

Town of Exeter
Zoning Board of Adjustment
October 17, 2023, 7 PM
Town Offices Nowak Room
Final Minutes

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7 **I. Preliminaries**

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

11
12 **Members Absent:** Clerk Theresa Page, Laura Davies

13
14 **Call to Order:** Chair Robert Prior called the meeting to order at 7 PM.

15
16 **I. New Business**

- 17 A. The application of 81 Front Street, LLC for a variance from Article 4, Section 4.2
18 Schedule I and Section 4.3, Schedule II to permit multi-family use in the R-2
19 zoning district where only single family and duplex structure are permitted; and a
20 lot area per dwelling unit of 9,801 square feet where 12,000 square feet is
21 required. The subject property is located at 81 Front Street, in the R2, Single
22 Family Residential zoning district. Tax Map Parcel #72-195. ZBA Case #23-14.

23
24 Mr. Prior said the Board received a letter from Attorney Sharon Somers
25 requesting a continuance of this case until the Board's November meeting, in
26 order to allow the Board time to have a site walk

27 Ms. Petito made a motion to continue the hearing of 81 Front Street based on the letter
28 from the applicant received in the office today. Ms. Olson-Murphy seconded. The motion
29 passed 5-0.

30
31 Mr. Prior asked the Board to schedule a walkthrough of the property. If
32 more than three members of the Board are together, that constitutes a legal
33 meeting, so none of us can talk amongst ourselves during the walkthrough. If any
34 members of the public attempt to engage us in conversation, we must say "I'm
35 sorry, the law prohibits us from talking to you."

36 Attorney Somers, who was present, suggested having the sitewalk on the
37 night of the scheduled hearing [November 21]. Mr. Prior suggested meeting at 5
38 PM. Ms. Montagno said she would prefer to see the property in the daylight. Mr.
39 Prior suggested November 21 at 3 PM. He said abutters and members of the
40 public are welcome to attend as well.
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44 B. The application of Douglas W. Johnson and Linda R. Comerci for a special
45 exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5,
46 Section 5.2 to permit the conversion of an existing detached garage into a
47 residential unit. The subject property is located at 10 Highland Street, in the R-2,
48 Single Family Residential zoning district. Tax Map Parcel #65-142. ZBA Case
49 #23-13.

50
51 Mr. Johnson, the owner of 10 Highland Street, was present to discuss the
52 application. The property dates back to 1899 and the barn structure likely dates
53 from the 1940s. The overall plan is to renovate and convert the barn with a living
54 unit so that he and his wife can move back to Exeter from Alaska. The barn
55 structure is in poor condition. It would have a 1,100-1,200 square foot living area
56 loft over a vehicle garage. They will stay within the footprint of the existing
57 foundation.

58 Mr. Prior said the residential use was granted to the previous owners, but
59 they allowed it to expire. Mr. Johnson said the owner was granted a permit to put
60 four units in. They were talking about demolishing the barn and structure. What
61 they did was convert the farmhouse structure into a two-unit duplex. Two houses
62 in the back were subdivided off, so we have roughly ½ acre left in the front. We
63 haven't decided whether to keep the house as a two-family or make it back into a
64 single family.

65 Mr. Prior said four units were approved in March 2017, with two in the
66 back and two in the front. Mr. Johnson said no, the two in the back were
67 subdivided off. Mr. Eastman said the two subdivided homes are not relevant to
68 this case and are separate from the four units that were approved.

69 Mr. Johnson said there will be two units in the house and one in the barn.
70 Ms. Petito said they are requesting relief here just for the barn, to create one unit.

71 Mr. Prior asked if he's not planning on changing the footprint of the
72 structure. Mr. Johnson said that's correct, the barn is 40' x 26' and we are staying
73 in that foundation. The roof will be higher, likely around 28 feet. We don't want
74 the barn structure to overwhelm what's already there. We would go with a
75 minimal roof, probably queen post construction, to keep the existing pitch. There
76 will be a vaulted living area on the first floor in the west end, which would connect
77 up to a loft above the east side. The east side of the first floor would be the
78 garage.

79 Mr. Prior said there is no change in lot coverage, this is just the
80 conversion of the existing structure into a residential unit.

81 Mr. Prior asked for public comment, but there was none. Mr. Prior brought
82 the discussion to the Board.

83 Mr. Prior said the case seems straightforward, especially given the
84 approval granted in 2017.

85
86 Ms. Montagno made a motion to approve the application submitted by the applicants
87 Douglas Johnson and Linda Comerci for a special exception per Article 4, Section 4.2,

88 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of an
89 existing detached garage into a residential unit. Ms. Olson-Murphy seconded. Ms. Petito,
90 Mr. Prior, Ms. Olson-Murphy, Ms. Pennell, and Ms. Montagno voted aye. The motion
91 passed 5-0.

- 92
93 C. The application of 107 Ponemah Road, LLC for a special exception per Article 4,
94 Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
95 conversion of an existing single family residence and attached barn into three (3)
96 residential condominium units. The subject property is located at 50 Linden
97 Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel # 82-
98 11. ZBA Case #23-15.

99
100 Attorney Sharon Somers of Donohue Tucker and Ciandella, Henry Boyd
101 of Millennium Engineering, and applicant Gal Peretz were present to discuss the
102 application.

103 Attorney Somers said they are looking to convert the existing single-
104 family and barn into a three-family unit. The structure will be in the same footprint
105 as it is currently located.

106 Mr. Boyd discussed the site plans. The existing structure is less than four
107 feet from the westerly property line, so we are looking to make that more
108 conforming by shortening the building. There are two existing curb cuts, which
109 will both be maintained. There are some topography challenges on the site, with
110 a stone retaining wall and a walkout in the back. The driveway will be paved with
111 pervious pavers. We recut the existing paved driveway to provide parking, with
112 two spaces in the front and four spaces in the back. This will be two stories; we
113 designed a deck so that it would comply with the building setback. We will leave
114 the natural grade in the back and have pervious pavers, so there will be a slight
115 reduction in impervious surface: we will go from an open space of 71.6% to
116 71.8%. The building will be made smaller by taking the 38.5' depth and cutting
117 five feet off of it.

118 Mr. Prior asked if the entrance for one of the units will be off of the right-
119 hand side and the other two from the left-hand side on Linden Street. Mr. Boyd
120 said for the house building, with one unit, there are multiple access points. The
121 other two units will be housed within the new barn structure. Mr. Prior asked if the
122 house would only have one unit, and Mr. Boyd said that's correct.

123 Ms. Pennell asked if this property is on town sewer. Mr. Boyd said no, but
124 there is an existing sewer manhole nearby and the abutter to the east is already
125 tied in. There are discussions about an easement where there would be a new
126 sewer pipe for all three units tied into that manhole. Mr. Prior asked about town
127 water. Mr. Boyd said yes, they're on town water. Ms. Montagno asked if tying into
128 the town sewer is a given or still in discussion. Attorney Somers said because
129 this will have three units, we will need to go to the Planning Board for site review.
130 It's premature to talk about this. If the Board wishes to make a condition of

131 approval that we have town sewer, that's fine. Ms. Montagno asked if the existing
132 house is on a septic, and Attorney Somers said yes.

133 Ms. Montagno asked how many bedrooms would be in each unit in the
134 new building. Attorney Somers said two bedrooms in each unit. Mr. Prior said
135 that's a hard upper bound, because that affects parking.

136 Ms. Olson-Murphy said there are three units and six parking spaces.
137 Where's the guest parking? Mr. Boyd said he didn't think guest parking was
138 required. Ms. Montagno said that multifamily requires guest parking based on the
139 total number of units, with one additional space for guest parking for each four
140 units; that includes one space for up to four. Mr. Boyd said we don't show one in
141 the plan, but we could accommodate it. Mr. Prior asked if the house unit would
142 only have two bedrooms. Ms. Olson-Murphy said the plan shows 3-4. Mr. Boyd
143 said he doesn't know much about the inside of that building. Ms. Montagno said
144 it's two spaces required for each unit with 2+ bedrooms, regardless of whether
145 it's three or four. Mr. Prior said 7 spaces are required. Mr. Boyd said they can do
146 that.

147 Attorney Somers said the property is located on 3.5 acres. The single
148 family contains 2,430 square feet with four bedrooms. It was built in 1840 and
149 has been used as a residence since that time.

150 Attorney Somers went through the special exception criteria. A) The use
151 is a permitted special exception as set forth in Article 4.2, Schedule I; yes, it is
152 permitted. B) That the use is so designed, located and proposed to be operated
153 that the public health, safety, welfare, and convenience would be protected; yes,
154 we intend to demolish the attached barn and construct within essentially the
155 same footprint. We're going to increase the conformity of the property by pulling
156 the side of the barn back to follow the setback. There is adequate space to
157 accommodate the two dwelling units that will be in the new barn. The property is
158 on municipal water and we plan to extend municipal sewer to the property, as
159 well as enable the property to the west of ours to tie into the municipal sewers,
160 which will have public health benefits. There is adequate space on-site for the
161 vehicles for the units and for one guest parking space. C) That the proposed use
162 will be compatible with the zone district and adjoining post-1972 development
163 where it is to be located; yes, the property is zoned for residential use. It has
164 single-family use by right and this use by special exception. The proposed use of
165 this property is going to remain residential in character and therefore is
166 compatible. D) That adequate landscaping and screening are provided; this
167 would go to site review, but we've had discussions with the property owner of the
168 property on the westerly side as to the kind of screening or landscaping that they
169 might like to see. That will be ultimately worked out by mutual agreement. On the
170 easterly side, there's a fence acting as a screen between properties. Mr. Prior
171 asked if that fence is owned by the applicant's property, and Attorney Somers
172 said no, it's owned by the abutter. E) That adequate off-street parking and
173 loading is provided and ingress and egress is so designed as to cause minimum
174 interference with traffic; yes, we've addressed that. F) The use conforms with all

175 applicable regulations covering the district; yes, and we're also taking the non-
176 conformity of the setback and making it a little more conforming. G) The applicant
177 may be required to obtain Planning Board or Town Planning approval; yes, this
178 will go to site review. H) That the use shall not adversely affect abutting or nearby
179 property values; yes, it is not going to adversely affect the nearby or abutting
180 properties. I) and J) do not apply.

181 Attorney Somers went through the additional criteria for conversions. The
182 minimum lot size for each unit is going to have to be 4,500 square feet; yes, the
183 lot size is 15,246 square feet, so we meet this standard. The structure has been
184 a residence for 10 years. Relative to open space, because this is contemplated
185 to have municipal sewer, we've calculated the open space at 40% or 6,099
186 square feet of open space, and we have 11,621 square feet of open space, so
187 we exceed the minimum. We intend to have this conversion form a condominium,
188 so these will not be rental units, they will be for sale. We are not seeking an
189 expansion of the existing structure. This is going to be on municipal sewer, so
190 there's no need to get into septic facilities.

191 Mr. Prior said the application says six parking spaces. Is it acceptable that
192 the approval states there must be seven? Attorney Somers said yes.

193 Ms. Olson-Murphy asked if the new footprint is smaller than the current
194 one, and Attorney Somers said that's correct.

195 Mr. Prior asked for public comment.

196 Theresa Page of 46 Linden Street, an abutter and a member of the ZBA
197 who had recused herself from voting and discussion, gave public comment. She
198 and her husband purchased the property next to the applicant's home in 2022.
199 We expected the applicant's property to be a residential use. It's a larger home
200 that lends itself to being a multi-unit, so we're not opposed to the general idea. At
201 first it was vacant, then it had an Air BnB/short term rental for up to 12 people,
202 which was challenging. This is a small, three-house neighborhood. After that it
203 was a boarding house for a dozen workers, which had an increased number of
204 cars and traffic. The spillage over was difficult to manage. When we initially
205 moved in, we had no plans to add fencing, but it became a situation where we
206 did it at our own expense. We're located next to the Y, the Seacoast Schools,
207 and the parking lot, so it's busier than we expected. Kids walk across our
208 neighborhood, and buses come from the other side. With the increased use next
209 door, the traffic has been comical at times. Having a turnaround on the
210 applicant's property will help with some of that, but if we're adding more cars and
211 people, it's challenging. Sound and traffic are a concern. It's important that it
212 goes to Planning Board approval. This Board has the option of deferring approval
213 until the Planning Board approves it. Traffic around the entire area should be
214 considered. If it's going to be condos sold separately, she'd like it to be a
215 condition that it doesn't change what the permissible use is. She would also like
216 to see the sewer being made a requirement.

217 Mr. Prior asked if her home is currently on sewer. Ms. Page said yes. Mr.
218 Prior asked about the current use of the property. Ms. Page said it's rented to a
219 couple with a handful of dogs and it's lovely. It's single-family use now.

220 Lucas Elsasser of 46 Linden Street, Ms. Page's husband, said in the
221 application described moving from one to three units as a "slight intensification,"
222 and that's a mischaracterization. It sounds like it will be two bedrooms per
223 additional unit rather than four, which is comforting, but it's still 8-10 people on
224 the property and going from two cars to eight. The square footage in the
225 application said the lot size is 15,246 square feet but the site plan says 14,594
226 square feet, a discrepancy of 652. The impervious surface is 3,625 square feet,
227 but in the site plan is 4,139 square feet, a difference of 500+ square feet. Is there
228 a setback requirement for new construction, specifically between 50 and 52
229 Linden Street? Does the square footage include the decks or the new driveways?
230 Would it exceed that 60/40 ratio between open and impervious surface? Would
231 the pervious pavers be considered open space? There are two mature trees in
232 the area they'll have to take down. It may not affect our property values, but
233 adding decks on the back side dramatically changes the character of the property
234 and means less privacy for us. The new structure will be taller than the existing
235 barn and there will be much less green space.

236 Ms. Page said the pavers cover more area than is needed to turn around
237 and come right up to the fence on our side. We've had issues with headlights.
238 She's worried that it will encourage parking along the fence. If that could remain
239 green space, that would prevent the problem.

240 Mr. Prior asked Mr. Eastman if the previous uses of the property which
241 the abutters described were legal uses. Mr. Eastman said no, and he took action.
242 The owner acquiesced and moved the boarders out around July. He gave them a
243 deadline and they moved. Now the house is being rented as a single family
244 home, so there are no violations at this point.

245 Mr. Boyd said regarding the parking, these pervious pavers are
246 expensive, and they do work to help with groundwater recharge. The paved area
247 is large to accommodate the parking the town requires as well as prevent
248 residents from having to back all the way out into the street. He doesn't think
249 there's enough room between the edge of the paver and the abutter's fence for
250 people to park. We could eliminate some of the pavers with a product called
251 "GrassPave" to get back some green space. We can work out screening with the
252 abutter. He added that he doesn't know why the numbers in the application vary
253 from the survey.

254 Mr. Prior said the Board didn't get a site plan tax map. It's hard to see the
255 location of the abutting homes. Mr. Boyd said we show the abutters' homes on
256 the map, but it wasn't in the packet. It's not detailed but it shows the locations.
257 Attorney Somers presented the Board with the original application from 2022 that
258 includes the tax map. Mr. Prior reviewed it and said it looks like all of the houses
259 sit towards the front of their lots.

260 Attorney Somers said we did run into some zoning violations, but that is
261 now history. The property is being properly used. The Board can move forward
262 and decide if we meet the criteria. Traffic is not the purview of this Board, and it
263 will be studied extensively in the site review. We explained the amount of open
264 space and the presence of the pavers. Those kinds of things will be taken care of
265 with the Planning Board. Regarding the presence of the deck and removal of
266 trees, if this property were to remain as a single-family home and the owner
267 decided to renovate the barn into more bedrooms with a deck, they could do that
268 by right. That's not a basis for this Board to find that the criteria are not met. The
269 setback being improved upon is a plus. The exterior of the main building is not
270 being changed and will help to maintain the essential character of the building
271 and neighborhood. Ms. Petito asked about the discrepancies in the numbers
272 between the application and site plan. Attorney Somers said even with the
273 discrepancies, we exceed the minimums for open space etc.

274 Ms. Petito went through the special exception criteria. A) The use is a
275 permitted special exception as set forth in Article 4.2, Schedule I; yes. B) That
276 the use is so designed, located and proposed to be operated that the public
277 health, safety, welfare, and convenience would be protected; yes, it appears to
278 be. Ms. Montagno said there's a concern with traffic. Ms. Pennell said there's no
279 space for saving snow if they have to plow. Several parking spaces could be
280 consumed by snow piles. Mr. Prior said that's something for technical review, it's
281 not a stated concern in the ordinance. Ms. Montagno said regarding the footprint,
282 even though they're making one side less of an incursion, there's a deck that's
283 added on to the back. Does that not get counted as the footprint from a setback
284 perspective? Mr. Eastman said the deck would have to meet the setback. Ms.
285 Olson-Murphy said it does on the plan. Ms. Olson-Murphy asked if them
286 completely tearing down the building and rebuilding makes it a new structure that
287 has to conform to the setback. Mr. Prior said they are allowed to build a new
288 structure on the existing footprint, and they're using less than the footprint. C)
289 That the proposed use will be compatible with the zone district and adjoining
290 post-1972 development where it is to be located; Mr. Prior said yes, it is
291 residential. Ms. Petito said it seems to be compatible with the zoned district. D)
292 That adequate landscaping and screening are provided; we haven't heard about
293 screening or landscaping. Ms. Olson-Murphy said they've come up with some
294 ideas. Mr. Prior said the application states that it intends to provide screening on
295 the westerly side of the property as mutually agreed by the applicant and the
296 owner of 52 Linden Street. One can infer that if there is no mutual agreement,
297 this application would be invalid. We could make that a condition of approval. Ms.
298 Montagno asked why the property on the other side isn't addressed. Mr. Prior
299 said the property owner on the other side at 46 Linden already paid for a fence
300 which they are responsible for. Ms. Montagno said they expressed a concern
301 even with that fence about lights. Mr. Prior said the owner of the property has the
302 right to put lights on the property. Where we have some leverage is to make a
303 requirement that there be adequate landscaping between 50 and 52, where it's

304 closer to that structure. Ms. Petito continued with the criteria. E) That adequate
305 off-street parking and loading is provided and ingress and egress is so designed
306 as to cause minimum interference with traffic on abutting streets; yes, we heard
307 about the parking, there are four spots in the back, two in the front, and they're
308 adding one on the side. Mr. Prior said the application states six, so the approval
309 will have to state that there will be seven. We also heard from an abutter that
310 ingress, egress, and parking has been an issue in the past, but that's for
311 technical review. F) That the use conforms with all applicable regulations
312 governing the district where located; it's already non-conforming in the setbacks.
313 Mr. Prior said he thinks we're fine with that. G) The applicant may be required to
314 obtain Planning Board or Town Planning approval; yes, we did have an abutter
315 who requested that. Mr. Prior said yes, we will make any approval dependent on
316 site plan approval from the Planning Board. H) That the use shall not adversely
317 affect abutting or nearby property values; we haven't heard that it does. I) and J)
318 do not apply.

319 Ms. Petito went through the additional criteria for conversions: A) The
320 number of spaces for off-street parking shall comply with Article 5.6, offstreet
321 parking; yes, we went through that. B) The minimum lot size required for each
322 unit requires 30% of the minimum lot size per unit; yes, we went through that.
323 There was some discrepancy with the square footage but it appears it would still
324 meet that. Mr. Prior said 4,500 is required. Even at the lower numbers presented
325 it's still ok. C) The structure has been a residence for 10 years; yes, it has. D)
326 The lot must meet a minimum of 20% open space; she believes it does. E) Does
327 not apply as these will not be rental units. Each unit will be sold. F) May require
328 the site plan to have Planning Board approval; yes, all conversions of three or
329 more units must be reviewed. G) The Board may allow expansion to an existing
330 structure for the purpose of providing additional area for the units, providing all
331 other requirements are met; there is no expansion. H) Prior to any renovations or
332 building, the applicant shall provide evidence to the Building Inspector that septic
333 system is adequate for the units; this does not apply, as it will be on town sewer.
334 That can be a condition of approval.

335 Mr. Prior asked if there was any further discussion from the Board. Ms.
336 Montagno asked what the options are: either approve with conditions or defer
337 until after Planning? Mr. Prior said we can say an approval is dependent on not
338 just site plan review but on site plan approval. Ms. Olson-Murphy said we can
339 make it a condition of approval but we can't wait for them to approve it.

340
341 Ms. Petito made a motion to approve the application of 107 Ponemah Road for a
342 special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and
343 Article 5, Section 5.2 to permit the conversion of an existing single family
344 residence and attached barn into three (3) residential condominium units, subject
345 to the following conditions: 1) the units must be connected to existing municipal
346 water and sewer supply systems; 2) adequate landscaping as mutually agreed
347 upon by the applicant and the residents at 52 Linden Street be put in place; 3)

348 the applicant will add one parking space in addition to what is stated in the
349 application, for a total of 7 parking spaces; and 4) that the approval of this
350 application is dependent on site plan approval by the Planning Board. Ms.
351 Pennell seconded. Ms. Petito, Mr. Prior, Ms. Olson-Murphy, and Ms. Pennell
352 voted aye. Ms. Montagno voted nay. The motion passed 4-1.

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356 D. The application of Mario A. Ponte for a variance from Article 5, Section 5.6.6. to
357 permit less parking spaces than required for the residential and retail uses
358 proposed for within the existing building at 85-87 Water Street. The subject
359 property is located in the WC-Waterfront Commercial zoning district. Tax Map
360 Parcel #72-29. ZBA Case #23-16.

361
362 Applicant Mario Ponte and builder John DeStefano were present to
363 discuss the application. Mr. Ponte said this is the building that Trends is currently
364 in.

365 Ms. Petito said she wanted to disclose that she rents office space from
366 the applicant, but she doesn't think she needs to recuse herself. She is not in the
367 building under discussion

368 Mr. Ponte said we'd like to renovate the apartments on the second floor.
369 There are three apartments on the second floor, but there will be four. There is
370 one existing retail space, but we will convert it to two. There will be two more
371 apartments below the retail. We need parking relief like most of the buildings
372 downtown. He was told by the Engineer that his building owns most of the
373 alleyway, but we need additional parking spaces.

374 Mr. Prior asked Mr. Ponte to describe the existing layout. Mr. Ponte said
375 upstairs there are three apartments. There have been apartments there for 60
376 years. They're occupied, but we're not renewing their leases because we're
377 renovating. One floor below the street level, we use the space as storage for
378 Trends and the bookstore. It was apartments maybe 10 years ago.

379 Mr. Prior said there will be a net gain in the number of apartments, so a
380 net gain in the requirement for parking. The applicant said he was told 20 years
381 ago that the building was already allocated 20 parking spaces out front. Mr. Prior
382 said they're fictitious. Ms. Petito said without considering these spaces as
383 parking there would be no new development downtown. Mr. Ponte said both the
384 church converted to apartments and the loka got parking relief.

385 Mr. Prior asked if any changes to the exterior of the building are being
386 made. Mr. Ponte said yes, we're bringing it back to its original historical
387 significance, with dormered windows. It's already been approved by the HDC
388 twice.

389 Ms. Petito said she thinks the relief being sought would be for seven
390 additional spaces. Mr. Prior said they don't exist, we get that. Downtown is a mix
391 of residential and retail, and nobody has enough parking. Ms. Montagno asked if

392 the supposed spaces take into account overnight winter parking. The municipal
393 lot only has 18 dedicated spaces for overnight parking. Ms. Petito said this is
394 similar to the renovation of the Ioka building, which was recently approved. Mr.
395 Prior said solving parking is not within the ZBA's purview. Ms. Montagno said it is
396 within our purview to approve or deny a variance from the parking regulations in
397 our zoning.

398 Mr. Prior asked for public comment, but there was none.

399 Barry Pastor of Front Street said parking downtown is a problem for
400 everybody. The parking ban in place during the winter may not make a difference
401 to the businesses, but people living there need a place to park overnight. Mr.
402 Prior said he shares his skepticism that anyone would want to buy a
403 condominium unit that doesn't come with parking, but it's not the business of this
404 Board to question the business plan of anyone who comes before us.

405 Mr. Prior closed the public session and went into Board deliberations. He
406 said these parking spaces are fictitious to some extent, but where can we draw
407 the line to say this building can have them and this one can't? He doesn't believe
408 that this Board can draw such a line. It's up to the town to address the shortage
409 of parking that exists.

410 Ms. Olson-Murphy made a motion to approve the application of Mario A. Ponte for a
411 variance from Article 5, Section 5.6.6. to permit less parking spaces than required for the
412 residential and retail uses proposed for within the existing building at 85-87 Water Street.
413 Ms. Pennell seconded. Ms. Petito, Mr. Prior, Ms. Olson-Murphy, and Ms. Pennell voted
414 aye. Ms. Montagno voted nay. The motion passed 4-1.

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417 **II. Other Business**

418 A. Request for Rehearing: Aaron Jefferson – 165 A Kingston Road, Tax Map Parcel
419 #115-12, ZBA Case #23-12

420 Mr. Prior said this is strictly a discussion within the Board, and doesn't get
421 public input. The criteria for rehearing is that A) there is new evidence that was
422 not available at the time of the application, which is not the case; or B) The Board
423 determines that an error has been made in its decision, which the applicant
424 believes. Our decision was unanimously to deny the application, and there were
425 four separate criteria that we determined that the application did not meet, criteria
426 1, 2, 3, and 5.

427 Ms. Petito said she wasn't present at the previous meeting, but she read
428 the minutes and didn't see any error. The concerns raised by abutters were very
429 carefully considered by the Board. The Board came to a reasoned decision. She
430 went out to look at the site, and it's right in the middle of residences, so she
431 understands the concerns.

432 Mr. Prior said given that their denial was unanimous, he doubts the
433 applicant would have much of a chance in Superior Court.

434 Mr. Prior said that Ms. Montagno, Ms. Pennell, and Mr. Prior were the
435 members present at the prior meeting who are here tonight. It was a long

436 discussion with a lot of public testimony and back-and-forth, but we did a good
437 job of rendering a decision taking into account the applicant, the abutters, and
438 the interests of the town.

439 Ms. Montagno made a motion to deny the request to rehear the variance application for
440 the property at 165-A Kingston Road. Ms. Petito seconded. Ms. Petito, Mr. Prior, Ms.
441 Olson-Murphy, Ms. Pennell, and Ms. Montagno voted aye. The motion passed 5-0.

442
443 B. Approval of Minutes: August 15, 2023
444

445 Ms. Montagno made a motion to approve the minutes of August 15, 2023 as submitted.
446 Ms. Pennell seconded. Ms. Montagno, Ms. Pennell, and Mr. Prior voted aye and the
447 motion passed 3-0.

448
449 **III. Adjournment**
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451 Mr. Prior made a motion to adjourn. Ms. Olson-Murphy seconded. Ms. Petito, Mr. Prior,
452 Ms. Olson-Murphy, and Ms. Pennell, and Ms. Montagno voted aye. The motion passed
453 5-0. The meeting was adjourned at 9 PM.

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455 Respectfully Submitted,
456 Joanna Bartell
457 Recording Secretary
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