1 Town of Exeter 2 Zoning Board of Adjustment 3 November 19, 2024, 7 PM 4 Town Offices Nowak Room 5 Final Minutes 6 7 I. **Preliminaries** 8 Members Present: Chair Esther Olson-Murphy, Vice-Chair Theresa Page, Robert Prior, 9 Martha Pennell - Alternate, and Laura Montagno - Alternate. 11

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Members Absent: Clerk Laura Davies, Kevin Baum, Mark Lemos - Alternate

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Call to Order: Chair Esther Olson-Murphy called the meeting to order at 7 PM.

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I. **New Business**

A. The application of 163 Water C-2, LLC for a variance from Article 5, Section 5.6.3 and 5.6.6 OffStreet Parking Schedule to permit no off-street parking to be provided where 14 spaces are required for a proposed change in use from a retail use to a restaurant use. The subject property is located at 163 Water Street, Unit C-2, in the WC-Waterfront Commercial zoning district. Tax Map Parcel #72-17-2. ZBA Case #24-8.

Attorney Briana Matuszco of DTC Lawyers spoke on behalf of applicant 163 Water C-2 LLC and its owner Anthony Callendrello, Justin Corriss, the manager of Vino e Vivo and of the proposed new establishment at 163 Water Street, was also present.

Attorney Matuszco said the applicant proposes to operate a restaurant at 163 Water Street, currently the location of Paws Pet Boutique, whose lease runs out at the end of January 2025. The space is directly above Vine e Vivo, and the new restaurant would be part of Vino e Vivo's license and corporate structure; they would be operating as a single entity. The restaurant will have 40 seats and will be open Tuesday - Thursday from 5 to 10 PM and Friday and Saturday from 5 to 11 PM. The restaurant will have 5-6 employees. There will be no live music and they will strictly enforce last call and a hard out. The applicant intends to restore the historic nature of the space, and construction is slated to begin in March. The proposed opening of the restaurant is in July 2025. The applicant is seeking variance relief to permit no off-street parking where 14 spaces are required. The proposed use does not have enough off-street parking to comply with the zoning ordinances. The property is currently grandfathered for [relief in the amount of 5 spaces. The zoning requires 14 spaces, so the applicant is requesting relief for 9 spaces.

Attorney Matuszco went through the variance criteria. 1) The variance will not be contrary to the public interest and 2) The spirit of the ordinance will be observed; yes, this will not change the essential character of the locality, which is a mixed retail, office, and residential use, located on a busy main street with free

municipal parking nearby. The restaurant will operate in the evening hours: parking demand from other businesses is virtually non-existent after 5 PM. Granting the variance will not threaten the public health, safety, or welfare. There is free parking available on-street or at the Center Street lot, which contains 24 general spaces, or the Boathouse lot, which contains 25 general parking spaces and 2 handicapped spaces. 3) Substantial justice is done; yes, there is no benefit to the public interest in denying the parking variance, but it would have a significant impact on the applicant, as it would impede his ability to move forward with the proposed use of the site as a restaurant. The request for relief is moderate and will have an inconsiderable effect on parking on Water Street. 4) The value of surrounding properties will not be diminished; yes, the locality is currently comprised of mixed uses, small businesses, and upstairs residences, which will not be altered by the variance. The increase of foot traffic would cause other businesses and restaurants to be patronized, which would enhance the value of surrounding properties. 5) Literal enforcement of zoning ordinance will result in an unnecessary hardship; yes, there are special conditions to this property in that there is no physical space for offstreet parking. This is one unit in a condominium building which has no legal authority to alter the status. This unit is uniquely suited to provide a small restaurant setting. The existence of 5 preexisting non-conforming parking spaces helps in meeting its offstreet parking needs. The purpose of the ordinance is to ensure that adequate parking is available for people who want to utilize the proposed use. The relief sought is only for 9 spaces. Municipal parking is in close proximity. Patrons may visit on foot from nearby residences or may already be downtown to patronize other businesses. There is no fair and substantial relationship between the purpose of the ordinance and the application of the requested relief. The request is reasonable given the available parking located nearby and foot traffic.

Mr. Prior asked which space this is regarding. Attorney Matuszco indicated the space "C2" on the map.

Ms. Montagno said regarding the grandfathered 5 spaces, is that specific to the condo unit or the building overall? Attorney Matuszco said that's specific to the unit, which is currently operating as a retail space. Ms. Montagno asked if there are physically 5 spaces on the site, and Attorney Matuszco said no, there is no parking. Ms. Montagno said on Friday and Saturday, the hours would go from 5 - 11; how would this coordinate with the winter parking ban, where there is no on-street parking after 12 AM? Is 11 PM when people will be leaving? Mr. Corriss said the patrons would be out at 11, and closing doesn't take more than 30 minutes. We would be out of the parking spaces by midnight on those nights. As the manager of the location, he can develop a plan to ensure that they're out and closed by then. Ms. Page asked if the plan is to stick to the hours that have been outlined or is the hope to expand those if there is a level of success. Mr. Corriss said they're not expecting an expansion of evening hours, 11 PM is a hard out. Vino e Vivo is open at 4 PM, and the idea of this space is to be open intentionally later by design, so the 5 PM time would be firm.

Mr. Prior asked if the two restaurants would coexist or if the existing one would close. Mr. Corriss said they would coexist; on the licensing side, it's being treated as an expansion of the existing service. Mr. Prior asked if there would be a shared kitchen. Mr. Corriss said no, there would be a kitchen upstairs focusing on small plates and desserts.

Ms. Olson-Murphy asked for public comment.

Anson Lloyd, a resident in the building and a member of the condo Board of Directors, asked if the applicant can address waste management, recycling, and the current 10-yard dumpster, which is at near maximum capacity with three food venues right now. He oversees the agreement with Troiano Waste Management for the building when there is a missed pickup or overflowing trash. Mr. Corriss said it's not a conversation he has been a part of, but it's something he's happy to engage in. Attorney Matuszco said this doesn't have any bearing on the parking spaces. Ms. Montagno asked if this project would go before the Planning Board. Attorney Matuszco said no; she spoke with Doug [Eastman] and he said the Fire Department and Dave Sharples have been made aware of the proposed business. Ms. Page asked if the waste management was overlapping with parking or taking up existing parking spaces, and Mr. Corriss said no.

Ms. Olson-Murphy closed public session and brought the deliberations back to the Board.

Mr. Prior said given the situation downtown, this is a perfectly reasonable application. They meet the criteria for a variance. We have granted similar variances for other businesses in the downtown area. Ms. Page said she doesn't see this being impactful to downtown and congestion in the area. The Board was generally in agreement.

Mr. Prior moved to accept the application of 163 Water C-2, LLC for a variance from Article 5, Section 5.6.3 and 5.6.6 OffStreet Parking Schedule as presented. Ms. Montagno seconded. Ms. Olson-Murphy, Ms. Page, Mr. Prior, Ms. Pennell, and Ms. Montagno voted aye. The motion passed 5-0.

B. The application of Stonearch Development Corp. for a variance from Article 4, Section 4.3 to permit a minor subdivision of the property located at 12 Little River Road with less than the required lot frontage (width) and with frontage on a private right-of-way. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #62-90-1. ZBA Case #24-9.

Christian Smith, an Engineer with Beals Associates, spoke on behalf of Stonearch Development Corp. John O'Neal of Stonearch was also present.

Mr. Smith said that previously, the church parcel was divided from the existing house, which is now a residence. Five condominium units were approved. There are 63,775 square feet remaining. The property is encumbered by wetland buffers, local shoreland district buffers, and utility easements. The applicant is looking to divide that into two pieces. If that weren't the case, the property would support 15,000 square foot lots, because it is supported by water

and sewer. There is a right-of-way easement that covers the common drive in. The association is required to maintain that road; the town is not involved in maintenance or repairs.

Mr. Smith went through the variance criteria. 1) The variance will not be contrary to the public interest; yes, the variance is not contrary to the public interest as it will add two lots much larger than what is required in the R2 zone. There is no threat to the public health, safety, or welfare. The private section of the road frontage will be maintained by the HOA. The lot, if not so encumbered by utility easements and environmental setbacks, could sustain 4 conventional lots based on R2 zoning. 2) The spirit of the ordinance will be observed; yes, the proposed lot frontage is provided, albeit on a private road, which will be constructed to town design standards but maintained by a private entity. The lot will have twice the frontage it was approved for in 2021 by variance. The variance would not result in a development that would materially alter the character of the neighborhood. The lots would be larger than most of the abutting lots. 3) Substantial justice is done; yes, no harm to the general public would be realized by such an approval, therefore the benefit to the applicant could not be outweighed by harm to the public. 4) The value of surrounding properties will not be diminished; yes, allowing reduced frontage on a private way will not diminish the surrounding property values. Existing vegetation will remain and additional screening will be put into place. 5) Literal enforcement of zoning ordinance will result in an unnecessary hardship; yes, the 65-foot utility easement that bisects the parcel near its frontage and the municipal wetland and shoreland buffers would reduce any building potential this parcel has to an unusable size. The private way has an existing access easement that maintains the intent of frontage on a public street. Strict conformance to the ordinance would eliminate the proposed reasonable use of the property and result in an unnecessary hardship.

Mr. Prior asked Mr. Smith to explain the result of the denial of this variance. Mr. Smith said we would not be able to proceed to the Planning Board with the 2-lot subdivision request. The existing building would remain, the former rectory building. Mr. Prior said there was a previous approval; has that expired? Mr. Smith said no, that's actively under construction. Mr. O'Neal said the foundations of 3 of the 5 buildings are complete and the remaining ones will be poured this week and next. The water and sewer have been run in from the road and the gas will be run in in mid-December. That didn't need a variance because these 5 lots were already approved. Mr. Smith showed on the map the parcel in question, which would not necessarily be part of the condominium. Mr. Prior asked if there is a house there already, and Mr. Smith said no, this is a proposed home.

Ms. Page said prior to the 2021 meeting, this was one lot, and then it was subdivided into two, with the right of way splitting it, with 45 and 20 feet of frontage. The 45 feet serves the condominium parcel and the 20 served the lot that has the existing house. With this proposed change, will the new building

retain the 20.5 feet of actual public road frontage? Mr. Smith said yes, and the new building will take its frontage from the private road. There will be no public road frontage. The private road will be built the same as any other town road. Mr. Prior said the denial would not impact the 5 condominiums or the existing home, but would impact the building of one additional property, and Mr. Smith said that's correct.

Mr. Prior asked if there are no setback issues with the new house. Mr. Smith said that's correct. These designs are preliminary, so if that had to change and we needed more relief we would come back. Mr. Prior said all 7 homes on the proposed plan would share the one driveway and be on one private road, and Mr. Smith said that's correct. Just the 5 will be part of the HOA but these two lots would be part of the maintenance, repairs, and dealing with a winter road. Mr. O'Neal said this would be a separate condominium with an HOA "umbrella" over the entire lot for the road.

Ms. Olson-Murphy asked for public comment, but there was none. She brought the discussion back to the Board.

Ms. Olson-Murphy said she drove out there and it appears that the road hasn't been built yet. Mr. O'Neal said there was a parking lot that we crushed. Once the foundations go in we'll spread that gravel for the road. Ms. Olson-Murphy asked how they would respond if the Board wanted to put in the motion the requirement that the road be built to town specs. Mr. O'Neal said it has to be. It's being reviewed by the town. Mr. Smith said this will have to go through the Planning Board for subdivision approval. The road construction was actually a condition of building the condominiums.

Ms. Olson-Murphy closed the public session and the Board went into deliberation. She said according to the zoning, you can have frontage on a private road, so she's not worried that there is only 20 feet on a public way, but 100 feet is required. Ms. Montagno said for lot 1, there is 79.5 feet on the private way and 20 on the public way. Ms. Olson-Murphy said lot 2 has 45 feet of frontage on the private way. Mr. Prior said there's no question about the acreage. Ms. Montagno said there are hardships forcing the houses to be in these areas but they have plenty of land. Ms. Page said the purpose of the frontage requirement is to prevent the appearance of overcrowding. Given the size of the lots, she doesn't think we're bumping up against that purpose. They can't further condense it with the confines of the property.

Ms. Olson-Murphy said the screening is important because there's another house right on the other side of the property line. Ms. Montagno suggested including in the motion that the applicant would enhance the vegetative screening. The screening on the left side of the lot leaves a little to be desired. That said, the abutter is not here. Mr. Prior said it feels crowded but there is sufficient land and frontage.

Ms. Page asked if we could do a condition on the road that it has to be to town standards. Mr. Prior said it has to be, so we don't need to specify that.

Ms. Page made a motion to approve the application of Stonearch Development Corp. for a variance from Article 4, Section 4.3 to permit a minor subdivision of the property located at 12A Little River Road with less than the required lot frontage (width) and with frontage on a private right-of-way. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #62-90-1. ZBA Case #24-9, as presented, with the condition that sufficient screening be provided between lot 1 and the abutter. Mr. Prior seconded; he suggested the term "additional" in place of "sufficient" screening.

Mr. Prior moved to amend the motion by removing the word "sufficient" and replacing it with the word "additional. Ms. Pennell seconded. Ms. Olson-Murphy, Ms. Page, Mr. Prior, Ms. Pennell, and Ms. Montagno voted aye. The motion passed 5-0.

On the amended motion, Ms. Olson-Murphy, Ms. Page, Mr. Prior, Ms. Pennell, and Ms. Montagno voted aye. The motion passed 5-0.

Mr. Smith mentioned that Mr. O'Neal is already working with that abutter. That was a big tangled mess of invasive weeds and the neighbor has been thrilled that Mr. O'Neal has been working with him on it.

C. The application of Stonearch Development Corp. for variances from Article 4. Section 4.4 seeking relief from the required minimum front, side and rear setbacks, the minimum density (lot area/unit) requirement and maximum building coverage requirement for the proposed residential development of the property located at 57 Portsmouth Avenue. The subject property is located in the C-2, Highway Commercial zoning district. Tax Map Parcel #65-137. ZBA Case #24-10.

Christian Smith of Beals Associates spoke on behalf of John O'Neal of Stonearch Development. Mr. Smith said this property is just south of the Hampton Inn. The existing conditions plan depicts where the house was, but it's now a vacant lot. The applicant is looking to create two triplex buildings on the lot, which creates a lot of requests for relief due to the size and shape of the parcel. This would be a residential condominium development. The driveway entrance will use the existing curb cut on Portsmouth Avenue. It will have municipal water and sewer service, with closed drainage tying into the existing town drainage system.

Mr. Smith went through the variance criteria. 1) The variance will not be contrary to the public interest; yes, the proposed development will provide alternative housing opportunities to single-family residents and will provide additional tax revenue to the municipality. The proposed layout provides parking behind the building, which will result in a much-improved view from Portsmouth Ave as opposed to if the parking were in the front. The setbacks and density are not within the letter of the ordinance, but this type of housing is supported in the Master Plan. 2) The spirit of the ordinance will be observed; yes, the access to

the multi-family district and off-street parking are a permitted use, and multifamily residential use is permitted by special exception. The property was formerly a single-family residential dwelling. 3) Substantial justice is done; yes, there is no gain to the general public that would outweigh the loss to the developer that would result from a strict adherence to the setback and density requirements of the C2 zone, which are targeted at commercial developments. The Master Plan supports this type of housing in this area on Portsmouth Avenue. 4) The value of surrounding properties will not be diminished; yes, the surrounding properties would be enhanced by the addition of quality triplexes that would enhance the street view of the current vacant lot. Enhanced screening and vegetation to the surrounding properties will be provided through the Planning Board site review application. This will provide privacy for abutting parcels as well as the residents of the townhouse units. 5) Literal enforcement of zoning ordinance will result in an unnecessary hardship; yes, due to the size and shape of the parcel, the building envelope would be 828 square feet if the setbacks were applied. These provisions are generally applied to commercial development and need not apply to residential townhouse units. The parcel is in close proximity to the C1 district, and those provisions would eliminate much of the relief needed. The proposed use and density are reasonable in light of the fact that the parcel is served by water and sewer services.

Mr. Prior said the density seems pretty significant. This is a lot with a significant slope, are they going to dig it out and add a retaining wall? Mr. Smith said yes, the back building would be drive-under garages and the front would be at-grade garages. Each of these units would have a garage at ground level, so the back hill would need to be cut into with a retaining wall. That would be slab on grade. There would be a retaining wall/frost wall for the foundation.

Mr. Prior said they haven't asked for parking relief. Mr. Smith said they have 2 spaces in each garage plus a guest space. Mr. Prior said you would need 2 additional spaces. The rule is one space per bedroom plus one per four units.

Ms. Page said it's C2 so the residential uses permitted are mixed-use neighborhood development, which we're not looking at, and residential conversion, which includes not more than 4 units. Ms. Olson-Murphy said it's not a conversion, it's an empty lot. Ms. Page asked when the previous building was taken down. Mr. O'Neal said it's been at least 5 years. Ms. Montagno said she thinks it's been longer than that.

Mr. Smith said regarding the guest spaces, there is 20+ feet in the paved parking section behind the back building, so there are 2 spaces proposed there.

Ms. Olson-Murphy asked about fire accessibility. Mr. Smith said these are going to be sprinklered. The hydrant is not far away from us, so the Fire Department would hook up to the hydrant and fight it from Portsmouth Avenue.

Mr. Prior asked if they have to go through technical review. Mr. Smith said yes, the full site plan review includes technical review. Fire, Police, and DPW will look at it.

Mr. Prior asked if they are concerned about access onto Portsmouth Ave, which is a fairly busy road. Mr. Smith said Mr. O'Neal has engaged a traffic consultant. Mr. Prior asked if exiting the property would be strictly to the right, and Mr. Smith said he assumes that's what the traffic consultant would recommend.

Ms. Pennell asked if each unit has an underground garage, and Mr. Smith said each has a ground-level garage.

Ms. Pennell asked where the front door to the back units is. Mr. O'Neal said there's a garage door and a service door for each of the units. The ground floor is the garage and office space, the first floor is the living area, and the second floor is 3 bedrooms or 2 bedrooms and a study. The foundation wall serves as retainage and allows people to have a patio in the back. Mr. Smith showed a rendering of the proposed building.

Ms. Olson-Murphy asked for public comment.

Ryan O'Brian of 20 Haven Lane said it would be great to see something in this spot which has been vacant for so long. He doesn't have an issue with infringing on the side setbacks, but he has an issue with the separation between residential zones and commercial zones. There are numerous examples of a vapor-thin barrier between residential and commercial along Portsmouth Avenue. There is a residential R2 zone in the back. This is a residential use of the C2 zone but it abuts two single-family units. It's critical to maintain a buffer between the C2 zone and the residential zone. With proposed development in this area, it's likely that Portsmouth Avenue will need to be widened at some point. If this building is that far forward, you're not going to be able to put a second lane there.

Danielle Frank of 31 Haven Lane said she's not opposed to construction at this site. We'd like to see something new in the neighborhood, but this is too much for too small a lot. This was a single family home and the lot size has not changed. This would negatively impact the surrounding neighborhood with overcrowding.

Steve Taylor of 30 Haven Lane said he is concerned about traffic in that area and drainage of water causing flooding on Haven Lane. If you put 6 units in that tight area, the traffic problems would be threefold, especially with the 111 units they want to put on the side where Sanel Auto Parts is. Adding 6 onto that small lot, which has been vacant since 2015, you're going to be overcrowded and you'll have to change those lights.

Kyle Taylor of 30 Haven Lane said Hampton Inn uses this property as overflow parking. They already cannot handle the amount of parking they have.

Mr. Smith said typically an individual dwelling unit will generate 11 or 12 vehicle trips per day. To say that 6 homes here is going to create a threefold problem, the math doesn't work. We're working with a traffic engineer and will get this figured out. We anticipate that it will be a right-out only. These folks wanted an exit from the back but there's no right of way or room. If Hampton Inn is using this property he's not aware of an agreement to do so. There's no allowance for that use in the future. The drainage will connect to a catch basin on the corner of

the sidewalk at Hampton Inn. There are things that can be done on-site to mitigate any concerns that the DPW may have.

Ms. Olson-Murphy said the applicant implied that the setbacks for a commercial area are more aggressive than residential, but the setbacks they're requesting also don't align with any residential setbacks. You're asking for 9 and it's 25 in a residential area. You'd be here even if the build was in a residential zone.

Mr. Prior said he doesn't have a problem with the proposed setbacks. A few years ago we discussed adopting something called "form-based code," and one of the initiatives was to move buildings toward the road and have parking behind. The members of the public here are from Haven Lane, and are not the abutters, who would have been notified of this. He doesn't believe they will necessarily be impacted by the rear setback.

Ms. Olson-Murphy said we heard another application for this property and the rear abutters did come. It was a single building with 8 units of short-term rentals for nurses. Their concerns may have been with the short-term nature of that proposal.

Ms. Montagno said although there's proximity to the C1 district, every building between this property and C1 is residential. It's not residential units going next to commercial units. The difference between the setbacks of C1 and C2 are dramatic. In C1, the setback is 10 feet. Those setbacks are reasonable given what's in proximity. Mr. Prior said we're extending residential one property further north from Highland Ave. Ms. Olson-Murphy said if you meet the setbacks, the lot is not buildable. No matter what goes there, there will be setback relief.

Ms. Page said in C2, residential conversions are permitted, but we're going beyond that to do 6 units instead of 4 and there's no existing home that's being converted. Do we need to consider a variance for the use? Mr. Prior said if there had been one required, Doug [Eastman] would have made it part of the application.

Ms. Olson-Murphy asked if the Board is ok with the setbacks. Mr. Prior said given where it's located, he doesn't have a problem with it. Ms. Page said the Master Plan is consistent with putting buildings closer to the road, especially coming in closer to town from the 101.

Ms. Olson-Murphy asked the Board about the density and building coverage requests. Mr. Prior said the conversation regarding C1 vs C2 has allayed some of his concerns about density. He was concerned about 6 but doesn't necessarily see a benefit to the town or abutters in holding a line and saying they must only have 4. Once you've increased the size of the building envelope, there is sufficient room for 6 townhomes on that parcel. Ms. Olson-Murphy said it still seems significant. It's been a vacant lot for 8 - 10 years so anything is going to look huge there. She's worried about the bulk of it. If it has parking underneath it will have the 35-foot height. Mr. Prior said we were not asked for height relief. Directly across Portsmouth Ave is the two-story Blake

Auto building. Ms. Page said the layering of three and three helps. It's using the lot without crowding all the units together.

The Board reviewed the rendering again. Ms. Olson-Murphy said it looks better than an empty lot. Mr. Prior said it's a big building. The buildings will be more aligned than they are in the rendering. Only at an angle would you be able to see the back building.

Ms. Olson-Murphy asked the Board if they wanted to go through the variance criteria. Mr. Prior said he thinks it's been explained clearly enough. Ms. Montagno said it's been documented in the application. Mr. Prior said he didn't note any places where he disagreed with the conclusions reached. The only condition he would recommend is unnecessary in this case, which is full Planning Board review.

Mr. Prior made a motion to approve the application of Stonearch Development Corp. for variances from Article 4 Section 4.4 seeking relief from the required minimum front, side and rear setbacks, the minimum density (lot area/unit) requirement and maximum building coverage requirement for the proposed residential development of the property located at 57 Portsmouth Avenue as presented. Ms. Pennell seconded. Ms. Olson-Murphy, Ms. Page, Mr. Prior, Ms. Pennell, and Ms. Montagno voted aye. The motion passed 5-0.

II. Other Business

- A. Minutes Approval August 20, 2024

 Ms. Olson-Murphy said there are not enough members present [who were in attendance at the August meeting] to review this set of minutes, so it was tabled until the next meeting.
- B. Minutes Approval October 15, 2024

Ms. Page moved to approve the minutes of October 15, 2024 as presented. Mr. Prior seconded. The motion passed 5-0.

III. Adjournment

Mr. Prior moved to adjourn. Ms. Page seconded. The motion passed 5-0 and the meeting was adjourned at 8:30 PM.

429 Respectfully Submitted,430 Joanna Bartell431 Recording Secretary