



**Stratham Zoning Board of Adjustment
Meeting Minutes
November 25, 2014
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Jim Elliott, Secretary
Chris Cavarretta, Member
Chris Brett Member
Phil Caparso, Alternate

Members Absent: Tim Copeland, Board of Selectmen Representative
Garrett Dolan, Vice Chairman
Deidre Lawrence, Alternate

Staff Present: Audrey Cline, Building Inspector/Code Enforcement Officer
Lincoln Daley, Town Planner

1. Call to Order/Roll Call.

The Chairman took roll call and asked Mr. Caparso to be a full voting member. Mr. Caparso agreed.

2. Approval of Minutes.

a. October 14, 2014

Mr. Caparso made a motion to approve the minutes from October 14, 2014. Motion seconded by Mr. Cavarretta. Motion carried unanimously.

b. November 6, 2014

Mr. Brett made a motion to postpone the approval of the minutes for November 6, 2014 until we have at least 3 of the 4 people present who attended that meeting. Motion seconded by Mr. Caparso. Motion carried unanimously.

3. Public Hearing(s).

a. Case #614: Emerald Castle, LLC., 13 Evergreen Drive, Stratham, NH 03885 for the property located at 255 Portsmouth Avenue, Stratham, NH Tax Map 22, Lot 7. Variance

1 from Section 3.6.F of the Stratham Zoning Ordinance to allow a personal service establishment
2 use in the Residential/Agricultural Zoning district.
3

4 Mr. Elliott made a motion to accept the applicant's file and open case # 614 **Emerald Castle,**
5 **LLC., 13 Evergreen Drive, Stratham, NH 03885 for the property located at 255 Portsmouth**
6 **Avenue, Stratham, NH Tax Map 22, Lot 7.** Variance from Section 3.6.F of the Stratham
7 Zoning Ordinance to allow a personal service establishment use in the Residential/Agricultural
8 Zoning district. Motion seconded by Mr. Brett. Motion carried unanimously.

9 Ms. Sharon Somers, attorney representing Emerald Castle, LLC., took the floor. She explained
10 that they were seeking a variance to allow a personal use establishment in a portion of the
11 existing building; the remainder of the building will continue to be used for residential purposes.

12 Ms. Somers shared a letter from one of the abutters, Kevin Roy, who supports the project. She
13 then introduced Sarah Proulx, the proprietor of the establishment and explained this will be a
14 hybrid of the former business on the property which was a hair salon, with an add-on medi-spa
15 component. Also present was Barry Gier from Jones and Beach, who had prepared a conceptual
16 improvements plan and, Dr. Gary Proulx who will be the Medical Director of the facility.

17 Ms. Somers addressed the criteria for the variance and started with hardship; she said the property
18 is quite close to the road and situated on a very long and narrow lot which is different to a number
19 of the adjacent properties. Based on the configuration of the house and the lot, to ask that this
20 house be used solely for residential purposes would be unreasonable. It has a track record of
21 commercial use; at one point it was a hair salon and when it was being used, there was no
22 detrimental impact to the character of the neighboring area and they don't believe that the
23 continuation of a portion of the building as a commercial use would cause any future detriment to
24 the character of the area. The hair salon did operate as a special exception and had Ms. Proulx
25 decided to live in the property and the special exception had not expired, Ms. Proulx would have
26 been able to have had a personal service establishment as a matter of right. The use will be low
27 intensity with a maximum of 3 clients in the facility at any given time, the hours of operation
28 would be 9:00 am -5:00 pm Monday through Friday and 9:00 am -3:00 pm on Saturday. The
29 portion of the building devoted to the business will use 23% of the space.

30 Ms. Somers continued that they believe there is no fair or substantial relationship which exists
31 between the purpose of the Ordinance which is to keep the residential character of the
32 neighborhood and this application for 2 reasons: the residential component of the building will
33 remain, and that the proposed use is very low intensity.

34 Ms. Somers addressed the spirit and intent of the Ordinance and repeated that before Ms. Proulx
35 could have done this with a special exception if she lived there. Her lack of presence will have
36 negligible impact overall on the property so the spirit and intent will still be met if this variance is
37 granted.

38 The granting of the variance will not be contrary to the public interest, it will not alter the
39 essential character of the neighborhood, the proposed improvements to the layout of the parking
40 and driveway will actually make the property more residential in character than it is currently.
41 There will be no extra noise or traffic because of the small scale of the operation.

42 The next criteria was substantial justice. Ms. Somers felt there would be nothing to be gained by
43 denying the variance; the residential use will continue to function there as there is a tenant in the
44 building. At the same time if the variance is granted, the applicant will be able to conduct the

1 business that she bought the property for and she will be able to continue residing at her home in
2 Stratham and not have to move into the property.

3 Finally Ms. Somers addressed the criteria of diminution of property prices. She said there would
4 be none because there are going to be no exterior changes to the building, the proposed site plan
5 changes will make it more consistent with a residential character, any signage would be
6 conforming, and the low intensity of the use will keep the operation in keeping with a residential
7 character.

8 Mr. Charbonneau asked if 23% of the space represented 700 square feet. Ms. Somers said she
9 believed so. He then asked if there was a floor plan. There wasn't, but Mr. Brett confirmed it
10 would be located in the extension toward the driveway. Mr. Caparso asked about replanting the
11 tree that would have to be removed if the driveway was to be extended and would they be
12 painting white lines on the driveway. He doesn't want the property to look like another Kevin
13 Roy's place. Ms. Somers reminded the Board members that they would have to go before the
14 Planning Board with their site improvements plan so unless the Planning Board require striping,
15 she doesn't think it is necessary. She added also that they would be willing to work with the
16 Planning Board to make sure that this property along with Mr. Roy's doesn't look like a
17 commercial business.

18 Mr. Cavarretta asked if this property was purchased as a residence. Ms. Somers said it was
19 bought with the notion of being a rental property and being a business. Mr. Cavarretta then
20 asked if the rent was payable to property owner or to the business. Ms. Proulx replied that the
21 rent is going to a different LLC. Mr. Cavarretta asked if it would be fair to say that if the
22 variance was granted, 100% of the square footage would be used in some commercial venture.
23 Ms. Somers responded and said it would because it would be a rental property, however with a
24 future owner, it would be possible that somebody else could reside there. The title of the property
25 is Emerald Castle LLC regardless of where the rent is going. She continued that if the variance
26 was granted, it would create relief to allow a commercial enterprise in the designated portion of
27 the building and that would obviously in turn run to whatever future owner was in there.
28 However, a future owner might choose to live in the property.

29 Ms. Proulx introduced herself to the Board and explained what a medi-spa is; it is a cosmetic
30 business that is supervised by a licensed health care professional. The medi-spa will add a
31 clinical component to the hair salon. Examples of treatment that fall under the definition of medi-
32 spa would be laser treatments for capillaries, facial peels and treatments administered by
33 injection. The plan is to have 2 hair dressers, 1 aesthetician and she, and her husband Dr. Gary
34 Proulx who is going to be the Medical Director which State law requires for licensing purposes.
35 Ms. Proulx continued that she feels they are downsizing from the previous business as it had 3
36 hair dressers, massage and nails. There is only one closed room and they anticipate a maximum
37 of 2 to 3 clients total at one time in the establishment. She would like to create a boutique like
38 environment; not a medical one. Ms. Proulx is not intending to make any changes to the basic
39 structure or existing foundation of the building. She would like to improve the landscaping,
40 change the parking; changing it from what was used for the prior business to a more private and
41 aesthetically pleasing location on the property.

42 Ms. Proulx was asked if the plumbing would be changed. Ms. Proulx said she didn't believe so.
43 Mr. Gary Proulx said the current set up in the house is probably more than they need as the
44 previous business had 3 booths for hair where most of the plumbing was used. They will be
45 downsizing from that so the need will be less. Mr. Elliott asked if they would be using any
46 chemicals. Ms. Proulx said only for hair treatments; there are requirements as far as ventilation

1 with the State so they come and do an inspection. Mr. Charbonneau asked if the disposal of
2 chemicals is within the State law. Ms. Proulx answered in the affirmative. Ms. Somers said she
3 was sure this issue would be covered by the Planning Board as well.

4 Mr. Charbonneau asked if typically there would be 3 employees. Ms. Proulx replied yes.

5 Mr. Barry Gier took the floor. He said they would be going to the Planning Board for a site plan
6 review. He continued that the property sits on a site of 1.13 acres and there are no wetlands.
7 Currently there is a small parking lot out front and the intention is to expand the parking lot to the
8 back of the site, using the existing driveway cut off of Portsmouth Avenue. There would be a
9 total of 8 parking spaces and they will be looking at the septic system as they go for the site plan
10 review. The soils at the site are pretty good for drainage so they intend to install a small detention
11 infiltration area to handle the drainage off of the site.

12 Mr. Cavarretta said when Mr. Roy came before the ZBA, one of the concerns was wetlands so he
13 wanted to know if the wetlands were just on his property. Mr. Gier said he had a wetlands
14 scientist go out to Ms. Proulx's site and walk the property but he didn't see any wetlands on the
15 site.

16 Ms. Somers said in addition to the letter of support she shared earlier that there had been no
17 abutter opposition to this application. Mr. Elliott read out the letter of support from Mr. Kevin
18 Roy.

19 Mr. Charbonneau asked if the previous hair salon business had 3 employees also. Mr. Daley said
20 he believed so as well as a restriction of 6 parking spaces. Mr. Daley asked the applicant if she
21 knew how much area of the building was used for the previous home occupation. The applicant
22 wasn't sure. Mr. Daley asked what the hours of operation would be. He asked also how medical
23 waste would be disposed. Ms. Proulx said the only disposable medical waste would be syringes
24 and they have specialized containers to dispose of those. Those containers get picked up by
25 companies who come on a regular basis. Ms. Somers added that she has come across this in
26 other towns and that basically a contract is entered into with a medical waste supply company.
27 Mr. Cavarretta asked if it necessitated any type of modifications to pick up the medical waste.
28 Ms. Somers said they would come into the facility to pick up the box of waste.

29 Ms. Somers said the rough figures that she has for square footage is approximately 2950 for the
30 residential and 750 for the business. Mr. Charbonneau inquired where Ms. Somers got her
31 figures from and asked if the upper floor of the garage would also be used as the downstairs
32 equated to 576 square feet. Ms. Somers said her figures include the basement also. It was
33 established that the basement was not being used as part of the business only the garage and the
34 floor above the garage. Ms. Somers said the lion's share of the building will still continue to be
35 residential and the exact amount of square footage would be relevant if they were talking about a
36 special exception. Mr. Charbonneau said she had quoted 23% of the building would be used so
37 he was trying to establish where that figure came from.

38 Mr. Daley referred to Ms. Somers' response to the variance not being contrary to the spirit of the
39 ordinance in which she referenced that the intensity of use will not change as a result of the
40 proposed operation. He said if you look at the intent of the R/A zone, there is an opportunity
41 through the Home Occupation section of the Ordinance to allow for small operations to occur,
42 however it is usually geared and required that it be either owner occupied or the person who rents
43 the property maintains that business. This application is in stark difference to that. He asked Ms.
44 Somers to explain how this is not contrary to the spirit and intent of the ordinance. Ms. Somers

1 replied the only way for this not to be contrary to the spirit and intent of the ordinance is by
2 applying for a special exception. If this was being done under a special exception, the level of the
3 impact would be analogous to what it would be if done as a variance. There will be the same
4 scale of clientele, same scale of the number of employees, the same scale of the hours of usage
5 and the result of that is that the spirit and intent of the ordinance which is to keep in character the
6 residential neighborhood will in fact be met because the external indications of the operation of
7 the business are going to be pretty negligible.

8 Mr. Caparso said this property was purchased as an investment property by the trust. Ms. Somers
9 said that was correct; it was purchased to be a rental property and to operate a business. Mr.
10 Caparso said it was the intent of the trust to use this as a 100% commercial property. Ms. Somers
11 said it was, but 75% of that commercial property is being used for a residential zone which is
12 being allowed in the R/A zone. Mr. Caparso said if they were to grant this variance what would
13 stop an investment trust from coming in and buying investment properties all down Portsmouth
14 Avenue for commercial use. Ms. Somers said each of those applications would have to be
15 reviewed on an individual merit. Mr. Caparso said if they grant this variance it would be setting a
16 precedent.

17 Mr. Daley said that Ms. Somers had mentioned there would be no further intensity of use and yet
18 they are asking for 8 parking spaces which is 2 spaces more than what was granted for the special
19 exception. He also perceives there being clients waiting in the parking lot which will increase
20 traffic on Portsmouth Avenue. Ms. Somers said the space inside the building is fairly small so
21 this will not be like a traditional hair salon with a waiting area. The scheduling arrangements will
22 be such that waiting outside the building should not occur, however she can't guarantee that the
23 occasional person won't turn up late for their appointment, but it still wouldn't generate much
24 extra traffic. Ms. Cline added not to forget that the parking area will be for the person living in
25 the house also. Ms. Somers said when they talk about 3 clients; that is 3 clients maximum at any
26 given time and it is highly likely that there will mostly be only 2 clients at any given time and 2
27 employees. Mr. Caparso commented that the chance of increased traffic does exist and especially
28 when the Stratham Fair is in Town. He suggested that maybe traffic leaving the property be
29 directed to take a right turn only because Portsmouth Avenue gets very busy around the time the
30 business closes for the day and the traffic from Kevin Roy's property needs to be considered also.
31 He wondered if this could be added as a stipulation. Ms. Somers said some of this will be driven
32 by what D.O.T. has to say and that they are certainly willing to consider traffic improvement
33 suggestions. Mr. Proulx said not to forget that this property used to be a hair salon with the same
34 traffic use and an improved parking lot which helps to exit the property better.

35 Mr. Elliott asked how many families reside in the residential part of the house. Ms. Somers said
36 currently there is one woman living there. Mr. Elliott asked if there was a chance that any more
37 renters would move in there. Ms. Somers answered no. He asked if the signage was set up yet.
38 Ms. Somers said not yet, but it will be in conformance with the Ordinance.

39 Ms. Cline asked if the entrance to be used would be the front one. Ms. Somers said yes. Ms.
40 Proulx added that there is a rear entrance but it is not wheelchair accessible. Ms. Cline said the
41 entrance doesn't look wheelchair accessible currently, but assumed they would change that. Ms.
42 Proulx replied yes. Ms. Cline confirmed that a handicapped parking space would be provided.
43 Ms. Proulx said there would be. She added that when the previous business was there, there were
44 cars parked all over the place which is why they plan to have the parking off to the back. Mr.
45 Proulx said safety will be improved too as cars won't be parked on Portsmouth Avenue. He
46 added also that typically clients will be there for about an hour at a time so it won't be a case of 3
47 clients an hour plus they have to have an appointment.

1 Mr. Caparso made a motion to close the public session. Motion seconded by Mr. Brett. Motion
2 carried unanimously.

3 Mr. Caparso said he is really concerned that the applicant is opening up a Pandora's Box with this
4 property because right now 75% of this property's use is commercial. It will be 100%
5 commercial if the variance is allowed. He is concerned that if they set a precedent it will lead to a
6 lot of unintended consequences. Mr. Charbonneau said that cases are looked at individually so
7 there isn't necessarily a precedent being set; each case is different. Ms. Cline said commercial
8 codes are used for commercial uses so that already has a large impact which is larger than a home
9 occupation and gave examples of adding an accessible parking spot in front of the building with
10 the signage, or having a ramp. Mr. Brett said appearance wise, it doesn't matter if it's the
11 tenant or the owner in there.

12 The Board went through the criteria for a variance but before they began, Mr. Daley
13 recommended they support their rationale with documented reasons.

14 The Board discussed whether this application was contrary to the public interest. There were
15 differing views. Mr. Cavarretta felt that it wasn't because whether it is a hair salon or a medi-spa,
16 makes no difference although he has a little concern with congestion. Mr. Caparso argued it was
17 because it changes the interpretation of the law; at the moment it's owner occupied with a 25%
18 business use and now it's residential to the 25% business use. For Mr. Caparso that means that if
19 a Land trust comes along, they can use this to turn the rental property into 25% commercial. Mr.
20 Elliott said he's still stuck on the fact that if it were owner occupied they could through a special
21 exception process and be granted approval that way. He doesn't see this being any more intense
22 than what was approved before so in his mind this is not contrary to the public interest. Mr. Brett
23 supported Mr. Elliott. Mr. Charbonneau said he felt it was contrary because a special exception
24 could be granted if it was owner occupied. In this case there is no owner occupancy.

25 Mr. Charbonneau noted 3 in favor, 2 against.

26 Next the Board discussed if the spirit of the ordinance was observed. Mr. Brett felt it is observed.
27 Mr. Charbonneau said he finds the spirit of the ordinance is not observed; he is familiar enough
28 with Portsmouth Avenue and he knows there are a couple of commercial properties, but they pre-
29 date zoning so he feels that this is contrary to the public interest. Mr. Elliott said for the same
30 reason he doesn't find this contrary to the public interest, he feels the spirit of the ordinance is
31 being observed. Mr. Cavarretta agreed with Mr. Charbonneau and his reasoning. Mr. Caparso
32 felt the spirit was observed because as they are residents of Stratham they have an interest in the
33 Town's appearance and traffic flow.

34 Mr. Charbonneau noted 3 in favor, 2 against

35 Next discussed was if substantial justice is done. Mr. Elliott asked what is gained if they deny
36 this variance. He feels it is a very minor change in scope; the character of the neighborhood will
37 be preserved with the proposed modifications, it is not going to be a noticeable increase in traffic,
38 there won't be a threat to public safety or anything of that nature so he doesn't see any issues by
39 granting the variance.

40 Mr. Daley said one issue when looking at the totality of houses in Stratham. Mr. Daley was
41 interrupted by Ms. Somers who said she thought the public session had been closed. She doesn't
42 know if this is appropriate. Mr. Charbonneau agreed.

1 Mr. Caparso said he thinks Mr. Elliott is arguing this is a distinction without a difference meaning
2 if the Board allowed this to happen, the character of the community won't change substantially
3 because of it; Mr. Caparso argues just the opposite because the Board is basically changing the
4 spirit of the law from owner occupied to residential; that change is substantial enough that it
5 would conflict individuals' rights with community rights. His fear is that this change could open
6 up a lot of unintended development consequences so who knows where it could lead to further
7 down the road

8 Mr. Charbonneau agreed with Mr. Caparso. Mr. Cavarretta agreed with Mr. Elliott's reasoning.
9 For him the overriding factor is that they are residents of Stratham so they are aware of the
10 Board's concerns. Mr. Brett said he does have some concern that they could be setting a
11 precedent. Mr. Caparso reminded Mr. Brett that he had asked Counsel; if she was representing
12 somebody, would she point to this as a precedential case law and she replied yes. Mr.
13 Charbonneau added that she also reminded him that he had the right to turn around and say it
14 isn't. After consideration, Mr. Brett said substantial justice is done.

15 3 in favor, 2 against

16 The values of surrounding properties are not diminished was discussed next. All the board
17 members agreed this application would not diminish the values of surrounding properties.

18 Next to be discussed was whether literal enforcement of the provisions of the ordinance would
19 result in an unnecessary hardship.

20 Mr. Charbonneau said he couldn't see anything about the property that caused an unnecessary
21 hardship. All Board members agreed. All members agreed also that the proposed use was a
22 reasonable one.

23 Mr. Charbonneau said on most of the issue 3:2 in favor, everybody agreed that property values
24 would not be diminished. He said, if he's correct the applicant's request has been approved. The
25 Board members agreed that was the case.

26 Mr. Charbonneau told the applicant that their application had been approved and informed them
27 there was a 30 day appeal period so if they choose to do any work prior to that, it will be at their
28 own risk.

29 Mr. Elliot made a motion to close case # 614. Motion seconded by Mr. Caparso. Motion carried
30 unanimously.

31 **4. Miscellaneous.**

32 There were no miscellaneous items to report.

33 **5. Adjournment.**

34 Mr. Caparso made a motion to close the meeting at 8:15pm. Motion seconded by Mr. Brett.
35 Motion carried unanimously.

36