

Town of Exeter
Zoning Board of Adjustment
August 19, 2025, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Robert Prior, Clerk Esther Olson-Murphy, Kevin Baum, John Dal Santo - Alternate, Martha Pennell - Alternate, Laura Montagno - Alternate and Mark Lemos - Alternate.

Members Absent: Vice-Chair Laura Davies

Call to Order: Chair Robert Prior called the meeting to order at 7 PM. He said Theresa Page has left the Board and there is room for a new voting member.

I. **New Business**

- A. The application of Sujeong Shin, Chair, First Unitarian Universalist Society of Exeter (FUUSE) Board of Trustees for a special exception per Article 4, Section 4.2 Schedule I and Article 5, Section 5.2 to permit child day care and early childhood education for no more than twenty (20) children in their existing children's classrooms and nursery; and a variance from Article 5, Section 5.6.6 to allow for a reduced number of parking spaces required for child day care use. The subject property is located at 10 Elm Street, in the R-2, Single Family Residential zoning district, and is identified as Tax Map Parcel #72-166. ZBA Case #25-6.

Mr. Prior said Laura Montagno and Mark Lemos will be the alternates who will vote on this case.

Paul Friedrichs of 9 Newfields Road, the Recording Secretary and a Trustee of the First Unitarian Society (FUUSE), and Sujeong Shin, the Chair, were present to discuss this application. Mr. Friedrichs said the property was acquired in 1867 and we opened the first church there in 1868. Combined, the frontage is 371 feet on Elm and Maple Streets, with a square footage of 32,385. Childcare and early education fit the church's value and mission. The property hosted Exeter Head Start from 1978 into the late 1980s. It's zoned in R2, but the northern half of Elm Street is C1. PEA is the only R2 zoned abutter on Elm Street, and there is another R2 abutter on Maple Street. Unrestricted parallel parking is allowed on both sides of Elm Street, but it's rarely used by FUUSE members, staff or visitors. The plan to meet the requirement for off-street parking is to install a mesh-protected lawn parking area adjacent to the Maple Street gravel driveway, creating a 38x20' section for four additional parking spots. The mesh would be put on top of the lawn and pinned down tightly to create a grass parking area. For drop-off and pickup, we will use our existing 20x32' paved Elm Street driveway. To not exceed the parking ratio, we will use timed intervals to

45 limit pick up and drop off to 5 students per 15 minutes, which is a 2:5 space per
46 student ratio. If a third car showed up in that time, we would have to have brief
47 parking on the street. However, outside of drop-off and pick-up, there are no on-
48 street parking requirements for this proposal.

49 Mr. Friedrichs said he believes this proposal keeps value to the abutters
50 and other neighbors by providing an in-town, walkable preschool alternative and
51 preventing the attractive lawn and garden from turning into a parking lot. He
52 added that there is a shortage of daycares in the State.

53 Mr. Prior asked if there's no parking on the south side of Maple Street. Mr.
54 Friedrichs said yes, there's no parking along the entire length.

55 Mr. Prior asked about the benefits and drawbacks of having the drop-off
56 on Maple Street instead of Elm Street. Mr. Friedrichs said there's not a walkway
57 that's very safe to the entry door on Elm Street. We don't even clear that area of
58 snow in the winter.

59 Mr. Prior asked if there have been any problems with PEA parking on Elm
60 Street. Mr. Friedrichs said it was lined with construction vehicles from 7 AM to 4
61 PM when they were doing construction. We've had concerns about people
62 parking in the no parking zones.

63 Mr. Prior asked who will be managing the daycare facility. Mr. Friedrichs
64 said we have a couple interested in leasing the space. We would give them a 90-
65 day period to get State licensure and there would be no more than 20 children.
66 We've drafted a lease that specifies that there is staff parking on Maple Street
67 and describes the timed drop-off.

68 Mr. Baum asked if they anticipate there being non-typical events at the
69 daycare where parents will be there. Mr. Friedrichs said no, the church would not
70 allow that. Mr. Baum said there's church use on the weekends, but what
71 weekday use would there be? Mr. Friedrichs said the weekend traffic is
72 substantial on Sunday mornings. The weekday traffic will be a lot less. We have
73 weekday evening events such as 12-step groups, but none start before 5 PM.
74 We don't have any weekday daytime events. We have four administrators and
75 they would park in the gravel driveway, which has four parking spaces.

76 Mr. Baum asked about the times for the daycare. Mr. Friedrichs said they
77 would be open and ready to receive children by 6:30. 5 PM would be the latest
78 departure. We would allow the staff to stay until 6 PM for cleaning.

79 Ms. Montagno asked if parents dropping off would be pulling into the two
80 spaces and then backing out onto the street. Mr. Friedrichs said yes. Ms.
81 Montagno asked if church staff would be parked at the same time as daycare
82 staff. Mr. Friedrichs said the church staff aren't there every day. They're paid
83 part-time and most of that time is on the weekend. There is a staff meeting on
84 Mondays where all four of them are present. Ms. Montagno asked how all of
85 those cars will pull into the staff parking space. Mr. Friedrichs said it's 40' long
86 and 20' wide; we would add a 38' x 20' grass parking area. Staff would be able to
87 figure out the parking.

88 Mr. Prior asked for public comment.

89 Steve Taylor of 30 Haven Lane said he's all for the daycare, but is
90 wondering where the playground will be.

91 Ryan O'Brien of 20 Haven Lane said that the plastic overlay on the grass
92 doesn't sound very plow-able.

93 The Board allowed Mr. Friedrichs to respond to public comment. He said
94 we don't plow the gravel driveway and aren't planning to plow the plastic mesh.
95 We do the gravel by hand, and will use a snow blower on the mesh. Regarding
96 the playground, the lease we've drafted specifies temporary moveable fencing for
97 an area of 30 square feet per student, up to 600 square feet. They're not going to
98 have any plastic playground equipment, they take more of a natural approach.
99 They will remove and stow the fencing every weekend.

100 Mr. Prior closed the public session and the Board entered deliberations.

101 Ms. Montagno said she has concerns about the safety of pulling in and
102 backing out of the parking spaces. Mr. Prior said it would be better for them to
103 pull in parallel and have a staff member there to meet the children. There's a 15-
104 minute drop-off window. He thinks this can work. Mr. Baum said he thinks the
105 timed drop-off should be a condition. Mr. Lemos said at 6:30 to 8 AM, that street
106 will be pretty open. Even at dinner time, the dining hall rush won't be until 5 or
107 later. [PEA is] no longer fencing off that area or taking up spots with construction
108 vehicles.

109 Mr. Lemos went through the variance criteria: 1) The variance will not be
110 contrary to the public interest and 2) The spirit of the ordinance will be observed;
111 yes, the footprint will not change, we're just allowing people to park. Childcare is
112 a huge hurdle for people. Mr. Prior said there was a daycare here previously,
113 approved by a prior Zoning Board. Mr. Baum said the test is whether it will alter
114 the character of the neighborhood or impair the public health, safety, and welfare,
115 and that's not the case. This is consistent with the church use there and aligns
116 well because it's weekday, not weekend. They've addressed the pick-up and
117 drop-off. There's space there for parallel parking if needed. 3) Substantial justice
118 is done; Mr. Lemos said yes, the benefits to the applicant aren't outweighed by
119 harm to the general public. There wasn't public outcry against the proposal.
120 There would be a benefit to the public by allowing 20 potential families to have
121 childcare. 4) The value of surrounding properties will not be diminished; we
122 haven't had any expert testimony on this point. In his personal experience, a
123 childcare facility local to him hasn't impacted the value of his property. It could
124 actually be an incentive to have a walkable daycare nearby. 5) Literal
125 enforcement of zoning ordinance will result in an unnecessary hardship; Mr. Prior
126 said the hardship is that they wouldn't be allowed to use the property in a manner
127 for which it has already been used, and is entirely appropriate for it.
128

129 Mr. Baum moved to approve the variance from Article 5, Section 5.6.6 to allow
130 for a reduced number of parking spaces required for child day care use as
131 presented in the application and on the condition that the applicant use timed

pick-up and drop-off. Ms. Olson-Murphy seconded. Mr. Prior, Ms. Olson-Murphy, Mr. Baum, Ms. Montagno and Mr. Lemos voted aye, and the motion passed 5-0.

Mr. Prior said the special exception is to allow daycare for no more than 20 children.

Mr. Baum went through the special exception criteria. A) The use is a permitted special exception as set forth in Article 4.2, Schedule I; yes, it is allowed. B) That the use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience would be protected; yes, we addressed that with the variance. Given the timed drop-off and the layout, there's no impact to the public health, safety, welfare, or convenience. C) That the proposed use will be compatible with the zone district and adjoining post-1972 development where it is to be located; yes, it's compatible with the existing and permitted use, such as the church use and the institutional school use across the street. D) That adequate landscaping and screening are provided; yes, he has some questions about the temporary fencing, but the layout is sufficient. Mr. Prior said the church's aesthetic concerns will police how it looks. Mr. Baum continued with the criteria. E) That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets; yes, with the grant of the variance and the condition. F) That the use conforms with all applicable regulations governing the district where located; yes, subject to the Board granting the variance, which we did. G) The applicant may be required to obtain Planning Board or Town Planning approval; Mr. Baum said he doesn't think this needs a site plan. H) That the use shall not adversely affect abutting or nearby property values; yes, we've already found that with the variance. I) and J) do not apply.

Mr. Prior made a motion to approve the application for a special exception per Article 4, Section 4.2 Schedule I and Article 5, Section 5.2 to permit child day care and early childhood education for no more than 20 children in their existing children's classrooms and nursery at the subject property located at 10 Elm Street. Ms. Montagno seconded. Mr. Prior, Ms. Olson-Murphy, Mr. Baum, Ms. Montagno and Mr. Lemos voted aye, and the motion passed 5-0.

- B. The application of Green & Company for variances from Article 4, Section 4.2 Schedule I to permit residential use in the C-2, Highway Commercial zoning district; from Article 4, Section 4.4 Schedule III to permit reduced front and rear setbacks requirements for the proposed residential use; and from Article 6, Section 6.19 for relief from the Mixed-Use Neighborhood Development (MUND) requirements to permit the property at 76 Portsmouth Avenue to be subdivided. The subject property is located in the C-2, Highway Commercial zoning district, and is identified as Tax Map Parcel #65-118. ZBA Case #25-7.

176 Attorney John Bosen of DTC Lawyers, applicants Michael and Jenna
177 Green, and Engineer Paige Libby from Jones and Beach Engineers were present
178 to discuss the application.

179 Mr. Baum recused himself and left the meeting at this time. Mr. Prior said
180 alternates Ms. Pennell, Ms. Montagno, and Mr. Lemos will vote on this
181 application.

182 Mr. Prior suggested the Board speak with Town Counsel before
183 addressing this case.

184 Ms. Olson-Murphy made a motion to go into a non-meeting. Ms. Montagno
185 seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Pennell, Ms. Montagno, and Mr.
186 Lemos voted aye. The motion passed 5-0 and the Board entered a non-meeting
187 session at 7:50 PM.

188
189 The Board reconvened in the Nowak Room at 8:10 PM.

190 Attorney Bosen said this is a four-story mixed-use project which received
191 full approval from the Exeter Planning Board on March 27, 2025. Because of a
192 lease with the existing tenant, Fisher Auto Parts, which runs through 2034, the
193 Planning Board approval was in two phases. Phase one is the townhouses off
194 Haven Lane, and phase two is the multi-use building on Portsmouth Avenue,
195 built over a 10-year period. We're not seeking any changes or amendments to
196 the development plans; we want to align our plan to deliver what we told the
197 Planning Board we can do. We're seeking three variances: from article 4.2, to
198 allow stand-alone residences in the C2 zone; from article 4.4 schedule 111, to
199 allow a front setback of 9.2 feet where 50 feet is required and a rear setback of
200 9.4 feet where 50 feet is required; and from article 6.19, to allow the project to be
201 on two separate lots. The dimensions of the front and rear setback were
202 approved by the Planning Board in accordance with the MUND standard, and will
203 simplify the creation of the condominiums. However, the condominium statutes
204 require that they be built no more than five years from the date of the recording of
205 the condominium. The existing tenant could stay on its lease until 2034, which
206 could make it difficult or impossible to comply with that timeline. The applicant is
207 proposing that the property be subdivided into separate lots, so that each project
208 will have a separate condominium association.

209 Mr. Prior asked if anything has changed with the lease arrangement or
210 property ownership since the submission to the Planning Board. Attorney Bosen
211 said his client is now the property owner, where previously he was under
212 contract, but the lease is the same. Mr. Prior said the applicant was aware these
213 conditions existed at the time of the application. Attorney Bosen said we were
214 aware that the lease has a five-year option, so they could be out there until 2034.
215 Mr. Prior asked if the condominium regulations have changed, and Attorney
216 Bosen said they have not.

217 Ms. Libby showed the Board a presentation on the site plan and
218 subdivision plan. The rear portion of the site, as approved, would be 34 town
219 houses with two access points off Haven Lane, and the front of the site is

220 commercial space on the first floor with 36 one-bedroom residential units above.
221 Topographically, the lot is separated by a ravine that runs through the property
222 with drainage from abutting properties. That's where we're proposing our lot line.
223 Both lots meet zoning criteria otherwise; they are large enough to be a stand-
224 alone lot in the C1 zone [as stated] and meet the frontage requirements.

225 Attorney Bosen went through the variance criteria. 1) The variance will
226 not be contrary to the public interest and 2) The spirit of the ordinance will be
227 observed; yes, the essential character of the neighborhood would not be altered
228 by these variances. The project has already been approved by the Planning
229 Board and deemed appropriate for the neighborhood. The variance does not
230 change the project, it simply creates a boundary line between the two phases
231 that ensures the success of the approved project. 3) Substantial justice is done;
232 yes, there is no benefit to the public in denying the variances, because the
233 project has already been approved by the Planning Board. Any differences on
234 the ground would be grossly outweighed by hardship on the owner. Denying the
235 variances could result in an inability to construct phase two, which will provide
236 much-needed housing in Exeter, including workforce housing. 4) The value of
237 surrounding properties will not be diminished; yes, the project is fully approved by
238 the Planning Board, and whether the project is constructed in one phase or two
239 will have zero effect on property values.

240 Mr. Prior asked if the variances would only apply to the rear property
241 which has no access on Portsmouth Avenue. Attorney Bosen said they're for the
242 entire property. Mr. Prior asked if it is one piece of property now, owned by the
243 auto parts place. Ms. Libby said the auto parts store is the tenant; RAP was the
244 former owner, and Green & Company now owns the property. Mr. Prior asked if
245 the variance criteria will be on both parcels, or just the rear parcel. Attorney
246 Bosen said both parcels. We're asking for a subdivision. Mr. Prior said you don't
247 ask the ZBA to subdivide a lot. Why is the applicant here? Attorney Bosen said
248 we're not allowed to put a residential use in the C2 zone. Mr. Prior said you are
249 allowed under the MUND, and you have approval for it. Ms. Libby said the MUND
250 states that the commercial and residential have to be on one lot together, so
251 subdividing the rear lot requires the use variance we're asking for. It's mostly for
252 the rear portion of the lot but we're asking for relief for both lots because it's all
253 one development. Mr. Prior said you have approval and you can build this,
254 except that the auto parts dealer has a lease. If we separate it into a different lot,
255 it's no longer qualified for the MUND. There are specific benefits to the MUND,
256 so you're asking for the benefits without the MUND. Attorney Bosen said we did
257 run this scenario by town staff and have an email directing us to bring this to the
258 Zoning Board. Mr. Prior said seeking the variance is the only way to get what you
259 want, but we need to understand what you're asking for. Attorney Bosen said this
260 would be residential in a C2 Zone, so we need a variance.

261 Applicant Michael Green of Green & Company said the development has
262 been approved under the MUND. This is purely an ownership structure issue, so
263 we're asking for the variance before going back to the Planning Board. If we

could build it all at the same time, it would work beautifully. Even though they're not physically attached by road, because the neighborhood didn't want through traffic, they are connected by a sidewalk. There is no retail in the back, only residential. It qualifies as the MUND as it was approved. When we go to build this, we have to build the Haven Lane side first. To build the second phase, we would have to buy the lease from under the vendor, which is in no hurry to leave. We have a five-year window under the condominium conversion requirements. Mr. Prior said none of those underlying laws have changed. The applicant was aware of all of this when applying to the Planning Board. Mr. Green said we've never had a situation where we've gone beyond the five years. There is a five year extension in the law, where you could go to 10 years, and the Planning Board granted us 10. After five years, we no longer have control of the Board of the back portion, and they would have a say on what we do on the front portion. We were unaware of that. This is a housekeeping issue. Mr. Prior said the barrier for a variance is set high by the State of New Hampshire for a reason. There has to be hardship, and he's not hearing anything about the nature of the underlying property itself that creates hardship. You have an approved project, and if there's something legal that holds you up from building it, that's not something that the Zoning Board concerns itself with. Nothing has changed since the original application other than your awareness of this. The criteria specifies "special conditions of the property."

Attorney Bosen asked for a two-minute recess, and the Board granted it. When the Board reconvened, Attorney Bosen said the applicant would like to withdraw the application without prejudice.

Ms. Montagno made a motion to accept Green & Company's request to withdraw their application for a variance from Article 4, Section 4.2 Schedule I to permit residential use in the C-2 district; from Article 4, Section 4.4 Schedule III; and from Article 6, Section 6.19, without prejudice. Ms. Olson-Murphy seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Pennell, Ms. Montagno, and Mr. Lemos voted aye. The motion passed 5-0.

II. Other Business

A. Approval of Minutes

1. July 1, 2025

Ms. Montagno made a motion to approve the minutes from July 1, 2025 as presented. Ms. Olson-Murphy seconded. Ms. Olson-Murphy, Ms. Pennell, Mr. Lemos, and Ms. Montagno voted aye. The motion passed 4-0.

2. July 15, 2025

Mr. Prior said the Board should table the July 15 minutes, as not enough members are present to approve them.

307 B. Other business
308 Mr. Lemos said he and his family are moving to so he has to resign from
309 the ZBA. Mr. Prior asked Ms. Pennell if she would like to be a voting member.
310 Ms. Pennell said only if the Board is desperate. Mr. Prior asked Ms. Montagno if
311 she would like to be a voting member, and she agreed.
312

313 **III. Adjournment**

314 Ms. Pennell moved to adjourn. Mr. Lemos seconded. All were in favor and the meeting was
315 adjourned at 8:45 PM.

316
317 Respectfully Submitted,
318 Joanna Bartell
319 Recording Secretary
320