

1 **ATKINSON ZONING BOARD OF ADJUSTMENT**
2 **21 Academy Avenue**
3 **Atkinson, New Hampshire 03811**
4 **Public Hearing Meeting Town Hall**
5 **Wednesday, February 14, 2024**
6

Members Present

Glenn Saba, Chair
Bob Connors, Vice Chair
Arthur Leondires
Kevin Wade
Guy Wetherbee

Others Present

Vernon Dingman, V. W. Dingman Consulting
David Holigan, Chase Island Associates
Sue Coppeta, Planning and Zoning
Administrator
Chuck Mathison
Brian Boyle, Building Inspector

7 **Workshop 7:00 PM**

8 **Approval of Minutes:**

9 **Vice Chair Connors made a motion to approve the minutes of the January 10,**
10 **2024 meeting as corrected. The motion was seconded by Member Wetherbee. All**
11 **members of the Atkinson Zoning Board of Adjustment voted in favor. Vote:**
12 **4/0/0. The vote is unanimous. Kevin Wade did not vote**

13 **Call to Order:** Chair Glenn Saba called the meeting to order at 7:30 PM. All members
14 of the Zoning Board of Adjustment are present. Sue Coppeta, Planning and Zoning
15 Administrator is also present.

16 **Public Hearing – 7:30 P.M.**

17 Chair Saba stated that three hearings are continued from the January 10, 2024 meeting.
18 Chair Saba opened the public hearings at 7:30 PM, February 14, 2024.

19 **1. Application by Vernon Dingman for Michael R Damphousse Family Trust,**
20 **Michael Damphousse, Trustee for Special Exception under Article VII Section**
21 **700:2 to allow Conversion of a Seasonal home to year-round status on**
22 **property located at 13 Stickney Rd, Map 23 Lot 20, in the RR3 Zone.**

23 ***Continued from 1/10/24 meeting.***
24

25 **Abutters:**

26 Herbert R. and Dorothy Lippold, Kevin W. and Susan Nimmo, Damphousse, Micheal R.
27 Family Trust, Micheal Damphousse, TTE, Damphousse, Linda J. Rev. Trust, Michael &
28 Linda Damphousse, TTEE, Robert and Carol Kolifrath, Diane M. Barrett, Big Island
29 Pond Corporation, Vernon Dingman, V. W. Dingman Consulting (present), Chuck
30 Mathison (present)

31 **Discussion:**

32 Chuck Mathison stated he was the contractor for the homeowners. Chair Saba informed
33 Mr. Dingman that at the last meeting, the Board requested a plan that showed
34 dimensions. Mr. Dingman informed the Board that he met with Mr. Kavanaugh, the
35 designer of the approved plan and the off set dimensions on all four sides as well as the
36 building dimensions to the actual structure were added. This plan gives the closest
37 corner dimensions to all the property lines. The original structure was 667 square feet.

38 Chair Saba asked if the applicant had received approval for the septic. Mr. Dingman
39 explained that the septic was approved, assigned and installed in 2012 for seasonal
40 use. It is a clean solutions system and a three chambered effluent disposal area. It is
41 in place and has operational approval. Chair Saba stated that with this system the tank
42 must be aerated and asked what happens to the system when it's seasonal and the
43 system is off. Mr. Dingman explained that if the application is approved, the pump will
44 run year round. It is a three chambered arrangement with a septic tank, the bio con
45 treatment portion, the settling portion and a pump chamber. The aerator automatically
46 turns on when it senses flow.

47 There is 2023 approval for year round use from NHDES. The State gave approval for
48 construction in order to change the status because the State recognizes seasonal use
49 and/or year round use. In 2012 it was approved for seasonal use and in 2023 it was re-
50 approved for year round use. There is a well in place. Member Wetherbee asked
51 where it is noted that the system is year young. Mr. Dingham stated that it is only a
52 noted if the system is seasonal. The plan would not have a note if it is approved for
53 year round.

54 Mr. Dingman reiterated that shoreline approval is not required because the foundation
55 dimensions or location of the existing home have not changed. If it expands past 600
56 square feet, the applicant will have to apply for shoreline approval.

57 Chair Saba asked if anyone would like to speak on behalf of the project. There was no
58 comment.

59 Chair Saba asked for questions from the Board. There were none. Chair Saba
60 requested Findings of Fact.

61 **Findings of fact:**

- 62 • Continued from the January 10, 2024 meeting
- 63 • Septic approved for seasonal use in 2012, it is up and running and operational.
- 64 • Septic was reapproved in July 28, 2023 for year round use.
- 65 • Shoreline approval is not required, the footprint of the structure is not changing
- 66 • Hearing was continued because the Board did not have a plan that showed set
67 backs.
- 68 • The plan submitted at this hearing gives the information the Board requested at
69 the January 10, 2024 hearing.

70

71 Chair Saba requested to go through the criteria.

72

73 **700:2 Seasonal Conversion**

74
75 A change in the status of a dwelling from a seasonal, recreational, or secondary home to
76 a home which is intended to be used as a primary or year-round dwelling shall be
77 considered a change in the use of the existing building according to the building code of
78 the Town of Atkinson and shall require upgrading to state and local water supply and
79 sewage disposal regulations in effect at the time of such change in status. Before any
80 permits for structural alteration or change in use are issued by the Building Inspector and
81 the Health Officer, a special exception from the Board of Adjustment shall be obtained,
82 the granting of which shall include, but not be limited to, compliance with the following
83 requirements:

84 a. A review by the Health Officer.

85 The septic system has been approved and installed.

86 b. Compliance with Sections WS300 of Atkinson's Water Supply and Sewage
87 Disposal Regulations.

88 There is an existing well and a new one is being installed.

89 c. Written consent by the New Hampshire Water Supply and Pollution Control
90 Commission (NHWSPPCC).

91 Mr. Dingman explained that this is the NHDES approval. They are the only ones who
92 approve septic systems in New Hampshire. There might be local regulations but
93 NHDES has the final say.

94 Chair Saba stated that a septic system and a well must be in and operating. Chair
95 Saba asked for comment from the Board. There was none. Chair Saba requested a
96 vote that all criteria for a conversion from a seasonal to a year round home have been
97 met

98 **Vote: 5/0/0. Unanimous. The Board approved the criteria for Section 700:2.**

99 Chair Saba reminded the applicant that there is a 30 day appeal period. He explained
100 that this is the special exception, the applicant will still need approval from Code
101 Enforcement and Life Safety.

102 Chair Saba requested a motion.

103 **Member Leondires made a motion to approve the Application by Vernon Dingman**
104 **for Michael R Damphousse Family Trust, Michael Damphousse, Trustee for**
105 **Special Exception under Article VII Section 700:2 to allow conversion of a**
106 **seasonal home to year-round status on property located at 13 Stickney Rd, Map**
107 **23 Lot 20, in the RR3 Zone. The motion was seconded by Vice Chair Connors.**
108 **Vote: 5/0/0. All in favor.**

109 Chair Saba requested to turn to the next application.

110 **2. Applications for 2 Special Exceptions by Vernon Dingman for Patricia &**
111 **Lincoln Heffner for property located at 10A Chase Island Rd, Map 22 Lot 41 in**
112 **the RR3 Zone. These applications are a Special Exception under Article VII**

113 **Section 700:2 to Allow Conversion of a Seasonal Home to year-round status**
114 **and a Special Exception under Article VII Section 700:1a&e for the Expansion**
115 **and Alteration of a Nonconforming Use. *Continued from 1/10/24 meeting.***
116

117 Chair Saba explained that the Board requested several things from the applicant at the
118 January 10, 2024 meeting including pictures of the old structure with setbacks, size,
119 detail, house plan, exact layout, State approvals for the septic, a certified plan of the old
120 structure with setbacks and demolition permits.

121
122 **Abutters:**

123 J & J Realty Trust, Foley, James & Jean TTEE, Robert J. and Jennifer D. Wasselchuck,
124 Chase Island Assoc. (present), Lincoln and Patricia J. Heffner (present), Lorraine A.
125 Ladderbush, Nelson J. Rocha, Big Island Pond Corporation, Vernon Dingman, V. W.
126 Dingman Consulting (present)

127
128 Discussion: Chair Saba reviewed what the Board requested at the last meeting and
129 requested Mr. Dingman speak. Chair Saba informed Mr. Holigan that based on location
130 he is not an abutter and did not need to be notified.

131 Mr. Dingman stated that he has some additional information. First, Mr. Dingman gave
132 the Board a survey from Mr. Lavelle showing the pre-existing conditions. The note was
133 changed also. The Board was questioning the setbacks. The survey done by Mr.
134 Lavelle shows 4.6 feet from the front and the more recent survey done by the applicant
135 shows 4.5 feet, a one inch discrepancy. The proposed structure will be 5.8 feet from
136 the front. The previous structure was taken down in July. Note 2 depicts that the field
137 work and information provided was prior to the razing of the structure.

138 Chair Saba asked about the grading plan. Mr. Dingman stated that the applicant has
139 house plans and gave the Board a full sized set showing all elevations. The architect
140 supplied the stamped T1 plan. The set initially supplied did not have a certified stamp
141 for the architect.

142 Mr. Dingman explained that based on a request by the Board, the architect added the
143 two landings, one for the deck and one for the porch. These were also added to the
144 grading plan. The side line setbacks were questioned as to whether the 3x3 landing
145 from the porch was included. Mr. Dingman also informed the Board that the tax maps
146 are in error. The plans provided show a certified boundary survey. The physical
147 information depicted on the plan is the physical information in the field. Chair Saba
148 stated that there was a concern about the grade and the steps landing in the setback.
149 Mr. Dingman stated that side setback depicted is 14.8 feet to the closest corner of the
150 bottom step. He explained that the previous closest corner of the previous deck was
151 11.6 feet from the setback, so the setback has been increased by 3.2 feet on the same
152 side.

153 Chair Saba asked if there was a proposed site plan with measurements and setbacks.
154 Mr. Dingman showed him the plan and reviewed it with the Board.

155 Vice Chair Connors stated that the deck is being replaced with a three season porch.
156 Mr. Dingman stated that the proposed porch is being pushed back and is only on the
157 side of the dwelling.

158 Mr. Dingman pointed out the closest point to the landing and step from the lot line for
159 the Board. It is 14.8 feet. There is 5.8 feet from the front of the building where it was
160 4.5 feet. Chair Saba remarked that the proposed dwelling will have an enclosed porch
161 while the previous building had an open deck.

162 Chair Saba requested comment from the Board members.

163 Vice Chair Connors is concerned that the deck is being replaced by a three season
164 porch which is an extension of a house. Chair Saba remarked that it went from a
165 recreational use deck to a covered porch, which is impermeable. Mr. Dingman
166 reiterated that by NH Shoreline standards, a deck is also an impermeable structure.
167 Chair Saba informed him that by Atkinson Conservation standards, a deck is not an
168 impermeable structure.

169 Chair Saba opened the hearing to the public.

170 Mr. David Holigan, Chase Island Associates spoke. He stated that according to the
171 neighbors, the deck was added a few years ago. It will be a big difference between an
172 open deck and an enclosed porch. He is concerned that there will be a roof right on top
173 of the water. He suggested that the proposed enclosed porch can be set back more
174 and away from the water. He understands that the State approved it, but the Zoning
175 Board has powers as well. It is a tiny, postage stamp lot and the Association wants it to
176 look appropriate. He is also concerned about water runoff from the roof. Mr. Dingman
177 explained that there is a drainage and treatment system.

178 Vice Chair Connors stated the setback from the house to the water is being changed to
179 a smaller distance, so he believes a variance is required. The enclosed porch is an
180 extension of the house. Chair Saba agreed with Vice Chair Connors, the applicant is
181 taking recreational space and making it living space, even though it is a screened porch,
182 it is an enclosed space which the Board has traditionally looked at differently. If it were
183 a setback to another lot, the Fire Department and Code Enforcement would look at it
184 differently. The size is increasing, but normally that is added by going up, not by taking
185 an open deck and making it living space.

186 Mr. Dingman explained that the applicant needed to expand the proposed structure to
187 the 800 square foot mark because the applicant is requesting conversion to year-round
188 use. Chair Saba stated that by changing the existing open deck to a covered porch it
189 would require the need for relief in the form of a setback variance as opposed to just a
190 conversion because the expansion has become living space and is encroaching a
191 wetland area.

192 Mr. Dingman requested to consult with his client. Chair Saba allowed it. Mr. Dingman
193 returned and explained that the applicant is agreeable to setting the entire house and
194 porch back 10 feet, so the front corner of the proposed porch will be where the old

195 house corner was. There is room on the lot to keep the septic, setbacks and so forth
196 compliant. This will make the 4.6 foot setback a 14.6 foot setback to the front. The rear
197 setback will be 38.5 feet and will be compliant.

198 Chair Saba asked for comment from the Board. Vice Chair Connors agreed with the
199 changes.

200 Chair Saba requested comment from the public.

201 Mr. Holigan, Chase Island Association, stated that the Association is looking for space
202 in front of the house for appearance and he is agreeable. Chair Saba stated that that
203 there is room on the lot for the changes.

204 Chair Saba requested to go through the criteria for conversion of a seasonal home to
205 year round and requested the findings of fact be read. He stated that a new septic and
206 well will be provided. There is shoreline approval and the septic is approved.

207 **Findings of Fact:**

- 208 • This hearing was continued from the January 10, 2024 meeting
- 209 • The previous house was demolished on July 20, 2023
- 210 • The applicant received shoreline approval on 1/5/24 and septic approval on
211 2/12/2024.
- 212 • The plan for the existing/previous house that was demolished has been provided
- 213 • Setbacks are provided
- 214 • The closest set back is 14.8 feet on side set back, it was 11.6 feet on the
215 previous plan
- 216 • The new deck will be enclosed so there is an issue about a deck compared to a
217 screened in porch
- 218 • The applicant is proposing an enclosed porch so it is technically part of the house
- 219 • The applicant has proposed setting the house back 10 feet to accommodate the
220 three season porch which would allow adequate setbacks.
- 221 • All the roof drainage is to be treated
- 222 • The house is shifting east 10 feet

223
224 **700:2 Seasonal Conversion**

225 A change in the status of a dwelling from a seasonal, recreational, or secondary home
226 to a home which is intended to be used as a primary or year-round dwelling shall be
227 considered a change in the use of the existing building according to the building code of
228 the Town of Atkinson and shall require upgrading to state and local water supply and
229 sewage disposal regulations in effect at the time of such change in status. Before any
230 permits for structural alteration or change in use are issued by the Building Inspector
231 and the Health Officer, a special exception from the Board of Adjustment shall be
232 obtained, the granting of which shall include, but not be limited to, compliance with the
233 following requirements:

- 234 a. A review by the Health Officer.

235 The applicant has DES approval and it is in the packet.

236 b. Compliance with Sections WS300 of Atkinson's Water Supply and Sewage
237 Disposal Regulations.

238 The applicant is drilling a well.

239 c. Written consent by the New Hampshire Water Supply and Pollution Control
240 Commission (NHWSPCC).

241 The proposed septic has NHDES approval.

242
243 Chair Saba petitioned the board that all criteria are met. Vote was unanimous
244

245 **Vice Chair Connors made a motion to approve the Application by Vernon**
246 **Dingman for Patricia & Lincoln Heffner for property located at 10A Chase Island**
247 **Rd, Map 22 Lot 41 in the RR3 Zone. This application is for a Special Exception**
248 **under Article VII Section 700:2 to Allow Conversion of a Seasonal Home to year-**
249 **round status. Member Leondires seconded the motion. Vote: 5/0/0. All in favor.**

250 Chair Saba informed the applicant that there is a 30 day appeal period and requested to
251 review the criteria for the second part of the application.

252 **NONCONFORMING USES: 700:1 - ANY NONCONFORMING USE, AS THAT TERM IS**
253 **DEFINED IN ARTICLE III, MAY BE CONTINUED IN ITS PRESENT FORM EXCEPT AS**
254 **PROVIDED HEREIN:**

255 a. No extension, expansion, enlargement, or alteration of a nonconforming use will
256 be allowed without the granting of a Special Exception by the Board of Adjustment.
257 This Special Exception shall be issued in the form of a special permit which shall
258 expire within one (1) year unless acted upon by the permittee.

259 e. A Special Exception shall be granted by the Board of Adjustment provided the
260 following conditions are met for the non-conforming use:

261 1. There is no diminution of the value of surrounding properties.

262 Discussion: none.

263 **Vote: 5/0/0. All agree.**

264 2. It would be of benefit to the public interest.

265 Discussion: Chair Saba stated no harm has been done to the public interest.

266 **Vote: 5/0/0. All agree.**

267 3. It would result in substantial justice being done.

268 Discussion: Vice Chair Connors stated that the owner should be allowed to use their
269 property as they want to. Chair Saba stated that with the amendments, the Board

270 believes that it does not change the character of the neighborhood. The owner should
271 be able to use the property to the extent that the neighborhood and the law provides.

272 **Vote: 5/0/0. All agree.**

273 4. It would comply with Sections WS300 of the Atkinson Water Supply and Sewage

274 Discussion: A new septic system is being installed and has been approved by NHDES.
275 The applicant is building a new well.

276 **Vote: 5/0/0. All agree.**

277 **The four criteria are met.**

278 Chair Saba requested a motion.

279 **Member Leondires made a motion to approve the Application for Special**
280 **Exception by Vernon Dingman for Patricia & Lincoln Heffner for property located**
281 **at 10A Chase Island Rd, Map 22 Lot 41 in the RR3 Zone. This application is for a**
282 **Special Exception under Article VII Section 700:1a&e for the Expansion and**
283 **Alteration of a Nonconforming Use under Article VII, Section 700: 1:a&e. Member**
284 **Wade seconded the motion. Vote: 5/0/0. All in favor.**

285 Chair Saba requested to turn to the next application.

286 **3. Application for Variance by Vernon Dingman for Jaguar Realty Trust,**
287 **George Kalil, Trustee from Article IV Section 410:8b to allow the**
288 **construction of detached garage 53.8' from the Wetland instead of the**
289 **required 100 feet (46.2' variance) on property at 18 Chase Island Rd, Map 22**
290 **Lot 33 in the RR3 Zone.**

291 **Abutters:**

292
293
294 Guy and Karen LaPlante, Mildred Reynolds, Bilodeau, Scott & Gretchen Living Trust,
295 Bilodeau Scott & Gretchen, TTEE, John T. Mason, Jr., Chase Island Assoc. (present),
296 Jaguar Realty Trust, Kalil, Teresa TTE, Baker Living Trust, Baker, Blake and Donna
297 TTEE, Big Island Pond Corporation, Vernon Dingman, V. W. Dingman Consulting
298 (present)

299
300 Discussion: Chair Saba stated that the last hearing was continued. The Board
301 requested detailed building plans. It was concerned about plumbing and the use of the
302 second floor.

303 Mr. Dingman stated that the Board also requested pictures of previous conditions at the
304 last meeting. The Conservation Commission did not have a problem with the 53.8 feet.

305 The new floor plans are of the shoreline approved size of 30ft x 34ft. The architect
306 spoke to the applicant and the second floor can be storage. The new plans show a
307 blank second floor. There is a column on the first floor to support the storage for the
308 second floor. The plan shows the garage and the foundation plan, then the first floor

309 which is the garage area. Stairs are coming up from the back to the second floor.
310 There is a proposed half bath on the garage floor which was approved by NHDES. The
311 applicant is no longer proposing a full bath on the second floor or any plumbing to the
312 2nd floor. The second floor will be unfinished storage. The overall height was added to
313 the plan and it is 26 feet, 11 inches. The applicant is not asking for relief for height.

314 Chair Saba opened the hearing to the public. Mr. Holigan, Chase Island Association
315 stated that this addresses his concerns about a possible apartment or conversion.
316 Chair Saba stated that a separate septic system for an accessory building is unusual.

317 Chair Saba requested comment from the Board. There was none. Chair Saba
318 requested to go to the criteria.

319 1. Granting the variance would not be contrary to the public interest because:

320 Discussion: The new garage would allow the owner to store their equipment, car, boat,
321 lawn mower, tractor and so on, out of the weather and not becoming a hazard to the
322 lake because they will be enclosed.

323 Chair Saba stated that there is Conservation approval. The Board generally agrees that
324 a garage is better for storage than to leave equipment outside. Chair Saba stated that
325 plumbing in the garage is odd. The plumbing, bathroom and office upstairs have been
326 eliminated. It is up to Code Enforcement to ensure that the applicant complies.

327 **Vote: 5/0/0. Criteria 1 is approved.**

328 2. The spirit of the ordinance is observed because:

329 Discussion: Being one of the largest lots in the area, it will support the garage and has
330 NHDES shoreline approval which takes into account total lot percentages of coverage
331 and treatment.

332 Chair Saba stated the spirit of the ordinance is to protect the wetland. Atkinson
333 considers open water to be a wetland while the State does not consider open water as
334 wetland. The Conservation Commission has agreed that this relief will not impair
335 protection of the wetland. Vice Chair Connors stated that all the equipment will be
336 enclosed in a garage rather than being out and leaking into the wetland.

337 **Vote: 5/0/0. Criteria 2 is approved.**

338 3. Granting the variance would do substantial justice because:

339 Discussion: The health and safety of the lot and the neighborhood would be protected
340 with the proposed garage.

341 Chair Saba stated that substantial justice is what is the gain to the general public if the
342 application is denied compared to the loss to the landowner. Vice Chair Connors stated
343 denying the application would not benefit anyone.

344 **Vote: 5/0/0. Criteria 3 is approved.**

345 4. For the following reasons, the values of surrounding properties will not be
346 diminished:

347 Discussion: The garage will become an asset to the lot and to the neighborhood adding
348 value to the surrounding lots.

349 Chair Saba stated that the Board has to rely on its own knowledge. A nice garage, with
350 everything kept inside opposed to out on the lot could look very nice and definitely
351 cleans up the lot. Member Wade stated that new construction helps.

352 **Vote: 5/0/0. Criteria 4 is approved.**

353 5. Owing to special conditions of the property that distinguish it from other properties
354 in the area, denial of the variance would result in unnecessary hardship because:

355 5a. No fair and substantial relationship exists between the general public
356 purpose of the ordinance provision and the specific application of the
357 provision to the property because:

358 Discussion: The setback is within the property to this essentially private cove and the
359 53.8 feet is to the highest water mark. Mr. Dingman has depicted the lake elevation for
360 fall and winter. It is indicative of the pre-existing conditions of the lot, when and how it
361 was expanded.

362 Chair Saba stated that as far as special conditions of the property, it is a large lot
363 compared to most in that area. The provision of the ordinance is for the protection of
364 the wetland. The Conservation Commission believes that it is still being protected by
365 granting this relief. Chair Saba believes that the provisions of 5a have been met.

366 **Vote: 5/0/0. Criteria 5a is approved.**

367 5b. The proposed use is a reasonable one because:

368 Discussion: The health and safety of the neighborhood will be approved because
369 potential gas leaks or anything else will not be exposed.

370 Vice Chair Connors stated that having a garage is always a reasonable use. Chair
371 Saba agrees with Vice Chair Connors that it is always great to have a garage if the
372 property can hold it and it appears that it fits on this lot.

373 **Vote: 5/0/0. Criteria 5b is approved.**

374 **Vice Chair Connors made a motion to approve the Application for Variance by**
375 **Vernon Dingman for Jaguar Realty Trust, George Kalil, Trustee from Article IV**
376 **Section 410:8b to allow the construction of detached garage 53.8' from the**
377 **Wetland instead of the required 100 feet (46.2' variance) on property at 18 Chase**
378 **Island Rd, Map 22 Lot 33 in the RR3 Zone. Member Wetherbee seconded the**
379 **motion. Vote: 5/0/0. All in favor.**

380 Chair Saba reminded the applicant that there is a 30 day appeal period and any
381 development during that period will be done at the applicant's risk.

382 **Vice Chair Connors made a motion for a five minute recess. The motion was**
383 **seconded by Member Weatherbee. Vote: 5/0/0. All in favor. The hearing was**
384 **recessed at 8:27 PM.**

385 **Chair Saba reopened the hearing 4 at 8:32 PM.**

386 **4. Application submitted by Colleen Ann Murphy for Special Exception/Home**
387 **Occupation, specified in the Zoning Ordinance, Article IV, Section 450 to**
388 **operate “C Murphy, MD, PhD, DD, LLC aka Diaper Spa” (mental health**
389 **counseling), at property located at 23 Pope Rd, Map 12 Lot 22-1, RR2 Zone.**

390
391 Chair Saba requested the applicant come forward and read the abutters list.

392 **Abutters:**

393
394 Settlers Ridge Condominium Association (present), Nicole Gaziano (present), Most
395 Investments, LLC, Settlers Ridge Apartments (present), Paul Lovvik and Colleen
396 Murphy (present), Michael and Stephanie Vigliottia (present)

397
398 Chair Saba read some rules for the hearing and requested cell phones be muted.

- 399
- 400 • Every person who appears during the public portion of the hearing shall come to
 - 401 the podium and state their name and address.
 - 402 • Public comments shall be confined to the subject matter of the application
 - 403 • Questions from the public to the applicant must be done through the Chair
 - 404 • The Board’s preference is to allow the public to speak in the following order:
 - 405 direct abutters, impacted non-abutters, those who can demonstrate they are
 - 406 directly affected by the proposal under consideration and then other public
 - 407 comments at the discretion of the Chair.
 - 408 • The Chair may caution speakers to keep on topic and minimize repetition.
 - 409 • The Chair may limit the length of time for testimony in a manner the Board
 - 410 deems appropriate and based on the size of the audience, it will be limited to two
 - 411 minutes per person of the public participation.
 - 412 • Anyone who wishes to speak a second time will be at the discretion of the Chair.
- 413

414 Chair Saba stated he wanted to be clear that the applicant’s request is for a special
415 exception, it is a home occupation and if all the criteria outlined in the ordinance are
416 met, then the Board must approve the request, if the criteria are not met, then the Board
417 must deny it.

418 Chair Saba stated he is one member of five who will vote on the application. He sees
419 inconsistencies in the application that will need to be addressed. He questions why the
420 applicant has changed the web site and the business description so many times. He
421 understands that it was recently changed and he does not believe that any of the
422 versions are consistent with the application.

423 Chair Saba wonders what the true intent of the business is. If the applicant is a
424 therapist or a mental health therapist, he asked why the applicant uses the name “aka

425 *Diaper Spa*". If he were looking for help, these are not the words he would search.
426 These are two questions he believes need to be clarified.

427 He informed the applicant that she has three options, to continue with the hearing as
428 planned, to request a continuance to have time to get facts in order, or request to
429 withdraw without prejudice.

430 The applicant requested to proceed and asked if she should answer the questions from
431 the Chair first.

432 Chair Saba stated that she could address his questions in her presentation.

433 The applicant is submitting a formal request for a home occupation at her home address
434 of 23 Pope Road. The applicant stated that in compliance with Section 450:2 of the
435 zoning ordinances, her proposed home occupation, operating under her name, satisfies
436 the following criteria: it occupies less than 20% of the space, it does not involve a
437 multifamily dwelling, it requires no employees, ensures no visible presence of
438 equipment or materials outside, provides sufficient off street parking, produces no
439 odors, does not include any signage and does not involve heavy construction traffic.

440 It is a nonmedical business that does not provide diagnoses, treatments or prescriptions
441 for any medical conditions. It offers a safe and nonjudgmental environment for
442 individuals seeking comfort and solace. The services are strictly platonic and
443 exclusively operate on her own property with visits limited to one client at a time. Due to
444 its extremely low volume it is expected to receive only two to three visitors per month.
445 The applicant has established a comprehensive vetting process for all clients including
446 detailed discussion about their goals to ensure the suitability for the common space and
447 services provided. Additional background checks are conducted to insure the safety
448 and well being of the clients, herself and the community. She firmly believes that the
449 occupation would comply with the spirit and intent of the ordinances, offering a valuable
450 service to individuals seeking supportive and nurturing environment, relaxation,
451 decompression and stress management related to past trauma or current challenges.

452 With regards to changing the website, those updates were done because she received
453 feedback from the community that the business was being misunderstood or
454 misconstrued.

455 Chair Saba requested that if people are loud, to go out to the lobby. He will not interrupt
456 the applicant again. If anyone speaks, they will be asked to leave.

457 The applicant noticed that she was seeing comments from the public and the business
458 was being misconstrued or misunderstood or misinterpreted. Chair Saba asked why she
459 believes that is happening?The applicant stated that she believes that they are not the
460 audience for these types of services and therefore do not understand the specific
461 language or the specific idea regarding the concept.

462 Chair Saba asked if she thinks the first web site description had anything to do with that.
463 The applicant stated in her first web site description, the language was understood

464 among people in the community she was speaking to, but not to people outside the
465 community. Therefore, she eliminated terminology needing clarification for people
466 outside the community and also eliminated things that made people uncomfortable, for
467 example, describing the community. She wanted people to feel more comfortable and
468 made changes in response to indirect feedback from the community.

469 Vice Chair Connors stated that he can understand her changing content about the
470 walks in the park, which created a significant amount of conversation. It will be hard to
471 convince the Board that some of the other content was changed because of people's
472 concerns. He is very concerned about talk about boundaries and consent, massages
473 and changing diapers. When asked, the applicant informed Vice Chair Connors that
474 she will be changing the diapers. He stated that it appears to be a bed and breakfast,
475 food will be provided. The web site talks about massages. He does not believe the
476 applicant is a licensed massage therapist. In his opinion, if these were strictly video
477 based meetings, it probably would not be an issue. All of the things she has described
478 would use much more than 20% of the house. The kitchen will be used, there will be an
479 office. If all the spaces used inside the house are added up, it will be more than 20%.

480 Chair Saba requested that Vice Chair Connors allow the applicant to finish her
481 presentation.

482 Vice Chair Connors wants to cover two things. First is Section 450:2 of the Atkinson
483 Zoning Ordinances. The Board has to go by the spirit of the ordinance.

484 Chair Saba again requested Vice Chair Connors allow the applicant to finish her
485 presentation.

486 The applicant continued, stating that she is not a licensed therapist. She states on the
487 site that she is a coach. She does life coaching. She is also a sex coach and a
488 relationship coach. Chair Saba asked if she were a mental health counselor and the
489 applicant responded no, she is not but she provides mental health support services.

490 Chair Saba stated that the Board is acting on an application. That is why he informed
491 her that nothing is jiving. The Board has to act on what the applicant has written in the
492 application describing her home business. If her business has changed, it has not
493 changed on the public notice. The applicant responded that she means that she
494 provides support, counseling and services for mental health and wellness. Chair Saba
495 asked if she is a mental health counselor. The applicant responded that "counselor" is
496 not a protected term in New Hampshire or anywhere in the United States.

497 Chair Saba asked if she will be doing mental health counseling. The applicant stated
498 that she only does counseling or coaching through her telehealth. She does not do
499 counseling one to one or live. Chair Saba stated that in her application she is asking for
500 a home occupation permit for mental health counseling. The applicant responded that
501 she thought she had to include all her services, remote or not. Chair Saba responded
502 that if the applicant were fully remote, she would not be in front of the Board. The
503 application stated that she is 95% remote. Chair Saba informed her that she is not

504 100% remote, so that is why she is before the Board and when you come in front of the
505 Board, you must state your business and the application must clearly state it.

506 Chair Saba informed her that if the Board approves your application and you are not
507 doing what is on the application as to how you have described your business, then it is
508 the obligation of the Code Enforcement Officer to shut you down.

509 Chair Saba stated that the application is requesting a special exception home
510 occupation under Article IV Section 450:2 to operate “*C. Murphy, MD Ph.D. DD, LLC*
511 *a/k/a Diaper Spa,*” mental health counseling. The applicant added and coaching. Chair
512 Saba stated that the application must state that she does coaching and it does not. In
513 his opening statement, Chair Saba was trying to say that what is shown on the web site
514 and what is stated in the application do not agree. The applicant replied that she
515 thought he was reading from page 2 of the application. Chair Saba asked about the
516 public notice.

517 Member Wetherbee informed Chair Saba that the application does state “*mental health*
518 *counseling and coaching services for mental health*” at one point.

519 Chair Saba asked the applicant if she is a mental health counselor. The applicant
520 responded that she is not a licensed professional counselor or LPC, a protected term.
521 She is a counselor and ordained minister and can perform counseling under those
522 services. Also 100% of her counseling services are provided remotely. The applicant
523 stated that she is comfortable with what is written.

524 Chair Saba read from the application, “*home occupation counseling and coaching*
525 *services for mental health including talk and experiential therapies. Clients coming from*
526 *out of town or out of state considerable commuting distances may perhaps lodge*
527 *overnight at the facility although no extra interactive time is included, this is mostly for*
528 *courtesy and for safety and convenience.*”

529 Chair Saba reiterated that her application states “counseling and coaching for mental
530 health” and it’s the wording that she is referring to. The applicant agreed. The applicant
531 stated this addresses the Air B&B issue. It is not a bed and breakfast, it is for people
532 who come from afar and can stay at the facility. The clients stay overnight and get no
533 additional services, it is pay for a stay. Chair Saba stated that the services end and the
534 clients are staying for convenience. The applicant agreed.

535 Chair Saba requested comment from the Board.

536 Vice Chair Connors cited Article IV Section 450:2. It states, “*does not change the*
537 *character thereof or adversely affect the adjacent properties of the neighborhood.*” Any
538 reasonable person would agree that the proposed business has already changed the
539 character of the neighborhood.

540 Vice Chair Connors stated that regarding the applicant’s comments about only having
541 5% of her business at present, he does a lot of research for hearings and has spent
542 hours researching this issue. He has found ABDL groups and it is quite popular. There

543 are a lot of people looking forward to visiting the applicant so he suspects that it will not
544 be 5% of the business.

545 Vice Chair Connors stated that as to Chair Saba's point regarding the website changing,
546 there are a lot of people on the ABDL community sites saying that they have reached
547 out to the applicant and provided advice to change the web site. One of the people
548 commented that he hopes the applicant is successful because he believes sex work
549 should be legal; and he has advised her in an email to take all the stuff off because
550 people will think that there will be adults in diapers in the park. The individual followed
551 that he has texted the doctor, offered support and given advice. The individual also
552 stated that he "believes that age play and voluntary simulated diaper changes should
553 stay in the realm of sex work." All of these references seem to be in line with the
554 changes the applicant made on her website. Vice Chair Connors asked if this is a home
555 occupation. He commented that the special exception is for traditional home
556 occupations such as seamstresses.

557 Chair Saba read the ordinance definition on home occupations.

558 "A home occupation is the accessory use of a dwelling for a business nature conducted
559 by the residences thereof which is clearly secondary to the dwelling use for living
560 purposes and does not change the character thereof or adversely affect the adjacent
561 properties or the neighborhood. Home occupations include family group daycare home
562 facilities and professional business offices such as small office, doctors, stockbrokers,
563 bookkeepers, designers, managers and other professional consultant offices."

564
565 It is not limited to that but includes that. Chair Saba asked the applicant if she feels she
566 falls under any of those categories.

567 The applicant stated that she feels she falls under the category of home occupation.

568 Vice Chair Connors further says that Article IV Section 400:2 states that "*home
569 occupations are prohibited that are dangerous to the comfort, peace, enjoyment, health
570 and safety of the community or lending to its disturbance or annoyance.*" Again, he
571 thinks that any reasonable person, given the international media attention, given all the
572 discussion online by people looking forward to visiting this business would say this is
573 not a home occupation in the spirit of the ordinance. He does not believe this is a home
574 occupation that is in the spirit of the ordinance.

575 In addition, Vice Chair Connors stated that discussing 20% usage of the house, B&B for
576 \$1500, food, massage, all the things listed in her site, taking an aggregate of all the
577 things she mentions, then more than 20% of the house is being used. There is case
578 law that talks about it.

579 Member Wetherbee asked the applicant if there are any supporting documents to
580 demonstrate what the 8% use of the house would include. The applicant informed him
581 that she has a schematic and the percent to be used for the business is what is over the
582 garage. He informed the applicant that his background is architectural he needs more
583 than a sketch, he needs dimensions so he can do a calculation. For example, there is
584 no bathroom in the plan. He would assume anyone visiting would need facilities and

585 they would have to be added into the space. Also, if they are using kitchen space, if
586 there is a common space and if they are going to be on the porch, that would all apply
587 to the square footage. The applicant stated that the Building Inspector visited the facility
588 and measured. She does not know if he made a report. Chair Saba informed Member
589 Wetherbee that the Building Inspector is present and will inform the Board.

590 Vice Chair Connors stated that he does not believe the proposed business meets the
591 home occupation definition.

592 Chair Saba asked if there were more comment from the Board. There were no more
593 comments. Chair Saba opened the hearing to the public and requested comment be
594 kept orderly.

595 The applicant requested to respond to statements by Vice Chair Connors. She stated
596 that regarding the level of interest that is viewed on the internet, these are not
597 necessarily the people she would choose as clients. She talks to people about their
598 goals, she makes sure that they are a distinct match, that there is no sexual interest,
599 that it is platonic and that they are looking for a goal with regard to their overall health
600 and well being. She runs a background check. A very small percentage of those
601 people would be people who would match with her services. She would never see
602 more than one person in a day. It takes a long time for her to set things up and have
603 things prepped. Everything has to be clean, pristine and welcoming. It takes time for
604 her to strip everything down, clean and do laundry. She spends an eight hour day for
605 one, two hour visit. She would not see people every day of the week. She is not able to
606 see clients on days that she does remote health. She designates different days for
607 different functions. She informed the Board that she has not seen any clients since the
608 building inspector visited and she was informed that she needed a permit. She had
609 clients at her home for about a month or six weeks prior to that.

610 Vice Chair Connors stated that the applicant informed the Board that she will be
611 changing diapers and she also said that there is no sexual contact. Changing an adult
612 diaper and coming into contact with adults genitals for a fee is illegal in the State of New
613 Hampshire.

614 The applicant informed the Board that there is no genital contact. She has been
615 working in the medical community for over 20 years. She has worked in nursing homes
616 and hospitals. She has helped many nurses and has been a nurses aide. Chair Saba
617 stated that she said there will be no genital contact and she also stated that she will be
618 the one who will change the so-called diapers. Chair Saba asked how she can explain
619 it. This falls into his opening statements about inconsistencies that concern him.

620 The applicant explained that diaper changing is done in a clinical manner, just as it
621 would be done in a nursing home. There is no skin to skin contact, she wears gloves.
622 Vice Chair Connors asked if she powders the clients when she changes the diapers.
623 The applicant replied that she pours powder from a container. Chair Saba asked if the
624 applicant sees the validity of the questions from the Board. The claimant wants the
625 Board to understand that although a diaper change is in the name, it is not the focus. In

626 a two hour visit, a diaper change takes less than five minutes. An hour and fifty-five
627 minutes of an appointment is someone playing blocks and coloring. Chair Saba asked
628 then why the name "Diaper Spa"

629 Vice Chair Connors asked what the applicant meant by, "*only guests 21 years old can*
630 *receive the very elite one to one care*". She explained that she does not feel
631 comfortable having clients under 21 years old. Very elite one to one care is meant to
632 sound spa-like, welcoming and luxurious.

633 Chair Saba asked if there were more questions.

634 Member Wade asked what the average income per day would be if she only sees one
635 client a day. The applicant stated that she does military discounts and sliding scale fees
636 so the average daily income would be approximately \$200.00. She stated that she
637 would not make a lot of money and that is why she does remote health support as well.
638 Member Leondires asked if there would be only 2-3 visits per month. He asked why the
639 web site talks about field trips. The applicant denied that it mentioned field trips. The
640 applicant replied that the web site in one section describes the community and says that
641 there are parks and trails. Another section describes the services available and it does
642 not say that the applicant would take anyone on a field trip.

643 Chair Saba stated to the applicant that at 2-3 visits per month, how do you justify all
644 these?. The applicant replied that she believes in civil rights and people's ability to
645 pursue the care that they want or need. Chair Saba responded that the applicant could
646 still provide the services on line and by site visits.

647 Chair Saba requested the Building Inspector speak. Mr. Brian Boyle appeared.

648 Mr. Boyle informed the Board that he has been to the site a few times. He informed the
649 applicant that if a business was being conducted, then a permit would be needed. He
650 believes the applicant came to Town Hall to do the paperwork within a day or two. He
651 has not seen any vehicles in his visits. Mr. Boyle went to the home and walked the area
652 the applicant stated would be used. It is a series of rooms over a three car garage. It is
653 entered through a mudroom, and has a separate entry. The home was built just over 10
654 years ago. From a building code standpoint, there is no problem with stairway width,
655 there are egress windows on the second floor. He went solely into the area described
656 in the application. At the rear of one of the rooms, an office can be accessed. As the
657 applicant mentioned, he did a quick measurement. There are about 1000 square feet in
658 the area over the garage. Mr. Boyle stated he looked at the assessors card and the
659 total square footage of the dwelling is approximately 4500 square feet. The assessors
660 card does not count the basement or the attic. Chair Saba stated that the ordinance
661 says gross residential building space. Mr. Boyle stated that according to the assessor,
662 the 4500 square feet is the climate controlled living space and does not include the
663 garage, the basement or the attic. Chair Saba stated that the ordinance says gross
664 residential building space and read from the ordinance. After discussion about the
665 difference between gross living area and gross residential building space and because
666 of the way the ordinance is worded, Chair Saba does not believe the 20% is an issue.

667 **Chair Saba opened the hearing for direct abutters to speak.**

668 Michael Viggliotti 2 Kings Grant: He brought up 2 items, first is the safety of the
669 neighborhood. Per the website, she will be screening the national sex offender registry
670 for her clients and asked about the folks who are not on the sex offender registry,
671 people who have committed crimes and have not been caught, coming into the
672 neighborhood filled with children and next to parks and playgrounds. To him that is an
673 unwarranted risk.

674 Next is the impact or disruption to the neighborhood. There have already been two
675 police actions in the neighborhood. There has been a great increase in traffic. The
676 applicant has already called the police for people outside her home, taking selfies and
677 posting them on the internet. There is \$50 million of property value that has been
678 instantly decreased. Mr. Vigiotta moved into his home December 14, 2023 and if he
679 tries to sell his house now, there is a whole group of people with families who will never
680 look at this house.

681 Ann Romano, 25 Pope Road, the Senior Elderly Housing Center: This is not good for
682 the Town. It was a safe neighborhood but the traffic has increased terribly. People
683 come down and turn around, using her property and go back out. Everyone is talking
684 about this and it is not good. Everyone is talking about Atkinson, and it is not good.

685 Stephanie Viggliotti, 2 Kings Grant: If this diaper spa application passes she absolutely
686 believes that the proposed diaper spa will diminish her property value and she has
687 already put in quite a bit of money renovating it and bringing it up to speed. She thinks
688 about the name "Diaper Spa". If she were a clinician, she would name it "Dr. Murphy
689 Health Services". "Diaper" is intended to attract people involved in this fetish. It could
690 be people who the applicant is not interested in treating or working with. No one has
691 concealed the address so they still know where the applicant is. This concerns her
692 especially because of the huge increase in traffic, people looking and turning around in
693 front of her house. She does not think this is an appropriate use of the home.

694 Nicole Gaziano, 21 Pope Road: She has two daughters. One is scared to sleep in her
695 bed because she hears about it at school. Other parents will not let their kids come
696 over. She does not think the proposed business is right for the neighborhood.

697 Adria Garneau, 33 Rock Ridge, President, Settlers Ridge Condominium Association:
698 48 homes abut the property as well as much of the Settlers Ridge common land. To
699 repeat what has been said, she has seen a distinct increase in traffic. A lot of them turn
700 around in the elderly apartments but they are also coming through the village at Settlers
701 Ridge as well. If the address is searched, all the search engines try to take people
702 through the path to Woodlock Park. There have been a number of times where people
703 trying to find Woodlock Park or people coming from the opposite directions trying to get
704 to Pope Road end up at Woodlock Park and cannot find the road to Pope Road. She is
705 also concerned that there is only one egress for Pope Road to Main Street. If there
706 were increased traffic to a business in the area, she is concerned that if there was an
707 emergency and the one egress is blocked, there is no secondary egress or entrance for

708 emergency personnel. Also, the proposed home business would violate the character
709 of the neighborhood and adversely affect property values.

710 Gregory Igoe, Settlers Ridge: He asked if Ms. Garneau can be given more time since
711 she represents 48 homeowners and has been given authorization to present to the
712 Board. Chair Saba agreed if no one else from Settlers Ridge speaks.

713 Ms. Garneau stated that on behalf of several neighbors in the area, Settlers Ridge has
714 made a very detailed representation as to why this application could not be approved.
715 Chair Saba stated that the Board has received several packets, the Board members
716 have read them but he will not read them into the minutes.

717 Ms. Garneau stated Settlers Ridge has made a detailed representation of each of the
718 points in the ordinance that need to be approved to grant a special exception and
719 believe that none of those would satisfy a reason for this business in a residential area.

720 Danielle Webb, 17 Pope Road: She is not a direct abutter but can see the property
721 from her office where she works all day. There has been a significant increase in traffic.
722 On the weekends, people have slowed down while she is getting the mail. Ms. Webb
723 replied that she believes that the increase in traffic will continue. She believes that after
724 speaking with her neighbors, their position is the proposed business belongs in
725 commercial space, not in a residential neighborhood. She believes the character of the
726 business and how it is represented is disingenuous and that is not right. She referred
727 the Board to the packet they wrote.

728 Chair Saba asked if there were direct abutters who wished to speak. He allowed Pope
729 Road residents to speak.

730 Elizabeth Peck, 9 Pope Road: She lives across the open field. She stated that she has
731 seen a lot of traffic. Cars come at night. Chair Saba stated that he understands that
732 traffic has increased. Ms. Peck stated that people are parking for an hour or two and
733 idle. They park at Settlers Ridge, the headlights are on, after half an hour they turn off.

734 Chair Saba asked for more direct abutters.

735 Paul Lovvik, 23 Pope Road: He stated that the traffic has increased but it is not from
736 the applicant. The traffic is due to an article in The Eagle Tribune. There are a lot of
737 things on line. There were some facts in the article, but there was a lot of opinion due to
738 people connecting dots. Chair Saba stated that the Board understands. The Board is
739 concerned about the differences in the web site and the application. The Board has not
740 talked about social media, the Tribune or any national news programs. The concern is
741 neighborhood safety, change in character and inconsistencies. That is what the Board
742 would like to focus on.

743 Mr. Lovvik stated that people think the applicant wants the media attention. Chair Saba
744 stated that the term "*Diaper Spa*" seems to be a publicity grab. Mr. Lovvik stated it is
745 the wrong public, that the term makes sense for people seeking the service. It is not
746 something anyone else would care about. Mr. Lovvik stated that it is on the internet that

747 there are adults in diapers running around. He lives at the address and has not seen it.
748 A lot of what's being said is just not true. Mr. Lovvick just wants the board to act on the
749 facts of the case.

750 Lyndsey Phaneuf: She is not a resident of Atkinson but she is speaking for her mother.
751 She stated that her mother lives in the 55+ community at 25 Pope Road and her
752 children spend a lot of time there.

753 She informed the Board that she is an avid advocate against child abuse in New
754 Hampshire. She asked about the people who are not on the sex offender list. She is
755 currently advocating in a case where a 22 year old man who has been indicted three
756 times and is currently being indicted a fourth time. This is an issue in New Hampshire.
757 There is a high percentage of people incarcerated and not going on a list for sexual
758 offenses. Because of the RSA, they cannot be confident that children walking around
759 the neighborhood, going to the park, playing games, having birthday parties or going to
760 ball games will be safe. She stated that her children will not go to that property because
761 she understands the truth behind the number of people on the registry versus the
762 number of offenders New Hampshire has. She feels that no children would be safe
763 visiting the 55+ community.

764 Jeanmarie Ward, 6 Kings Grant: We have lived in the neighborhood for 23 years. It is
765 a beautiful neighborhood and is one of the nicest in Atkinson. We are surrounded by
766 Conservation Land and the Slade Forest. It makes her sad that there are people in the
767 neighborhood who are concerned about walking by this home with their children. She
768 thinks this changes the characteristic of the neighborhood.

769 Her other concern is about the space being incidental and secondary. The applicant
770 refers to it as a facility on her application and on the web site. Ms. Ward wonders who
771 would call their home a facility.

772 Dr. Dorothy Brosik, East Hampstead: Asked if the doctor has a medical license. Her
773 husband lived in Atkinson for years and they now live in East Hampstead. She is not
774 clear if the doctor has an active medical license. It seems to be a mixture of non
775 medical and medical. Someone mentioned that it seems like sex work and as far as
776 she knows, sex work is not legal in New Hampshire.

777 Chair Saba cautioned her that it is not the purview of the Board to state what is legal or
778 not legal. The Board has to decide if the criteria are met for a home occupation. Even if
779 the Board grants the special exception, the applicant will have to acquire all necessary
780 local and state permits. He understands that there will be a State hearing very shortly
781 coming up. The applicant replied that that is correct.

782 Sharon Burke, 19 Bittersweet Lane: Asked Dr. Brosik if she is aware of any scientific
783 proof that this is a recognized therapy. Dr. Brosik stated that she has never heard of
784 such a thing. Ms. Burke stated that the applicant is trying to sensationalize her
785 services, get attention and make it appear that this is a legitimate therapy.

786 Paul Cardone, 3 Meeting Rock: He stated that the Board has the letter from Settlers
787 Ridge and wants to ask what precedent this would make in the rest of the town for other
788 adult services such as book stores, movies and so forth that want to come into the
789 community.

790 Kayla Gallagher, 9 Stonewall Terrace: Stated she can speak to some of the concerns
791 of the Board and Vice Chair Connors. Much of the communities initial concerns and
792 outrage surrounded the applicant's initial web site which advertised things such as "*little*
793 *friends play date*" with a picture of two little kids for \$500. Her bed and breakfast
794 advertised the local trails and parks. Ms. Gallagher stated that the applicant has
795 advertised herself as a sexologist, she did again tonight. There are concerns about this
796 type of business and the type of clientele that it would attract. Ms. Gallagher created a
797 petition expressing these concerns that received nearly six hundred signatures in less
798 than a week. The petition has been shut down because the applicant modified her
799 website continually and because of the significant national and international attention
800 that Atkinson received. However, much of the community concern has remained.

801 She reached out to the applicant on Facebook to ask why the web site was modified
802 and the applicant explained as follows. The applicant stated that the changes do not
803 represent a change in the business plan. The applicant's plan has had nothing but
804 innocent and pure intentions to help these unfortunate people who have trauma, illness
805 or stress that force them to have an emotional or physical need to escape back to
806 childhood for safety.

807 The applicant assured Ms. Gallagher that there is no hidden agenda behind these
808 changes. Each modification was made with the best intentions and wishes of the
809 community in mind. As the applicant read the concerns expressed by the community on
810 line, it became apparent that certain areas were prone to misinterpretation or lacked
811 clarity. However the applicant did remove some of these services.

812 The applicant has stated to news outlets that she does not need a medical license for
813 this business. She also stated that this is not a sexual fetish business. According to the
814 applicant it helps the seekers of these services process trauma. A lot of times it is
815 childhood trauma when they were in diapers or just getting out of diapers and they want
816 to feel the safety they had before.

817 Ms. Gallagher stated that this appears to be a therapy business for all intents and
818 purposes. She informed the Board that the applicant is not a licensed therapist or a
819 licensed physician. Ms. Gallagher called the office of licensing and certification and was
820 informed that a license is needed for this type of business.

821 Ms. Gallagher is a licensed registered nurse. As a licensed registered nurse, she can
822 tell the Board that the mental health epidemic in this country is severe. When authority
823 is used and someone advertises themselves as a counselor, they are creating potential
824 victims. The community must be protected. She is asking the Board to shut the
825 business down.

826 Chair Saba asked the applicant to answer the question as to whether she needs a
827 license. Then after the answer, he will pause this hearing, continue the fifth hearing and
828 close it.

829 The applicant responded that they were asking if a license was needed to operate a
830 business as a therapist. It depends on how the question is worded. The applicant
831 stated that she is not doing therapy in New Hampshire, only remotely. She is providing
832 a safe space where people choose to regress. She is not diagnosing anything, she is
833 not providing direct treatment and she is not prescribing medication.

834 Chair Saba asked the applicant what the State hearing is about.

835 The applicant responded that it is about people who have complained because of their
836 misunderstandings. She has to talk about the complaints the State has received and
837 make them understand what the misunderstandings are.

838 Chair Saba requested a motion to pause the hearing, open the fifth hearing and
839 continue it.

840 **Member Wade made a motion to pause the hearing. Member Wetherbee**
841 **seconded the motion. Vote: 5/0/0. All in favor. The hearing was paused at 9:35**
842 **PM. Chair Saba asked the Board to go to the fifth hearing.**

843 Chair Saba requested to open hearing five at 9:40 PM.

844 **5. Application for Variance submitted by Joseph Casey from Article VI Section**
845 **600:11d to allow the installation of an inground pool 64' within the 100'**
846 **perimeter buffer (a 64' variance) on property at 3 Windmill Lane, Map 6 Lot 39**
847 **in the RR2 zone.**

848

849 Chair Saba asked if the applicant is present and read the abutters list.

850

851 **Abutters:**

852 George and Alice Tombarello, Sarah M. Flores, Derek J. Sterner, Fields, Micheal J.
853 2013 Trust, Micheal J. Fields TTE, Prince Family Living Trust, Robert A. and Karen S.
854 Prince, Joseph and Karen Casey (present), Butler Estates Homeowners Association,
855 John and Jean Lopizo, J.G. Land Services LLC

856 Discussion: Chair Saba stated that this hearing must be continued because there is not
857 enough time to hear it tonight. The applicant was present and understood. The hearing
858 will be continued to the March 13, 2024 meeting.

859 Chair Saba opened the hearing and requested a motion to continue the hearing to the
860 March 13, 2024 meeting of the Atkinson Zoning Board of Adjustment.

861 **Vice Chair Connors made a motion to continue the Application for Variance**
862 **submitted by Joseph Casey from Article VI Section 600:11d to allow the**
863 **installation of an inground pool 64' within the 100' perimeter buffer (a 64'**
864 **variance) on property at 3 Windmill Lane, Map 6 Lot 39 in the RR2 zone. to the**

865 **March 13, 2024 meeting. Member Wade seconded the motion. Vote: 5/0/0. All in**
866 **favor.**

867 **Chair Saba reopened the hearing for the Application submitted by Colleen Ann**
868 **Murphy for Special Exception/Home Occupation, specified in the Zoning**
869 **Ordinance, Article IV, Section 450 to operate “C Murphy, MD, PhD, DD, LLC aka**
870 **Diaper Spa” (mental health counseling), at property located at 23 Pope Rd, Map**
871 **12 Lot 22-1, RR2 Zone..**

872
873 Chair Saba requested to return to public comment.

874
875 Devon Cormier, 12 Willowvale: She appreciates the concerns about the children who
876 are required to play team sports at the park. She runs skilled nursing facilities and is
877 responsible for caring for people who cannot care for themselves and have to wear
878 adult diapers. Most of these people do not want that type of care, they want to maintain
879 their dignity. The fact that there are people who want this indicates that there is some
880 type of trauma or problem. She has also run into situations where people have not
881 gotten on the sex offender registry for a long time after leaving prison. She feels that
882 there is something more to this that she does not understand. Maybe there is
883 something to this type of therapy but it should not happen outside Woodlock Park.

884 Chair Saba clarified that Ms. Cormier is not disputing that there may be a need, but this
885 type of business should not be conducted near homes in a neighborhood. Ms. Cormier
886 stated that if there is a need, she does not know if it is for doing it or if it is for therapy to
887 change it. She is not a clinician, she is an administrator and a lawyer. She has three
888 licenses and has been doing this type of work for 15 years. The people she works with
889 who want young girls to change them, even though they are capable of changing
890 themselves, is problematic in their facility especially for the workers.

891 Chair Saba stated that once again it is not the Board’s job to determine if the service is
892 necessary or real, it is to decide if it qualifies as a home occupation and if a special
893 exception should be granted.

894 Holly Patterson, Non-resident – Plaistow (former owner of 23 Pope Rd): She built the
895 house in 2008 and knows every stick and square inch of it, every rock and every view.
896 Her concerns are several, but most important is that in the application it states that there
897 is no view of happenings on the property. She lived there for 15 years and if you stand
898 on Pope Road, you can look straight through to the pool house. There is no question
899 that you can get full line of site. On the other side of the house is the area that abuts
900 the elderly. They can look straight into the former back yard and the fire place. The
901 police were called because she had a problem with a peeping tom at the elderly
902 apartments. The police officer witnessed him. Any advertisement that anything going
903 on at this property outside would not be seen is untrue. Anyone on the porch is in full
904 view of anyone who walks by.

905 Chair Saba commented that all the Board members have seen that.

906 Andy Tenaglia, 8 Meeting Rock Drive: Cited Section 450:2(f) stating that a home
907 occupation must comply fully with Section 400:2. He feels that this home occupation
908 does not comply with the comfort, peace and safety of the community. He is concerned
909 about the disingenuous and duplicitous nature of the answers and indirect answers from
910 the applicant.

911 Chair Saba stated that he would like to address Article IV, Section 400:2:

912 Any uses that may be obnoxious or injurious by reason of the production or emission of
913 odor, dust, smoke, refuse matter, fumes, noise vibrations, or similar conditions,

914 Chair Saba stated that the Board agrees that the above is not an issue and
915 continued.

916 or that are dangerous to the comfort, peace, enjoyment, health, safety of the community or
917 lending to its disturbance or annoyance are prohibited in any district. No privately-owned
918 land in any district shall be used for the dumping of or storage of hazardous wastes or junk.
919 (1982, 1984)

920 Chair Saba requested the applicant respond.

921 The applicant responded that the increased traffic has been related to the media
922 attention. The media attention is not about the business, it is about conflict.

923 Chair Saba stated that one abutter mentioned that the applicant was giving interviews
924 and asked if that was has incited some of this. The applicant stated she has only given
925 one interview, to Channel 7 who showed up at her home. Channel 7 had already
926 interviewed the neighbors. They informed her that they wanted to give her an
927 opportunity to speak because the interviews with the neighbors would be aired and they
928 would like to hear her side. Chair Saba asked about the annoyance of the neighbors.
929 The applicant responded that it is an inflamed reaction from a lack of understanding and
930 also from Facebook media and the news media.

931 Chair Saba agrees to a degree, but he is troubled by what the applicant has posted on
932 her web site and the inconsistencies from the applicant. He is not talking about social
933 media, he is not talking about the interview she gave, he is talking about what the
934 applicant has posted on her web site in her business name, the application and how it is
935 changing, in time, to accommodate what she needs to say in order to get the business
936 open.

937 Vice Chair Connors stated that this was his point earlier. He is glad that Section 400:2
938 was brought up. Article IV Section 400:2 and Section 450:2 are key to him. What
939 concerns him is ... *"the enjoyment, health and safety"*... He understands what the
940 applicant is saying about the press, he is not concerned about the press. That will die
941 down. The spa, if it is still operational, will not resolve the stress of the neighbors. The
942 applicant has advertised her services on her web site. He is concerned about what the
943 applicant has posted on her web site regarding her home business. He has pictures of
944 all the things she posted on her web site.

945 Chair Saba requested to continue to the next person who wished to speak.

946 Dr. Dorothy Brosik, East Hampstead: Dr. Brosik requested credentials.

947 Chair Saba responded that he would like people who have not yet spoken to speak. He
948 again informed Dr. Brosik that the applicant's credentials are not the purview of the
949 Atkinson Zoning Board of Adjustment. She responded that it would make a difference
950 in terms of the home business.

951 Rebecca Arena, Sawyer Avenue: She stated that the web site got changed when
952 people in town started complaining. One thing that has not changed, this business is
953 still open. Chair Saba stated if she is not having people come to her house, the Board
954 cannot stop people from doing business out of their home on the internet. Ms. Arena
955 stated that she has not seen a notice on the web site that the business is closed and
956 has not seen any pause in advertisement for the business.

957 Chair Saba informed her that he understands what she is saying, but if she is
958 concerned about the business continuing operation, she should see the Code
959 Enforcement Officer.

960 Jeannie Geisser, 14 Pope Rd: She is not a direct abutter, one thing that has not been
961 mentioned, but perhaps is in the packet, Article IV, Section 450:3 states that no more
962 than one business permit can be in effect for any one location. The applicant has a
963 second web site where she advertises...

964 Chair Saba stated that Section 450:3 refers to a permitted business. As long as the
965 business(s) do not need a permit, it does not matter how many businesses are being
966 run out of the home. This application requires a permit because the applicant wants
967 clients to come to the home.

968 Ms. Geisser stated that the applicant is applying for an application for a B&B.

969 Chair Saba stated that currently no permit is required for a B&B in Atkinson and
970 reiterated that Section 450:3 refers to permitted businesses. There are a lot of self-
971 employed, multi business oriented residents, but no one is coming to their home and a
972 permit is not necessary.

973 Katherine Goodman, 168 Main Street: Question on the MDPs at the beginning of her
974 web site offerings, she advertised as MD Colleen Murphy. This tells her that the
975 applicant should have some type of certification. Vice Chair Connors informed her that
976 the Board is aware of what the web site has said. The Board has to decide if this is a
977 home occupant business and cannot make a decision as to the applicant's credentials.

978 Ms. Goodman stated that she works with the mentally disabled and has to change them
979 all day long. There is abuse. There is the situation where doctors have said that they
980 could never indulge in sexual activity. However, when a diaper is taken off, a relief is
981 noticed. To think that this is not some type of sexual fetish is wrong. If it is thought that
982 it is just diaper changing, we'll just put some powder on, it is wrong. If they have
983 messed or peed, the subject has to be cleaned. She cannot understand how a diaper

984 spa can be defined as anything else but changing. The applicant states that she is
985 changing adults. There is an art as a staff person to be able to do this. She is not
986 hearing that with this trauma of being childlike. It saddens her that a diaper spa to
987 cause a “*trauma in a diaper*”. If someone has had a trauma in a diaper, the last thing
988 that they would want would be to put on a diaper.

989 Kim Desimone, 8 Kings Grant: She stated that on the application and how it is worded,
990 the applicant refers to the proposed business as an LLC. If it is not an LLC, on its face,
991 how can the application stand.

992 Chair Saba stated that he understands the question, but it is not in the purview of the
993 Board. If the board issues a permit and there are inconsistencies, it is up to Code
994 Enforcement to verify. If there are State requirements, these must be reviewed by the
995 State.

996 Ms. Cheryl Eagen, Windham, NH: She stated that her grandchildren live in Atkinson
997 and they play at Woodlock Park. She then stated that the applicant informed the Board
998 that she has checks and balances in place to check the clients who come to her home
999 and one is to check the sex registry. Ms. Eagan remarked that if the applicant is
1000 concerned for her own safety, why is she surprised that everyone at the hearing is
1001 concerned for the safety of their families and their children. Residents of the
1002 neighborhood cannot check on clients for the proposed business. Residents will not
1003 know who is going to the applicant’s house, who is walking down the street or
1004 wandering into the park.

1005 The reason the Board should reject her application is that in 450:2a, it talks about the
1006 character of the neighborhood. The character of the neighborhood is peaceful, quiet
1007 and safe. The applicant will be inviting people from all over that have issues that
1008 residents should feel sorry for. Ms. Eagen questioned whether it is the place to take
1009 care of them in a neighborhood like this and will this change the character of the
1010 neighborhood as stated in Section 450:2a.

1011 Christopher Webb, 17 Pope Road: Mr. Webb read from the application. He asked if an
1012 applicant fills out an application and lies, what can be done. Chair Saba responded that
1013 if the Board approves it, it will be based on the application. If the business shifts off
1014 track, then the code enforcement officer will immediately shut the business down
1015 through the Board of Selectmen. There are provisions in town to protect it from
1016 something that is presented one way and is conducted in another. Mr. Webb asked
1017 what if the Board knows that there are lies.

1018 Chair Saba responded that the Board will discuss the inconsistencies in the business
1019 plan. It has been brought up several times. He requested to keep the hearing moving.

1020 Chair Saba requested to turn to the applicant. The public hearing is not closed.

1021 He informed the applicant that the Board has several concerns. The applicant has
1022 informed the Board that she has seen clients and that she did not know she needed a

1023 permit. Chair Saba asked if she has seen clients at her home since she was told not to.
1024 The applicant replied no.

1025 Chair Saba is concerned about inconsistencies in the description of the business, even
1026 as this has gone on, the applicant has changed what she said she was going to do.
1027 This is a problem. The community is concerned. He is not sure that the proposed
1028 business fits the home occupation description. The Board will discuss this. The Board
1029 wants to talk about the safety in the community and the neighborhood specifically.
1030 There is a lot of concern regarding the applicant vetting her clients. Chair Saba stated
1031 that there is discussion on whether proposed clients are not on the list. If the applicant
1032 is vetting the clients for her safety, the concern of the neighbors and the community is if
1033 the applicant is concerned, the community is concerned.

1034 The applicant responded that she checks on her clients as an extra measure. Generally
1035 and specifically, the people seeking this type of immersion experience are people who
1036 want to pretend to be children, not who are interested in children. There is no
1037 association with pedophilia or with other types. Chair Saba asked if that was an opinion
1038 and the claimant responded no.

1039 Chair Saba informed her that two doctors have testified that they have never heard of
1040 what the applicant is proposing.

1041 The applicant responded that she thinks they are talking about the diaper spa. There
1042 are people who do regression therapy and that is a similar thing. The applicant
1043 informed the Board that she is allowing her prospective clients to regress on their own in
1044 a safe environment. She is not doing anything to cause them to regress, but they are
1045 regressing in a safe environment.

1046 Chair Chair Saba asked the board for discussion.

1047 Vice Chair Connors said that the Board will follow the law. Regarding the points
1048 brought up about inconsistencies, Vice Chair Connors also has concerns. He has spent
1049 considerable time researching this issue to make sure he has the facts. The points
1050 about calling it a *Diaper Spa*, the points about the neighborhood and the points about
1051 the people. There are people who have a high level of interest but there will still be
1052 people coming all the time and the Board does not know who those types of people will
1053 be. He cannot get past "*enjoyment, comfort...*" No one has heard of this and it can be
1054 said that they do not understand. There are hundreds of people who do not understand
1055 because it is not a customary home occupation. This is an issue for him, it is not a
1056 customary home occupation but it does affect the comfort, peace, enjoyment and
1057 safety. He appreciates the applicant coming forward but he cannot get passed those
1058 two issues.

1059 **Vice Chair Connors requested to make a motion to deny the application.**

1060 Chair Saba stated he would not accept that and will continue the hearing, then will go
1061 through the criteria. Chair Saba asked if anyone else wished to speak. There was no

1062 comment. Chair Saba asked the applicant if she wished to address the statements by
1063 Vice Chair Connors.

1064 The applicant responded that this is a good thing that the Board is not familiar with it.
1065 Unfortunately the people who seek her services and who are in this community are not
1066 people who for the most part do choose to wear diapers. She has some clients who are
1067 veterans wounded in military action and are incontinent and because of that they wear
1068 diapers and go to her because of the PTSD and the trauma.

1069 Chair Saba stated that he feels the applicant is reinventing herself again, the whole
1070 business model is changing by the minute.

1071 Member Leondires asked the applicant if she knows how many diaper spas are in the
1072 country or in New England. The client responded that the term “*diaper spa*” is her term.
1073 Member Leondires asked if she knows of other similar businesses. The applicant
1074 responded that she knows of several others, she knows of two in Chicago. Member
1075 Leondires asked if they were residential. The applicant responded that she has taken
1076 her address off the web site. She does not advertise anywhere else. Currently, people
1077 are getting her address from the media and Facebook.

1078 Vice Chair Connors stated that there is an ABDL community on Reddit. He informed
1079 the applicant that people have said they have contacted you to advise you to change
1080 your web site. The community is advertising your address. It is not the people here, it
1081 is the ABDL community who is advertising your address.

1082 Chair Saba asked for further input from the Board. There was none. Chair Saba asked
1083 for further input from the public. There was none. Chair Saba requested to go through
1084 the criteria.

1085 Vice Chair Connors stated that he does not understand why the Board needs to go
1086 through the criteria if the proposed business does not meet the description of a home
1087 occupation.

1088 Chair Saba requested the findings of fact be read.

1089 **Findings of Fact:**

- 1090 • It is a non-medical business.
- 1091 • It is low volume, two to three visits per month.
- 1092 • The website has been updated due to misconstrued ideas regarding the
1093 proposed business and the services rendered.
- 1094 • The applicant is not a licensed therapist.
- 1095 • The applicant has informed the Board that she will provide mental health
1096 services/counseling coaching.
- 1097 • She was running the business for four to six weeks before the Building Inspector
1098 came.
- 1099 • She has not seen anyone since then
- 1100 • Screening the sex offender list and how sex offenders may not be on the list

- 1101 • There have been police actions in the neighborhood since the business started.
- 1102 • Property values have plummeted in the neighborhood which hurts everyone in
- 1103 the neighborhood.
- 1104 • There have been major traffic increases.
- 1105 • She refers to her home as a facility
- 1106 • The applicant is not licensed, but may need to be.

1107 Chair Saba allowed more comment.

1108 Jacob Bradley, 12 Bittersweet Lane: Mr. Bradley is concerned about changes to the
1109 website, but noted that on the web site one of the services offered was a tea party.

1110 Chair Saba responded that the Board has addressed all that and understands.

1111 Chair Saba asked if anyone present wished to speak for the application. There was no
1112 response. Chair Saba requested a motion to close the public hearing.

1113

1114 **Vice Chair Connors made a motion to close the public hearing. Member**
1115 **Wetherbee seconded the motion. Vote: 5/0/0. The public participation is closed.**

1116

1117 Chair Saba requested the audience remain silent. He stated that all occupations except
1118 those exempted under Section 450:5 shall be required to apply for home occupation
1119 permit.

1120 Chair Saba read Article IV Section 450:5a - Exemptions from permit application
1121 requirements:

1122 Home occupations in which neither customers nor vehicles come to the location where
1123 the business activity takes place and at which no sign is displayed and no outside person
1124 is to be employed and there is no outward appearance of business activity.

1125

1126 Chair Saba requested to go through the criteria for Article IV Section 450:2.

1127

1128 A permit for a home occupation shall be allowed in residential zones by special exception
1129 from the Board of Adjustment if the occupation complies with the following:

1130

- 1131 a. A proposed occupation shall be incidental and secondary to the use of the property
1132 as a dwelling and shall not consume more than 20% of the gross residential
1133 building space, and not change the residential character of the premises thereof.
1134 (1992)

1135 Discussion: Vice Chair Connors stated that it changes the residential character.

1136 Member Leondires agrees that it changes the residential character, there are kids
1137 outside, one woman stated that her daughter is scared to go outside. Chair Saba asked
1138 if the business is for people indoors only, will it change the residential character.

1139 Member Leondires stated that everyone knows it is there. Chair Saba stated that it has
1140 to be of the house not of the neighborhood. If the business is contained indoors, he
1141 does not think it would change the residential character. Vice Chair Connors stated that
1142 the applicant has advertised that part of the business will be conducted outside. Chair

1143 Saba again stated that if the business is contained inside it will not change the
1144 residential character. There is parking there. Chair Saba requested to continue to go
1145 through all the criteria.

1146 Vice Chair Connors stated again that he does not think it meets the requirements of a
1147 home occupation and does not understand why the Board is going through the criteria.
1148 If the Board does not agree, then anyone can come in. Chair Saba stated that the
1149 applicant has to meet Section 400:2.

1150 Member Wade stated that it meets the letter of the code. It will not affect how the
1151 residence looks from the outside. Vice Chair Connors agreed it meets Criteria One.
1152 Member Wade also stated that the application stated the business is accessory or
1153 incidental to the home.

1154 **Vote: 5/0/0. All members of the Zoning Board of Adjustment present agree that**
1155 **the criteria for Article IV Section 450:2 (a) have been met.**

1156 b. Unless exempted by Section 450:5-a, no home occupation shall take place in a
1157 multi-family dwelling.

1158 Discussion: This is a single family dwelling.

1159

1160 **Vote: 5/0/0. All members of the Zoning Board of Adjustment present agree that**
1161 **the criteria for Article IV Section 450:2 (b) have been met.**

1162 c. The occupation may be carried on by the occupant's immediate family residing at
1163 that location and by one or more additional employees whose aggregate hours of
1164 work at that location do not exceed eighty hours per week (80 hours/week). The
1165 foregoing limitations on the aggregate hours of work per week by additional
1166 employees shall not apply in the case of medical, dental or veterinary home
1167 occupations. (2007)

1168 Discussion: Chair Saba asked the applicant if she has employees. There are no
1169 employees.

1170

1171 **Vote: 5/0/0. All members of the Zoning Board of Adjustment present agree that**
1172 **the criteria for Article IV Section 450:2 (c) have been met.**

1173

1174 d. There shall be no physical evidence of equipment or materials outside the dwelling.

1175 Discussion: Chair Saba state that there is nothing outside. Vice Chair Connors stated
1176 that the applicant advertised that there would be play dates outside and there is
1177 equipment outside. Member Leondires stated that there is equipment and materials
1178 outside. The applicant stated that she had said clients could play on the patio on her
1179 website. Board members added that the web site states that clients can use the swing,
1180 the pool, the basketball court and karaoke. Member Wetherbee asked the applicant if it
1181 is correct that the business would not be able to operate the way she wants without

1182 those things. The applicant aged. Member Leondires stated that if that's the case then
1183 all the listed items are equipment.

1184 Chair Saba requested a vote.

1185 **Vote: 0/0/5. All members of the Zoning Board of Adjustment agree that the**
1186 **criteria for Article IV Section 450:2 (d) have not been met.**

1187 e. Adequate off-street parking areas must be provided. Parking areas in excess of
1188 those necessary for normal residential purposes may be allowed in side and rear
1189 yards only provided the residential character of the environment is preserved.
1190 (1992)

1191 Discussion: Chair Saba stated that it says for one client at a time. Member Wade
1192 stated that website did mention up to 10 clients at once. Chair Saba responded that the
1193 application has been changed to one client at a time.

1194 **Vote: 5/0/0. All members of the Zoning Board of Adjustment agree that the**
1195 **criteria for Article IV Section 450:2 (e) have been met.**

1196 f. When necessary, further restrictions shall be placed on the occupation in order to
1197 comply fully with Article IV, Section 400:2 of this ordinance.

1198 Discussion: Chair Saba read Section 400:2 again:

1199 Any uses that may be obnoxious or injurious by reason of the production or emission of
1200 odor, dust, smoke, refuse matter, fumes, noise vibrations, or similar conditions, or that
1201 are dangerous to the comfort, peace, enjoyment, health, safety of the community or
1202 lending to its disturbance or annoyance are prohibited in any district. No privately-owned
1203 land in any district shall be used for the dumping of or storage of hazardous wastes or
1204 junk. (1982, 1984)
1205
1206

1207 Chair Saba stated that he is concerned with inconsistencies in the description of the
1208 business and still feels that it is inconsistent. The description has changed through the
1209 course of the hearing. This lends to the disturbance and annoyance of the residents of
1210 the neighborhood and the community. Vice Chair Connors stated that any reasonable
1211 person would agree that the proposed business impacts the comfort, peace, enjoyment,
1212 health and safety of the community. Member Wetherbee asked the claimant if she
1213 thinks that the neighborhood is comfortable with what the applicant is proposing to do in
1214 her home. The applicant said no. They are not comfortable with what they believe the
1215 business is

1216
1217 **Vote: 0/0/5. All members of the Zoning Board of Adjustment agree that the**
1218 **criteria for Article IV Section 450:2 (f) have not been met.**

1219 g. A permit to operate a home occupation shall be issued to the owner/occupant only
1220 and is not transferable to a subsequent owner. A permit to operate a home
1221 occupation shall be issued to the owner/occupant only, and is transferable to a
1222 subsequent owner who will certify to the Zoning Board of Adjustment in writing that

1223 he or she will continue the home occupation on the same terms and conditions as
1224 the previous owner/occupant. (2007)

1225 Discussion: The applicant agreed.

1226

1227 **Vote: 5/0/0. All members of the Zoning Board of Adjustment agree that the**
1228 **criteria for Article IV Section 450:2 (g) can be met.**

1229 h. The applicant shall complete and sign a form that sets forth the nature of the home
1230 occupation and provides details of the business and its scope of operation.

1231 Discussion: Chair Saba stated that based on inconsistencies, he doesn't believe the
1232 applicant could. The plan and description keeps changing. Vice Chair Connors stated
1233 that the plan is wrong because it states it is an LLC and it is not. Chair Saba stated he
1234 would give her the benefit of the doubt.

1235

1236 **Vote: 5/0/0. All members of the Zoning Board of Adjustment present agree that the**
1237 **criteria for Article IV Section 450:2 (h) can be met.**

1238 i. No home occupation that will result in heavy truck use in excess of 20,000 lbs.
1239 gross vehicle weight shall be allowed. (1992)

1240 Discussion: Agreed.

1241

1242 **Vote: 5/0/0. All members of the Zoning Board of Adjustment agree that all criteria**
1243 **for Article IV Section 450:2(i) have not been met.**

1244 j. Vehicles registered to a home business or occupation must comply with the
1245 provisions of Section 480:1. (1992)

1246 Discussion: There are no vehicles registered to the home business.

1247

1248 **Vote: 5/0/0. All members of the Zoning Board of Adjustment agree that the**
1249 **criteria for Article IV Section 450:2 (j) have not been met.**

1250 Chair Saba stated that two of the criteria were not met, the criteria for Article IV Section
1251 450:2 (d) and for Article IV Section 450:2 (f).

1252 Vice Chair Connors requested to make a motion. Chair Saba agreed.

1253 **Vice Chair Connors made a motion to deny the Application submitted by Colleen**
1254 **Ann Murphy for Special Exception/Home Occupation, specified in the Zoning**
1255 **Ordinance, Article IV, Section 450 to operate "C Murphy, MD, PhD, DD, LLC aka**
1256 **Diaper Spa" (mental health counseling), at property located at 23 Pope Rd, Map**
1257 **12 Lot 22-1, RR2 Zone because it did not meet the criteria for Article IV Section**
1258 **450:2 (d) and for Article IV Section 450:2 (f). Member Wade seconded the motion.**
1259 **Vote: 5/0/0. Unanimous.**

1260

1261 Chair Saba informed the applicant that there is a 30 day appeal period.

1262
1263 Holly Pa asked if there is anything the Zoning Board can do for cease and desist if a
1264 business fails to comply. Chair Saba stated that the question should be addressed to
1265 the Code Enforcement Officer.

1266
1267 **Motion by Vice Chair Connors to close the hearing. Seconded by Member**
1268 **Leondires. Vote: 5/0/0. All in favor.**

1269
1270 **Motion by Member Leondires to close the public hearing. Seconded by Vice**
1271 **Chair Connors. Vote: 5/0/0. All in favor.**

1272
1273 **Motion by Member Leondires to adjourn the meeting. Seconded by Member**
1274 **Wetherbee. Vote: 5/0/0. All in favor.**

1275
1276 **Chair Saba adjourned the meeting at 10:25 PM.**

1277
1278 The next regular Zoning Board meeting is scheduled for March 13, 2024 at 6:00 PM in
1279 Atkinson Town Hall.