



# 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, October 17, 2023 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: PUBLIC HEARINGS**

The application of Douglas W. Johnson and Linda R. Comerchi for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of an existing detached garage into a residential unit. The subject property is located at 10 Highland Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #65-142. ZBA Case #23-13.

The application of 81 Front Street, LLC for a variance from Article 4, Section 4.2 Schedule I and Section 4.3, Schedule II to permit multi-family use in the R-2 zoning district where only single-family and duplex structure are permitted; and a lot area per dwelling unit of 9,801 square feet where 12,000 square feet is required. The subject property is located at 81 Front Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #72-195. ZBA Case #23-14.

The application of 107 Ponemah Road, LLC for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of an existing single-family residence and attached barn into three (3) residential condominium units. The subject property is located at 50 Linden Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel # 82-11. ZBA Case #23-15.

The application of Mario A. Ponte for a variance from Article 5, Section 5.6.6. to permit less parking spaces than required for the residential and retail uses proposed for within the existing building at 85-87 Water Street. The subject property is located in the WC-Waterfront Commercial zoning district. Tax Map Parcel #72-29. ZBA Case #23-16.

### **OTHER BUSINESS:**

- Aaron Jefferson – 165 A Kingston Road, Tax Map Parcel #115-12, ZBA Case #23-12 Request for Re-hearing
- Approval of Minutes: August 15, 2023

### **EXETER ZONING BOARD OF ADJUSTMENT**

*Robert V. Prior, Chairman*

Town of Exeter  
Zoning Board of Adjustment  
August 15, 2023, 7 PM  
Town Offices Nowak Room  
Draft Minutes

I. **Preliminaries**

**Members Present:** Chair Robert Prior, Clerk Theresa Page, Laura Davies, Martha Pennell - Alternate, and Laura Montagno - Alternate. Town Code Enforcement Officer Doug Eastman was also present.

**Members Absent:** Vice-Chair Esther Olson-Murphy, Kevin Baum, Joanne Petito - Alternate

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

I. **New Business**

- A. The application of Aaron Jefferson for a variance from Article 5, Section 5.1.2 B. for a change to an existing non-conforming use to permit a small auto repair operation on the property located at 165A Kingston Road. The subject property is located in the R-1, Low Density Residential zoning district. Tax Map Parcel 115-12. ZBA Case #23-12.

Attorney Sharon Somers of Donohue Tucker and Ciandella spoke for the applicant, Aaron Jefferson, who was also present. Dennis Biery, the current owner of the property, was present as well.

Attorney Somers said this property originally consisted of two parcels which were subdivided in 1993. Caren Vencis owns 115-13, which fronts on Kingston Road and is burdened by an access easement that serves 115-12. Starting in the 1970s, it was used for various commercial activities, including a welding facility, an excavation company, and an equipment repair site. The applicant is seeking to transform the existing non-conforming commercial use in an R-1 Zone into a small-scale auto repair shop. The two closest houses are the Vencis property and the Farmington State subdivision, with buffering in between.

Mr. Prior asked if the driveway with machinery holding up two mailboxes is the access road. Mr. Jefferson said yes. One of the mailboxes is for Caren Vencis and the other is for Dennis Biery.

Attorney Somers went through the variance criteria. 1) The variance will not be contrary to the public interest and 2) The spirit of the ordinance will be observed; yes, there is a long-standing non-conforming use in the area since the 1970s with residential properties abutting. The proposed use does not deviate so drastically from the existing use so as to alter the essential character of the neighborhood. We are simply looking to swap out one non-conforming use for another. The small-scale auto repair facility, which would take place inside the existing building, does not alter the health, safety, or welfare of the

45 neighborhood. Waste oil would be properly disposed of and the hours will be  
46 limited. 3) Substantial justice is done; yes, if the variance is denied, the existing  
47 non-conforming commercial use could continue. The proposed use is small-scale  
48 and will take place within the confines of the building. While there will be traffic on  
49 the access road, it will only occur during the day. If the application is denied, the  
50 applicant will not be able to have his small auto repair shop on the property. 4)  
51 The value of surrounding properties will not be diminished; yes, we do not  
52 believe these would be diminished by granting the variance. Adjacent residential  
53 properties have always been in existence at the same time the non-conforming  
54 use was in existence. The most recent residential lots, which were created in  
55 2002, are the Farmington Estates subdivision, lots 100-2-1 and 100-2-3.  
56 Whatever impact would have been felt, has already been felt. 5) Literal  
57 enforcement of zoning ordinance will result in an undue hardship; yes, we believe  
58 the subject lot is unique relative to other lots because it was part of a larger lot  
59 and was subdivided off in 1993 for the purpose of creating a stand-alone property  
60 for the non-confirming use. The proposed non-conforming auto repair operation  
61 will occur in the same facility. Denial would mean that the current non-conforming  
62 use could continue but the proposed use, which would be of minimal impact,  
63 could not. There is no fair and substantial relationship between the purpose of  
64 the ordinance and its application to this property. The purpose of the ordinance is  
65 to ensure that in changing the non-conforming use, you don't inadvertently harm  
66 abutters or the public. We believe that the proposed use will be quite similar, and  
67 will not be visible, as it's indoors and there is a buffer between this and the  
68 neighboring property. There will be no additional noise. The traffic, which will be  
69 3-4 vehicles a day on average, will use the same access point. The proposed  
70 auto repair use is a reasonable one; it is small-scale, is needed in the area, will  
71 be well away from the road, and the property will not be changing in appearance.  
72 The applicant will make arrangements for the proper disposal of waste oil.

73 Mr. Prior said the word "small" doesn't occur in the zoning regulations, so  
74 it's just an auto repair business. Attorney Somers said it's true that there's no  
75 reference to "small," she's just referencing what the applicant intends to do.

76 Mr. Prior asked if there is water and sewer on the property. Attorney  
77 Somers said the plan for both water and sewer is that water is currently being  
78 provided from Caren Vencis's property. Mr. Jefferson intends to use that water  
79 until such time as he drills a well himself. We think there is a septic system in the  
80 back of the property, and there will be testing done to confirm. If there isn't one,  
81 he will have to go through the process of obtaining and installing a State-  
82 approved septic system.

83 Mr. Prior said this property looks like it's close to an aquifer. Attorney  
84 Somers said it's close to, but not part of, the aquifer protection district. Mr. Prior  
85 asked if it's within setbacks from the aquifer. Attorney Somers said she believes  
86 so. If the septic had to be built, that would be taken into account when the septic  
87 is designed and installed. Mr. Prior said that's not in the Board's purview.

88 Mr. Prior asked if there's a plan to put up a sign. That would be an impact  
89 to the appearance of the neighborhood. Mr. Jefferson said there's a post out front  
90 that used to have a sign on it. He would like to put one out there, and would  
91 apply for a permit for it. Mr. Prior said a large sign is allowed according to the  
92 regulations. Ms. Davies said the applicant doesn't own the land with the frontage  
93 on the road. Is there a right in the right of way to locate a business sign? Mr.  
94 Jefferson said he's spoken with the owner about putting in a small sign on the  
95 existing post.

96 Ms. Montagno asked when the welding company went out of business.  
97 Mr. Jefferson said in 2016. Ms. Montagno said the oil would be managed, but  
98 what about other fluids handled in an auto shop? Mr. Jefferson said he would  
99 work with a recycling company. Ms. Montagno said the driveway is gravel, will it  
100 remain gravel? Mr. Jefferson said yes. Ms. Montagno asked how he would deal  
101 with vehicles on the driveway leaking fluids into the ground. Mr. Jefferson said if  
102 needed, he could put something else down. Most vehicles would be coming right  
103 into the shop and leaving. Ms. Montagno asked if there is proper drainage in the  
104 building for cars that may be leaking. Mr. Jefferson said "Speedy Dry" absorbs  
105 that material and goes into a dumpster to be disposed of. Ms. Montagno asked if  
106 the building is air conditioned, and Mr. Jefferson said it would be. Ms. Montagno  
107 said having the doors closed will help with noise.

108 Ms. Page asked what kind of vehicles would be coming in and out. Mr.  
109 Jefferson said maybe a tow truck here and there. There would be smaller  
110 vehicles that are CDL rated. He would give his waste oil to a guy who has a  
111 waste oil furnace. The antifreeze would be handled by a small box truck, which  
112 houses about six 55-gallon drums. Ms. Davies asked if it would beep when it  
113 backed up, and Mr. Jefferson said he didn't know. His output would probably be  
114 about three 55-gallon drums a year.

115 Ms. Page asked how the expected clients would compare to the  
116 landscape company there now. Mr. Jefferson said he hasn't seen much going in  
117 and out. Attorney Somers said the amount of traffic has fluctuated over the years  
118 in the whole spectrum of non-conforming use. What we're proposing wouldn't be  
119 altering that. Ms. Page said this would be the first time clients would be coming  
120 onto the property. Attorney Somers said the welding shop would have had  
121 customers coming onto the property.

122 Ms. Pennell said she's concerned about the right of way. Will it be wide  
123 enough to accommodate the traffic? Attorney Somers said it's a deeded right of  
124 way that has serviced the property for years. It's wide and sturdy enough to  
125 accommodate equipment. Mr. Jefferson said there was an excavation business  
126 where the owner moved excavators on it that were of substantial size without a  
127 problem. Ms. Pennell asked if the right of way ends at his property, and Attorney  
128 Somers says yes. Ms. Davies said the right of way appears to be wide. Mr.  
129 Jefferson said Mr. Biery told him it's approximately 50 feet wide. Attorney Somers  
130 said the deed from 1993 proposed a 50 foot right of way, so if the current owner

131 says it's about 50 feet she's going to go with that. Ms. Page asked how big the lot  
132 is, and Mr. Jefferson said 4.4 acres.

133 Ms. Davies asked if the non-conforming use has been continuous enough  
134 to satisfy the requirement. Attorney Somers said we discussed that with the  
135 Zoning Officer and she believes the answer is yes. Ms. Davies asked if the  
136 structures are non-conforming due to encroaching on setbacks. Mr. Eastman  
137 said he's not sure that would matter. Since the footprint of the building is not  
138 expanding or changing, it would be grandfathered. Mr. Eastman added that with  
139 a change in use in a State right of way, he believes that the State of NH would  
140 have to approve any change of use with a driveway permit. Attorney Somers said  
141 she doesn't think that's the case, since it's an easement over someone else's  
142 property, but it's something we'll check into. It's not within the purview of this  
143 Board. Mr. Eastman said State approval was a condition of Board approval on  
144 another project. Attorney Somers said if the Board made a condition of approval  
145 that we would obtain a curb cut if needed for change of use at the State level, we  
146 would be amenable to that. Ms. Davies said it would be wise to run it past the  
147 District Office at DOT.

148 Ms. Davies asked if the building housing the repairs is the taller barn-like  
149 structure or the narrow lower structure which looks like a coop. Mr. Jefferson said  
150 he has no plans to store anything in the long building. He would stay in the  
151 confines of the two-toned roof building.

152 Ms. Davies said usually permeable surfaces are a good thing, but not  
153 when you're dealing with vehicles and outdoor storage. Mr. Jefferson said he  
154 would keep all waste inside the building. The only thing outside would be a  
155 sealed dumpster, and there's already one on the property.

156 Mr. Prior opened the hearing to public comment.

157 Caren Vencis of 163 Kingston Road said when she bought her property,  
158 her husband opened a glass business and put a sign on Kingston Road. It had to  
159 be a certain length and height. The welding shop had a huge sign in a tree. Ms.  
160 Davies asked if she is okay with having a sign there, and Ms. Vencis said yes.  
161 Mr. Prior said as a home occupation, you were allowed 4 square feet of sign.  
162 This would be a legal non-conforming use, so the sign allowed is 24 square feet.  
163 Ms. Vencis said she wouldn't want that. Ms. Montagno asked if the glass shop is  
164 no longer in business. Ms. Vencis said her husband passed away in 2011 and  
165 she took down the sign. Ms. Montagno asked if there has been no traffic in the  
166 area from her business since the mid-2000s, and Ms. Vencis said that's correct.

167 Chuck Nelson of 165 Kingston Road said he's concerned about the  
168 aquifer, and would like to see a map of where the aquifer extends to. Mr. Prior  
169 said the aquifer is not part of the application because it does not touch the  
170 applicant's property. Mr. Prior said he looked at an aquifer map and it looks like  
171 there's a wetland between two of the properties off of Farmington, but that's not  
172 contiguous with these properties. Mr. Nelson asked if there will be lifts in the  
173 building; if there are three lifts, that might not be small.

174 Tom Conklin of 1 Farmington Road said he received a certified letter six  
175 days ago and was immediately upset with the proposal. 3-4 cars a day may  
176 sound like a small-scale operation, but we're talking about a 24 foot sign. If you  
177 did 8 cars you'd make more money. He's concerned about the traffic. The access  
178 road is at the bottom of a hill off of Route 111 where people go 45 miles an hour.  
179 He's concerned about turn-arounds on Farmington Road if people miss the turn.  
180 He doesn't know about the aquifer, but he has a pond on his property with a lot of  
181 standing water. He thinks there would be leaching onto surrounding properties  
182 through a shared aquifer. The applicant says there's an existing well that will be  
183 tested - who will test it? What will happen? What guarantees does he have, when  
184 he and his family will be consuming this water? Regarding the noise ordinance,  
185 people are going to hang out outside. Cars will be parked on the property. The  
186 gravel is permeable and the fluids will go right through. Mr. Conklin asked if Ms.  
187 Vencis is the fee recipient for the sign. Ms. Davies said she's the fee simple  
188 owner of the land where a sign would potentially go. She has property rights, but  
189 the right of way is a property right that's been transferred to the property out  
190 back. It doesn't necessarily include a business sign, but she could allow that. Mr.  
191 Eastman clarified that she cannot allow his sign on her property. Only the town of  
192 Exeter could allow that sign for her own use, but not for the applicant's use.  
193 There will be a sign, but it will have to be on his property. It also can't be on the  
194 State right of way.

195 Zach Fierman of 161 Kingston Road said he and his wife have two young  
196 kids who play on that road, so turn-arounds would be a problem. The noise and  
197 water pollution are also concerns. Mr. Prior asked if during the time he's been at  
198 161, has noise been an issue with the existing business? Mr. Fierman said no.  
199 There's almost never any traffic, except for the neighbors themselves going in  
200 and out. Ms. Page asked how long they've lived at the property, and Mr. Fierman  
201 said since December 22, 2022.

202 Dave Kessland of 3 Farmington Road, who is not an abutter, said he has  
203 similar concerns as his neighbors. What do we do in terms of risk mitigation? If a  
204 car leaks something, what recourse do we have? Mr. Prior said that's not a  
205 question the Board can answer.

206 Attorney Somers said her client went around to try to talk to everybody  
207 and have a discussion. The aquifer is not on this property. Ms. Davies asked if  
208 it's not in the area of the improvements or not on the lot at all, and Attorney  
209 Somers said not on the lot. It's probably close, but not on the property. She  
210 doesn't think there would be turnarounds on Farmington Road, based on current  
211 business activity. Ms. Davies asked if Farmington Road is public or private. Mr.  
212 Eastman said it's public.

213 Attorney Somers said with regard to the guarantees that have been asked  
214 for, this is an existing non-conforming commercial use. There's no guarantee that  
215 there wouldn't be a leak with the existing non-conforming use. The applicant will  
216 be doing work inside the building. The Board could impose reasonable conditions

217 that the cars would stay inside the building. He has a regime in place to remove  
218 these waste materials.

219 Mr. Prior said he acknowledges that the applicant can't control if people  
220 turn around. The point is there will be more traffic and more retail than there has  
221 been recently. When the retail business existed, Farmington Road did not exist.  
222 This is the nearest place that one can turn around. Attorney Somers said given  
223 the information we've heard tonight, the applicant would have to invest in having  
224 a good social media presence and website with clear directions to the property to  
225 avoid turn-arounds.

226 Mr. Jefferson said he anticipates putting a couple lifts inside the building.  
227 There are two doors so probably two lifts. They would be post lifts that require six  
228 inches of concrete with four inch bolts and posts that go up. Mr. Prior said he's  
229 planning to make a significant investment in the business, but it's going to be a  
230 small scale operation? Mr. Jefferson said he can buy two used Rotary brand lifts  
231 for \$3,000 each, so not a lot of money. Ms. Davies said there will be cars parked  
232 outside at some point. Would he consider paving a limited number of parking  
233 spaces? Mr. Jefferson said yes, he could do that. He was considering it anyway  
234 as gravel is not easy to plow. Ms. Davies asked if he would entertain that as a  
235 condition of approval, and Mr. Jefferson said yes. Ms. Montagno asked about  
236 containment of runoff. Ms. Davies said she's never seen any vehicle repair  
237 facility have that; only a fueling facility would have that kind of barrier around it.  
238 That might be a higher burden than is typical. Mr. Jefferson said if any vehicle  
239 came in leaking antifreeze or oil, he would get that right inside the building. He  
240 doesn't want to clean up a mess outside.

241 Mr. Prior said regarding the question of whether it's a re-zoning or not, it's  
242 a change to an existing non-conforming use which is significant enough to come  
243 before the ZBA, but not a re-zoning. When it comes to scale, we cannot restrict  
244 or enforce a restriction on the scale of the business or the number of vehicles  
245 stored on the property. Approving this as an auto repair operation allows this to  
246 go forward as a full-scale auto activity. Ms. Davies said the property could be re-  
247 marketed as an auto repair facility.

248 Ms. Montagno asked if this could go back to an R-1 use. Mr. Prior said  
249 the highest and best use of this property would be residential. It could support a  
250 subdivision. Ms. Davies said the non-conforming use is established and it's a  
251 property right. Ms. Page said under the zoning ordinance, any change to the non-  
252 conforming use is permitted only by variance. Is this change so significant that  
253 we're going against the spirit of the ordinance, or is it minimal enough that the  
254 spirit of the ordinance would still be met? Mr. Prior said we're going through the  
255 same variance criteria either way. In his opinion, there's significant enough of a  
256 change to the existing non-conforming use to require a variance from the  
257 underlying R-1 district.

258 Ms. Montagno asked how these types of environmental issues are  
259 enforced and monitored. Mr. Eastman said if there were a spill or incident, it  
260 would have to be self-reported. The town would probably get DES involved on

261 how to clean it up. He's never been involved in anything like that. Mr. Prior asked  
262 if it's the honor system to report it, and Mr. Eastman said yes, or if someone else  
263 detected something. Ms. Davies said DES will inspect properties if there are  
264 concerns.

265 Ms. Pennell said if we approve the variance, it goes with the land. He  
266 could sell it to someone who wanted to make a larger-scale auto repair business.  
267 Also, how is the public going to find this? She went there and had trouble finding  
268 the right of way. There would have to be some kind of signage. Mr. Prior said the  
269 lack of sign is a problem for the applicant, not for the Board. Ms. Montagno said  
270 the lack of signage could impact abutters. Ms. Davies said they would have to  
271 paint their mailbox a bright color with their business name on it, and use social  
272 media to direct people to it.

273 Ms. Davies went through the variance criteria. 1) The variance will not be  
274 contrary to the public interest and 2) The spirit of the ordinance will be observed;  
275 no, there are concerns on this. There might be noise or potential for leakage of  
276 hazardous material that may threaten the public health, safety, and welfare. Mr.  
277 Prior said he thinks we're opening up for a significant change, and he's  
278 concerned that it will change the essential character. Ms. Montagno said going  
279 from storage and personal repair to a full function repair shop is a pretty  
280 significant change to the character. Ms. Davies continued with the criteria. 3)  
281 Substantial justice is done; no, we've heard testimony from people who are  
282 nearby that they have concerns in that regard. 4) The value of surrounding  
283 properties will not be diminished; there was no testimony regarding property  
284 values. If there were a drastic change in scale of the business, it would  
285 potentially be more of a concern to the neighborhood and its property values, but  
286 this is just a change in use. Any expansion of a non-conforming use would have  
287 to come back before the Board. He could not expand the building or clear and  
288 pave land without coming back for more relief. Mr. Eastman said if the building  
289 expanded, he would have a meeting with the owner on whether that was an  
290 expansion of a non-conforming use. Mr. Prior said the scale of the business  
291 could increase without changing the building. 5) Literal enforcement of zoning  
292 ordinance will result in an unnecessary hardship; the hardship here is that the  
293 buildings in use are established, but they are flexible enough that they could be  
294 used consistent with zoning. There's no special aspects to the buildings that are  
295 specific to commercial use buildings. Ms. Page said the acreage of the lot itself  
296 could allow residential use. Ms. Montagno said whoever comes in next could  
297 expand the business.

298 Ms. Davies said she thinks there are concerns on several aspects of the  
299 criteria.

300  
301  
302 Mr. Prior moved to deny the application of Aaron Jefferson for a variance from Article 5, Section  
303 5.1.2 B. for a change to an existing non-conforming use to permit a small auto repair operation  
304 on the property located at 165A Kingston Road, as the Board does not feel that the variance

305 criteria 1, 2, 3, or 5 have been fully met by the application. Ms. Page seconded. Mr. Prior, Ms.  
306 Pennell, Ms. Page, Ms. Montagno, and Ms. Davies voted aye, and the motion to deny passed 5-  
307 0.

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312 **II. Other Business**

313 A. Approval of Minutes: July 18, 2023

314 Ms. Page moved to approve the minutes of July 18, 2023 as presented. Ms. Davies seconded.  
315 Mr. Prior, Ms. Page, Ms. Montagno, and Ms. Davies voted aye. Ms. Pennell did not vote, as she  
316 was not present at the July 18 meeting. The motion passed 4-0.

317

318 **III. Adjournment**

319

320 Mr. Prior adjourned the meeting at 8:33 PM.

321

322 Respectfully Submitted,

323 Joanna Bartell

324 Recording Secretary

325

326

18 September 2023

Mr. Douglas Eastman, Code Enforcement Officer  
Planning and Building Department  
Town of Exeter  
10 Front Street  
Exeter, New Hampshire 03833-3792

Reference: Proposed Renovation and Revitalization Activities  
10 Highland Street  
Tax Map 65 Lot 142

Dear Mr. Eastman:

We are the current owners of the property at 10 Highland Street and are interested in initiating a major renovation and revitalization project to update the existing house, maintaining its current use as a “duplex” with an apartment on each level and retaining the 2 vehicle garage. In addition, we would also plan on modifying the existing detached garage (former barn) converting it into additional living space: which would encompass approximately 1,150 square feet within the existing 40 foot by 26 foot structure while retaining a vehicle garage of approximately 675 square feet.

A complete rehabilitation would include improving the overall energy efficiency of the two structures located on the property, bringing both structures into compliance with current code. This will resolve prior construction deficiencies found within both structures and improve the overall street view and appearance of both structures.

We purchased the property in June 2022 with the intent of renovating both buildings and making Exeter our permanent residence. Since the purchase of the property, we have undertaken a comprehensive approach in evaluating both structures and property by hiring a local Architect (Dave Gleason), hired an Arborist to assess and evaluate the existing 100-year old trees located on the property and engaged in the services of a Landscape Horticulturist to evaluate and plan for improving the overall landscape of the property. In addition, we have conducted numerous inspections of the existing heating system, plumbing system and electrical systems within the primary dwelling and adjacent garage / barn. Lastly, we engaged Jones & Beach Engineers, Inc. to complete an Existing Conditions Plan of the property to include re-staking property boundary corners, determining setbacks, verifying elevations, Abutters and roads and rights-of-ways.

Based on these various surveys and inspections, we have determined that the existing 1899 structure including the additions constructed in the 1920's, 1930's and 1950's, has reached its useful life and is now in need of major revitalization and renovation. In addition, based on the evaluation of the adjacent garage / barn, this structure is currently under-utilized and also in need of renovation and upgrade.

Currently, the primary dwelling is being used as a 2-unit apartment / duplex building. The adjacent garage / barn is currently empty and is not being utilized in any manner. During 2017 and 2018, prior owners of the property sought and were granted approval from both the Town Planning Board (Case #17-35) – Multi-Family Residential Conversion and Zoning Board of Adjustment (Case #17-11) – Special Exception Request to construct up to 4-residential units on the property. From our understanding, this proposed use was never fully executed, and this approval lapsed in 2021.

After discussions with Mr. Gleason, we have made the decision to undertake the approach of a two-phased path in revitalizing the two structures located at 10 Highland St.

- Phase 1 would be the renovation, revitalization, and conversion of the adjacent garage / barn into an additional living space of approximately 1,150 square feet in a two-floor open loft style, utilizing the west end of the 1<sup>st</sup> floor and a portion a newly added 2<sup>nd</sup> floor. The 1<sup>st</sup> floor east end of the building would remain an enclosed vehicle garage of approximately 675 square feet. All renovation and revitalization activities of the additional living space and vehicle garage will remain within the current and existing footprint of the building that is approximately 40 feet by 26 feet in dimension.
- Phase 2 would be the renovation and revitalization of the original 1899 dwelling and additions, again with all activities remaining within the current and existing footprint of the building. This building would also remain a 2-unit duplex with an attached 2-vehicle garage. One unit / floor will be approximately 1,450 square feet, the other unit / floor will be approximately 2,000 square feet with the attached vehicle garage of approximately 600 square feet accessible to both units.

As part of the revitalization of the property, we intend to remove the majority of the existing and failing asphalt that now covers the street view of the property and replace and landscape this hardscape, asphalt area with native flowering plants. In addition, we intend to greatly enhance the overall energy efficiency of both revitalized structures with the introduction of newer building practices and techniques.

Lastly, as part of the property renovation and revitalization, we intend to keep the existing driveway access to the property in the current location now found on Highland Street and also include on the property an additional exterior, off street 2-vehicle parking locations and sufficient space for snow storage that will not impact the adjoining neighbors or the Town.

At the end of this 2-phased approach, we intend to have a property that enhances the neighborhood, with the exterior façade of the primary structure in the style of a late 1800's New England Connected Farmhouse with attached garage and the adjoining building in the style of a cedar shingle sided barn that contains the additional living space with the attached garage.

Enclosed with this letter, please find a copy of the completed package for the Zoning Board of Adjustment – Application for Special Exception.

We look forward to discussing our plans with you for the revitalization of 10 Highland Street.

Sincerely yours,

Douglas W. Johnson  
13940 Jarvi Dr.  
Anchorage, AK 99515-3940

Linda R. Comerci

[lindoug@ptialaska.net](mailto:lindoug@ptialaska.net)

(907) 276-6086 – home  
(907) 382-0753 – cell/text

Encs.

cc: Dave Gleason, Gleason Architects

Town of Exeter  
APPLICATION FOR

# SPECIAL EXCEPTION

Case Number:	_____
Date Filed:	_____
Application Fee:	\$ _____
Abutter Fees:	\$ _____
Legal Notice Fee:	\$ _____
TOTAL FEES:	\$ _____
Date Paid	_____ Check # _____

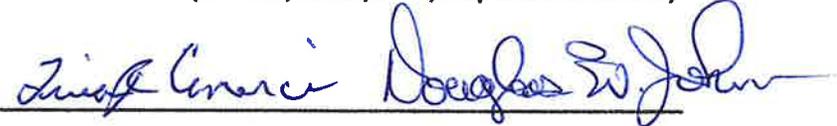
**Name of Applicant:** Linda R. Comerci / Douglas W. Johnson  
(if other than property owner, a letter of authorization will be required from property owner)

**Address:** 13940 Jarvi Dr., Anchorage, Alaska 99515-3940

**Telephone Number:** (907) 276-6086 (home) - (907) 382-0753 (cell/text)

**Property Owner:** Linda R. Comerci / Douglas W. Johnson

**Location of Property:** 10 Highland Street. R-2. Map 65 Lot 142  
(number, street, zone, map and lot number)

**Applicant Signature** 

**Date:** 20 SEPTEMBER 2023

*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:** 10 Highland Street was originally built in 1899, as a single family home, in the style of a New England Connected Farmhouse. Based on research conducted by the current owners with assistance from the Town Building Department and the Exeter Historical Society, it appears that over time, three additions were added on to the original structure including a two-car attached garage. These additions were approximately added to the original structure during the 1920's, the 1930's and the 1950's. In addition, a separate, stand-alone barn / garage building of unknown origin was built adjacent to and immediately to the north of the existing 1899 house.

In 2018, previous owners sought and were granted approval for a Multi-Family Residential Conversion (Planning Board Case #17-35 and Zoning Board of Adjustment Case #17-11) to convert the existing property into a 3 or 4 family complex, using part or all of the existing house, garage and/or barn. This prior approval has lapsed, the prior owners only converted the existing single family home into a 2-unit duplex. No other changes, modifications or additions were completed on the structures or the property. The building is currently used as a two-unit duplex apartment building.

**2. Proposed use and/or situation:** The current owners wish to undertake a two-phase approach and renovate and rehabilitate both existing structures, bring both structures into current building codes, markedly improve the energy efficiency of both structures, resolve structural issues within the existing original 1899 house and additions and as part of the renovation, convert the adjacent garage / barn into additional living space while keeping existing garage space for vehicle storage and remaining within the existing foot print of both buildings.

Phase 1 – Renovate the existing garage / barn structure, located immediately north of the existing 2-story 1899 house, include within the garage / barn structure, convert a portion of the overall footprint into additional living area of approximately 1,150 square feet in a loft style utilizing both the west portion of the 1<sup>st</sup> floor and adding a 2<sup>nd</sup> floor while retaining approximately 676 square feet of the east end of the 1<sup>st</sup> floor as a vehicle garage. The renovated structure will remain within the footprint of the existing 40 foot by 26 foot area now occupied by the existing garage / barn. The intent is to utilize the existing structure while improving the overall energy efficiency of this building with an overall height of completed structure that does not impact the visual space of the adjoining properties located to the north nor impact the visual appearance viewed from the south.

Phase 2 – Renovate the existing primary original 1899 residence to bring this dwelling into current code compliance, upgrade the existing energy efficiency of the building, and resolve existing construction concerns with more up to date construction practices and procedures. The renovation of the current structure will stay within the existing footprint and will retain an exterior façade that will be contemporary with the surrounding properties on Highland Street and adjacent to the Historical District.

The current owners intend to occupy one of the units, making Exeter their permanent residence.

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

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

- A. Existing Conditions Plan – Jones & Beach Engineers, Inc; dated 1 June 2023.
- B. Tax Map 65 showing Lot 142.
- C. Abutter's List and Map.
- D. Abutter's Mailing List and Labels.

## **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 permitted special exception as set forth in Article 4.2, Schedule I hereof;**

Article 4.2, Schedule I sets forth the permitted special exceptions for parcels located in R-2; Single Family Residential Districts. These permitted special exceptions include Two-Family homes, residential conversions, and accessory dwelling units. 10 Highland St is currently a permitted Two-Family home with an additional barn / garage structure with sufficient allowable existing square footage that could be converted into additional living space of approximately 1,150 square feet while retaining approximately 676 square feet of enclosed garage space. Therefore, the allowable addition of the converted additional living space is consistent with the requirements set forth within the stipulations of Article 4.2, Schedule I.

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

At completion of the proposed renovation of 10 Highland Street, both buildings will be substantially upgraded in energy efficiency, both buildings will be brought up to current applicable construction code requirements and the current property landscaping will be upgraded and improved with the removal of the majority of the substandard asphalt pad that now occupies the major viewshed as currently observed from Highland Street. The owner's intent of the overall project is to upgrade the existing structures for much needed life / safety needs, improve the overall exterior façade of the structures to bring them into conformity with the surrounding properties and remain compatible to the nearby historical district.

**C. That the proposed use will be compatible with the zone district and the 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 proposed use of the property located at 10 Highland Street after renovation and construction will remain compatible with the stipulations currently set forth for an R-2, Single-Family residential property. The intent of the current owners is to improve the overall aesthetic appearance to the property that is currently a distraction to the adjoining property owners and dwelling structures. In addition, the current owners intend to bring the current structures into applicable code compliance, greatly improve the overall energy efficiency of both structures and correct existing life / safety issues currently found.

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

The current owners of 10 Highland Street have already engaged in the services of a licensed arborist to evaluate the existing 100-year old trees that are located on the property and to begin a comprehensive program to improve the overall quality and health of these trees. As of 2022, the evaluation of the arborist was completed, along with the initial trimming of trees to remove life / safety hazards from overhanging tree limbs that overhung the existing structures and yards. In addition, the current owners have engaged the services of a landscape horticulturist to design the landscaping and screening of the property to allow for the improved overall visual appeal of the property. Included in the proposed landscape improvements to the property is the removal of the majority of the asphalt that currently detracts from the overall visual appearance of the property from Highland Street and replace the asphalt with native species flowering plants.

**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;**

Post renovation and construction, there will be parking for 4 vehicles which will be provided under-cover and within the confines of the two garage portions of the two renovated buildings. In addition, 2 exterior parking spaces for vehicles will be located on the property adjacent to the two garage structures. Ingress and egress to the property will remain with no changes to the existing, current property single entry / exit point located on Highland Street. In addition, adequate space for snow storage will be provided within the confines of the property so as not to impact adjacent property owners or the Town.

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

The proposed use of the property located at 10 Highland Street will conform with all applicable governing district regulations for an R-2 determination. In addition, the current owners of the property are aware that 10 Highland Street lies in close proximity to the Historical District. The intent of the renovation and revitalization project will keep the exterior façade of the 1899 structure and additions in the motif of a New England Connected Farmhouse. The renovation and conversion of the adjacent garage / barn into the additional living space and garage will also remain similar to the cedar shingle sided building that currently is in place.

**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.**

The current owners of the property located at 10 Highland Street are fully aware that we may be required to obtain a review of the proposed renovation and construction activities and/or Planning Board approval of the proposed site plan. It should be noted that this property was prior approved in 2018 for the development of a maximum of 4 dwelling units. This proposed request for Special Exception is for the addition of one additional living space unit to occupy the existing footprint of the existing garage / barn located immediately adjacent to the original 1899 constructed house and additions. There is no proposed expansion of the existing footprint of either building during the renovation and revitalization phases.

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

The current owners of the property located at 10 Highland Street have every intent to improve the overall appearance of the property to the betterment of the abutting and adjoining property owners and the neighborhood and not negatively impact the property values in any manner.

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- I. If the application is for a Special Exception for the bulk storage of 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;**

This application for a Special Exception is not for the bulk storage of any material which is potentially explosive or contains any explosive materials.

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

- 1. Affect the water quality of the 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 5.10.05 of this ordinance;**

The proposed renovation and revitalization activities to take place at 10 Highland Street will not create either a Professional or Technical Park District. Furthermore, the proposed renovation and revitalization activities to take place at 10 Highland Street will not affect the water quality of the Water Works Pond or any other water supplies or groundwater enhancement areas. 10 Highland Street is located in Tax Map 65. The proposed renovation and revitalization activities will not incur any health hazard to the community or include any temporary structures. Lastly, the proposed renovation and revitalization activities at 10 Highland Street will not include the permitting of any recycling, disposal, or transfer of hazardous waste as set for in Article 5.10.05 (sic) Article 5.09.05.

*Note: The applicant shall demonstrate that the 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.*

# Abutters List

For

**10 Highland Street  
Exeter, New Hampshire**  
Map 65, Lot 142

1. Map 65, Lot 138.1  
Rachel & Riadh Trabelsi  
12 Highland Street  
Exeter, New Hampshire 03833
2. Map 65, Lot 150  
Rachel & Frederick DeCicco  
PO Box 690  
Exeter, New Hampshire 03833
3. Map 65, Lot 151  
Paul O'Neil  
8 Elton Avenue  
Stratham, New Hampshire 03885
4. Map 65, Lot 152  
Larissa Kiers  
15 Highland Street  
Exeter, New Hampshire 03883
5. Map 65, Lot 141  
Melanie Drohan  
6 Highland Street  
Exeter, New Hampshire 03833
6. Map 65, Lot 141-1  
HL Calvert LLC  
181 Pickpocket Road  
Exeter, New Hampshire 03833
7. Lot 65, Lot 139  
J&M Evergreen Realty Trust  
Ken Ma, Trustee  
1501 Main Street  
Tewksbury, Massachusetts 01876



1 September 2023

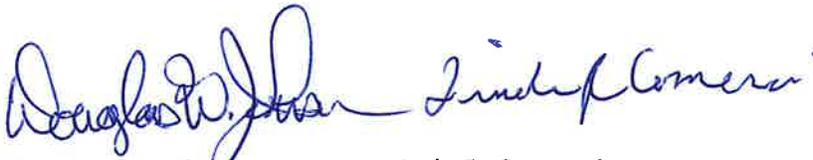
**Letter of Authorization**

Reference: 10 Highland Street  
Exeter, New Hampshire 03833  
Map 65 Lot 142

To Whom This May Concern:

Mr. Dave Gleason is authorized on our behalf to specifically represent us regarding design and construction oversight activities regarding our proposed renewal and revitalization activities specific to 10 Highland Street, Exeter, New Hampshire 03833. This authorization is specifically limited to these activities and does not include any financial obligations or encumbrances.

Sincerely,



Douglas W. Johnson  
13940 Jarvi Dr.  
Anchorage, AK 99515-3940

Linda R. Comerci

[lindoug@ptialaska.net](mailto:lindoug@ptialaska.net)

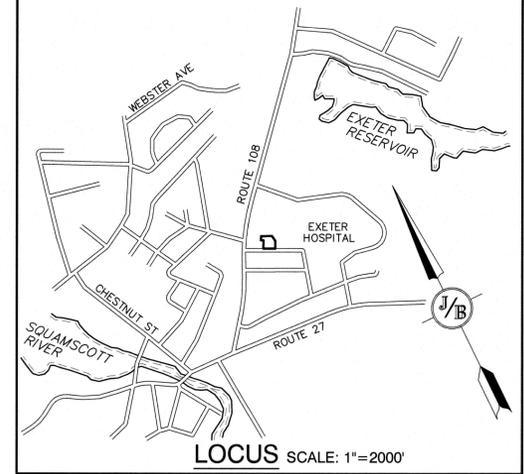
(907) 276-6086 (home)  
(907) 382-0753 (cell / text)

**LEGEND**

- PROPERTY LINE
- - - - - ABUTTER PROPERTY LINE
- BUILDING SETBACK
- TREE LINE
- EDGE OF PAVEMENT
- OHE OVERHEAD ELECTRIC LINES
- STONE WALL
- MAJOR CONTOUR
- MINOR CONTOUR
- DRAIN LINE
- ☐ CATCH BASIN
- ☐ WATER SHUTOFF
- ☐ UTILITY POLE
- ☐ GUY WIRE ANCHOR
- ☐ ELECTRIC METER
- ☐ IRON ROD
- ☐ IRON PIPE

**PLAN REFERENCES:**

1. "PLAN OF LAND, EXETER, NEW HAMPSHIRE, FOR LYMAN COLLISHAW," DATED DECEMBER 1970. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. R.C.R.D. 3476.
2. "CONDOMINIUM PLAN IN EXETER, NH SHOWING UNITS A & B OF 6 - B HIGHLAND STREET CONDOMINIUMS," DATED AUGUST 1, 2001. PREPARED BY PARKER SURVEY ASSOCIATES. R.C.R.D. 29218.
3. "TAX MAP 65 LOTS 138 & 139 LOT LINE CHANGE PLAN OF LAND IN EXETER OWNED BY HIGHLAND TRUST AND J & M EVERGREEN REALTY TRUST," DATED MAY 23, 2015. PREPARED BY LAVELLE ASSOCIATES. R.C.R.D. 38867.
4. "TAX MAP 65 LOTS 138 & 142 LOT LINE CHANGE PLAN OF LAND IN EXETER OWNED BY JEREMY D. RUSSMAN & DIANNA J. RUSSMAN," DATED JANUARY 29, 2016. PREPARED BY LAVELLE ASSOCIATES. R.C.R.D. 39395.
5. "TAX MAP 65 LOT 138 'HIGHLAND-EXETER' SUBDIVISION OF LAND IN EXETER, NH OWNED BY JEREMY D. RUSSMAN & DIANNA J. RUSSMAN," DATED JANUARY 29, 2015. PREPARED BY LAVELLE ASSOCIATES. R.C.R.D. 39396.

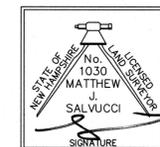


**NOTES:**

1. THE INTENT OF THIS PLAN IS TO SHOW THE BOUNDARY AND EXISTING CONDITIONS OF LOT 142 AS SHOWN ON TOWN OF EXETER TAX MAP 65.
2. ZONING DISTRICT: R-2 SINGLE-FAMILY RESIDENTIAL  
LOT AREA MINIMUM = 15,000 SF  
LOT FRONTAGE MINIMUM = 100'  
BUILDING SETBACKS (MINIMUM):  
FRONT SETBACK = 25'  
SIDE SETBACK = 15'  
REAR SETBACK = 25'  
MAX. BUILDING HEIGHT = 35'  
MAX. LOT COVERAGE = 25%
3. THE UTILITY LOCATIONS SHOWN HEREON WERE DETERMINED BY OBSERVED ABOVE GROUND EVIDENCE AND SHOULD BE CONSIDERED APPROXIMATE IN LOCATION ONLY. LOCATION, DEPTH, SIZE, TYPE, EXISTENCE OR NONEXISTENCE OF UNDERGROUND UTILITIES AND/OR UNDERGROUND STORAGE TANKS WAS NOT VERIFIED BY THIS SURVEY. ALL CONTRACTORS SHOULD NOTIFY IN WRITING ALL UTILITY COMPANIES AND GOVERNMENT AGENCIES PRIOR TO ANY EXCAVATION WORK OR CALL DIG-SAFE AT 1-888-DIG-SAFE.
4. THE SUBJECT PARCEL IS NOT LOCATED WITHIN AN AREA HAVING A SPECIAL FLOOD HAZARD ZONE DESIGNATION BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ON FLOOD INSURANCE RATE MAP NO. 33015C0405E, WITH EFFECTIVE DATE OF MAY 17, 2005.
5. BASIS OF BEARING: HORIZONTAL - PLAN REFERENCE 3. VERTICAL - ASSUMED.
6. CERTAIN DATA HEREON MAY VARY FROM RECORDED DATA DUE TO DIFFERENCES IN DECLINATION, ORIENTATION, AND METHODS OF MEASUREMENT.
7. ALL BOOK AND PAGE NUMBERS REFER TO THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
8. THE TAX MAP AND LOT NUMBERS ARE BASED ON THE TOWN OF EXETER TAX RECORDS AND ARE SUBJECT TO CHANGE.
9. RESEARCH WAS PERFORMED AT THE TOWN OF EXETER ASSESSOR'S OFFICE AND THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
10. THIS SURVEY IS NOT A CERTIFICATION TO OWNERSHIP OR TITLE OF LANDS SHOWN. OWNERSHIP AND ENCUMBRANCES ARE MATTERS OF TITLE EXAMINATION NOT OF A BOUNDARY SURVEY. THE INTENT OF THIS PLAN IS TO RETRACE THE BOUNDARY LINES OF DEEDS REFERENCED HEREON. OWNERSHIP OF ADJOINING PROPERTIES IS ACCORDING TO ASSESSOR'S RECORDS. THIS PLAN MAY OR MAY NOT INDICATE ALL ENCUMBRANCES EXPRESSED, IMPLIED OR PRESRIPTIVE.
11. ANY USE OF THIS PLAN AND OR ACCOMPANYING DESCRIPTIONS SHOULD BE DONE WITH LEGAL COUNSEL TO BE CERTAIN THAT TITLES ARE CLEAR, THAT INFORMATION IS CURRENT, AND THAT ANY NECESSARY CERTIFICATES ARE IN PLACE FOR A PARTICULAR CONVEYANCE, OR OTHER USES.
12. NO WETLANDS WERE OBSERVED ON THE SUBJECT PREMISES.
13. SURVEY TIE LINES SHOWN HEREON ARE NOT BOUNDARY LINES. THEY SHOULD ONLY BE USED TO LOCATE THE PARCEL SURVEYED FROM THE FOUND MONUMENTS SHOWN AND LOCATED BY THIS SURVEY.

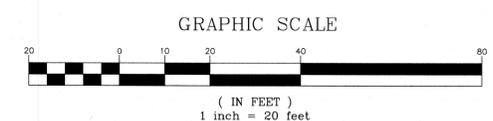
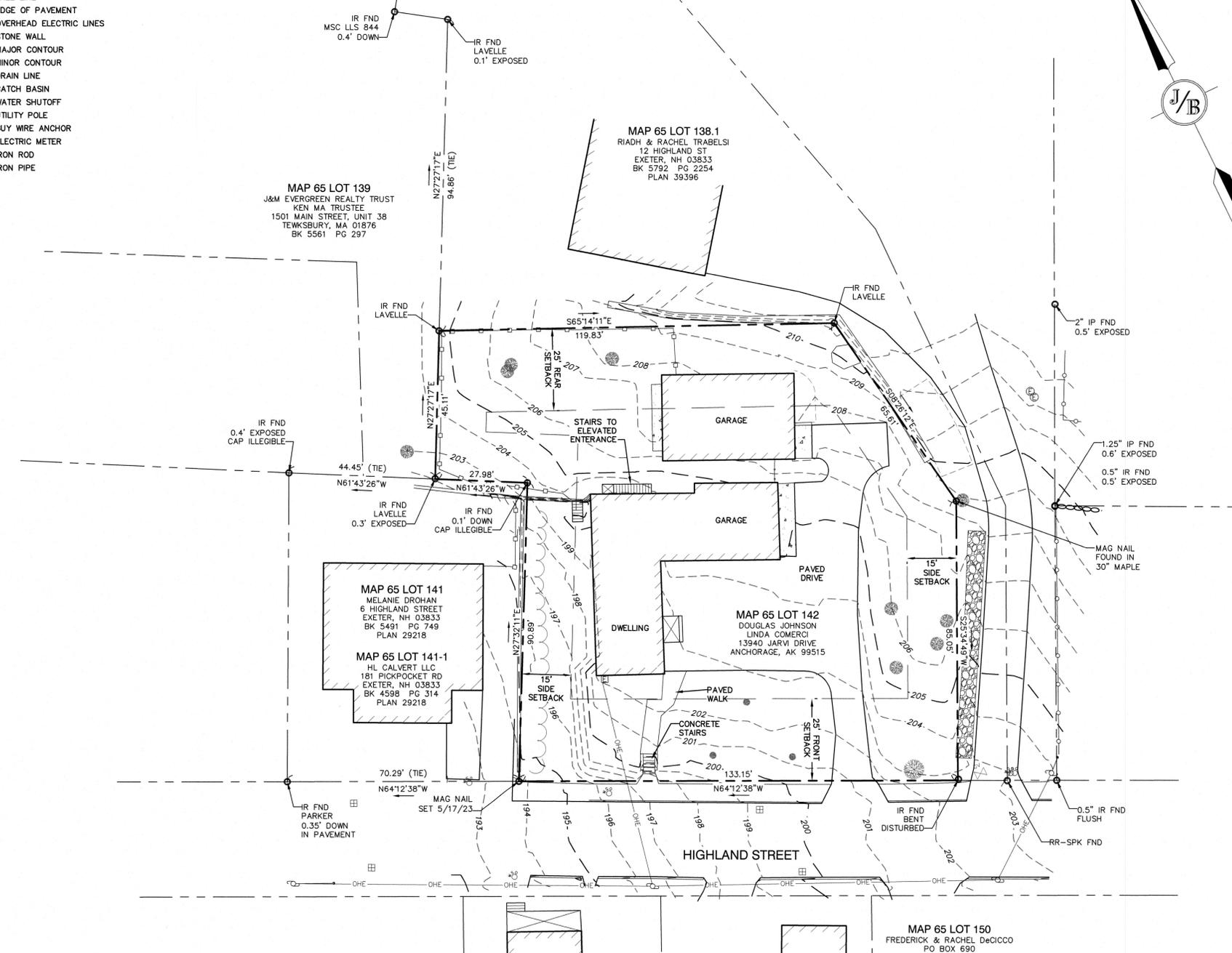
**CERTIFICATION:**

PURSUANT TO RSA 676:18-III AND RSA 672:14  
I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.  
I CERTIFY THAT THIS PLAT WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN UNADJUSTED LINEAR ERROR OF CLOSURE THAT EXCEED BOTH THE MINIMUM OF 1:10,000 AS DEFINED IN SECTION 503.04 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES AND THE MINIMUM OF 1:15,000 AS DEFINED IN SECTION 4.2 OF THE N.H.L.S.A. ETHICS AND STANDARDS.  
THIS SURVEY CONFORMS TO A CATEGORY 1 CONDITION 1 SURVEY AS DEFINED IN SECTION 4.1 OF THE N.H.L.S.A. ETHICS AND STANDARDS.



MATTHEW J. SALVUCCI, LLS 1030  
ON BEHALF OF JONES & BEACH ENGINEERS, INC.

8/17/23  
DATE:



<b>PROJECT PARCEL</b> TOWN OF EXETER TAX MAP 65, LOT 142
<b>APPLICANT/OWNER</b> DOUGLAS JOHNSON LINDA COMERCI 13940 JARVI DRIVE ANCHORAGE, AK 99515 BK 6415 PG 2754
<b>TOTAL LOT AREA</b> 18,433 SQ. FT. 0.423 ACRES

Design: WGM	Draft: MJS	Date: 5/17/23
Checked: WGM	Scale: 1" = 20'	Project No.: 23034
Drawing Name: 23034-PLAN.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

REV.	DATE	REVISION	BY
0	5/17/23	ISSUED FOR REVIEW	MJS

Designed and Produced in NH

**J/B Jones & Beach Engineers, Inc.**

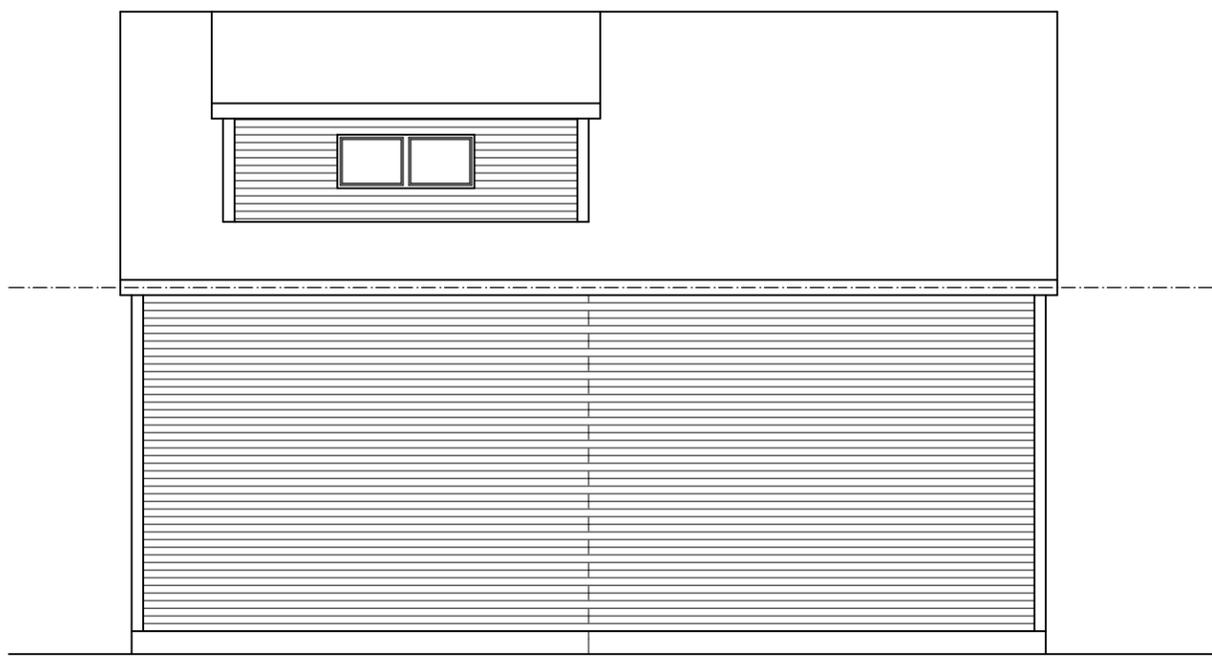
85 Portsmouth Ave. Stratham, NH 03885  
 PO Box 219  
 Civil Engineering Services  
 603-772-4746  
 FAX: 603-772-0227  
 E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	<b>EXISTING CONDITIONS PLAN</b>
Project:	TAX MAP 65 LOT 142 10 HIGHLAND STREET, EXETER, NH
Owner of Record:	DOUGLAS & JOHNSON LINDA COMERCI 13940 JARVI DRIVE ANCHORAGE, AK 99515

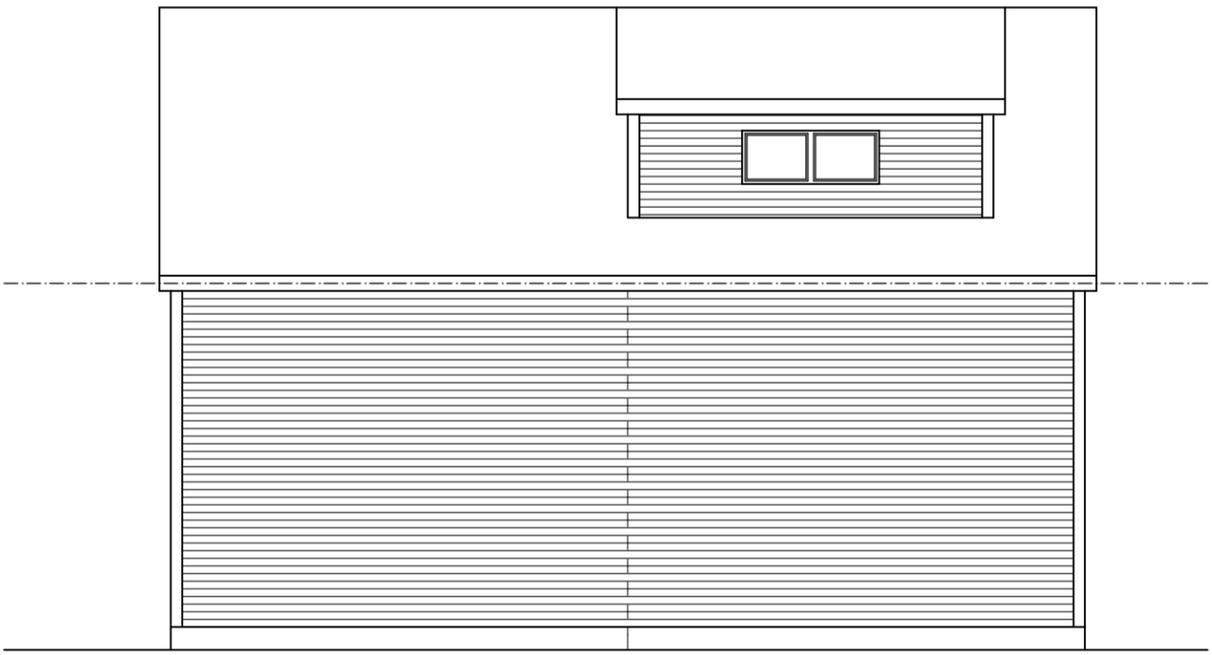
DRAWING No.	<b>C1</b>
SHEET X OF X	JBE PROJECT NO. 23034



REAR ELEVATION  
SCALE: 1/8" = 1'-0"



LEFT SIDE ELEVATION  
SCALE: 1/8" = 1'-0"



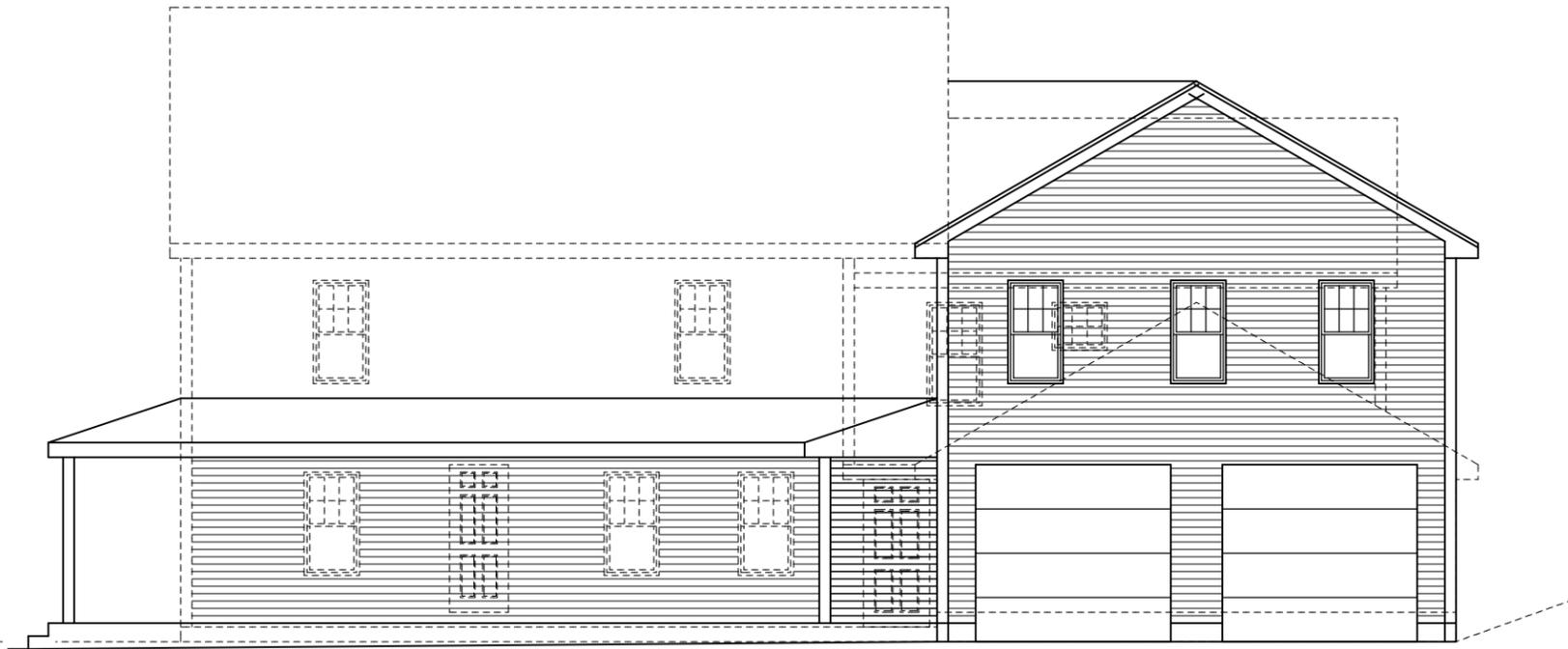
RIGHT SIDE ELEVATION  
SCALE: 1/8" = 1'-0"



FRONT ELEVATION  
SCALE: 1/8" = 1'-0"



FRONT ELEVATION - MAIN HOUSE  
SCALE: 1/8" = 1'-0"



FRONT ELEVATION - MAIN HOUSE  
SCALE: 1/8" = 1'-0"

ZONING BOARD OF ADJUSTMENT

**APPLICATIONS SKETCH PLAN  
REQUIREMENTS/CHECKLIST**

1. Title Block – descriptive name of project, north arrow (approximate), street address, date and scale (not less than 1" = 40').
2. Location map showing relevant streets and zoning district boundaries.
3. Names and addresses of applicant, record owner and abutting property owners, including those across the street.
4. Existing and proposed streets, driveways, parking areas (with delineation of spaces) and sidewalks.
5. Location of existing and proposed buildings and property lines.
6. Distances on all sides between buildings and property lines.
7. Existing and proposed tree lines, landscape buffers, screening and fences.
8. Location of existing landmarks including streams, brooks, wetlands, rock outcroppings, wooded areas and other significant environmental features.
9. Generalized floor plans showing dimensions and the square footage of areas for proposed uses.

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Plans should be no larger than 11" x 17" in size. They need not be prepared by an architect or land surveyor but they must be legibly drawn with printed labels.

- PLANS MUST CONTAIN ALL OF THE ABOVE INFORMATION IN ORDER FOR THE APPLICATION TO BE PLACED ON THE AGENDA FOR A ZONING BOARD OF ADJUSTMENT HEARING.



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD  
JOHN J. RATIGAN  
DENISE A. POULOS  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
HEIDI J. BARRETT-KITCHEN  
JUSTIN L. PASAY  
ERIC A. MAHER  
CHRISTOPHER D. HAWKINS  
ELAINA L. HOEPPNER  
WILLIAM K. WARREN  
BRIANA L. MATUSZKO

RETIRED  
MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
NICHOLAS R. AESCHLIMAN

September 29, 2023

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

**Re: 81 Front Street, Map 72, Lot 195**

Dear Chairman Baum and Board Members:

Enclosed please find Variance Application for the above referenced property together with supporting materials consisting of a narrative, Exhibit 1 showing surrounding properties and an existing conditions plan. Exhibit 2 and Exhibit 3 will be submitted under separate cover. Also enclosed is an abutter list, abutter labels and a check in the amount of \$200 for filing fees.

We respectfully request the matter be placed on the Board's October 17, 2023 agenda. If you have any questions, do not hesitate to contact me.

Very truly yours,  
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers  
SCS/sac/jh  
Enclosures

cc: Steven Wilson, Manager  
Shayne Forsley

C:\Users\jherron\ND Office Echo\VAULT-52X7DCYR\2023 09 29 ZBA Letter 4889-0661-5424 v.1.docx

DONAHUE, TUCKER & CIANDELLA, PLLC  
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

Town of Exeter  
APPLICATION FOR A

# VARIANCE

Case Number: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Application Fee: \$ \_\_\_\_\_

Abutter Fees: \$ \_\_\_\_\_

Legal Notice Fee: \$ \_\_\_\_\_

TOTAL FEES: \$ \_\_\_\_\_

Date Paid \_\_\_\_\_ Check # \_\_\_\_\_

Name of Applicant 81 Front Street, LLC  
(If other than property owner, a letter of authorization will be required from property owner)

Address 41 Industrial Drive, Unit 20, Exeter, NH 03833

Telephone Number ( 603 ) 235-5475

Property Owner 81 Front Street, LLC

Location of Property 81 Front Street, Tax Map 72, Lot 195, R-2 Zone

**81 Front Street, LLC by its attorneys, Donahue, Tucker & Ciandella**

Applicant Signature   
Sharon Cuddy Somers, Esq.

Date Sept 29, 2023

*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 VARIANCE

A variance is requested from article IV section 4.2 Schedule I and 4.3, Schedule II of the Exeter zoning ordinance to permit: Multi-family (8 units) in the R-2 zone where only single family and duplexes are permitted and a lot area per dwelling unit of 9,801 square feet where 12,000 square feet is required.

**FACTS SUPPORTING THIS REQUEST:**

**1. The variance will not be contrary to the public interest;**

**see attached**

**2. The spirit of the ordinance is observed;**

**see attached**

**3. Substantial justice is done;**

**see attached**

**4. The values of surrounding properties are not diminished;**

**see attached**

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**see attached**

**APPLICATION FOR VARIANCE  
81 FRONT STREET  
TAX MAP 72, LOT 195**

**RELIEF SOUGHT**

Variance I: Article 4.2, Schedule I to allow multi-family residential use consisting of eight residential units where multi-family residential use is not allowed in the R-2 District.

Variance II: Article 4.3, Schedule II to allow 9,801 square feet of lot area per dwelling unit for eight residential units where 12,000 square feet is required.

**INTRODUCTION**

The subject property has a long and interesting history of use, culminating in the current configuration of the structure(s) on the property which lends itself to a more modern use of a multifamily residence.

The main house on the property is a structure with great architectural significance and dates back to 1823 and contained a residence and a medical office of the then owner(s), first Mrs. & Dr. David Gorham and later Mrs. & Dr. Edward Otis. More recently, and beginning in 1987 and continuing through 2018, the property was owned by Michael Dingman and/or Otis House Limited. During the ownership by Mr. Dingman, the property evolved to its current configuration which consists of one contiguous building measuring approximately 273 feet in length and approximately 100 feet in width and a stand-alone dwelling where the former medical office existed, and all of which contains 16,088 square feet of finished living area. The evolution of the property was accomplished to meet the needs of Mr. Dingman who required living quarters for a number of household staff and security guards, and a pool and pool house. To accomplish these goals an extensive renovation and upgrade occurred within the main house and the contiguous portions of the building were added. In addition to the existing bathrooms and kitchen, three more kitchens were added for a total of four on the property and additional bathrooms were added such that there are now a total of thirteen bathrooms on the property and all changes remained consistent with the architecture of the original building.

Subsequent to the ownership by Mr. Dingman, the property was acquired by Philips Exeter Academy in 2018. The Academy analyzed the possible use of the property as faculty housing but ultimately opted not to proceed. The property then went on the market where it lingered for the last three years due to the size of the combined structures which acted as a deterrent to prospective buyers.

81 Front Street, LLC purchased the property in August of this year and now proposes a use which embraces the size of the structures. The proposed use of eight dwelling units with approximately 2,000 square feet each of space will address the need for housing, including for

families, and will prevent the possibility that the property will not be able to be effectively utilized and will need to go back on the market and face an uncertain future with lack of care.

### Variance I

#### For Use as Eight Dwelling Units Where Multi-Family Residential Use Is Not Allowed

#### The variance will not be contrary to the public interest.

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly and to a marked degree violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten the public health, safety or welfare.

The ordinance is silent as to what the basic objective is of precluding multi-family residential use in the R-2 zone which includes at least large portions of Front Street and which allows as a matter of right single-family dwellings, public schools, recreation facilities and open space development and allows, by special exception, the conversion of up to four residential units and two-family homes. That said, it is reasonable to assume that the basic objective of the ordinance is to prevent overcrowding and what could be perceived as a negative contrast to the allowed uses in the district.

The basic objective of the ordinance must also be viewed against the character of the locality to ascertain whether granting the variance will alter the essential character of the locality. Here the character of the locality is best described as mixed and there is no settled "essential" character of the locality. As shown on the attached Exhibit 1, the neighboring properties consist of a church, a lot with two dwelling units, a school, several single-family homes on smaller lots and with smaller structures than that of the subject property, the Exeter Inn, a three-family structure owned by Phillips Exeter Academy. Nearby property also includes a lot owned by Philips Exeter Academy with dormitory usage. The proposed use will be located on the largest property in the locality and with structures containing 16,088 of finished living space. The proposed use will entail transforming the interiors of the existing structures to accommodate seven contiguous units and one stand-alone unit and to provide on-site parking for such units. (See Exhibit 2, site and floor plan showing structures, proposed dwelling units and parking availability). The exterior of the structures, particularly that which is on the Front Street side will not be altered, a fact which was acknowledged and greatly appreciated when the applicant recently met with the Historic District Commission.

Finally, the proposed use of multi-family dwellings does not pose a threat to public health, safety or welfare. The use will continue to be residential in nature. Further, public safety will actually be enhanced because part of the proposal is to increase access for emergency service vehicles on the side portion of the property. (See Exhibit 2) Also, the renovations will be done to conform to NFPA and building code standards and will introduce elements such as fire walls which are currently lacking. Such steps will enhance the safety of the occupants as well as the public generally.

**The spirit of the ordinance is observed.**

Under New Hampshire law, this variance criteria is essentially merged with the “public interest” criteria. As stated above, the spirit of the ordinance is to prevent overcrowding and a marked departure from the allowed use in the district. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

**The values of the surrounding properties will not be diminished.**

We are unaware of any evidence which suggests that the values of surrounding properties will be diminished. Correspondence from an area realtor will be supplied in support of our conclusion that there is no diminution in value. (See Exhibit 3).

**Substantial justice is done.**

The analysis for this criteria requires that the Board balance the loss which the applicant would experience if the variance was denied and determine if the denial would benefit the public to such an extent that the benefit outweighs the loss to the applicant. If such benefit does not outweigh the loss, then the variance should be granted.

Here, no gain to the public would occur if the variance were to be denied. The property meets all criteria including density to receive a special exception to allow a conversion of the existing structures to four units, therefore by the ordinance definition of “multifamily”, a multi-family structure could readily be created even without this variance. A similar argument exists to support a series of four two-unit structures on the site, however under this scenario a variance for density would be required for the fourth two unit as there would be insufficient square footage to meet the requirement and extensive changes to or even demolition of the existing structures would be required to fashion four two-unit structures. Yet a third scenario to create the same result would be to subdivide the property into two lots and then obtain a special exception to convert each lot into a multi-family structure containing four units. As a result, even if the subject variance were to be denied, there are other avenues which could achieve a similar result of multiple dwelling units on the property.

By contrast, the loss to the applicant if the variance for eight units were to be denied is that the applicant would be faced with trying to populate units of 4, 222 square feet each. The odds of success in renting or selling such units in Exeter, New Hampshire is negligible, and thus the property could quickly find itself back on the market again. The proposed use of approximately 2,000 + square feet per unit is a much more achievable objective in the Exeter market, and even that size is quite generous.

**Unnecessary Hardship.**

**Owing to special conditions of the property that distinguish it from other properties in the area , denial of the variance would result in necessary hardship because:**

The property has several conditions which make it unique relative to the properties in the area. First, the size of the lot is 1.8 acres, which is larger than the abutting lots which have residential properties and is even larger than the Exeter Inn. Second, and perhaps more importantly, the structures on the lot, with the exception of what is identified as Building 2 on the Town of Exeter tax records consists of one building with contiguous portions and which is used for residential purposes and which is approximately 275 feet in length and 100 feet in width. Building 2 is characterized as a residence, but it is a stand-alone structure. Taken together, the structures contain 16,088 square feet of finished living area with all but 333 square feet of living area belonging to the main structure with contiguous pieces. Taken together, there are four kitchens, thirteen bathrooms, six bedrooms and twenty-three rooms.

The vast size of the structures together with the number of existing kitchens, bathrooms and bedrooms stand in stark contrast to the area's properties. The New Hampshire Supreme Court has recognized that characteristics of a particular property that might not normally be considered would be appropriate to consider in the hardship analysis. Harborside Associates v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That case involved a request for signage variance in Portsmouth, New Hampshire and the Court ruled that the sheer size and mass of the hotel to be served by the sign had to be taken into account in the analysis of special conditions. Here, the sheer size of the lot coupled with the number of existing rooms, kitchens and bathrooms that make up over 16,000 of finished living space must be taken into account in finding that the property contains special conditions.

**No fair and substantial relationship exists between the general public purposes of the ordinance provision and the application to the property because:**

The general public purpose of the ordinance is to prevent possible overcrowding that otherwise might be associated with multi-family residential use. As stated above, the massive size of the structures and the lot together with the absence of any change to the streetscape will prevent any perception of overcrowding. Further, the size of the lot and structures and the availability of on-site parking will prevent the property from functioning in an overcrowded manner. Finally, given that relief is readily available in the form of a special exception to create what is defined by ordinance as a multi-family structure, it is clear that there is no correlation between the purpose of the ordinance and the application to the subject property.

**The proposed use is a reasonable one.**

The existence of a 1.8 acre lot with the connected portions of one building and one stand-alone building and space for parking for eight units make it a ready-made site for conversion in this era to a multi-family residential use. The fact that the conversion will be done in a quality manner by Steve Wilson, a highly reputable developer, makes the conversion even more attractive. Mr. Wilson intends to keep the existing buildings intact, and with architecture consistent with the original house; a fact which the Historic District Commission is pleased with, and he will only remove a small portion of the connecting corridor between buildings in order to enhance the ability of emergency access vehicles to gain entry to all portions of the site to provide emergency services, a condition which they do not currently enjoy.

## **Variance II**

**To allow 9,801 square feet of lot area per dwelling unit for eight residential units where 12,000 square feet is required (Note: While the ordinance calls for a certain amount of square footage for single and/or two-family dwellings, there is no express requirement for multi-family dwellings and the board should look to the requirements under the ordinance for conversions as an appropriate measure of density and which calls for 3,600 square feet of lot area).**

### **The variance will not be contrary to the public interest.**

As with the use variance, the density ordinance is silent as to the basis of requiring a certain amount of square footage per dwelling unit in the R-2 zone and in fact contains no express category of density for multi-family dwellings. However, similar to the restriction on use of multi family dwelling units in the R-2 zone, it is reasonable to assume that the requirement of lot size per dwelling is designed to regulate the total number of residents on a lot and to prevent overcrowding.

Of particular importance is that the use ordinance contemplates that if a conversion to multifamily is created in the context of a special exception, for which we readily meet all criteria, then only 3, 600 square feet of lot area would be required. Such a requirement would mean that a lot size of only 28,800 square feet would be required for eight units, and the subject lot vastly exceeds that amount. The “purpose” of the density ordinance in this instance must be read in conjunction with the purpose of the use variance which clearly allows for a much reduced density requirement in the context of conversions.

The analysis of this variance requires looking at the same facts and circumstances as that employed in the variance for the use of multifamily units; therefore, the applicant restates and incorporates by reference the arguments presented in Variance I for this criteria.

### **The spirit of the ordinance.**

The applicant restates and incorporates by reference the arguments presented on this criteria in Variance I.

### **The values of the surrounding properties will not be diminished.**

The applicant restates and incorporates by reference the arguments presented on this criteria in Variance I.

### **Substantial justice is done.**

The applicant restates and incorporates by reference the arguments presented on this criteria in Variance I.

**Unnecessary Hardship.**

The applicant restates and incorporates by reference the arguments presented on this criteria in Variance I.

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September 29, 2023

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

Re: 81 Front Street LLC

To Whom It May Concern:

I have been a REALTOR in the Exeter area for over 42 years and I also reside in the neighborhood of the subject property. It is my opinion that converting the existing structure to an 8 units would not affect the value of properties in the area. The architectural significance of the property will be left in tact.

Best regards,

*Florence Ruffner*

Florence C. Ruffner, CRS  
Owner/Associate Broker  
Cell: 603-674-5440  
floinceruffner@gmail.com



LETTER OF AUTHORIZATION

I, Steven Wilson, Manager of 81 Front Street, LLC, owner of property depicted on Tax Map 72, Lot 195, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the Town of Exeter and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: 9-20-03

81 FRONT STREET, LLC



\_\_\_\_\_  
Steven Wilson, Manager

**81 FRONT STREET  
TAX MAP 72, LOT 195  
ABUTTER LIST**

OWNER: 81 Front Street, LLC  
41 Industrial Drive, Unit 20  
Exeter, NH 03833

ABUTTERS:

73/302 Chen Yanru & Rajesh Vaid  
25 Greybirch Circle  
Belmont, MA 02478

73/293 Exeter School District  
30 Linden Street  
Exeter, NH 03833

72/196 Mark & Sarah Russ  
3765 Farber Street  
Houston, TX 77005

72/191 Will & Camille Weete  
78 Front Street  
Exeter, NH 03833

72/192 Stephen Brum & Brenda Baker  
80 Front Street  
Exeter, NH 03833

72/193 Jennifer Young, Trustee  
Jennifer V. Young Revocable Trust  
84 Front Street  
Exeter, NH 03833

72/194 Phillips Exeter Academy  
20 Main Street  
Exeter, NH 03833

73/1 Hay Creek Exeter Partners I, LLC  
90 Front Street  
Exeter, NH 03833

ATTORNEY: Sharon Cuddy Somers, Esq.  
Donahue, Tucker & Ciandella, PLLC  
16 Acadia Lane  
Exeter, NH 03833



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JOHN J. RATIGAN  
DENISE A. POULOS  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
HEIDI J. BARRETT-KITCHEN  
JUSTIN L. PASAY  
ERIC A. MAHER  
CHRISTOPHER D. HAWKINS  
ELAINA L. HOEPPNER  
WILLIAM K. WARREN  
BRIANA L. MATUSZKO

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RETIREE  
MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
NICHOLAS R. AESCHLIMAN

October 2, 2023

Kevin Baum, Chair  
Exeter Zoning Board of Adjustment  
10 Front Street  
Exeter, NH 03833

Re: 107 Ponemah Road, LLC, Tax Map 82, Lot 11  
Application for Special Exception

Dear Chair Baum and Board Members

Attached please find an application for the above referenced property to allow for Residential Conversion pursuant to Exeter Zoning Ordinance Article 4, Section 4.2 Schedule I to convert the existing single-family dwelling with attached barn to a three-family home together with supporting materials, which include a narrative addressing the special exception criteria, together with Exhibit 1 and Exhibit 2 which respectively are a site plan and floor plans, abutter list, abutter labels and check in the amount of \$170.00 for filing fees.

We respectfully request that this matter be scheduled at the October 17, 2023 meeting.

Very truly yours,  
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers  
SCS/sac/jh  
Enclosures

cc: 107 Ponemah Road, LLC  
Henry Boyd

4894-5633-9587, v. 1

DONAHUE, TUCKER & CIANDELLA, PLLC  
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

Town of Exeter  
APPLICATION FOR

# SPECIAL EXCEPTION

Case Number:	_____
Date Filed:	_____
Application Fee: \$	_____
Abutter Fees: \$	_____
Legal Notice Fee: \$	_____
TOTAL FEES: \$	_____
Date Paid	_____
Check #	_____

**Name of Applicant** 107 Ponemah Road, LLC  
(If other than property owner, a letter of authorization will be required from property owner)

**Address** PO Box 234, Windham, NH 03087

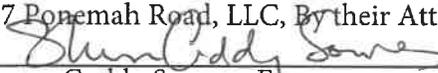
**Telephone Number** ( 603 ) 501-9268

**Property Owner** 107 Ponemah Road, LLC

**Location of Property** 50 Linden Street, Exeter, Map 82, Lot 11

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

**Applicant** 107 Ponemah Road, LLC, By their Attorneys, Donahue, Tucker & Ciandella

**Signature**   
Sharon Cuddy Somers, Esq.

**Date** Oct 2, 2023

*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:** \_\_\_\_\_

SEE ATTACHED

**2. Proposed use and/or situation:** \_\_\_\_\_

SEE ATTACHED

*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

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;**

SEE ATTACHED

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

SEE ATTACHED

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**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.*

SEE ATTACHED

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

SEE ATTACHED

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**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;**

SEE ATTACHED

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

SEE ATTACHED

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**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.**

SEE ATTACHED

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

SEE ATTACHED

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**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;**

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SEE ATTACHED

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**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;**

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*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.*



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BRIANA L. MATUSZKO

RETIRED  
MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
NICHOLAS R. AESCHLIMAN

*Please Respond to the Exeter Office*

October 2, 2023

**Via Hand Delivery**

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

**Re: Special Exception Application for Residential Conversion  
50 Linden Street, R-2 Zone, Tax Map 82, Lot 11  
Narrative Explanation**

Dear Chair Baum and Members of the Zoning Board:

This Firm (the “Applicant”) represents 107 Ponemah Road, LLC (the “Applicant” or “Owners”), which owns the property situated at 50 Linden Street in Exeter, also identified as Tax Map 82, Lot 11 (the “Property”). The Applicant seeks a Special Exception for a Residential Conversion pursuant to Exeter Zoning Ordinance Article IV, Section 4.2 Schedule I to convert the existing single-family dwelling with attached barn to a three-family home. This letter is intended as a narrative summary of the proposed use and a detailed explanation as to why the proposed use meets each of the applicable Special Exception criteria for a Residential Conversion.

We respectfully request that the Zoning Board place this matter on the agenda for the Board’s October 17, 2023 meeting.

**I. Property Description and Proposed Use**

The Property is a 0.35 acre lot of record that is improved by a 1.5-story, single-family home with attached barn and is situated in the Town’s R-2 Zoning District. The single-family home situated on the Property contains approximately 2,433 square feet of living area. The existing home has 4 bedrooms. The existing structure was built in 1840 and has been used as a residence for at least ten years.

The Applicant seeks a Special Exception for a Residential Conversion to convert the existing single-family use to a three-family use. As explained in more detail below, the proposed use complies with all of the Special Exception Criteria applicable to Residential Conversions.

DONAHUE, TUCKER & CIANDELLA, PLLC  
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

The Applicant submits that the applicable Special Exception criteria are met for the following reasons:

**II. Article V, 5.2 Special Exception Criteria**

**A. The use is a permitted special exception as set forth in Article 4.2, Schedule I.**

As noted above, the Property is situated in the R-2 District. Pursuant to Article IV, Section 4.2, Schedule I, Residential Conversions are permitted by Special Exception within the R-2 District, subject to compliance with additional Special Exception criteria set forth in the Schedule I Notes (discussed in detail below).

**B. The use is designed, located, and proposed to be operated so as to protect the public health, safety, welfare, and convenience.**

In submitting this Special Exception Application, the Applicant seeks to demolish the attached barn on the property and construct within substantially the same footprint a structure which will contain two dwelling units and the existing residence will remain as one dwelling unit. The Applicant does not propose any modifications to the exterior of the existing dwelling.

There is adequate space to accommodate two (2) dwelling units in a new structure in a building to be located where the barn currently sits, and which will have substantially the same footprint as the existing barn. The Property also uses municipal water, and the Applicant intends to extend the municipal sewer to the property in order to avoid the possible detrimental health and safety effects of on-site septic system to accommodate three dwelling units. Additionally, the Property presently has two driveways, each of which is long enough to park two cars. In addition, the Applicant proposes to create surface parking for four vehicles to accommodate the cars of the additional dwelling units.

Given that the Property's size and configuration are adequate to support the proposed use, the fact that the Property is served by municipal water and will be served by municipal sewer, and the fact that the Property has more than adequate off-street parking, the proposed use does not pose any threat to the public health, safety, welfare, or convenience.

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

The Applicant seeks a Residential Conversion to change the existing single-family use to that of a three-family use. The Property is zoned for residential use(s), including the current single-family use, as a matter of right, and the proposed three-family use, by Special Exception. The proposed use is also compatible with any adjoining post 1972 development in the form of single family homes and the Seacoast YMCA. The proposed use of the Property is thus in keeping with the R-2 District and will remain residential in character. Although there may be a slight

intensification of use, the Property is well-situated to accommodate such intensification while remaining compatible with the R-2 Single-Family Residential District.

**D. Adequate landscaping and screening are provided.**

See attached Site Plan, Sheet 2, depicting existing fences on the south and east side of the Property. The Applicant intends to provide landscaping on the westerly side of the Property, particularly in the vicinity of the proposed two-story building, as mutually agreed between the Applicant and the owner of 52 Linden Street.

**E. Adequate off-street parking and loading are provided, and ingress and egress are designed so as to cause minimum interference with traffic on abutting streets.**

Article V, Section 5.5.6, Off-Street Parking Schedule, requires 2 parking spaces for each multi-family unit of 2+ bedrooms. The existing residence has a total of four bedrooms, and therefore requires 2 parking spaces under Article V, Section 5.5.6. The proposed dwelling units in the barn will each have a total of 3-4 bedrooms, and therefore requires an additional 2 parking spaces each under Article V, Section 5.5.6. The proposed use thus requires a total of 6 off-street parking spaces. The Property presently has two driveways which can be used for parking for at least two cars and the Applicant proposes four surface parking spaces to the rear of the proposed two-story building, providing adequate off-street parking for up to 4 cars. Accordingly, the Property presently has adequate off-street parking for the proposed use.

**F. The use conforms with all applicable regulations governing the district where located.**

The Property is a substandard, lawfully nonconforming lot of record inasmuch as it was created before the enactment of Zoning in Exeter and does not comport with the minimum lot width (90 feet exists where 100 feet is required) or the minimum side yard setback (4+/- feet is provided where 10 feet is required) although the Property does comport with all other dimension requirements for the R-2 District. Both the existing use and the proposed use otherwise comply with Article, IV, Section 4.2, Schedule I: Permitted Uses, Article V, Section 5.3, Existing Lot Regulations, Article V, Section 5.6, Off-Street Parking, and other applicable provisions of the Zoning Ordinance. The Property and use thus comport with all applicable regulations.

**G. Town Planner review and Site Plan review.**

The Applicant will seek Site Plan Approval from the Planning Board upon the granting of this request for Special Exception.

**H. The use shall not adversely affect abutting or nearby property values.**

The proposed use will not adversely affect abutting or nearby property values. As noted above, the Applicant intends to tie the lot into municipal sewer and a new structure will replace

the existing barn; both actions will stabilize, or possibly enhance, the property values of the subject property. The residential use of the Property will remain the same and will not adversely affect the property values of nearby properties which include single family homes and the Seacoast YMCA. Any intensification of use occasioned by the proposed Residential Conversion will be minimal, given that the additional parked cars for the new units will be to the rear of the Property and blocked from view by a fence and the total number of cars will have minimal impacts on the traffic on abutting streets. As a result of these minimally invasive changes, the proposed use will not affect the values of nearby properties.

**I. The Application is not for the hazardous material that is potentially explosive.**

The Applicant does not seek to store explosive materials on the Property, so Article V, Section 5.2.I is inapplicable to this Special Exception Application.

**J. The Application is not for use on any of the following Tax Map Parcels: #70-101, #70-102, #70-103, #70-104, #69-2, #69-3 and/or #69-4.**

The Property under review is Tax Map 82, Lot 11. As such, Article V, Section 5.2.J is inapplicable to this Special Exception Application.

**III. Article IV, Section 4.2 Additional Special Exception Criteria for Conversions**

**A. The number of off-street parking spaces complies with Article 5.6 Off-Street Parking.**

As detailed in Section II, E, above, Article V, Section 5.6 of the Zoning Ordinance requires a total of 6 off-street parking spaces for the proposed use. As proposed, the Property will have 6 off-street parking spaces and, accordingly, there is adequate off-street parking for the proposed use under Article V, Section 5.6.

**B. The minimum lot size required shall be such that each dwelling unit is provided with thirty percent (30%) of the minimum lot size (per unit) required for the district.**

Article IV, Section 4.2, Schedule I Note (b), applicable to Residential Conversions, provides that “[t]he minimum lot size required shall be such that each dwelling unit is provided with thirty percent (30%) of the minimum lot size (per unit) required for the district.” Article IV, Section 4.3, Schedule II, provides that the minimum lot size for single-family dwellings is 15,000 square feet per unit. Assuming that the lot size requirement referenced in Article IV, Section 4.2 Note (b) refers to the existing use rather than the proposed use, the minimum lot size for the proposed use is 4,500 square feet per unit (30% x 15,000 square feet = 4,500 square feet). Because the lot size of the Property is approximately 15,246 square feet the minimum lot size per dwelling unit is met.

**C. The structure has been a residence for a minimum of ten (10) years.**

The existing structure on the Property has been a single-family residence for at least 10 years. The structure was built in 1840 and has been used as a residence since that time.

**D. The lot meets the open space requirements of Article IV, 4.3 Schedule II.**

Article IV, Section 4.3, Schedule II Note 17 contains two categories for minimum open space in the R-2 district: lots using septic systems require a minimum of 60% open space, whereas lots using municipal sewer require a minimum of 40% open space. The Property will use municipal sewer and must therefore have a minimum of 40% open space. Given that the Property is approximately 15,246 square feet, this translates to a minimum of 6,099 square feet of open space.

The footprint of the existing single-family home and attached barn is approximately 3,425 square feet; additionally, there is approximately 200 square feet of paved driveway surface on the property. The total impervious surface of the Property, therefore, is approximately 3,625 square feet. The remaining 11,621 square feet of the Property is open space, thus exceeding the minimum of 6,099 square feet of open space. Accordingly, the lot meets the open space requirements of Article, IV, Section 4.3, Schedule II.

See attached Site Plan, Sheet 2 for information concerning the total impervious surface.

**E. For conversions intended to become rental units, one of the dwelling units shall remain owner-occupied.**

The proposed Residential Conversion is intended to create three condominium units which will be sold therefore this requirement is not applicable.

**F. Site Plan review.**

The Applicant will seek Site Plan Approval from the Planning Board upon the granting of this request for Special Exception.

**G. The Applicant does not request an expansion of the existing structure.**

The Applicant does not propose an expansion of the existing structure, so it is unnecessary for the Zoning Board to consider same.

**H. There are adequate septic facilities for both units.**

The Applicant proposes to connect the property to the existing municipal sewer system and thus will have adequate septic facilities for all of the proposed dwelling units.

**IV. Conclusion**

Based on the foregoing, the proposed use fully complies with all provisions of the Exeter Zoning Ordinance applicable to Special Exceptions for Residential Conversions, and the Applicant respectfully requests that the Board grant the requested Special Exception for Residential Conversion. Should the Board require additional information or have questions about any of the foregoing, please do not hesitate to contact me directly. Thank you for your time and consideration.

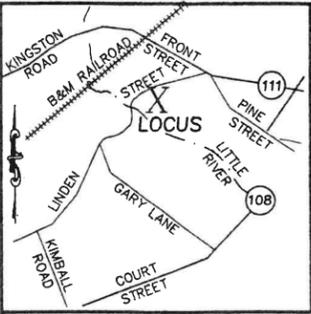
Very truly yours,

**DONAHUE, TUCKER & CIANDELLA, PLLC**



Sharon Cuddy Somers, Esq.  
[ssomers@dtclawyers.com](mailto:ssomers@dtclawyers.com)

cc: 107 Ponemah Road, LLC



LOCUS MAP  
NOT TO SCALE

**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 FIRM COMMUNITY PANEL 3301SC 0402 E. EFFECTIVE DATE: MAY 17, 2005.
- 3) ELEVATIONS SHOWN ARE BASED ON NAVD 88'

Exh. 1

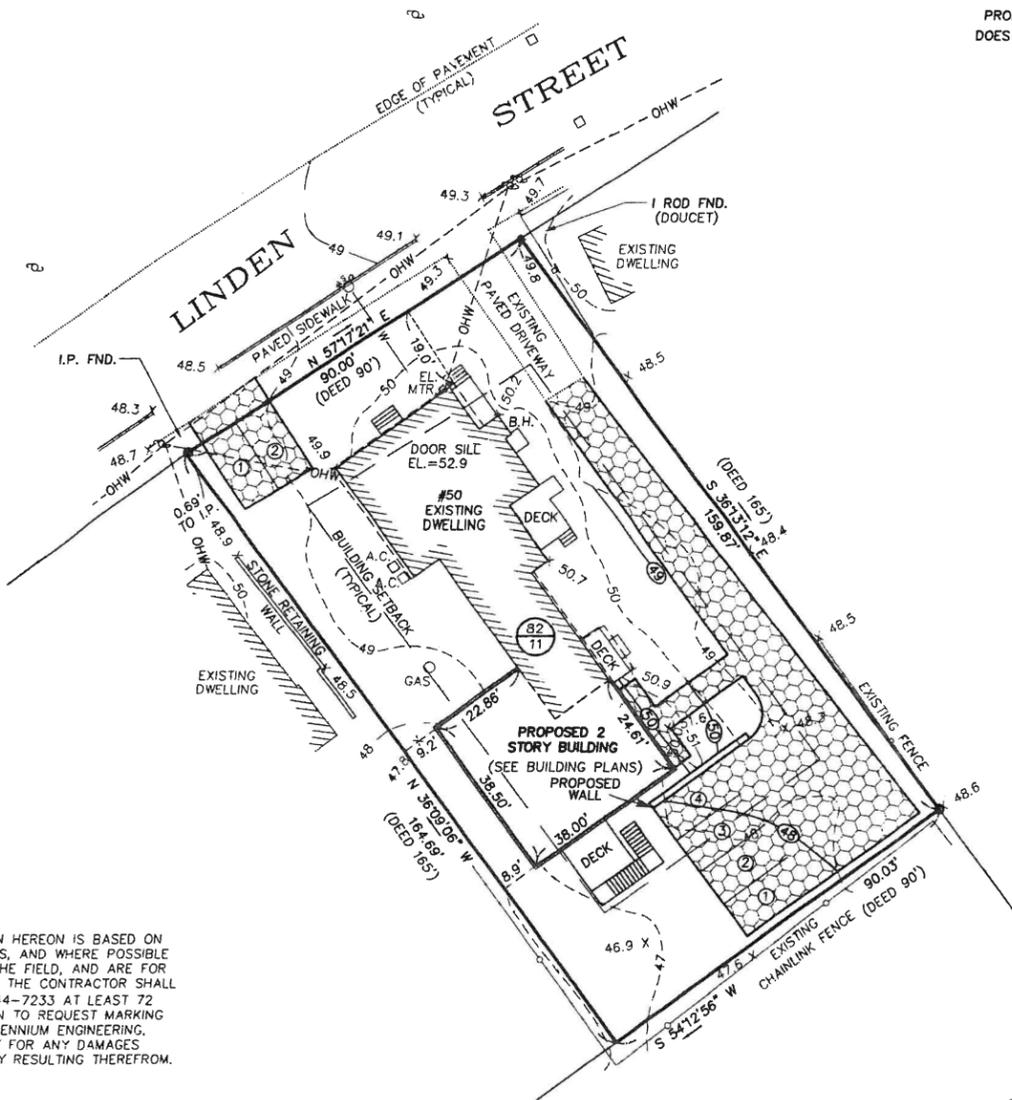
**RECORD OWNERS**

82  
11

107 PONEMAH ROAD LLC  
131 DANIEL WEBSTER HIGHWAY #888  
NASHUA, NH 03060  
BK.6398 PG.2561  
14,594 S.F.  
0.34 ACRES

**ZONING DISTRICT**  
ZONE R2 SINGLE FAMILY  
AREA 15,000 S.F.  
LOT WIDTH 100'  
LOT DEPTH 100'  
BUILDING COVERAGE 25%  
BUILDING SETBACKS  
FRONT 25'  
SIDE 15'  
REAR 25'

EXISTING IMPERVIOUS SURFACE 4,139 S.F.  
28.4% OF LOT AREA  
EXISTING OPEN SPACE AREA 10,455 S.F.  
IS 71.6% OF LOT AREA  
PROPOSED IMPERVIOUS SURFACE 4,117 S.F.  
28.2% OF LOT AREA  
PROPOSED OPEN SPACE AREA 10,455 S.F.  
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PROPOSED BUILDING COVERAGE 3,030 S.F.  
DOES NOT INCLUDE DECKS, STEPS OR ROOF  
20.8% OF LOT AREA



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**PAVER MAINTENANCE NOTE**

REGULAR CLEANING WILL HELP MAINTAIN A HIGH ENOUGH SURFACE INFILTRATION RATE TO SOAK THROUGH THE JOINTS. AT LEAST ONE INSPECTION AND CLEANING SHOULD BE PERFORMED DURING THE FIRST YEAR OF SERVICE AND THEREAFTER AS REQUIRED. CLEANING IS RECOMMENDED WHEN THE SURFACE INFILTRATION RATE IS LESS THAN 9.8"/HR OR 99%. CLEANING CAN BE DONE WITH A VACUUM ADJUSTED TO MINIMIZE THE REMOVAL OF JOINT MATERIAL. IN WINTER, SNOW REMOVAL CAN BE DONE AS FOR ANY OTHER TYPE OF PAVING, BUT IT IS STILL RECOMMENDED THAT SNOW REMOVAL BLADES BE COVERED WITH A PROTECTIVE COATING AND RAISED 1". SEGMENTAL PERMEABLE PAVEMENT REQUIRE LESS DE-ICING MATERIAL THAN CONVENTIONAL PAVEMENT, SINCE MELTED WATER DOES NOT ACCUMULATE. IT WILL NOT RE-FREEZE ON THE SURFACE. IT IS NOT RECOMMENDED TO SPREAD SAND FOR TRACTION, AS THIS MAY CLOG THE JOINTS; INSTEAD, SPREAD THE SAME AGGREGATE USED FOR FILLING JOINTS.

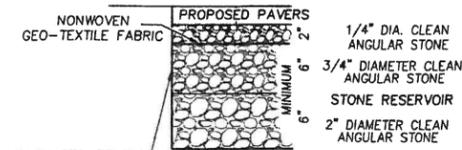
**LEGEND**

- C.B. CONCRETE BOUND
- I.P. IRON PIPE
- I ROD IRON ROD
- FND. FOUND
- 00 ASSESSORS MAP AND PARCEL
- OHW OVER HEAD WIRE
- UTILITY POLE
- ⊕ WATER SHUT OFF
- W — WATER SERVICE
- S — SEWER SERVICE
- LOCATION UNCERTAIN
- PROPOSED PERVIOUS PAVER
- PROPOSED PARKING SPACE
- PROPOSED CONTOUR

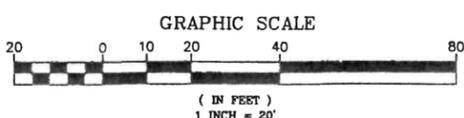
**"TECHO-BLOC" PERVIOUS**

**PAVER WALKWAY DETAIL NOT TO SCALE**

"TECHO-BLOC" PERVIOUS PAVERS. REFER TO MANUFACTURERS SPECIFICATIONS AND INSTALLATION GUIDELINES PROVIDED HEREWITH.



\* SAND SHALL BE GRADED SAND, FREE FROM ORGANIC MATERIALS, GRADED SUCH THAT 100% PASSES A 0.5" SIEVE AND A MAXIMUM OF 15 PERCENT PASSES A #200 SIEVE.



NO.	DATE	DESCRIPTION	BY

**PROPOSED CONDITIONS**

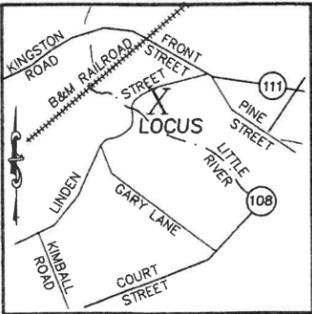
**ZONING PLAN**  
IN  
**EXETER, NH**

SHOWING  
**PROPOSED SITE IMPROVEMENTS**  
**AT 50 LINDEN STREET**  
(ASSESSORS MAP 82 LOT 11)

RECORD OWNERS  
**107 PONEMAH ROAD LLC**  
131 DANIEL WEBSTER HIGHWAY #888 NASHUA, NH 03060

**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"=20' DRWN. BY: H.H.B. PROJECT: E222905  
DATE: MAR. 22, 2023 CHKD. BY: R.S.G. SHEET 2 OF 2



LOCUS MAP  
NOT TO SCALE

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NASHUA, NH 03060  
BK.6398 PG.2561  
14,594 S.F.  
0.34 ACRES

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**ZONE R2 SINGLE FAMILY**

AREA 15,000 S.F.  
LOT WIDTH 100'  
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BUILDING COVERAGE 25%

**BUILDING SETBACKS**

FRONT 25'  
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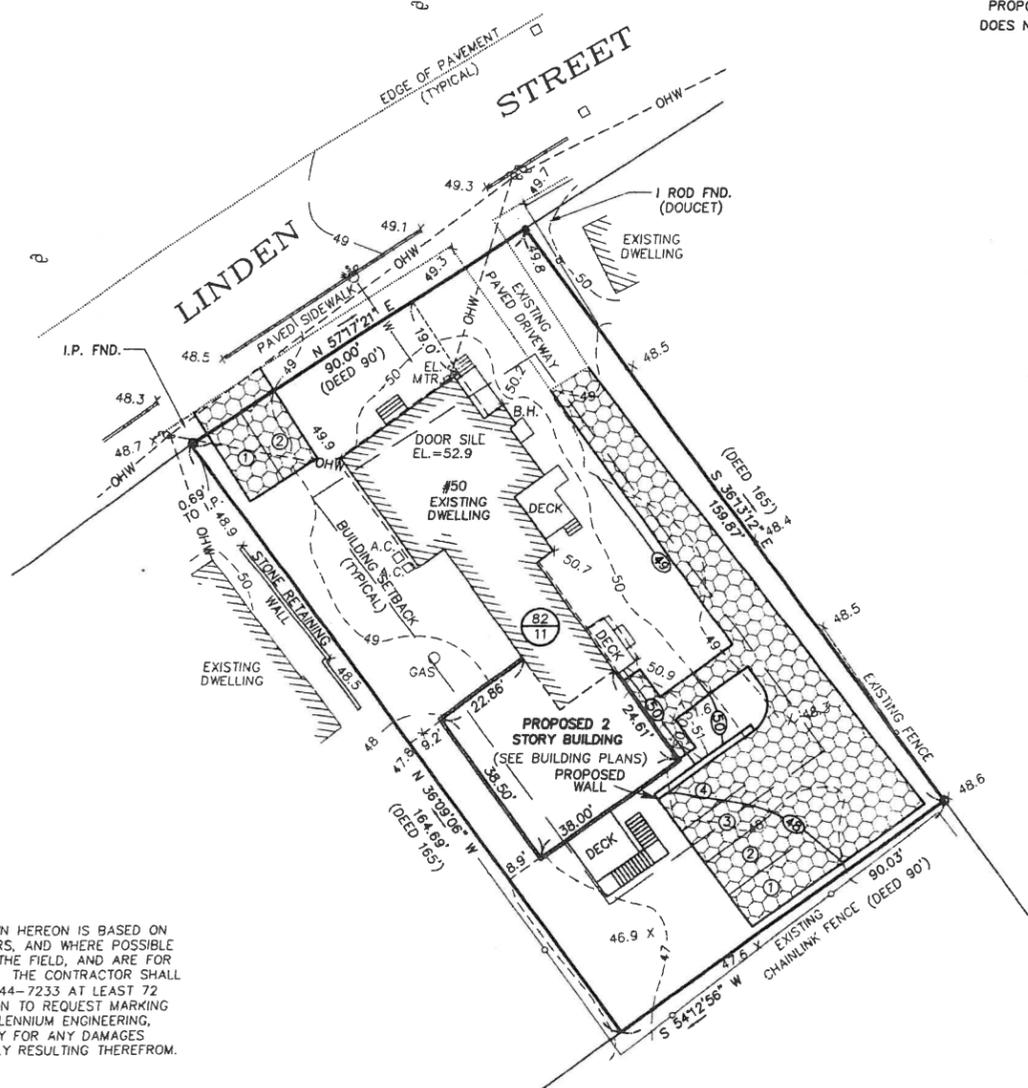
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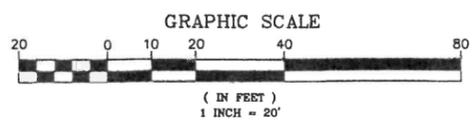
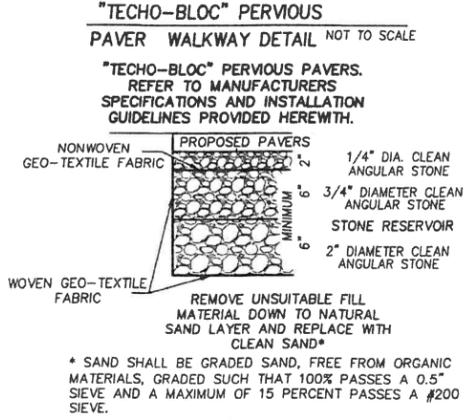
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  - LOCATION UNCERTAIN
  - PROPOSED PERVIOUS PAVER
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**PROPOSED CONDITIONS**

**ZONING PLAN**

IN  
**EXETER, NH**

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AT 50 LINDEN STREET  
(ASSESSORS MAP 82 LOT 11)

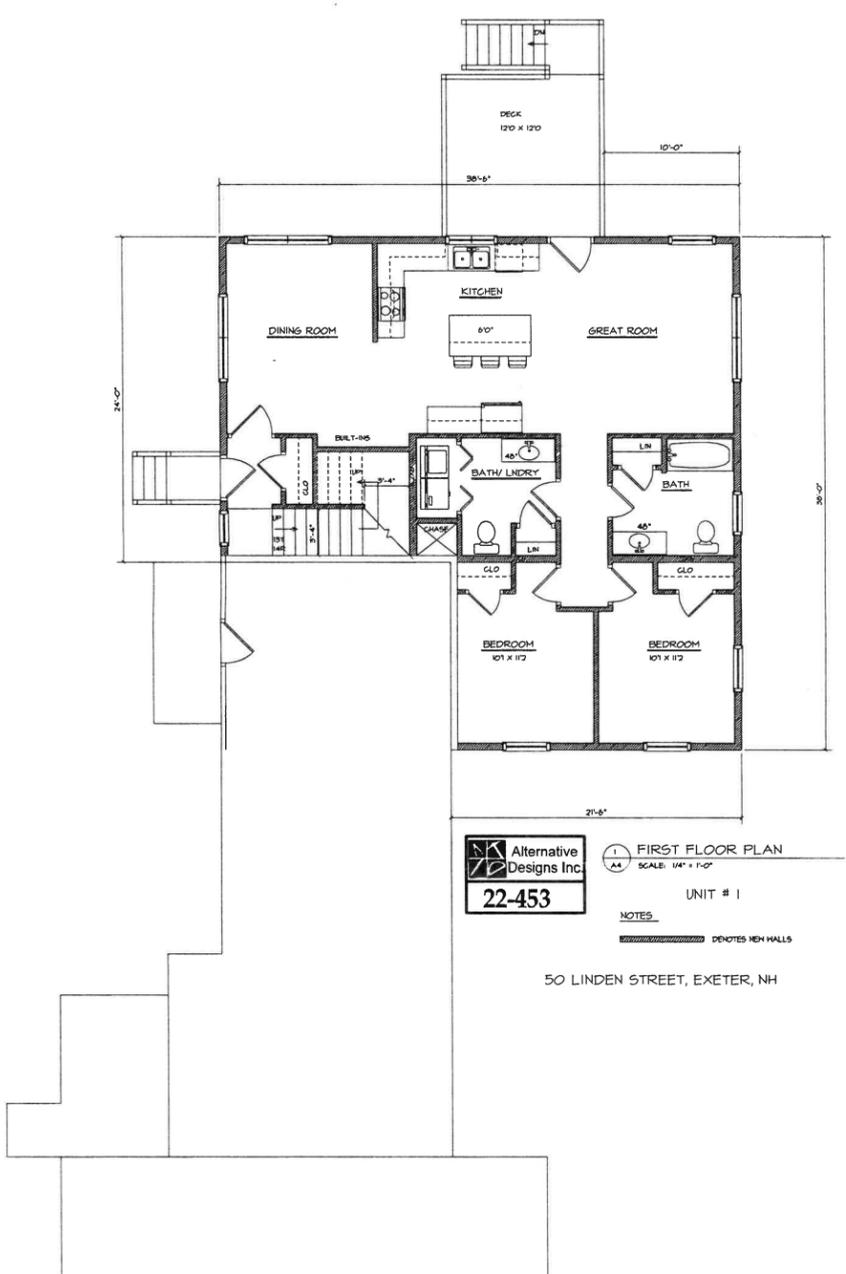
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DATE: MAR. 22, 2023	CHKD. BY: R.S.G.	SHEET 2 OF 2

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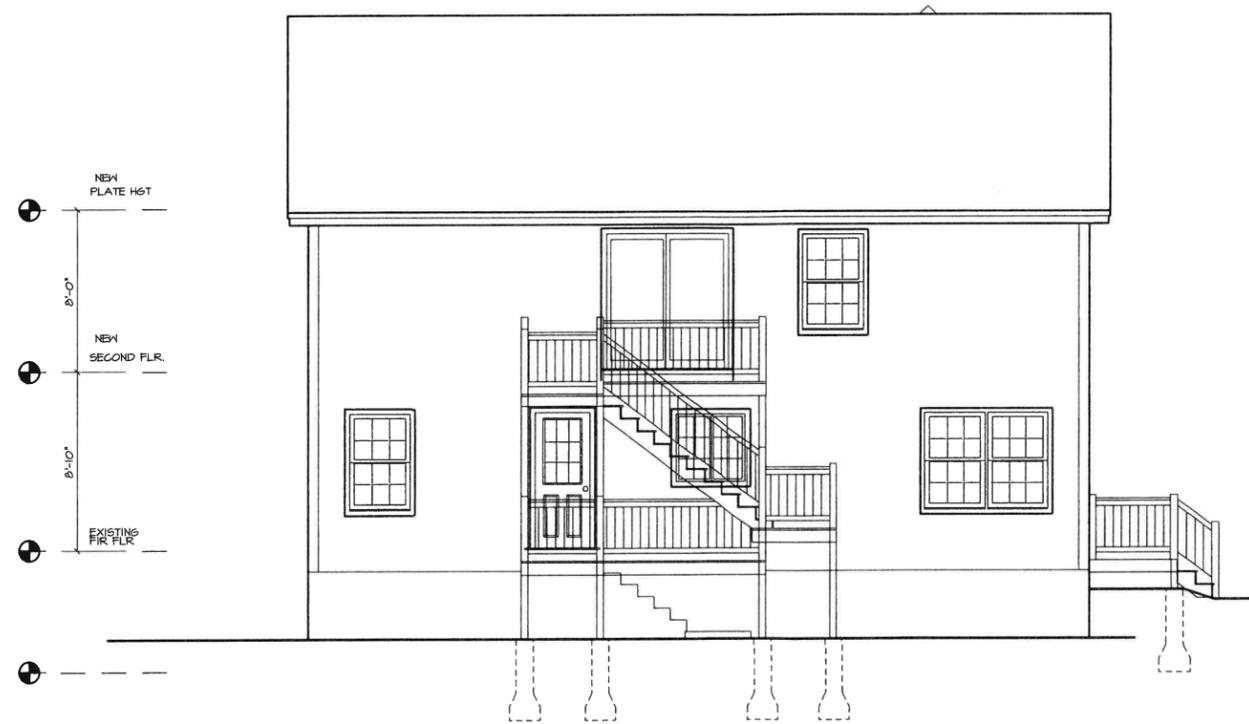
Exh. 2



Exh. 2

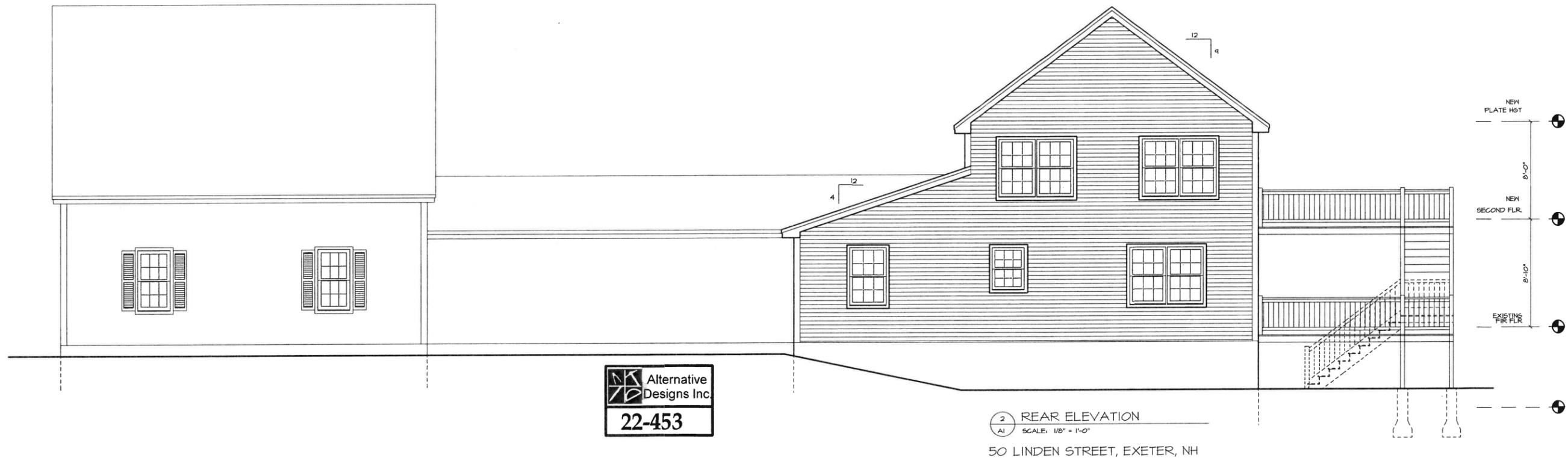


Exh. 2

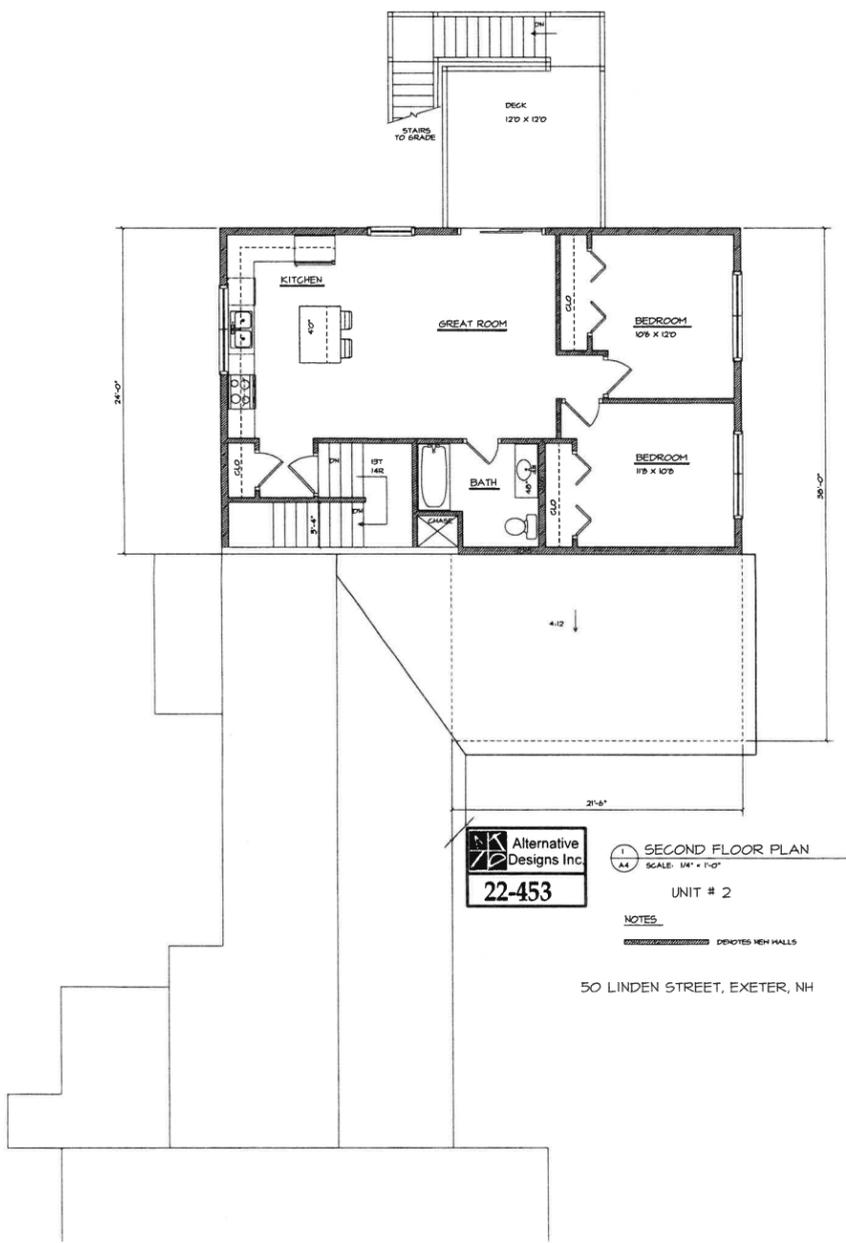


1 LEFT SIDE ELEVATION  
AI SCALE: 1/4" = 1'-0"  
50 LINDEN STREET, EXETER, NH

Exh. 2



Exh. 2



Alternative  
Designs Inc.  
22-453

1 SECOND FLOOR PLAN  
A.4 SCALE: 1/4" = 1'-0"

UNIT # 2

NOTES  
----- DENOTES NEW WALLS

50 LINDEN STREET, EXETER, NH

LETTER OF AUTHORIZATION

I, Gal Peretz, duly authorized representative of 107 Ponemah Road, LLC, owner of property depicted on Tax Map 82, Lot 11, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the Town of Exeter and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: 09-30-2022

107 PONEMAH ROAD, LLC

Gal Peretz  
Gal Peretz, duly authorized



Mario Ponte  
101 Water St.  
Exeter NH 03833  
T. 603.401.7261

September 28, 2023

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

RE: 85-87 Water St / Janvrin Block Project

Dear Chair Baum and Board Members,

Enclosed please find an application for a variance regarding the above property to permit limited parking of only three parking spaces for the building that will house 8 residential units and 2 retail units.

We respectfully request that this matter be placed on the Board's next October 2023 meeting agenda. Please do not hesitate to call me if you have any questions.

Sincerely,

  
Mario Ponte,

Town of Exeter  
APPLICATION FOR A

# VARIANCE

Case Number:	<u>2BA# 23-16</u>
Date Filed:	<u>10/2/23</u>
Application Fee: \$	<u>100.00</u>
Abutter Fees: \$	<u>50.00</u>
Legal Notice Fee: \$	<u>50.00</u>
TOTAL FEES: \$	<u>200.00</u>
Date Paid	<u>10/2/23</u> Check # <u>546</u>

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

Address 101 Water St., Exeter NH 03833

Telephone Number (603) 401-7261

Property Owner (Same)

Location of Property 85-87 Water St. Exeter NH 03833  
WC Waterfront Commercial zoning district Tax Map # 12-29

Applicant Signature Mario Ponte  
(Number, street, zone, map and lot number)

Date September 27 2023

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 VARIANCE

A variance is requested from article 5 section 5.6.6 of the Exeter zoning ordinance to permit:

To permit less parking than required for the proposed residential and retail uses to occupy the building.

FACTS SUPPORTING THIS REQUEST:

1. The variance will not be contrary to the public interest;

The essential character of the locality already relies on the use of ample off street parking, municipal parking lots and adding an additional 5 residential units and 1 additional retail unit to the downtown area will not change the essential character of the locality. Granting the parking variance will not threaten public health, safety or welfare.

2. The spirit of the ordinance is observed;

The spirit of the zoning ordinance is to prevent traffic problems caused by inadequate parking for the particular use. The spirit of the ordinance will be observed if the variance is granted.

3. Substantial justice is done;

The benefit to the applicant by allowing mostly off-site parking for the proposal means the proposal will proceed. There is no known detriment to the public from allowing off-site parking for residential use associated with this property. And no known detriment for any individual.

4. The values of surrounding properties are not diminished;

The proposed use is mostly residential and one additional retail unit which is consistent with nearby uses of retail, residential and restaurants. There is no evidence that the modest need of parking will diminish the values of the surrounding properties. In fact, the proposed exterior renovations will likely enhance the value of nearby properties.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The size of the lot as shown on the map has room for 3 parking spots (existing) and virtually no room for any additional on-site parking. The applicant seeks to restore the property and has worked diligently with the Exeter Historic Commission to honor and preserve the original historic features of the building.

ABUTTER LABELS AND LISTS:

Abutter labels and lists must be attached to this application. Please contact the Planning Office if you have any questions.

ADDITIONAL MATERIALS:

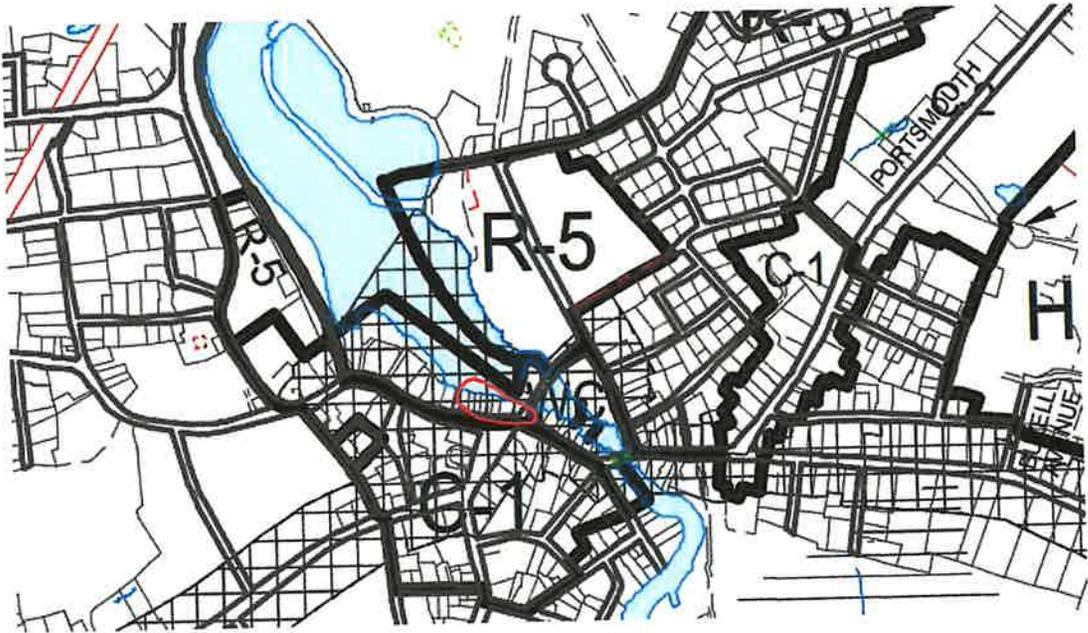
If provided with the application, additional submission materials will be sent to the ZBA members in their monthly packet of information. Please contact the Planning Office if you have any questions regarding additional submission materials.

# The Janvrin Block



The Janvrin Block, 85-87 Water Street, is part of the National Registry of Historic Places, is a cabled roofed brick building at the heart of downtown Exeter. At street level a series of brick arches are covered by a shingled awning over the door and windows. One arch is still completely visible on the east wall. A granite wall underlines the second floor windows which are clustered in threes. Beneath the corbeled cornice is an inscription stone. An elevated addition with novelty siding is attached to the rear of the building and continues onto the back of the Indian Head Bank. 19th century Commercial Building/Federal Survival, 1860

Completed building will provide 2 commercial retail units on the street floor (2,300 sq ft), 4 residential units on the second floor (3525 sq ft), 2 Penthouse suites on the 3rd floor (3525 sq ft), 2 residential units on the basement floor (1800 sq ft).



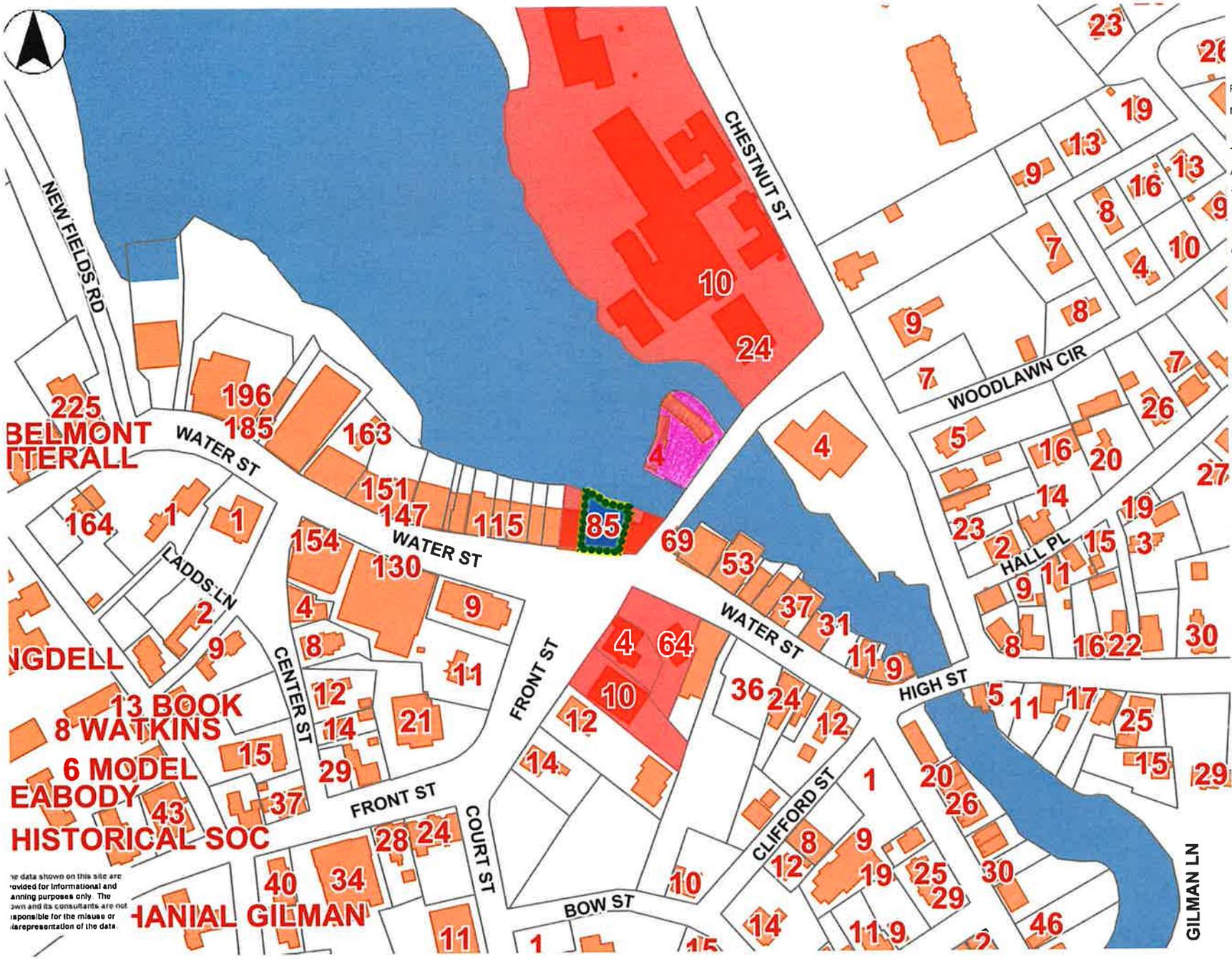
**Abutters List**[print this list](#)

Date: October 02, 2023

Subject Property Address: 85 WATER ST Exeter, NH  
Subject Property ID: 072-029-0000 (Trends Gift Gallery)

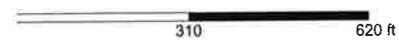
Search Distance: 0 Feet

MAILING ADDRESS(Applicant)  
Mario A Ponte, Sr. Rev. Trust  
101 Water Street  
Exeter, NH. 03833① Owner: EXETER MILLS LLC (Apartments)  
Co-Owner: C/O CHINBURG PROPERTIES  
Prop ID: 064-051-0000  
Prop Location: 10 CHESTNUT ST Exeter, NH3 Penstock Way  
Newmarket, NH. 03857② Owner: EXETER TOWN OF (Town Office Bldg.)  
Prop ID: 072-001-0000  
Prop Location: 10 FRONT ST Exeter, NH10 Front Street  
Exeter, NH. 03833③ Owner: 64 WATER STREET LLC (Met Ollies Bakery)  
Prop ID: 072-015-0000  
Prop Location: 64 WATER ST Exeter, NH181 High Street  
Exeter, NH. 03833④ Owner: INN BY THE BANDSTAND LLC (Ollie's Restaurant & Inn)  
Prop ID: 072-016-0000  
Prop Location: 4 FRONT ST Exeter, NH6 Front Street  
Exeter, NH. 03833⑤ Owner: TSUI AND YAP LIMITED (Capital Thai Restaurant)  
Prop ID: 072-028-0000  
Prop Location: 93-97 WATER ST Exeter, NH141 A Court Street  
Exeter, NH. 03833⑥ Owner: SHAW PEG & NADILE RONNEY A  
Co-Owner: KATZ AARON & JUDITH (Shaw Bldg Real Estate office)  
Prop ID: 072-030-0000  
Prop Location: 81-83 WATER ST Exeter, NH  
Water Street Market Place2147 O Street NW, Apt. 306  
Washington, D.C. 20037⑦ Owner: Kimball Island LLC  
Prop. ID: 072-031-00004 Strong Bridge  
Exeter, NH. 03833



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

All 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 10/02/2023 at 12:10 PM Abutter Map - 85-87 Water Street, Exeter



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD  
JOHN J. RATIGAN  
DENISE A. POULOS  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
HEIDI J. BARRETT-KITCHEN  
JUSTIN L. PASAY  
ERIC A. MAHER  
CHRISTOPHER D. HAWKINS  
ELAINA L. HOEPPNER  
WILLIAM K. WARREN  
BRIANA L. MATUSZKO

September 13, 2023

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

---

RETIRED  
MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
NICHOLAS R. AESCHLIMAN

**Re: 165A Kingston Road, Map 115, Lot 12**

Dear Chairman Baum and Board Members:

Enclosed please find Request for Rehearing for the above variance application which was denied by the Board on August 15, 2023.

We respectfully request that this Request for Rehearing be taken up at the Board's October 17, 2023 meeting. If you have any questions, do not hesitate to contact me.

Very truly yours,  
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers  
SCS/sac  
Enclosures

cc: Aaron Jefferson

S:\JA-JL\Jefferson, Aaron {12389-0000}\165A Kingston Road, Exeter, NH {12389-0001}\Rhearing Request\2023 09 13 ZBA Letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC  
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301



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MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
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**RSA 677: 2 MOTION FOR REHEARING**

September 13, 2023

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

**Re: Aaron Jefferson, 165A Kingston Road, Map 115, Lot 12**

Dear Chair Baum and Board Members:

This is a request for a rehearing by Aaron Jefferson, applicant (“Jefferson”) from the Zoning Board of Adjustment’s (“ZBA”) denial of the application for variance to change the use of an existing non-conforming use.

**I. FACTUAL CONTEXT**

Jefferson requested relief from the provisions of Article 5, Section 5.1.2.B to grant a variance to allow a change to an existing non-conforming use to permit a small auto repair facility on the subject property. The application was presented to the ZBA on August 15, 2023 and at that time, the ZBA denied the request.

Jefferson provided historical information to indicate that the subject property was once part of a larger property but was subdivided in 1993; it is served by an access easement created in 1993 when the property was subdivided. The access easement burdens the front lot. Jefferson further provided historical information concerning the subject property and indicated that dating from the 1970’s, that the property was used for a variety of commercial activities, including a welding operation, the site of the current owner’s excavating company, equipment repair of vehicles for the excavation company and currently for use by a landscape company. All of such activities are existing non-conforming uses.

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Jefferson then provided evidence to describe the non-conforming use which he proposed to change to, and which would consist of vehicle repair to take place inside the existing building with approximately six trips in and out of the property on a daily basis and with the hours of operation from Monday through Friday, 9 am to 6 pm and Saturday morning by appointment only. Jefferson further described details of the operation including the fact that waste oil generated would be kept in sealed drums and removed.

After deliberating on the evidence presented, the Board determined that the variance request should be denied because there might be noise or potential for leakage of hazardous material, the request will alter the essential character of the neighborhood, substantial justice would not be served because concerns were raised by neighbors and no hardship exists because existing buildings could be used consistent with zoning and there is nothing in the buildings which make them specific to commercial use and the land size meant that residential use was possible.

## II. ARGUMENT

### A. Standard for Granting a Motion for Rehearing

The “rehearing process is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals filed with the court. Loughlin, New Hampshire Practice, 15 Land Use Planning and Zoning §§ 21.19. A request for rehearing should be granted only if the Board committed error or there is new evidence which was not available at the time of the hearing. The ZBA may grant such a rehearing if in its opinion good reason is stated in the motion.

### B. The ZBA’s Conclusion that Several Variance Criteria were not Satisfied was Erroneous

- 1) The draft minutes from the August 15, 2023 meeting concluded that the spirit of the ordinance was not adhered to based on a concern of possible noise or potential for leakage of hazardous materials. In doing so, the Board erred because the finding of the “spirit and intent” criteria must be identical to the finding of public interest and no express negative finding was made concerning the public interest criteria. That said, the Board’s comments regarding “spirit and intent” are misplaced because the possibility (emphasis added) of noise or leakage of hazardous materials could equally apply to the operation of the existing non-conforming use. In particular, evidence was presented that the existing non-conforming use involved repairs, oil and antifreeze is already on site as part of the historic operation and large pieces of equipment have already historically been on site. Noise from the machinery of the existing non-conforming use (trucks, excavation machinery) was historically already an element of the equation. Further, since the ordinance is designed to regulate only a change in the purpose, manner or extent of a non-conforming use which is harmful, but not to prohibit the change itself or to prohibit the existing non-conforming use, then the Board erred in denying relief over concern of potential risks that could occur as a matter of right with the existing non-conforming use. Similarly, a concern was expressed about the potential of the change to

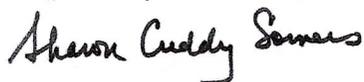
be so significant as to change the essential character of the neighborhood. Again, if the existing non-conforming use, which historically did have the public on site at times, were to be deployed to something other than the subject application, then those activities could occur as of right and would result in the traffic and other issues complained of by the Board.

- 2) There is some inconsistency in the Board's thinking regarding a future increase in the scale of the operation and how that impacts the decision. Specifically, the Board correctly notes that if there is a drastic change in the business as evidenced by changes to the land or new buildings, then further relief would be needed. The Board then notes that the scale of the business could still increase even if the building size did not increase. While there might be some increase, any change in scale would of its nature be limited if the size of the building or the facilities in general were not expanded.
- 3) The Board misapplied the hardship standard, citing that the existing buildings could be used for other activities consistent with zoning, that there was nothing "commercial" in nature about the buildings, and the land itself could be used for residential purposes. The Board's charge is not to identify means by which have the property be used consistently with zoning; rather it is to analyze the application before it and determine whether the applicant has demonstrated that the property is burdened by the zoning restriction in a manner distinct from other similarly situated property. The Board failed to take into account the special condition of the property containing a non-conforming use and failed to recognize that the existing non-conforming use, with any related impacts, could lawfully continue with the current or future owners.

### III. CONCLUSION

The Board's decision was unlawful and unreasonable. The Board committed error by determining that the application did not meet all five variance criteria. Accordingly, we respectfully request that this rehearing request be granted.

Respectfully submitted,



Sharon Cuddy Somers  
SCS/sac  
cc: Aaron Jefferson