



TOWN OF EXETER, NEW HAMPSHIRE

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 772-4709

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LEGAL NOTICE EXETER ZONING BOARD OF ADJUSTMENT AGENDA

The Exeter Zoning Board of Adjustment will meet on Tuesday, May 17, 2022 at 7:00 P.M. in the Nowak Room located in the Exeter Town Offices, 10 Front Street, Exeter, to consider the following:

NEW BUSINESS:

The application of Patricia Duval for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Schedule I, Note #2 and Article 5, Section 5.2 for the proposed construction of an accessory dwelling unit on the property located at 105 Brentwood Road. The subject parcel is located in the R-1, Low Density Residential zoning district. Tax Map Parcel #60-24. ZBA Case #22-9.

OTHER BUSINESS:

- Election of Officers
- Approval of Minutes: March 15 and April 19, 2022

EXETER ZONING BOARD OF ADJUSTMENT

Kevin M. Baum, Chairman

*Posted 05/06/22: Exeter Town Office and Town of Exeter website
Revised: 05/09/22*

Town of Exeter
Zoning Board of Adjustment
March 15, 2022, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Robert Prior, Esther Olson-Murphy, Rick Thielbar, Laura Davies, Martha Pennell - Alternate, Christopher Merrill - Alternate

Members Absent: Kevin Baum, Anne Surman - Alternate

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

I. **New Business**

- A. The application of Gateway at Exeter, LLC for a variance per Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.3 Schedule II: Density and Dimensional Regulations (Residential) to permit a multi-family residential development on property located on Epping Road. The subject property is located in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-7. ZBA Case #22-4.

Jay Leonard, a lawyer, and Tom Monahan, the principal of Gateway to Exeter LLC, were present to discuss the application. Attorney Leonard said the project has ZBA variance approval from May 22, 2019 and Planning Board approval from Aug/Sept 2020, but there is now a concern regarding a condition of the variance. The previous application was for a mixed-use development, but we haven't been able to get financing for the mixed-use. In Dec 2021, we initiated a process through Mr. Sharples in the Planning Office where we planned just the residential part of the project, and that's the new plan.

Mr. Eastman and Town Counsel are concerned that the mixed-use status could be considered a condition of the variance approval. If that was a condition, it wasn't one that everyone understood, and it wasn't directly related to the variance granted. The mixed-use piece doesn't accomplish any zoning purpose.

There is a change in circumstance in that we want to build just the residential component. Another change in circumstance is that the pandemic changed the commercial and residential rental market, and we can't find a tenant for the commercial property. The other change is the passage of time. All of the other facts that supported the earlier variance are the same, so the conclusion regarding the variance should be the same.

Mr. Monahan can get financing to build the 224 rental units, and the project is exactly the same with regards to the residential property. 25% of those units, or 56 units, are dedicated to workforce housing as defined by the State of NH. 28 of those will be one-bedroom, and 28 will be two-bedroom. These will remain rental properties

45 for 30 years. The workforce housing will have a cost of rent plus utilities that is
46 affordable to families who have 60% of the area median income (AMI).

47 Mr. Prior says the letter signed by the ZBA is ambiguous as far as the connection
48 is concerned. He read from the decision letter: "We grant permission for a multi-
49 family residential project as part of a mixed-use development plan within the area
50 shown as the site on the display plan submitted and with the application as
51 presented." There are five stated conditions, but this "as part of" is not a condition.

52 Mr. Prior read the conditions and asked Attorney Leonard to confirm that they
53 are still the case. 1) The remaining 45 ± acres to the rear of the site remain
54 undeveloped; Attorney Leonard said yes, we've already drafted a deed with the State
55 and local people, and that should happen this month. 2) 25% of the residential rental
56 units qualify as workforce housing rental units as defined under the NH State
57 workforce housing statute; Attorney Leonard said yes. 3) The restriction for
58 workforce housing rental shall be for not less than 30 years; Attorney Leonard said
59 yes. 4) The residential portion shall remain as rental units for not less than 30 years;
60 Attorney Leonard said yes. 5) The multi-family portion of the complex shall include
61 not more than 224 residential rental units; Attorney Leonard said yes. Mr. Prior
62 summarized that they're fully prepared to meet the five conditions.

63 Mr. Prior said there's ambiguity with "part of a mixed-use." There will be a
64 mixed-use development, but it will be separated in time. They still intend to use the
65 two acres at the front for non-residential use. Attorney Leonard said that's correct;
66 the first lot, #47-6, is a little over two acres, and will be dedicated to the commercial
67 use. We are fully intending to build a commercial use. It was originally proposed as a
68 40,000-45,000 sq ft property with two stories, but we now can't commit to the size.
69 We are not asking for a variance to that piece; it would remain zoned as the town
70 has it zoned. Lot #47-7 is the lot that will have the residential component. It will be
71 three buildings, two having 75 units and one having 74, just as we first proposed,
72 and of the size proposed, with a 17,500 sq ft footprint. There will be a total of 224
73 units. The last lot, #47-7-1, we are going to deed to the town and it will be restricted
74 by conservation easements. The overseer of that land is the Exeter Conservation
75 Commission. There are enforcement rights that will be granted to NHDES. The land
76 [of #47-7-1] can't be developed.

77 Mr. Prior asked if separating the lots is intended to facilitate Mr. Monahan selling
78 parcel #47-6. Attorney Leonard said he would either sell it or finance it separately,
79 which requires a separate lot.

80 Ms. Pennell read information from the Planning Board minutes from August 20,
81 2020 that did not seem to match the conditions set by the ZBA. Attorney Leonard
82 said using the words "mixed-use" in the decision created an expectation that that
83 was associated with the variance in Mr. Sharples' interpretation. That interpretation is
84 what's holding things up. Mr. Prior said it wasn't a condition, but it was part of the
85 ZBA decision. We don't need to worry about what the Planning Board did or didn't
86 do; we need to look at the underlying decision that allows residential use in this zone.
87 Ms. Davies said the inclusion of "mixed-use" was intentional, and we insisted on it.
88 Mr. Prior said it was part of the application. Ms. Pennell said she doesn't see where

89 the Zoning Board discussed the timing and the commercial building that had to be up
90 before the other two finished. Mr. Prior said he doesn't believe it was discussed.
91 Attorney Leonard said we fully expected to build the commercial building, but things
92 changed. We were trying to minimize the footprint of development, maximize the
93 undeveloped area, and have buffers in place, and that all continues to be true.

94 Mr. Thielbar said frequently a variance application is simple enough to
95 approve as submitted, but this request was too much. The applicant should come up
96 with some bullet points on what we are actually approving. Attorney Leonard said the
97 variance is for 224 residential multi-family units, of which 25% or 56 units will be
98 workforce housing. He asked that the Board use the exact same language of the
99 earlier approval but with no requirement regarding the time of the construction of the
100 commercial property. The residential and commercial should be independent. Mr.
101 Eastman said the motion should specify that the variance is for lot #47-7, because
102 there has been a subdivision.

103 Mr. Prior asked for public comment.

104 Nick Taylor, the Executive Director of the Workforce Housing Coalition of the
105 Greater Seacoast, spoke in favor of this proposal and its 56 workforce housing units.
106 NH is short 20,000 housing units and we need those units to continue to grow our
107 economy. Ms. Davies asked if Mr. Taylor had seen any difficulties with conditions of
108 approval holding the project to workforce housing. Mr. Taylor said no, not when the
109 conditions of the approval are clear.

110 Aaron Brown of 11 Deer Haven Drive in Exeter, the Vice Chair of the Exeter
111 Planning Board, said Ms. Pennell was misinterpreting Planning Board condition 16. If
112 the Exeter Planning Board had abandoned the commercial aspect of this project, we
113 would not be here and the applicant would not have tried to sue the town. What
114 they're not telling you is that they don't want to do the commercial, so they're
115 separating the lots. Is the ZBA re-hearing this variance? Are they going to unwind a
116 Planning Board condition? Mr. Prior said the Board is only looking at the ZBA
117 condition and the ambiguity surrounding "as part of a mixed-use development".
118 We're not going to rehear the five variance criteria. The applicant needs a
119 clarification and an extension, because this approval runs out on May 22, 2022. We
120 allowed residential use in a commercial zone, and none of those factors have
121 changed, except that indication that it's part of a mixed-use development, which was
122 part of the statement but not a condition of approval. As a Board, we need to decide
123 whether we are comfortable not tying it to a commercial use.

124 Mr. Brown said that a proposed zoning amendment to rezone this corridor for
125 multi-family residential use was defeated by a town vote five or six years ago. The
126 Planning Board is starting to see residential uses coming in through variances; at
127 what point do these variances become a rezoning of the property? If it's time for a
128 zoning change, we should be bringing this back to the voters.

129 Mr. Prior said that's not something that's within the ZBA's purview. It wasn't
130 necessarily that the voters rejected this, it could be said that they didn't wish to give
131 blanket approval and are content to allow the ZBA to make a case-by-case decision.

132 In 2019, putting in 224 residential units made a lot of sense to this Board, and
133 nothing's changed with that.

134 Mr. Brown said to clarify condition 16 of the Planning Board, the project is
135 allowed to build 112 units and get their occupancy permit before having to build the
136 commercial project. Mr. Prior said the Planning Board will have to deal with that once
137 the ZBA process is over.

138 Darren Winham of 3 Juniper Ridge, the Town Economic Development
139 Director, said it's not true that Mr. Monahan doesn't want to do the commercial. As
140 soon as the market will allow it, he will do that. He [Mr. Winham] likes that this project
141 is rental. Workforce housing is a huge issue, and since these are rentals, the cost is
142 60% of area median income [AMI] vs 80% of AMI for condos. In the case of McKay
143 Drive, the market was good for market-rate housing and they built two large
144 buildings; when the market allowed, they found the commercial for the front, and the
145 Primrose School is going in now.

146 Attorney Leonard said the TIF for the corridor specifically includes reference
147 to multi-family. It's not contrary to what the town passed. Regarding enforcing
148 covenants, we have used the same covenants in Londonderry, and they are
149 enforceable. The financing is tied to tax credits which require these to be in place.
150 Mr. Monahan does want to develop the commercial property, that's his goal.

151 Mr. Prior closed the public hearing and the Board entered deliberations.

152 Ms. Davies said the intention of the zoning and the TIF was part of the earlier
153 discussion. The commercial component, and the quality thereof, was important to her
154 vote in favor of the approval. Now that the property has been subdivided, it can be
155 subject to any commercial use. How can we ensure that this is a significant, better-
156 quality commercial property? Mr. Thielbar said someone who buys that property will
157 want to have it produce as much as possible. Ms. Davies said certain uses might be
158 willing to pay more for the land but would have lower-quality jobs. Mr. Prior said if the
159 project had not wanted to put in residential, it would never have appeared at zoning.
160 If he had wanted to put in a Maaco transmission dealership, it would not have come
161 to this Board. The concerns of this Board are limited to the residential portion. Ms.
162 Davies said the residential portion was a trade-off. She had expectations of what the
163 commercial portion would be. She would like to ensure that this is the kind of
164 commercial we were promised. Mr. Prior said we didn't specify it would be a two
165 story office building, we said "as was stated in the application." The application is
166 unchanged.

167 Mr. Thielbar asked Ms. Davies to read the special exceptions allowed in the
168 Epping Road commercial zoning on 4-4. Ms. Davies read "gasoline and/or service
169 stations, sexually-oriented business use, light industry, medical rehab facility, elderly
170 congregate facilities, churches and places of worship, community buildings, social
171 halls, clubs, lodges, fraternal organizations, or heliports." Mr. Thielbar said none of
172 those are the wonderful developments that Ms. Davies is suggesting. Mr. Prior said it
173 would have to come back to us for a special exception, so we do still have a degree
174 of control. What we were asked to do in 2019 was facilitate workforce housing, and
175 nothing has changed, except that it's no longer tied to a commercial development.

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Mr. Prior made a motion that we approve the request for a clarification and modification of the decision that was made May 22, 2019 regarding tax map parcels #47-6 and #47-7 that we no longer consider that the residential development needs to be tied to the commercial development in terms of the timing of the development, and further that we confirm all the conditions of approval that were granted in 2019, and next that we agree that the residential portion of this application refers to #47-7, and we grant a one-year extension to the decision, so that the approval now runs through May 22, 2023. Ms. Pennell seconded. Mr. Thielbar, Ms. Olson-Murphy, Mr. Prior, and Ms. Pennell voted aye, and Ms. Davies voted nay. The motion passed 4-1.

B. The application of Exonian Properties LLC for a variance from Article 5, Section 5.1.2.B. for a change in the purpose of a non-conforming use to permit a multi-family residential use of the existing structure on the property located at 43 Front Street; and a variance from Article 5, Section 5.6.6 for relief to provide no on-site parking where 24 spaces are required. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel # 72-198. ZBA Case #22-5.

Attorney Sharon Sommers of DTC spoke representing Exonian Properties LLC; the principals of Exonian Properties, Florence Ruffner and David Cowie, were also present. Attorney Sommers said we are seeking relief to allow parking on the street for a multi-family housing project, and to change one non-conforming use, a church, to a new non-conforming use, multi-family residential.

Attorney Sommers went through the variance criteria. 1) The proposed change will not threaten the public health, safety, or welfare. The properties around this site include residential, the Historical Society, and the educational services, dormitories, and churches on Elm Street. A multi-family residential unit will not alter the character of the neighborhood or threaten the public health, safety or welfare. 2) The spirit of the ordinance will be observed; yes, this is considered with #1 and has already been addressed. 3) Substantial justice is done; yes, the benefit to the applicant is that the existing church structure can remain intact with a viable use of multi-family residential, and there is no known detriment to the public. 4) The value of surrounding properties will not be diminished; yes, the residential use will be consistent with other nearby uses, and we're unaware of any evidence that this will diminish property values. 5) Literal enforcement of zoning ordinance will result in an undue hardship; yes, the property was constructed as the First Baptist Church in the 19th century. The applicant would like to keep the church building there and has obtained approval from the HDC to do so. The special condition arises from the focus on keeping the church intact in a viable way. The permitted uses, such as single-family dwellings, public schools, recreation facilities, or open space developments, don't work in the confines of this existing structure. The proposed use is compatible with other nearby uses. There is no fair and substantial relationship with preventing negative impacts and how the ordinance is applied to this property.

220 The proposed use is a reasonable one; yes, none of the permitted uses will work
221 within the existing structure. The proposed use will be compatible with neighboring
222 properties and will also help keep the church intact, and is reasonable.

223 Ms. Davies asked if it will be 11 residential condo units, and Attorney
224 Sommers said yes.

225 Mr. Prior asked if any members of the public wished to speak, but there was
226 no public comment. Mr. Prior closed the public session and the Board entered
227 deliberations.

228 Mr. Merrill asked why someone would want to do all this and not just sell the
229 property to the Academy. Ms. Olson-Murphy said it's not the Board's concern.

230 Ms. Davies said given the site size, location, and zoning, there aren't a lot of
231 great options other than conversion to residential. She's happy with the use. Mr.
232 Prior said regarding the use variance, he's satisfied with the presentation and sees
233 no need to go through the five criteria again.
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235 Ms. Davies moved to accept the application of Exonian Properties LLC for a variance
236 from Article 5, Section 5.1.2.B. for a change in use to permit 11 units of multi-family
237 residential use in the existing structure at 43 Front Street as proposed. Mr. Thielbar
238 seconded. Mr. Thielbar, Ms. Olson-Murphy, Mr. Prior, and Ms. Davies voted aye, and
239 Mr. Merrill voted nay; the motion passed 4-1.

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241 Attorney Sommers spoke regarding the parking variance application. We seek to
242 have no on-site parking, and to have the 24 spaces required by the ordinance covered
243 either by people parking on the street or at nearby municipal parking lots. She went
244 through the variance criteria. 1) The variance will not be contrary to the public interest;
245 yes, having parking on the street will not threaten the public health, safety, or welfare.
246 The essential character is residential uses, the Historical Society, educational uses, and
247 churches. The parking needs of those uses are met in part by on-site parking and in part
248 by using street parking. Adding the parking spaces for 11 residential units to the existing
249 municipal and street parking will not change the essential character of the neighborhood
250 or cause any public health, safety, or welfare concerns. 2) The spirit of the ordinance will
251 be observed; yes, this has been addressed with #1. 3) Substantial justice is done; yes,
252 the benefit to the applicant of allowing off-site parking is that it will allow the proposal to
253 proceed, and there is no detriment to the public given the off-site parking already in the
254 area. 4) The value of surrounding properties will not be diminished; yes, this is
255 consistent with nearby uses, and we're asking for a modest amount of street parking
256 we're asking for. The improvements to the property will stabilize or improve the
257 surrounding property values. 5) Literal enforcement of zoning ordinance will result in an
258 undue hardship; yes, from the survey presented with the application, the Board can see
259 that there's no ability to park on site. The applicant could demolish the site and build
260 something with a smaller footprint to create some on-site parking, but the applicant
261 wishes to maintain the historical structure, which necessitates finding parking off-site.
262 The special condition is that to keep the property intact, we need to find parking offsite.
263 The town has granted the building an occupancy of up to 460 people as a church; the

264 parking needs of that many people would be greater than the at most 24 cars on the
265 street or in a municipal lot. There is no fair and substantial relationship between the
266 ordinance and the request. There is a great volume of parking available, some very
267 close by, such as on Spring Street. At most it would be within a block. The proposed use
268 is a reasonable one; yes, we seek to keep this church intact and make it a multi-family
269 residential use, and those people need to park somewhere. Given the amount of street
270 and municipal parking, we believe the proposal is a reasonable one.

271 Mr. Prior said it would be possible to have parking on-site on the ground floor.
272 Has that been discussed? Mr. Cowie said we explored underground parking, but it
273 wasn't economically feasible and there were radius concerns about it being able to wrap
274 around within the footprint. Putting it on the street level would greatly diminish the
275 number of units possible, which would also not be economically viable. Ms. Davies
276 asked if there would be a loading area with short-term parking. Mr. Cowie said we would
277 use the rear of the church as a drop-off area and handicapped access, but it would not
278 be used as parking.

279 Mr. Merrill said the buildings at 43 Front Street are condos that already have
280 difficulty parking. For four months out of the year, you can't park on the street. Where will
281 these people go? Ms. Davies asked if there had been a parking study. Attorney
282 Sommers said we did not prepare a parking study. There was a municipal parking study
283 done several years ago. There are times when Spring Street is empty. The condos there
284 have at least some parking on-site. There are also spaces along Front Street and in front
285 of the church. Mr. Prior said the applicant will have a discussion with their investors
286 about whether you can market a condo with no parking. These are not issues that
287 concern the Zoning Board. Attorney Sommers said the Board should look at the impact
288 of 24 cars on the parking needs of the other elements of Exeter. Ms. Davies asked if the
289 municipal lot allows overnight parking. Mr. Eastman said there are 15 spaces there for
290 overnight parking in the winter. Ms. Olson-Murphy said the municipal lot on Center
291 Street is only 24 spaces. Mr. Eastman said there is permitted overnight parking there but
292 only for 10 spaces. Ms. Davies said she would like to see more of a parking plan. Mr.
293 Prior pointed out that if it were still a church with 100 people, that would be temporary
294 parking, not overnight.

295 Ms. Ruffner said there is a municipal lot behind her office building. Ms. Olson-
296 Murphy said there are 20 spots there, but she doesn't know how many of those are
297 overnight spots.

298 Attorney Sommers said that the applicants will study the issue further and come
299 back to the Board. Ms. Davies said if they could secure some dedicated parking spaces
300 elsewhere that might help. Mr. Prior suggested giving up some space underneath the
301 building for parking to minimize the impact.

302 Attorney Sommers requested a continuance until the next meeting, April 19th,
303 where they will provide additional information.

304

305 Mr. Merrill moved to approve a continuance of the hearing to April 19, 2022. Mr. Thielbar
306 seconded. Mr. Thielbar, Ms. Olson-Murphy, Mr. Prior, Ms. Davies, and Mr. Merrill voted aye,
307 and the motion passed 5-0.

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311 **II. Other Business**

312 A. Approval of Minutes: February 15, 2022

313 Mr. Thielbar moved to approve the minutes of February 15, 2022 as presented. Mr. Merrill
314 seconded. Mr. Prior, Ms. Olson-Murphy, Ms. Davies, Mr. Thielbar, and Mr. Merrill voted aye,
315 and the motion passed 5-0.

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317 **III. Adjournment**

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319 Mr. Thielbar moved to adjourn. Ms. Davies seconded. The motion passed 5-0 and the meeting
320 was adjourned at 9 PM.

321

322 Respectfully Submitted,

323 Joanna Bartell

324 Recording Secretary

Town of Exeter
Zoning Board of Adjustment
April 19, 2022, 7 PM
Town Offices Nowak Room
Draft Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Rick Thielbar, Laura Davies, Christopher Merrill - Alternate, Martha Pennell – Alternate

Staff Present: Doug Eastman, Building Inspector/Code Enforcement Officer and Barbara McEvoy, Deputy Code Enforcement Officer.

Members Absent: Anne Surman - Alternate

Call to Order: Chair Kevin Baum called the meeting to order at 7 PM.

I. **New Business**

- A. Continued public hearing on the application of Exonian Properties LLC for a variance from Article 5, Section 5.6.6 for relief to provide no on-site parking where 24 spaces are required for the proposed residential development at 43 Front Street. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel # 72-198. ZBA Case #22-5.

Sharon Sommers of DTC spoke representing Exonian Properties; Principals Florence Ruffner and David Cowie were also present. Attorney Sommers said the Board asked us to revisit the question of where people will park off-site, particularly during the winter months.

Regarding on-site parking, she presented Exhibit B, a conceptual plan, which shows an on-site space that could have three cars while leaving the building in its current configuration. Exhibit C contains the original architectural drawings where additions to the building are noted. The second page shows that there's a certain amount of underpinning of the structural columns required. For underground parking or additional ground level parking, the rear of the building would need to be removed, which is at odds with preserving the integrity of the structure. The slope there is significant and is not conducive to parking.

Regarding off-site parking, Exhibit A shows 155 yards of walking in order to park one's car in the Center Street municipal lot. The Townhouse Common parking lot is 235 yards away. The Exeter River Reservoir municipal parking lot, near the river walkway, is 275 yards away. Following the March ZBA meeting, the Principals spoke with town officials and came up with Exhibit B which has a list of municipal lots downtown and the total number of parking spots: just under 200. Center Street has 10 designated winter spaces; Exeter Reservoir or the "Boat Launch" has 5 winter spaces; the Front Street municipal lot has 22 winter spaces; the Townhouse Common lot has 12 winter spaces. Total on-street

45 parking in the downtown area is 339. The designated winter parking spaces are
46 first-come first-serve. Town officials said there's not an intensive demand for
47 these spaces, and a request can be made to expand the number of designated
48 parking spaces in the future, as long as the DPW felt there wouldn't be difficulties
49 with plowing. Jennifer Perry has emailed the Board indicating that the DPW is
50 aware of the situation with winter designated spaces and there is a possibility of
51 expanding those should the need arise. The applicants also provided photos of
52 the current parking situation.

53 Mr. Baum said the email from Jennifer Perry indicates that there are 79
54 overnight spaces available, while the submission says 195. Attorney Sommers
55 said 195 is the total municipal lot spaces, of which 79 are winter spaces. Ms.
56 Perry's email also contains the Train Station Lot and Front Street West End,
57 which are not included in the application; the application looks at 49 overnight
58 winter spaces, which is an ample number for this property and others that would
59 like to use them.

60 Mr. Thielbar said people who live in this building would have a right to two
61 cars, and they won't want to have to rotate them. What would stop a resident
62 there from permanently claiming one of the nearby spots? Attorney Sommers
63 said that anyone could decide to keep their car in an on-street spot, except in the
64 winter. It's up to how the condo association wants to govern itself. Mr. Thielbar
65 said 49 spaces is not a huge number, and the 24 spaces this property needs
66 represent a 50% increase in demand for those places. Attorney Sommers said
67 Public Works is not averse to designating more spaces for winter parking if
68 demand warrants it.

69 Mr. Baum said he would like to hear more about current winter space use.
70 Ms. Davies said she called Mr. Sharples and heard that there are tools at the
71 town's disposal to address the need for additional overnight parking, and the
72 Town Manager is in favor. The town is willing to look into resident parking permits
73 if demand requires. He also said he was unaware of a winter parking problem.

74 Ms. Pennel said the loka conversion and other new developments will
75 also be counting on the lots. Has the town taken into consideration the future
76 increase in demand? Attorney Sommers said the loka went through the Planning
77 Board process and it's their job to take that into consideration. The ZBA's job is
78 to determine if we meet the variance criteria. Mr. Thielbar said we frequently get
79 requests for "no parking" variances. Parking for residents is a 24 hour demand
80 for the space. When you give a few extra spots to a restaurant, that's totally
81 different. Attorney Sommers said the cars won't be present 24 hours a day.

82 Mr. Prior said this is all about overnight parking in the winter. Solving
83 parking problems isn't necessarily the problem of the Zoning Board, but it is a
84 responsibility of the developer to help solve them. Are the applicants aware of
85 any precedents on restricting the number of vehicles that are allowed to be
86 owned by the condo owners? Attorney Sommers said she's not aware of any
87 laws; it would be more of a marketing decision. If each unit could only have one
88 car, that would be 13 spaces, and there's still 10 off-site spaces that would be

89 needed. Mr. Prior said the three on-site spaces are suspicious, because two of
90 the cars couldn't move out of the spots. Attorney Sommers added that the
91 applicants also made a good faith effort to find private parking in the area but
92 were not successful.

93 Mr. Thielbar said he'd like to hear about the costs of underground
94 parking. Mr. Cowie said it would require a 160 foot runway to get down beneath
95 the church and we've only got 75 feet. The maximum slope allowed is 15%,
96 which would be infeasible in this space. The width of the space is only 18 feet so
97 it couldn't turn. The footings are at all different levels under the church, so it
98 would all have to be underpinned even if we could get down to that level, which
99 he thinks is not possible. A structural engineer has been involved in all the steps
100 so far. The building requires two egress stairs, one of which has to be in the
101 back, so we're limited in room to come in from the back anyway. You would also
102 lose any parking behind the church.

103 Mr. Thielbar said a lot of these problems could be solved with hydraulic
104 lifts for the vehicles to get underground. Mr. Cowie said they explored that
105 possibility, and it's \$80,000 per vehicle for the system to put your car into a lift
106 and have it parked, and that's without looking at the cost of installation. Mr.
107 Thielbar said residents could just get the car down to the underground level via
108 lift and drive it to a parking space themselves. Mr. Cowie said there's not enough
109 turning radius for that. Ms. Ruffner said we've owned the church for a year and
110 done extensive work looking at underground parking, and it's just not feasible.

111 Mr. Merrill said the Academy parks on Spring Street. The Boatyard is full
112 every Tuesday because of yoga. It's a long walk from the municipal lots in snow
113 and rain. Mr. Prior said this is a marketing problem for the applicant, not a
114 problem for the ZBA.

115 Attorney Sommers went through the variance criteria. 1) The variance will
116 not be contrary to the public interest or would alter the essential character; yes,
117 we have provided evidence that there is enough space on the street and in
118 municipal parking lots, including winter parking spaces. The town is also willing to
119 re-examine adding more designated spaces. There is no evidence that this will
120 change the essential character of the neighborhood or be contrary to the public
121 interest. If people don't want to walk a block, that will be a marketing issue. 2)
122 The spirit of the ordinance will be observed; yes, this has been addressed with
123 #1.3) Substantial justice is done; yes, the benefit to the applicant of allowing off-
124 site parking is that it will allow the proposal to proceed. We've received HDC
125 approval and a use variance. There is no detriment to the public or to the private
126 in granting this variance. There is physically space for those people to park right
127 now. 4) The value of surrounding properties will not be diminished; yes, given
128 the number of spaces that are available, it's not going to impact the neighboring
129 properties. 5) Literal enforcement of zoning ordinance will result in an undue
130 hardship; yes, we've exhausted all possible options for providing on-site parking.
131 We've provided at least 2 spaces on the property. There are significant
132 impediments to underground parking given the 11 units and the need to renovate

133 this historic building, including cost, slop and turning radius. There is no fair and
134 substantial relationship between the ordinance and the request. The purpose of
135 the ordinance is to prevent parking problems, and the evidence shows that there
136 is off-site parking in the lots for the winter parking and on the street. It's not going
137 to create a problem. The proposal is a reasonable one. We have a use variance.
138 We are providing housing to the town.

139 Ms. Davies asked when this property was last used as a church. Mr.
140 Cowie said they ceased services during Covid but it was still an active church.

141 Mr. Baum opened the hearing to the public.

142 Jessica O'Leary of South Street said the overnight parking in the winter is
143 an issue. There are a lot of people that park on South Street and in the winter the
144 dozen spaces at Bow Street are always taken. The pictures were not taken in the
145 wintertime.

146 Mr. Baum brought the discussion back to the Board.

147 Ms. Davies said regarding Ms. Pennell's concerns that town staff is not
148 considering the parking for the various upcoming projects, her [Ms. Davies']
149 conversation with Dave Sharples indicates that they're on top of it and are
150 prepared to do some modifications such as adding spaces for winter overnight
151 parking. Mr. Thielbar said it's hard to park in town and we keep adding more
152 residential parking, which is dramatically different than commercial parking. Mr.
153 Baum asked the Board to focus on the criteria rather than general parking issues.
154 Mr. Thielbar said under criteria 1 and 2, we can consider the impact on the
155 community. Downtown residential parking does not benefit the economy. Mr.
156 Baum said that's a policy issue.

157
158 Mr. Prior made a motion to approve the application of Exonian Properties LLC for a
159 variance from Article 5, Section 5.6.6 for relief to provide no on-site parking where 24
160 spaces are required for the proposed residential development at 43 Front Street. Mr.
161 Prior seconded.

162
163 Mr. Prior went through the variance criteria. 1) The variance will not be contrary to the
164 public interest and 2) The spirit of the ordinance will be observed; yes, it is the
165 responsibility of this Board to treat the application in the same manner as every other
166 application that has come before us. Overnight and winter parking will be tricky, but it's
167 not contrary to the public interest to grant a variance to this residential property. Mr.
168 Thielbar said he disagrees; the additional parking demand will inhibit retail sales and
169 inconvenience other residents who are using those spots. This is a 50% increase in the
170 demand for overnight parking for a single project. Mr. Prior said it's not a 50% increase,
171 it's an additional 20-something spots needed. We don't know what the demand is on
172 those spots. 3) Substantial justice is done; this is a balance between the obvious benefit
173 to the applicant and any detriment to the public. It will be an issue for the project's
174 marketing. We can't quantify a detriment to the public by allowing the off-site parking.
175 Mr. Baum said he wishes we had more information about what the needs are, but from
176 the facts that he's heard tonight he's convinced that the town officials have confidence

177 that the capacity is there or can be added. Mr. Thielbar said the question posed to the
178 town officials isn't what he was concerned with. Increasing the designated winter
179 overnight spots doesn't increase the total number of parking spots. This will be 24
180 additional permanent spots with no commercial benefit to the town. Ms. Davies said
181 mixed-use is vital because it brings people downtown. In Manchester, when they added
182 residential use downtown it made it more lively and safer. Mr. Prior continued with the
183 criteria. 4) The value of surrounding properties will not be diminished; no, we've had no
184 testimony to that effect. 5) Literal enforcement of zoning ordinance will result in an undue
185 hardship; yes, he does believe there would be unnecessary hardship placed on the
186 applicant by requiring them to provide parking, and perhaps make it unfeasibly
187 expensive. They would either not turn this into residential or incur costs that they would
188 not be able to sustain. Mr. Thielbar said he disagrees. It's a significant hardship, but the
189 cost to provide a parking system will pale in comparison to the cost of the project as a
190 whole.

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192 Mr. Baum, Mr. Prior, Ms. Olson-Murphy, and Ms. Davies voted aye, and Mr. Thielbar
193 voted nay. The motion passed 4-1.

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197 B. The application of Steven Ruhm for a variance from Article 5, Section 5.3.1 A. 2.
198 and 5.3.1 A.3. to permit the proposed construction of a detached 22' x 20' garage
199 with less than the required side and rear yard setbacks on the property located at
200 89 Park Street. The subject property is located in the R-2, Single Family
201 Residential zoning district. Tax Map Parcel #63-130. ZBA Case #22-6.

202
203 Caroline Ruhm, the owner, and Brian Frazier, the builder, were present to
204 discuss the application. Ms. Ruhm said we would like more space to put cars out of sight
205 and out of the elements in the winter. The house was built on a non-conforming lot so
206 there is little space for a detached garage. An attached garage would alter the use of the
207 walk-out basement or the porch. The current shed location is the least obstructive space
208 on the property. We are proposing as small a garage as we can. It will have quality
209 roofing and natural siding.

210 Mr. Baum asked if the garage will be closer to the neighbor's property than the
211 existing shed. Mr. Frazier said it's in the same general vicinity. The lot isn't a right angle,
212 so we're asking for a few feet off the property line on that side. Mr. Prior said they're
213 shifting the structure toward Locust Avenue so it doesn't hit the property line as it angles
214 in.

215 Mr. Thielbar asked if they'd talked to their neighbors. Ms. Ruhm said they talked
216 to the neighbors on each side as well as across, and they were all ok with it.

217 Mr. Baum asked if there would be a 20 foot height limit, and Mr. Frazier said yes,
218 it would be 20 feet tall or less.

219 Mr. Baum opened the hearing to the public, but there was no comment. Mr.
220 Baum closed the public session and brought the discussion back to the Board.

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Ms. Davies made a motion to approve the application for a variance from Article 5, Section 5.3.1 A. 2. and 5.3.1 A.3. to permit the proposed construction of a detached 22' x 20' garage with less than the required side and rear yard setbacks on the property located at 89 Park Street as proposed. Mr. Prior seconded. Mr. Baum asked if the Board wished to go through the criteria, but they were comfortable with the application as presented. Mr. Baum, Mr. Prior, Ms. Olson-Murphy, Ms. Davies, and Mr. Thielbar voted aye. The motion passed 5-0.

- C. The application of Ben and Sarah Anderson for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the operation of a Bed & Breakfast use in the existing accessory structure located at 66 Newfields Road. The subject property is located in the RU-Rural zoning district, Tax Map Parcel #24-29. ZBA Case #22-7.

Justin Pasay of DTC Lawyers spoke representing the applicants. Attorney Pasay said he's presented this application before the Board previously. This is a large property on Newfields Road, 5.5 acres in size. It's improved by a single-family dwelling and attached garage, as well as the Word Barn which has its own dedicated electric, heating, and septic. The Word Barn Cultural Arts Center was permitted in 2017, and makes an important contribution to the cultural scene in Exeter. The Word Barn building has a studio apartment in it which was a long-term rental for decades. The Andersons purchased the property in 2013 and used it for that purpose for years, then in 2017 decided to use the Air BnB platform to rent it to short-term renters, because that was more consistent with the Word Barn use. There have been 471 total guests in the Air BnB, mostly couples from nearby States travelling north who would come and patronize local restaurants and shops. The applicants are not aware of any complaints regarding the use of the unit for transient guests. Their accommodations include breakfast, and there is an area for the guests to dine. In December 2020 the town sent a notice that short-term rentals are not an approved use in Exeter and they need relief.

We came to this Board in July of 2021 to permit a bed & breakfast. At that time, Article 2 of the zoning ordinance defined a bed & breakfast as *"The primary dwelling of the owner-operator that provides exclusively for the lodging of transient guests and whose posted rates shall include breakfast; a bed & breakfast shall not be used for any other hospitality or business related uses; a bed & breakfast shall not have more than four rentable rooms and must have a dining area capable of accommodating the number of registered guests."* The Board at that time denied the application on the grounds that the definition required that the bed & breakfast be housed within the primary dwelling unit, and that the proposed use would be an additional business use on the property, which was not permitted. The variance application was also denied, but the first four criteria of the variance were met, which means that this Board saw the proposal as being consistent with the neighborhood, not being a public threat, not compromising surrounding property values, and that it would accomplish substantial justice, but found that the hardship criteria was not met. We filed an appeal, which is still pending in the Superior Court, but in the meantime, we filed a Citizen's Petition warrant article to

265 amend the bed & breakfast definition in the zoning ordinance. It was signed by 1,700
266 people. This proposed ordinance removed the requirement that the proposed bed &
267 breakfast be within the primary dwelling of the property, as well as the prohibition on
268 other hospitality or business-related uses. That proposed ordinance defined a bed &
269 breakfast as *“The primary dwelling of the owner-operator and/or detached accessory*
270 *structure on the same property that provides for the lodging of transient guests and*
271 *whose posted rates shall include breakfast; a bed & breakfast shall not have more than*
272 *four rentable rooms and must have a dining area capable of accommodating the number*
273 *of registered guests.”* The Planning Board voted unanimously to recommend its adoption
274 at Town Meeting, and 84% of the vote was in favor of this petition. We asked the
275 Superior Court to stay the hearing to see if we could now get this approval with the
276 revised ordinance. We do meet the definition of a bed & breakfast as it was changed by
277 the Town Meeting, because it is owned and operated by the Andersons who live on the
278 property, it’s a single unit to lodge transient guests, all living accommodations are
279 included, the rate includes breakfast, and there is a dining area that can accommodate
280 the registered guests.

281 Mr. Baum asked what the Andersons provide for breakfast. Attorney Pasay said
282 honey, eggs, toast, and tea and coffee. Mr. Baum said the old ad for the unit says
283 breakfast is “based on availability”, but Attorney Pasay said there will always be
284 breakfast provided. Ms. Pennell asked where the breakfast will be provided. Attorney
285 Pasay said there’s a kitchen area with a welcome package that includes the food. The
286 dining area is in the studio. Ms. Pennell asked about Meals Tax, and Attorney Pasay
287 said yes, the State imposes an 8.5% Meals Tax on the total rate of the stay, which
288 ultimately trickles into a benefit for the town. Ms. Pennell said she feels that the definition
289 of a bed & breakfast is to go to a separate room where you are served breakfast.
290 Attorney Pasay said Town Meeting was made aware that we were trying to
291 accommodate what we are doing within the definition of a bed & breakfast, and it was
292 universally accepted. This is the rare situation where the ZBA knows what the Planning
293 Board and the Legislative Body wanted when they voted for this ordinance.

294 Attorney Pasay went through the special exception criteria. 1) The use is
295 permitted as a special exception under Article 4, Section 4.2 Schedule I; yes, bed &
296 breakfasts are permitted by special exception in the RU District, and with the
297 amendment to the ordinance we do meet the definition of a bed & breakfast. 2) The use
298 is so designed, located, and proposed to be operated so that the public health, safety,
299 and welfare are protected; yes, the discussion by the Board last summer considered this
300 issue and found unanimously that it met these criteria. This is a minor and reasonable
301 use. It operated as a transient Air BnB for two years without any complaints. The
302 property is very insulated, and the use is indiscernible from the road. There is no public
303 health threat; there are public interest benefits because it will bring business to town and
304 pay the State Rooms & Meals Tax. The petition was signed by 1,700 people, and there
305 is widespread support for the Word Barn and specifically this proposed use. There are
306 unique circumstances to the property, and the use is benign. 3) The proposed use will
307 be compatible with the zoned district and adjoining post-1972 development; yes, nothing
308 about the property’s appearance will change, and it will not alter the character of the

309 neighborhood. The residential use has been in place for decades. This is a less
310 impactful use than other uses that are permitted by special exception. 4) Adequate
311 landscaping and screening are provided; yes, there's a wooded buffer on three sides
312 and there will be no discernable change to the appearance of the property. 5) Adequate
313 offstreet parking and loading is provided, and ingress and egress is provided to provide
314 minimum interference on abutting streets; yes, the regulation requires one additional
315 space for each rented unit, and there is ample space on the property. There are two
316 striped spaces next to the Word Barn. We will go to the DOT to get a driveway permit for
317 the additional use. He described the work done by the applicants recently to get current
318 on the DOT permit, then he resumed the special exception criteria. 6) The use conforms
319 with all applicable regulations of the district; yes, it's compliant with other regulations.
320 We're happy with a condition of approval that requires an amendment with DOT, as well
321 as Mr. Eastman coming out to certify the property. 7) As a condition of special exception
322 approval, the applicant may be required to obtain town plan review and/or Planning
323 Board approval of the site plan; in this case, there are no new structures or changes
324 we're proposing. It's been an existing use for decades. 8) The use shall not adversely
325 affect nearby or abutting property values; yes, the use is indiscernible from the street or
326 any neighboring property. We provided a realtor's letter that it will not negatively affect
327 property values, and will increase this property's value, which will incidentally increase
328 the property values around it. The final two criteria are not applicable to this application.

329 Ms. Pennell asked why they can't turn this into an apartment. Mr. Thielbar said
330 the bands make too much noise. Ms. Pennell said they should have it be a short-term.
331 Mr. Baum said that's what this is getting at, since short-term rentals are not permitted.
332 Ms. Pennell asked how long they rent the room for, and Attorney Pasay said most
333 renters are couples for 2-3 nights. The short-term nature of this use is more compatible
334 with the Word Barn use.

335 Mr. Baum opened the discussion to the public, but there was no comment. Mr.
336 Baum closed the public session and entered into Board discussion.

337 Mr. Thielbar said those who benefit from temporary rentals should recuse
338 themselves, and Mr. Prior now meets the requirements for conversion to a bed &
339 breakfast. Mr. Prior said he [Mr. Prior] is also a property owner, a taxpayer, and many
340 other things. He does have an accessory dwelling unit that is a rental, so if the Board
341 feels he needs to recuse himself, he can do so. Mr. Baum said that is a permitted use.
342 Mr. Prior said anyone with a spare bedroom could run a bed & breakfast out of their
343 house. It doesn't matter that he has an accessory dwelling unit. Mr. Baum said he
344 doesn't think it's a conflict.

345 Mr. Thielbar said the intention of a bed & breakfast was for someone to take
346 guests into their home, serve them a nice meal, and help them become familiar with the
347 area. This is a motel. What they've submitted meets the definition that they've conned
348 the Board of Selectmen into accepting. Mr. Baum objected, saying the applicants did
349 everything they were permitted to do. Mr. Thielbar said he would vote no as a protest,
350 and Mr. Prior warned that doing so could open the Board to challenges.

351 Mr. Baum went through the special exception criteria. 1) The use is permitted as
352 a special exception under Article 4, Section 4.2 Schedule I; yes, it clearly meets this

353 definition. It's a detached accessory structure that provides for lodging of transient
354 guests and includes breakfast. There's no definition of what a breakfast is. It doesn't
355 have more than four rentable rooms, and it does have a dining area capable of
356 accommodating the number of guests. The ordinance doesn't say where the dining area
357 has to be. 2) The use is so designed, located, and proposed to be operated so that the
358 public health, safety, and welfare are protected; yes, it's a single unit on a large property
359 which is buffered from the surrounding properties. There's no evidence from when it was
360 in use that there were issues with it. 3) The proposed use will be compatible with the
361 zoned district and adjoining post-1972 development; yes, a bed & breakfast is permitted
362 by special exception in this zone. It's consistent with the existing use and was operated
363 in this way for several years. 4) Adequate landscaping and screening are provided; yes,
364 it's one unit within the property, which is buffered. 5) Adequate offstreet parking and
365 loading is provided; yes, there appears to be sufficient parking for the Word Barn use,
366 and one unit is not going to tip that. 6) The use conforms with all applicable regulations
367 of the district; yes, but he would like to see a condition of an approval by the DOT for the
368 bed & breakfast use. 7) As a condition of special exception approval, the applicant may
369 be required to obtain town plan review and/or Planning Board approval of the site plan.
370 He doesn't think that's necessary. This property probably should have had a site plan for
371 the Word Barn Use, but that's not related to the use being requested tonight. 8) The use
372 shall not adversely affect nearby or abutting property values; yes, given the buffering
373 discussed, he sees no adverse effect on property values. The final two criteria are not
374 applicable to this application.
375

376 Ms. Davies made a motion to approve the application for a special exception per Article 4,
377 Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the operation of a
378 Bed & Breakfast use in the existing accessory structure located at 66 Newfields Road, with the
379 condition that further review and approval for the bed & breakfast use by the Department of
380 Transportation as well as town Building and the Fire Department to ensure that it meets all
381 applicable local and State standards is required. Mr. Prior seconded. Ms. Davies, Mr. Prior, Mr.
382 Baum, and Ms. Olson-Murphy voted aye, and Mr. Thielbar abstained. The motion passed 4-0-1.

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385 D. The application of The White Apron for a variance from Article 5, Section 5.6.6
386 seeking relief to permit less parking spaces than required for a social hall use on
387 the property located at 1 Franklin Street; and a determination as to whether the
388 "dining/restaurant" use condition imposed by a previous variance granted on said
389 property in 2014 would apply to the Applicant's proposed use. The subject
390 property is located in the C-1, Central Area Commercial and R-2, Single Family
391 Residential zoning districts. Tax Map Parcel #72-71. ZBA Case #22-8.

392
393 Mr. Baum recused himself from this application. He said this is Mr. Merrill's last
394 meeting, and thanked Mr. Merrill for his service as an alternate. Mr. Baum left at this
395 time and Mr. Prior became the acting Chair.

396 The Board took a short break at 9:23 PM, and reconvened at 9:28 PM.

397 Attorney Colby Gamester was present to discuss the application, as well
398 as owners Jay and Elizabeth Curcio and Zach Smith of Winter Holben
399 Architecture and Caitlyn Burke of the Boulos Company. Attorney Gamester is
400 filling in for Attorney Durbin, who was not able to be present.

401 Mr. Prior said there is an issue with one of the applicant's documents: the
402 landowner authorization letter says Rye instead of Exeter. Attorney Gamester
403 said the applicant would be happy to provide an updated letter of authorization to
404 the Board. Mr. Prior said that would be sufficient.

405 Attorney Gamester said the White Apron is a local catering service that
406 has been in business for 20 years. With the approval of this application, they will
407 be able to grow their business. The proposed use would consume the first floor
408 of 1 Franklin Street under the "social hall use" described in the ordinance. It
409 would provide on-site catering, event services, and community events. There
410 was concern in 2014 about the first floor being used as a restaurant, and that a
411 future owner could convert it to a full service restaurant. Conditions were placed
412 on the approval that the restaurant could not operate until 5 PM. The proposed
413 use for the White Apron is a social hall and event space; there will be no
414 restaurant services provided. The application asks that the Board find either that
415 the use is not subject to the restaurant condition, or to amend the approval to
416 remove the restaurant condition.

417 The social hall use is a permitted use in the C1 zoning district, where the
418 majority of the property lies, but a portion of this property sits in the R2 district
419 where social halls are not permitted. This Board has already found that the social
420 hall use is reasonable and consistent with the spirit and intent of the ordinance.
421 Amending the conditions of the approval, or finding that the use is not subject to
422 the restaurant condition, would allow the White Apron to use the entirety of the
423 first floor for a single purpose at scheduled times, unlike a general restaurant with
424 people coming and going.

425 Mr. Prior asked if there would be restrictions on time. Attorney Gamester
426 said we believe the restriction of 5 PM was created because of the owner's use
427 of the first floor as a restaurant, with the comings and goings around lunchtime.
428 We believe that there does not need to be a time restriction around the proposed
429 use.

430 Mr. Thielbar said the restriction on time of service was related to the
431 parking. After 5, the Long Block doesn't need the parking and those spaces
432 would be available to serve the people they would plan to have. Attorney
433 Gamester said the parking easement is 7 AM - 7 PM, so it doesn't match the 5
434 PM restriction. That easement is very well protected for the 11 spaces and the
435 12th overflow spot.

436 Ms. Pennell asked if the catering would be prepared in the kitchen there.
437 Mr. Curcio said we have a kitchen in Dover NH, where we will produce all the
438 food for the first year of operation; after that we intend to produce food for events
439 out of the space.

440 Attorney Gamester said the second part of this request is a variance to
441 allow 31 parking spaces where 33 are required. For the social hall, the ordinance
442 requires 1 parking space for every 200 square feet of floor area, which calls for
443 28 required spaces; there is a 1-bedroom apartment which requires one parking
444 space; and there are two 2-bedroom apartments which each require two spaces,
445 for a total of four. These add up to 33 required by the ordinance. In 2014, the
446 Board chose not to apply the more stringent parking calculations, which would
447 have forced the applicant to treat the entire first floor as a social hall use. Since
448 that application, the bedroom count has gone down from what was proposed at
449 that meeting. There is more available parking on-site today than in 2014.

450 Attorney Gamester went through the variance criteria. 1) The variance will
451 not be contrary to the public interest and 2) The spirit of the ordinance will be
452 observed; yes, the current approved use and the proposed use are virtually one
453 and the same. The de minimis parking deviation is reasonable. The granting of
454 the variance would not alter the essential character of the neighborhood or
455 threaten the public health, safety, or welfare. The occupancy load of the building
456 is currently 197 people, and it would be the same under the White Apron use.
457 Under the current approval, there's no restriction other than the occupancy load
458 placed on the property. It can seat up to 60 people in the restaurant and use
459 other portions of the property up to its occupancy load. Under the proposed use,
460 there is more predictability, as no one is just showing up to dine. The owners will
461 coordinate logistics and planning, including guest parking, with the organizer of
462 each event. 3) Substantial justice is done; yes, there would be no gain to the
463 public by denying the variance relief sought. The granting of the additional relief
464 for the de minimus parking deficiency would have no impact on the public, but
465 there would be a substantial loss to the owner of the property if the relief were
466 denied. It would also create an injustice to the public by not allowing the creation
467 of a singular use through the entire first floor of the property. 4) The value of
468 surrounding properties will not be diminished; yes, the proposed use is not only
469 consistent with the current approved use, it's more straightforward and logical
470 than the current use. There's no evidence that this will have an impact on
471 surrounding properties. 5) Literal enforcement of zoning ordinance will result in
472 an unnecessary hardship; yes, this property is unique in its environment. It is in
473 two zones, and the R2 zone is controlling its use. It was constructed as a social
474 hall. It is suitable for holding private events and functions. There is no fair and
475 substantial relationship between the ordinance and its application to the property.
476 We have received letters of support from 8 Clifford Street and 1-9 Water Street.
477 The letter from the Attorney for the Long Block Condominiums had a correction
478 regarding the number of parking spaces, but we intend to completely honor the
479 easement.

480 Mr. Prior said in 2014, his understanding was that this was envisioned as
481 a private club as part of a larger development. There was the provision that there
482 might be additional dining offered to those who were not residents to this cluster
483 of homes. Attorney Gamester said even if this was a limited use in what a social

484 hall would be, it wouldn't limit the members of the social hall from holding events.
485 He doesn't believe it was limited in the record anywhere to being a private club in
486 order to hold events.

487 Mr. Thielbar asked about the potential number of people who might be in
488 the facility. Mr. Eastman said it would fall under maximum occupancy, which is
489 197. Ms. Davies said the discussion in 2014 was that the members of the private
490 club were in walking distance of the property, which would reduce the need for
491 parking. Mr. Prior said there is a large delta between the 197 occupants and the
492 number of parking spaces required, which is of concern. This owner is doing
493 event planning which would include parking discussions, but they could sell it to
494 someone else. Attorney Gamester said the owners knew there were going to be
495 natural limitations on the property. They will have those conversations with the
496 organizers of each event. Parking planning will be part of running their business.

497 Mr. Prior opened the hearing to the public.

498 Carl Draucker of 18 Franklin Street, an end unit of the condos on Franklin
499 Street, said he was a member of the Bungalow Club, the private club referred to
500 in the 2014 application for the variance. The variance application referred to
501 limited hours of 6 PM to 9 PM, and 100 members of the club, 15 of whom would
502 be owners of the Cottage Townhouses. The approval reduced 6 PM to 5 PM.
503 This request by the White Apron would threaten the public health, safety, and
504 welfare. After the Bungalow Club closed, there were three weddings, the last of
505 which lasted until 11 PM with loud music outside. People who left turned north on
506 Franklin Street, contrary to the one-way direction on that street. Many people
507 who showed up parked on Franklin Street and blocked a portion of his driveway.
508 There's no way to control when and how people come to an event such as a
509 wedding reception. They're going to park on Franklin Street to the extent they
510 can.

511 John Dal Santo, the majority owner of the Long Block, said his lawyer
512 sent a letter which was not properly quoted. Presently there are 31 parking spots
513 on the property, which Long Block may exclusively use 11 from 7 AM to 7 PM
514 pursuant to the parking easement, but also may use 24/7. Mr. Prior asked if there
515 are residents in the Long Block building, and Mr. Dal Santo said yes, and there
516 are also clients who operate there into the evening. Mr. Prior asked if resident
517 cars parked overnight are identifiable to the applicants, and Mr. Dal Santo said
518 no, but he would be supportive of that. In the past, people coming to the events
519 parked in those spaces, and we had them towed.

520 Jessica O'Leary of 15 South Street, behind 1 Franklin, said she agrees
521 that one of the wedding receptions went very late and was loud, and this is a
522 concern for an event space going forward. Customers for businesses in the area
523 park on Franklin and South, and she was blocked in her driveway once by an
524 event. When the Curcios started in 2018, there was an ancillary parking lot at the
525 end of South Street, but now there's a 4 unit building there. If there are people
526 there on the weekend and late at night with loud music, and there's no place to
527 park, that affects her property values.

528 Scott Kuckler of 12 Clifford Street, which abuts the proposed venue via
529 his backyard, said this building would be perfect for this use if it weren't
530 squeezed into this little piece of land in a neighborhood. Regardless of loud
531 music, 200 people talking is a noise on its own. It's a quiet neighborhood. People
532 will park for events, not take a shuttle. There will be a significant impact on his
533 quality of life and the livability of this neighborhood. Other local businesses may
534 fail because of the parking issue.

535 Tom Grimmett of 22 Franklin Street, one of the 7 units of the Squamscott
536 House Condo Association, said he's concerned about a business that's vacant
537 so he would like to see something move in there, but he's also concerned about
538 the parking. Some of the parking spaces illustrated in the application were not
539 applicable; he counts only 13 spots for event parking for 197 attendees. Mr. Prior
540 said the Board has to consider the parking requirements, not the 197 maximum
541 occupants. It's 1 parking spot for each 200 feet of the social hall plus the
542 residences upstairs.

543 Attorney Gamester said regarding Mr. Drauckner's point, there were
544 considerations of the timeline in the 2014 approval, but the Board chose not to
545 create a time limit on the closing end. That said, his clients are not intending to
546 have 11 or 12 o'clock events every night. What's approved now is a 60-seat
547 restaurant and event space. They can run a restaurant but they don't want to. No
548 matter how many spaces are available, parking will need to be managed. Mr.
549 Prior asked if the apartments are occupied. Ms. Curcio said yes.

550 Mr. Drauckner said a restaurant will occupy a space for less time than an
551 event will. Diners will leave after 1 - 2 hours, but an event will last 5 - 6 hours. It
552 will congest our town.

553 Ms. Davies said she's trying to think of a way to include valet and offsite
554 parking as a condition. Attorney Gamester said there are different meanings of
555 valet, it can be managed on-site or off-site. He doesn't believe that the applicants
556 have secured off-site spots, so the shuttle service would likely be from other lots
557 such as park-and-ride lots. Conditions go beyond the idea that the White Apron
558 will be there. The approval could say this applicant or any other owner or lessee
559 must submit a business plan describing their parking strategy. He doesn't think
560 it's possible to bind the applicant to anything that may be out of their control.
561 Everything we're discussing can be done on the property today, but we're trying
562 to be good neighbors and nix the restaurant aspect to it.

563 Mr. Prior said regarding noise and hours of operation, we don't have a
564 noise ordinance in Exeter, we rely on the goodwill of neighbors and abutters. Mr.
565 Eastman said there's a town ordinance related to noise after 11 PM. Attorney
566 Gamester said it's expected that things will be quieting down by that time.

567 Mr. Prior said there's been no consideration of employee parking.
568 Attorney Gamester said that's part of the parking calculations.

569 Mr. Thielbar asked if we could have a limitation of no outside music.
570 Attorney Gamester said the intention is that the music is inside. Mr. Prior said

571 there are outdoor spaces and decks for flow outside. The doors that back up to
572 South Street would be open.

573 Mr. Prior brought the discussion back to the Board. He said there are two
574 requests. The first is for a social hall to be located in the R2 zoning district, which
575 we already approved in 2014, and that's it's not subject to the restaurant/dining
576 conditions that it's a 60-seat restaurant with restricted hours to no earlier than 5
577 PM. The use, not the occupancy capacity of the building, is changing. The
578 wedding receptions held there were perfectly legal, even if unpopular with the
579 neighbors.

580 Ms. Davies said this has the potential to be less or more intrusive, but it's
581 a permitted use in the commercial district. Mr. Prior said the question of parking
582 has to be addressed by the owner of this property and the owners of the Long
583 Block property. Ms. Davies said it is resolved, it's a question of enforcement.
584 They can tow. There's no concrete reason to reject a very similar use.

585 Mr. Prior said of the two options, he prefers to say that the use is not
586 subject to the restrictions on the restaurant use.

587 Ms. Davies made a motion that, regarding the application of The White Apron for a modification
588 to the 2014 variance, we find that the proposed use is not subject to the 2014 dining/restaurant
589 condition regarding hours of operation and limitation on the number of seats, and that the
590 entirety of the first floor be dedicated to a social hall use. Ms. Olson-Murphy seconded. Ms.
591 Davies, Mr. Merrill, Ms. Davies, Mr. Thielbar and Mr. Prior voted aye, and the motion passed 5-
592 0.

593
594
595 Mr. Prior said there is a definitive parking easement with Long Block that
596 runs with the property that was signed by Kathleen Mahoney and witnessed by
597 Mr. Baum (which is why he recused himself). This is a question of enforcement
598 and towing. That said, the relief being sought is very minor. Ms. Davies said she
599 doesn't see any practical way to condition a business plan for offsite parking. Mr.
600 Thielbar said if their customers have a terrible time parking, it will be bad for their
601 reputation. After all the discussions about how there's really not a shortage of
602 parking downtown, she doesn't see how we can deny them for two spaces. Mr.
603 Prior said we should also insist that the 11 PM noise ordinance should be
604 enforced.

605 Ms. Davies went through the criteria for the parking variance. 1) The
606 variance will not be contrary to the public interest and 2) The spirit of the
607 ordinance will be observed; yes, although people have concerns, she doesn't
608 think granting a variance for just two additional spaces threatens the essential
609 character of the neighborhood or threatens the public health, safety, or welfare.
610 3) Substantial justice is done; yes, relief from two required spaces is not, in her
611 opinion, going to harm the general public or individuals. 4) The value of
612 surrounding properties will not be diminished; yes, many of the properties have
613 turned over since this building use was approved, and property values have
614 skyrocketed in this neighborhood. There's no evidence that values will be

615 diminished. 5) Literal enforcement of zoning ordinance will result in an
616 unnecessary hardship; yes, there is a lack of parking in downtown Exeter, and
617 don't have the space to meet the zoning requirements. She does consider that a
618 hardship.
619

620 Ms. Davies made a motion that we approve a variance from Article 5, Section 5.6.6 for the
621 property at 1 Franklin Street seeking relief to permit less parking spaces than required for a
622 social hall use. Mr. Thielbar seconded, but he said we should talk specific numbers.
623

624 Mr. Thielbar made a motion to modify the prior motion to state that there will be 31 spaces
625 where the requirement is 33. Ms. Davies seconded the amendment. The amendment to the
626 motion passed 5-0. The motion was amended to *Ms. Davies made a motion that we approve a*
627 *variance from Article 5, Section 5.6.6 for the property located at 1 Franklin Street, seeking relief*
628 *so that 31 spaces will be provided where the requirement is 33 spaces.]*

629 Ms. Davies, Mr. Prior, Mr. Thielbar, Ms. Olson-Murphy, and Mr. Merrill voted aye, and the
630 amended motion passed 5-0.

631
632

633 Ms. Pennell said regarding the definition of a bed & breakfast, she wanted to have the
634 words "shall have" inserted, ie "a bed & breakfast shall have not more than four rentable rooms
635 and *shall have* a dining area..." Mr. Prior said that this was a Citizen's Petition and not
636 professionally prepared. The language cannot be changed, but we can request that the
637 Planning Board take up the ambiguous language for the next town meeting.
638

639 **II. Other Business**

640 A. Approval of Minutes: March 15, 2022

641 The minutes were tabled until the next meeting.

642 **III. Adjournment**

643

644 Ms. Olson-Murphy moved to adjourn. Ms. Davies seconded. All were in favor and the meeting
645 was adjourned at 11:10 PM.

646

647 Respectfully Submitted,
648 Joanna Bartell
649 Recording Secretary

650

651

652

PATRICIA DUVAL
105 BRENTWOOD ROAD
EXETER, NEW HAMPSHIRE 03833
(603) 234-8838

April 25, 2022

Town of Exeter
Zoning Board of Adjustment
10 Front Street
Exeter, NH 03833

To Whom It May Concern:

This letter serves as my formal request for the permitted use of an accessory dwelling unit to be located at 105 Brentwood Road, Exeter, NH.

With the limited inventory of housing and rental options, this acceptance will help to provide an additional housing option for the community.

This will also aid in defraying not only my tax burden but will also allow me to continue to maintain the property at its current high level of esthetics and quality.

All additional required information is included within the attached application.

Thank you for your time and attention in this matter. Please let me know if you need any further information or have any questions.

Respectfully,



Patricia Duval

Attachment

Town of Exeter
APPLICATION FOR

SPECIAL EXCEPTION

Case Number:	<u>2BA # 22-9</u>
Date Filed:	<u>4/29/22</u>
Application Fee:	\$ <u>100.00</u>
Abutter Fees:	\$ <u>90.00</u>
Legal Notice Fee:	\$ <u>50.00</u>
TOTAL FEES:	\$ <u>240.00</u>
Date Paid:	<u>4/29/22</u> Check # <u>1488</u>

Name of Applicant Patricia DUVAL
(If other than property owner, a letter of authorization will be required from property owner)

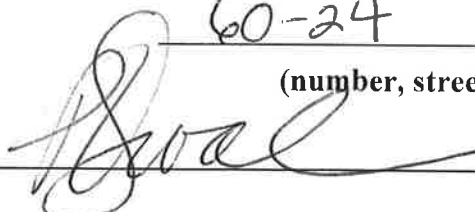
Address 105 Brentwood Road

Telephone Number (603) 234-8838

Property Owner Patricia DUVAL

Location of Property 105 Brentwood Road
60-24

(number, street, zone, map and lot number)

Applicant Signature 

Date _____

*NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if space is inadequate.*

APPLICATION FOR A SPECIAL EXCEPTION

1. Currently existing use and/or situation: _____

Existing single family home with
no garage.

Existing deteriorating shed to be removed.

2. Proposed use and/or situation: _____

Two car garage with an
accessory dwelling unit located
above.

Note: Proposed change of use may result in applicable impact fees.

3. List all maps, plans and other accompanying material submitted with the application:

see attached plans and photos

APPLICATION FOR SPECIAL EXCEPTION:

Special Exceptions:

A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

Special Exceptions, as enumerated in Article 4.2, Schedule I, shall be permitted only upon authorization by the board of adjustment. Such exceptions shall be found by the board of adjustment to comply with the following requirements and other applicable requirements as set forth in this ordinance.

NOTE: Please use a separate piece of paper if additional space is needed to complete the following information:

4. Explain the justification for special exception by addressing the following criteria:

A. That the use is a permitted special exception as set forth in Article 4.2, Schedule I hereof;

Accessory dwelling unit is a permitted special exception.

B. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected;

Yes, it is designed to operate in the health, safety and welfare interest of the public.

C. That the proposed use will be compatible with the zone district and adjoining post 1972 development where it is to be located;

Note: Adjoining principal uses in existence prior to 1972 (generally referred to as grand-fathered uses) that are not permitted uses as listed in 4.1 Schedule I: Permitted Use, shall not be considered in determining the compatibility of an applicant's proposed use.

The accessory dwelling unit will be located in Zone RI

Zone RI is compatible.

D. That adequate landscaping and screening are provided as required herein;

Yes, upon completion Loam and seed will be repaired and replaced.

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;

4+ parking spaces are located off street.

Driveway access remains unchanged.

F. That the use conforms with all applicable regulations governing the district where located, except as may otherwise be determined for large-scale developments;

Zoned R1

G. As a condition of Special Exception approval, the applicant may be required to obtain Town Planner review and/or Planning Board approval of the site plan. Additionally, the Board of Adjustment may require the applicant to obtain Planning Board approval of the site plan prior to rendering a decision on an application for Special Exception.

N/A

H. That the use shall not adversely affect abutting or nearby property values;

This betterment does not adversely affect any abutters. This installation will both enhance the value & appearance of the neighborhood

I. If the application is for a Special Exception for the bulk storage of a material which is, in the opinion of the Planning Board, potentially explosive, than landscaping, per Article 5.20, shall be deemed to include such blast containment, blast dampening or blast channeling features as the Board may require;

N/A

J. If the application is for a use in the “Professional/Tech Park District,” such exception will not:

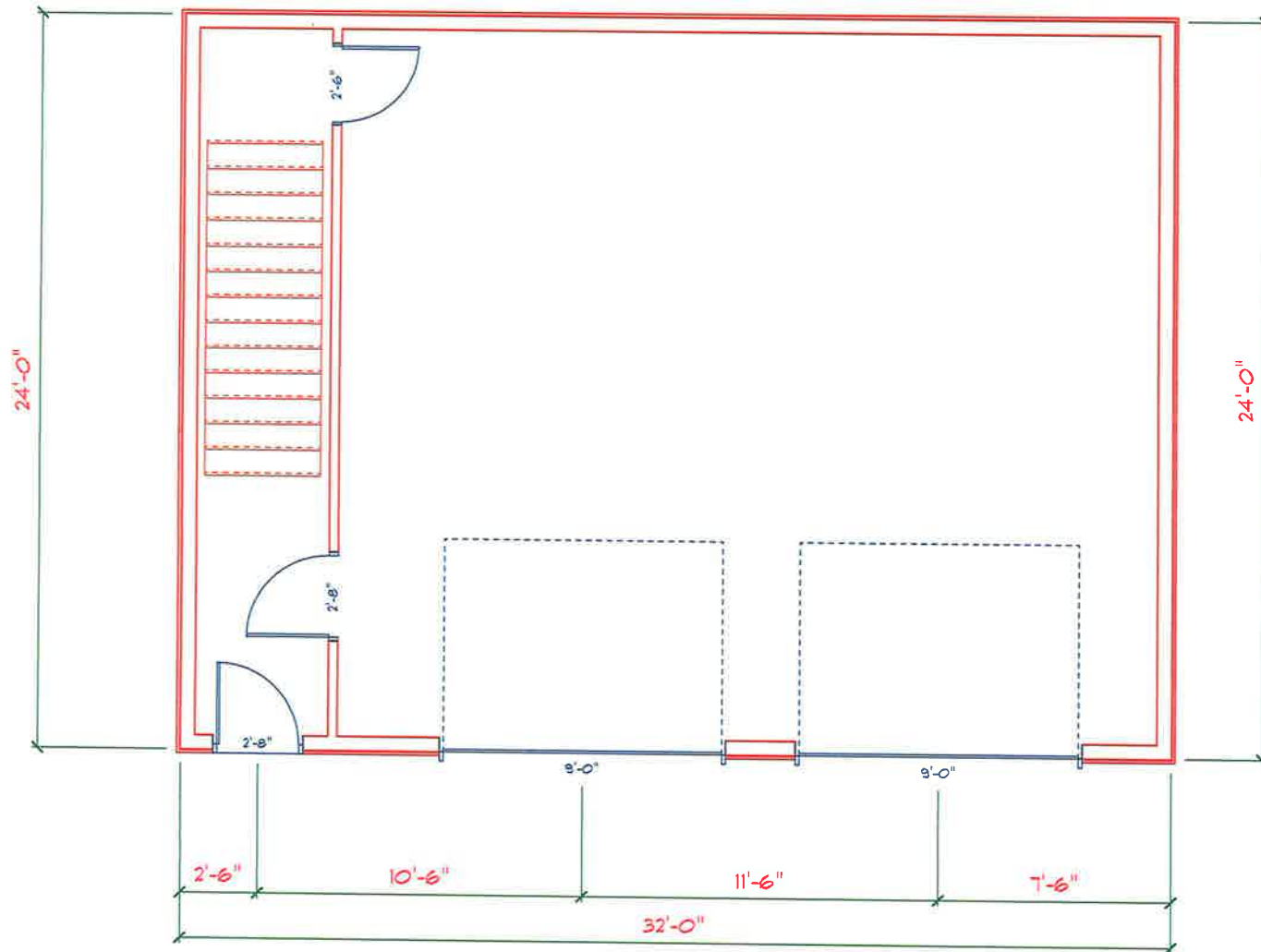
- 1. Affect the water quality of Water Works Pond or other water supplies;**
- 2. Constitute a health hazard to the community;**
- 3. Permit temporary structures;**
- 4. Permit the recycling, disposal or transfer of materials defined as hazardous waste and set forth in Article 5.10.5 of this ordinance;**

N/A

Note: The applicant shall demonstrate that handling, storage and containment of any chemicals or substances defined as “hazardous” will be handled in strict accordance with the regulations and recommendations of the EPA and/or any other governmental body charged with enforcing compliance with any laws or statutes regulating hazardous substances.

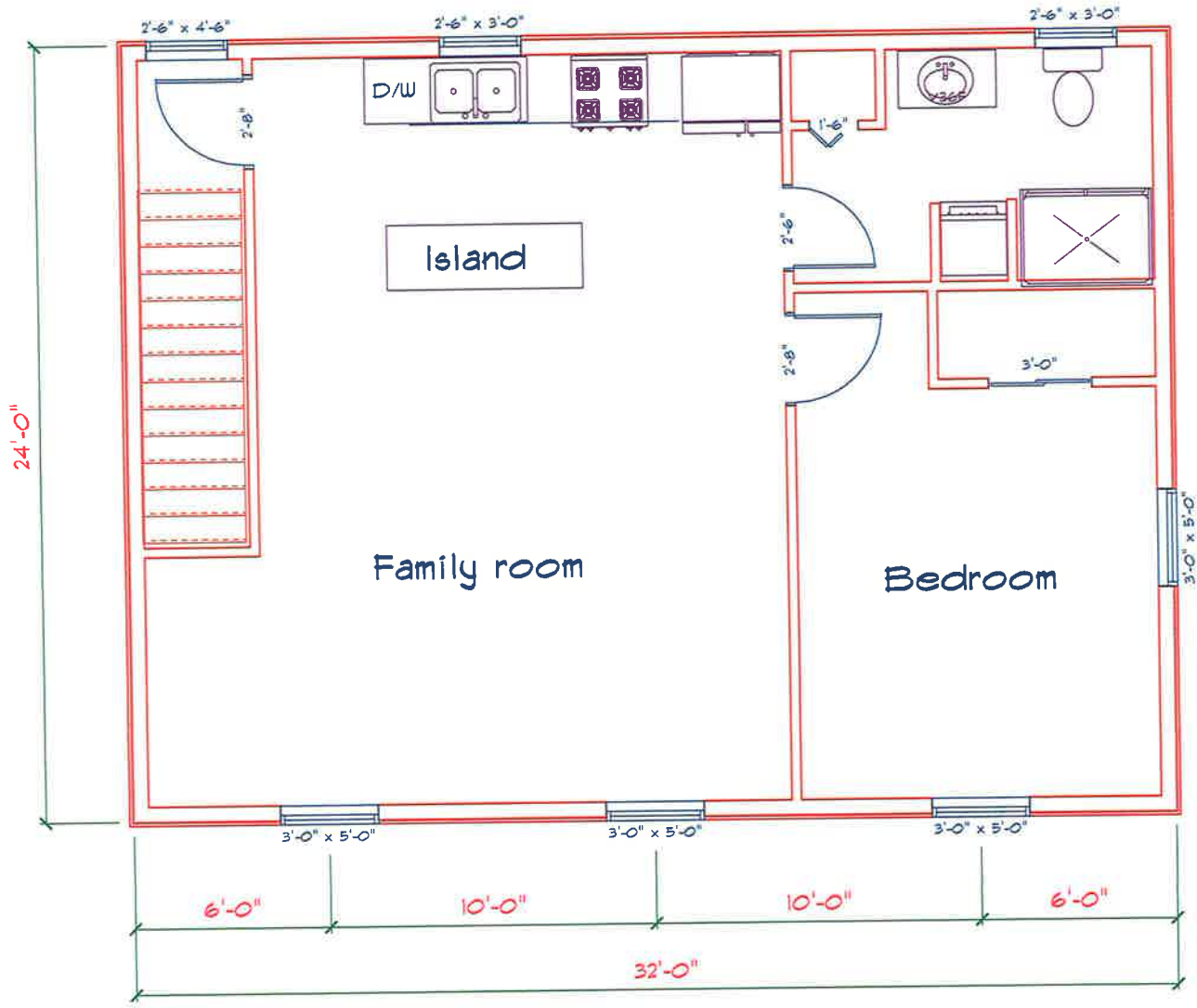
Patty Duval
105 Brentwood Road
Exeter N.H

garage level plan



Patty Duval
105 Brentwood road
Exeter N.H

2nd floor plan





yellow to match existing home.



60-23

60-26

60-25

60-24-1

107

61-25-1

61-24

60-24

105

114

112

60-3

60-2

60-4

60-1

108

61-23



- Parcels
- NH Highways
 - Interstate
 - US Highway
 - State Highway
- Town Boundary
- Abutting Towns
- Streets (Updated Feb 2
- Misc Streams
- Parcel Streams
- Open Water
- Buildings

The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.



Printed on 04/07/2022 at 12:15 PM

Abutter List

TM# 60-24

Patricia Duval
105 Brentwood Road
Exeter, NH 03833

TM# 60-25

Heather & Christopher Jones
97 Brentwood Street
Exeter, NH 03833

TM# 60-25

Leah & Chad Everbeck
~~95 Ferry Street~~ 99 Brentwood Rd.
Hudson, NH 03051

Wetlands
Scientist

Sergio Bonilla
P.O. Box 4028
Portsmouth, NH 03802

TM# 60-1

Tobi & Gert Overmars
108 Brentwood Road
Exeter, NH 03833

TM# 60-2

Michelle Farrar
112 Brentwood Road
Exeter, NH 03833

TM# 60-3

Richard Dolloff
114 Brentwood Road
Exeter, NH 03833

TM# 60-23

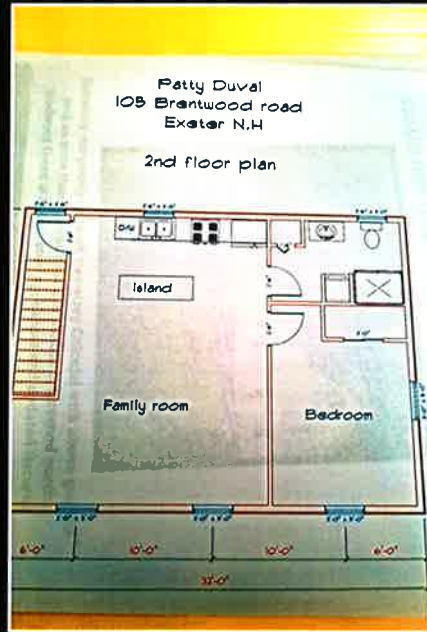
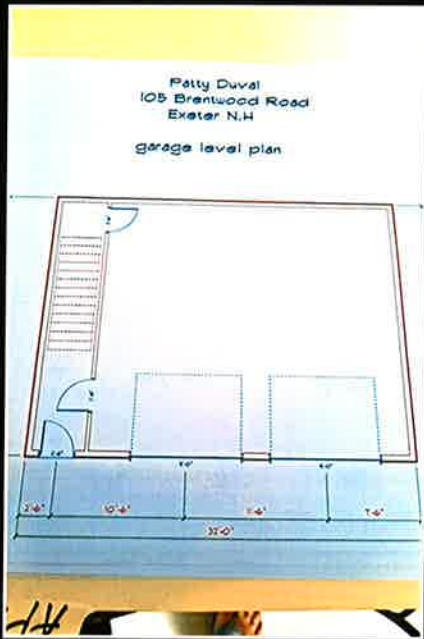
Kerry Wilson
104 Brentwood Road
Exeter, NH 03833

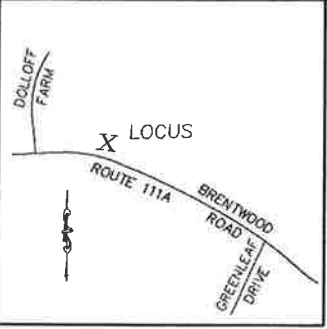
TM# 60-24

Robert & Tracy Martin
11 Tuxbury Lane
Amesbury, MA 01913

LLS

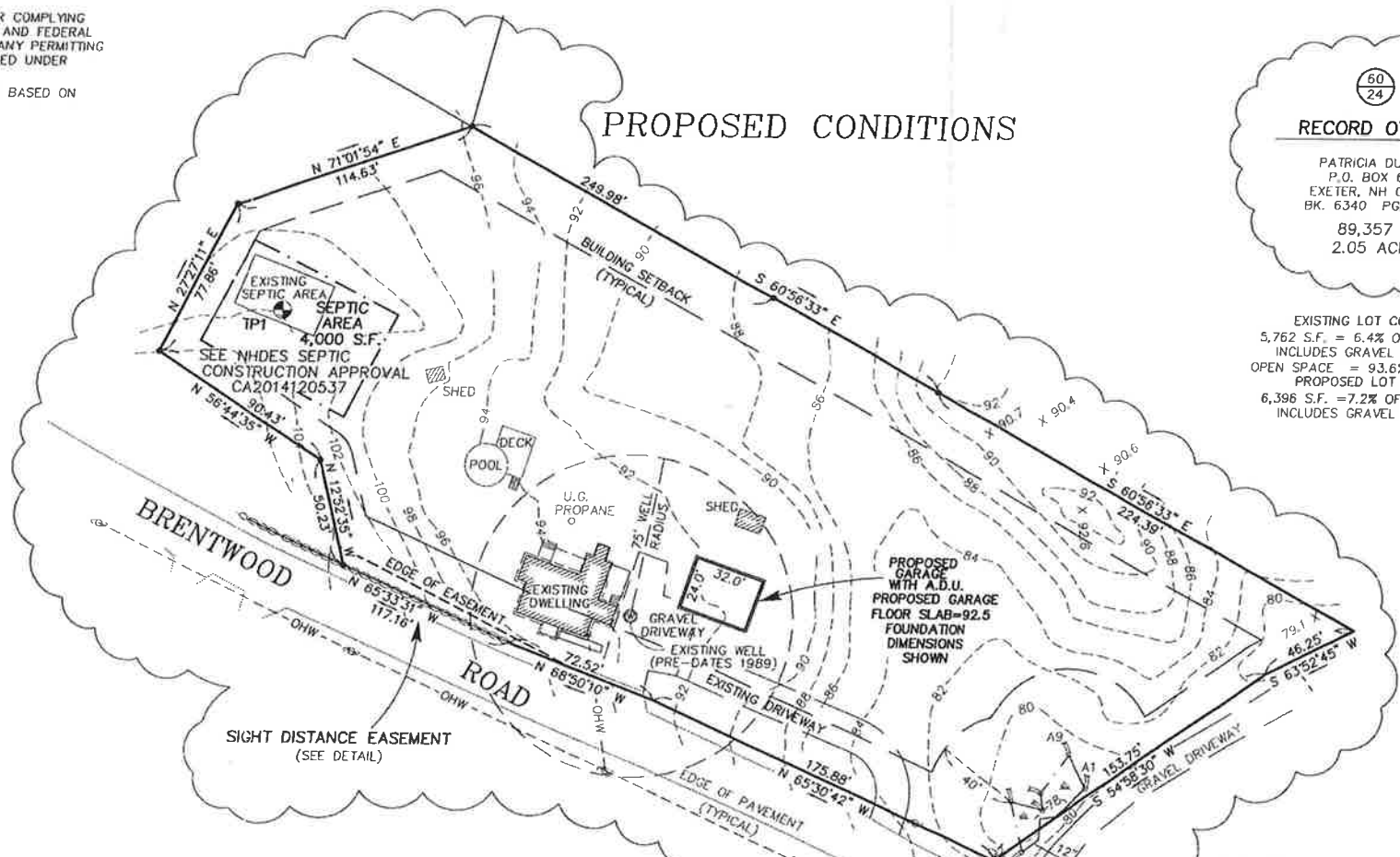
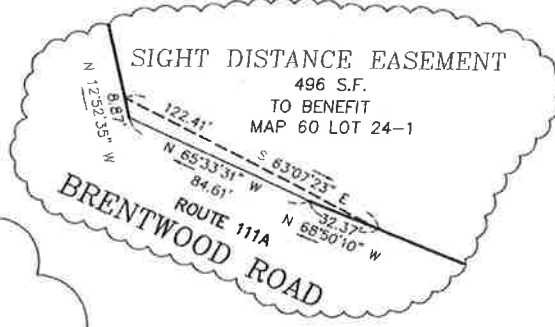
Henry Boyd, P.E.
Millennium Engineering
15 Hampton Road
Exeter, NH 03833





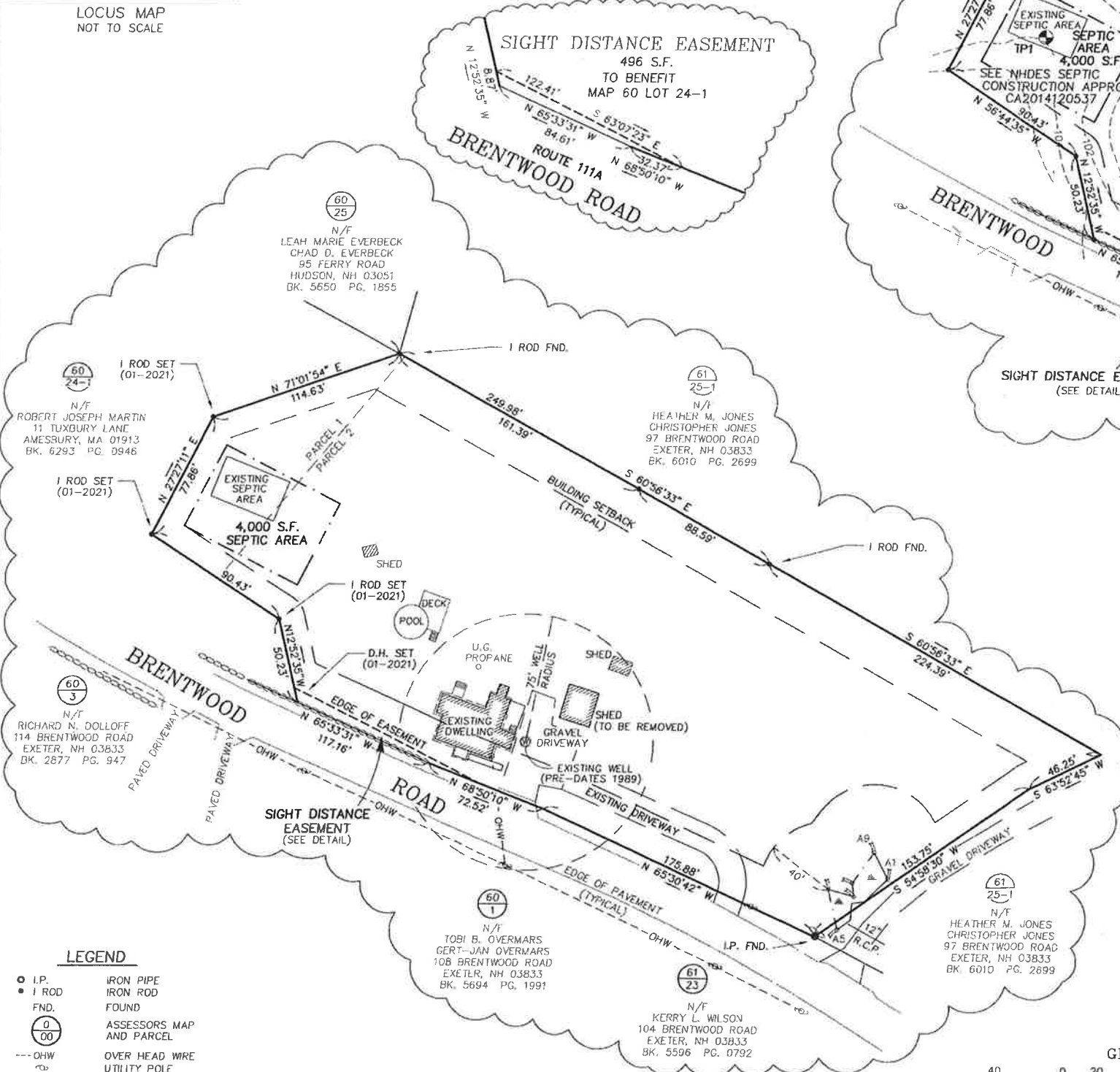
- NOTES:**
- 1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
 - 2) THIS PARCEL DOES NOT LIE WITHIN A FLOOD ZONE. SEE F.I.R.M. COMMUNITY PANEL 33015C 0401 E EFFECTIVE DATE MAY 17, 2005
 - 3) THE LANDOWNER IS RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL WETLANDS REGULATIONS, INCLUDING ANY PERMITTING AND SETBACK REQUIREMENTS REQUIRED UNDER THESE REGULATIONS.
 - 4) THE ELEVATIONS SHOWN HEREON ARE BASED ON NAVD88.

SIGHT DISTANCE EASEMENT DETAIL



RECORD OWNER
 PATRICIA DUVAL
 P.O. BOX 661
 EXETER, NH 03833
 BK. 6340 PG. 2461
 89,357 S.F.
 2.05 ACRES

EXISTING LOT COVERAGE
 5,762 S.F. = 6.4% OF LOT AREA
 INCLUDES GRAVEL DRIVEWAY
 OPEN SPACE = 93.6% OF LOT AREA
 PROPOSED LOT COVERAGE
 6,396 S.F. = 7.2% OF LOT AREA
 INCLUDES GRAVEL DRIVEWAY



ZONING DISTRICT

R-1 LOW DENSITY RESIDENTIAL

MINIMUM REQUIREMENTS

AREA	2 ACRES
LOT WIDTH	150'
LOT DEPTH	150'

BUILDING SETBACKS

FRONT	25'
SIDE	15'
REAR	25'
WETLAND	40'

BUILDING COVERAGE

MAXIMUM	15%
MINIMUM	80%

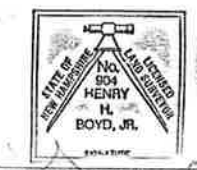
* SEE VARIANCE FOR REDUCED LOT AREA EXETER ZONING BOARD OF ADJUSTMENT CASE #20-10 DATE: AUGUST 18, 2020

WETLANDS DELINEATION BY
 SERGIO BONILLA
 CERTIFIED WETLAND
 SCIENTIST (CWS) #261
 P.O. BOX 4028
 PORTSMOUTH, NH 03802
 IN ACCORDANCE WITH THE REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION (VERSION 2-TR-12-1, JANUARY 2012).

UTILITIES NOTE
 THE LOCATION OF UTILITIES SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY OTHERS, AND WHERE POSSIBLE FROM MEASUREMENTS TAKEN IN THE FIELD, AND ARE FOR INFORMATIONAL PURPOSES ONLY. THE CONTRACTOR SHALL CONTACT "DIGSAFE" AT 1-888-344-7233 AT LEAST 72 HOURS PRIOR TO ANY EXCAVATION TO REQUEST MARKING OF UNDERGROUND UTILITIES. MILLENNIUM ENGINEERING, INC., ASSUMES NO RESPONSIBILITY FOR ANY DAMAGES INCURRED DIRECTLY OR INDIRECTLY RESULTING THEREFROM.

I CERTIFY:
 THAT THIS ACTUAL SURVEY WAS MADE ON THE GROUND BETWEEN SEPTEMBER AND JANUARY OF 2021.

THAT THIS SURVEY CONFORMS TO THE REQUIREMENTS FOR ACCURACY FOR N.H. URBAN SURVEY.



LICENSED LAND SURVEYOR DATE 4-9-2022

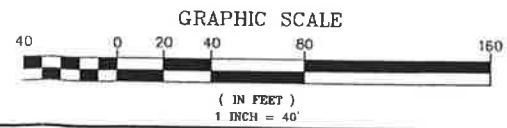
PLAN FOR SPECIAL EXCEPTION IN EXETER, NH

SHOWING
 A PROPOSED GARAGE WITH DETACHED DWELLING UNIT AT
 105 BRENTWOOD ROAD
 (ASSESSORS MAP 60 LOT 24)

RECORD OWNER
 PATRICIA DUVAL
 P.O. BOX 661 EXETER, NH 03833

MILLENNIUM ENGINEERING INC.
 ENGINEERS AND LAND SURVEYORS
 P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833
 PHONE: (603) 778-0528 FAX: (603) 772-0689 WWW.MEI-NH.COM

SCALE: 1"=40'
 DATE: APR. 29, 2022 DRWN. BY: K.I.M.
 CHKD. BY: H.H.B. PROJECT: E202429



- LEGEND**
- I.P. IRON PIPE
 - I ROD IRON ROD
 - FND. FOUND
 - /○ ASSESSORS MAP AND PARCEL
 - OHW OVER HEAD WIRE UTILITY POLE
 - W WETLAND FLAG
 - W WETLAND

EXISTING CONDITIONS

D-29299