



**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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3. New Business:

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

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

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

### 4. Adjournment

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