

Town of Exeter
Zoning Board of Adjustment
August 15, 2023, 7 PM
Town Offices Nowak Room
Final Minutes

1
2
3
4
5
6
7 **I. Preliminaries**

8 **Members Present:** Chair Robert Prior, Clerk Theresa Page, Laura Davies, Martha
9 Pennell - Alternate, and Laura Montagno - Alternate. Town Code Enforcement Officer
10 Doug Eastman was also present.

11
12 **Members Absent:** Vice-Chair Esther Olson-Murphy, Kevin Baum, Joanne Petito -
13 Alternate

14
15 **Call to Order:** Chair Robert Prior called the meeting to order at 7 PM.

16
17 **I. New Business**

- 18 A. The application of Aaron Jefferson for a variance from Article 5, Section 5.1.2 B.
19 for a change to an existing non-conforming use to permit a small auto repair
20 operation on the property located at 165A Kingston Road. The subject property is
21 located in the R-1, Low Density Residential zoning district. Tax Map Parcel 115-
22 12. ZBA Case #23-12.

23 Attorney Sharon Somers of Donohue Tucker and Ciandella spoke for the
24 applicant, Aaron Jefferson, who was also present. Dennis Biery, the current
25 owner of the property, was present as well.

26 Attorney Somers said this property originally consisted of two parcels
27 which were subdivided in 1993. Caren Vencis owns 115-13, which fronts on
28 Kingston Road and is burdened by an access easement that serves 115-12.
29 Starting in the 1970s, it was used for various commercial activities, including a
30 welding facility, an excavation company, and an equipment repair site. The
31 applicant is seeking to transform the existing non-conforming commercial use in
32 an R-1 Zone into a small-scale auto repair shop. The two closest houses are the
33 Vencis property and the Farmington State subdivision, with buffering in between.

34 Mr. Prior asked if the driveway with machinery holding up two mailboxes
35 is the access road. Mr. Jefferson said yes. One of the mailboxes is for Caren
36 Vencis and the other is for Dennis Biery.

37 Attorney Somers went through the variance criteria. 1) The variance will
38 not be contrary to the public interest and 2) The spirit of the ordinance will be
39 observed; yes, there is a long-standing non-conforming use in the area since the
40 1970s with residential properties abutting. The proposed use does not deviate so
41 drastically from the existing use so as to alter the essential character of the
42 neighborhood. We are simply looking to swap out one non-conforming use for
43 another. The small-scale auto repair facility, which would take place inside the
44 existing building, does not alter the health, safety, or welfare of the

45 neighborhood. Waste oil would be properly disposed of and the hours will be
46 limited. 3) Substantial justice is done; yes, if the variance is denied, the existing
47 non-conforming commercial use could continue. The proposed use is small-scale
48 and will take place within the confines of the building. While there will be traffic on
49 the access road, it will only occur during the day. If the application is denied, the
50 applicant will not be able to have his small auto repair shop on the property. 4)
51 The value of surrounding properties will not be diminished; yes, we do not
52 believe these would be diminished by granting the variance. Adjacent residential
53 properties have always been in existence at the same time the non-conforming
54 use was in existence. The most recent residential lots, which were created in
55 2002, are the Farmington Estates subdivision, lots 100-2-1 and 100-2-3.
56 Whatever impact would have been felt, has already been felt. 5) Literal
57 enforcement of zoning ordinance will result in an undue hardship; yes, we believe
58 the subject lot is unique relative to other lots because it was part of a larger lot
59 and was subdivided off in 1993 for the purpose of creating a stand-alone property
60 for the non-confirming use. The proposed non-conforming auto repair operation
61 will occur in the same facility. Denial would mean that the current non-conforming
62 use could continue but the proposed use, which would be of minimal impact,
63 could not. There is no fair and substantial relationship between the purpose of
64 the ordinance and its application to this property. The purpose of the ordinance is
65 to ensure that in changing the non-conforming use, you don't inadvertently harm
66 abutters or the public. We believe that the proposed use will be quite similar, and
67 will not be visible, as it's indoors and there is a buffer between this and the
68 neighboring property. There will be no additional noise. The traffic, which will be
69 3-4 vehicles a day on average, will use the same access point. The proposed
70 auto repair use is a reasonable one; it is small-scale, is needed in the area, will
71 be well away from the road, and the property will not be changing in appearance.
72 The applicant will make arrangements for the proper disposal of waste oil.

73 Mr. Prior said the word "small" doesn't occur in the zoning regulations, so
74 it's just an auto repair business. Attorney Somers said it's true that there's no
75 reference to "small," she's just referencing what the applicant intends to do.

76 Mr. Prior asked if there is water and sewer on the property. Attorney
77 Somers said the plan for both water and sewer is that water is currently being
78 provided from Caren Vencis's property. Mr. Jefferson intends to use that water
79 until such time as he drills a well himself. We think there is a septic system in the
80 back of the property, and there will be testing done to confirm. If there isn't one,
81 he will have to go through the process of obtaining and installing a State-
82 approved septic system.

83 Mr. Prior said this property looks like it's close to an aquifer. Attorney
84 Somers said it's close to, but not part of, the aquifer protection district. Mr. Prior
85 asked if it's within setbacks from the aquifer. Attorney Somers said she believes
86 so. If the septic had to be built, that would be taken into account when the septic
87 is designed and installed. Mr. Prior said that's not in the Board's purview.

88 Mr. Prior asked if there's a plan to put up a sign. That would be an impact
89 to the appearance of the neighborhood. Mr. Jefferson said there's a post out front
90 that used to have a sign on it. He would like to put one out there, and would
91 apply for a permit for it. Mr. Prior said a large sign is allowed according to the
92 regulations. Ms. Davies said the applicant doesn't own the land with the frontage
93 on the road. Is there a right in the right of way to locate a business sign? Mr.
94 Jefferson said he's spoken with the owner about putting in a small sign on the
95 existing post.

96 Ms. Montagno asked when the welding company went out of business.
97 Mr. Jefferson said in 2016. Ms. Montagno said the oil would be managed, but
98 what about other fluids handled in an auto shop? Mr. Jefferson said he would
99 work with a recycling company. Ms. Montagno said the driveway is gravel, will it
100 remain gravel? Mr. Jefferson said yes. Ms. Montagno asked how he would deal
101 with vehicles on the driveway leaking fluids into the ground. Mr. Jefferson said if
102 needed, he could put something else down. Most vehicles would be coming right
103 into the shop and leaving. Ms. Montagno asked if there is proper drainage in the
104 building for cars that may be leaking. Mr. Jefferson said "Speedy Dry" absorbs
105 that material and goes into a dumpster to be disposed of. Ms. Montagno asked if
106 the building is air conditioned, and Mr. Jefferson said it would be. Ms. Montagno
107 said having the doors closed will help with noise.

108 Ms. Page asked what kind of vehicles would be coming in and out. Mr.
109 Jefferson said maybe a tow truck here and there. There would be smaller
110 vehicles that are CDL rated. He would give his waste oil to a guy who has a
111 waste oil furnace. The antifreeze would be handled by a small box truck, which
112 houses about six 55-gallon drums. Ms. Davies asked if it would beep when it
113 backed up, and Mr. Jefferson said he didn't know. His output would probably be
114 about three 55-gallon drums a year.

115 Ms. Page asked how the expected clients would compare to the
116 landscape company there now. Mr. Jefferson said he hasn't seen much going in
117 and out. Attorney Somers said the amount of traffic has fluctuated over the years
118 in the whole spectrum of non-conforming use. What we're proposing wouldn't be
119 altering that. Ms. Page said this would be the first time clients would be coming
120 onto the property. Attorney Somers said the welding shop would have had
121 customers coming onto the property.

122 Ms. Pennell said she's concerned about the right of way. Will it be wide
123 enough to accommodate the traffic? Attorney Somers said it's a deeded right of
124 way that has serviced the property for years. It's wide and sturdy enough to
125 accommodate equipment. Mr. Jefferson said there was an excavation business
126 where the owner moved excavators on it that were of substantial size without a
127 problem. Ms. Pennell asked if the right of way ends at his property, and Attorney
128 Somers says yes. Ms. Davies said the right of way appears to be wide. Mr.
129 Jefferson said Mr. Biery told him it's approximately 50 feet wide. Attorney Somers
130 said the deed from 1993 proposed a 50 foot right of way, so if the current owner

131 says it's about 50 feet she's going to go with that. Ms. Page asked how big the lot
132 is, and Mr. Jefferson said 4.4 acres.

133 Ms. Davies asked if the non-conforming use has been continuous enough
134 to satisfy the requirement. Attorney Somers said we discussed that with the
135 Zoning Officer and she believes the answer is yes. Ms. Davies asked if the
136 structures are non-conforming due to encroaching on setbacks. Mr. Eastman
137 said he's not sure that would matter. Since the footprint of the building is not
138 expanding or changing, it would be grandfathered. Mr. Eastman added that with
139 a change in use in a State right of way, he believes that the State of NH would
140 have to approve any change of use with a driveway permit. Attorney Somers said
141 she doesn't think that's the case, since it's an easement over someone else's
142 property, but it's something we'll check into. It's not within the purview of this
143 Board. Mr. Eastman said State approval was a condition of Board approval on
144 another project. Attorney Somers said if the Board made a condition of approval
145 that we would obtain a curb cut if needed for change of use at the State level, we
146 would be amenable to that. Ms. Davies said it would be wise to run it past the
147 District Office at DOT.

148 Ms. Davies asked if the building housing the repairs is the taller barn-like
149 structure or the narrow lower structure which looks like a coop. Mr. Jefferson said
150 he has no plans to store anything in the long building. He would stay in the
151 confines of the two-toned roof building.

152 Ms. Davies said usually permeable surfaces are a good thing, but not
153 when you're dealing with vehicles and outdoor storage. Mr. Jefferson said he
154 would keep all waste inside the building. The only thing outside would be a
155 sealed dumpster, and there's already one on the property.

156 Mr. Prior opened the hearing to public comment.

157 Caren Vencis of 163 Kingston Road said when she bought her property,
158 her husband opened a glass business and put a sign on Kingston Road. It had to
159 be a certain length and height. The welding shop had a huge sign in a tree. Ms.
160 Davies asked if she is okay with having a sign there, and Ms. Vencis said yes.
161 Mr. Prior said as a home occupation, you were allowed 4 square feet of sign.
162 This would be a legal non-conforming use, so the sign allowed is 24 square feet.
163 Ms. Vencis said she wouldn't want that. Ms. Montagno asked if the glass shop is
164 no longer in business. Ms. Vencis said her husband passed away in 2011 and
165 she took down the sign. Ms. Montagno asked if there has been no traffic in the
166 area from her business since the mid-2000s, and Ms. Vencis said that's correct.

167 Chuck Nelson of 165 Kingston Road said he's concerned about the
168 aquifer, and would like to see a map of where the aquifer extends to. Mr. Prior
169 said the aquifer is not part of the application because it does not touch the
170 applicant's property. Mr. Prior said he looked at an aquifer map and it looks like
171 there's a wetland between two of the properties off of Farmington, but that's not
172 contiguous with these properties. Mr. Nelson asked if there will be lifts in the
173 building; if there are three lifts, that might not be small.

174 Tom Conklin of 1 Farmington Road said he received a certified letter six
175 days ago and was immediately upset with the proposal. 3-4 cars a day may
176 sound like a small-scale operation, but we're talking about a 24 foot sign. If you
177 did 8 cars you'd make more money. He's concerned about the traffic. The access
178 road is at the bottom of a hill off of Route 111 where people go 45 miles an hour.
179 He's concerned about turn-arounds on Farmington Road if people miss the turn.
180 He doesn't know about the aquifer, but he has a pond on his property with a lot of
181 standing water. He thinks there would be leaching onto surrounding properties
182 through a shared aquifer. The applicant says there's an existing well that will be
183 tested - who will test it? What will happen? What guarantees does he have, when
184 he and his family will be consuming this water? Regarding the noise ordinance,
185 people are going to hang out outside. Cars will be parked on the property. The
186 gravel is permeable and the fluids will go right through. Mr. Conklin asked if Ms.
187 Vencis is the fee recipient for the sign. Ms. Davies said she's the fee simple
188 owner of the land where a sign would potentially go. She has property rights, but
189 the right of way is a property right that's been transferred to the property out
190 back. It doesn't necessarily include a business sign, but she could allow that. Mr.
191 Eastman clarified that she cannot allow his sign on her property. Only the town of
192 Exeter could allow that sign for her own use, but not for the applicant's use.
193 There will be a sign, but it will have to be on his property. It also can't be on the
194 State right of way.

195 Zach Fierman of 161 Kingston Road said he and his wife have two young
196 kids who play on that road, so turn-arounds would be a problem. The noise and
197 water pollution are also concerns. Mr. Prior asked if during the time he's been at
198 161, has noise been an issue with the existing business? Mr. Fierman said no.
199 There's almost never any traffic, except for the neighbors themselves going in
200 and out. Ms. Page asked how long they've lived at the property, and Mr. Fierman
201 said since December 22, 2022.

202 Dave Kessland of 3 Farmington Road, who is not an abutter, said he has
203 similar concerns as his neighbors. What do we do in terms of risk mitigation? If a
204 car leaks something, what recourse do we have? Mr. Prior said that's not a
205 question the Board can answer.

206 Attorney Somers said her client went around to try to talk to everybody
207 and have a discussion. The aquifer is not on this property. Ms. Davies asked if
208 it's not in the area of the improvements or not on the lot at all, and Attorney
209 Somers said not on the lot. It's probably close, but not on the property. She
210 doesn't think there would be turnarounds on Farmington Road, based on current
211 business activity. Ms. Davies asked if Farmington Road is public or private. Mr.
212 Eastman said it's public.

213 Attorney Somers said with regard to the guarantees that have been asked
214 for, this is an existing non-conforming commercial use. There's no guarantee that
215 there wouldn't be a leak with the existing non-conforming use. The applicant will
216 be doing work inside the building. The Board could impose reasonable conditions

217 that the cars would stay inside the building. He has a regime in place to remove
218 these waste materials.

219 Mr. Prior said he acknowledges that the applicant can't control if people
220 turn around. The point is there will be more traffic and more retail than there has
221 been recently. When the retail business existed, Farmington Road did not exist.
222 This is the nearest place that one can turn around. Attorney Somers said given
223 the information we've heard tonight, the applicant would have to invest in having
224 a good social media presence and website with clear directions to the property to
225 avoid turn-arounds.

226 Mr. Jefferson said he anticipates putting a couple lifts inside the building.
227 There are two doors so probably two lifts. They would be post lifts that require six
228 inches of concrete with four inch bolts and posts that go up. Mr. Prior said he's
229 planning to make a significant investment in the business, but it's going to be a
230 small scale operation? Mr. Jefferson said he can buy two used Rotary brand lifts
231 for \$3,000 each, so not a lot of money. Ms. Davies said there will be cars parked
232 outside at some point. Would he consider paving a limited number of parking
233 spaces? Mr. Jefferson said yes, he could do that. He was considering it anyway
234 as gravel is not easy to plow. Ms. Davies asked if he would entertain that as a
235 condition of approval, and Mr. Jefferson said yes. Ms. Montagno asked about
236 containment of runoff. Ms. Davies said she's never seen any vehicle repair
237 facility have that; only a fueling facility would have that kind of barrier around it.
238 That might be a higher burden than is typical. Mr. Jefferson said if any vehicle
239 came in leaking antifreeze or oil, he would get that right inside the building. He
240 doesn't want to clean up a mess outside.

241 Mr. Prior said regarding the question of whether it's a re-zoning or not, it's
242 a change to an existing non-conforming use which is significant enough to come
243 before the ZBA, but not a re-zoning. When it comes to scale, we cannot restrict
244 or enforce a restriction on the scale of the business or the number of vehicles
245 stored on the property. Approving this as an auto repair operation allows this to
246 go forward as a full-scale auto activity. Ms. Davies said the property could be re-
247 marketed as an auto repair facility.

248 Ms. Montagno asked if this could go back to an R-1 use. Mr. Prior said
249 the highest and best use of this property would be residential. It could support a
250 subdivision. Ms. Davies said the non-conforming use is established and it's a
251 property right. Ms. Page said under the zoning ordinance, any change to the non-
252 conforming use is permitted only by variance. Is this change so significant that
253 we're going against the spirit of the ordinance, or is it minimal enough that the
254 spirit of the ordinance would still be met? Mr. Prior said we're going through the
255 same variance criteria either way. In his opinion, there's significant enough of a
256 change to the existing non-conforming use to require a variance from the
257 underlying R-1 district.

258 Ms. Montagno asked how these types of environmental issues are
259 enforced and monitored. Mr. Eastman said if there were a spill or incident, it
260 would have to be self-reported. The town would probably get DES involved on

261 how to clean it up. He's never been involved in anything like that. Mr. Prior asked
262 if it's the honor system to report it, and Mr. Eastman said yes, or if someone else
263 detected something. Ms. Davies said DES will inspect properties if there are
264 concerns.

265 Ms. Pennell said if we approve the variance, it goes with the land. He
266 could sell it to someone who wanted to make a larger-scale auto repair business.
267 Also, how is the public going to find this? She went there and had trouble finding
268 the right of way. There would have to be some kind of signage. Mr. Prior said the
269 lack of sign is a problem for the applicant, not for the Board. Ms. Montagno said
270 the lack of signage could impact abutters. Ms. Davies said they would have to
271 paint their mailbox a bright color with their business name on it, and use social
272 media to direct people to it.

273 Ms. Davies went through the variance criteria. 1) The variance will not be
274 contrary to the public interest and 2) The spirit of the ordinance will be observed;
275 no, there are concerns on this. There might be noise or potential for leakage of
276 hazardous material that may threaten the public health, safety, and welfare. Mr.
277 Prior said he thinks we're opening up for a significant change, and he's
278 concerned that it will change the essential character. Ms. Montagno said going
279 from storage and personal repair to a full function repair shop is a pretty
280 significant change to the character. Ms. Davies continued with the criteria. 3)
281 Substantial justice is done; no, we've heard testimony from people who are
282 nearby that they have concerns in that regard. 4) The value of surrounding
283 properties will not be diminished; there was no testimony regarding property
284 values. If there were a drastic change in scale of the business, it would
285 potentially be more of a concern to the neighborhood and its property values, but
286 this is just a change in use. Any expansion of a non-conforming use would have
287 to come back before the Board. He could not expand the building or clear and
288 pave land without coming back for more relief. Mr. Eastman said if the building
289 expanded, he would have a meeting with the owner on whether that was an
290 expansion of a non-conforming use. Mr. Prior said the scale of the business
291 could increase without changing the building. 5) Literal enforcement of zoning
292 ordinance will result in an unnecessary hardship; the hardship here is that the
293 buildings in use are established, but they are flexible enough that they could be
294 used consistent with zoning. There's no special aspects to the buildings that are
295 specific to commercial use buildings. Ms. Page said the acreage of the lot itself
296 could allow residential use. Ms. Montagno said whoever comes in next could
297 expand the business.

298 Ms. Davies said she thinks there are concerns on several aspects of the
299 criteria.

300
301
302 Mr. Prior moved to deny the application of Aaron Jefferson for a variance from Article 5, Section
303 5.1.2 B. for a change to an existing non-conforming use to permit a small auto repair operation
304 on the property located at 165A Kingston Road, as the Board does not feel that the variance

305 criteria 1, 2, 3, or 5 have been fully met by the application. Ms. Page seconded. Mr. Prior, Ms.
306 Pennell, Ms. Page, Ms. Montagno, and Ms. Davies voted aye, and the motion to deny passed 5-
307 0.

308

309

310

311

312 **II. Other Business**

313 A. Approval of Minutes: July 18, 2023

314 Ms. Page moved to approve the minutes of July 18, 2023 as presented. Ms. Davies seconded.
315 Mr. Prior, Ms. Page, Ms. Montagno, and Ms. Davies voted aye. Ms. Pennell did not vote, as she
316 was not present at the July 18 meeting. The motion passed 4-0.

317

318 **III. Adjournment**

319

320 Mr. Prior adjourned the meeting at 8:33 PM.

321

322 Respectfully Submitted,

323 Joanna Bartell

324 Recording Secretary

325

326