

Town of Exeter
Zoning Board of Adjustment
July 20, 2021, 7 PM
Nowak Room, Town Offices
Final Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Rick Thielbar, Laura Davies, Martha Pennell - Alternate, Anne Surman - Alternate

Members Absent: Clerk Esther Olson-Murphy, Christopher Merrill - Alternate

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

I. **New Business**

- A. The application of Kyle and Maggie McGrady for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of an existing three-unit residential structure to four units. The subject property is located at 92 Court Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel # 83-14. Case #21-7.

Owner Maggie McGrady and Henry Boyd of Millennium Engineering were present to discuss the application. Mr. Boyd said this is a three-unit dwelling, and they're asking that it be recognized again as a four-unit structure. There is more than adequate parking, with a five-space garage on-site and three parallel spaces in the existing driveway. The structure itself will not change in size. They'll have adequate landscaping and screening.

Ms. McGrady said she purchased the property last year. In August they did a renovation and re-landscaped the back of the property; they have a plan to redo the front yard as well. The current use is a three family, four-bedroom, four-bathroom, 2,392 square foot home, with 100 feet of frontage on Court Street. The property has a detached five-car garage/barn. The lot size is 39,941 square feet. The proposed use is to convert from a three-family to a four-family residential home. It was converted from a four-family to a three-family in 1999 by the previous owner. The use is a permitted special exception as set forth in Article 4.2, as it's consistent with other homes in the area. The lot is 219% of the required lot size for a legal four-family conversion, and has eight off-street parking spaces, which is 160% of the requirement. The proposed use will not change the appearance of the property. The proposed use will be compatible with adjoining development, as there are many multi-family homes on Court Street. Adequate landscaping is provided, and will comply with what is required by the town. Adequate off-street parking and loading is provided, and ingress and egress are provided so as to cause minimal interference on abutting streets. The use conforms with all applicable regulations of the district. It's a four-family dwelling in an R2 zone. The use shall not adversely affect nearby or abutting

45 property values, as it's consistent with uses on Court Street and will not change
46 the external appearance.

47 Ms. Davies asked if the owners will be residing in the property. Ms.
48 McGrady said yes, she and her husband live there and have no plans to leave.
49 Ms. Davies asked how the garage spaces are accessed. Ms. McGrady said the
50 garage has three bays, two tandem spaces, and one single space, all accessible
51 from the driveway. Mr. Baum asked about the three outside parking spaces. Ms.
52 McGrady said it was an existing parking area, but they cleaned it up and added
53 more gravel.

54 Mr. Baum opened the meeting to public comment.

55 Mark DiFabio of 94 Court Street was present via Zoom to comment. He is
56 an abutter and supports the McGradys. They've been wonderful neighbors and
57 he has no concerns about this project.

58 Mr. Prior moved to close the public session. Ms. Davies seconded. All
59 were in favor.

60 Ms. Pennell said she used to live on Court Street so she probably
61 shouldn't vote. Mr. Baum and Ms. Davies said they didn't feel that was a reason
62 not to vote, but that Ms. Surman can be the voting alternate on this case.

63 Mr. Baum said this request makes sense and the applicant went through
64 the points, so he doesn't think they need to go through the criteria again. They're
65 going back in time to how the property was 20 years ago, with no external
66 changes to the property. Mr. Thielbar agreed. Mr. Baum mentioned that they
67 have done some external improvements, they've done a nice job of fixing it up.
68

69 Mr. Prior moved to approve the application for a special exception for Kyle and
70 Maggie McGrady as proposed. Ms. Davies seconded. Ms. Surman, Mr. Baum,
71 Mr. Prior, Ms. Davies, and Mr. Thielbar voted yes, and the application was
72 approved 5-0.

- 73
74 B. Continued public hearing on the application of Ben and Sarah Anderson for a
75 special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and
76 Article 5, Section 5.2 to permit the operation of a Bed & Breakfast use in the
77 existing accessory structure located at 66 Newfields Road. The subject property
78 is located in the RU-Rural zoning district, Tax Map Parcel #24-29. Case #21-5.

79 Owners Ben and Sarah Anderson, as well as Attorney Justin Pasay of
80 DTC, were present to discuss the application.

81 Mr. Baum said this is a threshold question under the first of the special
82 exception criteria; it's all about whether the use is a permitted special exception
83 under 4.4.2 Schedule 1. Ms. Davies said they have guidance from the town's
84 Attorney on that question. Attorney Pasay said they had submitted a letter
85 making two arguments about whether the Andersons' use does constitute a bed
86 & breakfast, but if the Board's determination is that it's not a bed & breakfast,
87 they can move on to the variance request.

88 Attorney Pasay said he understands if there is an “application fatigue”
89 with the Andersons, as they’ve been before the ZBA several times, starting in
90 2017 when the Word Barn was permitted, in 2020 regarding a nano-brewery, and
91 now this issue. The current issue is a zoning issue brought to the Andersons’
92 attention by a letter from Doug Eastman in December, saying that short-term
93 rentals are not permitted, and suggesting they go before the ZBA for a special
94 exception. They’re only looking to permit what has been the status quo of the
95 property for decades. The second issue is the citizen’s petition and public
96 support for the Word Barn. The third issue is the foundational issue. Last time,
97 there were two questions being raised: are bed & breakfast s required to be
98 enclosed exclusively within the primary dwelling of the owner/operator? The
99 Andersons’ position is that it is not required, and Mr. Prior had previously pointed
100 out other instances, such as 72 High Street, where the Board has allowed
101 portions of a bed & breakfast use to occur outside of the primary dwelling.
102 Traditionally, to be a bed & breakfast, the owner must be present on site and
103 provide food and beverages to the guests.

104 Attorney Pasay said that in a letter dated June 1, he considered what the
105 Planning Board in 1995 was thinking when they drafted the definition in the
106 zoning ordinance. The language is “the bed & breakfast cannot be used for any
107 other hospitality or business-related uses,” which this is not. It’s a small space
108 that can’t accommodate any other use. Mike Dolly of the Planning Board said at
109 the time that he was concerned about the use of a bed & breakfast for other
110 functions, such as weddings or business meetings. The ZBA already determined
111 that the property is suited for the Word Barn use; this is a minor addition which is
112 consistent with what the purpose of the regulation was, and is consistent with the
113 historic use of this space. It was used for decades as a long-term rental and for
114 two years under the Andersons as a short-term rental without any complaints.
115 This property is well equipped to handle this use. The short-term nature of the
116 proposal is even less impactful than the previous long-term rental.

117 Mr. Prior said that their definition of bed & breakfast doesn’t say that a
118 bed & breakfast is “that portion of the property that is available for rent,” it says
119 it’s “the primary dwelling of an owner-operator.” This is the definition approved by
120 the voters of Exeter. It also cannot have another business-related use, which is
121 what they already have. Attorney Pasay said there is room there for
122 interpretation. There’s nothing in the zoning ordinance that says you can’t have
123 two uses permitted by special exception on the same property, or a variance for
124 one use and a special exception for another. The context Mr. Dolly gave is
125 important. The Planning Board was making this a special exception use to let the
126 neighbors weigh in on such proposals.

127 Mr. Thielbar said the first words of the definition are “the primary
128 dwelling.” A dwelling is a self-contained unit of accommodation used by one or
129 more households as a home, such as a house, apartment, mobile home,
130 houseboat, vehicle, or other substantial structure. The bed & breakfast was to be
131 in the primary residence with the primary owner. Mr. Thielbar said that Attorney

132 Pasay had given an example of another bed & breakfast, but that applicant
133 functioned consistently with the bed & breakfast requirements and asked
134 permission to additionally use a separate structure on the property to supplement
135 their capacity. There are other requirements as well: they have to serve
136 breakfast, and that doesn't mean a box of Cheerios. The dining area must be in
137 the bed & breakfast, not in an adjacent structure, capable of accommodating the
138 guests. The function of a bed & breakfast is to invite a community into a private
139 home and allow the homemaker to make money and the visiting folk to get to
140 know the neighborhood. This is a one-unit motel separate from the main
141 structure, which could be operated with the owners never having contact with the
142 guests, and that's not the intent of a bed & breakfast. Attorney Pasay said the
143 Board's historic interpretation has not been so narrow. A recent bed & breakfast
144 was permitted with a structure outside the primary dwelling. The purpose of a
145 bed & breakfast is to ingratiate residents into the area, and that's certainly what's
146 happening here.

147 Ms. Surman asked if they only have one precedent, of 72 High Street. Mr.
148 Prior said yes. That bed & breakfast is owner-occupied, and there is an extension
149 in the building that used to be the garage, but there are also rooms in the primary
150 dwelling. Ms. Surman said she agrees with Mr. Thielbar after reading the
151 definition. A "dining area" should be a dining room, and this is a studio. Attorney
152 Pasay said the recommendation from Mr. Eastman, who knows these matters
153 best, was to go for a special exception.

154 Mr. Anderson said regarding the breakfast concern, they supply eggs,
155 honey, and local tea and coffee, and they have a designated area for dining.
156 Also, it would be challenging for someone to come onto their property without
157 seeing the Andersons. The aspect of the ordinance that the space has no other
158 uses could be interpreted as meaning the entire property, or the bed & breakfast
159 space itself, and the neighborhood and community support for the Word Barn
160 suggests it would behoove the Board to interpret this gray stipulation in the Word
161 Barn's favor. The bed & breakfast space has clear and defined confines, and has
162 nothing to do with the Word Barn use. The bed & breakfast use ensures that they
163 keep a tight control on volume and how long events at the Word Barn last. They
164 collected more than 2,000 signatures on a petition in support. This was done to
165 give the ZBA the confidence that this was something the community would like to
166 see go forward. Mr. Anderson pointed out that with the nano-brewery application,
167 Ms. Surman said she liked them as people but the approval follows the property,
168 not the people, and the next owners could do something different or awful. That's
169 not the case here, as a bed & breakfast is already an approved use. The risk to
170 the town and neighborhood are non-existent, while the risk to the future of the
171 Word Barn is huge. The arts need subsidizing, and the Word Barn cannot survive
172 on its own. This is about keeping their heads above water and continuing to offer
173 community gatherings via a use which has existed on their property for decades
174 with no complaints. The concept of Air BnBs caused some confusion at the last
175 meeting, but the Andersons are indeed hosting a bed & breakfast. Air BnB is just

176 a reservation software platform which lets them vet and screen their guests
177 appropriately. Doug Eastman stated at the last meeting that Air BnBs were not
178 allowed in Exeter because people were renting out their entire property and not
179 being present, and parties were happening, but that is not the case here.

180 Ms. Davies asked where the breakfast occurs. Mr. Anderson said there's
181 a dining area within the apartment. The Andersons are not present at breakfast,
182 they leave the foods so the guests can make breakfast at their will.

183 The Board watched a video of Mr. Anderson demonstrating the bed &
184 breakfast space in the context of their property.

185 Mr. Baum said that they have a legal opinion on this matter, which is
186 privileged, but the Board can waive that and read it to the applicant. The Board
187 agreed. Mr. Baum read an email from Attorney Inspector Morgan, the town's
188 legal counsel, which stated that this proposal did not fall within the definition of a
189 bed & breakfast, which is defined as the primary dwelling of an owner-operator
190 that provides exclusively for the lodging of transient guests and whose posted
191 rate shall include breakfast. A bed & breakfast shall not be used for any other
192 hospitality or business-related uses. A bed & breakfast shall not have more than
193 four rentable rooms and a dining area capable of accommodating the number of
194 registered guests. Since the barn is also used as an entertainment venue, it is
195 used for another business-related use. Moreover, the apartment is not in the
196 primary dwelling of the owner, and it is not clear that a bed & breakfast may rent
197 full apartments, rather than attached bedrooms. Therefore, his opinion is that this
198 proposal would require a variance instead of a special exception.

199 Attorney Pasay said that counsel's interpretation is putting words into it
200 that the town did not intend. There's no discussion about what "room" means.
201 The regulation doesn't say it has to be confined to a single room. Regarding
202 other business, there's nothing in the ordinances that says a property that has a
203 permitted bed & breakfast can't have another use on it. The point of the ZBA is to
204 look at specific properties and look at whether proposed uses are suitable for the
205 property. This property is totally able to accommodate the proposed uses.

206 Mr. Baum opened the discussion to the public, for comment on the
207 specific issue of whether this proposal meets the definition of a bed & breakfast.

208 Enna Grazier of 8 Warren Avenue said she doesn't think it's appropriate
209 to look at this issue without considering that this a family who lives in a home.
210 Once you're on the property, that's the home. The Andersons are the most pre-
211 eminent hosts she's ever met and they're what you hope to find in the best of bed
212 & breakfast s. It's an overstep on the part of the Board to determine or define
213 where the guests must sleep or what they should eat in someone's home.

214 Dave Sullivan of 44 Hampton Falls Road said if he owned this property,
215 his teenage girls would love to stay in the [bed & breakfast] space, but they
216 would still be in his home. It wouldn't be in the primary residence, but it wouldn't
217 be something separate either. The definition of primary residence is too narrow.

218 Attorney Pasay said there's an opportunity to make an interpretation. The
219 Board finding that this is a bed & breakfast is more consistent with other uses

220 under special exception. To find that this is a novel use is to require a variance,
221 which is a higher standard, more like that for a hotel/motel.

222 Mr. Baum brought the discussion back to the Board. Ms. Davies said the
223 other case they heard with short-term rental/Air BnB use, the objection was that
224 there was no one there and strangers were showing up. That's not the case here,
225 as the Andersons intensively use and live at this property. However, this just
226 doesn't seem to fit the bed & breakfast definition. The breakfast is supposed to
227 be a prepared breakfast. This is in a separate building, more like a studio or an
228 apartment use. The town attorney's opinion weighs even more in that direction.

229 Ms. Surman said the fact that the approval goes with the land is always in
230 the back of her mind. Someone else may take that use and not do it correctly.
231 The bed & breakfast definition says "primary dwelling," ie in the home. The Word
232 Barn is not where they live, they live on the property. Stretching the definitions is
233 a slippery slope.

234 Ms. Pennell said she agrees with what has been said. She was surprised
235 that Mr. Eastman recommended that they go this route rather than apply for an
236 accessory dwelling unit. She added that when you go to a bed & breakfast, the
237 breakfast is served to you in another location.

238 Mr. Baum said there's no definition of "breakfast;" he's more focused on
239 the aspect that it's for "exclusive lodging of transient guests." This also doesn't
240 count as the primary dwelling. It may not make sense, but this is the definition
241 they have.

242
243 Mr. Prior made a motion to deny the special exception request for case #21-5 on
244 the grounds that it does not meet the definition of a bed & breakfast as per the
245 Exeter zoning ordinances. Mr. Thielbar seconded. Mr. Baum, Mr. Thielbar, Mr.
246 Prior, Ms. Davies, and Ms. Pennell voted aye, and the motion passed 5-0.

247
248 C. The application of Ben and Sarah Anderson for a variance from Article 4, Section
249 4.2 Schedule I: Permitted Uses to permit a short-term rental use of the existing
250 residential unit located in the accessory structure at 66 Newfields Road. The
251 subject property is located in the RU-Rural zoning district, Tax Map Parcel #24-
252 29. Case #21-8.

253 Attorney Pasay went through the variance criteria. 1) The variance will not
254 be contrary to the public interest and 2) The spirit of the ordinance is observed;
255 yes, the proposal will not alter the essential character of the neighborhood and
256 will not threaten public health or safety. The point of 4.2 is to make sure that
257 appropriate uses are sited in rural districts and that there not be a compromise to
258 the rural character. In this case, the variance actually advances those purposes.
259 In 2017, the Board found that the Word Barn was appropriate for the property
260 because of the nature of the property and its wooded buffer. This was a long-
261 term rental for decades, which is more impactful than the short-term rental
262 proposed. No one driving by or on any adjoining property would be able to
263 discern this use. The Andersons would be fine with updating the DOT driveway

264 permit to reflect the additional use. This proposal supports the public interest
265 because it brings people to Exeter. 3) Substantial justice is done; yes, the public
266 isn't gaining anything by denying this. There were 2,000 signatures on the
267 petition in support. There is no objection from the abutters and the neighborhood
268 that they know of. This is funding the Word Barn, so it would be a negative
269 impact on the Andersons if they cannot have a short-term rental. It's unclear
270 whether the Word Barn will be solvent if they don't approve this use. 4) Values of
271 surrounding properties are not diminished by this proposal; yes, they have an
272 expert opinion saying from an agent at Keller Williams that not only would it not
273 diminish the surrounding properties, when the Andersons' property value goes up
274 that would positively impact surrounding properties. 5) Literal enforcement of the
275 zoning ordinance would result in unnecessary hardship; yes, this is a property
276 that already has a variance for the Word Barn because the property is uniquely
277 situated. It's 5.5 acres, bigger than surrounding properties, and it's buffered by
278 open space and conservation land. Its topography hides this activity from the
279 road. They've had these uses for years without any impact or complaints.

280 Mr. Baum said this used to be a long-term rental, has it only been a short-
281 term since 2019? Attorney Pasay said since 2018. Ms. Pennell asked if they
282 would update the permit for the driveway with the State, and Attorney Pasay said
283 yes, if they get this approval they would advise the DOT of this additional use.
284 Ms. Pennell pointed out that their DOT approval says that any further
285 development or subdivision will require reapplication for a permit. Attorney Pasay
286 said the Andersons are happy to resolve that with the DOT. Mr. Baum said point
287 3 of the DOT permit says other access to the highway from the premises is to be
288 prevented, but they have a sign for an overflow parking area; that entry was to be
289 closed. Attorney Pasay said the Andersons are addressing that with the DOT. It's
290 a longstanding farm road that's been open forever. They are looking for approval
291 from the ZBA before finalizing with the DOT.

292 Mr. Thielbar said the accessory building has been used for long-term
293 rental for years. He's never seen a request from the Andersons for an accessory
294 building be converted to an accessory dwelling unit. They could have put long-
295 term rental back in that unit and had it generating income. He's hearing that they
296 want to do a transient guest in that environment, but he thinks that would be like
297 a one-unit motel room. The accessory structure is not approved for any
298 residential use. Many people in town have accessory dwelling units. If they are
299 successful in getting a variance to allow transient guests in a structure that's not
300 approved for any residential use, anyone who has an approved accessory unit is
301 one step ahead of where they are, and the ZBA will have no basis for rejecting
302 that request from anyone. They'll be legalizing Air BnBs, and the ZBA doesn't
303 have the authority to make that big a change to the whole community. Attorney
304 Pasay said this is transient occupancy in a bed & breakfast. If this was in the
305 Andersons' house, it would be permitted as a special exception. He argued that
306 the ZBA doesn't set precedent, because every question that comes before the

307 Board is pertaining to the uniqueness of that property. There's no other Word
308 Barn in town. Long-term rental doesn't make sense because of the Word Barn.

309 Ms. Davies said when the guest is in the home, that's a different level of
310 supervision. The commercial nature of the Word Barn use makes it more suited
311 to short term rental. Is there a way to tie the two uses together, so that if the
312 Word Barn use goes away, so does the short-term rental use? Attorney Pasay
313 said they would likely agree, but he'd want to make sure it's enforceable. Would it
314 be a condition of approval? Mr. Baum asked Ms. Davies whether she was tying it
315 to the Word Barn use or owner-occupancy, and Ms. Davies said probably both,
316 but the commercial nature of the Word Barn in the same building is what she had
317 in mind. Ms. Surman said this will create precedent. If they allow an Air BnB
318 here, it opens the opportunity for people to apply. Ms. Davies said that's another
319 reason to tie it to the commercial use.

320 Mr. Thielbar said the Andersons should have applied for an accessory
321 dwelling unit instead. Attorney Pasay said a short-term rental is much less
322 impactful than a long-term rental. Mr. Baum asked how much use the short-term
323 rental is getting. It seems like one person caring for the space would be less
324 impactful than 300 people coming through in a year. Attorney Pasay said that in
325 the two years, there were 471 guests. There was 98.7% occupancy in this
326 period. Mr. Anderson said they vet these people and they care for the space.
327 They're not welcoming bad guests who will misuse the property. Mr. Baum said it
328 sounds like the equivalent of adding a long-term tenant, so it's not less impactful.
329 Mr. Anderson said these people are going out to eat and out in town every night,
330 not once a month like a long-term tenant. This use subsidizes the Word Barn,
331 and without it, the Word Barn model falls apart. Ms. Pennell asked if Air BnB is
332 the only venue for booking, and Mr. Anderson said they want that vetting of
333 guests that Air BnB provides, although occasionally they have guests from other
334 sources.

335 Ms. Pennell asked Mr. Eastman if Air BnB is allowed in town, and Mr.
336 Eastman said no. They need to come to grips with this, as other towns like
337 Portsmouth have. Exeter has dealt with two violations just this past week.
338 They're reported by their neighbors, who don't know who these guests are
339 coming in and out at all hours. There's nothing in the ordinance that says you can
340 have an Air BnB, so he's enforcing that. There are options for how to handle it,
341 but nothing currently in place. Ms. Davies said the ordinances haven't caught up
342 with the technology, and the State hasn't set up anything to deal with it.

343 Ms. Surman asked if the Word Barn stood on its own prior to the short-
344 term rental. Mr. Baum said personal hardship or the business model is not a
345 factor in their approval, but the applicant can answer the question. Mr. Anderson
346 said all arts require subsidy. The rental unit provides the most substantial funding
347 for their operation. A long-term rental is not viable in their space because of the
348 Word Barn. Attorney Pasay said the objection to Air BnBs in other towns is that
349 companies are buying up properties and exclusively using them as Air BnBs.

350 Here, the Word Barn use and the short-term rental use are connected and make
351 sense together, so they could consider that as a condition of approval.

352 Mr. Baum opened the discussion to public comment, but there was none.

353 Mr. Prior went through the variance criteria. 1) The variance will not be
354 contrary to the public interest and 2) The spirit of the ordinance is observed; Mr.
355 Thielbar said the negative economic impact to the greater community, particularly
356 the hotel industry, is inconsistent with the words and intent of not having short-
357 term transient rentals outside of a hotel or bed & breakfast. Mr. Prior said he
358 disagrees. He doesn't think the proposed use is in conflict with the ordinance.
359 The hotel industry is not his concern. By running this as a single short-term rental
360 unit, it's conscribed enough that it doesn't conflict. The nature of the property is
361 such that it's not going to be an issue where others in Exeter who have Air BnBs
362 are thinking they'll be next. He doesn't believe this will alter the essential
363 character of the neighborhood or threaten the public health, safety, or welfare.
364 Mr. Thielbar said he's defining "neighborhood" as the whole town. Mr. Prior said
365 because it's being considered as a short-term rental and not a bed & breakfast,
366 there's no longer a requirement that the property is owner-occupied, so they
367 should make that a condition of approval. Ms. Davies said she wants to tie it into
368 the Word Barn use. That makes it unique and not transferable to other
369 properties. For hardship, this unit will be tough to rent long-term. Mr. Prior and
370 Mr. Baum said that's not a legal hardship. 3) Substantial justice is done; Mr. Prior
371 said there's been no testimony that there would be hardship to abutters, but he's
372 heard some concern from the Board about harm to the general public. Mr. Baum
373 said he doesn't see harm to the public. The concern about transient rentals is
374 people coming and going, not taking care of the property, and making noise, but
375 at this property they've already found it buffered enough to be appropriate as an
376 event space. 4) Values of surrounding properties are not diminished by this
377 proposal; Mr. Prior said yes, they've had no testimony to this effect. 5) Literal
378 enforcement of the zoning ordinance would result in unnecessary hardship; Mr.
379 Prior said he is having a hard time finding there's hardship. Ms. Davies said
380 there's an existing unit that's not able to be used effectively. Mr. Thielbar said
381 they created the hardship by requesting the variance for the Word Barn. Mr.
382 Baum said the property is already getting reasonable use. This would be a
383 benefit to the Word Barn, but that's not hardship. Ms. Davies said it's an existing
384 unit, they're not asking to create a unit. Mr. Baum said there are special
385 conditions to this property that distinguish it, and that's the buffer. The intent of
386 the ordinance is to limit transient occupancy that creates more noise and has
387 people going in and out at different times. Rental use is reasonable, it's just a
388 question of whether transient use is reasonable. This might be a case where
389 there should be a zoning ordinance amendment. Ms. Davies said if they tie it to
390 the owner-occupancy and the Word Barn, they will cover all the bases. Mr. Prior
391 read his proposed language: "should the current use of the Word Barn lapse,
392 then the short-term rental use would also lapse."

393 Mr. Thielbar said they should make it a requirement that the Andersons
394 never come back and ask for anything further. Mr. Baum said he doesn't think
395 they can do that, but they can make it clear where they would come down on
396 future applications. Mr. Thielbar said he expects that as soon as the ink is dry on
397 this approval, they will come back for more units. Mr. Prior said a future owner
398 could come back. Mr. Baum said any conditions have to be enforceable, and a
399 condition that they can't come back wouldn't be.

400 Mr. Prior said there are so many questions on whether this meets the
401 criteria. The only one he's sure about is that it will not negatively impact the value
402 of the surrounding properties. This is about what's right for all the citizens of
403 Exeter. He's not getting the sense that it can pass all five criteria. Ms. Davies
404 said she can find support for all five criteria. Regarding hardship, it doesn't meet
405 B but it could meet A.

406
407 Ms. Davies made a motion to accept the application for a variance to permit a
408 single short-term rental at the property in a pre-existing unit in a detached
409 dwelling located within the Word Barn, conditioned upon the continued use of the
410 property for community gatherings with ticket sales for certain events within the
411 existing accessory structure identified as the Word Barn, and also conditioned
412 upon owner-occupancy of the primary dwelling unit. The motion was not
413 seconded.

414
415 Mr. Prior made a motion to deny the application for a variance to permit a single
416 short-term rental unit at the property in a pre-existing dwelling located within the
417 Word Barn, on the basis that it does not meet variance criteria 5, and that there
418 would be no unnecessary hardship. Mr. Baum seconded. Mr. Baum said the
419 town has decided that short-term rentals are not permitted except as a
420 hotel/motel use in specific zones outside of the rural zone. This is because of the
421 impact of transient use. This proposal would have minimal impact, but that's the
422 definition they have. This is occupied all year, and there are additional potential
423 impacts. This use tends to be in a more institutional setting and closer to the
424 downtown. Mr. Prior said the hardship is not that the property cannot be rented,
425 it's that by coexisting with the Word Barn, the applicant claims this can only be
426 rented on a short-term basis. That's not related to the special conditions of the
427 property, it's about the particular uses that the owner wishes to have on the
428 property. The hardship is self-imposed. He would be more comfortable with an
429 application that did not have this short-term concept.

430
431 Mr. Thielbar moved to amend the motion to include that the application does not
432 meet criteria 1 and 2. Ms. Pennell seconded. Ms. Pennell and Mr. Thielbar voted
433 aye; Mr. Prior, Mr. Baum, and Ms. Davies voted no. The amendment failed 2-3,
434 so the original motion was voted on.
435

436 Mr. Prior, Mr. Thielbar, Ms. Pennell, and Mr. Baum voted aye, and Ms. Davies
437 voted nay. The application was denied 4-1.

438
439 **II. Other Business**

- 440 A. Excel Construction Management (for Freedman Realty Trust) – ZBA Case #18-
441 14 Request for extension of variance approval – 173-179 Water Street Tax Map
442 Parcel #64-50

443 There was no one present to discuss this application, which Mr. Baum
444 said is not necessary for this type of request. Mr. Prior said it's standard for the
445 Board to approve this type of request, especially where this has been a
446 challenging year for real estate.

447 Ms. Davies said the approval had expired by a few days, but Mr. Baum
448 said the request was made before the expiration. Ms. Davies pointed out that the
449 ZBA meeting was also not held last month.

450 Mr. Prior moved to extend the variance on case #18-14 by one year, through July
451 17, 2022. Ms. Surman seconded. Mr. Prior, Ms. Davies, Mr. Thielbar, Ms.
452 Surman, and Mr. Baum voted aye, and the extension was granted 5-0.

- 453
454 B. Approval of Minutes for May 18, 2021

455 Mr. Thielbar made a motion to accept the minutes of May 18, 2021 as presented.
456 Mr. Prior seconded. All were in favor and the minutes were approved 6-0.

457 **III. Adjournment**

458
459 Mr. Prior moved to adjourn. Mr. Thielbar seconded. All were in favor and the meeting was
460 adjourned at 9:52 PM.

461
462 Respectfully Submitted,
463 Joanna Bartell
464 Recording Secretary