, and owner of Ganesh imports and Serendipity. She's in full support of the removal of the loka marquee. Saving the building is more important than the sign. The developer's plans are beautiful and will bring a positive change to the community. She's concerned about the marquee staying and creating confusion because it's no longer a theater.

John and Jennifer Segal abutters at 65 Water Street, owner of Picture's Worth a Thousand Words. Mr. Prior said not an abutter because they don't own the building, but he will let them speak. Ms. Segal said she likes the proposal but she's missing the style and sass of the marquee. You knew you were in Exeter when you saw it.

Karen Weeks of 7 Penn Lane in Exeter said the HDC were clear about the criteria of Article 8 that informed their decision, but the other side has been

more about feelings. This hearing should be decided on Article 8. The marquee has significant historic value.

Scott Hogan, a local land use attorney who has been working with Laurie Couture and John and Jennifer Segal. Mr. Prior said they have his letter, the objection to appeal of the administrative decision, as part of the record. Mr. Prior asked the Board if Mr. Hogan should speak. Mr. Merrill, Ms. Davies said no., Ms. Surman yes. Mr. Theilbar said he hadn't seen the letter and would like him to speak. Mr. Prior said yes. Mr. Hogan said he understands that the Zoning Board is looking at the HDC's decision de novo, the process of the HDC was exemplary. The NH preservation alliance and NH Division of Historical Resources submitted letters to the HDC which informed their decision. They should respect the HDC's process.

Linda Wade said she is formerly a resident of Exeter, and wanted to talk about the Secretary of the Interior's standards. Mr. Prior said that topic had been covered, and as a non-resident they will not let her speak.

John Scalamero, an Exeter resident, said they should have respect for the rule of law. 8.2.1A, safeguarding the architectural heritage of the town. Marquee represents a unique art deco piece of architecture and should be preserved. 8.2.1B, the marquee itself is a representation of Exeter's cultural, economic, and political history. It presented a way for the town to communicate to itself and others. HDC's decision should be respected and upheld.

Karen Belten of 3 LaPerle Avenue said that there are a lot of feelings here, but there's a question of whether this can go back to the 1915 representation. This brings back the character of the original architecture and seems closer to the Master Plan. It's in the town's best interest for someone to save this building and restore it to a historic period that she finds valid.

Patrick Gordon said the requirement to put the marquee back on the building does not hinder the development of this building in any way. The HDC was in full support of the project with the one condition that the marquee remain.

Maired Carr asked them to consider the precedent set by the ZBA overturning the HDC's decision, and whether this puts the whole Historic District in danger.

Michelle Norton of 10 Sanborn Street supports the HDC in their considering the historical aspects that should not be changed. The marquee was taken down for temporary purposes, and that should be considered.

Robin Musgee of 12 Cherry Street said that many things in Exeter are of historical significance, and the sign is as well.

Mark Dettore of 3 Little Pine Lane and owner of a property at 10 High Street, this building has been abandoned and needs a new breath of life. The marquee was specifically there for theater purposes, and it was no longer a theater. The new proposal looks wonderful and he would like to welcome the developers into the community.

Karen Weeks said the 1915 sign is no longer in existence, they would have to make one up. The marquee is still in existence, and has been on that

building for 80 years. Whether people don't like it is irrelevant, it's a great representation of the art deco period.

Mr. Prior called for a five minute recess at 9:30 PM. The meeting reconvened at 9:35 PM.

Attorney Somers said the comments of the HDC Chair are not practically accurate. She objects to his statements that the proposed change of use has no relevance and no bearing and the marquee will not hinder the development. The project is not going to include a movie theater. The presence of the marquee will hinder the development because it negatively impacts the marketability of the second floor residential units. The letters of the Secretary of Interior did not mandate, merely recommended that they follow the guidelines. To say that the marquee has national significance is not accurate. The provisions of the Zoning Ordinance and the Design Guidelines need to be read in context. Section 8.2.1, we are conserving property values because they're maintaining the value of this property by removing the marquee. Mr. Gordon contended that the marquee would be a draw, but no evidence of that was presented, and a business owner said the opposite. The marquee is not the only way that they could foster civic pride and education. They plan to have displays in the lobby that will speak to the building's heritage. The purpose of the downtown Historic District is to preserve the scale and unique character of the downtown and to retain and enhance the commercial character. You do that by ensuring you have viable commercial operations down there. One of the sections of design guidelines talks specifically about commercial properties, and that's what should be focused on.

Ms. Surman said that to answer the concerns of one caller, she doesn't think the marquee would be destroyed. The marquee could be repurposed in some other way than putting it back on the building. Attorney Somers said it's in safe storage. They will hold onto it for six months after the decision, they've offered it to the Exeter Historical Society, which has expressed interest in the letters. Mr. Prior said the letters would be used on the building? Attorney Somers said she believes it's the exact letters but they would choose the ones in best condition from the two sets of the sign.

Mr. Prior closed the public session and began the deliberations.

Mr. Theilbar said the Ioka Building is falling down. If you put the sign in front of two of the three windows, no one is going to want to live in those units. If they have to have the sign, they'll have a great deal of difficulty going ahead with the project.

Ms. Davies said she is confused about statements by the HDC that retaining the sign will not impact the development, when it will clearly affect the marketability of those units, particularly if the sign is to be lit at night. The Master Plan and the goals of the town are not consistent with this impact to the development. The developer's proposal did a good job respecting the historic nature of this building. The HDC's priority seems to be retaining the historic features at the expense of the rest of the building, and that doesn't help the town.



Ms. Olson-Murphy warned that once the marquee is gone, they can't bring it back. Mr. Prior said it's no longer a theater, and they have to separate the emotional and the practical.

Mr. Prior said one of the members of the public reference 8.9, but what it says is that HDC should consider the downtown Master Plan and the Secretary of the Interior's Guidelines. Need to recognize the economic viability of downtown and separate historic from iconic. The marquee is clearly an icon of the town, and will remain so even if it's not on the building. Ms. Davies said the Old Man of the Mountain is still iconic for the State.

Mr. Merrill said why hasn't anyone bought and taken care of the sign previously? Mr. Prior said it wasn't for sale, but the owners are willing to offer it as a donation. Ms. Surman said if it were going to be a theater, that would be different, but this would be a different use. She said they must put a hook on the building to support the downtown Christmas light display.

Ms. Davies made a motion to approve the application of Ioka Properties LLC for an appeal from an administrative decision made by the Historic District Commission regarding the Ioka marquee, overturning the decision that the signboard must remain. Mr. Thielbar seconded. Mr. Thielbar said the developers were willing to put up a sign on the building and a canopy, and they should mention that specifically. Attorney Somers said the appeal was to reverse the decision and grant approval for the application as presented on July 16, 2020. This proposal included the signage.

Ms. Davies withdrew her motion and Mr. Thielbar withdrew his second.

Ms. Davies moved to approve the application of Ioka Properties LLC for an appeal of the decision made by the HDC at its July 16th 2020 meeting, removing the condition of approval that the marquee and lettering remain in their current location on the front of the Mayer Building. Mr. Thielbar seconded. Mr. Merrill asked if they should add a provision for the disposal of the marquee, and Mr. Prior said no, not as a condition, the attorney for the applicant stated that the marquee would be retained for a period of six months and would then be offered for donation. Ms. Olson-Murphy asked if saying the letters need not go back on the building is an issue, and Mr. Prior said "current location." The version of the proposal from July 16th that they're approving has letters on the building. By a roll call vote, the motion passed 5-0.

### **III. Other Business**

#### **A. Approval of Minutes: August 18, 2020**

1. Corrections: Ms. Davies said line 35 should read "adequate sight distance," not "adequate site distance." In line 58, "witness test pits" should be "witnessed test pits." In line 106, it should read "Curtis Tree Care," not "Curtis Street Care."

Mr. Thielbar moved to accept the minutes of August 18th, 2020 as amended. Ms. Davies seconded. Ms. Olson Murphy voted and the motion passed 5-0.

**IV. Adjournment**

**Ms. Davies** moved to adjourn. Mr. Thielbar seconded. All were in favor and the meeting was adjourned at 10:21 PM.

Respectfully Submitted,  
Joanna Bartell  
Recording Secretary