

Town of Exeter  
Zoning Board of Adjustment  
July 18, 2023, 7 PM  
Town Offices Nowak Room  
Final Minutes

I. **Preliminaries**

**Members Present:** Chair Robert Prior, Vice-Chair Esther Olson-Murphy, Clerk Theresa Page, Laura Davies, Kevin Baum, and Laura Montagno - Alternate. Deputy Town Code Enforcement Officer Barb McEvoy was also present.

**Members Absent:** Martha Pennell - Alternate and Joanne Petito - Alternate.

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

I. **New Business**

- A. The application of Gateway at Exeter for a variance to modify the terms of a previously granted variance from Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.3 Schedule II: Density & Dimensional Regulations (ZBA Case #19-07) to permit a multi-family residential complex as part of a mixed-use development plan for property located on Epping Road. The proposed modification will require that 20% of the residential units qualify as workforce housing rental units as defined under the InvestNH Capital Grant Program where the prior approval required that 25% of the units qualify as workforce housing rental units as defined under the NH State Workforce Housing statute. The subject property is located in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-6 and #47-7. ZBA Case #23-10.

Morgan Hollis, an Attorney at Gottesman & Hollis of Nashua, spoke representing Gateway at Exeter LLC. Also present were Tom Monahan, the Principal of Gateway at Exeter LLC, and Paul Roy, the Business Manager of ProCon, the contractor on the project.

Attorney Hollis said this is a property which received a variance from the ZBA on May 21, 2019, to allow a multi-family residential complex as a portion of a mixed-use development. 25% of the residential units were to be defined as workforce housing as defined by NH law. The Planning Board approved it as a subdivision where the commercial part was subdivided off from the residential, and an area was subdivided off as conservation land. It came back to this Board on March 15, 2022 for clarification on technical matters and a one-year extension of the original ZBA approval, which was granted. The client has since begun construction. However, times have changed since 2019, especially the cost of construction and labor, which have nearly doubled. Interest rates have gone from near-zero to around 6%. In the original agreement, 25% of the rents would have been capped at the 60% AMI [average median income] rate, which now would

45 not generate enough money to pay for the project. The State of NH came out  
46 with the Invest NH Grant program, which will give a grant if you meet their criteria  
47 for workforce housing. Under this program, rents can be at 80% of AMI, meaning  
48 higher rents than the State Workforce Housing threshold, and there is a lower  
49 threshold, 20% of units rather than 25%. We're asking the Board to modify their  
50 2019 approval to 20% of units as workforce, and workforce will be defined as  
51 80% of AMI rent. If the Board approves this modification, funding can be attained,  
52 and the project will go forward. The town will still receive the benefit of additional  
53 housing, and the town will also receive \$10,000 per unit for 44 units, or \$440,000,  
54 from Invest NH to address housing needs. There's no change other than the rent,  
55 which means that some people will not be able to afford it, and that the  
56 percentage of units goes down slightly. It will not change the density, design, or  
57 layout of the project.

58 Attorney Hollis discussed the variance criteria as previously approved. He  
59 said that the most difficult determination was related to variance criteria 5), that  
60 literal enforcement of the zoning ordinance will result in an undue hardship. He  
61 said that the Board determined that this is a unique piece of property, and that  
62 has not changed. Previously, the applicant presented that the restriction  
63 prohibiting multi-family in this zone has no fair and substantial relationship to the  
64 purpose of the zoning restriction. This is still a multi-family project, so there is no  
65 change there. Finally, the multi-family use with some affordable workforce  
66 component was a reasonable use for this project. The overall number of units  
67 and the density of units has not changed, so we think this is still a reasonable  
68 use for this property. We believe the hardship criteria was met properly and  
69 continues to be met notwithstanding the change in this condition.

70 Attorney Hollis continued with the criteria: 1) The variance will not be  
71 contrary to the public interest; yes, in 2019, the Board found that it was in the  
72 public interest to have more housing available, because of the shortage, and to  
73 have a component of the housing be workforce housing. That has not changed,  
74 so we believe that the application with the changed condition is still not contrary  
75 to the public interest. 2) The spirit of the ordinance will be observed; yes, the  
76 spirit and intent of the ordinance is keeping the values of property in the town. In  
77 this case the housing, density, and location of this property would be in keeping  
78 with the spirit and intent of the ordinance. Raising the rents slightly and lowering  
79 by 5% the amount of affordable units does not change that determination. 3)  
80 Substantial justice is done; yes, in 2019 the Board determined that granting a  
81 variance would allow reasonable use of the property without any adverse impact  
82 on private or public rights, so the balance falls to the benefit of the applicant. At  
83 least there's an option here for workforce housing, and if the modification to the  
84 variance is granted, that will continue on. 4) The value of surrounding properties  
85 will not be diminished; yes, it was determined that there would be no adverse  
86 impact from 224 units with 25% of those units at 60% AMI rents, and there is no  
87 change to the impact by the change we're requesting.

88 Attorney Hollis added that the costs of the project have changed from  
89 \$39M to \$57M.

90 Mr. Prior said the number 25% which was approved in 2019 was  
91 suggested by the applicant. The cost of construction and financing have gone up;  
92 what has the change in rents been in that period? Is there a way of quantifying  
93 the increase in the cost of construction, rents, and financing? He thinks the cost  
94 of rent has also gone up significantly. Mr. Monahan said rents have gone up, but  
95 they haven't caught up to the interest rate increase or the construction cost  
96 increase. The numbers that Attorney Hollis mentioned were only the hard costs;  
97 the soft costs would be another 15% or 20%, around \$10M. The rents that we  
98 would be charging today under the 80% AMI would be \$1,775 for a one bedroom  
99 and \$2,130 for a two bedroom, including utilities. Mr. Prior asked what the  
100 change would have been from 2019, but Mr. Monahan said he didn't know; the  
101 rents have gone up considerably, but not commensurately. Mr. Baum said  
102 looking in the minutes of the 2019 meeting, the applicant indicated that the rent in  
103 2019 would have been \$1,270, but it's not clear whether that was a one or two  
104 bedroom. Mr. Monahan said that would have been a one-bedroom at 60%. In  
105 2019, we had our financing, but we ran into a problem with a Planning Board  
106 condition that took a year or two to be resolved. In that time, we had Covid, and  
107 following that rates went from zero to 6%.

108 Mr. Prior said 20% of the units would be 44.8, so it could be 44 or 45. Mr.  
109 Monahan said we have to round up. Mr. Prior asked if that 20% number is  
110 mandated by the grant program. Attorney Hollis said yes, that's the minimum  
111 number from the grant. Mr. Prior asked if the grant financing is guaranteed. Mr.  
112 Monahan said yes, we received the largest grant given by the State, although we  
113 haven't received the money. We need this approval and to substantially complete  
114 the project in two years to receive it.

115 Mr. Baum asked if the 30 year rental-only restriction of the original  
116 approval would still apply. Attorney Hollis said yes.

117 Mr. Baum said in 2019 we talked about the site not going for any density  
118 bonuses under the town Site and Subdivision regulations. Is that still the case?  
119 Attorney Hollis said yes. Mr. Monahan said we were talking about a density  
120 based on 67 acres, but we've deeded 45 of those 67 acres to the Town of Exeter  
121 Conservation Commission. We've also paid the State wetland mitigation fees of  
122 almost \$200,000.

123 Ms. Davies asked about the \$440,000 grant going to the Town of Exeter.  
124 Mr. Prior said we just made it \$450,000 [by specifying 45 units rather than 44].  
125 Mr. Monahan said the 25% would have been 56 units or \$560,000 to the Town.  
126 This is part of Invest NH and the \$100M Covid money they received. 70% went  
127 to hard building construction and 30% to running the business. Towns also have  
128 the opportunity to apply, and he believes that Darren [Winham] and Russ [Dean]  
129 have already applied. The grant is unrestricted, but Invest NH prefer it to be used  
130 for some sort of affordable housing component.

131 Ms. Davies said going from 60% of AMI to 80% of AMI is a 33% increase,  
132 which is a significant increase to a renter. It's a lot less affordable. When the  
133 Board talked about why we were granting the variance, it's because we were  
134 very impressed by the generous workforce housing proposal. It's disappointing to  
135 see it become less units and less affordable. You're going to the minimum  
136 numbers. Is there any play in there to make it more generous to the community?  
137 Mr. Monahan said one of the main issues of financing is debt service coverage  
138 ratio. Under the NH Housing Finance Authority, you have to be at 1.17% rate. In  
139 the real world, the number's about 1.21%. At 20% [of units], he's at 1.10%; that  
140 doesn't cover the ratio, which means that more equity is required. At 1.17%, will  
141 require about \$6M extra dollars to cover the equity. This is the only way we can  
142 make it work. If it were up to him, there would be 56 families living there now, but  
143 it can't happen. Mr. Prior asked if the number of units was flexible. From 56 to 45  
144 is a loss of 11 units. Mr. Monahan said he doesn't think he can do it. He looks at  
145 this development as a family legacy development. He could make more money  
146 with a food truck than he can here over the next few years. It will be manageable  
147 at 20%.

148 Mr. Prior opened for public comment, but there was none. He closed the  
149 public session and went into Board deliberations.

150 Ms. Davies said she's disappointed that it's not what the Board approved,  
151 but she knows that these are the market conditions. This much housing would  
152 make a difference for Exeter. We don't have enough rental housing period, not  
153 just the workforce housing. Would the entire project remain rental housing? Mr.  
154 Baum said that was his understanding, and he doesn't think that's changed. Ms.  
155 Davies said it's a plus having 45 workforce units, although \$1,775 for a one-  
156 bedroom is not that affordable.

157 Mr. Baum said he agrees that it's better than nothing, although it's not  
158 where we wanted to be. There were a number of reasons and conditions that we  
159 found that variance criteria were met. We also considered the preservation of  
160 wetlands and the conveyance to the town of that land. It would all be rental, and  
161 not for sale. It's disappointing that we won't have the same numbers and it won't  
162 be as affordable, but that was just one factor in finding that the variance criteria  
163 were met.

164 Ms. Page said that if we tie it back to the variance criteria, the conditions  
165 are in place to ensure that the spirit of the ordinance is observed and that  
166 substantial justice is done. There's the balancing act we have between the public  
167 and the applicant. Although the balance has changed, it doesn't shift the balance  
168 to where the criteria is no longer met.

169 Mr. Baum said at the time [the variance was granted], one of our biggest  
170 concerns was the interplay between the residential use and the light  
171 industrial/commercial use, and that's not changed by this. Ms. Davies said she  
172 thinks the proximity to all this employment is a good thing, although that's not the  
173 way our ordinance is written right now.

174 Mr. Prior asked if the Board would like to go through the variance criteria  
175 again. Mr. Baum said he doesn't think the change proposed affects the  
176 conditions.  
177

178 Ms. Davies moved to approve the application of Gateway at Exeter for a variance to modify the  
179 terms of a previously granted variance to permit a multi-family residential complex as part of a  
180 mixed-use development plan, with the modification proposed: that 45 units, rather than 56, will  
181 qualify as workforce housing rental units as defined under the InvestNH Capital Grant Program,  
182 where the prior approval required that 56 of the units qualify as workforce housing rental units  
183 as defined under the NH State Workforce Housing statute. Additionally, we're acknowledging  
184 that the rental rate will be based on 80% of AMI for our area rather than 60%. Mr. Baum  
185 seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Page, Ms. Davies, and Mr. Baum voted aye, and  
186 the motion passed 5-0.

- 187  
188 B. The application of 43 Winter Street LLC for a special exception per Article 4,  
189 Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the  
190 conversion of an existing single-family residence into two (2) residential  
191 condominium units. The subject property is located at 43 Winter Street. in the R-  
192 2, Single Family Residential zoning district. Tax Map Parcel #63-21. ZBA Case  
193 #23-11.

194 Brian Allen and Alex Higley of 43 Winter Street LLC were present to  
195 discuss the application. Mr. Allen said the house has been around since 1890. It  
196 started as a single-family farmhouse, was converted to a two-family and then a  
197 three-family, and then went back to a single-family. We are proposing to turn it  
198 back into a two-family home with condos, with both units for rental use. It's a five-  
199 bedroom home and the need in Exeter for a five-bedroom home is not there in  
200 the way that there is need for a two- and three-bedroom unit.

201 Mr. Prior asked Mr. Allen to describe the construction taking place. Mr.  
202 Allen said when we purchased the home, it was in unlivable conditions. The  
203 bathrooms didn't work and there was a slope in the kitchen floor due to broken  
204 floor joists. It had leaking water. When we removed the drywall to investigate the  
205 issues, we decided that turning it back into a two-family makes more sense. The  
206 front of the home is the original 1800s home with the basement, and that would  
207 be the two-bedroom unit of 1,400 square feet; the back unit would be 1,600  
208 square feet. The back unit is three different iterations of construction, including a  
209 recent addition of a staircase to the second unit which was removed about 10  
210 years ago. Mr. Prior asked if that meant the work they're doing now is changing  
211 the footprint of the building, and Mr. Allen said yes, with a 12' x 18' addition which  
212 was approved by the Building Department. It's smaller than the addition that was  
213 removed 10 years ago.

214 Ms. Davies said she's concerned that the proposal is increasing  
215 impervious surfaces on the property with the addition and the driveway. Mr. Allen  
216 said we've hired a site contractor to address that and the water relating to the  
217 sump pump.

218 Mr. Prior asked if they would keep the existing driveway on the left of the  
219 building and add a new driveway on the right, and Mr. Allen said yes, ideally we  
220 would have two driveways, one for each unit. The size of the second driveway  
221 could be smaller. We had proposed it to have enough space for two cars plus  
222 guest parking for both units, so there would be no street parking. There are no  
223 granite curbs in front of the house, but we wanted to have only off-street parking.  
224 Ms. Davies said the drawing is vague and it looks like a giant driveway. Mr. Allen  
225 said it was a rough estimate and we can make it smaller. The existing driveway  
226 holds 2 vehicles, so we wanted the new driveway to fit 2 vehicles plus a guest  
227 space for each unit. Ms. Davies said that's more than required. You only need 5  
228 for two units. Mr. Allen said he would be okay with changing it to 5. Ms. Davies  
229 asked if he would accept this as a condition, and Mr. Allen said yes.

230 Mr. Prior asked Ms. McEvoy if there would be any issue with adding a  
231 second curb cut to the property, and Ms. McEvoy said the applicant would have  
232 to ask the DPW. People can do a horseshoe driveway now. Where it would be is  
233 up to the DPW.

234 Mr. Baum asked if there's a need for two driveways. Mr. Allen said the  
235 current driveway only fits two vehicles, and extending it wouldn't work because it  
236 would take up 50% of the yard. It's only 12 feet wide. Mr. Baum said the existing  
237 driveway is on the property line with a neighbor. Mr. Prior suggested having a  
238 single driveway on the right side of the house, eliminating the existing driveway.  
239 They may want to discuss that with DPW. It would give them a single place to  
240 plow.

241 Ms. Davies asked if access to the property on the corner of Whitley Road  
242 is from Winter Street or Whitley. Mr. Allen said Winter Street. Ms. Davies said it  
243 seems like a lot of driveways in a small area.

244 Mr. Prior said there's a building that encroaches on the property. Mr. Allen  
245 said he thinks it's a tax map issue. We don't think the neighbor's garage is on our  
246 property.

247 Ms. Montagno asked if they intended the units to be rental units. Mr. Allen  
248 said we would like to hold them. Our financing is a commercial construction loan  
249 that we'd like to transfer to us holding them as rental units. Ms. Montagno said  
250 one of the units must remain owner-occupied. Mr. Allen said that's why we would  
251 like to go for the condos, where we would own them both and rent them as  
252 condos with the option to sell one or both in the future. 5 Winter Street, which is  
253 five houses down, has two condos on a smaller lot. Mr. Prior asked if that's ok,  
254 and Ms. McEvoy said yes, as long as they're condos.

255 Mr. Baum asked how big the addition is, and Mr. Allen said 12'x18'. Ms.  
256 Page said the restriction is 400 square feet, and this would be 216 square feet.  
257 Mr. Baum said it's less than the restriction. Ms. Page asked if it's in the same  
258 place as the previous addition, and Mr. Allen said roughly yes. Mr. Baum said he  
259 considers that to be gone and not existing, as it was removed 10 years ago, but it  
260 does come in under the 400 square foot restriction. The Board can allow some  
261 expansion. He asked Ms. McEvoy if she and Mr. Eastman are comfortable with

262 the dimensions and setbacks, and Ms. McEvoy said yes. Mr. Prior asked if they  
263 have a building permit for the 12'x18' addition, and Mr. Allen said yes.

264 Mr. Prior asked for public comment, but there was none. He closed the  
265 public session and entered into Board deliberations.

266 Ms. Davies said she would like to add the condition of only five parking  
267 spaces plus whatever travel space is necessary. Mr. Prior said he doesn't think  
268 we can mandate having one driveway instead of two, but we've made our  
269 position clear on that. Ms. Davies said she doesn't think we can say they should  
270 get rid of the existing driveway. Mr. Baum said he thinks we could, but it's hard to  
271 know exactly what we're looking at with the limited information provided. It might  
272 be that one driveway is worse due to conditions on the site. They are only asking  
273 for the conversion, so we know that setbacks, building coverage, and open space  
274 are met. That mitigates some of the concerns about the driveway. Ms. Davies  
275 said it's a grandfathered structure and an existing driveway. We can only have a  
276 say about the new driveway and the conversion. Ms. Davies asked Ms. McEvoy  
277 if they have to comply with lot coverage restrictions, and Ms. McEvoy said we  
278 can take a look at that when we determine where the driveway will be with Public  
279 Works.  
280

281 Ms. Davies moved to approve the application of 43 Winter Street LLC for a special exception  
282 per Article 4, Section 4.2 Schedule I and Article 5, Section 5.2 to permit the conversion of an  
283 existing single-family residence into two (2) residential condominium units, with the condition  
284 that the paving onsite will be limited to that necessary to support five standard-sized parking  
285 spaces and any necessary travel ways and turn-arounds. Ms. Olson-Murphy seconded. Mr.  
286 Prior, Ms. Olson-Murphy, Ms. Page, Ms. Davies, and Mr. Baum voted aye, and the motion  
287 passed 5-0.

288  
289 **II. Other Business**

290 A. Approval of Minutes: June 20, 2023  
291 Corrections: Ms. Page said in line 100, *Ms. Stewart* asked if it will require an occupancy permit  
292 and septic approval, but it should read *Ms. Page*.

293 Mr. Baum moved to approve the minutes as amended. Ms. Olson-Murphy seconded. Mr. Prior,  
294 Ms. Olson-Murphy, Ms. Page, and Mr. Baum voted aye, and the motion passed 4-0.

295  
296 **III. Adjournment**  
297

298 Mr. Baum moved to adjourn. Ms. Page seconded. All were in favor and the meeting was  
299 adjourned at 8 PM.

300  
301 Respectfully Submitted,  
302 Joanna Bartell  
303 Recording Secretary