

Town of Exeter
Zoning Board of Adjustment
April 19, 2022, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

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

Members Absent: Anne Surman - Alternate

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

I. **New Business**

- A. Continued public hearing on the application of Exonian Properties LLC for a variance from Article 5, Section 5.6.6 for relief to provide no on-site parking where 24 spaces are required for the proposed residential development at 43 Front Street. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel # 72-198. ZBA Case #22-5.

Sharon Sommers of DTC spoke representing Exonian Properties; Principals Florence Ruffner and David Cowie were also present. Attorney Sommers said the Board asked us to revisit the question of where people will park off-site, particularly during the winter months.

Regarding on-site parking, she presented Exhibit B, a conceptual plan, which shows an on-site space that could have three cars while leaving the building in its current configuration. Exhibit C contains the original architectural drawings where additions to the building are noted. The second page shows that there's a certain amount of underpinning of the structural columns required. For underground parking or additional ground level parking, the rear of the building would need to be removed, which is at odds with preserving the integrity of the structure. The slope there is significant and is not conducive to parking.

Regarding off-site parking, Exhibit A shows 155 yards of walking in order to park one's car in the Center Street municipal lot. The Townhouse Common parking lot is 235 yards away. The Exeter River Reservoir municipal parking lot, near the river walkway, is 275 yards away. Following the March ZBA meeting, the Principals spoke with town officials and came up with Exhibit B which has a list of municipal lots downtown and the total number of parking spots: just under 200. Center Street has 10 designated winter spaces; Exeter Reservoir or the "Boat Launch" has 5 winter spaces; the Front Street municipal lot has 22 winter spaces; the Townhouse Common lot has 12 winter spaces. Total on-street parking in the downtown area is 339. The designated winter parking spaces are

45 first-come first-serve. Town officials said there's not an intensive demand for
46 these spaces, and a request can be made to expand the number of designated
47 parking spaces in the future, as long as the DPW felt there wouldn't be difficulties
48 with plowing. Jennifer Perry has emailed the Board indicating that the DPW is
49 aware of the situation with winter designated spaces and there is a possibility of
50 expanding those should the need arise. The applicants also provided photos of
51 the current parking situation.

52 Mr. Baum said the email from Jennifer Perry indicates that there are 79
53 overnight spaces available, while the submission says 195. Attorney Sommers
54 said 195 is the total municipal lot spaces, of which 79 are winter spaces. Ms.
55 Perry's email also contains the Train Station Lot and Front Street West End,
56 which are not included in the application; the application looks at 49 overnight
57 winter spaces, which is an ample number for this property and others that would
58 like to use them.

59 Mr. Thielbar said people who live in this building would have a right to two
60 cars, and they won't want to have to rotate them. What would stop a resident
61 there from permanently claiming one of the nearby spots? Attorney Sommers
62 said that anyone could decide to keep their car in an on-street spot, except in the
63 winter. It's up to how the condo association wants to govern itself. Mr. Thielbar
64 said 49 spaces is not a huge number, and the 24 spaces this property needs
65 represent a 50% increase in demand for those places. Attorney Sommers said
66 Public Works is not averse to designating more spaces for winter parking if
67 demand warrants it.

68 Mr. Baum said he would like to hear more about current winter space use.
69 Ms. Davies said she called Mr. Sharples and heard that there are tools at the
70 town's disposal to address the need for additional overnight parking, and the
71 Town Manager is in favor. The town is willing to look into resident parking permits
72 if demand requires. He also said he was unaware of a winter parking problem.

73 Ms. Pennell said the loka conversion and other new developments will
74 also be counting on the lots. Has the town taken into consideration the future
75 increase in demand? Attorney Sommers said the loka went through the Planning
76 Board process and it's their job to take that into consideration. The ZBA's job is
77 to determine if we meet the variance criteria. Mr. Thielbar said we frequently get
78 requests for "no parking" variances. Parking for residents is a 24 hour demand
79 for the space. When you give a few extra spots to a restaurant, that's totally
80 different. Attorney Sommers said the cars won't be present 24 hours a day.

81 Mr. Prior said this is all about overnight parking in the winter. Solving
82 parking problems isn't necessarily the problem of the Zoning Board, but it is a
83 responsibility of the developer to help solve them. Are the applicants aware of
84 any precedents on restricting the number of vehicles that are allowed to be
85 owned by the condo owners? Attorney Sommers said she's not aware of any
86 laws; it would be more of a marketing decision. If each unit could only have one
87 car, that would be 13 spaces, and there's still 10 off-site spaces that would be
88 needed. Mr. Prior said the three on-site spaces are suspicious, because two of

89 the cars couldn't move out of the spots. Attorney Sommers added that the
90 applicants also made a good faith effort to find private parking in the area but
91 were not successful.

92 Mr. Thielbar said he'd like to hear about the costs of underground
93 parking. Mr. Cowie said it would require a 160 foot runway to get down beneath
94 the church and we've only got 75 feet. The maximum slope allowed is 15%,
95 which would be infeasible in this space. The width of the space is only 18 feet so
96 it couldn't turn. The footings are at all different levels under the church, so it
97 would all have to be underpinned even if we could get down to that level, which
98 he thinks is not possible. A structural engineer has been involved in all the steps
99 so far. The building requires two egress stairs, one of which has to be in the
100 back, so we're limited in room to come in from the back anyway. You would also
101 lose any parking behind the church.

102 Mr. Thielbar said a lot of these problems could be solved with hydraulic
103 lifts for the vehicles to get underground. Mr. Cowie said they explored that
104 possibility, and it's \$80,000 per vehicle for the system to put your car into a lift
105 and have it parked, and that's without looking at the cost of installation. Mr.
106 Thielbar said residents could just get the car down to the underground level via
107 lift and drive it to a parking space themselves. Mr. Cowie said there's not enough
108 turning radius for that. Ms. Ruffner said we've owned the church for a year and
109 done extensive work looking at underground parking, and it's just not feasible.

110 Mr. Merrill said the Academy parks on Spring Street. The Boatyard is full
111 every Tuesday because of yoga. It's a long walk from the municipal lots in snow
112 and rain. Mr. Prior said this is a marketing problem for the applicant, not a
113 problem for the ZBA.

114 Attorney Sommers went through the variance criteria. 1) The variance will
115 not be contrary to the public interest or would alter the essential character; yes,
116 we have provided evidence that there is enough space on the street and in
117 municipal parking lots, including winter parking spaces. The town is also willing to
118 re-examine adding more designated spaces. There is no evidence that this will
119 change the essential character of the neighborhood or be contrary to the public
120 interest. If people don't want to walk a block, that will be a marketing issue. 2)
121 The spirit of the ordinance will be observed; yes, this has been addressed with
122 #1.3) Substantial justice is done; yes, the benefit to the applicant of allowing off-
123 site parking is that it will allow the proposal to proceed. We've received HDC
124 approval and a use variance. There is no detriment to the public or to the private
125 in granting this variance. There is physically space for those people to park right
126 now. 4) The value of surrounding properties will not be diminished; yes, given
127 the number of spaces that are available, it's not going to impact the neighboring
128 properties. 5) Literal enforcement of zoning ordinance will result in an undue
129 hardship; yes, we've exhausted all possible options for providing on-site parking.
130 We've provided at least 2 spaces on the property. There are significant
131 impediments to underground parking given the 11 units and the need to renovate
132 this historic building, including cost, slope and turning radius. There is no fair and

133 substantial relationship between the ordinance and the request. The purpose of
134 the ordinance is to prevent parking problems, and the evidence shows that there
135 is off-site parking in the lots for the winter parking and on the street. It's not going
136 to create a problem. The proposal is a reasonable one. We have a use variance.
137 We are providing housing to the town.

138 Ms. Davies asked when this property was last used as a church. Mr.
139 Cowie said they ceased services during Covid but it was still an active church.

140 Mr. Baum opened the hearing to the public.

141 Jessica O'Leary of South Street said the overnight parking in the winter is
142 an issue. There are a lot of people that park on South Street and in the winter the
143 dozen spaces at Bow Street are always taken. The pictures were not taken in the
144 wintertime.

145 Mr. Baum brought the discussion back to the Board.

146 Ms. Davies said regarding Ms. Pennell's concerns that town staff is not
147 considering the parking for the various upcoming projects, her [Ms. Davies']
148 conversation with Dave Sharples indicates that they're on top of it and are
149 prepared to do some modifications such as adding spaces for winter overnight
150 parking. Mr. Thielbar said it's hard to park in town and we keep adding more
151 residential parking, which is dramatically different than commercial parking. Mr.
152 Baum asked the Board to focus on the criteria rather than general parking issues.
153 Mr. Thielbar said under criteria 1 and 2, we can consider the impact on the
154 community. Downtown residential parking does not benefit the economy. Mr.
155 Baum said that's a policy issue.
156

157 Mr. Prior made a motion to approve the application of Exonian Properties LLC for a
158 variance from Article 5, Section 5.6.6 for relief to provide no on-site parking where 24
159 spaces are required for the proposed residential development at 43 Front Street. Mr.
160 Prior seconded.

161
162 Mr. Prior went through the variance criteria. 1) The variance will not be contrary to the
163 public interest and 2) The spirit of the ordinance will be observed; yes, it is the
164 responsibility of this Board to treat the application in the same manner as every other
165 application that has come before us. Overnight and winter parking will be tricky, but it's
166 not contrary to the public interest to grant a variance to this residential property. Mr.
167 Thielbar said he disagrees; the additional parking demand will inhibit retail sales and
168 inconvenience other residents who are using those spots. This is a 50% increase in the
169 demand for overnight parking for a single project. Mr. Prior said it's not a 50% increase,
170 it's an additional 20-something spots needed. We don't know what the demand is on
171 those spots. 3) Substantial justice is done; this is a balance between the obvious benefit
172 to the applicant and any detriment to the public. It will be an issue for the project's
173 marketing. We can't quantify a detriment to the public by allowing the off-site parking.
174 Mr. Baum said he wishes we had more information about what the needs are, but from
175 the facts that he's heard tonight he's convinced that the town officials have confidence
176 that the capacity is there or can be added. Mr. Thielbar said the question posed to the

177 town officials isn't what he was concerned with. Increasing the designated winter
178 overnight spots doesn't increase the total number of parking spots. This will be 24
179 additional permanent spots with no commercial benefit to the town. Ms. Davies said
180 mixed-use is vital because it brings people downtown. In Manchester, when they added
181 residential use downtown it made it more lively and safer. Mr. Prior continued with the
182 criteria. 4) The value of surrounding properties will not be diminished; no, we've had no
183 testimony to that effect. 5) Literal enforcement of zoning ordinance will result in an undue
184 hardship; yes, he does believe there would be unnecessary hardship placed on the
185 applicant by requiring them to provide parking, and perhaps make it unfeasibly
186 expensive. They would either not turn this into residential or incur costs that they would
187 not be able to sustain. Mr. Thielbar said he disagrees. It's a significant hardship, but the
188 cost to provide a parking system will pale in comparison to the cost of the project as a
189 whole.

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191 Mr. Baum, Mr. Prior, Ms. Olson-Murphy, and Ms. Davies voted aye, and Mr. Thielbar
192 voted nay. The motion passed 4-1.

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196 B. The application of Steven Ruhm for a variance from Article 5, Section 5.3.1 A. 2.
197 and 5.3.1 A.3. to permit the proposed construction of a detached 22' x 20' garage
198 with less than the required side and rear yard setbacks on the property located at
199 89 Park Street. The subject property is located in the R-2, Single Family
200 Residential zoning district. Tax Map Parcel #63-130. ZBA Case #22-6.

201
202 Caroline Ruhm, the owner, and Brian Frazier, the builder, were present to
203 discuss the application. Ms. Ruhm said we would like more space to put cars out of sight
204 and out of the elements in the winter. The house was built on a non-conforming lot so
205 there is little space for a detached garage. An attached garage would alter the use of the
206 walk-out basement or the porch. The current shed location is the least obstructive space
207 on the property. We are proposing as small a garage as we can. It will have quality
208 roofing and natural siding.

209 Mr. Baum asked if the garage will be closer to the neighbor's property than the
210 existing shed. Mr. Frazier said it's in the same general vicinity. The lot isn't a right angle,
211 so we're asking for a few feet off the property line on that side. Mr. Prior said they're
212 shifting the structure toward Locust Avenue so it doesn't hit the property line as it angles
213 in.

214 Mr. Thielbar asked if they'd talked to their neighbors. Ms. Ruhm said they talked
215 to the neighbors on each side as well as across, and they were all ok with it.

216 Mr. Baum asked if there would be a 20 foot height limit, and Mr. Frazier said yes,
217 it would be 20 feet tall or less.

218 Mr. Baum opened the hearing to the public, but there was no comment. Mr.
219 Baum closed the public session and brought the discussion back to the Board.

220

221 Ms. Davies made a motion to approve the application for a variance from Article 5, Section 5.3.1
222 A. 2. and 5.3.1 A.3. to permit the proposed construction of a detached 22' x 20' garage with less
223 than the required side and rear yard setbacks on the property located at 89 Park Street as
224 proposed. Mr. Prior seconded. Mr. Baum asked if the Board wished to go through the criteria,
225 but they were comfortable with the application as presented. Mr. Baum, Mr. Prior, Ms. Olson-
226 Murphy, Ms. Davies, and Mr. Thielbar voted aye. The motion passed 5-0.

- 227 .
- 228 C. The application of Ben and Sarah Anderson for a special exception per Article 4,
229 Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
230 operation of a Bed & Breakfast use in the existing accessory structure located at
231 66 Newfields Road. The subject property is located in the RU-Rural zoning
232 district, Tax Map Parcel #24-29. ZBA Case #22-7.

233

234 Justin Pasay of DTC Lawyers spoke representing the applicants. Attorney Pasay
235 said he's presented this application before the Board previously. This is a large property
236 on Newfields Road, 5.5 acres in size. It's improved by a single-family dwelling and
237 attached garage, as well as the Word Barn which has its own dedicated electric, heating,
238 and septic. The Word Barn Cultural Arts Center was permitted in 2017, and makes an
239 important contribution to the cultural scene in Exeter. The Word Barn building has a
240 studio apartment in it which was a long-term rental for decades. The Andersons
241 purchased the property in 2013 and used it for that purpose for years, then in 2017
242 decided to use the Air BnB platform to rent it to short-term renters, because that was
243 more consistent with the Word Barn use. There have been 471 total guests in the Air
244 BnB, mostly couples from nearby States travelling north who would come and patronize
245 local restaurants and shops. The applicants are not aware of any complaints regarding
246 the use of the unit for transient guests. Their accommodations include breakfast, and
247 there is an area for the guests to dine. In December 2020 the town sent a notice that
248 short-term rentals are not an approved use in Exeter and they need relief.

249 Attorney Pasay said the applicants came to this Board in July of 2021 to permit a
250 bed & breakfast. At that time, Article 2 of the zoning ordinance defined a bed & breakfast
251 as *"The primary dwelling of the owner-operator that provides exclusively for the lodging*
252 *of transient guests and whose posted rates shall include breakfast; a bed & breakfast*
253 *shall not be used for any other hospitality or business related uses; a bed & breakfast*
254 *shall not have more than four rentable rooms and must have a dining area capable of*
255 *accommodating the number of registered guests."* The Board at that time denied the
256 application on the grounds that the definition required that the bed & breakfast be
257 housed within the primary dwelling unit, and that the proposed use would be an
258 additional business use on the property, which was not permitted. The variance
259 application was also denied, but the first four criteria of the variance were met, which
260 means that this Board saw the proposal as being consistent with the neighborhood, not
261 being a public threat, not compromising surrounding property values, and that it would
262 accomplish substantial justice, but found that the hardship criteria was not met. We filed
263 an appeal, which is still pending in the Superior Court, but in the meantime, we filed a
264 Citizen's Petition warrant article to amend the bed & breakfast definition in the zoning

265 ordinance. It was signed by 1,700 people. This proposed ordinance removed the
266 requirement that the proposed bed & breakfast be within the primary dwelling of the
267 property, as well as the prohibition on other hospitality or business-related uses. That
268 proposed ordinance defined a bed & breakfast as *“The primary dwelling of the owner-
269 operator and/or detached accessory structure on the same property that provides for the
270 lodging of transient guests and whose posted rates shall include breakfast; a bed &
271 breakfast shall not have more than four rentable rooms and must have a dining area
272 capable of accommodating the number of registered guests.”* The Planning Board voted
273 unanimously to recommend its adoption at Town Meeting, and 84% of the vote was in
274 favor of this petition. We asked the Superior Court to stay the hearing to see if we could
275 now get this approval with the revised ordinance. We do meet the definition of a bed &
276 breakfast as it was changed by the Town Meeting, because it is owned and operated by
277 the Andersons who live on the property, it’s a single unit to lodge transient guests, all
278 living accommodations are included, the rate includes breakfast, and there is a dining
279 area that can accommodate the registered guests.

280 Mr. Baum asked what the Andersons provide for breakfast. Attorney Pasay said
281 honey, eggs, toast, and tea and coffee. Mr. Baum said the old ad for the unit says
282 breakfast is “based on availability”, but Attorney Pasay said there will always be
283 breakfast provided. Ms. Pennell asked where the breakfast will be provided. Attorney
284 Pasay said there's a kitchen area with a welcome package that includes the food. The
285 dining area is in the studio. Ms. Pennell asked about Meals Tax, and Attorney Pasay
286 said yes, the State imposes an 8.5% Meals Tax on the total rate of the stay, which
287 ultimately trickles into a benefit for the town. Ms. Pennell said she feels that the definition
288 of a bed & breakfast is to go to a separate room where you are served breakfast.
289 Attorney Pasay said Town Meeting was made aware that we were trying to
290 accommodate what we are doing within the definition of a bed & breakfast, and it was
291 universally accepted. This is the rare situation where the ZBA knows what the Planning
292 Board and the Legislative Body wanted when they voted for this ordinance.

293 Attorney Pasay went through the special exception criteria. 1) The use is
294 permitted as a special exception under Article 4, Section 4.2 Schedule I; yes, bed &
295 breakfasts are permitted by special exception in the RU District, and with the
296 amendment to the ordinance we do meet the definition of a bed & breakfast. 2) The use
297 is so designed, located, and proposed to be operated so that the public health, safety,
298 and welfare are protected; yes, the discussion by the Board last summer considered this
299 issue and found unanimously that it met these criteria. This is a minor and reasonable
300 use. It operated as a transient Air BnB for two years without any complaints. The
301 property is very insulated on three sides by open land and across the street by
302 Conservation land that the town owns. The use is indiscernible from the road. There is
303 no public health threat; there are public interest benefits because it will bring business to
304 town and pay the State Rooms & Meals Tax. The petition was signed by 1,700 people,
305 and there is widespread support for the Word Barn and specifically this proposed use.
306 There are unique circumstances to the property, and the use is benign. 3) The proposed
307 use will be compatible with the zoned district and adjoining post-1972 development; yes,
308 nothing about the property’s appearance will change, and it will not alter the character of

309 the neighborhood. The residential use has been in place for decades. This is a less
310 impactful use than other uses that are permitted by special exception. 4) Adequate
311 landscaping and screening are provided; yes, there's a wooded buffer on three sides
312 and there will be no discernable change to the appearance of the property. 5) Adequate
313 offstreet parking and loading is provided, and ingress and egress is provided to provide
314 minimum interference on abutting streets; yes, the regulation requires one additional
315 space for each rented unit, and there is ample space on the property. There are two
316 striped spaces next to the Word Barn. We will go to the DOT to get a driveway permit for
317 the additional use. He described the work done by the applicants recently to get current
318 on the DOT permit, then he resumed the special exception criteria. 6) The use conforms
319 with all applicable regulations of the district; yes, it's compliant with other regulations.
320 We're happy with a condition of approval that requires an amendment with DOT, as well
321 as Mr. Eastman coming out to certify the property. 7) As a condition of special exception
322 approval, the applicant may be required to obtain town plan review and/or Planning
323 Board approval of the site plan; in this case, there are no new structures or changes
324 we're proposing. It's been an existing use for decades. 8) The use shall not adversely
325 affect nearby or abutting property values; yes, the use is indiscernible from the street or
326 any neighboring property. We provided a realtor's letter that it will not negatively affect
327 property values, and will increase this property's value, which will incidentally increase
328 the property values around it. The final two criteria are not applicable to this application.

329 Ms. Pennell asked why they can't turn this into an apartment. Mr. Thielbar said
330 the bands make too much noise. Ms. Pennell said they should have it be a short-term.
331 Mr. Baum said that's what this is getting at, since short-term rentals are not permitted.
332 Ms. Pennell asked how long they rent the room for, and Attorney Pasay said most
333 renters are couples for 2-3 nights. The short-term nature of this use is more compatible
334 with the Word Barn use.

335 Mr. Baum opened the discussion to the public, but there was no comment. Mr.
336 Baum closed the public session and entered into Board discussion.

337 Mr. Thielbar said those who benefit from temporary rentals should recuse
338 themselves, and Mr. Prior now meets the requirements for conversion to a bed &
339 breakfast. Mr. Prior said he [Mr. Prior] is also a property owner, a taxpayer, and many
340 other things. He does have an accessory dwelling unit that is a rental, so if the Board
341 feels he needs to recuse himself, he can do so. Mr. Baum said that is a permitted use.
342 Mr. Prior said anyone with a spare bedroom could run a bed & breakfast out of their
343 house. It doesn't matter that he has an accessory dwelling unit. Mr. Baum said he
344 doesn't think it's a conflict.

345 Mr. Thielbar said the intention of a bed & breakfast was for someone to take
346 guests into their home, serve them a nice meal, and help them become familiar with the
347 area. This is a motel. What they've submitted meets the definition that they've conned
348 the Board of Selectmen into accepting. Mr. Baum objected, saying the applicants did
349 everything they were permitted to do. Mr. Thielbar said he would vote no as a protest,
350 and Mr. Prior warned that doing so could open the Board to challenges.

351 Mr. Baum went through the special exception criteria. 1) The use is permitted as
352 a special exception under Article 4, Section 4.2 Schedule I; yes, it clearly meets this

353 definition. It's a detached accessory structure that provides for lodging of transient
354 guests and includes breakfast. There's no definition of what a breakfast is. It doesn't
355 have more than four rentable rooms, and it does have a dining area capable of
356 accommodating the number of guests. The ordinance doesn't say where the dining area
357 has to be. 2) The use is so designed, located, and proposed to be operated so that the
358 public health, safety, and welfare are protected; yes, it's a single unit on a large property
359 which is buffered from the surrounding properties. There's no evidence from when it was
360 in use that there were issues with it. 3) The proposed use will be compatible with the
361 zoned district and adjoining post-1972 development; yes, a bed & breakfast is permitted
362 by special exception in this zone. It's consistent with the existing use and was operated
363 in this way for several years. 4) Adequate landscaping and screening are provided; yes,
364 it's one unit within the property, which is buffered. 5) Adequate offstreet parking and
365 loading is provided; yes, there appears to be sufficient parking for the Word Barn use,
366 and one unit is not going to tip that. 6) The use conforms with all applicable regulations
367 of the district; yes, but he would like to see a condition of an approval by the DOT for the
368 bed & breakfast use. 7) As a condition of special exception approval, the applicant may
369 be required to obtain town plan review and/or Planning Board approval of the site plan.
370 He doesn't think that's necessary. This property probably should have had a site plan for
371 the Word Barn Use, but that's not related to the use being requested tonight. 8) The use
372 shall not adversely affect nearby or abutting property values; yes, given the buffering
373 discussed, he sees no adverse effect on property values. The final two criteria are not
374 applicable to this application.
375

376 Ms. Davies made a motion to approve the application for a special exception per Article 4,
377 Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the operation of a
378 Bed & Breakfast use in the existing accessory structure located at 66 Newfields Road, with the
379 condition that further review and approval for the bed & breakfast use by the Department of
380 Transportation as well as town Building and the Fire Department to ensure that it meets all
381 applicable local and State standards is required. Mr. Prior seconded. Ms. Davies, Mr. Prior, Mr.
382 Baum, and Ms. Olson-Murphy voted aye, and Mr. Thielbar abstained. The motion passed 4-0-1.

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385 D. The application of The White Apron for a variance from Article 5, Section 5.6.6
386 seeking relief to permit less parking spaces than required for a social hall use on
387 the property located at 1 Franklin Street; and a determination as to whether the
388 "dining/restaurant" use condition imposed by a previous variance granted on said
389 property in 2014 would apply to the Applicant's proposed use. The subject
390 property is located in the C-1, Central Area Commercial and R-2, Single Family
391 Residential zoning districts. Tax Map Parcel #72-71. ZBA Case #22-8.

392
393 Mr. Baum recused himself from this application. He said this is Mr. Merrill's last
394 meeting, and thanked Mr. Merrill for his service as an alternate. Mr. Baum left at this
395 time and Mr. Prior became the acting Chair.

396 The Board took a short break at 9:23 PM, and reconvened at 9:28 PM.

397 Attorney Colby Gamester was present to discuss the application, as well
398 as owners Jay and Elizabeth Curcio and Zach Smith of Winter Holben
399 Architecture and Caitlyn Burke of the Boulos Company. Attorney Gamester is
400 filling in for Attorney Durbin, who was not able to be present.

401 Mr. Prior said there is an issue with one of the applicant's documents: the
402 landowner authorization letter says Rye instead of Exeter. Attorney Gamester
403 said the applicant would be happy to provide an updated letter of authorization to
404 the Board. Mr. Prior said that would be sufficient.

405 Attorney Gamester said the White Apron is a local catering service that
406 has been in business for 20 years. With the approval of this application, they will
407 be able to grow their business. The proposed use would consume the first floor
408 of 1 Franklin Street under the "social hall use" described in the ordinance. It
409 would provide on-site catering, event services, and community events. There
410 was concern in 2014 about the first floor being used as a restaurant, and that a
411 future owner could convert it to a full service restaurant. Conditions were placed
412 on the approval that the restaurant could not operate until 5 PM. The proposed
413 use for the White Apron is a social hall and event space; there will be no
414 restaurant services provided. The application asks that the Board find either that
415 the use is not subject to the restaurant condition, or to amend the approval to
416 remove the restaurant condition.

417 The social hall use is a permitted use in the C1 zoning district, where the
418 majority of the property lies, but a portion of this property sits in the R2 district
419 where social halls are not permitted. This Board has already found that the social
420 hall use is reasonable and consistent with the spirit and intent of the ordinance.
421 Amending the conditions of the approval, or finding that the use is not subject to
422 the restaurant condition, would allow the White Apron to use the entirety of the
423 first floor for a single purpose at scheduled times, unlike a general restaurant with
424 people coming and going.

425 Mr. Prior asked if there would be restrictions on time. Attorney Gamester
426 said we believe the restriction of 5 PM was created because of the owner's use
427 of the first floor as a restaurant, with the comings and goings around lunchtime.
428 We believe that there does not need to be a time restriction around the proposed
429 use.

430 Mr. Thielbar said the restriction on time of service was related to the
431 parking. After 5, the Long Block doesn't need the parking and those spaces
432 would be available to serve the people they would plan to have. Attorney
433 Gamester said the parking easement is 7 AM - 7 PM, so it doesn't match the 5
434 PM restriction. That easement is very well protected for the 11 spaces and the
435 12th overflow spot.

436 Ms. Pennell asked if the catering would be prepared in the kitchen there.
437 Mr. Curcio said we have a kitchen in Dover NH, where we will produce all the
438 food for the first year of operation; after that we intend to produce food for events
439 out of the space.

440 Attorney Gamester said the second part of this request is a variance to
441 allow 31 parking spaces where 33 are required. For the social hall, the ordinance
442 requires 1 parking space for every 200 square feet of floor area, which calls for
443 28 required spaces; there is a 1-bedroom apartment which requires one parking
444 space; and there are two 2-bedroom apartments which each require two spaces,
445 for a total of four. These add up to 33 required by the ordinance. In 2014, the
446 Board chose not to apply the more stringent parking calculations, which would
447 have forced the applicant to treat the entire first floor as a social hall use. Since
448 that application, the bedroom count has gone down from what was proposed at
449 that meeting. There is more available parking on-site today than in 2014.

450 Attorney Gamester went through the variance criteria. 1) The variance will
451 not be contrary to the public interest and 2) The spirit of the ordinance will be
452 observed; yes, the current approved use and the proposed use are virtually one
453 and the same. The de minimis parking deviation is reasonable. The granting of
454 the variance would not alter the essential character of the neighborhood or
455 threaten the public health, safety, or welfare. The occupancy load of the building
456 is currently 197 people, and it would be the same under the White Apron use.
457 Under the current approval, there's no restriction other than the occupancy load
458 placed on the property. It can seat up to 60 people in the restaurant and use
459 other portions of the property up to its occupancy load. Under the proposed use,
460 there is more predictability, as no one is just showing up to dine. The owners will
461 coordinate logistics and planning, including guest parking, with the organizer of
462 each event. 3) Substantial justice is done; yes, there would be no gain to the
463 public by denying the variance relief sought. The granting of the additional relief
464 for the de minimus parking deficiency would have no impact on the public, but
465 there would be a substantial loss to the owner of the property if the relief were
466 denied. It would also create an injustice to the public by not allowing the creation
467 of a singular use through the entire first floor of the property. 4) The value of
468 surrounding properties will not be diminished; yes, the proposed use is not only
469 consistent with the current approved use, it's more straightforward and logical
470 than the current use. There's no evidence that this will have an impact on
471 surrounding properties. 5) Literal enforcement of zoning ordinance will result in
472 an unnecessary hardship; yes, this property is unique in its environment. It is in
473 two zones, and the R2 zone is controlling its use. It was constructed as a social
474 hall. It is suitable for holding private events and functions. There is no fair and
475 substantial relationship between the ordinance and its application to the property.
476 We have received letters of support from 8 Clifford Street and 1-9 Water Street.
477 The letter from the Attorney for the Long Block Condominiums had a correction
478 regarding the number of parking spaces, but we intend to completely honor the
479 easement.

480 Mr. Prior said in 2014, his understanding was that this was envisioned as
481 a private club as part of a larger development. There was the provision that there
482 might be additional dining offered to those who were not residents to this cluster
483 of homes. Attorney Gamester said even if this was a limited use in what a social

484 hall would be, it wouldn't limit the members of the social hall from holding events.
485 He doesn't believe it was limited in the record anywhere to being a private club in
486 order to hold events.

487 Mr. Thielbar asked about the potential number of people who might be in
488 the facility. Mr. Eastman said it would fall under maximum occupancy, which is
489 197. Ms. Davies said the discussion in 2014 was that the members of the private
490 club were in walking distance of the property, which would reduce the need for
491 parking. Mr. Prior said there is a large delta between the 197 occupants and the
492 number of parking spaces required, which is of concern. This owner is doing
493 event planning which would include parking discussions, but they could sell it to
494 someone else. Attorney Gamester said the owners knew there were going to be
495 natural limitations on the property. They will have those conversations with the
496 organizers of each event. Parking planning will be part of running their business.

497 Mr. Prior opened the hearing to the public.

498 Carl Draucker of 18 Franklin Street, an end unit of the condos on Franklin
499 Street, said he was a member of the Bungalow Club, the private club referred to
500 in the 2014 application for the variance. The variance application referred to
501 limited hours of 6 PM to 9 PM, and 100 members of the club, 15 of whom would
502 be owners of the Cottage Townhouses. The approval reduced 6 PM to 5 PM.
503 This request by the White Apron would threaten the public health, safety, and
504 welfare. After the Bungalow Club closed, there were three weddings, the last of
505 which lasted until 11 PM with loud music outside. People who left turned north on
506 Franklin Street, contrary to the one-way direction on that street. Many people
507 who showed up parked on Franklin Street and blocked a portion of his driveway.
508 There's no way to control when and how people come to an event such as a
509 wedding reception. They're going to park on Franklin Street to the extent they
510 can.

511 John Dal Santo, the majority owner of the Long Block, said his lawyer
512 sent a letter which was not properly quoted. Presently there are 31 parking spots
513 on the property, which Long Block may exclusively use 11 from 7 AM to 7 PM
514 pursuant to the parking easement, but also may use 24/7. Mr. Prior asked if there
515 are residents in the Long Block building, and Mr. Dal Santo said yes, and there
516 are also clients who operate there into the evening. Mr. Prior asked if resident
517 cars parked overnight are identifiable to the applicants, and Mr. Dal Santo said
518 no, but he would be supportive of that. In the past, people coming to the events
519 parked in those spaces, and we had them towed.

520 Jessica O'Leary of 15 South Street, behind 1 Franklin, said she agrees
521 that one of the wedding receptions went very late and was loud, and this is a
522 concern for an event space going forward. Customers for businesses in the area
523 park on Franklin and South, and she was blocked in her driveway once by an
524 event. When the Curcios started in 2018, there was an ancillary parking lot at the
525 end of South Street, but now there's a 4 unit building there. If there are people
526 there on the weekend and late at night with loud music, and there's no place to
527 park, that affects her property values.

528 Scott Kuckler of 12 Clifford Street, which abuts the proposed venue via
529 his backyard, said this building would be perfect for this use if it weren't
530 squeezed into this little piece of land in a neighborhood. Regardless of loud
531 music, 200 people talking is a noise on its own. It's a quiet neighborhood. People
532 will park for events, not take a shuttle. There will be a significant impact on his
533 quality of life and the livability of this neighborhood. Other local businesses may
534 fail because of the parking issue.

535 Tom Grimmett of 22 Franklin Street, one of the 7 units of the Squamscott
536 House Condo Association, said he's concerned about a business that's vacant
537 so he would like to see something move in there, but he's also concerned about
538 the parking. Some of the parking spaces illustrated in the application were not
539 applicable; he counts only 13 spots for event parking for 197 attendees. Mr. Prior
540 said the Board has to consider the parking requirements, not the 197 maximum
541 occupants. It's 1 parking spot for each 200 feet of the social hall plus the
542 residences upstairs.

543 Attorney Gamester said regarding Mr. Drauckner's point, there were
544 considerations of the timeline in the 2014 approval, but the Board chose not to
545 create a time limit on the closing end. That said, his clients are not intending to
546 have 11 or 12 o'clock events every night. What's approved now is a 60-seat
547 restaurant and event space. They can run a restaurant but they don't want to. No
548 matter how many spaces are available, parking will need to be managed. Mr.
549 Prior asked if the apartments are occupied. Ms. Curcio said yes.

550 Mr. Drauckner said a restaurant will occupy a space for less time than an
551 event will. Diners will leave after 1 - 2 hours, but an event will last 5 - 6 hours. It
552 will congest our town.

553 Ms. Davies said she's trying to think of a way to include valet and offsite
554 parking as a condition. Attorney Gamester said there are different meanings of
555 valet, it can be managed on-site or off-site. He doesn't believe that the applicants
556 have secured off-site spots, so the shuttle service would likely be from other lots
557 such as park-and-ride lots. Conditions go beyond the idea that the White Apron
558 will be there. The approval could say this applicant or any other owner or lessee
559 must submit a business plan describing their parking strategy. He doesn't think
560 it's possible to bind the applicant to anything that may be out of their control.
561 Everything we're discussing can be done on the property today, but we're trying
562 to be good neighbors and nix the restaurant aspect to it.

563 Mr. Prior said regarding noise and hours of operation, we don't have a
564 noise ordinance in Exeter, we rely on the goodwill of neighbors and abutters. Mr.
565 Eastman said there's a town ordinance related to noise after 11 PM. Attorney
566 Gamester said it's expected that things will be quieting down by that time.

567 Mr. Prior said there's been no consideration of employee parking.
568 Attorney Gamester said that's part of the parking calculations.

569 Mr. Thielbar asked if we could have a limitation of no outside music.
570 Attorney Gamester said the intention is that the music is inside. Mr. Prior said

571 there are outdoor spaces and decks for flow outside. The doors that back up to
572 South Street would be open.

573 Mr. Prior brought the discussion back to the Board. He said there are two
574 requests. The first is for a social hall to be located in the R2 zoning district, which
575 we already approved in 2014, and that's it's not subject to the restaurant/dining
576 conditions that it's a 60-seat restaurant with restricted hours to no earlier than 5
577 PM. The use, not the occupancy capacity of the building, is changing. The
578 wedding receptions held there were perfectly legal, even if unpopular with the
579 neighbors.

580 Ms. Davies said this has the potential to be less or more intrusive, but it's
581 a permitted use in the commercial district. Mr. Prior said the question of parking
582 has to be addressed by the owner of this property and the owners of the Long
583 Block property. Ms. Davies said it is resolved, it's a question of enforcement.
584 They can tow. There's no concrete reason to reject a very similar use.

585 Mr. Prior said of the two options, he prefers to say that the use is not
586 subject to the restrictions on the restaurant use.

587 Ms. Davies made a motion that, regarding the application of The White Apron for a modification
588 to the 2014 variance, we find that the proposed use is not subject to the 2014 dining/restaurant
589 condition regarding hours of operation and limitation on the number of seats, and that the
590 entirety of the first floor be dedicated to a social hall use. Ms. Olson-Murphy seconded. Ms.
591 Davies, Mr. Merrill, Ms. Davies, Mr. Thielbar and Mr. Prior voted aye, and the motion passed 5-
592 0.

593
594
595 Mr. Prior said there is a definitive parking easement with Long Block that
596 runs with the property that was signed by Kathleen Mahoney and witnessed by
597 Mr. Baum (which is why he recused himself). This is a question of enforcement
598 and towing. That said, the relief being sought is very minor. Ms. Davies said she
599 doesn't see any practical way to condition a business plan for offsite parking. Mr.
600 Thielbar said if their customers have a terrible time parking, it will be bad for their
601 reputation. After all the discussions about how there's really not a shortage of
602 parking downtown, she doesn't see how we can deny them for two spaces. Mr.
603 Prior said we should also insist that the 11 PM noise ordinance should be
604 enforced.

605 Ms. Davies went through the criteria for the parking variance. 1) The
606 variance will not be contrary to the public interest and 2) The spirit of the
607 ordinance will be observed; yes, although people have concerns, she doesn't
608 think granting a variance for just two additional spaces threatens the essential
609 character of the neighborhood or threatens the public health, safety, or welfare.
610 3) Substantial justice is done; yes, relief from two required spaces is not, in her
611 opinion, going to harm the general public or individuals. 4) The value of
612 surrounding properties will not be diminished; yes, many of the properties have
613 turned over since this building use was approved, and property values have
614 skyrocketed in this neighborhood. There's no evidence that values will be

615 diminished. 5) Literal enforcement of zoning ordinance will result in an
616 unnecessary hardship; yes, there is a lack of parking in downtown Exeter, and
617 don't have the space to meet the zoning requirements. She does consider that a
618 hardship.
619

620 Ms. Davies made a motion that we approve a variance from Article 5, Section 5.6.6 for the
621 property at 1 Franklin Street seeking relief to permit less parking spaces than required for a
622 social hall use. Mr. Thielbar seconded, but he said we should talk specific numbers.
623

624 Mr. Thielbar made a motion to modify the prior motion to state that there will be 31 spaces
625 where the requirement is 33. Ms. Davies seconded the amendment. The amendment to the
626 motion passed 5-0. The motion was amended to *Ms. Davies made a motion that we approve a*
627 *variance from Article 5, Section 5.6.6 for the property located at 1 Franklin Street, seeking relief*
628 *so that 31 spaces will be provided where the requirement is 33 spaces.]*

629 Ms. Davies, Mr. Prior, Mr. Thielbar, Ms. Olson-Murphy, and Mr. Merrill voted aye, and the
630 amended motion passed 5-0.

631
632

633 Ms. Pennell said regarding the definition of a bed & breakfast, she wanted to have the
634 words "shall have" inserted, ie "a bed & breakfast shall have not more than four rentable rooms
635 and *shall have* a dining area..." Mr. Prior said that this was a Citizen's Petition and not
636 professionally prepared. The language cannot be changed, but we can request that the
637 Planning Board take up the ambiguous language for the next town meeting.
638

639 **II. Other Business**

640 A. Approval of Minutes: March 15, 2022

641 The minutes were tabled until the next meeting.

642 **III. Adjournment**

643

644 Ms. Olson-Murphy moved to adjourn. Ms. Davies seconded. All were in favor and the meeting
645 was adjourned at 11:10 PM.

646

647 Respectfully Submitted,
648 Joanna Bartell
649 Recording Secretary

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