

Town of Exeter
Zoning Board of Adjustment
Tuesday, 1/19/2021, 7 PM
Remote via Zoom
Final Minutes

I. **Preliminaries**

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

Members Absent: Chair Joanne Petito, Hank Ouimet - Alternate

Call to Order: Acting Chair Bob Prior called the meeting to order at 7 PM.

Mr. Prior 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 January 8, 2021, 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, which is required under the Right-to-Know law.

II. **New Business**

A. None scheduled

III. **Other Business**

A. Request for Rehearing – Ben and Sarah Anderson – Case #20-2 66 Newfields Road – Tax Map Parcel #24-29

Mr. Prior said that this case was initially heard on Nov 17, 2020, and they have now received a request for a rehearing from Attorney Justin Pasay on behalf of the applicants. The five voting members at the November meeting were Joanne Petito, Rick Thielbar, Laura Davies, Anne Surman, and Chris Merrill; four of those members are here, and he will be sitting in for Ms. Petito. There's no rule that the members need to be the same, but he thinks the voting list should be similar. This is a written request and there will be no further input from the applicant or the public unless the rehearing is granted.

44 Mr. Thielbar said it's not clear what the Board's function is in this matter. He was
45 not moved by the submittal, and he doesn't think it's appropriate or necessary to go
46 through it point by point. Mr. Prior said they should decide whether there is significant
47 evidence that they erred in their previous decision, either through a legal error or if
48 there's new information available to them. There are two aspects to the request. The first
49 is an analysis of what Attorney Pasay considers to be the legal error when they did not
50 meet four out of five variance criteria, 1, 2, 3, and 5. The second is a presentation of new
51 evidence, but his [Mr. Prior's] opinion is that this is not new evidence, but the offer of a
52 condition to approval of restricting the operating hours further. Mr. Baum said he agrees
53 that the proposed condition is not new evidence, since it could have been presented at
54 the initial hearing. New evidence would be facts that have come to light since the initial
55 hearing. Ms. Davies agreed, saying it's more of a negotiation point than new evidence.

56 Regarding the attorney's argument that the property already includes a
57 commercial use, Mr. Prior said that the analysis at the last meeting was that the Word
58 Barn use was a distinctly different use than what was proposed. Alcohol is currently
59 provided, but that falls under quite different legal requirements from the State as
60 opposed to a brewery. The underlying zoning district allows home occupations, but this
61 is not a roadside farmstand. There are many restrictions on home occupations; they are
62 not by right, but by permit, and the Board would have to vote on them.

63 Mr. Baum said the initial Word Barn use came to the Board as a special
64 exception, but the Board determined that it was a matter of a variance instead. The
65 brewery was proposed as an amendment to the variance. His understanding is that
66 home occupation is permitted by special exception, if it's a permitted home occupation.
67 The Board determined that the Word Barn use didn't fall under a permitted home
68 occupation. Mr. Prior said he believes the proposed use of the property does not count
69 as a home occupation. Ms. Davies said that Attorney Pasay is making an analogy to
70 something that is permitted, the production of a good on the property like a farmstand.
71 Mr. Prior said it's not similar; the brewery would be restricted to those who are attending
72 ticketed events at the Word Barn, so it's not retail or for the public. Mr. Thielbar said they
73 handled the Word Barn use as a variance in 2017 because it was such an unusual and
74 special case that it didn't fit as a special exception.

75 Ms. Surman said regarding Attorney Pasay's point about whether there would be
76 a significant increase in traffic, they can't know that, so she doesn't think it's relevant.

77 Mr. Baum said they should address the applicant's specified error that the public
78 interest prong of the variance criteria was satisfied, but the spirit of the ordinance prong
79 wasn't. Did the Board consider the criteria, which is whether the variance will alter the
80 essential character of the neighborhood and threaten the public health, safety, and
81 welfare? In the minutes, there is discussion about the character of the neighborhood, in
82 line number 332 - 335, so it seems that the Board addressed the concerns. Ms. Davies
83 said it was discussed, and the majority felt it would alter the character of the
84 neighborhood to offer a bar/restaurant use. Mr. Thielbar said if the courts have said
85 criteria 1 and 2 are really one, then not meeting 2 is the same as not meeting both.

86 Mr. Thielbar said regarding hardship, the letter says that the virus has put a
87 hardship on them, but that's not a unique hardship and he doesn't think that's a basis for

88 it being reheard. Mr. Prior said he still doesn't find hardship, as normally defined. It's the
89 nature of the physical property itself that creates a hardship. A use variance has already
90 been granted; this is a further expansion of that, not something that should be
91 guaranteed by right. It's beyond the scope of what has been granted. He doesn't see
92 anything in the application that says they made a real mistake.

93 Ms. Davies said that page five of the attorney letter claims that the ZBA had no
94 discussion and made no finding that the denial of the variance would provide a gain to
95 the public that outweighs the loss to the applicants from the denial, but she specifically
96 remembers Ms. Petito saying allowing a brewery/restaurant in this neighborhood would
97 go too far and change the character of the neighborhood, so denying the variance would
98 be a gain to the general public.

99 Ms. Surman said they covered it well. If they grant the change to the variance,
100 the applicant could continue to expand to something else. Regarding the hardship
101 aspect, it wasn't hardship in terms of Covid, which has affected everyone. She doesn't
102 want the applicant to think that they don't like what goes on at the Word Barn, but this is
103 not going in the right direction of what the Word Barn was intended to be.
104

105 Ms. Surman moved to deny the rehearing of Case #20-2 per RSA 677.2, as no new information
106 has come forward that would cast any doubt on the denied application from the meeting of
107 November 17, 2020. Mr. Thielbar seconded. In a roll call vote, Mr. Merrill, Mr. Thielbar, Ms.
108 Surman, Ms. Davies, and Mr. Prior voted yes, and the motion for the rehearing was denied.

109
110 B. Approval of Minutes - December 15, 2020
111 Corrections: Mr. Thielbar said that regarding the Curtis Tree Care application, they
112 specifically referred to a class 2 vehicle in the text of the motion, which was not captured
113 in the minutes. Mr. Baum said he thought the issue was addressed by the language of
114 their request, which they referenced. Mr. Prior said he would like the recording secretary
115 to review the tape and they can approve the amended minutes at the next meeting.
116

117 **IV. Adjournment**

118

119 Mr. Thielbar moved to adjourn. Ms. Davies seconded. The motion passed unanimously, and the
120 meeting was adjourned at 7:50 PM.

121
122 Respectfully Submitted,
123 Joanna Bartell
124 Recording Secretary