

Town of Exeter  
Zoning Board of Adjustment  
August 17, 2021, 7 PM  
Town Offices Nowak Room  
Final Minutes

I. **Preliminaries**

**Members Present:** Robert Prior, Clerk Esther Olson-Murphy, Laura Davies, Martha Pennell - Alternate, Christopher Merrill - Alternate, Anne Surman - Alternate

**Members Absent:** Kevin Baum, Rick Thielbar

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

I. **New Business**

- A. The application of ZV Investments, LLC 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 single family home and accessory structure into four (4) residential condominiums. The subject property is located at 50 Newfields Road, in the R-1, Low Density Residential zoning district. Tax Map Parcel # 35-9. Case #21-9.

Ms. Pennell will not be a voting alternate on this case.

Barry Gier with Jones Beech Engineers and Dan Martin with ZV Investments were present to represent the applicants. Mr. Gier said this property is actually in the RU district. Mr. Prior said in the application, it's R-1, and Mr. Gier said that's incorrect.

Mr. Gier said the proposal is for four units with a limited common area, including an existing house. Each unit has two parking spaces, plus four additional spaces; they have adequate parking. It's a 5.85 acre lot. The proposed conversion is allowed by special exception, with the requirements of footnote 1: 1) The number of spaces for offstreet parking shall comply with Article 5.6; yes, they have 10 spaces. 2) The minimum lot size required shall be such that each dwelling unit is provided with 30% of the minimum lot size per unit required for the district, the required area being 52,272 square feet; yes, the project has 145,910 square feet. 3) The structure has been a residence for a minimum of 10 years; yes, the existing primary building was constructed as a residence in 1925. 4) The lot must meet the minimum of 20% open space; yes, the project has 95% open space. 5) If the conversion is intended for rentals, one dwelling shall remain owner-occupied; all units are intended to be sold, including the main home, so that doesn't apply. 6) The ZBA may require the Planning Board to review the proposed site plan; yes, they're aware of this and will go if necessary. 7) The ZBA may allow an expansion to the primary dwelling to provide additional area to meet the requirements, provided all other requirements are met. Any expansion greater than 400 square feet shall go before the Planning Board for review. Yes, they understand that

44 they may be required to go to the Planning Board for review. [Requirements are  
45 continued below.]

46 Ms. Davies asked about the existing use in the blue building on the property. Mr.  
47 Gier said it was previously a church, but he doesn't think there's any current use besides  
48 storage. Ms. Pennell asked if this was the Blue Ribbon Cleaners site, but this was not  
49 confirmed. Mr. Prior asked whether the limited common area behind on the non-garage  
50 side will be an open area. Mr. Gier said that's an exterior area for the residents, perhaps  
51 for a patio set or a barbeque. There's no expansion to the footprint, only an expansion  
52 upwards.

53 Mr. Gier resumed the footnote requirements: 8) Prior to any renovations, the  
54 owner shall provide evidence to the Town Building Inspector that septic facilities are  
55 adequate for all units according to the standards of the town and the NH DES. If deemed  
56 necessary by the Building Inspector, such evidence shall be in the form of certification by  
57 a State of NH licensed septic systems designer; also the owner shall insure there is  
58 adequate potable water according to the standards of the State of NH. They've talked to  
59 Mr. Eastman about this and they will have to expand the existing septic. Ms. Davies  
60 asked whether the well, which is in the wetlands, is adequate, and Mr. Gier said they  
61 believe so. Mr. Prior asked if they're allowed to touch the well, and Mr. Gier said he  
62 believes they can, but they will confirm that. They already had to make some  
63 improvements to the well and septic systems over the winter after the septic system  
64 failed.

65 Ms. Pennell asked why they chose to put three units in the garage and one in the  
66 house, and Mr. Gier said he thinks it was an economic decision by the applicant.

67 Ms. Davies asked if the DOT driveway permit is adequate, or if they will need an  
68 upgrade. Mr. Gier said he doesn't believe they will need to upgrade, as it was used as a  
69 church at one point and that use had more traffic than is anticipated with this project. Mr.  
70 Prior said in terms of trips per week, this will generate more traffic than the church did,  
71 and Mr. Gier said yes, but it will not have the peaks. Mr. Prior said he did a walk around  
72 and exiting the driveway was problematic; although that's not the purview of this Board,  
73 it may be something they recommend the Planning Board look at.

74 Mr. Gier moved on to the Special Exception criteria. A) The use is a permitted  
75 special exception as set forth in Article 4.2; yes, it's a conversion of an existing  
76 residential into multiple condominium use, which is permitted per 4.2 Schedule 1  
77 Footnote 1. B) The use is so designed, located, and proposed to be operated so that the  
78 public health, welfare, safety, and convenience will be protected; yes, it's on an existing  
79 single family parcel of 5 acres, there's adequate parking without additional impervious  
80 area, and the septic will be upgraded. C) The proposed use will be compatible with the  
81 zoned district and adjoining post-1972 development where it is to be located; yes, this  
82 zone is residential and the proposed use is residential, so they believe it's compatible.  
83 Mr. Prior asked if there are other multi-family properties in the immediate area, and Mr.  
84 Gier said he doesn't think so, but they didn't do an extensive review. D) Adequate  
85 landscaping and screening are provided as required; yes, there is adequate  
86 landscaping, which he pointed out on the site plan. Mr. Prior said there's almost nothing  
87 on the south, and Mr. Gier said that's existing parking, which they're not changing. E)

88 Adequate offstreet parking and loading is provided, and ingress and egress are so  
89 designed to cause minimal interference with traffic on abutting streets; yes, it's an  
90 existing drive with existing parking; it's had higher intensity uses in the past, without any  
91 issues. Mr. Prior asked if they were planning on changing the curb cut, and Mr. Gier said  
92 no. F) The use conforms with all applicable regulations governing the district where  
93 located; yes, the proposed project will comply. They are not asking for any variances or  
94 deviations. G) Applicant may be required to obtain Town Planner review and/or Planning  
95 Board review; yes, they will meet with them as required. Mr. Prior said that would only  
96 apply if the ZBA requires it. Ms. Davies said she thinks for four or more units it's  
97 supposed to go to the Planner or the Planning Board. Mr. Prior said they would look into  
98 that while Mr. Gier continued. H) The use shall not adversely affect abutting or nearby  
99 property values; yes, they're trying to clean up the property, and are not adding anything  
100 on the exterior other than taking it up a story, so they don't believe it will have any  
101 impact. I) and J) are not applicable to the project.

102 Mr. Prior said in the Schedule 1 notes under F, it says that the ZBA may require  
103 the Planning Board to review a proposal; all proposals with three or more units *must* be  
104 reviewed by the Planning Board. Mr. Gier said they're aware of that, although sometimes  
105 the Planning Board will say "yes, move on." Mr. Prior said the Planning Board looks to  
106 the ZBA for guidance, so if the ZBA says they don't require it, the Planning Board will  
107 take that into account, but they should talk to the Planner about it.

108 Ms. Olson-Murphy said that Schedule 1 note C requires that the structure has  
109 been a residence for a minimum of 10 years; it was built in 1925, but has it been used as  
110 a residence, even when the church was there? Mr. Gier said yes, that was his  
111 understanding.

112 Ms. Surman said where it's not a rental, which would have had to be owner-  
113 occupied, will the documents say that the owners can't sublet? Mr. Gier said they asked  
114 the Building Inspector that, and he is looking into it. They didn't find the requirement that  
115 an owner can't rent his unit. Mr. Prior said he thought the Board had heard a previous  
116 application that was similar. Ms. Olson-Murphy said they had a previous case where  
117 they said the owners couldn't rent. Mr. Gier said the applicant is selling the units, so it's  
118 not applicable. Mr. Prior said it's possible that the current owners could simply transfer it  
119 to another corporation which could rent it out. Ms. Davies said the intention of the  
120 requirement is not to have all units be rental with no ownership involvement. In the past  
121 she thinks they required that one unit remain owner-occupied and not be sublet. Mr. Gier  
122 said he would like to consult with his client on whether they would accept such a  
123 restriction.

124 Ms. Surman asked if there's enough room on the property that they could come  
125 back to the ZBA and look to build more units. Mr. Gier said there's enough room to do  
126 that, but he doesn't think there's provision to do that without a variance. This proposal is  
127 just converting what they already have. Mr. Prior said he thought he saw a structure on  
128 the property in the woods, and Mr. Gier said he thinks there is a chicken coop, which  
129 they are not planning to use.

130 Mr. Prior asked for further questions from the Board, but there were none. He  
131 opened it to the public for comment, but there were no comments. He closed the public  
132 session.

133 Mr. Gier said the applicant and himself have an issue with the enforceability of  
134 the provision not to have all units rented. They intend to sell, likely to four individuals,  
135 and after that, how would the Board or the town police the rental? This would restrict the  
136 ability to market this. It's also unlikely that all four units would be purchased for rental  
137 and none would be owner-occupied. Ms. Davies said traditionally in condo documents,  
138 it's required that the association monitor the proportion of tenant-occupied units. Actual  
139 enforcement would be through the town, and typically only occurs when there's a  
140 complaint. Mr. Gier said they're meeting the provisions of the regulations, and they don't  
141 want additional provisions put on the property. Mr. Prior said the requirements would be  
142 on the condominium association, not the applicant. Ms. Davies said this is a rural  
143 residential district; they're considering whether this is in keeping with the neighborhood,  
144 so they can't dismiss the concern that this wouldn't be owner occupied. Mr. Prior said he  
145 does feel it's enforceable, not by the town, but by the association.

146 Mr. Prior brought the discussion back to the Board. He said this is a great way of  
147 utilizing the property. It's a reasonable project, with no expansion of the footprint. The  
148 Board should go through both sets of criteria. Ms. Davies said she does think that they  
149 should request that the Planning Board consider the driveway access and whether it falls  
150 under the existing driveway permit.

151 Ms. Davies went through the footnote criteria (4.2 Schedule I Footnote 1): 1) The  
152 number of spaces for offstreet parking shall comply with Article 5.6; yes, the applicant  
153 has demonstrated that they have met that criteria. 2) The minimum lot size required shall  
154 be such that each dwelling unit is provided with 30% of the minimum lot size per unit  
155 required for the district; yes, the applicant presented calculations that the minimum lot  
156 size would be 13,068 square feet per unit, or a total of 52,272 square feet, and they've  
157 calculated that the uplands plus 25% of the wetland area equals 145,910 sq ft. 3) The  
158 structure has been a residence for a minimum of 10 years; yes, the existing primary  
159 building was constructed as a residence in 1925 and the applicant represents that it has  
160 been occupied as a residence in the last 10 years. 4) The lot must meet a minimum of  
161 20% open space; yes, the project has more than adequate open space at 94.7%. 5) If  
162 the conversion is intended for rentals, one dwelling shall remain owner-occupied. In this  
163 case, the units are intended to be sold, and they've discussed the Board's feelings on  
164 that; they can discuss it further if a motion is made. 6) The ZBA may require the  
165 Planning Board to review the proposed site plan; because there are four units, it must be  
166 reviewed by the Planning Board, and the applicant has acknowledged that. 7) The ZBA  
167 may allow an expansion to the primary dwelling to provide additional area to meet the  
168 requirements, provided all other requirements are met; they do intend to expand the  
169 structure, but not more than 400 square feet, so there's no requirement that this aspect  
170 be reviewed by the Planning Board. 8) Prior to any renovations, the owner shall provide  
171 evidence to the Town Building Inspector that septic facilities are adequate for all units  
172 according to the standards of the town and the NH DES. The applicant has indicated

173 that they will be working on the septic system and the Building Inspector will be involved  
174 in that process.

175 Mr. Prior said he thinks they can agree that they meet all of the criteria under the  
176 footnotes.

177 Ms. Davies moved on to the special exception criteria: A) The use is a permitted  
178 special exception; yes, this use is a permitted special exception in the rural district. B)  
179 The use is so designed, located, and proposed to be operated so that the public health,  
180 welfare, safety, and convenience will be protected; yes, the existing structures are being  
181 utilized, and there's no new construction. With a review of the driveway, she feels that  
182 the public health, safety, and welfare would be protected. C) The proposed use will be  
183 compatible with the zoned district and adjoining post-1972 development; this is where  
184 they were talking about their concern about a four unit property in a rural residential  
185 district. There aren't many multifamily residences in this area, if any, but they can  
186 discuss it in conditions if they wish. D) Adequate landscaping and screening are  
187 provided as required; yes, this is addressed by existing screening, and there's no new  
188 construction. E) Adequate offstreet parking and loading is provided, and ingress and  
189 egress are so designed to cause minimal interference with traffic on abutting streets.  
190 Because of the nature of Newfields Road, there's a slight concern that the driveway is  
191 properly permitted by DOT for the new use. Mr. Prior asked if they should say a note to  
192 that effect, rather than a condition of any motion. He's not sure that if they don't change  
193 the curb cut they will have to go for DOT review. Ms. Davies said DOT frequently  
194 conditions permits on single family use. It could be a note to the Planning Board. F) The  
195 use conforms with all applicable regulations governing the district where located; other  
196 than the number of units, which is covered under the special exception, it does conform  
197 to the governing regulations for the district. G) Applicant may be required to obtain Town  
198 Planner review and/or Planning Board review; yes, they will meet with them as required.  
199 H) The use shall not adversely affect abutting or nearby property values; she doesn't  
200 have a concern about that. It's existing structures, and will be a nice investment in the  
201 area. There was no evidence presented to the contrary. The applicant contends that it  
202 won't, and she agrees. Mr. Merrill asked if everything there is grandfathered in, such as  
203 the garage, which is well within the setback. Mr. Prior said yes. Mr. Merrill asked about  
204 the wetlands, and Mr. Prior said he hopes it's out of the setback for wetlands. Ms.  
205 Davies said I) and J) do not apply to this application.

206  
207 Ms. Davies made a motion to approve the application of ZV Investments, LLC for a  
208 special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5,  
209 Section 5.2 to permit the conversion of an existing single family home and accessory  
210 structure into four residential condominium units as proposed, with the condition that the  
211 condominium documents include a provision that at least one unit be owner-occupied  
212 and a note to the Planning Board when they review this application as required that they  
213 consider the driveway permit and whether it's adequate to the proposed use. Ms.  
214 Surman seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Davies, Mr. Merrill, and Ms.  
215 Surman voted aye, and the motion passed 5-0.

216

217 **II. Other Business**

218 A. Approval of Minutes: July 20, 2021

219 Corrections: Mr. Prior said Ms. Davies did not vote aye on motion in lines 436  
220 and 437. Ms. Davies said the record should read “Mr. Prior, Mr. Thielbar, Ms. Pennell,  
221 and Mr. Baum voted aye, and Ms. Davies voted nay, and the motion passed 4-1.”

222 Mr. Merrill asked what would happen if Mr. Baum or Mr. Thielbar [who were not  
223 present] found other corrections to the minutes, and Mr. Prior said they had received a  
224 copy and he assumed that if there was an issue they would have let him know.  
225

226 Ms. Surman moved to approve the minutes as amended. Ms. Davies seconded. Mr. Prior, Ms.  
227 Davies, Ms. Pennell, and Ms. Surman voted aye, and the motion passed 4-0.

228

229 **III. Adjournment**

230

231 Ms. Davies moved to adjourn. Ms. Surman seconded. All were in favor and the meeting was  
232 adjourned at 8 PM.

233

234 Respectfully Submitted,

235 Joanna Bartell

236 Recording Secretary