



**Stratham Zoning Board of Adjustment
Meeting Minutes
December 12, 2023
Stratham Municipal Center
Time: 7:00 pm**

Members Present: Drew Pierce, Chair
Brent Eastwood, Vice Chair
Bruno Federico, Member
Frank MacMillan, Member
Jameson Paine, Member

Members Absent: Nicholas Garcia, Alternate

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

1. Call to Order/Roll Call

Mr. Pierce called the meeting to order at 7:02 pm and took roll call.

2. Approval of Minutes

a. October 24, 2023

Mr. MacMillan made a motion approve the October 24, 2023 meeting minutes. Mr. Paine seconded the motion. All voted in favor and the motion was approved.

3. New Business:

a. 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 this afternoon an email was submitted from the Applicant requesting the Board table the application until the January 9, 2024 meeting. Mr. Pierce read aloud the email and requested a motion. **Mr. MacMillan made a motion to postpone consideration until the January 9th meeting. Mr. Paine seconded the motion. All voted in favor and the motion was approved.**

b. 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.

Mr. Pierce invited the Applicant to begin their presentation. Kevin Baum of Hoefle, Phoenix, Gormley & Roberts spoke on behalf of the Applicant, Green & Company. He introduced Joe Coronati from Jones and Beach along with Michael and Jenna Green from Green & Company. The Applicants are seeking a variance to allow single-family use in the Special Commercial Zone. The proposal is for 59 single-family style condominium units. The request tonight is solely for the use, they are not seeking any density relief. He noted that single-family use is not permitted in this zone. Mr. Coronati will present an overview of the project and Mr. Baum will review the variance criteria. He addressed two items in the staff memo. One is a request from the Planning Board for a joint meeting and the other is regional impact. Regarding the joint meeting, the Applicant's position is that although joint meetings are allowed by statute, they don't believe the statute contemplates the type of meeting requested by the Planning Board. The particular issue is that there is not a concurrent application with the Planning Board. He acknowledges that the Applicant has provided plans, but not of the detail for Planning Board review nor is there a pending application. Their interpretation of the statute is that although there are occasions where the joint meetings are permitted, it requires jurisdiction by both Boards and at this time there is only an application with the ZBA so it would be premature for the Planning Board to review it as a joint meeting. He notes that the Planning Board has reviewed the project on a preliminary basis back in March 2023. The Planning Board provided comment at that time which the Applicant has taken into account. Mr. Baum stated that he wanted to raise that now in case the ZBA is interested in a joint meeting, the Applicant would like to address it prior to a full hearing. He is seeking a response from the ZBA on that request.

Mr. Pierce called for a discussion from the ZBA members on the request from the Planning Board. Mr. Pierce stated that he does not think the ZBA is out of process. Mr. Paine stated that he agrees since there is no pending Planning Board application. Mr. Pierce stated that it appears to be the opinion of the ZBA that a joint meeting is not needed. Mr. Baum addressed the question of regional impact. He stated that the ZBA can make a determination of regional impact, but it is not typical. Mr. Baum does not think it makes sense in this case. He recognizes that the Planning Board may make that determination and they think that makes more sense because the criteria to be considered are more Planning Board criteria and the Applicant has not provided the information nor is it the purview of the ZBA. The general considerations are relative size and number of dwelling units and proximity to neighboring communities. Mr. Baum stated the proximity does apply to this project due to the proximity to Exeter, but they think it is already accounted for as the Town of Exeter is the neighboring municipality and a direct abutter so they have received notice of the application and is fully aware of the project and is welcome to provide comments. Mr. Baum stated the rest of the criteria: shared transportation networks, light/noise/odors, and proximity to water and shared services; are related to Planning Board discussion and if the Planning Board wants to declare regional impact, it makes more sense to do it at that time rather than now. The Applicant's feeling is the general reason to have the discussion now is because of the potential impact to Exeter, but they are a noticed abutter for this case and have the full opportunity to comment on it. Mr. Baum stated that a regional impact determination would potentially delay any design making by the ZBA because it would require RPC to potentially have a meeting or at least to comment on the project and the Applicant thinks comments are better suited for when they file the full subdivision application. Mr. Baum requests that the ZBA not elect to declare regional impact; it may be applicable but he thinks it is premature at this time. Mr. Pierce replied that he thinks it makes sense to hear the presentation before they make the determination.

Mr. Coronati presented the project. He stated that Green & Company has the property under agreement for potential site development. Mr. Coronati described the outline of the property and noted areas of tidal marsh. He noted a uniqueness of the property that it begins at the end of Stoneybrook Lane which is unique in that the town line runs down the centerline of the road with half in Stratham and half in

Exeter. Mr. Coronati described the surrounding uses: Lindt chocolate, Subway, a daycare, and a single family house. The portion of the property that is in Exeter is unbuildable as it is mostly wetlands, tidal marsh, and the outfall from Parkman Brook. The uniqueness of the shape of the property dictates that the access is from Stoneybrook Lane at the end of which is an old house, a man-made pond, a driveway to the house and trails throughout the property. The goal of this development would be to follow the trails and wetlands crossings and lead into a single-family home, multi-family development. Mr. Coronati clarified that the structure would be single-family homes but under condominium form of ownership with private roads and private maintenance. The communities built by Green & Company are full maintenance of lawns, driveways, and snow removal. This is similar to Rollins Hill in Stratham and to Bramber Valley which was constructed by Green & Company. John O'Neill who constructed Rollins Hill is also a partner.

Mr. Coronati stated that what makes this property unique is that it is a sizable upland portion of land adjacent to Route 101 but its access is from Stoneybrook Lane and through a single point of egress that crosses Parkman Brook. It is almost 1,500 feet from Route 108 to the first crossing of Parkman Brook. Once in the property there are 58 single-family homes that would be constructed. The development is in the Special Commercial Zone that allows multi-family and duplexes by Conditional Use Permit from the Planning Board but does not allow single-family homes. There is already one single-family home on the property and the neighboring property in the same zone is also a single-family home. They are seeking approval from the ZBA to take the allowed use of the duplex and separate them. They feel the best use of the property is single-family units as the demand in Stratham has been for single family homes that are freestanding. The units would be built as they are sold as opposed to building many units and selling them at the end. Mr. Baum noted that multi-family and duplexes are allowed by Conditional Use and the permitted right and the stated purpose of the Special Commercial Zone is hotel, conference center, restaurant, entertainment and other large scale development, and commercial uses. They don't think those uses fit with this particular lot as it is just not feasible or practical for the reasons that Mr. Coronati pointed out. It is constrained by Route 101, it is far off of Route 108 where there is existing commercial but it is separated by existing residential use. It is very impacted by wetlands and associated buffers and the Squamscott River which further limits what can be built on the property including large-scale multi-family and commercial, there is insufficient space for parking requirements for those uses. Nor do they think those uses would be appropriate or wanted because of the significant amount of impervious surface that would be created which is lessened by this proposed project.

The other issues with the permitted uses is the lack of municipal water and sewer. Mr. Baum stated that they have explored on a number of occasions water and sewer from the Town of Exeter and it is simply not available at this time. There may be some possibility in the future, but they tried for about a year to negotiate something but it never went anywhere and the Town is not interested without significant infrastructure improvements that are not feasible. The Applicant also believes the permitted uses would be a more significant impact on the surrounding residential properties. Mr. Baum provided an example of truck traffic that would be associated with commercial uses. He added that the Applicant believes this particular lot is not appropriate for the intended purpose of the zone and for other reasons they believe single-family use is a better overall fit for the property. It's an easier layout. There are some good pockets of upland but they are separated and they fit much better to have smaller uses and buildings that can be fit within the pockets and lower the amount of impervious surface. Wherever possible they tried to avoid wetlands impacts. Mr. Baum stated that they think it is ultimately consistent with the Town's goals. There is a desire for additional housing and although the stated purpose for this zone is for commercial/mixed-use it does allow for multi-family housing. The Applicant tried to mimic that in some way and originally proposed a multi-family development. Mr. Baum stated that he agrees

with Mr. Connors' interpretation that this proposal doesn't fit the Town's definition of multi-family. He stated that the project tries to mimic some aspects of a cluster subdivision with preserving Open Space, views to the river, and keeping the frontage relatively undeveloped and the residences back away from the road and existing commercial. Mr. Baum stated they believe it meets with the overall intent but not within the specific stated intent of the Special Commercial District. Mr. Baum asked if the ZBA has any questions for him or Mr. Coronati.

Mr. Pierce called for questions from the ZBA. Mr. Paine asked if space is set aside for a well for 59 units. He noted that they propose development of the majority of upland with units and roads. Mr. Coronati pointed to an area with 200-foot well radii that has been reserved for a Community Public Water System. Mr. Paine asked if there will be individual septic systems. Mr. Coronati replied they will be either individual or small community fields for clusters of homes. Mr. Paine stated that the plans don't appear to show room for community fields, only individual septic systems. Mr. Coronati pointed out on the plan some areas between homes that can be used for septic and also some community areas for stormwater and/or septic. He added that they recognize if there isn't sufficient room for septic systems, the number of units would be reduced. Mr. Paine stated that they are adjacent to Route 101 and expressed concern with chloride impacting the drinking water from runoff. Mr. Coronati replied that although the well protection areas about Route 101, the wells will be at least 200 feet from the right of way line and 250 feet from the edge of roadway which is not uncommon. He added that the Community water system is a State permitted, regulated water system. Mr. Paine commented that he believes it is a red flag to catch their attention. Mr. Coronati added that he chose the well locations to meet State requirements and no impervious is allowed in the protection areas.

Mr. Federico asked for confirmation that the proposal is for three-bedroom homes. Mr. Coronati replied yes. Mr. Federico asked if there will be any age restrictions on the homes. Mr. Coronati replied no, not at this time. Mr. Federico asked if the Applicant is aware that might be an impact. Michael Green replied that the development won't be age restricted but a lot of their developments are age-targeted and are mostly empty nesters. He added that usually only one bedroom is used. Mr. Federico asked why then are they proposing three bedrooms. Mr. Green replied those are guest rooms and that empty-nesters aren't childless, it's that their children are grown. He added that it is perception and usually one or both of the extra bedrooms are used for offices but they can be alternate guest rooms if necessary. Mr. Federico still questions why build 3 bedrooms and added that the elementary school has a building committee and that might force some issues. Mr. Coronati replied that his research shows that seacoast schools are low on enrollment and that they are not anti-kids, but they don't see a lot of that come to fruition in the sales. These are set up not to be age-restricted in a 55 and over community and they are allowed and welcome children.

Mr. Pierce asked how they determined the number of units. Mr. Coronati replied they used State lot loading criteria which allows more units than they proposed, but they needed to reduce the project based on what they could fit on the property. In order to include more units they would need to construct multi-family or larger buildings. A previous proposal included 400 plus units when they were seeking to get water and sewer service from Exeter but negotiations couldn't be finalized. Another concept of 110 townhouses had the same issue with the water and sewer infrastructure needs. They have spoken with Exeter about tying into the sewer and they can but not cheaply as there are three areas of Exeter's sewer system that would need to be upgraded for the development. Mr. Coronati stated that they are willing to provide an easement through the property for a future connection. Mr. Baum added that the Applicant will commit to granting the easement.

Mr. Paine asked if the Applicant considered a cluster development. Mr. Coronati replied that they

consider this proposal as a cluster development. He added that the typical cluster development is a town-owned road, is based on a yield plan and provide Open Space maintained by a home-owners association. This proposal is similar but is multi-family with private roads. He showed areas of the plan that would be Open Space and added that in this proposal there is zero obligation for the Town to maintain the roads or provide trash service as this will be a condominium-form ownership. He summarized that the Town gets all the benefits of a cluster without the cost to the taxpayer. Mr. Coronati stated that the taxpayers in this development don't get a break on their property taxes. Mr. Connors added that per the Zoning Ordinance a cluster development is permitted through a Conditional Use Permit and does not require a Variance. Mr. Connors asked for clarification that the Applicant is not proposing a cluster development. Mr. Coronati replied that it is not a cluster per the Stratham Ordinance, that it is a multi-family development with single-family homes. He reiterated the private road aspect of the project along with the homes being "clustered" and the presence of a lot of open space. Mr. Baum added that the intent was to keep with the spirit but it is not a cluster development.

Mr. Eastwood commented that he keeps hearing the term "multi-family" and he's getting confused. In his mind, it is clearly single-family and he asked for an explanation of what is meant by "multi-family". Mr. Baum replied it is not a multi-family as Stratham's ordinance defines that as three or more units in a single building. It was originally proposed as multi-family because the property will be all under one ownership, but Mr. Connors indicated that it doesn't meet the definition of a multi-family. Mr. Baum stated that they are saying that the project is consistent with the intent of the zone that allows multi-family, but multi-family won't work there because of the smaller areas and the need for water and sewer. He continued that it will be one overall development under one condominium declaration but each unit will be a stand-alone, single-family structure. Mr. Eastwood asked why it doesn't qualify as a cluster development besides the private road aspect. Mr. Baum replied it lacks the layout of the Open Space. Mr. Connors clarified that a private road is allowed in a cluster development. Mr. Baum clarified that the Applicant is requesting a variance for single-family use. He added although a cluster is permitted by Conditional Use Permit, it is not permitted by right and they chose the Variance process so the public is protected and because they think it is a better use. He further clarified that they are before the ZBA requesting a variance for single-family use.

Mr. MacMillan stated that the parcel is sort of isolated, on the side of a highway, bordered by two highways and bordered by wetlands and asked if this is the same zoning as on the other side of Route 101 and it just carried through to this property or did someone have an intent to designate this parcel for a certain type of development. Mr. Federico replied that all of the land south of Route 101 is considered Special Commercial. He was on the committee that drafted the Special Commercial Zone as part of the Gateway project. Mr. Coronati added there is not much land south of Route 101, basically this property, a single-family home, Lindt Chocolate, Subway, and a daycare.

Mr. Pierce wants to discuss the allocation of units. He asked if the ZBA is granting relief for the change from multi-family to single-family or is the Applicant asking for the ZBA to approve 59 units. Mr. Baum replied that they are not asking for approval for the 59 units. He added that information because he thought it would be helpful for the ZBA to understand the project. They are not asking for any density relief. They would commit to no more than 59, if that helps the ZBA's decision. Mr. Pierce clarified for the public that the ZBA is not approving the number of units.

Mr. Eastwood asked if it is not a cluster development then why can they have less than 2 acres per unit. Mr. Baum replied because it is a condo association. Mr. Connors added it is also a different zoning district and that requirement applies to the Residential-Agricultural District.

Mr. Paine stated that the zoning thought about commercial use next to the highway with regards to noise and other factors. A commercial development typically has different construction than single-family homes with more steel and concrete, noise abatement, thicker windows, etc. In this case there will be single-family homes adjacent to the highway and in many places in New Hampshire where there are houses this close to the highway there are sound barriers. He has concerns with housing adjacent to the highway and introducing from day 1 a highway noise presence. He is concerned with potential future complaints from homeowners after the developer is gone from the project. Mr. Baum replied it is a marketability issue for the developer and there are ways of dealing with it such as berms and sound walls. Mr. Green added that whether this is single-family homes, multi-family townhomes, or a large building, the sound mitigation methods are all the same. As far as the interior of the building, the insulation factors can be changed to create an additional sound factor, the windows can be changed to triple pane, and they can build a berm and plant on it. Mr. Green added that the bigger issue is the Town is looking at the property as Special Commercial and the property has been there a long time. There was supposed to be a church on it at one point along with a number of other things proposed and if it worked for commercial it would be done. He added that just getting into the site is a major feat and once into the site there is only two little pods to build on. Mr. Green added that he has no problem building a commercial facility or a hotel, it just isn't in this spot; it might be zoned that way and everything south of Route 101 might be used that way, but this is a difficult site with the river on two sides and no space for large parking areas. Mr. Green stated that they don't just build residential. If they could do something with it that would make financial sense, they would. He knows the ZBA doesn't consider the financial side, but he questions if it will ever be a commercial site. Mr. Green added that they are in the business of building a product that is marketable. They have considered the noise and have looked at abatement and they are concerned with it but they think they have a way to handle that. He is not looking to build a failed product.

Mr. MacMillan asked if the sewer lagoons in Exeter could be a problem with odors. Mr. Coronati replied that there is 300 to 400 feet to the closest lagoon and they don't anticipate a problem. He further described the setback for the closest home to Route 101 and the distance to Portsmouth Avenue.

Mr. Baum said he would through the Variance criteria.

- I. The variance not be contrary to the public interest, and
- II. The spirit of the Ordinance is observed.

Mr. Baum said the Supreme Court has indicated those two criteria are now considered together. The question for this Board is whether the requested variance would unduly and to a marked degree conflict with the Ordinance so as to violate its basic zoning objectives. We do not believe it does, he said. He said it generally meets with the objectives, the residential objectives, of this District. It also meets with the stated objectives of the Ordinance (Section 1.2). Mr. Baum said he wouldn't go through all those objectives, but to note a few, to promote health, safety, and welfare; this project provides new needed housing that will be built to code. To protect property values – Mr. Baum noted that they have submitted an appraiser's report with their application. The appraiser has noted that the project, in his view, will increase or improve surrounding property values. It will certainly increase the value of this property which, as Mr. Green noted, has been undeveloped for some time with a dilapidated residence. This will put [the property] back on the tax rolls and provide some value to the Town. Because of the residential nature of all of the immediate surrounding lots, we believe, as does our appraiser, that this is a better fit and will be more beneficial to those property values. Encourage appropriate use of land; again as we have mentioned, large commercial and large multi-family development and parking fields are not appropriate for this lot. Wise expenditure of public finds – this will add to the tax rolls and

utilize a private road, private water, private sewer, Mr. Baum said. The target demographic is empty nesters, so we don't expect this will be a large addition to the public schools.

Mr. Baum said the other test is whether the variance will alter the essential character of the neighborhood or threaten public safety and the general welfare. We do not believe either are implicated here. We believe this is a better fit than a potential large commercial hotel or entertainment type use, he said. It provide additional housing and really creates an addition, and this is noted by the appraiser as well, to the existing neighborhood that is there. To develop this commercially, or as a large-scale multi-family project, really squeezes that existing residential neighborhood between potentially two commercial uses or two large-scale uses. This is more fitting and provides an extension of that neighborhood and access to those conservation and open space areas that would be part of the common area for the condominiums. This project would have much less traffic than would be in place for a larger commercial or entertainment type use. So given these factors, we believe a variance for single-family use does not unduly or to a marked degree conflict with the general purposes of the Ordinance or of the Special Commercial District.

III. Substantial justice is done.

This is a balancing test between the hardship to the applicant and the benefit to the public, Mr. Baum said. The determination here is that, and the Supreme Court has indicated this condition is met, unless the loss to the applicant of denial is outweighed by the benefit to the public. Denial is a clear loss to the applicant, but we believe it is a loss to the public as well due to the increased taxes and less impactful to the closer residential owners. We believe overall it is a better fit than commercial, which is permitted by right, and large multi-family. Certainly we do not believe the harm of denial is outweighed by the benefit to the public, so this criteria is met, he said.

IV. The values of surrounding property values will not be diminished.

Mr. Baum said we have submitted a report by Brian White, who is a professional appraiser, and he has indicated in his belief that this is an appropriate fit and a better fit and likely to increase surrounding property values and not diminish them. That is based on the reduced noise of the proposed use as compared to other permitted uses and preserved viewsheds for single-family dwellings as opposed to commercial, multi-family, or even duplexes. Mr. Baum this would create an addition of the existing neighborhood and expand opportunities to visit open space preserved as part of the common area.

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

Mr. Baum said the first prong of the hardship criteria is that special conditions of the property exist that distinguish it from other properties in the area. Mr. Baum said that this is clearly met. It is a 77-acre lot that is significantly constrained. It is surrounded by water bodies on two sides, highways basically on two sides. It is next to residential cutting it off from the existing commercial. It is significantly constrained by the wetland buffers limiting the available uplands for development. We believe it's clear that special conditions exist.

The next prong is that there is no fair and substantial relationship between the general purpose of the Ordinance and its specific application here. The general purpose of the Special Commercial District does not fit. Large-scale commercial, hotels, entertainment, conference centers, and other residential uses permitted by Conditional Use Permit – we just think this is a better overall fit because of the lack of public water and sewer, because of the impact of large-scale multi-family buildings on viewshed,

and lower impacting parking demands and traffic. We think this is a reduced development consistent with the surrounding area and overall residential allowances of this zone.

Lastly, the proposed use is reasonable, he said. Mr. Baum said certain residential uses are permitted by conditional use permit, but not this one. We think this is the appropriate fit given the limited areas of upland and the more limited increase in impervious surfaces that this would create. This would preserve view sheds to the river and to other conservation areas across the brook. Mr. Baum noted that single-family homes already exist on Stoneybrook Lane and to the south of the property as well. The next closest properties that are commercial are across Route 101 which effectively, though technically abutting, is really disconnected. Given these factors, we believe the request, solely for single-family where that use is not otherwise permitted, meets the five variance criteria and we ask that you grant the requested variance. If granted, we would go next to Planning Board where some of the other considerations, including traffic, would be further vetted. NHDES would also vet the septic and water systems. Mr. Baum said he would be happy to entertain additional questions.

Mr. Pierce asked if there was a motion to open the public hearing. Mr. MacMillan moved to open the public hearing. Mr. Paine seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce said any members of the public may now speak. Please state your name for the record.

Drew Goddard, of 1 Sanctuary Drive said he appreciated the opportunity to hear the presentation and sales pitch. I have to be very clear, he said, I am not against development. However I think that it has to be very thoughtfully done in the town that we live in and we have to care about that. It's not about what the development of the highest and best use is today, he said, we are also planning for the future. When we are putting paper streets in, and easements, and access points, it is for 50 years or 100 years. So while today a residential developer may say that the highest and best use today, for profitability, is for single-family homes, we need to look forward to what this community is going to look like for future generations.

Mr. Goddard said the Master Plan clearly states that this parcel is a commercial parcel. That is what represented the highest and best use to the Town. The Planning Board looks at the parcels and that's what was the best value for the town. But to a residential developer, when you buy commercial land hoping to turn it into residential land, it is going to be a lot more profitable to go that avenue.

Mr. Goddard read the purpose statement of the Special Commercial District from the Zoning Ordinance (Section 3.4.7 of the Ordinance). Residential is allowed in upper-story units, Mr. Goddard noted. That is not what is being proposed. They are asking for a variance to change Table 3.6. There's been a lot of talk about multi-family and duplexes. Mr. Goddard said there's been a lot of talk that these types of uses are permitted. However these uses are not permitted by right. There is a path to it, but it's not like a multi-family development would be an approvable project. By [the Zoning Board] allowing the right to develop single-family uses with a clear path – at minimum it should require a conditional use permit - would be rezoning this district, Mr. Goddard said. Mr. Goddard said this is tantamount to spot-zoning. There's been a lot of talk about public water and sewer connections, Mr. Goddard said. They failed to get it, they couldn't get there. Mr. Goddard noted that he attended a presentation by Michael Garrepy for a conceptual application with the Planning Board. Mr. Goddard noted that David Sharples, the town planner from Exeter, was in attendance that night. Mr. Sharples was very animated to set the record straight, because there was a lot of talk that Exeter would not provide water and sewer connections, that that is not the story. The developer did not like what Exeter

388 proposed related to water-sewer connections. Mr. Baum noted the expense of that, Mr. Goddard said.
389 That is a more accurate description – they don't want to pay the bill – it's not that the talks with Exeter
390 failed, it's just they didn't like what they heard.

391
392 Mr. Goddard said it is important to look at Mill Brook Office Park right around the corner. They are
393 building their fourth commercial building that's been approved. They are doing this because they have
394 zero percent vacancy. It shows that there is a market for more commercial development. I live and
395 work right by that office park. The scare tactics that there are lot of trucks and traffic in and out. I can
396 tell you with Mill Brook, I don't see lots of trucks or dangerous delivery trucks. I see this as more of
397 a scare tactic. The lingo of age-targeted is just a developer's sales pitch. If they wanted to do an over-
398 55 development, they could do that. Age-targeted means nothing, he said. Mr. Goddard noted that
399 cluster developments are permitted by conditional use permit. While the ZBA is not granting the
400 number of units, but if you do grant the variance, the applicant would bypass the cluster development
401 requirements. I believe under the Cluster Development regulations, this many units would not be
402 permitted, Mr. Goddard said. Mr. Goddard noted that the density requirement was not as limited in
403 this zone, but a yield plan would be required and there would be a process. But if [the Board] makes
404 this a permitted use, the Board has negated that and cleared a path for the developers to pursue what
405 is the highest and best use for themselves.

406
407 Mr. Goddard noted that it's been noted that this land is difficult to develop. Some parcels are harder
408 to develop. They are using almost all of the uplands, he said. Mr. Goddard noted that the property is
409 150-feet from Route 101. Mr. Goddard noted that there is a gas transmission line so there has already
410 been some development. He said he would surmise that there would be little to no barrier between the
411 proposed houses and Route 101. Mr. Goddard noted that the existing homes are older homes. Mr.
412 Goddard said this land could be a wonderful opportunity for medical office buildings similar to Mill
413 Brook. It doesn't have to be a hotel or entertainment use. As the Seacoast grows, the need for more
414 commercial grows and here in Stratham, we have very little commercially-zoned land. To grant a
415 single-family rezoning, I do not believe this is the right forum for the Board to make a decision of this
416 scale. It sounds more like a Town Meeting vote. For all these reasons, I would hope that this Board
417 rejects the variance, and if there is a re-zoning request, a Town Meeting vote would be more pertinent.

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419 Greg Mann, of Frying Pan Lane, said his only concern is that if this is approved it would result in more
420 than 100 new people to Stratham. Our Fire Department is not even full-time. It is not exactly staffed
421 to an adequate level as is for the 8,000 residents in town already. Mr. Mann noted that the applicant
422 had indicated the development would be age-targeted. Mr. Mann said that approximately 80 percent
423 of emergency calls are medical calls and most of them are for elderly people age 55 and over. Mr.
424 Mann noted that he is a full-time fire fighter in Merrimack and he sees this firsthand.

425
426 James Forrest, of 14 Stoneybrook Lane in Exeter, noted that his property is the last one before the hill
427 and the subject property. Mr. Forrest asked for clarification regarding what the variance would grant.
428 Mr. Pierce said the scope of the application, as he understands it, is to allow single-family instead of
429 multi-family on the lot where multi-family is an allowable use. Mr. Forrest said if the variance was
430 granted, it would allow them to plan that way, but it would not set anything in stone at this time, is
431 that right, he asked. Mr. Connors said to clarify the variance is to allow a use that is not permitted in
432 the zone, so single-family is not permitted in the Special Commercial Zone. What the Zoning Board
433 is considering is to allow single-family on this site. So that would settle the use question. The Planning
434 Board would look at density, and other factors, but the Planning Board could not revisit the use.

435
436 Mr. Forrest said as an abutter he agreed that the proposed use would be a net benefit. He said he is not

437 very keen on commercial development. Logistically speaking, Stoneybrook Lane is not a good road.
438 Mr. Forrest said he is concerned that the existing road infrastructure is not sufficient to serve a large
439 commercial development. He said he is concerned it would create more demands on emergency
440 responders responding to traffic accidents.

441
442 Mr. Goddard, of 1 Sanctuary Drive, said he would like to address traffic flow. As residential abutters,
443 you are going to be concerned about traffic, he said. Large commercial developers may have the desire
444 to acquire the existing single-family homes in order to reconfigure the entranceway. He said you can't
445 look at the road and traffic flows today and say it doesn't work. The road can be improved and
446 addressed through proper development. This would all be part of the process. He said the amount of
447 homes proposed in this development would necessitate some improvements to the road and be a
448 necessary requirement.

449
450 Mr. Goddard noted the appraiser's report. He said you can hire anybody to write a report on your
451 behalf and say the highest and best use is what [the developer] is looking for. The Town should be
452 looking at what the highest and best use is in the long-term, not what is most profitable today. He said
453 he did not see a hardship.

454
455 Dot Cleary, of 12 Stoneybrook Lane in Exeter, said she wanted to address some items that were
456 discussed regarding a potential commercial development. Ms. Cleary noted that she had been in the
457 area since 1958. She said Stoneybrook Lane is directly accessed off Route 108. That used to be only
458 way, but then they widened Portsmouth Avenue and put a median down in it. So they had to use
459 Stoneybrook Connector, which used to be called Finch Lane. Ms. Cleary noted that the five houses on
460 Stoneybrook Lane in Exeter Lane would be heavily impacted by the development. Currently, the bus
461 comes around Finch Lane and stops and the school-age children are walked down there. We have
462 heard numerous times about the distance of Portsmouth Avenue. Ms. Cleary said it was unrealistic to
463 think families will walk their kids, no they will drive their kids, she said. This will impact at least three
464 residences. Ms. Cleary said the development would add a minimum of 118 vehicles, if each residence
465 has two vehicles. These vehicles would need to drive from Stoneybrook to Finch Lane. Ms. Cleary
466 said there is already traffic challenges with the existing daycare and residences and conflicts with
467 traffic trying to access the McDonald's or the gas station. Ms. Cleary noted there have been a
468 considerable number of accidents both at the Route 101 interchange but also at the Finch Lane
469 intersection.

470
471 Ms. Cleary likened the proposed development to a 'divide and conquer' strategy. All Stratham has to
472 do is to collect the taxes, but Exeter has to deal with the infrastructure. In 1985 or 1986, it was agreed
473 between the towns to run water and sewer lines down the road. Half of my house is in Stratham, she
474 said. Supposedly Stratham is supposed to be billed [for the water and sewer], but her understanding is
475 the town has never been billed. The infrastructure for the water/sewer is 50 years old. It will need to
476 be torn up and redone at considerable expense to taxpayers. This would require heavy equipment up
477 and down the road.

478
479 Ms. Cleary noted that new development would generate considerable traffic, including deliveries. Ms.
480 Cleary noted that the existing neighborhood already generates a significant amount of delivery traffic.
481 Ms. Cleary said that would increase exponentially with a large residential development. Ms. Cleary
482 noted that this site was initially proposed as a development for a church. Ms. Cleary said that the
483 church was not developed at the site because a second exit was needed, not just Stoneybrook Lane.
484 Now look at what you are throwing at the road, on a daily basis, not just on Saturday and Sundays?
485 Ms. Cleary said the requirement for a second access point was cost-prohibitive. Ms. Cleary said the

Board would not be being a good neighbor to the residents of Exeter if they were to grant this because of the impacts this would have on them.

Drew Goddard said he did not want to quote the Planning Board, but when they discussed concept proposals previously for this site, this [type of development] did not go over very well. It was not supported. One member of the Board said he did not support it, but if it was affordable housing, he would potentially support the project. Mr. Goddard said his concern is that if you grant this, you will handcuff the Planning Board to potentially have to approve the project. He noted lawyers are involved and they could try to force this through the Planning Board, even if the Board did not support the project. By granting this variance tonight, you are potentially placing the Planning Board in a very difficult position. The best course is to reject this and let it go to Town Meeting. Let the Town decide and for the developers to go to Town Meeting and make this presentation. Let the Town make this decision. But if you grant this tonight, then that ship has sailed, and I just don't think it's the proper forum, he said.

Eric Bateman, of 10 Stoneybrook Lane in Exeter, said that there already bottleneck issues on Stoneybrook Lane especially associated with the daycare. This development would result in a hell of a lot of cars. The mornings and early evenings are already very crowded on the street. Mr. Bateman said he also agreed with the sentiments offered by his neighbors Mr. Forrest and Ms. Cleary.

Mr. Baum asked if he could speak to some of the public comments and Mr. Pierce agreed. Mr. Baum said he would reiterate that the scope of the variance requested tonight is just to allow the single-family residential use. Mr. Baum said residential uses are contemplated [in the District] and permitted. We are not asking for an end-around on zoning. Duplexes and triplexes could be developed here at a higher density than what we are proposing. This is not spot zoning. It is within the power of this Board to grant use variances. We are asking for a use variance just for single-family use. It doesn't change the review by the Planning Board. It just means stand-alone homes can be developed here instead of larger structures.

Mr. Baum noted that Mr. Goddard is not a direct abutter. The direct abutters who spoke – one was in favor – and we agree with the comments and concerns raised by the other two. They are consistent with the concerns we have raised and our proposal tonight. Single-family use will be less impactful than the other types of uses that are permitted. Yes, there will be more traffic and those are Planning Board issues. However, the traffic issues would be far worse than what would be incurred under a large commercial development. The traffic concerns can be addressed with the Planning Board.

Mr. Baum noted that it was not realistic to anticipate a Mill Brook Office Park type of development at the site. The layout makes it clear, it does not permit that type of development. The road in, though wetlands, does not lend itself to office buildings. As Mr. Green indicated, there is a reason this parcel has remained undeveloped. He said we believe we meet the variance criteria and understand the concerns raised tonight. We do not believe these concerns will be exacerbated by this proposal, in fact they will be lessened under a single-family proposal.

Michael Garrepy, of Garrepy Planning Consultants representing the applicant, said he wanted to respond to a concern raised by Mr. Goddard concerning potential public water/sewer connections. Mr. Sharples, the Exeter Town Planner, was at our preliminary consultation with the Planning Board. He did raise the issue of water and sewer capacity and said there may be some availability. We were surprised by his attendance and his comments. We did follow up with him and the Town. It was determined, in a nutshell, that Exeter wants to reserve excess capacity for its own residents for water

and sewer. Mr. Garrepy also noted that if they were to tie into municipal water and sewer, it would be at a tremendously oppressive cost that would bankrupt likely any project at this site.

Mr. Garrepy said that we are limited in our water capacity at this site. Our gallons per minute really would not much more density than what we are proposing. A larger project would not be permissible on the site given the water constraints. We have two preliminary wells and have done preliminary draw-down tests. That's another reason why we have scaled back the project, from garden-style apartments, to townhouses, to duplexes, and now down to the least impactful alternative.

Ms. Cleary, of 12 Stoneybrook Lane, noted that there were eight existing businesses at 1 and 3 Portsmouth Avenue. She noted the amount of weekly truck traffic that traffics the site, including garbage trucks and different types of delivery trucks. She said there is not a lot of commercial traffic there now. She hopes that puts more in perspective the traffic issues associated with residential and commercial uses.

Mr. Forrest, asked for a clarification on the multi-family use. It doesn't seem like the land is developable for commercial uses. If it were to be a multi-family use hypothetically, would it be the same number of units? Mr. Garrepy said the wells support a certain amount of gallons per day. Mr. Garrepy said it would be a different product, so it might perhaps be a townhouse style development with more units but fewer bedrooms per unit. But the overall density is determined by the number of gallons per day generated by the well.

Mr. Forrest asked if there would be a greater impact on personal traffic compared to commercial traffic if it was to go from a single-family to multi-family development. Mr. Garrepy said there would definitely be a greater traffic impact under multi-family. Mr. Connors noted that the Town does have in place a maximum residential density requirement that would apply to all types of development, regardless of the type of residential development proposed. Mr. Forrest asked, because the lot straddles the Exeter/Stratham town line, does that impact the density calculation? Mr. Connors noted that the part of the lot proposed for the development is all in Stratham, so it would all fall under the Stratham zoning requirements. Mr. Connors noted that since part of the driveway serving the development is in Exeter, it is his understanding that the Exeter Planning Board would have to approve part of this project – the access piece, if this were to advance with a variance. Mr. Forrest asked if there had been consultation with the Exeter Planning Board regarding access. Mr. Garrepy said they have not spoken with the Planning Board, but have spoken with the Planning Staff. That would be a bit premature to talk about all of the Exeter access issues. We have a full traffic report that is almost complete. We have studied all of the intersections and all of the ramp volumes. So we will have a very comprehensive traffic study that we will share with both towns to work out the off-site traffic mitigation that we will need.

Mr. Coronati said he wanted to add that we are requesting a variance for the lowest density. Duplexes and multi-family are higher density uses. Commercial is clearly more traffic and more impact to the site. We are asking for relief to have a lower density. Mr. Goddard replied that they cannot say definitively that this is a lower density project. Mr. Coronati replied that duplexes would be more units. Mr. Goddard replied it would come down to septic loading. Mr. Baum addressed Mr. Pierce and commented that the public should not be interacting directly with the Applicant. He added that they are happy to answer questions and that Mr. Goddard has spoken four times tonight. Mr. Baum stressed that they are not asking for density relief, they are asking for single-family and he requested some limit on the back and forth from the audience. Mr. Pierce agreed and asked if there are any more comments to the Board on the project. There were no additional comments and Mr. Pierce requested a motion to

close the public hearing.

Mr. Paine moved to close the public hearing. Mr. MacMillan seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce announced that the public hearing is closed and board deliberations may begin. Mr. Pierce stated that what is important for the Board to consider are the discussions regarding density, traffic, access, and safety and other issues that in his opinion would be addressed by the Planning Board. He added that the relief being requested is specifically just to change the multi-family units to single-family units. Mr. MacMillan asked if the variance request is just to change or to allow an additional use. Mr. Pierce replied to allow single-family residential use on the property. Mr. MacMillan summarized that they are not requesting a change, they can do anything they want within what the statute says, and we are just allowing an additional use. Mr. Pierce replied correct.

Mr. Pierce stated that it appears to him that depending on the lot loading, one would likely get more duplexes or multi-family units out of this property, so he agrees with the Applicant that single-family use will be less of an impact with regards to traffic and safety. He suggested the property could be arranged as four 15-unit buildings with two cars each and then there is the same number of units and occupancy. He added that many of these applications request multi-family units where single-family is allowed and that this is a less impactful use, going to single-family. Mr. MacMillan agrees.

Mr. Pierce asked Mr. Connors when the regional impact determination needs to be made. Mr. Connors replied that the statute says the Board should make that determination promptly so he recommends making the determination at this meeting. He read aloud the text of NH RSA 36:56 which governs Developments of Regional Impact. Mr. Connors noted that the language says “shall” and does not give the Board the discretion to not review it. It is his understanding that the Board must review it and make a determination. Mr. Connors added that he asked the Town attorney to weigh in on the determination question as well as the joint meeting question and the Town attorney provided a confidential memo to the Board members with his opinion that provides a clear recommendation on whether or not the Board should make the determination.

Mr. MacMillan asked if the ZBA is reviewing a site plan or just deliberating on a variance. Mr. Connors replied the ZBA is reviewing a variance request but the Applicant provided a plan to demonstrate how they see the development moving forward. Mr. MacMillan asked for clarification on the definition of regional impact. Mr. Connors replied that it will impact an abutting community or have a larger regional impact to the general region. Mr. Eastwood asked what are the types of things that regional impact will provide? Mr. Connors directed the Board’s attention to the staff memo, there is a list of criteria including the relative size or number of dwelling units as compared to the existing stock; proximity to the borders of a neighboring municipality; transportation networks; anticipated emissions such as light, noise, smoke, odors or particles; proximity to the aquifers or surface waters that transcend municipal boundaries; and shared facilities such as schools and solid waste facilities. Mr. Pierce asked Mr. Connors if traditionally this is a determination that the Planning Board would make or the ZBA? Mr. Connors replied that both boards are land use bodies so either Board should make the determination. Mr. Pierce stated it is based on the application so if the Board is determining if they can add the use of single-family, he asked is it only if that impacts the six conditions? Mr. Connors replied it is whether or not if the development, if approved, would reasonably be construed as having regional impact. Mr. Pierce replied that the ZBA is not approving a development, that the ZBA is reviewing a land-use modification. Mr. Connors replied that the ZBA is looking at a variance for single-family along with a plan as to how the Applicant will develop the property. Mr. MacMillan

633 stated that is not a final plan and requested clarification that the plan still needs Planning Board review.
634 Mr. Connors replied yes. Mr. MacMillan asked if the ZBA determining regional impact would short-
635 circuit the process? Mr. Pierce suggested it would be pre-mature.
636

637 Mr. Paine asked if the ZBA makes a regional impact determination, then would this meeting get
638 continued and asked if they would invite the municipality in to consider. Mr. Connors replied if the
639 ZBA determines the project has a regional impact, then the ZBA would need to postpone the ZBA
640 decision until January. The Town would send a letter to Exeter and to the Regional Planning
641 Commission stating that it has determined the project has regional impact and provide the new meeting
642 date. Mr. Coronati requested clarification that the Town of Exeter was notified. Mr. Connors replied
643 correct, but the new letter to Exeter would be a little different than the abutter notification sent
644 previously. Mr. Pierce stated that the Planning Board would receive a full application for the
645 neighborhood and at that point they could make a determination for regional impact as opposed to the
646 ZBA making the determination on a concept plan. He added that the plan is supporting material for
647 the application but not what the ZBA is there to approve. Mr. MacMillan agrees with Mr. Pierce's
648 reasoning and added that the project has the potential to have a regional impact in at least two of the
649 six criteria but he thinks the Applicant has only asked for the variance. Mr. Paine stated that the ZBA
650 is the first land use board to review the project and the ZBA's decision on regional impact should be
651 with all the input from the regional officials – the community and the RPC. The ZBA's decision will
652 determine how the proposal may go forward and with that it lays out their development options. If the
653 ZBA makes a decision without input from the community and the RPC then they may be shortchanging
654 the public input opportunity. He recommends that the ZBA make determination on regional impact
655 tonight and ensure that the public input process is thorough and complete. Mr. Garrepy asked if the
656 Applicant can speak on this matter. Mr. Baum added that they tried to address it earlier, but it was
657 their understanding that the Board wanted to wait.
658

659 **Mr. Paine made a motion to re-open the public hearing. Mr. Pierce seconded the motion. All**
660 **voted in favor and the motion was approved.**
661

662 Mr. Garrepy stated that he used to work for the RPC and was the circuit rider planner for Stratham.
663 He has never seen a Zoning Board determine regional impact. He added it has probably happened in
664 the state at some point but he agrees with the Chair that the Applicant is not proposing a development,
665 that the plan is for illustrative purposes only, that there will be a lot of changes, and when they have
666 full design then it is more appropriate for the Planning Board to determine regional impact. He added
667 that they would be happy to go through that process with the Planning Board with a complete set of
668 plans so that the regional impacts, if there are any, can be better addressed than with conceptual
669 drawings. He reiterated that the Town of Exeter has already been noticed as an abutter and they have
670 been part of this process with Mr. Sharples from Exeter attending the Planning Board meeting.
671

672 Mr. Baum commented that the primary reason for the statute is notice and the Town of Exeter has had
673 notice. He reminds the Board that this is not a proposal for a development and that they are only
674 seeking relief for single-family use. He added that he believes the Planning Board very well may find
675 for regional impact at that time but they are issues in their purview for example, traffic, emissions, and
676 light. He reiterated that the issue before the ZBA is whether single family use is permitted on the site.
677 Mr. Baum stated that the plans are all examples in order to provide some guidance for the ZBA and
678 that they are not final and will go through the Planning Board process. There will be more sufficient
679 information as part of the Planning Board application for that Board, the Town of Exeter, and the RPC
680 to really vet them. Mr. Baum added that he is not sure what those entities would do with the current
681 plans because the scope of the question for the ZBA and for anyone else will simply be the single-

family use request and if Exeter had concerns, they could have had a representative at the meeting tonight and chose not to.

Mr. MacMillan stated he has a concern with language in the statute that says a local land use board shall review promptly and determine whether or not the development if approved reasonably can be construed as having the potential for regional impact. He asked if the ZBA leaves themselves open if they adopt a finding of regional impact, does it make a ZBA ruling on the variance a problem. Mr. Pierce replied that they should ask if there are any more comments from the public and close the public hearing before addressing that. Mr. Baum replied that they are suggesting that determination goes to the Planning Board because the Statute discusses a development and tonight the Applicant is solely discussing a use variance that is limited in scope and does not get to the factors that the Statute contemplates. He added that the ZBA may be able to find one but he does not believe in this case it is applicable. The development will be fully vetted when they file an application with the Planning Board and he reiterated that the Applicant is happy to go through the regional impact process at that time.

Mr. Pierce made a motion to open the public hearing. Mr. Paine seconded the motion. All voted in favor and the motion was approved.

Mr. Paine stated that the Town has zoning that allows certain uses and certain uses have been reviewed by regional planning commissions, transportation, various economic development models, etc. If the ZBA introduces a new use to an area that can contribute to some of the infrastructure or different items under the regional impact criteria without the input from the RPC, then they haven't sought opinions from organizations that are supposed to help the Town. He provided an example of a question regarding traffic that the ZBA could ask the RPC. He added that the other side of this is that there is a change of use that is not allowed and the community has seen this property as a way to generate revenue from commercial property without putting more stress on schools and other public facilities and asked if that is something that needs to be considered.

Mr. Paine made a motion to determine that the project has a regional impact. Mr. Eastwood seconded the motion. Mr. Paine and Mr. Eastwood voted in the affirmative and Mr. Pierce and Mr. MacMillan voted nay. Mr. Federico abstained. The motion failed on a 2-2-1 vote. Mr. Pierce asked Mr. Connors for some procedural guidance. Mr. Connors said he would urge the Board to see if they could come to a consensus on the matter.

Mr. Eastwood said he felt that many of the public comments we received, and many of the questions we asked, directly relate to the regional impacts of the application. Mr. Eastwood cited criteria from RSA 36:56 including: 2.) Proximity to the borders of a neighboring municipality; 3.) Transportation networks; 4.) Emissions such as noise, and; 5.) Proximity to aquifers and surface waters. Mr. Eastwood said we discussed all of these factors tonight and I think any more information we can gather would make for a better informed decision.

Mr. Pierce said he did not disagree with Mr. Eastwood, but he still believes [the determination] is premature. I think we could have heard this application without the visual, without the site plans. We are really here to determine if single-family can be added as a use. I still feel it's a premature action. Mr. Eastwood asked then it should be the Planning Board who makes this determination? Mr. Pierce said that's right.

Mr. MacMillan said he would like to reference the advice the Board has been given. Mr. Federico asked if the Board is prepared to make a decision on the variance without additional information. If

we make a decision to grant a variance, I think we are hamstringing the Planning Board because we are allowing single-family homes without understanding the impact. Mr. Federico said he was part of the drafting of the Special Commercial District. The reason for not allowing single-family homes was cited. We wanted to encourage commercial development. So if we are going to go against commercial development in this zone, I think we need the Town to decide if they want to get rid of the Special Commercial District.

Mr. Pierce said he felt that granting this variance would not take away the ability of someone to develop this as a commercial site. It would simply allow them to pursue single-family homes in lieu of multi-family homes. That's the way he hears the application being presented. That the Board is not taking away the ability for it to be a commercial project. Mr. Federico said the Planning Board could still deny the application.

Mr. MacMillan said he would be comfortable with those two options: Finding that there is a regional impact and then making a determination on the variance. Mr. Connors said he would note a case out of Antrim, *Pierce Lake Association vs. Town of Antrim Zoning Board of Adjustment*. That is a case concerning a cell tower application and it was in front of the Zoning Board not the Planning Board. The Zoning Board did not make a determination on regional impact and the case was appealed. The party appealing said the Board had to take this step concerning regional impact. The judge remanded it back to the Zoning Board and said the Board had to make a determination on regional impact. Mr. Connors said this does not concern the merits of the application, it is just a procedural step that he believes the Board has to take. Mr. Pierce said so the Board could determine the application does not pose a regional impact at this point, vote yes or no on that, and then vote on the variance if there is not a finding of regional impact.

Mr. MacMillan said he felt the Board was constrained by the language of the Statute. Mr. MacMillan said he felt under the statute the Board needed to make a finding now and take an up-or-down vote regarding regional impact. Mr. Paine asked if there was a change of opinion regarding the previous vote. Mr. MacMillan said he thought there had been some reconsideration involving this.

Mr. Paine made a motion that the Board determines the project has a regional impact. Mr. MacMillan seconded the motion. Mr. Eastwood, Mr. MacMillan, Mr. Paine, and Mr. Federico voted in the affirmative. Mr. Pierce voted nay. The motion passed on a 4-1 vote.

The Board briefly discussed a site walk and determined it was not necessary.

Mr. MacMillan moved to table consideration of the application to a date certain, to the Zoning Board's January 9, 2024 meeting. Mr. Eastwood seconded the motion. All voted in favor.

Mr. Pierce noted this meeting was called to order at 7:02 p.m. Mr. Federico asked for clarification regarding the ordering of applications for the January 2024 meeting. Mr. Pierce said Case #674 would be the first order of business.

4. Adjournment

Mr. MacMillan made a motion to adjourn the meeting at 9:25 p.m. Mr. Eastwood seconded the motion. All voted in favor and the meeting adjourned.