

Town of Exeter  
Zoning Board of Adjustment  
November 15, 2022, 7 PM  
Town Hall  
Final Minutes

I. **Preliminaries**

**Members Present:** Chair Kevin Baum, Laura Davies, Martha Pennell - Alternate

**Members Absent:** Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Joanne Petito - Alternate, Dave Mirsky - Alternate

**Call to Order:** Chair Baum called the meeting to order at 7:07 PM. He asked for a moment of silence for Rick Thielbar, who passed away this week.

I. **Continuances**

A. The application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of "Elderly Congregate Health Care" to permit skilled nursing care off site on related campus. The subject property is located at 7 RiverWoods Drive in the R-1, Low Density Residential zoning district. Tax Map Parcel #97-23. ZBA Case #22-15

B. The application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of "Elderly Congregate Health Care Facilities" to permit skilled nursing care off site on related campus. The subject property is located at 5 Timber Lane, in the R-1, Low Density Residential zoning district. Tax Map Parcel #98-37. Case #22-16.

Ms. Davies made a motion to continue the hearing on cases #22-15 and #22-16 to December 20, 2022 at the applicant's request. Ms. Pennell seconded. The motion passed 3-0.

C. ZBA Case 22-16. The application of 107 Ponemah Road 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 the existing single-family dwelling and attached barn located at 50 Linden Street to a three-family home. The subject property is situated in a R-2, Single Family Residential zoning district. Tax Map Parcel #82-11. ZBA Case #22-17.

Ms. Davies moved to continue the hearing for case #22-17 to January 17, 2023 at the applicant's request. Ms. Pennell seconded. The motion passed 3-0.

D. The application of Jewett Construction Co., LLC (on behalf of Craig Jewett) for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 for a change of use to permit the existing church on the property at 12 Little River Road to be used as a Montessori Early Childhood

44 Education Center. The subject property is located in the R-2, Single Family  
45 Residential zoning district. Tax Map Parcel #62-90. ZBA Case #22-20.

46 Ms. Davies moved to continue the hearing for case #22-20 to December 20, 2022 at the  
47 applicant's request. Ms. Pennell seconded. The motion passed 3-0.

48  
49 **II. New Business**

- 50  
51 A. The application of Richard and Debbi Schaefer for a variance from Article 5,  
52 Section 5.3.3. to permit the use of test pits for an individual sewage disposal  
53 system with less than the required 24 inches to seasonal high-water table. The  
54 subject property is located at 24 Powder Mill Road, in the R-1, Low Density  
55 Residential zoning district. Tax Map Parcel #102-4. ZBA Case #22-18.

56 Henry Boyd of Millennium Engineering spoke on behalf of the Schaefers,  
57 who were also present.

58 Mr. Boyd said the Schaefers are trying to give their daughter a piece of  
59 land to keep the family together. Their parcel is 17 acres. He presented Tax Map  
60 102 and a wetland delineation sketch from the wetland scientist for the Board's  
61 reference.

62 Mr. Boyd said that Exeter has an overreaching requirement for septic.  
63 Normally septic needs 6 inches of existing natural soil above the high water  
64 table, but Exeter requires 24 inches. This parcel has between 10 and 17 inches,  
65 about 7 inches short of what's required. This requirement is not necessarily  
66 scientific. We could add fill above the naturally occurring soil, which we will have  
67 to do anyway to get to the 4 total feet from the seasonal water table required for  
68 the septic system. This variance won't create any problems for the town or river,  
69 but will provide a benefit for the applicant.

70 Mr. Baum said this project will also need a permit from NH DES. From a  
71 quick read of the State regulations, do they require 2-4 feet? Mr. Boyd said when  
72 you design the septic system, the State allows 2 feet from the septic to the water  
73 table when using certain technologies. The standard leach field is four feet, but  
74 newer technologies allow a reduction in the size and the distance from the water  
75 table. The first permit required from DES is a subdivision approval, since there is  
76 no sewer. We have to calculate the lot loading based on the soils. The applicants  
77 would have to prove to NH that there is enough soil to support a house, before  
78 they will grant the permit. Then we go to the Planning Board for approval for the  
79 subdivision, then back to DES for the septic design.

80 Mr. Baum asked what type of system would be 2 feet from the water  
81 table. Mr. Boyd said the applicant would likely use Enviro-Septic. We would not  
82 take a reduction in the distance to the water table, but more in the size. Looking  
83 at test pits, the soils here are slower. The 2 foot separation is for the septic itself.  
84 In Exeter, there must be 2 feet natural soil plus the allowance to the septic, for a  
85 total of 4 feet. If approved, we will design a system that will not harm the  
86 environment.

87 Ms. Davies asked about the proposal for the subdivision. Mr. Boyd said  
88 we haven't spent any survey money at this point, only done test pits and the  
89 delineation on the tax map. There's a tree line and driveway. He pointed out on  
90 the map where the house would likely be, but it depends on how much land the  
91 subdivision could be. We would have to meet setbacks from the structures and  
92 wetlands.

93 Mr. Schaefer presented a sketch of the proposed lot, which the Board  
94 reviewed. Mr. Boyd said he would encourage the applicants to share the  
95 driveway between parcels to minimize impacts, but if the State determined it was  
96 acceptable, there's an area for a separate driveway.

97 Ms. Pennell said she doesn't understand why Exeter's regulations are an  
98 issue. Mr. Eastman said it's been an issue before, in the same area, on Linden  
99 Street. 20 years ago, the Conservation Commission wanted to subdivide a piece  
100 of land to sell as a house lot, and they couldn't meet the 24 inches. They were at  
101 10 inches or so. They were granted a variance. Mr. Eastman said he doesn't  
102 know why it's 24 inches. There should be a relief valve when you make  
103 something more restrictive than the state.

104 Mr. Baum said the technology has improved since the regulations were  
105 made. Rye has similar requests frequently. State regulations have moved faster  
106 than the local. Would the applicants consider the condition of using the Enviro-  
107 Septic system? It will probably will have to happen regardless. Mr. Boyd said we  
108 use that system 98% of the time.

109 Mr. Boyd said that one of the reasons for the difference in regulations is  
110 that Exeter has sewer through most of the community, so it doesn't come up that  
111 frequently. If there's no scientific or public health reason to deny it, the Board  
112 should grant the variance so that the applicants can use their property.

113 Mr. Baum said the application contains the variance criteria.

114 Mr. Baum asked if any members of the public would like to speak, but  
115 there was no comment. He closed public comment and the Board entered into  
116 deliberations.

117 Ms. Pennell said her concern was that when there were hurricanes in  
118 Florida, you heard that people should not have built where they built. The  
119 applicants are asking to build where someone says they don't have enough  
120 depth. Mr. Baum said it's not the State saying that, it's the town, which is more  
121 restrictive. The Planning Board here probably does not revisit septic  
122 requirements often. The applicant's next step is to go to DES for subdivision  
123 approval and design approval, so the experts in this field will review it. The  
124 applicants will also go before the Planning Board for subdivision approval. Ms.  
125 Davies added that they'll look at floodplain issues during the subdivision  
126 approval.

127 Mr. Eastman said regarding the 24", there are smaller lots of record  
128 available in the town, as small as 1 acre. We want to make sure that on a small  
129 lot there's a good drainage area. This lot will be in excess of 5 acres, so there's  
130 plenty of room.

131 Ms. Davies said it sounds like there are other safeguards in place. She  
132 takes environmental issues seriously, but this should be an ok area.

133 Ms. Davies made a motion to approve the application of Richard and Debbi Schaefer for  
134 a variance from Article 5, Section 5.3.3. to permit the use of test pits for an individual  
135 sewage disposal system with less than the required 24 inches to seasonal high-water  
136 table, on the condition that an Enviro-Septic Pipe or similar system is used. Ms. Pennell  
137 seconded. The motion passed 3-0.

- 138  
139 B. The application of John Luke Rogers for a special exception per Article 4,  
140 Section 4.2 Schedule I: Permitted Uses, Schedule I Notes 2. and Article 5,  
141 Section 5.2 to permit an existing "in-law" unit to become an accessory dwelling  
142 unit. The subject property is located at 29 Hampton Road, in the R-2, Single  
143 Family Residential zoning district. Tax Map Parcel #87-23-3. ZBA Case #22-19.  
144

145 Mr. Rogers said he and his wife Stacy live at 29 Hampton Road. In the  
146 backyard is an accessory dwelling unit, which is approved as an in-law or guest  
147 suite. He is applying for a special exception to authorize the space as a rental  
148 property. Rental economics are dynamic right now. NH has high occupancy  
149 rates. This space, which is sitting idle, could be beneficial to the town and to us.  
150 This is a converted pool house, and the pool has been filled in. The proposed  
151 use is to rent it out on an intermediate or long-term basis.

152 Mr. Baum asked about the driveway on the map included with the  
153 application. Mr. Rogers said it's a shared drive; 29 has a driveway in front of the  
154 house which is connected to the driveway for 31. The house in the back is off of  
155 the shared driveway. The deed shows the right of way.

156 Ms. Davies said if they want it to become an accessory dwelling unit, the  
157 owner has to occupy one of the two units. Mr. Rogers agreed. Mr. Eastman said  
158 he went through all of that with the applicants. The driveway is tricky, since it's an  
159 easement for a driveway on Hunter Place.

160 Ms. Pennell asked if the applicants converted this from a pool house. Mr.  
161 Rogers said we only moved in a year ago, but our understanding is that there  
162 was formerly a pool that has been filled in. This in-law suite was converted years  
163 ago. Mr. Eastman said it was all permitted, a previous owner filled in the pool and  
164 renovated the pool house into a guest house. It was part of a four-lot subdivision  
165 around the year 2000.

166 Mr. Baum said it sounds like the property meets the accessory dwelling  
167 unit requirements. Ms. Pennell asked if the applicant will have to file with the  
168 Registry, and Mr. Eastman said the Building Department will do a Certificate of  
169 Occupancy and the applicant will be required to amend his deed.

170 Mr. Baum asked if his plans would include short-term rentals. Mr. Rogers  
171 said no, he spoke with Mr. Eastman and it won't be short-term.

172 Mr. Rogers went through the special exception criteria. A) The use is a  
173 permitted special exception as set forth in Article 4.2, Schedule 1; yes, the R2  
174 special exception includes accessory dwelling units. We plan to rent it out as an

175 ADU. B) That the use is so designed, located and proposed to be operated that  
176 the public health, safety, welfare, and convenience would be protected; yes,  
177 that's at the forefront of our intentions. Our family lives on the property. C) That  
178 the proposed use will be compatible with the zoned district and adjoining post-  
179 1972 development where it is to be located; yes. D) That adequate landscaping  
180 and screening are provided; yes, the property is set back from Hampton Road. E)  
181 That adequate off-street parking is provided; yes, plenty of parking is available.  
182 F) That the use conforms with all applicable regulations governing the district  
183 where located; yes. G) The applicant may be required to obtain Planning Board  
184 or Town Planning approval; yes, we will comply with anything that the ZBA  
185 deems necessary. H) That the use shall not adversely affect abutting or nearby  
186 property values; yes, this will be a good thing overall for the immediate area and  
187 the town. He added that I) and J) are not applicable for the ADU use.

188 Mr. Baum opened the discussion to the public, but there was no  
189 comment. He closed the public session and entered into Board deliberations.

190 Mr. Baum asked Mr. Rogers to send Mr. Eastman a copy of the deed. Mr.  
191 Eastman said we can download it without him sending it.

192 Ms. Davies said this is very straightforward. It's an existing building legally  
193 put into use as a residence, but not as a legal separate unit for rental. It meets all  
194 ADU criteria. There will be no physical change to the property. She has no  
195 concerns.

196 Ms. Pennell said she has no issues.

197 Mr. Baum said the access didn't make sense to him at first, but it sounds  
198 like there's an easement.

199 Ms. Davies made a motion to approve the application of John Luke Rogers for a special  
200 exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Schedule I Notes 2 and  
201 Article 5, Section 5.2 to permit an existing "in-law" unit to become an accessory dwelling  
202 unit at 29 Hampton Road. Mr. Baum seconded. [not voted]

203  
204 Ms. Pennell questioned the use of the term "in-law." Mr. Eastman said it could be  
205 referred to as an "accessory structure" instead.  
206

207 Ms. Davies moved to change her motion to use the term "accessory structure" instead of  
208 "in-law unit" in the previous motion: "to permit an existing accessory structure to become  
209 an accessory dwelling unit at 29 Hampton Road." Mr. Baum seconded the amended  
210 motion. The amended motion passed 3-0.

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### III. Other Business

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#### A. Minutes of September 20, 2022

215

Corrections: Ms. Pennell said in the "Members Absent" section, Chris Merrill was  
216 not a ZBA member at that time. Mr. Baum said Dave Mirsky was a member,  
217 although he was not present.

218 Ms. Davies was not present at the 9/20 meeting, so there was not a quorum to  
219 vote. The minutes were tabled until the December meeting.

220

221 **IV. Adjournment**

222 Ms. Davies moved to adjourn. Mr. Baum seconded. All were in favor and the meeting was  
223 adjourned at 8:05 PM.

224

225 Respectfully Submitted,

226 Joanna Bartell

227 Recording Secretary