

Town of Exeter
Zoning Board of Adjustment
April 20, 2021, 7 PM
Remote via Zoom
Final Minutes

I. **Preliminaries**

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

Members Absent: Chair Joanne Petito, Laura Davies, Kevin Baum

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.

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.

He acknowledged the outgoing Chair, Joanne Petito, who is stepping down from the Board when her term expires this month.

Mr. Merrill will be the voting alternate on the first application; Ms. Pennell will be the voting alternate on the second.

II. **New Business**

- A. The application of 154 Water Street LLC for a variance from Article 4, Section 4.4 Schedule III: Density & Dimensional Regulations-Non-Residential to permit two existing commercial office spaces to be converted into residential units with less than the required minimum lot area. The subject property is located at 28 Front Street, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #72-160. Case #21-4.

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Property owner James Horne was present to discuss the application. The property has four residential units and two commercial units; the 2 commercial units are decrepit and obsolescent, and do not meet ADA standards. The residential units are in high demand, and he would like to turn the two ground floor units into residential units. This will make the property more profitable and better for the tax rolls; it will provide housing; and it will incentivize him to make investments in the building such as a sprinkler system and a new a water main. This is a 9,000 square foot lot with four residential units; adding two would not violate the spirit of the neighborhood. There are a lot of non-conforming lots in downtown Exeter.

Mr. Prior asked how long the units upstairs have been residences. Mr. Horne said at least since he bought the building in 2008. The third floor is not currently occupied, and based on items he's found he believes it was last occupied in the 1940s. The two units were probably converted to commercial in the 1950s or 60s. Ms. Pennell said in the 1950s she had a classmate who lived on the second floor of that building. There were the Scamman law offices on the first floor. It had been changed to the Gage Law Offices when Mr. Horne bought the building.

Mr. Prior observed that the applicant didn't ask for parking relief, and Mr. Horne said he has two more spaces than he needs, with the garage, two spaces in front of the garage, and eight more spaces. Mr. Eastman confirmed that the parking calculations are correct, adding that the units are not two bedrooms, just one bedroom, which reduces the parking requirement.

Mr. Prior asked for public comment, but there was none.

Mr. Thielbar discussed the variance criteria. 1) The variance request is not contrary to the public interest and 2) The spirit of the ordinance is observed: yes, it's clear that the public is not served by a building that's falling down or not being used productively. 3) Substantial justice is done: yes, there is a great benefit to the applicant in a more profitable building, and the public interest is not harmed at all. 4) Property value will not be diminished; yes, there's been no discussion of a negative impact to any property value. It will only increase the value of the neighbors' property. 5) Literal enforcement of the ordinance would result in an unnecessary hardship: yes, the building itself presents the hardship. It's in need of upgrading, but upgrading it to an office doesn't make sense, as it doesn't lend itself to office use.

Mr. Prior added that the specific relief being sought is related to the requirement on the lot size, which can't be changed. There are no external changes. He thinks they meet all of the variance criteria.

Mr. Thielbar asked if the applicants need to go to the Planning Board. Mr. Eastman said no, because the changes are internal and there are no site improvements required. They're turning it into a multi-family, which is a permitted use; the relief is only about the density.

Mr. Thielbar moved to approve the application of 154 Water Street LLC for a variance from Article 4, Section 4.4 Schedule III: Density & Dimensional Regulations-Non-Residential to permit two existing commercial office spaces to be converted into

89 residential units with less than the required minimum lot area. Mr. Merrill seconded. In a
90 roll call vote, Mr. Prior, Mr. Thielbar, Mr. Merrill, Ms. Olson-Murphy and Ms. Surman
91 voted yes, and the motion passed 5-0.

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- 93 B. The application of Ben and Sarah Anderson for a special exception per Article 4,
94 Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
95 operation of a Bed & Breakfast use in the existing accessory structure located at
96 66 Newfields Road. The subject property is located in the RU-Rural zoning
97 district, Tax Map Parcel #24-29. Case #21-5.
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99 Attorney Brendan O'Donnell of DTC spoke on behalf of the applicants, Ben and
100 Sarah Anderson, who were also present. Attorney O'Donnell was speaking instead of
101 Justin Pasay, which the applicants authorized. Attorney O'Donnell said that the
102 applicants are seeking a special exception for a bed and breakfast use on their property.
103 66 Newfields Road is a single family farmhouse with an attached garage and a detached
104 structure known as the Word Barn. This is a rural, secluded property with large setbacks.
105 The Word Barn was a horse barn that was renovated in the 1980s to add a studio
106 apartment on the upper floor with complete living facilities. When the Andersons bought
107 the property in 2013, they were told that this had been used as a long-term rental for
108 decades. They continued to rent out the apartment after their purchase. Recently it came
109 to their attention by a letter from the town that they did not have permission to rent that
110 space, and they were asked to file for a special exception for the bed & breakfast use of
111 the space.

112 Mr. Prior asked if there was an application for an accessory dwelling unit filed
113 when the apartment was originally built. Mr. Anderson said no, no records could be
114 found before a certain date for the property. Mr. Eastman confirmed that there are no
115 records of it. Mr. Prior asked if the Andersons turned it from a long term rental into a bed
116 & breakfast, and Attorney O'Donnell said yes. When the long-term tenant left after about
117 a year of their ownership, they began renting it out through Air BnB.

118 Ms. Pennell said she has a problem with the definition of bed & breakfast in the
119 ordinance [Zoning Ordinance 2.2.12]. The unit should be in the main dwelling, not
120 separate. She would like legal input on this question. Mr. Prior said he doesn't believe
121 there's a distinction to be made between structures on the property, as long as one is
122 owner-occupied. Mr. Thielbar said it says "the primary dwelling of the owner-operator."
123 It's an integral part of the main structure, not an outbuilding. Ms. Pennell said the
124 ordinance also states "the bed and breakfast shall not be used for any other hospitality
125 or business related uses," so how can they operate the Word Barn? Mr. Thielbar said
126 this issue wasn't addressed in the submittal. Mr. Prior asked Mr. Eastman to comment
127 on whether it must be one structure or could be two, and Mr. Eastman said they did
128 approve a special exception for a Bed and Breakfast at 72 High Street back in the 90s;
129 there were three units in the residence and a fourth in an outbuilding. He doesn't
130 remember that being an issue. He doesn't think it's that much of an issue in this case, as
131 long as they're providing the services associated with a bed and breakfast, specifically
132 serving breakfast to guests. Mr. Prior said regarding the ordinance saying "the bed &

133 breakfast shall not be used for any other hospitality or business related uses,” that’s
134 pretty clearly saying they have to pick between the two uses.

135 Attorney O’Donnell said regarding the definition of bed & breakfast, it needs to be
136 owner operated, and the owner-operator has to have their primary dwelling on the
137 property. Having the owner-operator on the premises is a major factor in regulating any
138 issues with the guests. This property is the primary residence of the Andersons. The
139 Andersons provide honey and eggs to the guests for their breakfasts. Regarding “the
140 bed and breakfast shall not be used for any other hospitality or business related uses,”
141 these are discrete spaces within the building, not commingled spaces. No people other
142 than the guests have access to this space, and it doesn’t share the facilities of the Word
143 Barn.

144 Mr. Prior read a review from a person who had stayed in the past that discussed
145 hearing the noise from the Word Barn sound check in the space. Mr. Prior said this
146 shows that it’s not a separate space from the Word Barn, it’s the same space. It’s part of
147 the same structure. Attorney O’Donnell said sound coming through a wall doesn’t mean
148 that the spaces are intermingled. None of the people who come to events at the Word
149 Barn enter the B&B space. There’s a dedicated parking space for the rental. It has a
150 dedicated bathroom, kitchen, and bed. He doesn’t see anything in the ordinance that
151 suggests if you operate a bed & breakfast, you can’t do anything else with your property.
152 The bed & breakfast space is not used for any other purpose, it is strictly limited to this
153 use.

154 Ms. Pennell said they should postpone the discussion until the Zoning Board has
155 gotten guidance from town legal counsel. The ordinance says “the primary dwelling,”
156 which would be the house. Attorney O’Donnell asked that the Board raise any concerns
157 they have now, so the applicants can come back and address all concerns. Mr. Prior
158 said the concern are 1) the appropriateness of having the B&B and business use in one
159 structure, and 2) the owners living in the other structure. They are separate structures. If
160 the definition of a bed and breakfast is all of your property, whether it is one structure or
161 two, it implies that the business use should not be in the same structure. He’s inclined to
162 defer the application pending legal counsel.

163 Ms. Surman asked about the difference between Air BnB and a bed & breakfast.
164 She thought an Air BnB was not a permitted use. Mr. Prior said Air BnB is a vehicle for
165 the public to be put in touch with a rental property, which could be a room, a B&B, or a
166 hotel. The only part of the zoning ordinance that discusses this type of use is as a bed &
167 breakfast. Since the Andersons are providing food, it’s a bed & breakfast under the
168 code. Mr. Eastman said that the problem with Air BnBs is when the owners go away.
169 With a bed & breakfast the owners are there at the time.

170 Mr. Eastman said he’s also concerned that when the Andersons got their
171 driveway permit from the State of NH for the Word Barn, there were nine conditions
172 listed with that permit, and condition 1 is that any further development or subdivision of
173 the property beyond the dwelling and the Word Barn will require reapplication for a
174 driveway permit. It may not be an issue, but the Andersons should also bring it back to
175 the DOT. There was also another driveway added to the property, and they were told by
176 the DOT that it would have to be removed, but as of today it’s still there.

177 Mr. Prior discussed granting a continuance. Attorney O'Donnell said the
178 Andersons assent to the continuance.

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180 Mr. Thielbar made a motion to continue the application of Ben and Sarah Anderson until the
181 next meeting, which should be in May. Ms. Surman seconded. In a roll call vote, Ms. Surman,
182 Mr. Thielbar, Ms. Pennell, Ms. Olson-Murphy, and Mr. Prior voted yes, and the motion passed
183 5-0.

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185 **III. Other Business**

186 A. Minutes of March 16, 2021.

187 Ms. Surman moved to approve the minutes of March 16, 2021 as presented. Mr. Merrill
188 seconded. Mr. Prior, Mr. Thielbar, Ms. Pennell, Mr. Merrill, Ms. Surman, and Ms. Olson-Murphy
189 voted yes, and the motion passed 6-0.

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191 **IV. Adjournment**

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194 Respectfully Submitted,

195 Joanna Bartell

196 Recording Secretary