

Town of Exeter  
Zoning Board of Adjustment  
November 17, 2020, 7 PM  
Remote via Zoom  
Draft Minutes

I. **Preliminaries**

**Members Present:** Chair Joanne Petito, Clerk Rick Thielbar, Laura Davies, Martha Pennell - Alternate, Christopher Merrill - Alternate, Ann Surman - Alternate

**Members Absent:** Vice-Chair Robert Prior [left prior to voting], Kevin Baum, Hank Ouimet - Alternate, Esther Olson-Murphy - Alternate

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

**Call to Order:** Chair Petito called the meeting to order at 7 PM.

Ms. Petito read a statement:

As Acting Chair of the Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet electronically.

On November 6, 2020, Public notice of this meeting was posted on the town website and on the bulletin board of the town offices at 10 Front Street. As provided in that public notice, the public may access the meeting online and via phone.

Please note that all votes taken during this meeting shall be done by roll call vote. Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting and who that person is (son, daughter, spouse, etc...), which is required under the Right-to-Know law.

II. **New Business**

A. The application of IOKA Properties LLC for a variance(s) from Article 4, Section 4.4. Schedule III: Density & Dimensional Regulations-Non Residential seeking relief from the Maximum Height Regulations and the Minimum Rear Yard Setbacks; and from Article 5, Section 5.6.6. Off-Street Parking Schedule to allow for no off-street parking to be provided in conjunction with the proposed redevelopment of the existing building. The subject property is located at 53 Water Street, in the WC-Waterfront Commercial zoning district. Tax Map Parcel # 73-34. Case #20- 16.

Attorney Sharon Somers of Donohue, Tucker and Ciandella (DTC), Principals David Cowie and Jay Caswell, and Christina O'Brien of Market Square Architects were

45 present to discuss the application. Attorney Somers said that Ioka Properties LLC is  
46 seeking relief from the height regulations to accommodate a structure on the building's  
47 roof and a relief from setback regulations to put in balconies. They're also seeking relief  
48 from the off-street parking requirements.

49 Ms. O'Brien showed the proposed rear elevation, with balconies on three floors.  
50 The 1st floor balcony protrudes 8 feet, the 2nd and 3rd floor balconies 5 feet, and there  
51 is a basement-level outdoor deck. On the roof, there will be a railing that encloses a  
52 patio with an open air pergola, as well as a structure for a stair access point. The first  
53 floor deck would be 5.84 feet from the existing property line on one side, and 0.14 feet  
54 on the other side.

55 Mr. Prior left at this time due to technical issues.

56 Ms. O'Brien said regarding the height requirements, a height of 35 feet is  
57 allowable on the street side. An existing parapet is above that height, and they're hoping  
58 to use that as a screen for the rooftop condenser units. On the river side, a height of 50  
59 feet above grade level is allowed, which hits in the middle of their proposed rooftop  
60 railings. They're asking for a 10 foot allowance above the 50 feet, just in case the 7 foot  
61 pergola structure must be raised slightly. Per zoning ordinance, an access way does not  
62 fall under the maximum building height allowances. The pergola would be level with that  
63 structure.

64 Ms. Petito asked how much higher the pergola and access point are than the  
65 front height of the building. Ms. O'Brien said the parapet is about 6 feet taller than the 35  
66 feet, and the pergola is about 7.5 feet taller. It shouldn't be visible from Water Street,  
67 although you may see a corner of the access way. Attorney Somers said the pergola  
68 and stairwell are set back from Water Street, and it shouldn't be visible from the street.  
69 She added that the design has been approved by the HDC. Mr. Thielbar asked if the  
70 elevator must come above the roof, and Ms. O'Brien said no, it does not come above the  
71 roof.

72 Mr. Thielbar said that some information in the presentation was not included in  
73 the packet. They will want to have these limitations on what they can do with the roof on  
74 record. Attorney Somers said the full package was submitted electronically to the  
75 department today for the record.

76 Ms. Surman asked why they asked for 10 feet when they only need 7 feet for the  
77 planned structures. Attorney Somers said they don't want to have to come back in the  
78 event that the height of the pergola is slightly taller due to a construction issue. Mr.  
79 Cowie said they would be ok with only 8 feet, and Mr. Thielbar said he would be more  
80 comfortable with that.

81 Attorney Somers went through the variance criteria. 1) Not contrary to the public  
82 interest; no, the rear setback is abutting the river, and the variance isn't going to affect  
83 the essential character of the locality. Regarding the height relief, this is a practical  
84 concern for the mechanicals, as well as being necessary to create a high-end  
85 experience for the residents. All of this has been approved by the HDC. Other properties  
86 in this locale have rooftop improvements or outdoor seating areas, so this is consistent  
87 with the neighborhood. 2) Spirit of the ordinance; yes, this is the same as #1. 3)  
88 Substantial justice is done; yes, the applicant will be able to redevelop this property to

89 maximize the enjoyment of the retail and residential users. They're not aware of  
90 detriment to any individual if granted. 4) Property values will not be diminished; no, if  
91 anything property values will go up as a result of this work. 5) Hardship; yes, the special  
92 conditions for this property are that they are the largest building in the area and one of  
93 the few that is big enough to support these rooftop improvements, which will not be  
94 visible from the street. Regarding the balconies, this is the only property in the area wide  
95 enough to support them. The encroachment into the rear yard setback will replicate  
96 what's already there with the former bump-out, which will be removed. There's no  
97 crowding of abutting properties. Regarding the height, there's no blocking of light or air,  
98 as the pergola and railing are largely transparent. The proposal is reasonable; yes, they  
99 created the design so there's a balance between what's attractive to residents while not  
100 building too high. Ms. Petito asked them to clarify that the balcony is shallower and  
101 narrower than the existing bump-out structure on the building, and Mr. Cowie said the  
102 lower balcony is slightly more projecting, but the other two project less. He added that  
103 removing the existing structure and putting in balconies will cut down the massing of the  
104 building on that side.

105 Ms. Petito asked for public comment, but there was none. She closed the public  
106 session and began the Board deliberations.

107 Ms. Davies said she had expected the public to be concerned about noise from  
108 the balcony, but that's not the case since no one was present. She's not concerned  
109 about it. Ms. Petito said it's not visible from the street, and there were no public concerns  
110 presented. The balconies are more pleasant to look at than the existing bump-out.

111 Mr. Thielbar went through the criteria. 1) Not contrary to the public interest; no,  
112 when looking at functionality and aesthetics, this is definitely in the public interest. 2)  
113 Spirit of the ordinance is observed; yes. 3) Substantial justice is done; yes, the building  
114 owners are making an effort to maintain the appearance of the building while still having  
115 it function in a significantly different way. 4) Value of surrounding properties will not be  
116 diminished; yes, and the value may even be enhanced. 5) Literal enforcement of the  
117 ordinance would result in unnecessary hardship; yes, the special nature of the structure  
118 makes it difficult to make the transition in function within the ordinance limitations. He  
119 added that he would like to restrict the overall height to 8 feet, rather than the 10 feet  
120 requested in the application.  
121

122 Ms. Davies moved to approve the application of Ioka Properties, LLC for a variance from Article  
123 4 section 4.4 schedule III: Density & Dimensional Regulations-Non Residential seeking relief  
124 from the Maximum Height Regulations and the Minimum Rear Yard Setbacks as requested,  
125 with the exception that we will approve the 58 foot height where 50 feet is required as opposed  
126 to the 60 foot height where 50 feet is required, as detailed in the application. Mr. Thielbar  
127 seconded. Ms. Petito pointed out that the applicant had submitted additional documents today.  
128 Mr. Thielbar moved to amend the motion to include the document submitted to the town office  
129 today showing additional drawings. Ms. Davies seconded the amended motion. In a roll call

130 | vote, Ms. Surman, Mr. Merrill, Ms. Davies, Ms. Petito, and Mr. Thielbar voted yes, and the  
131 | motion passed 5-0.

132 | Attorney Somers said they are also seeking relief for the required 91 off-street  
133 | parking spaces required by the ordinance. They propose providing none.

134 | She went through the variance criteria. 1) Not contrary to the public interest; this  
135 | requirement is intended to prevent traffic problems, but this is a downtown property in a  
136 | commercial zone of similar uses, with some residential on the upper floors, which are  
137 | permitted as a matter of right in this zone. Almost all of these properties do not have any  
138 | off-street parking, so they won't be changing at all the essential character of the  
139 | neighborhood. There will be both residential and commercial uses, which they believe  
140 | will create a "staggered" parking demand. 2) Spirit of the ordinance is observed; yes,  
141 | the spirit and intent is the same as #1. 3) Substantial justice is done; yes, this variance  
142 | will allow the applicants to move forward with the project. They're not aware of any  
143 | individuals who believe their interest will be impaired. Any public impact will be minimal,  
144 | especially compared with the benefits generated by this building. 4) Values of  
145 | surrounding properties will not be diminished; no, the surrounding properties are largely  
146 | commercial and do not provide off-street parking. This renovation will enhance the value  
147 | of surrounding properties, not diminish them. 5) Hardship; yes, the unique aspect of this  
148 | property is its size. Fair and substantial relationship; yes, the purpose is to prevent  
149 | parking issues, but the needs will be staggered. Proposed use is reasonable; yes, this  
150 | variance is critical to this building being developed. She added that they looked into  
151 | shared parking, but did not find a solution.

152 | Mr. Thielbar asked why they were adding a balcony to the first floor retail area.  
153 | Attorney Somers said it's irrelevant, as the balcony itself doesn't alter the parking  
154 | calculations. Mr. Caswell said that is just speculative space, so they're planning a  
155 | balcony for aesthetic reasons. Mr. Thielbar said if they end up with a restaurant on the  
156 | first floor, they may need to come back for a larger parking variance.

157 | Ms. Petito asked for public comment.

158 | Jeff Koroski of Captain's Way said if they have a roof deck, a side deck, and a  
159 | restaurant, it will create problems with parking. There are already parking problems  
160 | downtown.

161 | Attorney Somers responded that the use of the roof deck will be strictly limited to  
162 | residents, and will not be open to the public. Regarding the parking situation, a 2018  
163 | traffic survey by RPC determined that there was the perception of a parking issue  
164 | downtown but there is actually sufficient parking. The only restaurant usage will be in the  
165 | basement.

166 | Ms. Petito closed the public session and opened the Board deliberations.

167 Mr. Thielbar said he doesn't understand how they arrived at the 91 spaces  
168 number. He doesn't believe the "staggered demand" would be enough to offset the  
169 parking challenges, as not all residents will leave during the day. There also needs to be  
170 a place where those cars can park overnight. There will be 18 downtown parking spaces  
171 tied up essentially full time. Ms. Davies said the Master Plan calls for residential uses  
172 downtown, which would be impossible without zoning relief. Ms. Petito said she believes  
173 the calculations are based on the anticipated size of the restaurant. Ms. Davies said  
174 there are empty storefronts and parking is available downtown.

175 Ms. Davies went through the variance criteria. 1) Not contrary to the public  
176 interest; no, the public interest is in having a thriving downtown. Overall the parking  
177 always seems to work somehow. The mixed-use plan for the building mitigates the  
178 parking needs slightly. 2) Spirit of the ordinance is observed; yes, this is basically the  
179 same as public interest. 3) Substantial justice is done; yes, there's really no detriment to  
180 any particular party that's directly foreseen with the variance being granted. The uses  
181 are all permitted by zoning. Having this building back in use will offer a public benefit and  
182 a benefit to other property owners. Any potential impact will be outweighed by the  
183 anticipated benefits. 4) Values of surrounding properties will not be diminished; no,  
184 they've had no testimony that property values will be diminished, and she believes that  
185 the values will be enhanced by this restoration. 5) Hardship; the special conditions of the  
186 property present a hardship. This is a historic building, and no one would like to see it  
187 torn down or reduced in size. No fair and substantial relationship exists between the  
188 ordinance and the specific application; yes, the parking regulation is there to provide  
189 orderly and easy parking for people, but this is a historic structure with no on-site parking  
190 and requires relief to remain in use. Proposed use is a reasonable one; yes, all the uses  
191 proposed are permitted. A mixed-use property is a desirable way to develop historic  
192 buildings in downtown. The staggered nature of the uses could reduce the parking  
193 demand. She added that she personally thinks the building should be used, and it  
194 requires parking relief, so she recommends granting the request. Ms. Petito agreed. Mr.  
195 Thielbar suggested giving them relief for 100 spaces instead, so they don't have to come  
196 back for further relief. Ms. Petito said she doesn't think they can give them more than  
197 they've asked for. The number requested is a lot already.  
198

199 Ms. Davies moved to approve the application for a variance from Article 5, Section 5.6.6. Off-  
200 Street Parking Schedule for off street parking relief for up to 91 spaces in conjunction with  
201 proposed redevelopment of the existing building at 53 Water Street, as stated in the  
202 application. Mr. Thielbar seconded. Ms. Surman, Mr. Merrill, Ms. Davies, Ms. Petito, and Mr.  
203 Thielbar voted yes, and the motion passed 5-0.

204  
205 Ms. Petito paused the meeting for a 5 minute break at this time. The meeting  
206 reconvened at 9:03 PM.

- 207  
208 B. The application of Benjamin and Sarah Anderson for a modification to a  
209 previously granted variance from Article 4, Section 4.2 which permitted the use of

210 the existing accessory barn on their property for community gatherings. The  
211 Applicant is seeking relief to permit the operation of a nano-brewery and tasting  
212 room, with limited hours, in the basement/ground floor of the barn structure. The  
213 subject property is located at 66 Newfields Road, in the RURural zoning district.  
214 Tax Map Parcel #24-29. Case #20-2.  
215

216 Attorney Justin Pasay and owners Benjamin and Sarah Anderson were present  
217 to discuss this application. Attorney Pasay said this is a large 4.5 acre parcel, and  
218 includes a single family home and the Word Barn building, which is about 25 x 58 feet in  
219 size. They are requesting a modification to a variance from 2017, which permitted  
220 community gatherings with the sale of tickets for certain events, which he will refer to as  
221 "The Word Barn Use." This was subject to the condition that Doug Eastman confirm that  
222 the Andersons meet all State, local, and federal requirements, which they have complied  
223 with. The variance was granted based on the unique characteristics of the property, such  
224 as its size, topography, and buffering, as well as the nature of the barn building for the  
225 Word Barn use, which has provided a significant value to the community. Letters of  
226 support to that effect were submitted in February [Ms. Petito said they were not in the  
227 packet]. There have been no complaints filed regarding the Word Barn operation.

228 Recently, the Andersons had the idea to add a nano-brewery to the Word Barn,  
229 which is a distinct use but complementary to the Word Barn use. A nano-brewery is a  
230 small brewing operation. These operations are heavily regulated; they will need to obtain  
231 a license from the NH Liquor Commission, and will have monthly affirmative reporting to  
232 the State regarding consumption. They would not be able to produce more than 2,000  
233 barrels annually. No alcohol would be consumed at the Word Barn other than beer that  
234 was brewed there. They are proposing offering limited food so that they could serve  
235 pints of beer rather than just 4 ounce pours. They would also be selling growlers. They  
236 would be required to get a valid license or certificate from the State or local health  
237 official, a Permit of Assembly, and a certificate from the Fire Department. They must also  
238 have a Federal permit from the Bureau of Alcohol, Tobacco, Firearms, and Explosives.  
239 Approval from the ZBA tonight will not allow them to go forward immediately, they will  
240 undergo several more processes. The brewing operation would be primarily open  
241 Thursday - Sunday during events at the Word Barn. The fit-up of the space would be  
242 very minimal. In the 1980s, the barn was rebuilt into a high-end art center with a  
243 dedicated septic system. They're looking to put the brewing equipment and a dedicated  
244 700 square foot tasting room in the basement. The anticipated impact is low, as the use  
245 coincides with the existing Word Barn use. Nano-brewery use is not listed in the zoning  
246 ordinance, and is not totally separate from the Word Barn use, so Doug Eastman  
247 advised that an application for a modification to the existing variance is appropriate.

248 Attorney Pasay showed and described an aerial view of the property and a tax  
249 map to illustrate the buffer between the property and its neighbors. He said that the  
250 minor adjustment to the building will be indiscernible to viewers of the property. He also  
251 showed a floor plan for and pictures of the Word Barn building.

252 Mr. Anderson described the various events and fundraisers they'd done at the  
253 Word Barn. Although they've had their normal operations shut down since March, the

254 community has donated to support them and they have had some outdoor events which  
255 sold out. They will likely not have any events for the next six months, but if they are  
256 allowed to go forward with the nano-brewery they can work on that process. A nano-  
257 brewery is in line with the grass-roots and community focus of the Word Barn, and will  
258 help to financially support the Word Barn. The Word Barn has a five year zero-complaint  
259 track record that they are looking to maintain.

260 Attorney Pasay went through the variance criteria. 1) and 2), Proposed  
261 modification is not contrary to the public interest and the spirit of the ordinance is  
262 observed; yes, it does not unduly and in a marked degree conflict with the zoning  
263 objectives. The Word Barn already exists, and this is a minimal modification not  
264 discernible from the exterior of the property. The RU zone already allows with a special  
265 exception such uses as bed and breakfasts, child daycare facilities, farm stands, etc,  
266 which are similar to the existing and proposed uses of this property. It's in the public  
267 interest because it will enhance the experience of the Word Barn. 3) Substantial justice  
268 is done; yes, there is no loss to the public that is not outweighed by the gain to the  
269 applicant and the community. There's no discernable detriment to the public, as the  
270 scope and nature of the modification are small. 4) The value of surrounding properties  
271 will not be diminished by the modification; yes, given the existing use, there's no  
272 evidence of a negative impact on the value of surrounding properties, and it may  
273 enhance value. 5) Hardship; the property is unique due to its large size and its wooded  
274 buffer between the property and its abutters. The additional use will be obscured from  
275 the road so will have no impacts on the essential character of the neighborhood. The  
276 proposed use is reasonable; yes, it will complement the Word Barn and will be  
277 consistent with other permitted uses in the district. They suggest two conditions they  
278 would be willing to agree to: that the approval is conditional upon receipt of all Federal,  
279 State, and local permits, as verified by the Code Enforcement Officer; and that they  
280 would have limited hours, specifically Thursday and Friday night from 5 - 10 PM and  
281 Saturday and Sunday from 1 - 9 PM.

282 Ms. Petito said this seems like a separate business entity from the Word Barn.  
283 Attorney Pasay said it will be operated by the same people and the goal is to  
284 complement the existing Word Barn use. Ms. Petito said for the previous variance, there  
285 were a lot of younger people and families who were in support of the Word Barn. Is there  
286 a separation between these customers and the alcohol business? Attorney Pasay said  
287 there would be separate entrances. There will continue to be family-friendly events at the  
288 Word Barn. The State requirements on the operations of these breweries are robust and  
289 will regulate the details of who can be in the space. Ms. Davies said the current approval  
290 for the Word Barn accommodated some serving of alcohol; Mr. Thielbar clarified that  
291 there was no selling of alcohol, but they could serve it for a donation.

292 Ms. Surman asked if they need to have a different curb cut on Newfields Road to  
293 support this modification. Attorney Pasay said as part of the first variance in 2017, they  
294 were supposed to go to the State and re-permit the existing driveway, but did not; they  
295 have rectified that now. They will likely go through that process again for the  
296 modification.

297 Ms. Surman said she was concerned about what would happen in the future if  
298 this use is permitted. Attorney Pasay said it wouldn't grow any bigger than what is  
299 proposed. Mr. Anderson said they live on the property with their family and have no  
300 expectation or desire to grow it into anything beyond a complementary part of the Word  
301 Barn experience. Ms. Petito asked if it would be open during every event at the Word  
302 Barn, and Attorney Pasay said it likely would not. Ms. Davies asked about serving beer  
303 at outdoor events. Attorney Pasay said they couldn't have people outside with the  
304 alcohol. The alcohol consumption is limited to the tasting room space. Ms. Petito asked  
305 about the number of events in a year, and Mr. Anderson said there were 75 events in  
306 2019.

307 Ms. Petito asked about water and septic usage from the brewery. Attorney Pasay  
308 said that the barn has a dedicated septic that supports 1,000 gallons per day, so they're  
309 confident that the existing well and septic would accommodate the use, but it's also  
310 something that would be confirmed as part of the State and Federal regulations. Mr.  
311 Thielbar said variances go with the property, and the Andersons' good management of  
312 the property shouldn't influence their decision. The Word Barn use is consistent with the  
313 exceptions for the zoning, but the nano-brewery is retail, and that is missing from the list  
314 of special exceptions. Also, a limitation on brewery hours is nearly impossible for the  
315 town to enforce.

316 Ms. Petito said that this proposal doesn't seem like part of the current Word Barn  
317 operation and goes beyond a minor modification to that variance. Attorney Pasay argued  
318 that there is already a commercial component to this property with the selling of tickets.  
319 The additional alcohol sales would be similar to a farm stand where people stop and  
320 purchase items, which use is permitted.

321 Ms. Petito asked for public comment, but there was none, although Ms. Petito  
322 mentioned that there were letters of support previously submitted. She closed the public  
323 session and began the Board deliberations.

324 Mr. Thielbar said there's no hardship, and they're asking for a dramatic change to  
325 the operations. There's no retail allowed in the special exceptions of the RU Zone. Ms.  
326 Davies said this is tiny in scale. They're limited to 3 barrels in a batch, and the tasting  
327 room space is only 700 feet. Mr. Thielbar said it could grow into a full-blown restaurant if  
328 they allow the modification. Ms. Davies said they could include the condition suggested  
329 by the applicant and limit the serving of alcohol to the basement space. Ms. Petito said  
330 she agreed with Mr. Thielbar, this is a separate operation from the Word Barn and would  
331 be a bar/restaurant in a residential neighborhood, which would affect the character of the  
332 neighborhood. Ms. Surman said she also thinks this proposal goes too far and  
333 compromises the residential and rural character of the neighborhood. Ms. Pennell said  
334 the Word Barn is a wonderful contribution to the community, but agreed that this is going  
335 beyond the original concept and would be allowing them or the next owners to have a  
336 restaurant.

337 Mr. Thielbar went through the ways in which the proposal did not meet the  
338 variance criteria. Regarding 1) Proposed modification is not contrary to the public  
339 interest and 2) Spirit of the ordinance is observed; no, to introduce a retail business into  
340 the Rural Zone is not maintaining the spirit of the ordinance. 3) Substantial justice is



341 done; no, they are opening the door to a type of operation significantly different than  
342 what is happening now, which does potential damage to the public. 4) The value of  
343 surrounding properties will not be diminished; he speculated that it could have a  
344 negative financial impact on the surrounding properties, but in the absence of testimony  
345 he said he would pass on this criteria. 5) Hardship; no, they don't need this operation to  
346 successfully run the Word Barn, since they have shown how well they're doing without  
347 the brewery.

348 Ms. Davies said that it's relevant that the beer would be produced on site as with  
349 a farm stand or agro-tourism offering. She believes that the approval would be  
350 reasonably constraining.

351

352 Ms. Surman moved to deny the application of Benjamin and Sarah Anderson for a modification  
353 to a previously granted variance from Article 4, Section 4.2 which permitted the use of the  
354 existing accessory barn on their property for community gatherings. The Applicant is seeking  
355 relief to permit the operation of a nano-brewery and tasting room, with limited hours, in the  
356 basement/ground floor of the barn structure. The subject property is located at 66 Newfields  
357 Road, in the RURural zoning district. Tax Map Parcel #24-29. Case #20-2. Mr. Thielbar  
358 seconded. In a roll call vote, Ms. Surman, Mr. Thielbar, and Ms. Petito voted yes; Ms. Davies  
359 and Mr. Pennell voted nay. The motion passed 3-2 and the application was denied.

360

361

362 **III. Other Business**

363 A. Approval of Minutes - October 20, 2020

364 Ms. Davies and Mr. Pennell did not vote, as they were not present on October 20.

365 Ms. Surman moved to approve the minutes from the meeting of October 20, 2020 as submitted.  
366 Mr. Thielbar seconded. Ms. Surman, Mr. Thielbar, Ms. Pennell, and Ms. Petito voted yes and  
367 the motion passed 4-0.

368 **IV. Adjournment**

369

370 Ms. Davies moved to adjourn. Mr. Thielbar seconded. Mr. Thielbar voted nay [in jest] and the  
371 motion passed 4-1. The meeting was adjourned at 10:30 PM.

372

373 Respectfully Submitted,

374 Joanna Bartell

375 Recording Secretary