

Town of Exeter
Zoning Board of Adjustment
December 19, 2023, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Robert Prior, Vice-Chair Esther Olson-Murphy, Clerk Theresa Page, Martha Pennell - Alternate, and Laura Montagno - Alternate.

Members Absent: Kevin Baum, Laura Davies, Joanne Petito - Alternate

Call to Order: Chair Robert Prior called the meeting to order at 7 PM. He said there are five voting members present but each case will have one member recused; given that there will be only four members voting on each application, the applicants have the right to delay for another month without prejudice. The applicants chose to proceed.

I. **New Business**

- A. The application of Matthew Soper for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of the existing single-family structure located at 3 Portsmouth Avenue into a rooming and boarding house. The subject property is located in the C-1, Central Area Commercial zoning district, Tax Map Parcel #71-32. ZBA Case #23-18.

Laura Montagno recused herself from this application.

Meredith Farrell Goldstein of the Orr and Reno law firm spoke on behalf of the applicant. Owners Matt and Novena Soper were also present.

Attorney Goldstein said the property was purchased last fall. It's a single-family home with four bedrooms in the C1 District. There's a variety of uses allowed in that district, such as retail, office space, bed & breakfast, hotels, motels, multifamilies, and single-families. We're requesting that a special exception be granted to the Sopers to use this home as a rooming and boarding house. This would be a four-bedroom home with each bedroom rented out individually to unrelated individuals, targeting professionals in the area. Although it's a change in use, the day-to-day function of the home would not be changing. The Sopers are hopeful that this will provide an affordable housing option in the downtown area. This could serve visiting nurses and medical professionals. The rent will be competitive with market rates but will provide another option in the downtown area for professional housing. The Sopers have a property in Stratham NH that has been operating as this style of home for seven years, and it's provided a unique housing option for that community. The applicant is confident that this fits well into this neighborhood, with businesses, duplexes, multifamily, and single-family homes.

44 Mr. Prior asked how the number of bedrooms matches the number of
45 residents. Attorney Goldstein said each room would be rented out to an individual
46 or couple. That would be the maximum based on the size. Mr. Prior asked if the
47 number of residents could be restricted. Attorney Goldstein said that's something
48 we could explore. The zoning ordinance permits one parking spot per unit, with
49 each bedroom being considered a unit. Thinking about space, a single person
50 makes the most sense. Mr. Prior said we've had incidents in Exeter of properties
51 being utilized at a much higher density than appropriate. There's nothing in the
52 zoning ordinances to restrict that, but it's something he'd like to explore.

53 Attorney Goldstein went through the Special Exception criteria. A) The
54 use is a permitted special exception as set forth in Article 4.2, Schedule I; yes,
55 rooming and boarding houses are permitted in this district. B) That the use is so
56 designed, located and proposed to be operated that the public health, safety,
57 welfare, and convenience would be protected; yes, we looked first at what's there
58 right now, which is a single-family four-bedroom home. A family of four or five
59 could reside there and the function would be the same day-to-day. Looking at
60 traffic and parking, the property has a large parking lot at the back of the
61 driveway that would fit the required five spaces and has another space for a sixth
62 vehicle. They would have room to turn around before exiting the property, so they
63 wouldn't have to back out into the street causing a hazard. C) That the proposed
64 use will be compatible with the zone district and adjoining post-1972
65 development where it is to be located; yes, this zone allows a variety of uses.
66 They work well together and create a livable community. This is a great
67 opportunity for professionals to walk to work or to Exeter Hospital. This area has
68 businesses and multi-family. We're confident that this fits well. D) That adequate
69 landscaping and screening are provided; we're not proposing any changes to the
70 exterior of the home, and there's ample landscaping and screening that's already
71 been done. We're open to further changes if the Board believes it's necessary. E)
72 That adequate off-street parking and loading is provided and ingress and egress
73 is so designed as to cause minimum interference with traffic on abutting streets;
74 yes, this property is well-suited for this because there is significant parking and
75 the option for vehicles to turn around before exiting the property. It shouldn't
76 have a negative impact. F) That the use conforms with all applicable regulations
77 governing the district where located; yes, we don't have any concerns there. G)
78 The applicant may be required to obtain Planning Board or Town Planning
79 approval; yes, we're open to that. We've talked to Doug Eastman about this
80 project and he agreed that because there's no exterior changes that likely would
81 not be necessary here. H) That the use shall not adversely affect abutting or
82 nearby property values; yes, there are commercial businesses, multifamilies,
83 duplexes, and single families, and this would fit well there. There would be no
84 exterior changes made, so there would be no changes of appearance that might
85 affect property values. I) and J) do not apply. In summary, this is something the
86 Sopers have done before. They're passionate about creating unique housing
87 options.

88 Mr. Prior said the applicant used the phrase “upscale housing option.”
89 There are four bedrooms and 2.5 baths. Mr. Soper said there are 3.5 baths, three
90 three-quarter baths on the second floor and a half bath on the first floor. Mr. Prior
91 said it won’t be individual bathrooms for each unit. Mr. Soper said he’d like to do
92 renovation so everyone can have their own private space.

93 Ms. Page said she’s curious how the word gets out to Exeter that these
94 spaces are available. Attorney Goldstein said Mr. Soper is exploring programs
95 through Exeter Hospital such as visiting nurses. Mr. Soper said he’s also
96 exploring Craigs List, Rent.com, and the VNA.

97 Mr. Prior asked what the turnover at his Stratham property is. Mr. Soper
98 said 6-8 months on average. Mr. Prior asked if there is a minimum lease, and Mr.
99 Soper said it can be customized to the individual. The minimum is one month, but
100 that’s never happened. He’s had the property in Stratham for ten years and has
101 rented it for seven, and it has been through 50 or 60 tenants.

102 Ms. Pennell asked who keeps the common areas clean. Mr. Soper said
103 he hires a housekeeper to clean the common area, and the tenants are
104 responsible for their living spaces.

105 Ms. Pennell asked if he is intending to live there. Mr. Soper said maybe in
106 the future, but not right now.

107 Ms. Pennell asked if he would rent to an adult with a child, and he said
108 yes.

109 Mr. Prior asked for public comment.

110 Kit O’Meara said she and her husband Colin Hatchard own 46-48 High
111 Street; they live at 48 and rent out 46. She said the town of Exeter doesn’t allow
112 Air BnBs because the neighborhood doesn’t want people coming in every six
113 months or every week. They want people who are bonded to the community and
114 care about the town of Exeter. Her neighbors have kids in the schools. Will it be a
115 requirement of the lease that they have to rent to professionals and those who
116 work at Exeter Hospital? If this is granted, how would they make this safe for
117 those that live there? Would there be sprinklers and a fire escape, and fire doors
118 for each bedroom? The entry and exit should be two cars wide, because it’s a
119 busy area. She believes that this is not good for our neighborhood.

120 Mr. Prior said those safety issues are not the purview of the ZBA. It’s
121 strictly the use of the property as a boarding house under the special exception
122 criteria. Such issues would be the purview of the Planning Board if we
123 recommend it to them for technical review.

124 Nils Hanson of 56 High Street said he has similar concerns. It seems like
125 an Air BnB, which are not allowed. If the owner is not living there, how often is
126 someone checking in? How attached are the owners to the building and the
127 tenants? What is the background check for tenants living there? Mr. Prior said
128 there’s nothing in the zoning about checks. There’s no mandate from the town
129 that they do that. Mr. Hanson said if he were renting to someone he would do
130 background checks and credit checks to make sure they were a good tenant. He
131 would love more housing but this doesn’t sound like a tenant that we would get

132 from the Hospital. There are rental properties on the street, but this is a little
133 different. They're lumping commercial and retail into this, but this is different.
134 Those close at a certain time. Mr. Prior said we're sensitive to the fact that this is
135 within the C1 District, but it abuts R2 on two sides.

136 John Gromek of 25 Forest Street said he is the former owner of Exeter
137 Cycles bike shop and currently owns the building. He's across the street from this
138 building [the applicant's property] and he doesn't see any problems with it. What
139 he's heard from the owner sounds fine.

140 Melissa Errend of 15 Prospect Street said she is in support of the project.
141 This meeting was posted on a Facebook page and she would like to speak for
142 the people who commented in support of the project on that post. Many feel that
143 affordable housing is in short supply in Exeter. It's easy for the abutters to come
144 and speak out against it, but there are so many potential benefits.

145 Anthony Zwaan of 7 Marlboro Street said he's not speaking for or against.
146 The applicant has all the intentions that they're representing, but at the end of the
147 day it's an application for a use. Ownership can change. Rental occupants can
148 change. He urged the Board to be specific in what it allows. This applicant says
149 there are five parking spaces on the property. When it was a single-family
150 residence there were people parking on the town right-of-way, so he would
151 encourage the Board to specify that the number of occupants in the building
152 should be dictated by the number of spaces on the property, not the town right-
153 of-way. There should be a limit of five residents for the building. There could be
154 as many as eight people in the building, meaning eight cars. Regarding the
155 length of stay, unless that's specified, you get into questions of what is an Air
156 BnB and what is a boarding house. Is the rental term monthly, weekly, hourly?
157 It's interesting to see high visibility properties being purchased and then the use
158 is changed immediately after purchase. Mr. Prior said another trend is moving
159 toward multi-family properties. Dr. Zwaan said on the Planning Board it bothered
160 him when an application came in that was inaccurate or incomplete. Because of
161 the question about the number of bathrooms, the Board could formally state that
162 the application was inaccurate or even table it.

163 Mark Harrison of 60 High Street said this sounds like putting ten pounds
164 of stuff in a five-pound bag. This property wasn't designed for this. The parking
165 lot doesn't have the spaces lined. How will it be plowed? Will it be pushed up
166 against the fence? The fence or the parking spaces will be goners. Is there
167 actually enough room to turn and maneuver a vehicle? If they change the
168 gradient of the property, where does the runoff go? They've paved a large portion
169 of that area. The noise level will be a problem. The Hospital houses visiting staff
170 in nice accommodations. Having to share a bathroom won't work for them. This
171 is not a good neighborhood for this intensive use.

172 Michael Voulgarelis of 55 High Street said we all want affordable housing,
173 but this is a single-family home. It could be rented out now as-is. He's skeptical
174 that professionals will want to move into this building. They're not going to want
175 to live with strangers. The Attorney used neighboring properties as an example of

176 what should be allowed; if we let this go through, is there anything that would
177 stop all the houses on High Street becoming boarding houses? Mr. Prior said
178 those are in the R2 and would require a variance, which has a much higher bar
179 and involves hardship. This property is surrounded on two sides by a highway
180 and one side by a restaurant. Everything else is R2, where a rooming house or
181 boarding house is not allowed except by a variance. This is in the commercial
182 district, where it is allowed by special exception. Mr. Voulgarelis said there could
183 be 60 people living in that home over a 7-year period. It would change the
184 dynamic of the neighborhood.

185 Sam Mukarkar of 34 Auburn Street said he's concerned about the
186 parking. The Attorney mentioned "affordable housing," but this would be market
187 rate and that's not affordable. The side of the house floods because there's no
188 drainage. It will change the character of the neighborhood. Someone came in
189 from out of town to run a similar boarding house and the Code Enforcement
190 Officer had to shut it down. There was one other boarding house where the
191 neighbors tried to buy it and turn it into townhomes, but the owner refused. The
192 applicant talked about renting to professionals from the Hospital and the
193 Academy, but there are no agreements in place. He's concerned about
194 transients. The owner should convert it to apartments and rent it out. He hopes
195 the Board will make this contingent on going to technical review and looking at
196 parking, drainage, and safety.

197 Nils Hansen of 56 High Street said there's probably no lease. Can the
198 tenant pay by the night and decide to leave whenever they want?

199 Brandon Lynch of 15 Prospect Street said this property is in the
200 commercial district and is surrounded by multi-family houses. He's in favor of this
201 project. There are some issues that could be addressed with safety and drainage
202 in technical review, but he's in support of this application.

203 Kit O'Meara said they're saying it's surrounded by multi-family houses
204 with the same purpose, but that's not true. Someone who is here for six months
205 or three months is not the same as families who have children in the school
206 system.

207 Attorney Goldstein said the minimum lease would be a month. Air BnBs
208 are not allowed here. This would be a true rental with the NH minimum lease of a
209 month. Although multifamilies are typically rented out for longer, there's no
210 requirement that there be a year-long lease. The parking requirements that guide
211 us are in the zoning requirements, which is five spots; she mentioned the sixth
212 just to let the Board know that's an option. The parking area expansion was done
213 with the town's approval. This would be a unique housing arrangement for the
214 area, but this idea of minimalist housing is very popular for young professionals.
215 There's one operating in Stratham that's doing very well. Regarding the idea that
216 this could be rented out now, the rental rate to make this make sense
217 economically would not be affordable to most families in the area. Regarding the
218 noise level, it would be similar to what a family with three kids would be like. This
219 would still be a residential use. As to whether it would be attractive to Hospital

220 use, that is not part of the special exception criteria, but during Covid it was
221 common for visiting medical personnel to rent out rooms in someone's home.

222 Mr. Prior asked her to address the number of residents versus the
223 number of rooms. Attorney Goldstein said that's something we may be open to
224 the Board restricting. We wouldn't want to limit it to one person per bedroom
225 because we would want it to be an option for single parents, but maybe there
226 could be a restriction on how many bedrooms could have more than one person.

227 Mr. Soper said he would be open to allowing any number of occupants
228 that's legal. He can't say "single occupancy only" because that's discriminatory.
229 He would be open to dual occupancy but limiting the cars. Mr. Prior asked if
230 legally you're not supposed to restrict the number of occupants of a rental. Mr.
231 Soper said you can, but you're not supposed to say single occupancy. Mr. Prior
232 asked if he'd discussed with the Code Enforcement Officer on a legal limit of
233 occupants. Mr. Soper said no, but he wouldn't rent to more people than the
234 house could handle. It would be two people per room maximum. Attorney
235 Goldstein said fire code maximum occupancy could be addressed in technical
236 review. Mr. Prior said once the use has been approved, the cat is out of the bag.

237 Attorney Goldstein added that the owner would do a background check
238 and a full credit check of potential occupants.

239 Mr. Prior closed the public session and brought the discussion back to the
240 Board.

241 Mr. Prior said he considers this an incomplete application, in that it does
242 not specify the number of parking spots. It's required to have five: one for each
243 bedroom and one visitor spot per four bedrooms. Any approval would be based
244 on the plan as submitted, which shows four bedrooms. Ms. Pennell said she
245 would like to know where the bedrooms are in the house and the layout. Mr. Prior
246 said there are four bedrooms on the plan and 2.5 baths, but the applicant has
247 told us there are 3.5 baths, so that's another way that the application is
248 incomplete. Ms. Pennell said she would like to defer the decision and ask the
249 applicant to come back with a more complete application. Mr. Prior suggested
250 going further with this discussion in case there are other issues the Board would
251 want addressed prior to resubmission.

252 Ms. Olson-Murphy said she's concerned about the lease period. The
253 State requires at least a month, but that's the minimum to make it not an Air BnB.
254 She'd feel better if it were something like a six-month lease. One month will have
255 a lot more transient population going on there than the neighborhood would enjoy
256 having. Mr. Prior said it would also be administered by a non-resident. He
257 remembers a case where the parent of a PEA student rented a property for a
258 year but ran it as an Air BnB when the student was not there. Once these things
259 get going, they're difficult to stop. Ms. Page said there's a strong demand for very
260 short-term rentals. If the ownership were to change, whatever we put into place
261 should focus on those concerns.

262 Mr. Prior said he would like a motion to defer the application to a further
263 meeting and that we would require a more complete site plan, including parking,

264 and an exact plan of the building itself. Some of the other questions raised here
265 should also be addressed.

266 Ms. Page moved to defer the application of Matthew Soper for a special exception per
267 Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the
268 conversion of the existing single-family structure located at 3 Portsmouth Avenue into a
269 rooming and boarding house until a further meeting, at which point we expect to review a
270 more detailed site and parking plan for the property. Ms. Olson-Murphy seconded. Mr.
271 Prior, Ms. Olson-Murphy, Ms. Page, and Ms. Pennell voted aye, and the motion passed
272 4-0.

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275 B. The application of Malcolm C. and Lindsay S. Sonnett for a special exception per
276 Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to
277 permit the conversion of an existing detached garage on the property at 1 Salem
278 Street into a residential dwelling unit. The subject property is located in the R-2,
279 Single Family Residential zoning district, Tax Map Parcel #63-211. ZBA Case
280 #23-19.

281 Ms. Olson-Murphy recused herself from this case.

282 Malcolm Sonnett said he and his wife Lindsay are requesting a special
283 exception to convert the space above the garage into a 750 square foot
284 residence. It will be within the existing footprint of the garage. Residential
285 conversions are permitted in the R2 zone by special exception. The home is
286 located in a neighborhood that has many multifamily homes. One of the abutting
287 properties is a multifamily home, and more than 45% of the homes on Salem
288 Street are multifamily. There will be no negative visual impact because it is within
289 the garage footprint. There will be no adverse impact on street traffic as ingress
290 and egress will be managed through the existing driveway access point. There's
291 plenty of off-street parking at the site.

292 Mr. Prior asked if there's no physical change to the footprint of the
293 existing structure. Mr. Sonnett said that's right. Mr. Prior asked how a space of
294 34x26 feet can get them 750 square feet. Mr. Sonnett said there's a half-story
295 above with a cathedral ceiling up to a 12-foot peak. There's existing access along
296 the train tracks, with a separate entrance and vestibule. Inside, a stair goes up to
297 the second floor with one bedroom and one bathroom.

298 Mr. Prior said this meets the criteria for accessory dwelling unit. Mr.
299 Sonnett said technically we have a non-conforming lot, due to the road frontage.
300 We would need 100 feet and we have 75. We do meet it in terms of percentage
301 of square footage to open space.

302 Ms. Page asked about the setback from the street and from the back and
303 side of the garage to the property line. Mr. Sonnett said from the railroad abutter
304 to the side, it's 16 or 17 feet, and from the rear property line it's 26 or 27 feet.
305 There are a couple of feet extra from the minimum setback. The setback of the
306 existing house from the street is probably about 25 feet. Ms. Montagno said it's a
307 non-conforming lot, but the building is already there. If it's an existing non-

308 conforming, do the setbacks matter? Mr. Prior said no, they do not matter. Ms.
309 Page said on the schedule for accessory dwelling units, the proposed use must
310 conform to the dimensional requirements of a one-family lot. Mr. Prior said this is
311 not an accessory dwelling unit, this is a residential conversion of an existing
312 detached garage. It doesn't come under the schedule 1 notes in 4.7.

313 Ms. Pennell asked why this is a conversion and not an accessory dwelling
314 unit. Mr. Prior said Article 4, Section 4.2, Schedule I: Permitted Uses says
315 conversions are for turning existing residential buildings as well as accessory
316 structures into not more than four dwelling units. Mr. Sonnett said accessory
317 dwelling units have a requirement that the lot size meet that shown in the table.
318 Mr. Prior said we're considering it as a conversion because that's what the
319 applicant has requested in the application.

320 Mr. Prior went through the conversion criteria from Schedule 1. The
321 number of parking spaces shall comply; it appears it does. Each dwelling unit
322 requires 30% of the minimum lot size. Mr. Sonnett said we meet that criteria by a
323 long shot. The lot size is 14,800 square feet. Mr. Prior said the requirement in R2
324 is 15,000 square feet if you're on municipal water and sewer, so 30% of that
325 would be 3,000 per unit. It's fine. The structure has been a residence for a
326 minimum of 10 years; Ms. Pennell said yes, it's been there since she was a kid.
327 Mr. Prior said there must be a minimum of 20% open space; he said yes. One of
328 the dwelling units shall remain owner-occupied; Mr. Sonnett said yes, we have
329 no plans to move. Mr. Prior said that becomes part of the property, that it always
330 has to be owner-occupied. The Board may require Planning Board review, and
331 three or more units must be reviewed. Ms. Pennell said that doesn't affect this.
332 Mr. Prior said there's no expansion of the existing structure. There's no septic.
333 Mr. Sonnett said that's right, it's tied into town water and sewer.

334 Esther Olson-Murphy of 18 Oak Street [speaking as a resident while
335 recused] said she has no problem with their plan. They've done a nice job adding
336 the second floor on the garage. It fits the neighborhood perfectly.

337 Mr. Prior said they've already done the work and now they're looking for
338 permission. Mr. Sonnett said it's an in-law apartment and we want to have the
339 option to rent it.

340 Mr. Prior closed the public session and brought the discussion back to the
341 Board. He said we've gone through the criteria and he sees no reason not to
342 accept a motion.

343 Ms. Montagno made a motion to approve the application of Malcolm C. and Lindsay S.
344 Sonnett for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses
345 and Article 5, Section 5.2 to permit the conversion of an existing detached garage on the
346 property at 1 Salem Street into a residential dwelling unit. Ms. Page seconded. Mr. Prior,
347 Ms. Montagno, Ms. Page, and Ms. Pennell voted aye, and the motion passed 4-0.

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350 **II. Other Business**

351 A. Approval of Minutes: October 17 2023

352 Ms. Olson-Murphy made a motion to approve the minutes of October 17, 2023 as
353 submitted. Ms. Pennell seconded. Mr. Prior, Ms. Olson-Murphy, and Ms. Pennell voted
354 aye, and the motion passed 3-0.

355
356 Ms. Pennell asked if Aaron Jefferson had done anything regarding his
357 application. Mr. Prior said no; he believes there have been discussions with the
358 Planning Office about using that property in another way.

359
360 B. Approval of Minutes: November 21, 2023
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362 Mr. Prior said there was an issue with the minutes that he's not sure how
363 to handle. Whoever was working the back room that night heard us say we were
364 going to go out of public session and thought that meant a private session, and
365 shut the recording off. At line 385, 20 minutes were not captured: all of our
366 discussion plus the first three variance criteria. We have a record of all the public
367 testimony and our vote, but not a complete record of the discussion. There have
368 been no requests for the minutes or indication that there would be a challenge or
369 appeal of the decision. He doesn't know how the Board could recreate this 20
370 minutes, or the three minutes missing from the next application.

371 Ms. Montagno said it's been 30 days, don't they only have 30 days to
372 appeal? Mr. Prior said it hasn't yet been 30 days. He doesn't want to try to
373 recreate the discussion because of fallible human memory. It happens at line 385
374 and line 653. The Board should accept the minutes for what they are. Ms.
375 Montagno asked for the worst-case scenario, and Mr. Prior said we don't have a
376 full record of our discussion, so we would have to consider granting a request for
377 a rehearing.

378 Ms. Page said she thinks that because it was a variance request, we
379 determined that the first three criteria were met. Each of the criteria needs to be
380 met. Mr. Prior agreed that the first three criteria would have been met.

381 Ms. Page made a motion to accept the minutes of November 21, 2023 as presented.
382 Ms. Olson-Murphy seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Page, and Ms. Pennell
383 voted aye. The motion passed 4-0.

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385 **III. Adjournment**

386 Ms. Page moved to adjourn. Ms. Montagno seconded. All were in favor and the meeting
387 was adjourned at 8:40 PM.

388
389 Respectfully Submitted,
390 Joanna Bartell
391 Recording Secretary
392