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6 **Stratham Zoning Board of Adjustment**
7 **Meeting Minutes**
8 **March 3, 2015**
9 **Municipal Center, Selectmen's Meeting Room**
10 **10 Bunker Hill Avenue**
11 **Time: 7:00 PM**
12

13
14 **Members Present:** **Arol Charbonneau, Chairman**
15 **Garrett Dolan, Full Time Member**
16 **Chris Cavarretta, Full Time Member**
17 **Phil Caparso, Alternate**
18 **Deidre Lawrence, Alternate**
19

20 **Members Absent:** **Chris Brett, Full Time Member**
21 **Jim Elliott, Secretary**
22 **Timothy Copeland, Alternate/Board of Selectman Representative**
23

24 **Staff Present:** **Lincoln Daley, Town Planner**
25 **Audrey Cline, Code Enforcement Officer**
26

27 **1. Call to Order/Roll Call.**

28 The Chairman took roll call and explained the rules of procedure. As Mr. Brett and Mr.
29 Elliott were absent, Ms. Lawrence and Mr. Caparso were made full voting members.

30 **2. Approval of Minutes.**

31 **a. January 13, 2015**

32 Mr. Caparso made a motion to approve the minutes for January 13, 2015. Motion
33 seconded by Ms. Lawrence. Motion carried unanimously.

34 **b. February 10, 2015**

35 Mr. Cavarretta made a motion to approve the minutes for February 10, 2015. Motion
36 seconded by Mr. Caparso. Motion carried unanimously.

37 **3. Public Hearing(s).**

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

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

4 Mr. Dolan made a motion to accept the application as complete. Motion seconded by
5 Ms. Lawrence. Motion carried unanimously.
6

7 Ms. Sharon Somers, attorney for the applicant, took the floor. She stated she had some
8 photos, which she distributed to the Board. Ms. Somers explained that although this was
9 a rehearing, she would run through the main points for the members not there at the
10 original hearing.
11

12 The application is for a variance to allow a personal service establishment in a portion of
13 a building. The rest of the house will be for residential purposes. The proprietor of the
14 business will be the applicant, Ms. Sarah Proulx. The business will be a hybrid of the
15 former use as a hair salon, and medi-spa purposes. Ms. Somers said Mr. Barry Geier
16 from Jones & Beach was also here, as was Dr. Gary Proulx, and May Youngclaus,
17 realtor.
18

19 Ms. Somers focused on the hardship criteria for a variance. She said she believes the
20 special conditions of the property are three fold. Firstly this is a residential property and
21 is extraordinarily close to a busy highway so is not suited to a family residence. It acts
22 also as a nice, wooded buffer between the property next door and the Kevin Roy
23 property. She then referred to the photos to show the distance between the Proulx
24 property and their next door neighbor; the distance being approximately 400 feet.
25 Across from the property is the Stratham Hill Park, and next door is a commercial
26 property which was established as a commercial use last year with 3 or 4 employees, and
27 5 or 6 customers a day. Ms. Somers said the third special condition is the history of the
28 property itself. It was a combination residential and small scale salon for which the
29 approval has lapsed. The approval for that was granted in 1999 with 2 employees and
30 another approval was granted with a total of 6 vehicles, but during this time it was a small
31 scale operation. She feels this plus the physical elements of the property indicate that
32 there are special conditions for the property.
33

34 Next, Ms. Somers addressed the next criteria to be considered for a hardship; “no fair and
35 substantial relationship exists between the general purpose of the zoning ordinance and a
36 specific restriction on the property”. She said a residential use is still going to continue
37 within this building; the use will comply with the general purpose of the zoning
38 ordinance. The proposed use for a portion of the building is a low intensity, personal use
39 which will not threaten the residential character of the building. The percentage of the
40 building being devoted to the business is the same as the previous small scale business.
41 There won’t be any difference in the tone or the feeling from the use of the property. Ms.
42 Somers said that one of the issues raised the last time they were before the Board was
43 whether or not the residential use component of the building was going to be done by the
44 owner or tenant. Under the ordinance and the way it is written, Ms. Somers said that
45 shouldn’t enter into the equation at all.
46

1 Ms. Somers continued; the public interest component of the variance criteria is that given
2 the historical use of the property, there is no change to the residential nature of the
3 building, and no change to the historical use or characterization of the property. There is
4 no alteration to the essential character of the neighborhood which will threaten public
5 health, safety or welfare. She continued that as said before, they do intend to make site
6 improvements to allow for better access and egress, and to eliminate the parking lot in
7 front of the building. She knows there were concerns about how that may look and said
8 her client is more than willing to listen to any reasonable conditions of approval this
9 Board may place, as to screening and landscaping. They are also amenable to such
10 conditions from the Planning Board. The character of the neighborhood will not be
11 altered because it's going to be the same ratio of use as there was before. This property
12 will not diminish values of surrounding properties; the exterior of the building is going to
13 stay as it is currently; the improvements will be to the egress and access which will help
14 towards the stability of the surrounding properties if not enhance it. Ms. Somers
15 continued that there will be limited hours of operation, and there will be a very modest
16 client base.

17
18 Ms. Somers referred to the criteria of substantial justice and said it would be served if this
19 variance was granted. Granting the variance would not create an overly intense use or
20 anything that is more dramatic than what has been there in the past. The only difference
21 is that the residential portion of the building will not be owner occupied. A great burden
22 would be caused to the applicant if denied given the fact this house was purchased for
23 this explicit purpose. Concerning the spirit and intent of the ordinance; she feels the
24 applicant meets that based on the reasons stated so far.

25
26 Ms. Proulx took the floor and explained the medi-spa portion of the business. She said it
27 is supervised by healthcare professionals and a medical director is required which would
28 be her husband Dr. Gary Proulx. The medi-spa has a medical component which consists
29 of 9 surgical services to treat facial aging, and other cosmetic conditions such as brown
30 spots and capillaries. Ms. Proulx said there would be 2 hair dressers also which would
31 be booth rentals. The prior business had 3 hair dressers and a massage therapist, and
32 nails. She feels that this application is staying with the same amount of employees.
33 There should be no more than 2 or 3 clients at any time in the establishment plus the
34 employees. She would like it to be a boutique style environment and has branded it
35 medtique. They don't intend to change the structure, but they would like to do some
36 landscaping, and change the parking to make it more private and ascetically pleasing.
37 The current tenant has lived at the property for about 6 months and they have a 5 year old
38 dog that got out and ran out onto the road and got killed. It will be continued as
39 residential, but she is backing up the fact that it is a very busy road.

40
41 Ms. Youngclaus, realtor, took the floor and explained she was there to give a realtor's
42 opinion on value. In realtor language there is a term "externally obsolete". A property is
43 considered this when such factors as neighborhood, location within a large community
44 diminish the use of the property as intended, when originally built. The highest and best
45 use for this property is no longer as a purely residential property. Portsmouth Avenue
46 has become busier, and the fact the Town put in a new turning lane makes the case.

1 When Ms. Youngclaus is working with clients, the first thing asked is “is there a yellow
2 line down the road”; the minute you get to a double yellow line, and there is a turning
3 lane, the Town is basically saying that stretch of road is too busy to comfortably be a
4 residential property. A second issue is the fact that there are some other businesses, but
5 there are not a lot of people who want to live next door to a business. If this became a
6 business property, that would enhance the value to the Town. As a residential property it
7 has lost value. In 2010 it was on the market for \$399,999 and it didn’t sell. It was back
8 on the market at 2013 for \$299,999 and still didn’t sell. It was sold to the Proulx for
9 \$268,000, and so the Town of Stratham has lost out on property tax. In 2003 a permit
10 was issued to do the renovations for a salon, and in her opinion it is logical that if that
11 was an appropriate use of the property back then, it would be more so today.
12

13 Mr. Caparso asked Ms. Youngclaus if she was saying this property would become more
14 valuable if they granted this variance. Ms. Youngclaus said she isn’t calling it a
15 commercial property, but as a mixed use it is going to be a higher and better use of the
16 property than restricting it to just residential. Mr. Cavarretta said last time the applicant
17 was here, the big concern was that a precedent would be set if it was non-owner
18 occupied, and now the Board is hearing that residential would not be the best use. Ms.
19 Youngclaus said all she can say is this property is best used the way it has been used
20 since 2003. Mr. Charbonneau said he didn’t disagree with Ms. Youngclaus that there
21 was external obsolescence, but there are any number of homes along Portsmouth Avenue,
22 some of which are even closer to Portsmouth Avenue than this property. He asked if they
23 wouldn’t be externally obsolete as well. Ms. Youngclaus said that they would be. Ms.
24 Lawrence asked if Ms. Youngclaus was the realtor back in 2010. Ms. Youngclaus
25 replied that she wasn’t.
26

27 Ms. Cline asked if she could make a clarification about owner occupied versus not. Ms.
28 Cline read directly from the zoning ordinance: “home occupation shall be allowed only
29 for a single family residence and shall be carried on strictly by the owner of the principle
30 building, and shall reside in said building or a tenant with the owner’s permission
31 residing in the principle building”. Ms. Cline said the difference is the person who’s
32 living in that residence has care and control over what’s going on in the other part of the
33 building, as opposed to somebody who rents the apartment, and then somebody else rents
34 the commercial part, whether it’s the tenant or the owner. Mr. Charbonneau confirmed
35 this related to the previous home occupation at this property; Ms. Cline said it was. Ms.
36 Proulx confirmed that the last approval was for a special exception for a home occupation
37 which is different to what is being applied for now.
38

39 Dr. Gary Proulx said they are not leasing the commercial part of the building; they are the
40 owners. Based on the definition read by Ms. Cline, he feels they are owner occupied,
41 therefore caring for the place, thereby living in half of the place as they are going to be
42 working there and there will be some nights, they stay there. They own half and rent
43 half. He argued they would be in there more than a home owner that lived there. Mr.
44 Proulx emphasized they want to make it a great place to work and make the Town better
45 by having it. He stressed they live in the Town, they love the Town and they would be

1 able to provide employment for the Town. He said he would never have invested his
2 retirement in this if they hadn't been told it was fine.

3
4 Mr. Caparso said his concern is that it will turn into another Kevin Roy. Mr. Proulx said
5 they would probably not turn it into that, and it's not a place a family would want to live
6 so it would be a great hybrid to meet both needs.

7
8 Ms. Somers said one of the things she mentioned earlier on is that one of the special
9 conditions of the property is that it serves as a buffer between Kevin Roy's property and
10 the neighbor. The relief they are seeking is to have a mixed use, not a full commercial
11 operation. If a future owner wanted that, they would have to come before the Board to
12 get it. Ms. Somers referred to a chart she handed out earlier, and said a statement had
13 been made that there were a lot of businesses out on the road already. To test that they
14 did some research on Town records, and determined what is and is not out there; they
15 came up with a total of 5 including the expired hair salon. Mr. Cavarretta went through
16 the list and asked if they were owner occupied; they were.

17
18 Ms. Cline asked if she could speak. She said one of the big differences that may be
19 getting lost is the difference between a variance and a special exception. A variance is
20 forever so the next person will treat the property the way they want to and they will have
21 the ability to do that if it is a commercial property as there's no restriction at that point.
22 Special exceptions for a home occupation die with the approval when the person leaves.
23 She has no doubt the applicant has good intentions, but the Board may have very little
24 control over what happens down the road if a variance is granted for a mixed use
25 building. Mr. Dolan confirmed it was a variance the applicant was seeking.

26
27 Ms. Cline went on to say she wasn't very clear on the buffer being a special condition
28 and said she would like the Board to find out why that would be a better situation than it
29 is now. Historically this property did have a home occupation which is being alluded to
30 as an equal use, but it has been denied for commercial uses in the past. All of the
31 properties on the sheet were or are home occupations. To the best of her knowledge there
32 have only been 3 commercial approvals or historically grandfathered commercial uses on
33 that whole stretch of Portsmouth Avenue. Potentially these home occupations could
34 ask for a variance for a commercial use as a next step.

35
36 Mr. Daley said he had no issue with the intent of the application; he is sure they would do
37 a fantastic job. He addressed the issue of a double line as raised by Ms. Youngclaus; it's
38 a state road and has been that way for many, many years. That entire area has been R/A
39 for many, many years, and the properties identified as commercial are grandfathered
40 properties, and have been commercial in various capacities for many, many years. In the
41 case of the applicant, it is a home occupation with different criteria which the Board
42 needs to evaluate for this application. Referring to an aerial photograph, Mr. Daley
43 showed other properties close to Portsmouth Avenue. Mr. Daley questioned the
44 uniqueness of it being a long, narrow lot; he said the Board needs to consider that as part
45 of the process. He suggested the Board consider other similar sized properties along

1 Portsmouth Avenue, not just the immediate area when looking at the uniqueness of this
2 property.

3
4 Mr. Proulx said the other properties are not as close to the road as they are. He said that
5 Dr. Bartolini who was the owner of what is now Kevin Roy's business, only lived there
6 for 3 weeks, but he was granted an owner occupied position for years. Mr. Proulx said he
7 sensed there was something against this business and he can't understand why. He said
8 he would consider living there if that is what it takes to get the approval.

9
10 Ms. Somers turned to the special conditions; she said the buffer makes it unique which
11 benefits the surrounding properties. She then turned to Mr. Daley's comments about not
12 just looking at properties in the immediate vicinity. Ms. Somers said one of the elements
13 of the criteria is to look at whether or not you are going to impact the essential character
14 of the neighborhood; the immediate confines exist of vacant land across the street and
15 next to it a large lot which is mostly wooded, and next to that is the Kevin Roy property.
16 It is incomprehensible to her how a mixed use property which is going to be on the same
17 footprint, with same use is going to have an impact of the essential character of the
18 neighborhood.

19
20 Ms. Somers continued she doesn't think it's in dispute that Portsmouth Avenue is a
21 highly busy road; nobody wants anybody who could be in danger like small children,
22 animals or a person with dementia anywhere near that road. She is here for what the
23 applicants do want to know, not what someone else might want to do 5 years down the
24 road. One of the criteria the Board has to consider is substantial justice, and she quoted a
25 court case from the town of Keene where there was an office district, an historic building
26 in that district which was 7,000 S.F. and the person wanted to have a mixed residential
27 and office space; the zone allowed multifamily and office but not both. The Board
28 decided that in order to ram home the requirements of the zoning ordinance, it would
29 have been an unreasonable interference with the use of the property as a residence. They
30 decided to come up with a compromise which would allow a mixed use. She suggested
31 to the Board that taking the facts they do have, that there is a special condition, and the
32 historical usage, it is clear beyond dispute that there is no fair and substantial relationship
33 between the general purpose of the ordinance and the specific restriction of the property.
34 This is not going to impact on the essential character of the neighborhood. The
35 residential use will be continuing in the building, and thus the purpose of the ordinance
36 will be maintained because there will be a consistency with the residential district.

37
38 Mr. Charbonneau asked Ms. Somers if she was arguing that beside the special condition
39 of the location of the house on the lot, the special condition is also due to the fact that it
40 abuts the Roy property. Ms. Somers replied that the special condition is that if you look
41 at this lot, it is right in the middle of 2 lots; one is Kevin Roy's lot to the right and the
42 other one is Map 22 Lot 6 which is a very large wooded lot, where the house sits on the
43 corner; the applicant's lot functions as a buffer between the highly residential, wooded lot
44 and the commercial use of Kevin Roy's lot. Ms. Lawrence asked how this buffer relates
45 to the use of the property as a mixed home occupation. Ms. Somers said the test is
46 whether there is something inherent in the property itself which makes it unique to other

1 lots around it. Mr. Caparso said he was struggling to understand the buffer argument
2 because he couldn't see how it would change if the applicant's property was changed
3 from residential to a mixed use. Ms. Cline said she understood Ms. Somers to be saying
4 the buffer would protect any use to that side of the property on Lot 6. The Board and Ms.
5 Somers continued to discuss the buffer being a special condition. Ms. Cline said the
6 buffer in question belongs to the neighbor's parcel not the applicant's lot.
7

8 Mr. Daley read the definition for hardship concerning literal enforcement of the
9 ordinance will result in unnecessary hardship. He read "the restrictions on one parcel are
10 balanced by similar restrictions on other parcels in the same zone. The hardship imposed
11 is shared equally by all property owners, no grounds for a variance exist; only when some
12 characteristics of the particular land in question make it different to others can
13 unnecessary hardship be claimed". Mr. Daley reminded the Board that in the past there
14 was an effort to rezone this area to be an alternative mixed use of some sort, but the
15 residents of Stratham voted against the rezoning.
16

17 Mr. Dolan asked if any of the neighbors had opposed this plan. The applicant said they
18 hadn't. Mr. Proulx asked the Board if they honestly think that area will go back to being
19 residential; that somebody is going to take that house as a residential property. He felt for
20 that reason justice wasn't done. He feels what they are planning to do is a positive and if
21 anything it will be more negative to let the property return to its former state as a
22 residence only. Ms. Somers reminded the Board that one of the criteria is whether
23 substantial justice is being done. She said she hasn't heard anything tonight that suggests
24 there would be any gain to the public by this being denied.
25

26 Mr. Dolan said that in Ms. Somers' opening statement, she said that the owner occupancy
27 component of the statute is somehow invalid and only applies to residential properties.
28 Ms. Somers said something must have been misunderstood as that is not what she
29 intended to say. Ms. Somers clarified that if this was owner occupied, they would just
30 need a special exception, but as it's not owner occupied, they need a variance
31

32 Mr. Barry Geier, Jones and Beach took the floor. He said there were no wetlands on the
33 site, and the existing houses will stay as they are. Currently there is a small parking lot;
34 the intention is to keep the current curb cut, and to access a larger parking lot in the rear.
35 Ms. Lawrence asked how many parking spaces would be added. Mr. Geier said currently
36 there are about 6 spaces. They are asking for 7 in the rear, and a handicapped parking
37 space in front. Mr. Cavarretta asked about landscaping. Mr. Geier said they need to go
38 before the Planning Board to discuss that. Ms. Somers emphasized that her clients are
39 very amenable to any reasonable conditions of approval to try and screen and soften any
40 commercial impact this may have. Ms. Proulx said the majority of people who use a
41 medi-spa don't want their car to be seen which is why they want the parking lot at the
42 rear of the property. Mr. Dolan asked where the residents would park. Ms. Proulx said
43 they would park at the side of the building. At the moment they park in the front.
44

45 Mr. Caparso asked what the frontage and setback were. Mr. Geier said the current
46 setback was 25 feet and the frontage about 155 feet. Mr. Proulx reiterated that this would

1 be a small scale business by appointment so the traffic will be controlled. Mr. Caparso
2 said his concern was more to do with when Stratham Fair is happening.

3
4 Mr. Cavarretta asked how much work to the exterior would be required to make the
5 building ADA compliant. Mr. Geier said he would have to look at it, but he thinks the
6 ramp and door would need to be revised. Ms. Somers said there is a possibility also that
7 it could be swung around to the rear of the property for ascetic reasons too.

8
9 Mr. Dolan said this property went on the market in 2010 so it has not be used as a hair
10 salon since at least that time, so the special exception has lapsed. Mr. Dolan read through
11 the criteria for a variance and asked how they can have a hardship in the land; it doesn't
12 exist. Ms. Somers said the test is whether or not there is a special condition of the land
13 which makes it unique to other properties in the area.

14
15 Ms. Lawrence referred to the ordinance and read Section 17.8.b.v.1.a and b. She said that
16 for the sake of argument if there is a fair and substantial relationship between the general
17 public purposes of this ordinance provision and the specific application of that to this
18 property, and the applicant doesn't meet Section 17.8.b.v.1, it says in the next paragraph
19 (2) "if the criteria in sub paragraph 1.a. was not established an unnecessary hardship will
20 be deemed to exist if, and only if, owing to special conditions of the property that
21 distinguish it from other properties in the area, the property cannot be reasonably used in
22 strict conformance with the ordinance, and a variance is therefore necessary to enable a
23 reasonable use of it".

24
25 Ms. Lawrence asked if there was anything else unique to this property beside the road
26 and buffer which have been mentioned. Ms. Somers said she feels the special conditions
27 are those already stated and all those things taken together would make it difficult to
28 reasonably use it in conjunction with a residential use. Ms. Lawrence said part of the
29 application is that it will continue to be used for residential purposes. She asked Ms.
30 Somers if they were mixing up the concept of marketability and reasonable use because
31 there are people using their similarly situated properties solely for residential purposes.
32 Ms. Somers said she felt the realtor's opinion was a factor in the analysis of this
33 application. Mr. Cavarretta said he is pretty familiar with 245 Portsmouth Avenue; they
34 bought the house for \$96,000 which needs extensive repairs. He asked Ms. Somers what
35 is the difference in sale, if the property was reverted to a single family home and you take
36 the mixed use being discussed tonight. He added that there is a concern it will turn into
37 another Kevin Roy even if it doesn't happen with the current application because a
38 variance stays with the property. Ms. Somers said that a new owner would have to
39 operate under the variance that exists; should they want to deviate from it, they would
40 have to come back before the Board for a whole new variance. Mr. Proulx reiterated that
41 they didn't buy the property to have a large scale commercial operation; they would have
42 bought another place instead.

43
44 Mr. Caparso asked Ms. Cline if there are any other properties on Portsmouth Avenue that
45 are not owner occupied and a rental with mixed use. Ms. Cline said there is no other
46 mixed use, as that is only a term used in commercial. Mr. Caparso then asked if there

1 were any non-owner occupied residential properties in town which have a commercial
2 venture in them. Ms. Cline said that would be a commercial property. Ms. Proulx said
3 there is somewhere in town where somebody was renting and they were running a
4 business but they didn't have the permission of the owner. Ms. Cline and Mr. Daley
5 weren't aware of anywhere in the Town's residential zone of a business being run by
6 somebody who wasn't either a tenant or owner of a property. Mr. Daley said there are
7 other elements to be considered such as number of employees outside of the family, and
8 the amount of area dedicated to the business may exceed the allowable amount. Ms.
9 Cline said if this was approved as a commercial venture, that even with the restrictions
10 the applicants are placing on themselves, those restrictions are not required to be kept by
11 the next person who moves in. Ms. Somers said that could be easily addressed by adding
12 conditions of approval. She said also that if the previous special exception had not
13 lapsed, arguably they would not have to be before the Board.
14

15 Ms. Lawrence asked for confirmation that if conditions were added to the approval, if
16 those would have to be honored by the next owner. Ms. Cline said typically you
17 wouldn't put a long list of conditions on a variance and you would have to condition it as
18 the same use because if it was a commercial building, you wouldn't have to get
19 permission.
20

21 Mr. Charbonneau said he still wasn't understanding what made this property unique. Ms.
22 Somers referred to the buffer again. Mr. Daley addressed the Board and said counsel was
23 correct that the Board approved the Kevin Roy property. When that went through the
24 ZBA, and then Planning Board, part of the evaluation was its impact on the character of
25 the neighborhood. Whether people like the style of building or not, that was not germane
26 so to speak; it was presented, and designed, and approved by both boards to fit into the
27 character of the community, to maintain the residential character. Mr. Daley said he was
28 struggling with the buffer explanation also. Ms. Somers said the buffer would have a
29 mitigating effect from Kevin Roy's property.
30

31 Mr. Proulx added that Kevin Roy's property is so obviously commercial. Ms. Proulx
32 said the only thing they would like to add to this property is an eave for the front door.
33 Ms. Cline said both boards worked really hard at trying to make Kevin Roy's property
34 look residential. She reminded everybody that there is no half way, it is either a
35 residential, a residential home occupation or it is full commercial. As far as the
36 buffering, Ms. Cline said this buffer belongs to somebody else, she doesn't think that
37 buffer can be counted on because there's no regulation.
38

39 Mr. Dolan referred to the applicant's comment earlier that there would be 2 hair dressers
40 which would be done via booth rental. He asked if that meant the applicant would be
41 renting out interior space. Ms. Proulx said they would be under their name; it's a
42 hairdresser thing.
43

44 Mr. Dave Canada, Chairman, Board of Selectmen explained that the Selectmen had asked
45 for this rehearing because they were concerned with spot zoning that seems to be going
46 on along Portsmouth Avenue. He thinks it's very curious that a hardship is being a

1 resident in a residential zone, and creating a buffer zone by creating a non-conforming
2 use. He continued that they want to accommodate people who come before Boards and
3 they really want to help people get a “yes”. However, he said, the ordinance cannot be
4 turned on its head; this is not a residential proposition, it’s not in the spirit and intent of
5 the ordinance. The applicant paid cheap residential rates so at a minimum the applicant
6 could rent out 2 rental units there which would more than cover the mortgage. There
7 isn’t a grandfathered use there. We encourage businesses in town, but the businesses that
8 are in the similar kind of business, are all south of the traffic circle where they pay
9 commercial prices for commercial land for commercial purpose. It wouldn’t be fair to
10 them, if spot zoning in the residential area was allowed. Mr. Canada said that the zoning
11 may well need to be updated in that area, but this is not the way to change it. It has to be
12 at a Town meeting and be an ordinance change so to continually allow people to take
13 single units in this residential area and make them commercial is not the proper thing for
14 this Board to do.

15
16 Mr. Stephen Grenier, Stratham resident asked, if a variance was granted with the
17 condition that it must remain a residential hair salon, wouldn’t that stop it from being
18 commercial. Ms. Cline said the criteria Mr. Grenier is mentioning doesn’t make it
19 commercial or non-commercial; the difference being that single family dwellings and
20 duplex dwellings are residential, everything else is a commercial building. If it is used in
21 any other way, it becomes a commercial building. Mr. Grenier asked if the Board can’t
22 set specific criteria. Ms. Cline said technically they could, but there are a lot of elements
23 allowed in a commercial building that might get missed that could affect it down the
24 road. She gave an example; if they got a building permit for a big plate glass window in
25 the front, there would be nothing in the variance that would restrict that. Mr. Grenier said
26 he hopes the applicant is granted a variance.

27
28 Ms. Somers said she hoped the Board would grant a variance.

29
30 Mr. Daley empathized with the Proulx, and said the Town tries to be business friendly,
31 but has to make sure that what is being discussed is in line with the ordinance. There will
32 be an effort this year with the Planning Board to look at the rezoning issue more
33 carefully, and potentially present new zoning opportunities for that area of town for
34 consideration.

35
36 Mr. Caparso made a motion to close the public session. Motion seconded by Mr. Dolan.
37 Motion carried unanimously.

38
39 The Board discussed the criteria.

40
41 Mr. Dolan said the Town voted not to change the zoning for this area. He doesn’t believe
42 granting a variance, particularly when the property can still be used as a residence, and as
43 an owner occupied special exception. This doesn’t meet the criteria for not being
44 contrary to the public interest.

1 Mr. Caparso said he agreed with Mr. Dolan. He sympathizes with the applicant, but there
2 has to be a balance between what's good for an individual applicant to what is good in
3 the spirit for the Town today, and in the future. His primary concern is that this is unique
4 to the Town, and if they allow this, it could create an endless stream of applicants coming
5 in wanting to develop Portsmouth Avenue.
6

7 Mr. Charbonneau agreed; he said between the intent of the Master Plan, the zoning, the
8 fact the Town has made a decision they want it to remain residentially/agricultural zone,
9 it would be contrary to the public interest.
10

11 Mr. Cavarretta said ascetically, he thinks it would enhance the look of everything out
12 there, but his fear is it could turn into an eyesore. He is torn, but voted it would not be
13 contrary to the public interest.
14

15 Ms. Lawrence said they have the Master Plan issue and the fact that the Town has spoken
16 to keep that area zoned R/A.
17

18 The Board discussed if the spirit of the ordinance is being observed.
19

20 Mr. Dolan said it wouldn't be observed because it is a residential zone creating a
21 commercial property in the midst of the zone. Mr. Caparso said he agreed with Mr.
22 Dolan based on his previous comments.
23

24 Mr. Charbonneau agreed; it's a residential zone, and this would be at least a semi-
25 commercial use so the spirit would not be observed.
26

27 Mr. Cavarretta said he thinks the spirit of the ordinance would be observed if conditions
28 were put in place. If the conditions couldn't be agreed upon, then the spirit of the
29 ordinance wouldn't be observed.
30

31 Ms. Lawrence said she didn't think the spirit was observed given the current zoning for
32 the district. The nature of the district is what has to be considered.
33

34 Next substantial justice was discussed.
35

36 Mr. Caparso said he didn't think substantial justice was done. It would be good for the
37 Proulx's if this variance was granted as it would increase the property value, and give an
38 additional income stream, however it will give them an unfair competitive advantage to
39 the other neighbors who, apart from Kevin Roy, are owner-occupied and residential. In
40 terms of the Town, this Board would be legislating a change in the ordinance in terms of
41 the R/A zone which would have a significant impact on the future of the Town. It would
42 be an injustice to the Town and neighbors to pursue this.
43

44 Mr. Dolan said for the same reasons he spoke to earlier that it can still be used as a
45 residential property, substantial justice would not be done. Mr. Charbonneau said he
46 agreed with Mr. Dolan for the same reasons.

1
2 Ms. Lawrence and Mr. Cavarretta agreed for the same reasons also plus what Mr. Canada
3 had said regarding tax base and the zone.
4

5 The Board moved on to discuss the values of surrounding properties are not diminished.
6

7 Mr. Dolan referred to Mr. Caparso's comments about the value of this property
8 increasing while the neighbors' properties stay the same. For him that means the value of
9 surrounding properties could diminish with the granting of this variance.
10

11 Mr. Charbonneau said he doesn't see any evidence that the values of surrounding
12 properties would diminish because of a couple of mixed use buildings. Mr. Cavarretta
13 agreed with Mr. Charbonneau, as did Mr. Caparso.
14

15 Ms. Lawrence said she wasn't sure there was enough information presented. She said
16 they could conclude that their property would go up, but doesn't know if that necessarily
17 means that surrounding properties would diminish in value.
18

19 Mr. Dolan said Ms. Lawrence's statement was more accurate that their property would
20 increase in value, but not have any definitive impact on surrounding properties' values.
21

22 Next "literal enforcement of the provisions of the ordinance would result in an
23 unnecessary hardship" was discussed.
24

25 Mr. Dolan said he didn't see any special conditions in the property that prevent the
26 reasonable use and enjoyment of the property as a residential parcel.
27

28 Ms. Lawrence said the general public purpose of the ordinance provision is to preserve
29 the residential/agricultural neighborhood of that particular zoning district. She suggested
30 the Board answer part b. first; "is this a reasonable use?" She felt it was as a home
31 occupation. Mr. Charbonneau pointed out that if part a. isn't satisfied then part b
32 becomes a moot point.
33

34 Mr. Caparso said he thinks the general purpose of the ordinance as passed by Town
35 meeting and reinforced by the election, was to keep it residential/agricultural.
36

37 Ms. Cline said there is a list that breaks down the criteria for this section which she
38 shared with the Board members.
39

40 The Board went through the list. They talked about the buffering; Mr. Caparso said you
41 could argue it is commercial creeping. Ms. Lawrence said they need to look at any
42 special conditions or unique elements of the property which distinguish it from
43 surrounding properties in the area. Ms. Lawrence said she doesn't think the property
44 being across from the park is determinative of anything, and she still doesn't understand
45 the buffer argument, and how it relates to the variance application. She said obviously
46 the purpose of the ordinance provision is to preserve residential and agricultural uses in

1 the area. She continued that if they say there is a fair and substantial relationship that
2 means the Board can't meet the conditions. Ms. Lawrence talked about if the property
3 cannot be reasonably used in strict conformance with the ordinance; she felt it could be as
4 a solely residential property.

5
6 Ms. Lawrence asked Ms. Cline if 2 families are allowed in the R/A zone. Other board
7 members said it could be if the lot size is big enough.

8
9 Mr. Charbonneau said he agreed that the property didn't seem to have any special
10 conditions that made it unique to other properties in the area, and a continued use as a
11 residential is reasonable. Mr. Dolan, Caparso and Cavarretta said they would have to
12 agree on that.

13
14 Mr. Charbonneau read out Section 17.8.3. Ms. Lawrence said what sticks in her mind is
15 that they bought this property thinking they would be allowed to do something, but unless
16 there is an unnecessary hardship, they can't. Mr. Dolan said it is unfortunate that it
17 wasn't made clear at the time of purchase that the property was a residential property. He
18 doesn't think it meets the criteria for an unnecessary hardship. Ms. Lawrence said it can
19 be used as a residential property. Mr. Caparso said he agreed and he sees this as
20 continuing income regardless of the outcome. He doesn't see that as an unnecessary
21 hardship, it is more about can they make more money than they make now from the
22 property. Mr. Dolan said they still have the option of pursuing an owner-occupied
23 special exception.

24
25 The Board voted on the individual criteria of the variance;

26
27 "The variance will not be contrary to the public interest".

28
29 *4 against 1 in favor*

30
31 "The spirit of the ordinance is observed"

32
33 *5-0 against*

34
35 "Substantial justice is done"

36
37 *5-0 against*

38
39 "The values of surrounding properties are not diminished"

40
41 *5-0 in favor*

42
43 "Literal enforcement of the provisions of the ordinance would result in an unnecessary
44 hardship"

45
46 *5-0 against*

1
2 The Board proceeded to Section 17.8.v.2 which addresses whether or not a property
3 cannot be reasonably used in strict conformance with the ordinance, and therefore a
4 variance is necessary to enable a reasonable use of it. The Board agreed that the property
5 could still be used as a residential property without a variance so this doesn't apply.
6

7 *5-0 against*
8

9 Mr. Charbonneau stated that the variance was denied, but the applicant has the right to
10 appeal. Mr. Daley said the applicant's recourse would be to request a rehearing with the
11 Zoning Board.
12

13 Mr. Dolan made a motion that based on the discussion and vote on the 5 criteria on the
14 granting of a variance, and there was a majority vote on Section 17.8.3.b.i., b.ii., b.iii, b.
15 iv, and b.v. not supporting the granting of the variance. The written notice should
16 indicate that the Board has denied the variance. Motion seconded by Mr. Caparso.
17 Motion carried unanimously.
18

19 Mr. Caparso made a motion to close Case # 614. Motion seconded by Mr. Dolan.
20 Motion carried unanimously.

21 **4. Public Meeting.**

22 **a. Board of Adjustment – Amended Rules of Procedure.**

23 Mr. Daley explained these amendments have come about because of the realization the
24 regulations do not include that a denial from the Building Inspector is required in order to
25 come before the Board for a hearing.

26 Another major change was made to allow interaction between staff and the Board during
27 the procedures for an application. Other minor changes include grammatical changes.

28 Mr. Dolan made a motion to adopt the Board of Adjustment Rules of Procedure dated
29 February 15, 2015. Motion seconded by Mr. Caparso. Motion carried unanimously.

30 **5. Miscellaneous.**

31 Mr. Daley mentioned that a workshop with Town Counsel had been organized for March 24,
32 2015, but there is an application that night also. He would like to tentatively reschedule the
33 workshop for April 14, 2015.

34 **6. Adjournment.**

35 Mr. Dolan made a motion to adjourn at 10:06 pm. Motion seconded by Ms. Lawrence.
36 Motion carried unanimously.
37