

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

I. **Preliminaries**

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

Members Absent: Joanne Petito - Alternate, Laura Montagno - Alternate

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

I. **New Business**

- A. The application of 81 Front Street, LLC for a variance from Article 4, Section 4.2 Schedule I and Section 4.3, Schedule II to permit multi-family use in the R-2 zoning district where only single-family and duplex structures are permitted. The subject property is located at 81 Front Street, in the R-2, Single-family Residential zoning district. Tax Map Parcel #72-195. ZBA Case #23-14. (This application was previously scheduled to be heard at the October 17th, 2023 meeting and was continued to November 21, 2023 meeting at the Applicant's request. Modifications have been made to the application to reduce the number of units requested).

Attorney Sharon Somers of DTC, owners Steve and Karen Wilson, and Shayne Forsley, the General Manager of Hampshire Development Corporation, were present to discuss the application.

Attorney Somers said that the applicant is seeking to convert an existing structure to six residential units. The Board had a sitewalk there this afternoon. The property itself is 1.8 acres. The building was constructed in 1823 with a number of contiguous parts added later. The property is in the R2 zone, and the front portion is in the Historic District. It has approximately 16,000 square feet of finished living space. We would like to create something that makes more sense in the current era. We believe we qualify for a special exception for 4 units or 2 as a duplex, but even that would be too large. We would like a variance to obtain 6 units, which will be more appropriate and more functional. There are going to be no exterior changes to the portion of the building facing Front Street. Multi-family is defined as three or more units. Since we could have 4 units with a special exception, the notion seen in many of the objection letters that we can't pursue a multi-family is inaccurate. In some correspondence, the legal standard for the variance criteria are misstated. According to NH Case Law, the Malachy Case, the Harborside Case, and the Chester Case determine what is critical to

45 the public interest standard. It doesn't have anything to do with whether the
46 public gains, it has to do with whether the essential character of the
47 neighborhood will be changed if the project goes forward. Also, the jurisdiction of
48 this board relative to traffic issues is simply to determine whether there is
49 adequate parking on site. Any other traffic issues will be dealt with by the
50 Planning Board.

51 Mr. Forsyth gave a presentation on the project. The original house is in
52 the historic district. The detached "doctor's office" building is where Dr. Otis
53 operated a business. Down the driveway, there's a three car garage and carriage
54 house. The carriage house has been converted to living quarters. The garage is
55 a modern addition. Beyond the garage there's a large inground pool and a hot
56 tub which have been neglected and abandoned, which we intend to backfill and
57 replace with vegetation and a patio. There's a former spa house and mens' and
58 womens' locker rooms, which could be converted to living quarters. There's a
59 large side yard with a fence parallel to Seminary Way. The connector is a 30 foot
60 long, 6-foot-wide climate controlled enclosure that connects the front of the
61 house to the rear, which would be removed. There's a curb cut on seminary way;
62 the driveway has plenty of room for parking. There's a three-season porch next to
63 the inground pool, which will be redeveloped into fully functioning interior space.
64 Regarding parking, the driveway off Seminary Way would support 4 spaces and
65 there are an additional 8 off Front Street.

66 Mr. Prior asked if there are no changes to the impervious surface, and Mr.
67 Forsyth said that's correct. Ms. Davies asked if there would be additional paving
68 for spaces 1 - 5. Mr. Forsyth said he's only showing this for illustrative purposes;
69 if we need any more paving or onsite work, we would have a full analysis done
70 by an engineer, and that would go through the Planning Board. Ms. Davies said it
71 appears to be minimal anyway.

72 Ms. Davies asked if Seminary Way is public or private. Attorney Somers
73 said it's been owned by the Exeter School District since 1948. The subject
74 property and the property across the street have historically used Seminary Way
75 as a driveway. Ms. Pennell said she thinks it belongs to the Exeter School Board.
76 Do they know anything about this? The town is taking on the responsibility of
77 plowing it up to the gate. Attorney Somers said the property is shown on the
78 deed and tax maps as owned by the School District. The town will plow that
79 driveway as is customary with school property. Nothing about the school
80 operation will change as part of this proposal. The school would have received
81 an abutter notice. When it comes to Planning Board site review, they would be
82 consulted. The area that we propose to use for access and egress to Seminary
83 Way has been used in the same way for many years. Mr. Baum said it was
84 historically used this way, but is there no easement or right of way? Attorney
85 Somers said her impression is that there's an implied easement, based upon the
86 historical use of the property.

87 Attorney Somers asked Mr. Forsyth to speak about the data on the
88 neighboring properties. Mr. Forsyth said they looked at a 500x700 foot area

89 around 81 Front Street with 30 properties. Of these, 13 are single-family homes,
90 7 multi-family, and 10 commercial/institutional properties. 81 Front Street is a 1.8
91 acre lot. The average acreage within the sample area was just under $\frac{3}{4}$ of an
92 acre for single-family homes; 0.463 acres for multi-family; and just over $\frac{3}{4}$ of an
93 acre for commercial properties. In this small sample area, there's a variety of
94 uses, including the Academy, multi-family, rental properties, churches, the Exeter
95 Inn, and funeral homes. Ms. Olson-Murphy asked if 81 Front Street is included in
96 the average for the single-family properties, and Mr. Forsyth said it was
97 comparative. Mr. Prior said that means it was excluded.

98 Attorney Somers went through the variance criteria. 1) The variance will
99 not be contrary to the public interest; and 2) The spirit of the ordinance will be
100 observed; she thinks the basic objective of precluding multi-family in the R2 zone
101 is to prevent overcrowding. To determine whether that basic objective will be
102 unduly violated, the Board should look at whether the essential character of the
103 locality will be affected. We would argue that there is no specific character to this
104 locality. While there are single-family homes, there are a number of other uses,
105 such as a church, a funeral home, a school, and student housing. What we
106 propose will transform the interior. The exterior, particularly the side that faces
107 Front Street, will not be altered. The proposed use does not pose a threat to
108 public health, safety, or welfare. The use will continue to be residential. Public
109 safety will be increased because we're removing the corridor between the
110 original house and the rear of the property, which could increase emergency
111 access. There will be a number of exterior renovations to bring this into code,
112 such as fire walls. There is no definition in the ordinance of "neighborhood" or
113 "locality," but the Webster's Dictionary defines neighborhood as "a section lived
114 in by neighbors and usually having distinguishing characteristics," but we would
115 argue that this does not have distinguishing characteristics, it's a mix of things. 3)
116 The value of surrounding properties will not be diminished; yes, the lack of
117 change to the exterior of the building indicates that it will not constitute a
118 diminution of value. The improvements to landscaping may actually enhance the
119 value. The multi-family use up to 4 units is allowed via special exception and
120 there are other multi-family in the area. What we're proposing is only an
121 incremental increase to 6. There was an appraisal done which she will address
122 later. 4) Substantial justice is done; yes, there is no gain to the public if the
123 variance is denied. We could apply for a special exception for 4 units. Even if this
124 were to be denied, it's not something that would foreclose our ability to pursue a
125 multi-family on this property. If it were denied, the applicant would suffer as a
126 result. This is a huge property of 16,000 square feet. Prior to the client's
127 purchase of this property, it was on the market for over three years. A single
128 family willing to buy this is not readily available. The size of units compatible with
129 the Exeter market is more along the lines of 6 than 4, so there would be a loss to
130 this applicant if the proposal were denied. 5) Literal enforcement of zoning
131 ordinance will result in an unnecessary hardship; yes, there are special
132 conditions to the property in that it has 1.8 acres, which is larger than the abutting

133 residential lots, and larger even than the Exeter Inn. The structure on the lot is
134 one building with contiguous portions at 16,000 square feet, with 4 kitchens, 15
135 bathrooms, 6 bedrooms, and 23 rooms. The ruling of Harborside allows for the
136 Board to take into account the size of a property when considering special
137 conditions. There is no fair and substantial relationship between the general
138 public purpose of the ordinance and the application of the ordinance to the
139 property. We believe that the purpose of not allowing this number of units by right
140 or special exception is to prevent overcrowding. With 6 units, we meet the
141 density requirements. The massive size of the structure and the lot, and the
142 absence of any change to the streetscape, will prevent any sense of
143 overcrowding. All changes will be on the interior of the building. The proposed
144 use is a reasonable one. This is a 1.8 acre building with a massive number of
145 rooms and square footage. It's ready-made for a use of something other than
146 single-family.

147 Mr. Prior asked if the applicant had gone before the HDC. Attorney
148 Somers said Mr. Wilson attended the HDC on a consultation basis and advised
149 them he would not be making any changes to the Front Street portion of the
150 property. They won't be exercising jurisdiction over this. Only a portion of the
151 property lies within the Historic District.

152 Ms. Page said if this was converted as a special exception and it were a
153 rental unit, it would need to be owner-occupied. Is the intention with 6 that it will
154 be owner-occupied? Mr. Wilson said it will be owner-occupied. His daughter and
155 her family will live there and own the rear two units. In order to accomplish that, it
156 would need to be condominiumized. Ms. Davies asked if all 6 units would be
157 condos, and Mr. Wilson said yes, they'll have a common insurance and
158 maintenance program. Ms. Page asked if the units that his daughter wouldn't
159 own would be rented out or sold. Mr. Wilson said the other units would be
160 individually owned.

161 Mr. Baum asked if the calculations have been done and the building
162 would otherwise meet the special exception conditions of open space, lot size,
163 etc. Attorney Somers said that is correct. Mr. Baum said that would be for 4 units,
164 have they done a similar calculation for the 6? Mr. Wilson said the conversion
165 would require a minimum of 4,500 square feet per dwelling unit, and we would be
166 providing almost 10,000 square feet per unit. The property has 236 feet of
167 frontage on Front Street where 100 is required, so it could support a subdivision
168 of two lots, each with four unit conversions.

169 Mr. Baum said there will be no exterior changes on Front Street. Will the
170 other exterior changes be just to get rid of that connecting structure? Mr. Wilson
171 said we'll be taking out an area of 30 x 6 feet or 180 square feet and closing in an
172 area of about 20 x 12 feet to close the pool off, which widens the connector by 12
173 feet, so adding about 240 square feet. You won't see the change from Front
174 Street or anywhere off the property. The ordinance for conversion would allow up
175 to 400 square feet of the net addition and this would only be 60 square feet.
176 There will be consistent architecture, consistent landscaping, and shared utilities.

177 Ms. Olson-Murphy asked the composition of the six units. Mr. Wilson said
178 one unit will be a three-bedroom unit, in the servants' quarters/former carriage
179 house. Four would be two-bedroom units and one would probably be a one-
180 bedroom unit. Allowing six units keeps the size of them down and avoids having
181 four- or five-bedroom units. Mr. Prior asked if there would be two units in the
182 modern addition in the back and four in the front, and Mr. Wilson said yes. The
183 carriage house would be as it exists. The two units out front would be
184 symmetrical. The fourth unit would occupy the indoor pool house. The pool would
185 be eliminated and that's where the minor addition would take place.

186 Ms. Page asked what the intention is for the small doctor's office. Mr.
187 Wilson said he had originally applied for eight units because he read the
188 ordinance and found that if he wanted to use that as an ADU, it would count as a
189 unit. Now, after listening to the density question and the abutters, we re-
190 evaluated that. We're going to forego the use of that building unless someone
191 who lives there comes to the town and ask to use it as an office. Mr. Prior asked
192 if it would be associated with the association, rather than one of the units. Mr.
193 Wilson said yes, it would be a limited common area for rental.

194 Ms. Davies asked about the density. Attorney Somers said it meets the
195 density for six units. When we applied for eight units, we would have needed two
196 variances, one for density and one for use. With six, we only need a variance for
197 the use. Ms. Davies said density for the R2 district is one house, so what density
198 are they talking about? Mr. Wilson said if you have a conversion of four units, it
199 would require 4,500 square feet per unit, so in this case 6 x 4,500 would be
200 27,000 square feet. We have 75,000 square feet. In the R2 zone, either 12,000
201 or 15,000 square feet would support a single-family home. We meet the 12,000
202 square foot requirement. In our district, it's 15,000, so we're 3,000 square feet
203 shy or less for density for single-family houses. For density of a conversion, we
204 have 5x as much property as would be required. Ms. Davies said you're talking
205 about density under the conversion provision, and Mr. Wilson said correct.

206 Mr. Prior asked for public comment.

207 Bob Casassa spoke representing the abutters Mark and Sarah Ross at
208 79 Front Street, which is immediately to the right of the property. The property is
209 zoned for single-family use and has been used as a single-family residence for
210 decades or centuries. All upgrades to the property were to promote that single-
211 family use. The applicant argues that this property has been so improved that it is
212 no longer functional as a single-family home and requires a variance. The
213 applicant is attempting to leverage the single-family improvements into a
214 rationale on why you must abandon single-family use. It would go from one unit
215 to six. There wouldn't be changes to the exterior, but there would be a lot more
216 people in the interior who would come out. There would likely be two cars per
217 unit, so 12 cars adding traffic to that area. One of the purposes of the ordinance
218 is to not have congestion or undue intensity of population. This application runs
219 counter to the purpose of the ordinance. The applicant must establish that the
220 variance will not be contrary to the public interest, but the applicant has not met

221 that burden. The increase in density and traffic will be contrary to the public
222 interest. The proposed condominiums are not a permitted use. It will alter the
223 essential single-family character of this area. Based on the number of letters the
224 Board received and the number of people here tonight, these people absolutely
225 believe they're in a neighborhood and that there's an essential character of
226 where they live. Regarding substantial justice, there's no loss to the applicant. It's
227 an amazing house. If you were to end up with that as a single-family house,
228 that's an amazing property. It's the applicant's burden to establish that the value
229 of surrounding properties will not be affected. He has submitted two letters from a
230 realtor and an appraiser to the effect that putting a six unit condo will diminish the
231 value of 79 Front Street. It's up to the applicant to establish the special conditions
232 of hardship for the property, but this property can be used in a reasonable
233 manner or there may be a pathway to reasonable conversion consistent with the
234 ordinance. If this variance is granted, other property owners in the area could
235 come in and say "my house is too big, I want to turn it into a number of units." He
236 asked the Board to deny the applicant's request.

237 Sarah James of 70 Court Street said her block is similar to the area that
238 surrounds 81 Front Street. Most of the buildings are single-family. There are
239 three lots that have been divided into multiple units, and that significantly altered
240 the character of the neighborhood. The residents turn over much more frequently
241 than those in single-family homes and the residents don't interact with the
242 neighbors or neighborhood activities. This area of Front Street is a pocket of
243 lovely homes where the neighbors know each other and work together to add
244 strength to our town. She fears that subdividing a property in the middle of this
245 neighborhood will permanently alter its character in a way that is not beneficial
246 and is permanent.

247 Peter Vorking of 12 Grove Street said the reason there's so many people
248 here is that we are a neighborhood. He saw no letters in support of this proposal,
249 all of the letters opposed it. We have block parties. We are a neighborhood of
250 single-family homes. On the hardship issue, it reminds him of the story of the boy
251 who killed his parents and asked for mercy because he was an orphan. The
252 individual who bought it knew there had to be multiple exceptions made in order
253 for this to be converted. This has been a moving target; first it was eight units,
254 then six units, then they would condo-ize it, it's hard to know what's being asked
255 for. It was Michael Dingman's right to buy the property and do what he wanted
256 with it. This is an over-the-top property, but he was within his right to do what he
257 did. Two wrongs don't make a right. This is not allowed by the zoning regulations;
258 if the zoning regulations are wrong, change them, but don't make all these
259 exceptions. Mr. Prior said we are being asked for six units, there's no confusion
260 on that factor.

261 Paul Young of 84 Front Street, across the street from the property, said
262 this is an R2 Zone. There's a Master Plan of the town that allows for more density
263 in some areas and less density in others. This should be a planning and
264 subdivision questions. It doesn't seem like a variance for this is appropriate. Mr.

265 Prior said under State law, variances are allowed and they are the province of
266 the Zoning Board of Adjustment.

267 Barry Pastor of 100 Front Street said there was discussion about an
268 owner-occupied residence for rental properties. One property next door to him
269 was made into condos but they ended up being rented out and no owner lived in
270 the property. How do we know that the developer is not going to rent them out?

271 Attorney Somers said that someone would like to speak in support of the
272 project. Mr. Prior said although the letters we received were mostly negative,
273 there were a few in support, contrary to a claim made earlier.

274 Erica Wilson of 81 Front Street, who is Steve Wilson's daughter, said
275 she's currently occupying 1,700 square feet of the property now. She, her
276 husband, and their two young sons enjoy calling 81 Front Street home. Dr. Otis
277 purchased the property in 1894 and rented it out to academy families for years
278 before settling down there. Like him, she's an instructor at Tufts medical, and
279 she's the third local physician living in this property. She was dismayed to read
280 the letters that said that opening this house to multiple residents would damage
281 the quality of the neighborhood in some way. She values the historic character of
282 the neighborhood and the quiet and walkability. She hopes to carve out a space
283 here to raise her young family. Foot and vehicle traffic in the area of 81 Front
284 Street is a fact sometimes. Essex Inn, Epoch Restaurant, Phillips Academy, St.
285 Michael's Church, and Lincoln Street School are all in the area. Six additional
286 families would not be a noticeable increase in traffic in this busy corridor. Without
287 the outward appearance or green space diminishing, she's unsure how the
288 presence of families would alter the "genteel" nature of the neighborhood, unless
289 they feel that the people moving into these smaller and more affordable units are
290 themselves unfit for the neighborhood. Regarding safety and security, there was
291 a scenario proposed by several letters which was influenced by a neighbor who
292 distributed flyers to solicit letters to the Board, that 81 Front Street would become
293 a "party palace" for students from the Academy. Her husband is a former law
294 enforcement officer specializing in drug recognition and enforcement, and she
295 and her husband would be invested in ensuring that illegal and disruptive
296 activities are not carried out on this property. It seems more likely that a single-
297 family home paid for by distant parents would be a concern in this area. There
298 was concern that traffic in the back driveway would affect the safety of the
299 entrance to Lincoln Street School used by parents for drop off, but there's no
300 reason that her family using that driveway would affect safety there. Safety
301 hazards from the greenery and structure were present when we purchased the
302 property. One room was left unsecured and open to the elements. The deep
303 inground pool was half filled with rainwater, which was a drowning risk and bred
304 mosquitos. Regarding ensuring substantial justice, her practice is treating mental
305 health in this community, and justice is allowing more people to benefit from
306 public spaces. We shouldn't strive for a situation in town where four kitchens and
307 13 bathrooms are allotted to one or two households. We should turn obscenely
308 huge homes into multiple units. Exclusionist attitudes are reflected in some

309 letters. With the guidance of the HDC and in the hands of a reputable developer,
310 this project would allow more individuals and families to be contributing members
311 of this wonderful local community. The public interest in the need for housing
312 should supersede the individualist interest expressed. The town's population has
313 doubled in the past 50 years. Long-term visions for a sustainable community
314 should focus on turning oversized and underutilized single-family houses into
315 multi-family ones, while maintaining the architectural heritage and beauty of the
316 area. Regarding hardship, she invites the Board to consider the collective
317 hardship of housing shortages. Large houses sit empty on the market when they
318 could house several families. One of the letters mentioned a project at 69 Main
319 Street, but that wasn't a Steve Wilson project; for an example of a Steve Wilson
320 project, they should look to the renovation of the historic Army/Navy Building in
321 Downtown Portsmouth. This renovation included the painstaking preservation of
322 original wood window sashes and glass panes. It earned NH Homes 2018 award
323 for excellence. He also did the conversion of 81 High Street to 15 apartment units
324 and the restoration of the Woolworth's Building on Wall Street which preserved
325 the historic facade. The characterization of the developer as an absentee
326 landlord focused on profit extraction at the price of architectural beauty is not
327 accurate. A couple of the letters came from properties that are not currently being
328 maintained. The property at 87 Front Street has had six foot tall weeds in it for a
329 year. We need to focus on the fact that people need housing. More people
330 should be able to be a part of this wonderful neighborhood.

331 Walter Payne of 1 Pine Street said the political views just expressed are
332 not relevant here. When Attorney Somers said the optimal size is six units, she
333 was referring to maximizing revenue. Are you allowed to buy a property and then
334 tell the Zoning Board that if you can't maximize revenue, they're causing a loss?
335 You bought the property knowing those encumbrances were on it. Zoning is
336 supposed to prevent people from maximizing the value of their property, by for
337 example putting a cement factory with it. Mr. Prior said there are many other
338 reasons for zoning than that.

339 Josh Segal of 36 Pine Street said we've seen a lot of changes in the
340 community over 35 years. Similar stuff that has been brought before the Zoning
341 Board has been denied. There's no denying that this is a community. No one is
342 against Erica or having new people in the community. This community has been
343 very welcoming to new people. This is about changing a single-family to multi-
344 family for profit. The buyers knew when they bought the property that it would
345 need to go through some type of variance, so it's a risk-reward situation. We
346 don't want to reward this type of risk-taking. It's creeping incrementalism that will
347 change the feeling of this town. It's not about NIMBY, it's about the community
348 making these changes over time. He'd like to see that stopped.

349 Attorney Somers said she would like it noted that there was a letter from a
350 local realtor and two other letters of support for the project that were submitted.
351 There was a lot of talk about this creating a precedent, but each property needs
352 to be viewed on its own merits. There was lots of talk about neighborhood, but

353 there is no monolithic character to the properties out there right now. This is not a
354 series of single-family dwellings where what we are proposing to do would stick
355 out like a sore thumb. Regarding the diminution in value, there really wasn't
356 much to that letter from the realtor, other than that they thought there might be
357 some diminution. The letter from Peter Stanhope acknowledges that this area
358 contains a mix of commercial and residential uses; he notes that there is a
359 *possible* risk based on the fact that there will be change. He says that this will
360 cause a nuisance in the additional traffic, noise, guests, parking, and
361 construction. He assumes the potential for 12 people. He is forgetting that if this
362 were to remain a single-family house, she doesn't know who would live in that,
363 but likely a very wealthy person who would not be living there by themselves, but
364 might have extended family, servants, a trainer, etc, all of whom would have
365 vehicles. His comments are about possibilities of risk, and she doesn't think they
366 carry a lot of weight. She believes that the applicant has met the burden for this
367 and the other criteria.

368 Mr. Baum said the condo approach isn't part of the application. Generally
369 this meets the special exception criteria and could be a conversion, but that must
370 be owner-occupied if a rental. If it would be a condo, that may alleviate some of
371 the concerns about non-owner occupancy and transient use of the property. Is
372 the applicant interested in making that a formal condition of the approval?
373 Attorney Somers said she would characterize this as a representation of how we
374 intend to proceed with the proposal. Mr. Wilson said this property is owned by the
375 Wilson Realty Trust which includes his daughter. If we had to rent the units
376 because they were not saleable or decided to rent the units, we would comply
377 with the zoning and have an owner-occupied unit. There's an economic analysis
378 that has to be done. With 6 units and 2 purchased by his daughter, it would have
379 to be a condominium, since you can't have both rentals and purchased units. Mr.
380 Baum said this variance will run with the land past his ownership. Mr. Wilson said
381 if we have to rent the units, there would be an owner-occupied component. Mr.
382 Baum said that requirement wouldn't apply, so we could choose to have it be a
383 condition of the approval. Mr. Wilson said you have my commitment to that.

384 Mr. Prior closed the public session and the Board entered deliberations.
385 [20 minutes of this meeting were not captured.]

386 Mr. Baum went through the variance criteria: 4) The values of surrounding
387 properties are not diminished; expert testimony on this question is not conclusive
388 but can't be ignored. We have two conflicting realtor letters and the Stanhope
389 letter. We question some of the assertions that were in it. He [Mr. Baum] was not
390 able to attend the sitewalk, but from what he's heard we've got a historic building
391 that has fallen into some disrepair. It's going to be restored and brought up to
392 code, which will improve the value of this property, and would typically raise the
393 value of surrounding properties as well. Does changing the use of this property,
394 or changing it from four units to six, affect the property values? He's not
395 convinced that it will. Ms. Davies said there's a professional opinion stated here.
396 She thinks she would have landed in a different place than him, but she doesn't

397 want to negate his opinion entirely. Ms. Page said the burden on the applicant is
398 to show that it's more likely than not that property values won't be diminished.
399 Giving the opinion that there's a possibility isn't saying that's necessarily going to
400 happen, and it's based on the idea that there would be a "nuisance," which may
401 not be the case. Mr. Baum said there's nothing in the report that indicated what
402 that nuisance would be, other than a preference to remain a single-family home.
403 5) Literal enforcement of zoning ordinance will result in an undue hardship; first,
404 we have to find that there are special conditions that distinguish it from other
405 properties, which given the lot's size, which we should consider under case law,
406 this house clearly has special conditions. Ms. Davies said simply the
407 maintenance for a single-family home would require someone extremely wealthy.
408 Regarding "there is no fair and substantial relationship between the public
409 purpose of the ordinance and the specific application", the question is what is the
410 purpose of the single-family requirement. He's swayed by the applicant in that
411 the general purpose is to avoid congestion or over-dense lots, and that's not
412 really a factor here. No density relief is needed. This lot can support this number
413 of units without being offensive to the ordinance. This is not something that is
414 going to be big and out of scope, because they're essentially using the existing
415 building. It's not going to crowd out or shade surrounding buildings. Ms. Davies
416 said the location is in-town, mixed-use, not just a cul-de-sac in a corner of town.
417 The changes won't be that noticeable because the building isn't really changing.
418 The use is changing, but there could be that many people living in this home as a
419 single-family. The last aspect is that the use is reasonable. Given generally if the
420 underlying use is permitted it's considered reasonable, and it is permitted. It's a
421 residential use and will remain a residential use.
422

423 Mr. Baum made a motion to approve the application of 81 Front Street, LLC for a
424 variance from Article 4, Section 4.2 Schedule I (Section 4.3, Schedule II is no longer
425 being requested because that's dimensional only) to permit multi-family residential use,
426 specifically 6 multi-family residential units, on the condition that should the units become
427 rental units, one of the units will remain owner-occupied. Ms. Olson-Murphy seconded.
428 Mr. Eastman asked that a site plan be included as a condition.

429
430 Mr. Baum made an amendment to his motion to include that the variance is subject to
431 site plan review by the Planning Board. Ms. Davies seconded the amendment. Ms.
432 Page, Ms. Davies, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy voted aye and the
433 motion was amended.

434
435 Ms. Page, Ms. Davies, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy voted aye on the
436 amended motion and the application was approved 5-0.

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438
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- 440 B. The application of Patrick Houghton for a variance from Article 4, Section 4.2
441 Schedule I: Permitted Uses to allow the proposed construction of multi-family
442 units on the property located at 46 Main Street; a variance from Article 4, Section
443 4.3 Schedule II: Density & Dimensional Regulations-Residential seeking relief
444 from the minimum front yard setback requirement; and a variance from Article 4,
445 Section 4.3 Schedule II to exceed the density requirements to permit five (5)
446 units on a 26,000+/- square foot lot. The subject property is located in the R-2,
447 Single-family Residential zoning district. Tax Map Parcel #63-1. ZBA Case #23-
448 17.

449
450 Attorney John Arnold of Orr & Reno spoke on behalf of the applicant, Pat
451 Houghton. Attorney Arnold said this is Cocheco Auto Repair. It's in zone R2 and
452 is about 6/10 of the acre. It has a curved frontage with two existing curb cuts. The
453 proposal is to demolish the existing auto repair facility and build five townhome-
454 style condominiums. There would be three units in the building to the left and two
455 units in the building to the right. The project requires three variances: to allow
456 multi-family use in the R2 zoning district; to allow a front setback of 14 feet where
457 25 is required; and a lot size or density variance to allow five units on a 26,000
458 square foot lot.

459 Mr. Prior asked what would be allowed by right or special exception on
460 this property. Attorney Arnold said by right it could be a single-family. By special
461 exception it could be a duplex. If this were a conversion, which it's not because
462 there's no existing residential building there today, the minimum lot size per unit
463 is 4,500 square feet. We're providing 5,200 square feet per unit. For the setback,
464 allowed by right is 25 feet, but we're asking for 14.

465 Mr. Houghton said he represents Houghton Properties, a family real
466 estate investment company from Manchester. His son spent the last four years at
467 Phillips Exeter and he passed by this service station in disrepair. Exeter is a
468 unique and special place and it would be a great improvement to the
469 neighborhood if that building were redeveloped. We're planning on building five
470 condominiums, with one duplex and three attached condominiums. We chose a
471 Georgian Colonial architecture style to fit into Exeter. The condos will be
472 townhouse in style with a common driveway to a rear parking field. There will be
473 a garage under. The units will be 2,000 to 2,200 square feet with three floors of
474 living area, three bedrooms and 2.5 baths.

475 Mr. Prior asked if they meet the parking requirements. Mr. Houghton said
476 yes. There will be one-stall garages underneath the units, with additional parking
477 in the parking field out back. Mr. Prior said it would need 17 parking spots: one
478 for each bedroom and an extra for visitors for each four units. Ms. Olson-Murphy
479 said three-bedroom units only require two spaces, so it only requires 12.

480 Mr. Baum asked about the open space. Mr. Prior said the impervious
481 surface is 12,500 square feet. Attorney Arnold said we provide 52% and 40% is
482 required.

483 Mr. Houghton said we had a neighborhood meeting and sent out 40
484 letters to neighbors on Main Street and adjacent streets, although some were
485 addressed incorrectly. He's not sure how many did not get to the correct house,
486 but he did get a number of phone calls and had six people at the neighborhood
487 meeting with no opposition to the project.

488 Attorney Arnold went through the variance criteria. Mr. Prior said the
489 attorney will go through all three variances together. 1) The variance will not be
490 contrary to the public interest and 2) The spirit of the ordinance will be observed;
491 the test is whether the variances would alter the essential character of the locality
492 or affect the public health, safety, or welfare. He does not believe multi-family use
493 would alter the essential character of the locality. The current use is a non-
494 conforming auto garage, so returning it to residential use will be consistent with
495 the character of the neighborhood. The neighborhood already has a number of
496 multi-family properties around it. 64 Main Street, 68 Main Street, 44 Main Street,
497 and 41 Main Street are all multi-family. 69 Main Street is the newest multi-family
498 in the area. It was approved a couple of years ago. There are nine units in it. Mr.
499 Eastman said that property is in a commercial zone and it's a permitted use.
500 Attorney Arnold said it's still in proximity and it's relevant to the character of the
501 locality. Regarding the lot size density variance, the zoning ordinance doesn't
502 contemplate multi-family in the R2 District at all, so it doesn't specify a density for
503 this use. Minimum lot size for single-family homes is 15,000 square feet and for
504 duplexes 24,000 square feet. If this were a conversion, the minimum lot area for
505 each unit is 4,500 square feet, so for five units you would need 22,500 square
506 feet, and our lot size is 26,000 square feet. All other multi-family properties in the
507 area have more density than what we're proposing. 64 Main Street has five units
508 with 1,300 square feet each. 69 Main Street only has 3,500 square feet per unit.
509 Regarding the setback, we're taking the measurement of the porch stairs.
510 According to the ordinance, "open air porches" can be in the front yard, but we
511 weren't sure how "open air porch" was defined, so we measured from the front
512 corner of the porch to be conservative. The porch itself is four or five feet deep,
513 so the actual building is more like 19 feet back. A 14 foot setback is consistent
514 with other properties in the area; some have even less than 14 feet. A reduction
515 in the front yard setback allows the development to be shifted forward, so there's
516 more room for landscaping and screening to protect the abutters in the rear. It
517 provides a similar streetscape to other properties. Regarding public safety, health
518 and welfare, this historically has been an area of concern with respect to traffic
519 near to the school and having traffic backups during pickup and dropoff. We took
520 a look at the ITE trip generation figures, and five units have about three trips
521 generated at the peak hours. That's a decrease from the trip generation from the
522 existing use, so it will be an improvement in traffic. The property now has two
523 very wide curb cuts and there's no cohesive flow of traffic. That would be
524 eliminated; the curb cuts will be consolidated into a single curb cut on the side
525 closer to the school, although it may change as part of the Planning process. 3)
526 Substantial justice is done; we don't believe there's any harm to the public with

527 this application. There are public benefits: it eliminates the non-conforming
528 commercial auto repair facility; it will beautify the property; it will make the
529 property more consistent with the rest of the neighborhood; and it will provide
530 housing to the town which is in great demand. There is a benefit to the applicant
531 in that he will be able to proceed with the project. 4) The value of surrounding
532 properties will not be diminished; yes, removing the existing service station and
533 building this development is going to boost surrounding property values. The use
534 will be more consistent with what's around it. There's already reduced setbacks
535 and more density in this area than what we're proposing. 5) Literal enforcement
536 of zoning ordinance will result in an undue hardship; yes, this is a challenging
537 property. There have been a number of efforts to redevelop it over the past
538 several years, which have all been unsuccessful. Looking at the GIS map, it's a
539 much larger lot than surrounding properties other than the school. It's 6/10 of an
540 acre, where other nearby lots are half that size. It's an unusual shape with an
541 irregular rear lot line. These make it hard to repurpose this property as a single-
542 family residence. There is no substantial relationship between the purposes of
543 the ordinance and their application to this property; given how the surrounding
544 area has already been developed. There's already multi-family uses throughout
545 the neighborhood with more density and lesser setbacks. Strictly enforcing those
546 restrictions on this property don't serve the public purpose of the ordinance.
547 What's being proposed is consistent with what's already there. On the setback,
548 you may say you can shift the development back and create a few more feet in
549 the front, but where we've placed the development is consistent with surrounding
550 properties and provides a substantial benefit to the properties in the rear with
551 additional screening and landscaping. The proposed use is reasonable and
552 would improve the area.

553 Ms. Davies asked for details on the landscaping. Mr. Houghton said we'd
554 be concerned about the two properties behind us and the property to the side.
555 Either a fence or general landscaping would be considered.

556 Mr. Prior asked if they meet the height requirements, and Mr. Houghton
557 said we think we will be ok. The maximum height is 35 feet. Certainly we'll be
558 close to that.

559 Ms. Davies said typically service stations don't get repurposed to
560 residential use because of contamination issues. Mr. Houghton said there was a
561 phase 1 study that is complete, and we hired an engineer to look at it. The
562 engineer felt comfortable that we could develop the lot into residential use. We
563 will do a phase 2 study if it's indicated. Mr. Prior asked if the burden is on the
564 seller if contamination is found. Mr. Houghton said he thinks that could be
565 negotiated. The DES polices that. There is funding out there to take care of
566 problems. He [Mr. Houghton] owns a former gas station on South Willow Street
567 in Manchester that was turned into a restaurant, and we did a thorough study at
568 DES. We continue to have monitoring wells there. Mr. Prior said that doesn't
569 weigh into the variance criteria under consideration. Mr. Baum asked if any
570 underground tanks had been removed. Mr. Eastman said yes, that was done

571 years ago. Mr. Baum asked the applicant if there would be a basement, and Mr.
572 Houghton said yes. Ms. Davies said it appears that the garage is on the first
573 floor, and there will be a basement underneath. Mr. Houghton said the garage
574 will be the first 20 feet of the condominium and another 20 feet of
575 basement/storage, partly below grade.

576 Ms. Pennell asked where they will put the snow. Mr. Houghton said we've
577 done some engineering on where snow can be placed. Attorney Arnold said
578 there's 25 feet behind the parking lot.

579 Ms. Pennell said this is a corner lot, would it be subject to Article 5.3.2 on
580 corner lot visual clearance? Mr. Eastman said it's on a corner, but it's not
581 considered a corner lot. If there are any issues, we'll look at them in the planning
582 process.

583 Mr. Baum asked about the density requirement on a conversion. If you
584 look at the dimensional table, the only place that would be less than you're
585 proposing is the R5 multi-family. Attorney Arnold said it wasn't clear that we
586 needed a separate variance for density, but Mr. Eastman thought it was better
587 practice to include it. For a residential conversion, the ordinance says you need
588 30% of the required lot size for each unit. If you take the 15,000 square feet
589 required for single-family, it's 4,500 square feet. If you're doing a conversion of 5
590 units at 4,500 square feet, it's 22,500, which is less than the 26,000 we have.
591 None of that is binding because we're not doing a conversion, but the ordinance
592 contemplates a density similar to what we're doing here by special exception if
593 we were doing a conversion.

594 Mr. Prior asked for public comment.

595 Dave Essensa of 44 Main Street said he doesn't see any harm here if we
596 stuck to the ordinance. If he built a single-family or two family home, he'd still
597 make a profit. Five units in 0.6 acres would destroy the character of our
598 neighborhood. None of the houses there look anything like that. The units would
599 block his view, there would be lights shining into his property, and people coming
600 home at all hours of night.

601 Mr. Essensa read the letter of Tim Upton of 45 Main Street, who was not
602 present. He said the property of 46 Main Street is in an area of historical homes
603 and has been under consideration as a historic zone. His house was built in
604 1850. Adherence to single-family zoning regulations benefits the entire
605 community. The Board should deny any variance.

606 Mr. Essensa said he thinks this would be damaging to the value of his
607 property and others. Putting in five units compared to a single-family would
608 negatively affect the value. If the Board doesn't see it this way, he would ask for
609 an extension so that he could have an appraisal done on the property.

610 Ms. Davies said the property at 44 Main Street is non-conforming with
611 three units. The density is 3,049 square feet per unit. Yet you think this would
612 destroy the character because it has density next to your property? Mr. Essensa
613 said it would block his view. How are you going to get the snow back there?
614 Where's it going to drain to?

615 Anne Essensa, the wife of Dave Essensa, said what is there now is an
616 eyesore. She takes exception to calling 44 Main Street an apartment house; our
617 house is the original house and there are two tiny apartments in the back
618 extension. When we moved in, we were told the gas station was grandfathered
619 in, and the zoning was residential, so it would not be allowed to have a big
620 business or residence unless exceptions were made. Every house around the
621 gas station is the old, original, historic single-family home. They might rent out a
622 tiny little apartment. What's being proposed is huge compared to these homes.

623 Paul Markey of 10 Ash said if you turn this property into a huge house or
624 five units you'll turn that into a blind corner. School traffic is already a nightmare,
625 and he can't get out of his street at 7:30 or 2:30. It's against the public interest. It
626 was a gas station/junkyard and he'd be very worried about the cleanup there. Mr.
627 Prior said that's not a concern of the Zoning Board. DES would carefully monitor
628 any former gas station. Mr. Markey said regarding substantial justice, we would
629 need something concrete about landscaping, not just "maybe grass or a fence."
630 Anyone coming in and out of the driveway is going to be shining lights into his
631 house. Regarding the value of the surrounding properties not being diminished,
632 talking about setbacks, all the setbacks there have been grandfathered in. Mr.
633 Prior said 69 Main Street is similar, although it's in a different zone. Mr. Markey
634 said no, it's further back. Parking at 64 Main Street is ridiculous, it turns it into a
635 single-lane street. Snow removal will put the snow in his backyard. Please keep
636 this property single-family.

637 Kevin Blair of 55-59 Main Street, and the owner of the Exeter Flower
638 Shop which is now closed at that location, said his property is planning some
639 changes, and he hopes he can come out to 14 feet. He's not opposed to the
640 situation, but when we talk condos, maybe we should pay more for the land and
641 have less units. Regarding snow, it will get trucked off the property and be
642 included in the condo fee. Sightline is important, because he takes his life in his
643 hands every time he leaves his driveway. Everyone wants to see this property
644 cleaned up but there are still a few quirks.

645 Attorney Arnold said the concerns about landscaping, sightlines, traffic,
646 and snow removal are typically Planning Board issues. That's when more
647 detailed plans will be put together. On the density, the important thing is to look
648 what's around there. There are 4 or 5 multi-family buildings within 100 feet that
649 have more density than this project. There's no concrete measurement for
650 permissible density. He discussed the calculations done by the previous
651 application.

652 Mr. Prior closed the public session and entered into Board deliberations.
653 [3 minutes of the meeting were lost.]

654 Ms. Davies went through the variance criteria for the first variance
655 request. 1) The variance will not be contrary to the public interest and 2) The
656 spirit of the ordinance will be observed; the town has a need for housing. The
657 character of the neighborhood includes a significant amount of multi-family. The
658 location in the presence of other multi-family wouldn't threaten the safety or

659 welfare or injure public rights. Mr. Baum said the layout of this lot is important.
660 Both the size and the shape do not lend themselves to a single-family. Ms.
661 Davies said it's on a curve in a mixed use area. Ms. Page said moving this to
662 multi-family residential is moving this closer to the purpose of the ordinance than
663 the current use, which is non-conforming. Ms. Davies continued with the criteria:
664 3) Substantial justice is done; everyone has a preference for lower density in
665 their neighborhood, but she doesn't see any specific harm to other individuals, as
666 long as site considerations are taken into account during the planning process.
667 Those things are out of our purview. 4) The value of surrounding properties will
668 not be diminished; Mr. Essensa is concerned about that, but any new investment
669 on this lot will enhance property values, not detract from them. The use, being
670 consistent with other properties, wouldn't detract from it. Mr. Baum said there
671 would be little you could do here that would not improve property values, given
672 the current nature of the property. 5) Literal enforcement of zoning ordinance will
673 result in an unnecessary hardship; we've discussed that we think the proposed
674 use of multi-family is a reasonable one. We've discussed the individual
675 characteristics of the parcel, its shape, its location on the curve. If there's any
676 additional cost as the result of its previous use as a gas station, that's more of a
677 hurdle for a single-family home buyer to meet than a multi-family developer. She
678 thinks it meets both criteria A and B. It's a reasonable use and the use will not
679 alter the essential character of the neighborhood.
680

681 Ms. Davies moved to approve the request for a variance from Article 4, Section 4.2
682 Schedule I to permit multi-family use on the subject property. Ms. Olson-Murphy
683 seconded. Ms. Page asked if we need as a condition that Planning Board site plan
684 review is required. Ms. Olson-Murphy said that comes in as a multi-family. Mr. Baum
685 said in the last one, Mr. Eastman recommended it.
686

687 Ms. Page moved to amend the motion to include that site plan review and approval will
688 be obtained from the Planning Board. Ms. Olson Murphy seconded the amendment. Ms.
689 Page, Ms. Davies, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy voted aye and the
690 motion was amended.
691

692 Ms. Page, Ms. Davies, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy voted aye on the
693 amended motion and it passed 5-0.

694
695 Mr. Prior said the next request is a variance from Article 4, Section 4.3
696 Schedule II: Density & Dimensional Regulations-Residential seeking relief from
697 the minimum front yard setback requirement. Ms. Davies said she heard concern
698 that site distance and the blind curve will be an issue. She doesn't feel qualified
699 to make a judgment on that. Mr. Prior said this is not a formal corner lot, but it's
700 on a tight curve. We've heard testimony that there's traffic, the speed, the school,
701 etc. The corner lot requires a 30 foot setback. If we were approve it, it would be
702 subject to site plan review. He's not comfortable with allowing this because of the

703 nature of the property. The sightline is not impeded by the existing structure but it
704 may be by the proposed structure. Ms. Davies said she feels conflicted. The
705 trend in planning and neighborhood design is not to have parking lots in front of
706 everything. Mr. Prior said the combination of size and density here, there's ways
707 of reducing the impact into the setback without forcing parking up front, whether
708 it's four units, five smaller units, etc. The Planning Board would determine that,
709 but we can approve or deny the application in front of us. Mr. Baum said he has
710 trouble calling this a corner lot. It's all Main Street. Mr. Prior said it would meet
711 the legal definition, because Article 5.5.3 says "all street intersections," and Cass
712 Street is coming in right there. Ms. Davies said the intersection is across the
713 street, so she disagrees with his interpretation. Mr. Prior said the ordinance says
714 30 feet distance from the intersection. Ms. Olson-Murphy said if it's just 30 feet
715 from Cass Street, in theory, one building could be close and one couldn't be
716 close. Mr. Baum said getting designs that are not final makes it harder to get this
717 judgment. He personally doesn't have significant concerns about setback given
718 the surrounding area and how many homes are right on the sidewalk. It's more
719 consistent with the neighborhood than pushing it back to be conforming. Mr. Prior
720 said once we approve a specific number, it takes it away from the Planning
721 Board to approve. Ms. Page asked if it's possible to approve it in a way that the
722 Planning Board would have to be satisfied with its safety? Mr. Baum said he
723 doesn't know what the Planning Board would be able to do with it. We could
724 make it a setback to the enclosed structure rather than the open porch. Mr. Prior
725 suggested reopening public session and asking the applicant.

726 Attorney Arnold said if you want to give us the five units we're ok with not
727 having the setback. He understands the concern about the sightline but he
728 doesn't have technical expertise. Engineers have not looked into this. Is the
729 concern people entering and exiting or people driving around the curve? Mr. Prior
730 said there's a lot of traffic there, cars parked, and times that it approximates a
731 single-lane road. Ms. Davies said there's heavy pedestrian traffic as well.
732 Attorney Arnold said if the concern is people driving around that curve, the
733 intersection doesn't really come into it. Mr. Baum asked the distance from the
734 property line. Ms. Olson-Murphy said with the sidewalk, there could be 20 feet.
735 The breakdown lane gives you a little more. Attorney Arnold said the sidewalk is
736 outside of our property. Looking at the picture and estimating dimensions, it
737 doesn't look like the sightline is a problem. Mr. Houghton said if you look at our
738 proposed driveway, if you can imagine a car pulled up to exit the property, he's
739 not sure the sightline would be much different with this development. Ms. Page
740 said from a perspective of appearance of overcrowding, it actually helps that this
741 is on a curve. It would break up the building a little.

742 Ms. Page went through the criteria for variance request 2. 1) The variance
743 will not be contrary to the public interest and 2) The spirit of the ordinance will be
744 observed; from our perspective, we're ok with the appearance. There's been
745 concern about safety with regard to the setback, but some of that is mitigated by
746 the fact that it's not a 90 degree angle and the sidewalk adds 5-6 feet based on

747 the rendering. 3) Substantial justice is done; potential harm to the public is the
748 safety issue and the benefit to the applicant is being able to accommodate multi-
749 family use on the lot. 4) The values of surrounding properties will not be
750 diminished; yes, we haven't had a discussion of the value being impeded in the
751 context of the setback. 5) Literal enforcement of zoning ordinance will result in an
752 unnecessary hardship; some of the special conditions we've discussed are the
753 size of the lot and the irregular shape. In order to accommodate the multi-family
754 use, placing the construction closer to the road would allow for more screening
755 and privacy in the back. Mr. Prior said he's not sure he sees a hardship on the
756 setback. Mr. Baum said the shape of that lot and the jut-out from 44 Main limits
757 how far back you can move the buildings. There is case law that suggests that if
758 the ordinance is outside of the general condition of the neighborhood, there is a
759 hardship. If you look on Main Street, the other buildings are right on the property
760 line.
761

762 Ms. Page moved to approve a variance from Article 4, Section 4.3, Schedule II to permit
763 a front setback of 14 feet where 25 is required. Ms. Davies seconded. Mr. Baum asked if
764 we want to amend that it's as plans were presented? There will be stairs and an open
765 porch. Ms. Olson-Murphy said if we say "as presented," could they not change anything,
766 like move the driveway? Mr. Prior said no, that doesn't relate to the setback.

767
768 Mr. Prior made a motion to amend the motion to include the language "as submitted in
769 the plans as part of the application." Ms. Olson-Murphy seconded the amendment. Ms.
770 Page, Ms. Davies, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy voted aye and the
771 motion was amended.

772
773 Ms. Page, Ms. Davies, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy voted aye on the
774 amended motion and it passed 5-0.

775
776
777 Mr. Prior said the next variance is from Article 4, Section 4.3 Schedule II
778 to exceed the density requirements to permit 5 units on a 26,000 square foot lot.
779 Mr. Baum said this is the one he has trouble with. It feels like a lot. The last
780 application seemed more apples-to-apples to apply the conversion requirements
781 because that was an existing building. These are brand new buildings. In that
782 application, it didn't meet the 15,000 square feet per unit, but it was 13,000; this
783 is 5,000. It's below anything that's allowed in any district except for one. It seems
784 like too much for this lot. Multi-family makes sense but the density is more than
785 he's comfortable with. Mr. Prior asked if he would suggest an alternative density
786 or just say no. Mr. Baum said we have to take the applications as presented. We
787 can ask the applicant to come back and propose something.

788 Mr. Baum went through the criteria for the third variance request. 1) The
789 variance will not be contrary to the public interest and 2) The spirit of the
790 ordinance will be observed; he does think 5 units negatively impacts the

791 character of this neighborhood. There are other more densely developed lots
792 based on units per lot area, but they're generally contained within a single
793 building. There are a lot of single-family homes and single buildings, with the
794 exception of 69 Main Street which is within a different zone. Mr. Prior said all the
795 properties cited by the applicant are single buildings. Ms. Davies said that he
796 liked the fact that it was two buildings because that makes it less monolithic. Mr.
797 Baum said he wouldn't want to suggest a monolithic building because it would
798 impact sightlines and views for the neighbors. He doesn't believe the first two
799 criteria are met. 3) Substantial justice is done; he has less of an issue with this.
800 It's the weighing test and there certainly is a detriment to the applicant. 4) The
801 value of surrounding properties will not be diminished; that is a tougher call, but
802 without evidence, we don't have enough to deny. 5) Literal enforcement of zoning
803 ordinance will result in an undue hardship; he does think special conditions exist
804 in the lot size and shape, and that it's a corner lot. There isn't a specific provision
805 in the ordinance. Taking the general restrictions on density, which this doesn't
806 meet, and the closest other permitted type, which is conversion for four units
807 only, he thinks the intent is to not have overburdened lots. The use is reasonable
808 because it's residential, but fair and substantial relationship is where this fails.
809

810 Mr. Baum made a motion to deny the request for a variance from Article 4, Section 4.3
811 Schedule II to permit a density of 5 units on the property, for failure to meet criteria 1, 2,
812 and 5a. Ms. Page seconded. Ms. Page, Mr. Baum, Mr. Prior, and Ms. Olson-Murphy
813 voted aye. Ms. Davies voted nay. The motion to deny passed 4-1.

814
815
816

817 **II. Other Business**

818 A. Approval of Minutes: October 17, 2023

819 The Board tabled the minutes until the next meeting in December.

820

821 **III. Adjournment**

822 Ms. Davies moved to adjourn. Ms. Page seconded. All were in favor and the meeting
823 was adjourned at 11 PM.

824

825 Respectfully Submitted,

826 Joanna Bartell

827 Recording Secretary

828

829