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Stratham Zoning Board of Adjustment
Meeting Minutes
January 9, 2024
Stratham Municipal Center
Time: 7:00 pm

Members Present: Drew Pierce, Chair
Bruno Federico, Member
Frank MacMillan, Member
Nicholas Garcia, Alternate

Members Absent: Brent Eastwood, Vice Chair
Jameson Paine, Member

Staff Present: Mark Connors, Director of Planning and Community Development

1. Call to Order/Roll Call

Mr. Pierce called the meeting to order at 7:04 pm and took roll call. Mr. Pierce appointed Mr. Garcia as a voting member for the meeting.

2. Approval of Minutes

a. December 12, 2023

Mr. Pierce made a motion to table approval of the December 12, 2023 meeting minutes to the next regularly scheduled meeting. Mr. Federico seconded the motion. All voted in favor and the motion passed.

3. Old Business:

a. Case #674: Green & Company (Applicant), Boulders Realty Corp. (Owner), 13 & 15 Stoneybrook Lane, Tax Map 4, Lots 1 & 7, Zoned Special Commercial. Request for a variance from Table 3.6, Table of Uses, to permit the development of single-family dwelling units in a district where the use is not permitted. The applicant proposes 59 single-family dwellings on a single property under a condominium form of ownership. *This application was continued from the Board's December 12, 2023 meeting.*

Tim Phoenix of Hoefle, Phoenix, Gormley & Roberts spoke on behalf of the Applicant, Green & Company. He introduced Rick Green from Green & Company, Mike Garrepy and John O'Neil of Garrepy Planning Consultants, and Joe Coronati from Jones and Beach. Mr. Phoenix explained that this application was continued from the previous meeting in order to allow the Regional Planning Commission (RPC) to provide comments on Regional Impact. He commented on the RPC letter dated January 9, 2024 and provided a summary of the project. The parcel is 77 acres and the application

45 requests the use of 59 stand-alone homes in a condominium form of ownership which is not permitted
46 in the Special Commercial zone. He added that other similar, more impactful uses are permitted by
47 Conditional Use Permit such as duplexes, multi-family, hotels, community centers, hospitals, retail
48 sales, and restaurants. The project team analyzed some of those more intensive uses like duplexes and
49 determined that any reasonable use, especially commercial, would be best suited if the project could
50 be connected to municipal water and sewer. Members of the project team met the Town of Exeter on
51 several occasions and concluded that while water and sewer might be available at a reasonable cost in
52 the future, it is not now, so the project is limited to on-site well and septic. Mr. Phoenix commented
53 that he does not remember seeing a zone that would allow duplexes and no single family homes. He
54 theorizes that the idea was to try to appeal to commercial uses with maybe residential units above the
55 commercial, but the lot is surrounded by Route 101 (without access) and Route 108 (without frontage)
56 and for commercial uses being tucked back in the woods is not conducive to that kind of use. He added
57 that although small, there is a residential neighborhood that is passed through to get to the property.
58 The lot is also subject to numerous wetlands which limits where the homes can be constructed. The
59 argument is that the site does not lend itself to commercial without public water and sewer and its size
60 and location and wetlands make a larger project infeasible. Mr. Coronati and Green & Company
61 looked at proposing a project that would be economically feasible but won't be as intensive as some
62 of the permitted uses such as duplexes and multi-family.

63
64 Mr. Phoenix addressed the RPC letter. Most of the comments relate to Planning Board issues such as
65 transportation networks, traffic studies, light, noise, smoke, odors, particles, aquifers and surface
66 waters. Mr. Phoenix directed the Board's attention to the third paragraph of the letter regarding RPC's
67 ability to provide only limited comments due to the lack of information currently available. He believes
68 the main point of the letter is the comments regarding a lack of sufficient affordable and overall
69 housing availability. Mr. Phoenix replied that the project will include market-rate and not age-
70 restricted housing. He believes the project fits in nicely with the comments in the RPC letter. Although
71 a variance is required, the project team believes the project with single-family homes fits in well and
72 is better with regards to wetlands impact and its location not directly on Route 108. Mr. Phoenix
73 offered to have others on the project team present the plans or for Mr. Phoenix to repeat the review of
74 the criteria.

75
76 Mr. Pierce reiterated that the issue is to allow single-family residences in a place that does not
77 specifically say they are permitted. He added that at the last meeting there was an in-depth conversation
78 with Kevin Baum of Hoefle, Phoenix, Gormley & Roberts and the public hearing was opened.
79 Residents voiced concerned and had their questions answered. Mr. Pierce asked Mr. Phoenix if the
80 team is comfortable with the Board taking action on the application tonight without a full board
81 present. Mr. Phoenix replied that they would prefer to have 5 members present and he asked Mr. Garcia
82 if he plans to participate in the vote. Mr. Garcia replied that his instinct is to recuse himself because
83 there seems to be a lot of background information and he has not heard the counter to the Applicant's
84 presentation.

85
86 Mr. Pierce asked Mr. Connors if the public hearing needs to reopened. Mr. Connors replied it is up to
87 the Board but the public hearing was already held in December so the hearing does not technically
88 have to be reopened. He added that typically when applications are continued, the public hearing is
89 reopened in case there are additional comments.

90
91 **Mr. MacMillan moved to open the public hearing. Mr. Pierce seconded the motion. All voted in**
92 **favor and the motion passed.**

94 Mr. Phoenix requested that the project team be afforded the time to present the project prior to
95 hearing public comments. The Board agreed and Mr. Coronati presented the project. He started with
96 describing the project location and the surrounding land uses. The only access to the property is from
97 Stoney Brook Lane and there is currently one house and an old pond on the property. The proposal
98 is to extend the roadway into the site, avoiding wetlands where they can and crossing where there
99 are historic crossings. There would be 59 free-standing, single-family homes in a couple of different
100 loops. There would be individual septic systems and perhaps some shared septic systems, but the
101 goal is for individual systems. The drinking water for the development would be supplied by two
102 wells that have already been drilled. The wells would be a small community water system like other
103 condominium developments in town. This would not be a town maintained road, so there'll be no
104 more no burden to the town for maintenance. All the other land that's not developed will become
105 open space. There is an existing easement along Route 101 and the project is basically 100 feet away
106 from the right away line of Route 101 or almost 150 feet from the edge of pavement. There will also
107 be space for recreation, the project team is expecting a network of trails, but they haven't gotten to
108 that point yet.

109
110 Mr. Green added that the communities they build are an active lifestyle type where the roads are
111 maintained by the Association and the lawns are mowed, the properties are plowed, shoveled, etc.
112 by the Association. Residents typical to their developments are people that may live a few months
113 in Florida or have a travelling lifestyle. It's not an age restricted community. He described their
114 communities as age-targeted, meaning that's just who buys the homes. Mr. Green provided a current
115 example development in Portsmouth that is 56 homes, about 45 are currently occupied and there is
116 one home with two children. Their communities are typically not conducive to families with the big
117 playground in the backyard and two acres of land, it just it's a very different lifestyle.

118
119 Mr. Phoenix reiterated previous comments from Mr. Coronati that this property has been in its
120 existing condition, wooded with a dilapidated home on it, for decades. If there was a viable,
121 commercial use for this, it would have been done. They've talked with Exeter and have come back
122 to the town to offer something that in his mind should be permitted in the zone. He reiterated that
123 Mr. Green said at the previous meeting that he has no problem building a commercial facility or
124 hotel, but it just isn't in this spot. Mr. Phoenix proceeded to read aloud Mr. Green statements from
125 the last meeting minutes related to the site being difficult with the river on two sides and no space
126 for large parking areas. He added that he thinks the RPC letter specifically indicates that the housing
127 need is there for the next 15, 18, 20 years. Mr. Phoenix commented that from reading the minutes
128 of the last meeting, some of the neighbors didn't really seem to like the idea of any commercial use
129 and they would prefer residential.

130
131 Mr. Green stated that there are only two little pods of usable land on the parcel and on a blank piece
132 of paper without having done the analysis, it looks like a it could be a big commercial development,
133 but it just isn't there and it's hard to get into. Going to the end of Stoneybrook Lane is difficult
134 enough, but then there is a hill and another major crossing.

135
136 Mr. Phoenix stated that many of the concerns raised by the board members and others are really
137 Planning Board issues. He reiterated that the question before this Board is can single family houses
138 be constructed there. He stepped through the variance requirements, addressing the first two
139 together: contrary to the public interest and spirit of the ordinance. He addressed if the project would
140 alter the essential character of the neighborhood or threaten public health, safety and welfare. He
141 stated that given that duplexes, single family in a cluster, multifamily, and commercial uses are all
142 permitted, then this project is less impactful. And therefore, granting this variance doesn't violate

143 the basic objectives of the ordinance, which clearly intends to permit some kind of residential use.
144 Typically he finds that neighbors usually prefer the single family projects over duplex projects for
145 whatever reason. He added that the character of the area is eclectic, with a major highway, the river,
146 Route 108 (which is heavily commercial) and houses abutting the parcel. The project team believes
147 that this project will fit in with the essential character of the locality, given those factors. The project
148 will be vetted by the Planning Board and will have new well and new septic, and all new homes with
149 privately-owned roads that will bring in tax revenues without burdening the town with road
150 maintenance. He stated the project does not threaten public health, safety and welfare. Mr. Phoenix
151 continued that the third of the five variance requirements is that substantial justice is done which is
152 a balancing test of the rights of the Applicant against the harm to the general public. The project
153 team believes the rights of the Applicant would be harmed if this is denied and yet, there is no gain
154 to the general public from allowing single family homes out there as opposed to duplexes. Mr.
155 Phoenix addressed the fourth criteria that values of surrounding properties will not be diminished.
156 He directed the Boards attention to an appraisal from Brian White, an expert appraiser with decades
157 of experience, whose opinion is this is an appropriate fit, and a better fit, and is likely to increase
158 surrounding property values and not diminish them. Mr. Phoenix addressed the final criteria, literal
159 enforcement would result in unnecessary hardship. He stated there are special conditions of the
160 property that distinguish it from others in the area and repeated the issues with Route 101, the river,
161 lack of frontage on Route 108, and a lot of wetlands on the property. Mr. Phoenix added that for the
162 reasons previously stated and outlined in their memo, applying the requirements to the ordinance is
163 fair and reasonable. He continued that the purpose of this ordinance was to encourage mostly
164 commercial with some residential, and added that Mr. Coronati is an experienced developer and has
165 demonstrated that it just doesn't work. The fact that the property has been undeveloped for decades,
166 speaks to that. He addressed that the proposed use is not permitted in in the zone and described why
167 there are zoning ordinances, variances, and zoning boards - to analyze all circumstances in a
168 particular situation, to see if a variance or relaxing of the strict terms of the ordinance is in order.
169 The final issue is to determine if the use is reasonable. Mr. Phoenix reiterated there are residential
170 uses that are permitted and the project team believes this proposal is less intensive than duplexes
171 and multifamily.

172
173 Mr. Green added that if they chose to build multi-family or duplex, then the number would be
174 substantially higher than 59, and the project team is not asking for higher density, they are just trying
175 to make the project work. He added that it is rare that a developer asks for less density.

176
177 Mr. Pierce asked for questions from the Board. Mr. Garcia asked for clarification that the variance
178 requested is just for the use and has nothing to do with any environmental area, no relief from
179 conservation easements or anything like that. Somebody confirmed.

180
181 Mr. Pierce asked if any members of the public would like to speak.

182
183 Drew Goddard of 1 Sanctuary Drive spoke as a Stratham resident. He stated that he is not against
184 development and if anything he is pro-development, but he believes in good planning, like the future
185 mentioned in the RPC letter. He believes the application does not meet the five criteria required. The
186 project is not asking for just an additional use, but in essence asking for a rezoning. He believes that
187 the Zoning Board is not the forum for rezoning, that Town Meeting is and that the town should
188 decide what the future should look like, instead of trying to decide today what the highest and best
189 use is. He continued that the proposed use is not permitted in the ordinance and the other residential
190 uses described are also not permitted uses but instead may be allowed with a Conditional Use permit.
191 He added that the residents of the town and the Master Plan decided the highest and best use of this

192 zone and the intent of this district is to provide an opportunity for the development of hotel,
193 conference center, and restaurant entertainment complexes within the district. Mr. Goddard stated
194 the ordinance states that where municipal water and sewer services are available, increased densities
195 shall be allowed. He added that the ordinance does not say that municipal water and sewer need to
196 be allowed, that it says if those services are available, then higher densities would be allowed and
197 considered. He read from the ordinance that commercial/professional uses are allowed with upper
198 story residential uses encouraged. Mr. Goddard believes what the town is looking for is a commercial
199 area and he disagrees with the Applicant's presentation that duplexes and multi-family meet the
200 vision of the ordinance. He believes that a change from multifamily or upper story apartments or
201 condos to single family residential homes is a big leap and should be approved through rezoning.
202 He continued that with regards to water and sewer he spoke with Dave Sharples, Exeter's Town
203 Planner who told Mr. Goddard that Exeter has no stance on this project and when a project moves
204 forward into the Planning Board, that's when Exeter will comment. Mr. Goddard summarized his
205 conversation with Mr. Sharples that on a very high level, water availability was questionable and
206 that Exeter wasn't going to complete an analysis. Mr. Goddard stated that the Applicant from the
207 best of his knowledge hasn't hired a consultant to do an analysis. He continued describing some
208 water and sewer information he heard from Mr. Sharples and that Exeter hasn't denied sewer. Mr.
209 Goddard addressed the Applicant's discussion of the lack of water and sewer being insufficient for
210 commercial use. He believes that residential developments use more water and sewer than almost
211 all commercial developments except for some uses like restaurants. He believes that examples like
212 office space, commercial retail, and movie theaters would have just a couple of bathrooms. So the
213 need for water and sewer is a lot greater for residential than many or most commercial requirements.
214 He provided an example of Millbrook Office Park that is successfully constructing the fourth
215 building without municipal water and sewer. Mr. Goddard continued with other comments regarding
216 local and national housing shortages and that with more housing comes more commercial needs. Mr.
217 Goddard commented on the access to the site that the way roads are configured today are not
218 necessarily the way roads will be configured in 10 years or as the property gets developed. He added
219 that the existing traffic light is helpful. He discussed some of the variance criteria and believes that
220 the project violates basic zoning objectives and voiced strong opposition to losing potential
221 commercial tax base at this property and voiced issues with the proposed unit layout.

222
223 Mr. Pierce asked Mr. Goddard to pause while Mr. Pierce clarified to the Board and audience that the
224 plan submitted by the Applicant is conceptual and many of Mr. Goddard's comments are related to
225 the Planning Board approval process. He clarified that the Zoning Board's review is limited to the
226 use of the property. Mr. Goddard replied that his comments are a rebuttal to the Applicant's assertion
227 that the visibility of the property is not conducive to commercial use. Mr. Goddard closed his
228 comments with his assertion that the application does not meet the five requirements for a variance
229 and that the change of use of the property should be determined at Town Meeting.

230
231 Mr. Pierce asked if any other members of the public would like to speak.

232
233 Mr. Phoenix asked to respond to Mr. Goddard's comments using the RPC's letter recognizing
234 Stratham's future housing needs. He added that at least one of the residential abutter's stated at the
235 last meeting that they do not want the property used as commercial. Mr. Phoenix also objected to
236 Mr. Goddard's comments regarding the timing of the purchase of the property. He stated that the
237 hardship test relates to the land and not the owner and the Applicant submitted an appraisal from a
238 consultant with decades of experience and stated there is a case law that says if an expert opined on
239 an issue and there's no countervailing expert opinion to rebut it, then it's acceptable. Mr. Phoenix
240 described the property and its surroundings as a transition area and those areas are important for

241 zoning boards to perform an analysis if the ordinance makes sense in a particular instance and briefly
242 repeated how he believes the application meets each criteria. Mr. Pierce thanked Mr. Phoenix for his
243 response.

244

245 **Mr. MacMillan moved to close the public hearing. Mr. Pierce seconded the motion. All voted in**
246 **favor and the motion passed.**

247

248 Mr. Pierce asked if Mr. Garcia has any questions. Mr. Garcia replied that he understands the for and
249 against very well. Mr. Pierce requested a board discussion of the five criteria, beginning with the spirit
250 of the ordinance is observed. Mr. Pierce stated that the ordinance allows for residential uses in that
251 zone and allows for more impactful residential uses and most zoning is made to limit the impact of
252 building. He added that the town has not received any other applications for commercial uses for this
253 property and asked Mr. Connors to confirm. Mr. Connors replied that many years ago there was an
254 application for a church. Mr. Federico replied that he believes the church application was submitted
255 prior to the Special Commercial District zoning. He provided background that he was involved on the
256 committee to draft an agreement for water but the town recently voted against that. He added that in
257 his opinion, the zone is being held up because the town does not want to pursue water and sewer for
258 the district. Mr. Federico continued that the commercial zones are impacted by that decision and every
259 applicant that comes before this board has to be evaluated on current basis, not 20 years or 30 years in
260 the future because the town has already voted against water and sewer. The Board agrees that single-
261 family can be allowed in the spirit of the ordinance.

262

263 Mr. Pierce moved on to the criteria for contrary to the public interest. Mr. Federico commented that
264 the town voted against water and sewer so whoever develops the property has to take care of their own
265 water and sewer. Mr. Pierce summarized that it is a unique circumstance to have that zoning on that
266 lot and the town voted against allowing water and sewer to it. So in a sense, the town has somewhat
267 voted against its own zoning. Mr. Federico agreed.

268

269 Mr. Pierce moved on to the substantial justice criteria. Mr. MacMillan commented that the property is
270 very unique and there are many constraints on it and he believes the Applicant has met that criteria.
271 Mr. Pierce added that the project will bring almost five dozen housing units to Stratham and many
272 people agree that Stratham needs more housing. Mr. MacMillan added that the Board heard at the last
273 meeting about the value of surrounding properties not being diminished. He heard a preference from
274 the existing property owners that they prefer this kind of development over commercial development.
275 Mr. Federico stated that his understanding is that even though the town line goes right through the
276 center of Stony Brook, that Exeter maintains the road.

277

278 Mr. Pierce moved on to the diminishment of surrounding property value criteria. He commented that
279 an extensive appraisal was submitted as part of the application and no experts objected to the appraisal.

280

281 Mr. Pierce moved on to the criteria for unnecessary hardship. Mr. MacMillan stated that a denial would
282 make the property somewhat undevelopable. Mr. Pierce added to an extent that a developer would
283 actually be enticed to develop that property. Mr. MacMillan stated with regards to the criteria that the
284 proposed use is reasonable, that the Board has heard discussions regarding cluster and other types of
285 development and he is convinced that this is a reasonable use at this point, and that there's not really
286 another alternative. Mr. Federico added that those decisions will be decided by the Planning Board, to
287 even grant approval for the project. He thinks the discussion tonight is regarding just the land and
288 stated he's been in town for 44 years and it's been vacant for 44 years. He added there have been
289 numerous proposals, but they all had their problems.

290 Mr. Connors asked if the Board could expand its reasoning for Criterion V (the unnecessary hardship
291 criteria). Mr. Connors explained that one part of the unnecessary hardship criteria relates to special
292 conditions of the property, that there's some unique features of the property that distinguish it from
293 other properties in this part of town. Mr. MacMillan replied that he believe it has been demonstrated
294 that this is access is very difficult, that it does not have any services on site, and there's no prospects
295 of services coming in and the town voted against pursuing that in the immediate future. Mr. Pierce
296 added that there are significant setbacks on the property from two state highways and with wetlands.
297 Mr. Federico commented that Stoneybrook is a very small street for an entrance to a commercial
298 development. Mr. Pierce commented that a commercial development might be more impactful to
299 the surrounding residents and could possibly diminish property values.

300
301 Mr. Federico stated that if a variance is granted, the Applicant has two years to get approval by the
302 Planning Board for the project and then the variance goes away. The variance is not granted in
303 perpetuity. If the project is not approved by the Planning Board, it reverts back to Special
304 Commercial with no single family housing. Mr. Pierce summarized that the variance, if approved,
305 would expire on January 9, 2026. The design of the development including the total number and
306 density of dwelling units would be determined by the Planning Board. He believes the Board can
307 make a motion with conditions. Mr. Pierce and Mr. Connors discussed proposed conditions related
308 to density and deadlines. Mr. Connors directed the Board's attention to the draft motion and language
309 regarding RSA 676:3, Issuances of Decision. He stated that the Board needs to prepare written
310 Findings of Fact and suggested the Board consider the Findings of Fact at the February meeting for
311 approval.

312
313 **Mr. MacMillan made a motion that the Zoning Board of Adjustment approve the variance**
314 **application submitted by Green & Company from Table 3.6, Table of uses to permit the**
315 **development of single family dwellings at 13 and 15 Stony Brook Lane, Tax Map 4, Lots 1 and**
316 **7, Zone Special Commercial, in a district where the use is not permitted as the Board has**
317 **determined that the application meets all of the variance criteria subject to the Board's**
318 **deliberations. This motion for approval is subject to the following conditions:**

- 319 **1. If not exercised by the Applicant, this variance shall expire on January 9, 2026 or after**
320 **six months from the date of the final Planning Board site plan approval whichever is**
321 **later.**
322 **2 The design of the development including the total number and density of dwelling units**
323 **shall be determined by the Planning Board during the site plan review.**
324 **3. This approval shall be supported by written Findings of Fact to be drafted by the Chair**
325 **in consultation with the Planning Director to be considered by the Board at its February**
326 **6, 2024 meeting.**

327 **Mr. Pierce seconded the motion. All voted in favor and the motion passed 4 to 0.**
328

- 329 **b. Case #673: Marissa Caudill & David Merrill (Applicants), Apple Way Trust (Owner), 3 Apple**
330 **Way, Tax Map 5, Lot 56, Zoned Residential/Agricultural. Request for a variance from Section**
331 **2.1.26, Definition of Dwelling, and Table 3.6, Table of Uses, to permit the rental of a single-family**
332 **dwelling unit for short-term or transient occupancies.**
333

334 Mr. Pierce stated that the application was postponed from the December 12, 2023 meeting at the
335 request of the Applicant and he invited the Applicant to present their case.

336 Ms. Caudill explained that her and her husband purchased the home in September 2021 because it's
337 next to her sister's house on 49 Stratham Heights Road through the neighbor's yard. When they
338 purchased the home they planned to move in but because of her husband's job, they remain residents

339 of California and spend summers in Stratham. Since August 2022 they had a family from Greenland
340 renting the home because they lost their home to a fire. She stated that over the next few years, their
341 goal is to be able to use the home in the summer months and during school vacations which is hard
342 when tenants are looking to rent a home for a longer term like 30 days or more. They are requesting
343 the variance to have the flexibility to be able to rent to people for periods that might be fewer than 30
344 days. Ms. Caudill added that in addition to the town's abutter notification, she sent a letter to the
345 abutters prior to submitting the application to give them her contact information. She stated that her
346 sister's family is across the street, so if there were ever an issue that needed to be addressed she is
347 there to help. Ms. Caudill continued that they have local handymen, cleaners, plumbers and other
348 people on the ground for any issue that needs to get dressed. She stated that the property is over an
349 acre and this is their second home so they are very careful about who they allow to stay there and they
350 don't allow parties. They don't allow stays for fewer than three days, they require advanced bookings,
351 and they don't allow pets. Ms. Caudill stated that she does not think there would be much of an impact
352 on the neighbors given that it's generally quiet and they will be there in the summers.

353
354 Mr. Connors asked Ms. Caudill how large is the house. Ms. Caudill replied four bedrooms and two
355 and a half baths and that the square footage is hard for her to say accurately but it is big. Mr. Connors
356 asked if they were to rent it out for short term rentals, would it be just the whole house for one party
357 or would it be individual rooms. Ms. Caudill replied it would be the whole house with a maximum of
358 10 people. She stated that when they first bought the house they didn't know that short-term rentals
359 are not allowed and they stopped renting it when they received the letter from the town. The rentals
360 they had prior to the notice were primarily in fall and winter from Thanksgiving to March and mostly
361 parents coming to visit their kids. Ms. Caudill and her husband are both physicians and they also listed
362 the property on a rental site specific for doctors and they had a group of doctors that rented it during
363 training in Boston.

364
365 Mr. Federico asked who manages the property. Ms. Caudill replied that she does. Mr. Federico asked
366 how quickly she can respond to a complaint. Ms. Caudill replied that the renters have her cell phone
367 number. Mr. Federico asked what the minimum number of nights for a rental is. Ms. Caudill replied
368 three nights.

369
370 Mr. Federico asked if there were any comments from abutters. Mr. Connors replied yes, there was one
371 set of written comments received by Larry and Cathy Brophy of 2 Apple Way.

372
373 Mr. MacMillan stated that short term rentals are not approved anywhere in town and that it is a
374 Stratham ordinance that was adopted through Town Meeting and approved by a majority of people
375 who attended Town Meeting. He continued that in preparation for the meeting he reviewed VRBO
376 and Airbnb to search who else has rentals and the only one he found is on Stratham Heights Road. Mr.
377 Federico stated that Saltonstall Farm is unique because the state prohibits municipalities from hosting
378 overnight stays at working farms. Mr. MacMillan stated there is a property at Guinea Road that has a
379 similar situation where they have horse boarding as well, is kind of isolated, and the property can't be
380 seen from the street. Mr. Federico stated he believed that they are considered a farm also. Mr.
381 MacMillan asked if that is the farm exception. Mr. Federico replied yes. Mr. MacMillan stated that he
382 thinks this would be perfectly acceptable in Hampton, where this sort of thing happens and is allowed.
383 He thinks it's different in Stratham and he wanted to find out if there was anybody else that's doing
384 this because the town adopted the ordinance for a purpose and he thinks the purpose was to maintain
385 a certain character in the town and in neighborhoods. Ms. Caudill asked when the ordinance was
386 passed. Mr. Connors replied it is the definition of a single family dwelling and that has been in the
387 ordinance for a while, but he does not know exactly how long. Mr. Federico replied that his recollection

388 is when the town started to allow accessory dwelling units is when the ordinance came into effect and
389 at that time there was a minimum rental period of 30 days implemented so as to not affect
390 neighborhoods with weekly or daily transients.

391
392 Mr. Pierce stated that the ordinance specifically prohibits the use very clearly and he believes the
393 Board will have a hard time satisfying the five criteria. He explained that the application needs to be
394 approved by at least three Board members and asked Ms. Caudill if she wants to review each criteria.
395

396 Mr. Federico asked for confirmation that the property is in the Residential Agricultural Zone. Ms.
397 Caudill replied yes and that she understands the intention of residential and she is not proposing
398 anything that's not residential. Mr. Federico stated that is why he asked what the minimum number of
399 days for a rental is. Ms. Caudill replied that she can be flexible on that. Mr. Federico stated the zoning
400 requirement is a minimum of 30 days and a three-day rental is a hotel. Ms. Caudill does not agree and
401 replied that it is a home. Mr. Federico stated he understands it is a home but when there are transient
402 people coming in and out every day or every other day, it does impact a residential community. Ms.
403 Caudill replied that she understands and is not requesting a redefinition of the zoning and wonders
404 there can be a compromise about a duration potentially under 30 days. Mr. Pierce asked how many
405 times a year would she rent in that scenario. Ms. Caudill replied about two or three times per month
406 when they are not at the property which is about nine months per year so about 18 to 27 times. Mr.
407 Pierce stated that if she intended to rent it less than about 12 times per year, she could technically be
408 30 days whether renters stay there for 30 days or not. But if they are renting a couple of times a month,
409 then he thinks it goes against the ordinance. Ms. Caudill asked if one renter per month could be
410 permitted if it was for fewer than 30 days. Mr. Garcia replied that renters won't be forced to stay for
411 30 days, but they would own that month. Mr. Pierce added that she could rent the property for 30 days
412 and the renter doesn't need to stay there for 30 days, but they have to rent it for 30 days. Chelsey
413 Caudill-Babbin of 49 Stratham Heights Road asked if the property could be rented for four days in one
414 month and not rented for the remainder of that month. Mr. Garcia replied that he believes the rental
415 agreement would need to state that the property is rented for 30 days. Mr. Federico stated that it is the
416 owner's decision if they want to rent it for three days and not rent it again until the month expires. Mr.
417 Garcia stated that he assumes the ordinance doesn't specify that it would have to be from the first of
418 the month.

419
420 Mr. Federico explained to Ms. Caudill the process to get the ordinance changed. Ms. Caudill replied
421 that she is just one home and not interested in changing the ordinance. Ms. Caudill asked for
422 clarification on what part of the ordinance addresses rentals less than 30 days. Mr. MacMillan replied
423 page 9, section 2.1.26 which is the definition of dwelling. Mr. Connors added also the definition of
424 single family dwelling applies. Mr. Garcia asked where 30 days is mentioned in the ordinance. Mr.
425 Connors replied it is in the definition of transient occupancy.

426
427 Before reviewing each criteria, Mr. MacMillan and Mr. Federico stated that they believe there is a
428 workaround where she could rent the property for less than 30 days if she doesn't rent it to more than
429 one transient in 30 days. Mr. Pierce does not agree and wants Ms. Caudill to leave the meeting with
430 the correct understanding. Mr. MacMillan explained the roll of the Code Enforcement Officer during
431 a potential investigation and that the CEO has no ability to alter the enforcement of the ordinance. Ms.
432 Caudill asked if she would have to appear in court. Mr. Connors replied no, that the town would issue
433 a letter explaining the violation, require the violation cease, and would only need to go to court if the
434 violation continued. Mr. Garcia stated that his understanding is she would be in compliance if the lease
435 agreement has a minimum length of stay of 30 days. Ms. Caudill asked if that only applies to monetary
436 transactions. Mr. Garcia confirmed.

437 Ms. Caudill asked to review the variance criteria. Mr. Pierce began with the first criteria: contrary to
438 the public interest with regards to traffic, noise, sound, and odors and that the town voted to approve
439 the zoning ordinance. Ms. Caudill questioned if that is the purpose of a variance application. Mr.
440 MacMillan replied that she needs to satisfy all five criteria.

441
442 Mr. Pierce stated the second criteria is that the spirit of the ordinance is observed and this is the criteria
443 that he thinks the application does not meet. He added that the ordinance is clear and there is no unique
444 circumstance in her case. Mr. Garcia stated that the ordinance is not ambiguous. Mr. MacMillan stated
445 that the criteria refers to the property's unique need and not the owner's unique need. Mr. Federico
446 explained his understanding of accessory dwelling units in New Hampshire and transient occupancy.

447
448 Ms. Caudill stated that regarding noise, she doesn't believe it is an issue because they don't allow
449 parties or outdoor activities. Mr. Federico asked how she can enforce that from California. Ms. Caudill
450 replied that her neighbors have her phone number and she would call the police.

451
452 Mr. Garcia suggested continuing to review the criteria. Mr. Connors explained to Ms. Caudill that if
453 the Board denies the application then she cannot reapply for five years. She has the option to withdraw
454 the application before the Board votes. Ms. Caudill replied that she would like to proceed so that they
455 can make a decision on whether or not to sell the home. Mr. Pierce asked if Ms. Caudill is done with
456 her presentation. Ms. Caudill summarized that she requests to be granted a variance in agreement with
457 the five criteria with conditions such as a maximum number of days per year. Mr. Federico and Mr.
458 Connors briefly explained the process for Ms. Caudill to request a change to the ordinance at Town
459 Meeting. Ms. Caudill asked if she can do both. Mr. Connors replied that if a change to the ordinance
460 is approved, then she wouldn't need a variance.

461
462 Mr. Federico asked Ms. Caudill to address the abutter's comment letter. Ms. Caudill replied that it will
463 not hurt property values and that they have invested \$60,000 into home improvements including
464 painting the exterior of the house and have complete internal improvements as well. She believes in
465 terms of property values, it is mostly the exterior and the prior owners had been there for 23 years and
466 the landscaping was very overgrown. They completed landscaping improvements like tree trimming,
467 clearing, and planting new grass. They have a lawn maintenance and plow contractor. She believes
468 that short term rental owners need to maintain properties at a higher level than most single family
469 homeowners because of the grading by renters. She added that in this era of five star reviews, if you
470 don't have a five star review, you're not going to get rented. Ms. Caudill believes that her application
471 does not take away from the single family character of the neighborhood, it only would be rented by
472 single families. It is not a rent by the room situation. She added that parties are not allowed and would
473 be dealt with if they were happening. She cannot see how it would have a negative tax implication.
474 Regarding similar uses, Ms. Caudill stated that the only way to allow short-term rentals is by
475 requesting special permission. She does not want to seek a change to the ordinance to permit short
476 term rentals because she can appreciate how that changes the town potentially, but requests this one
477 exception.

478
479 Ms. Caudill asked if she had letters of support from other abutters would that help her case. Mr. Pierce
480 replied that would be helpful for the public interest criteria. Ms. Caudill discussed with the Board
481 requesting a continuance to a later meeting in order to obtain letters of support. Ms. Caudill-Babbin
482 asked for advice on how to strengthen the application. Mr. Pierce suggested reading the ordinance and
483 reviewing meeting minutes from past meetings. Mr. Connors suggested that he could meet with Ms.
484 Caudill to discuss the criteria. He added that letters of support can be helpful, but the proposal still
485 needs to meet the variance criteria.

486 Regarding transiency, Ms. Caudill asked what the difference is between someone saying that they're
487 renting for 30 days, but then only stay for five nights. Mr. Federico replied because there isn't another
488 family coming in the following week. Mr. Pierce added that renters are generally not invested in the
489 community, that their presence is transactional. He stated that a lot of people move to Stratham for the
490 community and you don't really get that with transient rentals.

491
492 The Board and Ms. Caudill further discussed the ordinance and how it applies to her property. Mr.
493 MacMillan stated that when a variance is granted, there is a 30 day period for objections. Ms. Caudill
494 asked for the Board to deliberate and decide her case.

495
496 **Mr. MacMillan made a motion to open the public hearing. Mr. Pierce seconded the motion. All**
497 **voted in favor and the motion passed.**

498
499 Mr. Pierce stated that written comments were submitted by Larry and Cathy Brophy of 2 Apple Way
500 and were previously discussed.

501
502 **Mr. MacMillan made a motion to close the public hearing. Mr. Pierce seconded the motion. All**
503 **voted in favor and the motion passed.**

504
505 The Board deliberated the five criteria for the variance request. Regarding public interest, Mr. Pierce
506 stated that the town has voted on this and he believes the Board needs to support what the town
507 adopted. Mr. Garcia added that the ordinance lacks ambiguity because there is a specific numerical
508 value attributed and definitions. Mr. Federico stated that there is a specific time limit and the Board
509 would be deciding contrary to the ordinance. Mr. Pierce added that it is a specific time for a specific
510 use, both of which are identified.

511
512 Regarding the spirit of the ordinance, Mr. Pierce stated that similar to the first answer, the Board would
513 not be observing the spirit of the ordinance because they'd specifically be going the complete opposite
514 of it. He doesn't believe they would be making a small change. Mr. MacMillan agrees and added that
515 the town voted to not allow rentals to transients. He thinks the only way to allow the use would be
516 with conditions, if the Board agreed, and if there was sufficient support from the neighborhood, but
517 he does not know if the Board has come to that agreement. Mr. Garcia asked if the Board could allow
518 a variance with the condition to allow a rental no fewer than 30 days if that is already allowed in the
519 ordinance. Mr. Pierce replied the difference is the ordinance states the rental period has to be at least
520 30 days and what the Board would be allowing is less of a rental period within a larger window of
521 time. Mr. MacMillan believes that would be in the spirit of the ordinance. He believes that the purpose
522 behind the ordinance is to prevent wear and tear in the neighborhoods. He provided the example if Ms.
523 Caudill does not use her property, and she doesn't rent it, then there is nothing that would keep her
524 from allowing a friend of hers to use her house. He added that if it was happening three or four times
525 a month then neighbors might object to that. Mr. Garcia asked if the Board does not grant a variance
526 with that condition, would there be anything stopping Ms. Caudill from renting to somebody for a 30-
527 day period, but they only stay for three days. Mr. MacMillan stated that someone could complain to
528 the Code Enforcement Officer. Mr. Federico stated that the issue he sees with transient is having a
529 different person every specific number of days. He is concerned with complaints from activity
530 occurring with those transients. Mr. Garcia asked if Ms. Caudill rented to a tenant for 30 days, and
531 then that tenant was just there for three days and gone for 27 days is there any cause to alert the Code
532 Enforcement Officer. Mr. Federico replied he does not think so.

533
534 Mr. Pierce addressed substantial justice. He believes it is in the property owners' best interest and he

535 believes that granting the variance would give substantial justice. Mr. MacMillan stated that he
536 believes substantial justice has more to do with the property itself, for example that it doesn't have
537 enough frontage and that there is something unique about the property. He added that the property in
538 the previous case is surrounded by two highways and three rivers and lots of wetlands. The substantial
539 justice had to do with the property, not so much what the owners need. Mr. Connors added that
540 substantial justice weighs the hardship of the applicant versus the benefits the public and determines
541 which one is stronger. Mr. MacMillan does not see a benefit to the public and he believes that granting
542 an Airbnb would diminish the surrounding values of the property. Mr. Pierce stated that people buy
543 homes in certain neighborhoods because of the families and the community feel of the neighborhoods.
544 Mr. Federico added that those are single-family neighborhoods where there can be no commercial
545 activity.

546
547 Mr. MacMillan stated the next criteria is literal enforcement of the provision of the ordinance would
548 result in an unnecessary hardship. Mr. Garcia stated that Ms. Caudill mentioned having to sell the
549 property and wondered if that qualifies. Mr. MacMillan read that no fair and substantial relationship
550 exists between the general public purposes of the ordinance provision in a specific application of that
551 provision to the property. Mr. Pierce stated that the Board needs to decide if there is an unnecessary
552 hardship to the property by not granting the variance. Mr. Garcia replied that if it is specific to the
553 property, then he can't think of what it is. Mr. MacMillan stated that the income is going to offset the
554 maintenance of the property and he doesn't know if that is enough to meet that criteria. Mr. MacMillan
555 asked if the Board is allowed to use a financial hardship as a hardship to grant a variance. Mr. Connors
556 replied that there are a couple of tests. One is to determine the purpose of the zoning restriction in
557 question. The applicant must establish because of special conditions of the property, the restriction as
558 applied to the property does not serve that purpose of zoning restriction in any fair and substantial
559 way. Mr. Garcia stated that he does not think there is a special condition of the property that requires
560 it to be a rental. Mr. Pierce and Mr. Federico stated that the property is useful for its legal intended
561 use, the intended use is a single family home, and there is nothing on the property that hinders its
562 intended use. Mr. MacMillan referenced the abutter's objection which notes concern that the approval
563 of this would open the door to similar uses that would change the character of the neighborhood" and
564 he believes that speaks to the purpose of the zoning.

565
566 Mr. Pierce stated that the Board should vote on each criteria and continued with the criteria. Regarding
567 the proposed use is a reasonable one, Mr. Pierce believes that the application is reasonable but that is
568 subjective. The Board voted on each criteria and determined unanimously that the application does not
569 meet the criteria for public interest, spirit of the ordinance, property value diminishment, and
570 unnecessary hardship. The Board voted unanimously that the application does meet the criteria for
571 substantial justice.

572
573 **Mr. MacMillan made a motion that the Zoning Board of Adjustment deny a variance application**
574 **submitted by Marissa Caudill and David Merrill from Section 2.1.26, definition of dwelling, and**
575 **Table 3.6 Table of Uses, to permit rental of a single family unit for short term or transient**
576 **occupancies as the Board has determined that the application does not meet the variance criteria**
577 **1, 2, 4 and 5, subject to the Board's deliberations. This denial shall be supported by a written**
578 **Finding of Fact to be drafted by the Chair in consultation with the Planning Director to be**
579 **considered by the full board at its February 6, 2024 meeting. Mr. Pierce seconded the motion.**
580 **All voted in favor and the motion passed.**

581
582 Mr. Pierce addressed Mr. Caudill and explained that the Board did not approve her application. Ms.
583 Caudill asked if in December she can submit a request to the town for the March 2025 Town Meeting.

584 Mr. Connors explained the process for proposing zoning amendments to the Planning Board or for
585 pursuing a zoning amendment by citizen petition, Ms. Caudill asked if in the meantime renting for 30
586 days is allowed. Mr. Pierce replied yes.
587

588 **3. New Business:**
589

- 590 **a.** Case #676: Gregory Gavutis (Applicant & Owner), 62 College Road, Tax Map 21, Lot 154, Zoned
591 Residential/Agricultural. Request for a variance from Section 12.6.1, Shoreland Protection
592 District, to permit the installation of a ground-mounted solar array 123-feet from the edge of a tidal
593 marsh where a minimum setback of 150-feet is required.
594

595 Mr. Pierce stated that the Applicant submitted an email today requesting that the Board postpone
596 consideration for the variance application until February 6, when hopefully all five board members
597 will be present. **Mr. Pierce made a motion to postpone the application to the February 6, 2024**
598 **meeting. Mr. Garcia seconded the motion. All voted in favor and the motion passed.**
599

600 Mr. Federico asked if there are not five members present at the next meeting, can the applicant request
601 another postponement. Mr. Connors replied yes, but the Board is not obligated to grant it.
602

603 **4. Adjournment**
604

605 **Mr. Pierce stated that the meeting adjourned at 9:45 p.m.**