

Town of Exeter
Zoning Board of Adjustment
February 21, 2023, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Acting Chair Robert Prior, Clerk Esther Olson-Murphy, Laura Davies, Dave Mirsky - Alternate, and Laura Montagno - Alternate. Town Code Enforcement Officer Doug Eastman was also present.

Members Absent: Chair Kevin Baum, Theresa Page, Joanne Petito - Alternate, Martha Pennell - Alternate

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

I. **New Business**

- A. 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 into three (3) residential condominium units. The subject property is situated in a R-2, Single Family Residential zoning district. Tax Map Parcel #82-11. ZBA Case #22-17.

Mr. Prior said this application has been withdrawn at the applicant's request.

- B. The application of Twenty-Nine Garfield Street, LLC for a variance from Article 4, Section 4.4 for relief from side and rear yard setback and building coverage requirements; and a variance from Article 6, Section 6.19.3.A.5 to exceed the maximum height requirement for the proposed construction of a three-story, 36-unit apartment building, parking and a first floor "Ambassador Station" providing services for patrons of the abutting train station. The subject property is located at 29 Garfield Street, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #73- 225. ZBA Case #22-21.

Henry Boyd of Millennium Engineering, applicant Mark Kearns, Attorney Tim Phoenix of Hoefle, Phoenix, Gormley & Roberts, Architect Dennis Meyers, and Engineer Ken Wood were present to discuss this application.

Mr. Kearns described his background in the area. Since 1980, he and his wife have owned real estate in Southern Maine and NH. They have tried for many years to develop affordable housing near the train station in Exeter. They're requesting a height variance solely to have a peaked-roof building with dormers. The MUND [Mixed Use Neighborhood Development zone] requires that new buildings follow the architectural style of the town, and they've tried hard to do that. Four of the units will have to be rented below market value, as required

45 by the State. It will have a solar array on the roof. The building will be entirely
46 electric. The appliances will be green, including induction electric stoves. Parking
47 is beneath the building, and there will be plug-ins for electric vehicles.

48 Mr. Boyd said this is an odd plot in a strange location. It runs up against
49 the rail corridor. There's a commercial building with existing truck traffic. The
50 existing building is 175x45 feet, and the rest of the property is gravel. There is a
51 storage business on the adjacent lot.

52 Mr. Prior asked if he considered the Garfield Street end to be the front of
53 the property, and Mr. Boyd said yes.

54 Mr. Boyd presented the proposed site plan. The building will take up most
55 of the lot. On the left side, it needs 5.4 feet of relief where 10 feet is required. On
56 the right hand side, it requires 3 feet of relief for having 7 feet where 10 feet is
57 required. In the back, it should be a 20 foot setback. Up to 75% lot coverage is
58 allowed in this zone. It only needs a small amount of relief, 1.3 percentage
59 points. It will accommodate all parking inside the building. It doesn't need front
60 setback relief, because the requirement is 0 in this zone, and we have 3.4 feet.

61 Mr. Prior said the Board is not approving the building's design, only the lot
62 coverage, setbacks, and height, so the team should address those issues. The
63 building will be reviewed by the Planning Board. Mr. Prior asked if the applicant
64 had been to technical review yet, and Mr. Boyd said no.

65 Mr. Mires presented a site plan with the concept of the building. To
66 accommodate the parking inside, it needs a minimum building width of 52 feet.
67 The parking is on the ground floor, not underneath. There's a slight slope front to
68 back related to the site. The floor plan has a double-loaded corridor with 36
69 narrow units, 18 per floor. Two units are one-bedroom and the rest are two-
70 bedroom. The building is higher because it has parking under the building. It
71 could meet the ordinance by having a flat roof, but the team agreed that in this
72 location a more traditional pitched roof would improve the building's appeal. The
73 tower at the Garfield Street end is the elevator overrun and stair access to the
74 roof. There would be shielded mechanical units on the roof.

75 Mr. Prior asked the height of the existing building. Mr. Mires said around
76 22 - 24 feet. That would fall in the middle of the second floor window of the
77 proposed building.

78 Mr. Prior asked what the parking requirements would be if it weren't a
79 MUND project, adding that the zoning calls for one parking space per bedroom
80 plus an additional visitor spot for each four units. Mr. Mires said in the MUND, it's
81 one per unit. Mr. Prior said the number of automobiles that would be used by this
82 building exceeds the 36 that will be provided on-site, and he's trying to determine
83 by how much. Mr. Mires said probably one and a half. There are 34 two bedroom
84 units and two one bedroom units, so 70, plus guest spaces. Mr. Prior said that's
85 significant.

86 Ms. Olson-Murphy asked about the width of the sidewalk. Mr. Mires said it
87 will be 5 feet. Ms. Olson-Murphy said the MUND requires sidewalks that are 8
88 feet wide. Mr. Mires said the sidewalk width is because of the width of the

89 building and the parking dimensions. Ms. Olson-Murphy asked the width of the
90 walkway into the building, and Mr. Mires said it could easily be 8 feet.

91 Attorney Phoenix said the applicant is proposing an ambassador station
92 for the train station to accommodate those using the train. The MUND's purpose
93 is to expand housing diversity in mixed use districts in order to increase the
94 vibrancy of these districts, stimulate the local economy, and provide access to
95 rental and home ownership options that are not possible in other districts, and
96 that is what this project would do. The MUND decreases parking to one space
97 per unit and has some other relief. This would be a new gateway for people
98 utilizing the train. It will only be rentals, not condominiums. It would provide more
99 than the required 10% of affordable housing units.

100 Attorney Phoenix said the lot is less than 70 feet wide. The width of the
101 underneath parking drives the width of the building, as well as increasing the
102 height. The tower is 57.08 feet, but the ordinance defines building height as the
103 distance to the highest point of the building not including towers or other
104 projections.

105 Attorney Phoenix went through the variance requirements. 1) The
106 variance will not be contrary to the public interest and 2) The spirit of the
107 ordinance will be observed; yes, the purposes of the zoning ordinance are
108 lessening congestion in the streets. Right now large trucks and tractor trailers are
109 going in and out of there, so changing the use of that building to an apartment
110 with covered parking underneath lessens congestion in the streets. We will
111 secure safety from fire, panic, and other dangers because the building will be
112 fully sprinkled. We will promote the general welfare with the ambassador station,
113 which helps the general public, as well as a walking path from Garfield Street to
114 the train parking lot. The residential use, which includes affordable housing, will
115 promote the general welfare. It will promote light and air because we only very
116 slightly exceed the coverage requirement. The trees in that area appear to be on
117 abutting properties. The nature of the uses around us, such as the storage
118 facility, parking lot, and railway, are not affected by the height of the building, and
119 we're far enough from any homes that the height variance will not affect them.
120 The ordinance looks to prevent overcrowding of land and undue concentration of
121 population, but this is under the MUND which calls for this kind of development.
122 We believe that it will facilitate the adequate provision of transportation, water,
123 sewerage, schools, parks and recreation facilities. This does not alter the
124 essential character of the locality in a negative way; the locality is eclectic, with
125 most of Garfield being residential but this area being commercial near a train
126 station and parking lot. The proposed building and its aesthetics help the
127 essential character of the locality. The variances do not threaten the public
128 health, safety, or welfare. 3) Substantial justice is done; yes. We have a narrow
129 lot with the width of the building determined by the parking. The length and height
130 are needed for the number of units to be financially viable. This harms no one in
131 the public, due to the location of the building and existing use, but Mr. Kearns will
132 be harmed if the variances are denied because he can't build the project he

133 wants in the way that he wants, to provide the benefits of 32 market value units
134 and 4 affordable units. 4) The value of surrounding properties will not be
135 diminished; yes, the project will beautify this area and be more in keeping with
136 what the town wants to see, so it will not diminish property values. 5) Literal
137 enforcement of zoning ordinance will result in an undue hardship; yes, this
138 property is narrow with all impervious surface. It's surrounded by industrial and
139 transportation uses. The property's location, width, and depth create special
140 conditions under the hardship test. There's no fair and substantial relationship
141 between the public purposes of the ordinance and its application in its instance..
142 Side and rear setback requirements are intended to promote ample air and light,
143 stormwater treatment, distance between neighbors, sightlines, and the like.
144 Stormwater treatment will be provided on-site. There's a storage facility next to
145 this property, so there will be no harm to anyone. Coverage limits are intended to
146 facilitate stormwater treatment, air, light, and separation, but we are just a very
147 slight amount over the limit. The height variance is driven by the parking
148 underneath and the pitched roof, which is aesthetically pleasing.

149 Mr. Prior said in order for this to be considered a MUND, there must be a
150 mixed use. The applicant is considering the ambassador station as the mixed
151 use. What percentage of the entire property does that represent? Attorney
152 Phoenix said the ambassador station is 1,000 square feet, while the building is
153 15,000 square feet per floor or 45,000 square feet total. He added that that's a
154 Planning Board issue. Town staff seemed to think this option was worth pursuing.
155 Traditional commercial retail or offices don't make sense in this location. Mr. Prior
156 said there are tremendous benefits to the applicant if this is considered a MUND.
157 The parking guidelines are there for a reason; they're based on the typical usage,
158 and that usage far exceeds the 36 spaces provided on-site. The last thing we
159 need is to have additional train parking taken up by residents of this building. Is
160 there a way of guaranteeing that residents don't use existing parking on Garfield
161 Street or the train parking lot? Attorney Phoenix said more people are having one
162 bedroom and an office. The town saw fit to pass the MUND ordinance, which we
163 comply with. People may have to park somewhere else. Since Covid, the train lot
164 hasn't been as full. There may be something we can work out with the Planning
165 Board, with something like residential stickers. We felt that we were following the
166 requirements of the MUND.

167 Ms. Davies asked whether these would be rentals or condos. Mr. Kearns
168 said all rentals, and as reasonably priced as we possibly can. There's no
169 intention of selling these as condos. Ms. Olson-Murphy asked what affordable is
170 in the area. Attorney Phoenix said 60% of HUD median area income for a family
171 of 3, per Section 6.19b3.

172 Mr. Prior opened the discussion to public comment.

173 Ann Sanok of Union Street, a block away from the proposed
174 development, said this is a relatively dense neighborhood of mostly single-family
175 and two-family homes. The area reflects Exeter's rich history and typifies the
176 essential architectural forms. She opposes this application. She doesn't like

177 what's there now, but this isn't a significant improvement. This fails to satisfy the
178 variance requirements and is inconsistent with the Master Plan and the goals of
179 the Lincoln Street improvement project, which envisioned "village-scale"
180 improvements. Regarding the public interest, the applicant says this will lessen
181 congestion, but adding 36+ cars is hardly limiting congestion. This project is
182 shoehorned into a narrow lot on a corner in a dense neighborhood. The Master
183 Plan calls for enhancing walking and biking infrastructure between primary
184 destinations and reducing congestion, not adding cars. The only safety
185 information the applicant mentioned is that the building will have sprinklers. This
186 building is close to the railroad tracks. Putting housing that close to a railroad
187 track with a diesel-roaring train is irresponsible and is not promoting the health,
188 safety, or welfare of citizens. They say this proposal will allow light and air, but
189 it's in a parking lot overlooking a diesel-roaring train and without a speck of green
190 space. The applicant suggests that this proposal prevents overcrowding of land,
191 but the variance is premised on increasing the building size. The applicant says
192 this will not cause an undue concentration of population, but three people per unit
193 in that crowded space is definitely an unreasonable concentration. The applicant
194 seeks to conform more closely with the R2 district with its design, so the density
195 should be more like R2's density and dimension regulations, instead of going
196 beyond even the commercial district. The applicant states that they will be
197 facilitating transportation, school, and recreational facilities, but there's no green
198 space so there's no recreation, and it complicates transportation. Bridge Brothers
199 only use the Agway in and out. It would be unfair to say that people at this
200 residence should be parking there. The exit onto Garfield Street is very tricky,
201 and is right next to a pre-school and close to Lincoln Street. Kids ride their bikes
202 in the street. The applicant asserts that substantial justice will be done by
203 granting the variance, but it won't be substantial justice for those who live in the
204 neighborhood. One of the Lincoln Street improvement plan's goals was
205 protection and enhancement of neighborhood identity. Having this building there
206 is just too crowded. Another goal was to enhance pedestrian safety, and this
207 does the opposite. Another goal was improvement to traffic circulation, and it fails
208 on that. The applicant contends that taking down the existing structure would be
209 an improvement, but this new building will exist surrounded by the same dismal
210 aesthetic conditions. She requests that the variance be denied.

211 Mary Tegel of Union Street said there is a lot of industrial use in that
212 neighborhood along the tracks and to the west. What is the implied or explicit
213 precedent for a dense, tall building with minimal setback, especially since it
214 seems to be inconsistent with the town's goal for how that part of town should
215 develop? Railroads have a lot of junk in the soil, and she thinks that an
216 independent third party should do a soil sampling before excavation begins. Mr.
217 Prior said that's out of the Board's purview. Ms. Tegel said the impact of the
218 construction will exceed their footprint. She's concerned about the harm to the
219 neighborhood, which will bear the cost of the financial harm. There will be
220 contamination of the soil, air, and water. Ms. Davies said the stormwater will be

221 treated on site. Ms. Tegel said there would be increased traffic in what is now a
222 safe neighborhood. It degrades our property values. The scale of this
223 neighborhood is worthy of preservation. Our loss is just as important as the
224 applicant's investment.

225 Bruce Kelley of 15 Garfield Street said this will ruin his property value.
226 There are 70+ cars that will be on the street in front of his house and his
227 neighbors' houses. That presents line-of-sight dangers for children of that
228 neighborhood. We won't be able to use and enjoy our neighborhood. The
229 applicant is trying to shoehorn a giant building into a small lot to maximize their
230 income. The variances have to meet criteria, and they failed to meet 3 or 4 of
231 those, although he doesn't recall the details. It's out of scope for the property,
232 and it doesn't bring anything good.

233 Sarena Preve of 14 Garfield Street said the zoning ordinance is to lessen
234 congestion in the street, and she doesn't think this is achievable with this
235 building. According to studies, there's been a significant increase in vehicle use
236 in households. There are at least 15 spaces not accounted for with this design.
237 Without space for the overflow, it will increase congestion on Garfield and Front
238 Street. This neighborhood is already prone to congestion. There's a winter
239 parking ban that further reduces parking availability. Accidents are going to
240 happen. This is a neighborhood where children walk, bike, skateboard, and
241 scooter. This project desires to overcrowd the land. It doesn't slightly exceed the
242 limits; the requested dimensions exceed current setback requirements by 50%
243 on the left, 30% on the right, 75% on the back. The height is increased by 33%.

244 Tim Gwynne of 16 School Street said he agrees with the previous
245 speakers. If the tower is put where they're proposing it to be, he will look out his
246 back door and see a giant tower. It doesn't make sense for this neighborhood.

247 Michelle Wasserman of 28 Garfield Street, which is across the street from
248 this property, said she opposes this petition. She's concerned about the harm to
249 the neighborhood. This will increase traffic and diminish property values. The
250 lack of parking will result in congestion and cars all over the street. The
251 requested variances don't allow for any green space. The proposed property is
252 far too large for the space. The current traffic from the moving company is hardly
253 noticeable, so this won't decrease traffic.

254 Lynn Wallace of Union Street said she's distressed by the amount of
255 development in the area. Bridges Brothers made a big effort to never have their
256 trucks come down their street. This will not be an asset to home values or the
257 neighborhood in general. Parking is already an issue in the neighborhood. As a
258 resident that pays taxes, she doesn't think it's fair to propose such a large
259 development in this area.

260 Greg Pollard of 8 Union Street said he agrees with his neighbors. This
261 proposal has fallacies built in. The tower is something that is "included" in zoning
262 ordinances, but it's a used part of the building with an elevator and stairs. He
263 requests that the Board deny this variance. It will impact the neighborhood
264 immediately and directly. What they put before the Board is gross malpractice.

265 David Taylor of 117 Court Street said he brings the perspective of a non-
266 neighbor. He's concerned about the number of cars and increase in traffic.
267 There's a bottleneck in traffic downtown, especially with the bridge. The
268 application has a reliance on the MUND but this isn't mixed use, it's a couple of
269 bathrooms in a building facing the parking lot. Also, who will be maintaining the
270 "ambassador suite"?

271 Attorney Phoenix said he's surprised at the level of opposition. What the
272 applicant proposed is a vast improvement on what's there. Legally, since we
273 comply, the parking issue is a Planning Board issue, but since there is concern,
274 we request to withdraw our application for now so we can take more time to
275 address their concerns. We are not asking for a continuance.
276

277 Ms. Davies made a motion to accept the applicant's request to withdraw. Ms. Olson-Murphy
278 seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Davies, Mr. Mirsky, and Ms. Montagno voted aye,
279 and the motion passed 5-0.

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281
282 C. The application of Janine L Richards for a special exception per Article 4, Section
283 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
284 conversion of the existing single-family home and accessory structures
285 (detached barn and garage) located at 14 Hobart Street into four (4) residential
286 condominium units. The subject property is located in the R-2, Single Family
287 Residential zoning district. Tax Map Parcel #74-88. ZBA Case #23-4.

288 Attorney Sharon Somers of DTC spoke on behalf of the applicant Janine
289 Richards, who was not present. The applicant's husband, David Richards, was
290 also present.

291 Attorney Somers said the relief sought is to authorize the single-family
292 property to be converted into 4 residential units. She added that Mr. Richards is
293 not sure whether he wants to go up to 4, so she requests to amend the relief to
294 allow "up to 4 units". She presented a tax card with a photo of the property; to the
295 left of the house is the garage, which is also noted on the plan. The tax map has
296 asterisks which note the lots in the vicinity that have multiple units. Most have 2
297 units, but one has 5 units.

298 Attorney Somers said the existing conditions are a single family house
299 with barn, garage, and shed. The site plan shows the existing driveway. We're
300 proposing to have 1 or 2 units in the single family house. If 2, there would be a
301 second garage attached to service the second unit. One unit is proposed for the
302 existing garage and one unit is proposed in the barn. The barn would have a new
303 400 square foot attached garage and new driveway. Each of the proposed units,
304 other than the garage unit, will have its own separate garage. We conform with
305 setbacks with the existing garage, and with the impervious surface requirements.
306 There won't be any change to the site other than the new driveway and the
307 creation of 2 or 3 garage spaces depending on how many units are created in the
308 single-family house. There are other properties in the neighborhood that are

309 multi-family. The proposed units are condominium units and will be owner-
310 occupied. The property is serviced by municipal water and sewer.

311 Attorney Somers went through the special exception criteria. A) The use
312 is a permitted special exception as set forth in Article 4.2, Schedule I; yes.
313 B) That the use is so designed, located and proposed to be operated that the
314 public health, safety, welfare, and convenience would be protected; yes.
315 C) That the proposed use will be compatible with the zone district and adjoining
316 post-1972 development where it is to be located; yes. D) That adequate
317 landscaping and screening are provided; yes, the site plan shows that there will
318 be a fence between the existing garage and 12 Hobart Street. Between the
319 property and 16-18 Hobart Street, there's a stone wall, and that wall and some
320 landscaping will act as screening between the barn unit and 16-18 Hobart Street.
321 E) That adequate off-street parking and loading is provided and ingress and
322 egress is so designed as to cause minimum interference with traffic on abutting
323 streets; yes, each unit will have its own garage. F) That the use conforms with all
324 applicable regulations governing the district where located; yes. G) The applicant
325 may be required to obtain Planning Board or Town Planning approval; yes, we
326 are aware that the Planning Board will have to review the proposal. H) That the
327 use shall not adversely affect abutting or nearby property values; yes, the
328 proposed use is residential, and all the properties in the area are single-family or
329 multi-family residential.

330 Ms. Davies asked if the buildings would be single-story. Mr. Richards said
331 we're planning to adhere to the rules that make it smaller than 400 square feet.
332 We haven't designed it yet. He's envisioning them being a standard garage
333 height. Mr. Prior asked if the existing footprint of the buildings would not change,
334 and Attorney Somers confirmed that the footprint would not change.

335 Ashley Comarsik of 20 Hobart Street said she has a right of way with the
336 neighbors at 16 and 18 Hobart. Her concern is parking. This was proposed years
337 ago and the concern then was impact on the neighborhood. This is a narrow
338 dead-end street which tapers off toward the end of the road. 16-18 Hobart has
339 four cars. There's a lot of traffic and turning around. Mailboxes have been hit and
340 people have driven off the road. How will the infrastructure of the road be
341 upgraded? Pipes are collapsing and water is spraying into the road. Does the
342 proposed driveway cut into 20 Hobart Street's property? The applicant mentioned
343 moving a rock wall, how will that be moved?

344 Cassandra Shawver of 16-18 Hobart Street, a direct abutter, said she has
345 concerns about traffic and parking. The spot where the driveway comes out at
346 McKinley and Hobart is a chokepoint. There are garages proposed, but where
347 will visitors park?

348 Ms. Davies said she has a question about the lot lines. Attorney Somers
349 said there was a lot line adjustment a few months ago, which is reflected in the
350 plan but not the tax map. The effect of the lot line adjustment made the 14 lot
351 larger in order to meet the dimensional requirements.

352 Attorney Somers said the total of parking spaces required is 9 spaces for
353 the 4 units. There will be 3-4 bedrooms in unit 1 in the barn, 3 bedrooms each in
354 units 2 and 3 but that may decrease, and 2 bedrooms in unit 4. The garages
355 themselves will house 6 cars, and the remaining 3 cars can be parked in the
356 driveway, so we believe there is adequate space to house the cars on the
357 property. Traffic will be a Planning Board issue. She agrees that it's a little tight
358 down there. The stone wall is on the 14 Hobart Street property. It wouldn't be
359 moved, but the length might be extended and some additional greenery might be
360 installed.

361 Mr. Prior asked for further public comment, but there was none. He
362 brought the discussion to the Board for deliberation.

363 Mr. Prior said the application is for up to 4 units in existing structures. It
364 meets all of the other requirements for setbacks and parking.

365 Ms. Olson-Murphy asked about the current condition of the garage and
366 barn. Can they be rehabbed? Mr. Prior said that's up to them and the Code
367 Enforcement Officer. It just has to be the same footprint.

368 Ms. Davies asked if there needs to be a permit for the second driveway,
369 and Mr. Eastman said we can require them to get a driveway permit. Ms. Davies
370 asked if there's any problem with two driveways for a certain amount of frontage,
371 and Mr. Eastman said no.

372 Ms. Davies went through the special exception criteria. A) The use is a
373 permitted special exception as set forth in Article 4.2, Schedule 1; yes, it is
374 permitted. B) That the use is so designed, located and proposed to be operated
375 that the public health, safety, welfare, and convenience would be protected; yes,
376 there are mild concerns from the nearby property owners, but that's more about
377 the public right of way than this proposal. She doesn't see this proposal as
378 presenting significant concerns. There's not a great change in the physical
379 aspects of the property, other than the addition of the three garages. C) That the
380 proposed use will be compatible with the zone district and adjoining post-1972
381 development where it is to be located; yes, there are no new structures other
382 than the garages, and there are multiple properties nearby that have more than
383 one unit. D) That adequate landscaping and screening are provided; the Board
384 should condition the approval on the assertions made by the applicant regarding
385 the screening. E) That adequate off-street parking and loading is provided and
386 ingress and egress is so designed as to cause minimum interference with traffic
387 on abutting streets; yes, she's satisfied that there is adequate off-street parking
388 between the garages and the driveway parking. F) That the use conforms with all
389 applicable regulations governing the district where located; yes, it does conform.
390 They don't require any additional relief. G) The applicant may be required to
391 obtain Planning Board or Town Planner approval; yes, they are intending to go to
392 the Planning Board. Mr. Prior said we should make that a condition of any
393 motion. H) That the use shall not adversely affect abutting or nearby property
394 values; yes, there will be an increase in the number of units, but not the physical

395 aspects other than the garages. The property is well within its lot coverage and
396 other requirements. I) and J) do not apply.

397 Ms. Montagno asked if the owner-occupied condition would be looked at
398 by the Planning Board to ensure that it gets into the condo documents. Mr.
399 Eastman said that would go through the Planning Office. Mr. Prior said when we
400 approve the application as presented, that would become part of the acceptance.
401

402 Ms. Davies moved to accept the application of Janine L Richards for a special exception
403 per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit
404 the conversion of the existing single-family home and accessory structures at 14 Hobart
405 Street into up to four residential condominium units as presented, with the commitment
406 of the applicant to provide screening on the north and south property lines and with a
407 condition that the site plan be reviewed by the Planning Board. This is ZBA case #23-4.
408 Ms. Olson-Murphy seconded. Mr. Mirsky asked if we have to require that the units be
409 owner-occupied. Mr. Prior said it's useful to repeat that as a condition of acceptance, but
410 it is in the application as presented.

411
412 Mr. Mirsky moved to amend the motion to include that the application is being voted on
413 based on the presentation by the applicant, and that the applicant intends to convey the
414 units as condominium units and prevent them from becoming rental units. The
415 condominium documents will require that the units be owner-occupied. Ms. Montagno
416 seconded. Mr. Mirsky, Ms. Olson-Murphy, Mr. Prior, Ms. Davies, and Ms. Montagno
417 voted aye, and the amendment passed 5-0.

418
419 On the amended motion, Mr. Mirsky, Ms. Olson-Murphy, Mr. Prior, Ms. Davies, and Ms.
420 Montagno voted aye, and the amended motion passed 5-0.

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422

423 The Board took a short break and reconvened at 9:10 PM.

424

425 D. The application of Samuel Lightner for a variance from Article 4, Section 4.3
426 Schedule II: Density & Dimensional Regulations-Residential to permit the
427 proposed construction of a 200 S.F. addition to the existing residence at 25
428 Clover Street with less than the required minimum front yard setback. The
429 subject property is located in the R-3, Single Family Residential zoning district.
430 Tax Map Parcel #64-66. ZBA Case #23-5.

431 Attorney Somers spoke on behalf of the applicants, owners Sam and
432 Colleen Lightner, who were also present. Attorney Somers said the applicants
433 are looking to create an addition to the front of their existing home. The setback
434 would be 12.8 feet from the street as opposed to the required 25 feet. The corner
435 of the proposed building is 13.9 to the street and the roof corner is 12.8. It's a two
436 story structure. Exhibit 4 depicts a fence around the boundary of the property and
437 shows the trees that are on the property itself, including a large maple tree to the
438 right of the existing structure.

439 Mr. Prior said he and another member stopped by the property over the
440 weekend and talked to Mr. Lightner, who said there's a big difference between
441 the property line and the street that is not clear on the site plan. Ms. Davies said
442 the town's property will provide the appearance that it is farther from the street.
443 Mr. Prior said it's 6 or 8 feet. Attorney Somers said it's perhaps as much as 12
444 feet.

445 Attorney Somers went through the variance criteria. 1) The variance will
446 not be contrary to the public interest and 2) The spirit of the ordinance will be
447 observed; yes. The front yard setback's zoning objective would be to avoid
448 overcrowding or safety issues. We don't believe that the proposal will alter the
449 essential locality or threaten the public health, safety, or welfare. It will be
450 consistent with the configuration and size of the structures on other lots. There
451 are no issues in terms of safety. There will be no line-of-sight issues coming out
452 of Fairway Drive. This modest addition on this lot will not further a sense of
453 overcrowding or congestion. 3) Substantial justice is done; yes, there would be a
454 significant loss to the applicant if they cannot proceed, as this fairly modest
455 addition will allow them to gain living space. We don't believe that there would be
456 any gain to the general public or individuals by denying this, and if there were
457 loss, it would be outweighed by the damage to the Lightners if they don't get this.
458 4) The value of surrounding properties will not be diminished; yes, we don't
459 believe that will be an issue. This will remain for residential use, and the size will
460 be compatible with other residential structures in the area, so there shouldn't be
461 any impact to property values. 5) Literal enforcement of zoning ordinance will
462 result in an undue hardship; yes, this property line is irregular. Regarding special
463 conditions, the southerly property line goes off at an angle towards Clover Street
464 and creates a diminished pocket in the front of the house in which to develop;
465 secondly, this is a corner lot; and thirdly, there is a large and lovely maple tree
466 that the applicant would like to keep on the easterly side, so an addition on that
467 side would jeopardize the maple tree. Those constitute special conditions. On the
468 west side, that's a children's play area, and the layout of the existing structure
469 has a garage on the west side. This is a densely populated neighborhood with
470 relatively small lots. The proposed addition is not going to unnecessarily call
471 attention to itself. It will blend in and not create a sense of overcrowding.
472 Therefore, there is no relationship between the purpose of the ordinance and the
473 application as applied here. The proposal is reasonable given the size of the
474 existing dwelling and the modest size of the addition. This is the best location for
475 the addition.

476 Mr. Prior asked for public comment.

477 Yamir Faggella of Bittersweet Lane said she's concerned that it's a
478 neighborhood with ranches. If he goes out and up, with people flying around the
479 corner and not stopping, will the view in the front be a problem?

480 Attorney Somers said we did some rough estimates to address the line of
481 sight question, and she doesn't believe there's an issue. Section 5.3.2 on corner
482 lot visual clearance says *no obstructions to vision exceeding 30 inches in height*

483 *above the established grade of the street at the property line shall be erected or*
484 *maintained on any lot within the triangle formed by the street lot lines of such lot*
485 *and a line drawn between the points along such lot lines 30 feet distance from*
486 *their point of intersection.* Mr. Prior said you measure back from the corner 30
487 feet and draw a line between the two points. Ms. Davies said the existing
488 stockade fence may conflict, but not the addition. Mr. Prior said he agrees.

489 Mr. Prior asked for further public comment, but there was none. He
490 brought the discussion back to the Board.

491 Ms. Davies said she thinks it will be closer to the street than is typical for
492 the neighborhood, but if they had to stay within these setbacks there's not much
493 they could do. That presents a true hardship. Mr. Prior said if we were in an area
494 where buildings were uniformly set back, we might have an issue with one
495 sticking out, but where it's located, he doesn't see an issue.

496 Ms. Davies went through the variance criteria. 1) The variance will not be
497 contrary to the public interest and 2) The spirit of the ordinance will be observed;
498 yes, we discussed any safety concerns and the purpose of the ordinance. 3)
499 Substantial justice is done; yes, she doesn't think the harm to the public would be
500 greater than the benefit to the applicant. 4) The value of surrounding properties
501 will not be diminished; yes, it would be an enhancement. Mr. Mirsky said he
502 doesn't think anything in the neighborhood looks like this computer-generated
503 picture. It's going to be different going around that corner, and people will be
504 surprised by that. The neighbor says this will confuse people driving in the
505 neighborhood. Mr. Prior said sightlines for people going on Clover Street will not
506 be impeded. People on Fairway Drive coming onto Clover do have a stop sign
507 which is located beyond that corner of the property line. He doesn't see this
508 addition impeding the sightlines. Mr. Mirsky said people from outside the
509 neighborhood won't be used to it. You're changing something about the way the
510 eye will take that in, and that affects safety. Ms. Davies said that concern would
511 be more relevant to criteria 1, public interest. Mr. Mirsky said he also thinks
512 property values would be diminished, because the other houses don't look like
513 that. This creates something irregular in the neighborhood. Ms. Montagno said
514 there's a house at the corner of Fairway and Bittersweet that's two stories as
515 well. Mr. Prior said the new units at tax map and lot 65-102 are all two stories.
516 Mr. Mirsky said it's more about it jutting out. Ms. Davies asked if he thought a
517 different architectural style would have a negative impact on the value of
518 surrounding properties. She thinks it will enhance it. Mr. Prior said it will enhance
519 the value of this property, not diminish other properties. Ms. Davies continued
520 with the variance criteria: 5) Literal enforcement of zoning ordinance will result in
521 an undue hardship; yes, literal enforcement of the setbacks would almost make
522 the lot unbuildable. The lot size and shape relative to the zoning setbacks is the
523 hardship.

524
525 Ms. Montagno moved to approve the application of Samuel Lightner for a variance from Article
526 4, Section 4.3 Schedule II: Density & Dimensional Regulations-Residential to permit the

527 proposed construction of a 200 S.F. addition to the existing residence at 25 Clover Street with
528 less than the required minimum front yard setback. The subject property is located in the R-3,
529 Single Family Residential zoning district. Tax Map Parcel #64-66. ZBA Case #23-5. Ms. Davies
530 seconded. Mr. Mirsky said he opposes this for the reasons he stated. Ms. Olson-Murphy, Mr.
531 Prior, Ms. Davies, and Ms. Montagno voted aye, and Mr. Mirsky voted nay. The motion passed
532 4-1.

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535 **II. Other Business**

536 A. Approval of Minutes: January 17, 2023

537 Mr. Prior said there were only 3 members fully present at the January meeting,
538 Mr. Baum, Ms. Olson-Murphy, and Ms. Davies, because he and Ms. Pennell had to
539 recuse themselves for a portion of the business. There would only be two people voting
540 on the minutes tonight for an important application. He suggests noting changes but not
541 voting on them at this time. He added that the Board received a letter from resident
542 Robert Colley in reference to a measurement that occurs on line 361, however, this is
543 not the point at which you make this type of change. The minutes are a reflection of what
544 was said at the meeting. We can't make the change requested. Ms. Davies said she
545 would prefer to wait to approve the minutes. Mr. Prior said the Board will defer taking
546 action on the January meeting minutes until the next meeting.

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548 **III. Adjournment**

550 Ms. Davies moved to adjourn. Ms. Montagno seconded. All were in favor and the meeting was
551 adjourned at 9:44 PM.

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Respectfully Submitted,
Joanna Bartell
Recording Secretary