Stratham Zoning Board of Adjustment
Meeting Minutes
December 14, 2010
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM

Members Present:	**John Dold, Chairman**
	Bruce Barker, Vice Chairman
	Arol Charbonneau, Secretary
	Kirk Scamman
	David Short
	Mike Smith, Alternate
Excused:	**Jeff Karam, Alternate excused from Case 548 because he is an abutter**
Staff present:	**Terry Barnes, Building Inspector**
	Paul Deschaine, Town Administrator

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1. Call to Order/Roll Call

Chairman, John Dold called the meeting to order at 7:00 pm. Mr. Dold then stated that Mr. Jeffrey Karam will not be involved in tonight's meeting.

2. Public Hearing(s)

a. Melody and David Costenbader – Special Exception relief from Section 5.13 Home Occupation, located at 181 Winnicutt Road, Stratham, NH within the Residential/Agricultural Zoning District – APPLICATION WITHDRAWN – Applicant is requesting a refund in the $225.00 Zoning Board of Adjustment Application Fee. The applicant withdrew there application prior to the Public Hearing.

Mr. John Dold explained that the applicant withdrew the application, but the Zoning Board Clerk had processed the application, posted the notice in the paper and notified the abutters of the Public Hearing.

Mr. Dold suggested that the Board reimburse half the Zoning Board application fee, which would be $112.50 of the application fee.

Mr. Bruce Barker made a motion to refund 50% or $112.50 to Mr. and Mrs. Costenbader because they withdrew there application for a home occupation permit, seconded by Mr. David Short. Motion was approved unanimously.

Mr. Dold closed case number 550.

b. Ernestine Bayer – Special Exception Relief from Section 2.1.20 Kennel, to have a kennel located at 24 Doe Run Lane, Stratham, NH, within the Residential/Agricultural Zoning District.

The Secretary read the Public Hearing Notice along with listing all information that was in the file. The applicant Ms. Ernestine Bayer approached the Board and explained that Ms. Sharon Summers will be representing her.

Attorney Sharon Summers with Donahue, Tucker and Cinadella located in Exeter stated that she provided each member with a package that contains the original application. Attorney Summers explained that Ms. Bayer has resided at this property for the last 10 years and is here tonight to get a special exception in order to have her own personal dogs allowed to stay at the property with her. Attorney Summers proceeded to explain that the Town adopted the kennel ordinance in 1997, which states that anyone with 5 or more dogs has to apply for a special exception for a kennel. Attorney Summers further explained that the town's definition of a kennel is very broad and what most people consider a kennel is a commercial operation that involves breeding and or boarding. Attorney Summers stated that these are Tina's dogs and have been her dogs for the last 24 years she has been a resident in Stratham.

Attorney Summer's then began to read the criteria for a Special Exception and stated that the first criteria states that the Special Exception has to be in harmony with the general purpose of the ordinance. Attorney Summer's referred the Board to the picture of the lot in the packet she provided the Board. Attorney Summer's explained that the applicant's lot is 17.79 acres with a nearest resident being 300 feet away. The home on the other side owned by the Lipbacks of 24 Doe Run Lane is a total of 350 feet. Attorney Summer's stated that Ms. Bayer has a huge parcel of land with a tremendous distant from the location of the kennel to the nearest abutting neighbor. Attorney Summer's then referred the Board to a photo of 28 Doe Run Lane being 450 feet away from the kennel. Attorney Summers referred the Board to the last photo of Butterfield showing the distances away from various parcels on Butterfield. In conclusion Attorney Summers stated that the nearest parcel is between 275 and 300 feet away.

Attorney Summer's then explained that Ms. Bayer owns all the dogs she does not take in dogs for training, daycare or boarding. Attorney Summers proceeded to explain that Ms. Bayer has been a resident of Stratham since 1986 first residing at 28 Doe Run Lane where she had a number of dogs for her own purposes. Ms. Bayer then moved in 2000 where she kept dogs for her own personal use. During that entire 24 yr period Ms. Bayer came to the Town Offices every year and obtains her group licensing, which is required by the State. Ms. Bayer has had no issue receiving her group licensing despite the town adopting the kennel definition being adopted in 1997 Ms. Bayer had no issue receiving her group licensing until this year. Attorney Summer's proceeded to stated that Ms. Bayer had no idea that this was a requirement until this year and Attorney Summer's requested that the Board take that into consideration while making there decision on this application.

Attorney Summer's then read criteria two for a special exception which asks if there is a hazard to the public or adjacent property owners because of fire, explosion or toxic materials. Attorney Summers' explained that there is no danger of fire, explosion or toxic material resulting from having multiple dogs on site. There has never been any danger in the last 24 years and there is nothing to suggest by continuing having multiple dogs that something would happen

Attorney Summer's then talked about whether or not there is a detriment to property values in the vicinity or changes the essential characteristics of the residential neighborhood because of the activities on site. Attorney Summer's explained that there has been no noted decline in any of the adjacent property values in the last 24 years that she has had the multiple dogs on site. There is no reason to believe if she continues to have multiple dogs on site that there would be a decline of property values. Attorney Summer's stated that Ms. Bayer has been doing this for the last 24 years and there is going to be no change and no change going forward with the characteristics of the neighborhood.

Attorney Summer's proceeded to explain that Ms. Bayer has activity taken steps to prevent noise problems from the dogs. She has installed a screen around the kennel area to avoid the dogs from seeing what is happening outside the kennel and barking when they see something. Another step the applicant has taken is installing a ultra sound device which emits a high pitch noise that will prevent the dogs from barking. Attorney Summer's referred the Board to the information packet that explains the ultra sound device.

Attorney Summer's began with the next special exception criterion which asks if there will be a creation in safety hazard or increase in traffic congestion. Ms. Bayer's property will not change therefore there will not be an increase in traffic.

Attorney Summer's proceeded with asking if there will be an excessive demand on municipal services as a result in granting this special exception. Attorney Summer's explained that there is no town water or sewer so there will not be an increase or excessive demand. There is no school use because there are multiple dogs on site. There has been no demand for police or fire services in the past as a result of having a kennel there.

Attorney Summer's proceeded to explain to the Board that the applicant is willing to have certain conditions of approval in order to grant the Special Exception. Attorney Summer's explained that the applicant is concerned about the future use of the property and her motivation for seeing this special exception is because the Town indicated she has applied and because she wants to keep residing at her property with her dogs. Attorney Summer's stated that the applicant is willing to have the special exception terminated if she departed from the property. The special exception would be with her not the property. The applicant would be wiling to have a maximum cap of 11 dogs on the property and she keeps the noise prevention standards in effect as part of the conditions of approval.

In conclusion Attorney Summer's stated that what they are proposing is a continuation of what has been on site for many years.

The Board asked Ms. Bayer how many dogs are currently at the property. Ms. Bayer responded and stated 7 dogs. Mr. Dold asked why the applicant asked for 11 dogs and Ms. Bayer stated in case they have babies. Attorney Summer's added that over time there maybe a fluctuation in the number of dogs so 11 dogs is to provide flexibility if there are a temporarily or periodic increase of dogs from what she currently has.

The Board asked Ms. Bayer if there have been any complaints of the dogs. Ms. Bayer responded and stated that she has never had anyone complain directly to her, but other people have told her that people are complaining but nothing has been brought directly to Ms. Bayer's attention. Attorney Summer's added that residents on Doe Run Lane were concerned with this proposal because they thought this was for a doggy day care or some kind of commercial business. Ms. Bayer then drafted a letter indicating what the proposal was all about and that seemed to ease the concerns from the abutter's.

Mr. David Short told the Board that he made an unannounced visit to the property to get a sense of what kind of noise there was. Mr. Barker stated that it didn't seem like the noise was excessive and didn't last for a long period of time. Ms. Bayer added that there were 7 dogs outside when he came to the property.

Ms. Bayer proceeded to explain to the Board how the dog silencer system works in order to keep the dogs from barking.

Mr. Dold asked if anyone would like to speak on behalf of Ms. Bayer's application.

Mr. Paul Wolfe from 19 Doe Run Lane stated that he has been a resident since 1984 and he has never had any issues with the dogs or Ms. Bayer. Further Mr. Wolfe explained that he is in favor of the application.

Mr. Keith Snelling from 33 Butterfield stated that the dogs bark all the time and it is very annoying.

Mr. Scott Frock from 35 Butterfield Lane is not in favor of granting the special exception because the noise from the dogs has become extremely disturbing to him and his family especially in the summer time.
Mr. Harold Sutterberg from 37 Butterfield Lane stated that the noise from the dogs is disturbing to him and his wife and he has called the police many times.

Mr. Dold stated that many of the residents didn't realize where the dog barking was coming from until the notices of this hearing were mailed out and that is why no one has called the police or contacted Ms. Bayer with the complaints.

Barbara Conekey from 43 Butterfield Lane stated that she has contacted the police several times to complain about the noise from all the barking dogs. Ms. Conekey said that the dogs are louder then a train. Ms. Conekey added that she drove down Doe Run Lane and because she lives on a private drive she never went down the driveway. She then went to the police and they gave her Ms. Bayer's name and she tried to find Ms. Bayer's number and it was unlisted. Ms. Conekey then talked to resident who lives on Doe Run and she said she would ask Ms. Bayer for her number to give to Ms. Conekey. Ms. Conekey then said she looked her up on Google and found out Ms. Bayer is a breeder. Ms. Conekey said she is very concerned if this special exception is granted then if Ms. Bayer moves the property will have a special exception for a kennel.

Gail Stewart 45 Butterfield Lane stated that she lives in the last house on the street and they can hear the noise from the dogs. Ms. Stewart said that the dogs bark so loud that they sound like they are in distress not just barking.

Lisa Philbrick from 39 Butterfield Lane stated that she has only lived there since October of 2010 and has been bothered from the noise from the dogs. Ms. Philbrick then added that she has a hearing impairment and she can hear the dogs barking without wearing her hearing aid.

Mr. Jeff Karam from 30 Butterfield Lane stated that the noise from the dogs is extremely disturbing for him and his family. Mr. Karam also added that he is concerned about his property value if a kennel is approved.

Jeff Johnson from 41 Butterfield explained that he works late in to the night and the noise is disturbing his lifestyle. Mr. Johnson further added that the howling is more disturbing to him then the barking.

Mr. Ted Czyz states that he has central air conditioning so he can't hear the dogs while that is running, but when he goes outside he can hear the dogs.

Mr. Terry Barnes, Building Inspector explained that Ms. Bayer has had an issue in the past with regards to her dogs with another resident in Stratham.

Mr. Dold asked Mr. Barnes if he has ever had any complaints regarding Ms. Bayer's dogs. Mr. Barnes responded and stated that he has never had any one complain to him about Ms. Bayer's dogs. Mr. Barnes explained that this matter came to his attention when Ms. Bayer went to register her dogs with the Town. When the Town Clerk saw she had more then 4 dogs she referred Ms. Bayer to Mr. Terry Barnes who then explained to her that she will need to apply for a Special Exception in order to continue having more then 4 dogs.

Attorney Summers stated to the Board that this is a special exception not a variance. Attorney Summers then explained the difference between a variance and a special exception. Attorney Summers offered to have a condition in her approval that this special exception is allowed for her only and if she were to leave the property then the special exception would no longer be valid.

Lastly Attorney Summers stated that the main issue residents have is the number of dogs and the noise that they make. Attorney Summers then suggested that another condition be added to her approval stating that the applicant will have no more then four dogs out side at any given time. That would help facilitate the noise issues that residents have brought up.

In summary the applicant would like the Board to grant the Special Exception and consider the conditions the applicant suggested she would do to facilitate the issues that have been brought up.

Attorney Summers briefly addressed a similar issue Ms. Bayer had at her previous address of 28 Doe Run Lane. Attorney Summers explained that Ms. Bayer resided at 28 Doe Run Lane from 1986-2000 and during that time a resident had an issue with Ms. Bayer's dogs. Attorney Summers further explained that those issues were resolved years ago and has nothing to do with this application at Ms. Bayer's current address.

Ms. Lisa Philbrook from 7 Butterfield Lane stated that it is important for the board to understand if the dogs are inside at night and the abutters can still hear them with closed windows allowing four dogs out side at one given time will still be an issue for abutters.

Attorney Summers responded and stated when the dogs are inside at night in there crate they do not bark inside. The abutters disagreed with Attorney Summers statement.

An Abutter asked the Board if the special exception is granted and in 6 months the issues have not changed or gotten worse what can the abutters do?

Mr. Barnes responded and explained that the noise ordinance is from 10:30 at night to 6:30 in the morning and if there is an issue then the abutters can contact the Police Department to make a complaint.

Mr. Paul Deschaine, Town Administrator proceeded to explain that conditions can be included in the approval in order to avoid further disturbance in the future.

Mr. Deschaine further explained that he is not for or against the application that a suggestion was made that an approval should be conditions and stipulated to apply only to Ms. Bayer. Mr. Deschaine stated from an administrator's stand point that you regulate and approve uses not owners. In conclusion Mr. Deschaine explained if you were to add that as a condition as soon as the ownership were to change the Board would be right back hearing this same application again. You can't make the decision based on the applicant Mr. Deschaine stated and in his opinion feels is an unwise course of action.

Mr. Dold asked Mr. Deschaine if the Board can condition the special exception to state if the approval does not work out in 3 or 4 months then the application is denied. Mr. Deschaine responded and stated that if the board were to continue the application on a trial bases to see if the applicant can resolve some issues would be possible.

Attorney Summers added that she aggress with Mr. Deschaine and that is what she suggested because the information is unclear on how well the devices are working and we can continue our findings and retain jurisdiction in order to ascertain whether or not abutters still have issues.

Mr. Deschaine explained that the Board renders a decision tonight but part of that decision is stipulated on a second review. Mr. Deschaine further recommended if the Board chooses to grant a trial period that the trial period be on the shorter side.

The Board stated that they believe the neighbors are hearing dogs barking but the applicant states she is keeping her dogs in the house at night when the neighbors are saying they hear dogs barking. The Board then stated they can go through all this and find out a year from now after Ms. Bayer has lost her dogs and the problem has not gotten any better because no one has actually identified exactly where the dogs live that are creating the noise.

Mr. Deschaine responded and explained that he cannot commit the resources of the police department to investigate each and every dog complaint to find the origination. The Board then added that there is suspicion of where the barking is coming from but they have not found out the exact source of the barking.

Mr. Kirk Scamman added that is the reason why he asked how many dogs live in the neighborhood and it was his understanding that there are over 20 dogs besides Ms. Bayer's dogs residing in the neighborhood.

Mr. Johnson a resident responded and asked the Board if they would make the decision based on what is asked tonight is it reasonable for someone to have 11 dogs in a private residence in a private neighborhood. The Board responded and stated if they are not creating a nuisance and if they are kenneled at night then they are not making noise. Mr. Johnson then stated it is his interpretation of what the Board just said is that the entire group does not know what they are talking about and the Board is calling into question the voracity of there statements and asking the abutters to go and invest and proof of where the sound is coming from.

The Board responded and stated that what they want Ms. Bayer to do is pretty serious as well. Mr. Johnson responded and stated what the abutters are asking is to enforce the law of the Town. The Board explained that the law of the Town is she would be entitled to the Special Exception if she met all the criteria and if her dogs are not in fact the source of the noise then she would be entitled to the special Exception.

The Board and the Abutters had further discussion on the source of the noise issues coming from the neighborhood. The abutters state that they may not know exactly where the source is coming from but they can try to avoid the problem from getting worse by not allowing someone to have more then the allowed number of dogs.

Mr. Barnes explained that her lot drops off behind the house and it seems like the sound is going from her home to Butterfield. Mr. Barnes suggested the Board add a condition to add a six foot fence to avoid the noise from traveling to Butterfield.

The Board then discussed whether or not to vote on the application now or continue the application in order to see if the noise is really coming from the applicants residence and to give the applicants attempts of screening the noise a chance to work.

Mr. Dold asked if the Board denies the application what Ms. Bayer would have to do. Ms. Bayer stated she would be fined up to $100 per day for each day she has five dogs or more. The Board stated she would be required to have four dogs only.

Attorney Summers then asked the Board if they would grant 7 dogs instead of the 11 she applied for. Ms. Bayer agreed to 7 dogs maximum. Ms. Bayer stated that she would do what ever needed to work with neighbors about this. Ms. Bayer offered to give her phone number in order to be contacted when she is not home if the dogs begin barking.

Mr. Dold explained if the Board does not grant the Special Exception and she has only four dogs and that is it. Mr. Dold then asked if the Board is willing to grant the special exception with the 7 dog limit and some conditions. Mr. Short then added that they could retain jurisdiction for a trial period.

Mr. Dold then asked for comments from the abutters how they feel about 7 dogs instead of 11. The abutters explained that they just want to reduce the noise and the abutters further added that by Ms. Bayer reducing the dogs from 11 to 7 that shows that Ms. Bayer cares about what the abutters have been saying.

The Board explained that if the special exception is denied then Ms. Bayer is allowed to have 4 dogs with out any conditions. Mr. Barker added that those four dogs alone could make a ton of noise and there is not much that can be done. The Board continues the case to August to see if there is an improvement.

Mr. Dold stated if agreed they will continue the case to the second Tuesday in August next year. During that period of time if Ms. Bayer would agree to maintain only 7 dogs, continue the screening the dog silencer, cell phone number, no more then four dogs and no dogs out side later then 9:00 pm and no earlier then 6:30.

Mr. Barker suggested if Ms. Bayer succeeds in limiting the sound coming from her dogs and the noise continues Mr. Barker suggested the abutters try to identify the source of the sound. Mr. Dold will send the abutters Ms. Bayer's cell number and list of conditions.

Ms. Bayer added that she will be installing exterior surveillance to record the noise. That will match the noise with the time of the complaint. This will ensure if the dogs are not barking and there is a complaint then they will know it is not Ms. Bayer.

Mr. Dold explained that the Board would not be taking a vote tonight but will at the request of the owner; make a motion to continue with conditions.

Mr. Dold made a motion to continue case number 548 until the second Tuesday in August 2011 with the following conditions: Ms. Bayer will maintained no more then 7 dogs maximum at her property, these dogs will be inside between 9:00 pm and 6:30 pm, Ms. Bayer will continue to maintained the covered fencing she has around her dog pen, she will continue the use of the dog silencer, she is willing to provide her cell phone and home phone to her neighbors, seconded by Mr. Short. Motion passed unanimously.

3. Approval of minutes:

   a. August 4, 2010
   b. August 10, 2010
   c. September 21, 2010

Mr. Barker made a motion to accept the above minutes, seconded by Mr. Scamman. Motion passed unanimously.

4. Adjournment:

Mr. Dold made a motion to adjourn, seconded by Mr. Short. Motion passed unanimously.

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John Dold, Chairman	Date
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Arol Charbonneau, Vice Chairman	Date
______________________________	______________________________
Kirk Scamman	Date
______________________________	______________________________
David Short	Date
______________________________	______________________________
Bruce Barker	Date
______________________________	______________________________
Michael Smith	Date