

Town of Exeter  
Zoning Board of Adjustment  
May 16, 2023, 7 PM  
Town Offices Nowak Room  
Final Minutes

I. **Preliminaries**

**Members Present:** Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Theresa Page, Joanne Petito - Alternate, Martha Pennell - Alternate and Laura Montagno - Alternate. Town Code Enforcement Officer Doug Eastman was also present.

**Members Absent:** Chair Kevin Baum, Laura Davies, and Dave Mirsky - Alternate

**Call to Order:** Acting Chair Robert Prior called the meeting to order at 7 PM. Ms. Montagno will vote on the first case and Ms. Pennell will vote on the second.

I. **New Business**

- A. The application of Tatiana Roth for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of an existing single-family residence into three residential dwelling units. The subject property is located at 70 Front Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #72-187. ZBA Case #23-6.

Peter Johnson, who was representing Tatiana Roth, was present to discuss the case. This is a large single-family residence at 70 Front Street, with 4,263 square feet. This house was purchased by Tatiana in 2019, but her husband and son passed away in 2020. The only way for her to keep the house would be to convert it into a three-family with a large owner's unit and two smaller units. The house lends itself to being divided up. All three have separate entrances. There is ample parking with a large driveway and a two-car garage. It's on town water and sewer. It was built in 1840. It's across the street from PEA dorms and a multi-family to the right belonging to PEA. David Bowen's residence is the only single-family next to us. There are no exterior property changes planned.

Mr. Prior said it looked like the applicant neglected to add one parking spot. It's one per bedroom plus one for a visitor. Mr. Johnson said there are five bedrooms, but one is being used as an office and doesn't have a closet. Ms. Olson-Murphy said they would need five spots. Mr. Johnson said there's enough room for up to seven spots.

Ms. Pennell asked if they would have to go to the HDC, and Mr. Prior said no, not if they're not making external changes.

Mr. Prior opened the discussion to public comment, but there was none. Mr. Prior closed the public session and entered Board deliberations.

Ms. Montagno went through the special exception criteria. A) The use is a permitted special exception as set forth in Article 4.2, Schedule I; yes, it is. B)

45 That the use is so designed, located and proposed to be operated that the public  
46 health, safety, welfare, and convenience would be protected; yes, she doesn't  
47 see any issues there. C) That the proposed use will be compatible with the zone  
48 district and adjoining post-1972 development where it is to be located; Mr. Prior  
49 said there are other multiple-unit properties nearby and abutting, so it's not  
50 changing the character of the neighborhood. D) That adequate landscaping and  
51 screening are provided; Mr. Prior said there are no exterior changes, so it doesn't  
52 apply. E) That adequate off-street parking and loading is provided and ingress  
53 and egress is so designed as to cause minimum interference with traffic on  
54 abutting streets; Ms. Montagno said yes, there is no change and we've confirmed  
55 there is adequate parking. F) That the use conforms with all applicable  
56 regulations governing the district where located; yes, it does. G) The applicant  
57 may be required to obtain Planning Board or Town Planning approval; this is not  
58 necessary. Mr. Prior said it's on town water and sewer, and there are no changes  
59 to the exterior planned. H) That the use shall not adversely affect abutting or  
60 nearby property values; Ms. Montagno said it will not. I and J) do not apply.  
61

62 Ms. Montagno moved to approve the application of Tatiana Roth for a special exception  
63 per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit  
64 the conversion of an existing single-family residence into three residential dwelling units.  
65 The subject property is located at 70 Front Street, in the R-2, Single Family Residential  
66 zoning district. Tax Map Parcel #72-187. ZBA Case #23-6. Ms. Olson-Murphy seconded.  
67 Ms. Olson-Murphy, Mr. Prior, Ms. Page, Ms. Petito, and Ms. Montagno voted aye, and  
68 the motion passed 5-0.

- 69  
70  
71 B. The application of Christine and Doug Rupp for a variance from Article 9, Section  
72 9.4.5 of the Floodplain Development Ordinance to permit the installation of a new  
73 individual sewage disposal system within the special flood hazard area (AE Flood  
74 zone). The subject property is located at 24 Powder Mill Road, in the R-1, Low  
75 Density Residential zoning district. Tax Map Parcel #102- 4. ZBA Case #23-7.

76 Attorney Justin Pasay spoke on behalf of the applicants. Christine  
77 ["Chrissy"] Rupp, her daughter Lorelai Marguerite, Christine's parents Debbie  
78 and Rick Shaefer who own the parcel, and Henry Boyd from Millennium  
79 Engineering were also present.

80 Attorney Pasay said this project was caught up by changes to the zoning  
81 ordinance that passed in March. The goal is to get relief similar to the relief they  
82 got in November 2022 from this Board. The Schaefer's own a 21 acre parcel on  
83 Powder Mill Road, and are looking to subdivide into two lots, one of 16 acres in  
84 which the Schaefer's would continue to live, and one with the detached garage  
85 which Chrissy's family would occupy. It's well suited for the proposal. It's in the  
86 R1 district, where the minimum acre size is 2 acres. It's surrounded by  
87 unimproved properties but on the west is a more densely settled area. This is in  
88 an AE FEMA zone, a special flood zone area. The old ordinance, Article 5.3.3,

89 had a provision which says you can't have a septic system within 24 inches of  
90 the seasonal high water table. We looked for variance relief from that provision in  
91 November of 2022, and received a unanimous decision for relief from a three  
92 member Board. The only provision was that an EnviroSeptic system or  
93 equivalent was used. In November, the only relief the applicants needed was  
94 from Article 5.3.3. After that, the Rupps instructed Henry Boyd to do a survey,  
95 and in February 2023 he filed a motion to subdivide. However, in the meantime,  
96 the Planning Board was proposing changes to the zoning ordinance, including a  
97 proposed change to the zoning ordinance section 9.4.5 which flatly prohibits any  
98 septic systems in a special flood hazard area. When they filed in February, it was  
99 caught, and a decision was made that they needed to go for additional relief. The  
100 applicant in good faith got the only relief necessary and to their detriment  
101 invested resources in the survey and plan, only to be told they need additional  
102 relief.

103 Attorney Pasay suggested that the vesting rule applies and the Board has  
104 the jurisdiction to say that the applicant doesn't need additional relief, but they  
105 also put in an application for the additional relief.

106 Attorney Pasay said that Henry Boyd has proposed installing a septic  
107 system that is three feet above the base flood elevation. The purpose of the flood  
108 plain development ordinance prohibiting septic systems in this area is very  
109 similar to the purpose of the subdivision regulation that they already have relief  
110 from: to protect the groundwater and to protect people and property from flood  
111 incidents. We think this proposal accomplishes that, because the location of the  
112 septic system will be three feet higher. It's aligned with the purposes of the  
113 ordinance.

114 Mr. Prior asked if there is any difference in how they will implement the  
115 plan proposed today and the plan proposed in November. Attorney Pasay said  
116 no. Mr. Prior asked if there is any downside, from the applicant's perspective, if  
117 the Board chose to vote that the approval that was granted in November was  
118 accurate. Attorney Pasay said no. The law is designed to protect people like the  
119 Rupps, who got the relief they needed only to find out six months in the process  
120 that they need additional relief. Per *Bartlett v Manchester*, the Supreme Court  
121 has determined that in every case the Board can determine whether they need  
122 relief in the first place. It's well within the Board's purview.

123 Mr. Prior asked Doug Eastman if from the town's perspective there is any  
124 downside to simply having this Board take a vote on the validity of the decision  
125 that was made in November, rather than making a motion based on a new  
126 reading of the criteria? Mr. Eastman said no, he encourages the Board to make  
127 that decision. He talked with the Town Planner and Natural Resources Planner  
128 about this, and everyone's comfortable with this proposal, but he was  
129 uncomfortable making that decision on his own.

130 Attorney Pasay said he brought copies of a letter that he sent to Mr.  
131 Eastman in March asking for this interpretation. Ms. Petito said it would make  
132 sense to take the letter and make it a part of the record.

133 Mr. Prior opened the discussion to public comment, but there was none.  
134 The Board moved into deliberation.  
135

136 Ms. Page made a motion that the Zoning Board has determined that the decision in November  
137 should stand based on the situation and the timing, and that the applicants were procedurally  
138 caught, and that the principles of Common Law apply, specifically the Bartlett v Manchester  
139 case that was referenced. Ms. Olson-Murphy seconded. Ms. Olson-Murphy, Mr. Prior, Ms.  
140 Page, Ms. Petito, and Ms. Pennell voted aye, and the motion passed 5-0.

141  
142 **II. Other Business**

143 A. Approval of Minutes - April 11, 2023

144 Corrections: Ms. Page said that in line 59, it reads "Ms. Page said she looked up facility  
145 and locality..." but that was Ms. Montagno.  
146

147 Ms. Page made a motion to approve the meeting minutes from April 11, 2023 as amended. Ms.  
148 Olson-Murphy seconded. Ms. Olson-Murphy, Ms. Page, and Ms. Montagno voted aye, and the  
149 minutes were approved 3-0.

150  
151 B. Election of Officers

152 Mr. Prior said full-time voting members can be officers, but alternates  
153 cannot. Mr. Baum has asked not to be an officer this year.

154 Ms. Petito nominated Bob Prior as Chair. Ms. Montagno seconded. Ms. Olson-Murphy, Mr.  
155 Prior, Ms. Page, Ms. Petito, and Ms. Montagno voted aye, and the motion passed 5-0.

156  
157 Mr. Prior nominated Esther Olson-Murphy as Vice Chair and Theresa Page as Clerk. Ms.  
158 Montagno seconded. Ms. Olson-Murphy, Mr. Prior, Ms. Page, Ms. Petito, and Ms. Montagno  
159 voted aye, and the motion passed 5-0.

160  
161 The Board discussed the length of terms for each member.  
162

163 **III. Adjournment**

164  
165 Ms. Pennell moved to adjourn. Ms. Page seconded. All were in favor and the meeting was  
166 adjourned at 7:50 PM.  
167

Respectfully Submitted,  
Joanna Bartell  
Recording Secretary