



**Stratham Zoning Board of Adjustment
Meeting Minutes
September 20, 2011
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Mike Smith
John Dold
Bruce Barker
Jeff Karam
Kirk Scamman
David Short

Members Absent: Chris Brett

Staff Present: Terry Barnes, Building Inspector

1. Call to Order/Roll Call:

Mr. Charbonneau, Chairman called the meeting to order at 7:00 pm and explained the procedure for the meeting to all those present.

2. Review of Minutes:

3. Public Hearings:

- a. Case # 563: Ken Litvack, 30 Doe Run Lane, Tax Map 12, Lot 41 Residential/Agricultural Zoning District. This is a public hearing whereby the applicant, pursuant to RSA 674.33-a, requests two equitable waivers and in addition, two Variance requests for relief from the dimensional requirements stated in Sections 11.5.3.b Wetlands Conservation District and 4.2 Table of Dimensional Requirement of the Stratham Zoning Ordinance to allow an existing shed to remain on the property.

Mr. Karam read Mr. Litvak's application for everybody present. Mr. Litvak's attorney, Mr. Seth Bostock took the floor. He explained that originally his applicant was going to apply for a variance, but through conversation with Mr. Barnes and Mr. Daley from the Town, decided to apply for an equitable waiver. However the Applicant is seeking a variance from the statutory ten year requirement for the shed as stated in RSA 674:33-a as he meets all other criteria for that RSA. The Chairman explained that his understanding is that the ten year statutory limitation is only in lieu of sections 1a and 1b

1 being satisfied. Mr. Bostock was asked to explain the ten year rule. The Board agreed
2 that as long as the Applicant satisfied 1a, b, c and d of RSA 674:33-a, an equitable waiver
3 could be granted. Mr. Bostock distributed a copy of a sketch of the Applicant's shed.
4 The Applicant then explained how the situation of the shed arose. Mr. Barnes explained
5 that the contractor thought he was using the correct property lines, but when Jones and
6 Beach did a survey, it was discovered that a mistake had been made. Mrs. Bayer,
7 abutter spoke saying that the original surveyor, who wasn't Jones and Beach made
8 mistakes and the contractor was using the original survey when putting the shed in, not
9 knowing it was wrong until Jones and Beach did the survey. Mr. Bostock mentioned that
10 an equitable waiver had been given for the other corner of Mr. Litvack's house before
11 because of the lot line problems. Mr. Dold asked Mr. Barnes if he knew about the
12 previous survey the abutter referred to, to which he replied he did not. The Chairman
13 then closed the public session.

14
15 The Chairman proceeded to go through the criteria of I (a) through (d) of RSA 674:33-a
16 for the Board. The Board agreed that Mr. Litvak satisfied each of the requirements
17 although Mr. Dold did request that Mr. Litvak state that he hadn't noticed that his
18 property was in violation as stated in 1 (a).

19
20 Mr. Scamman made a motion on case # 563 Ken Litvak, 30 Doe Run Lane, stating that
21 the requirements of the equitable waiver and RSA 674:33-a b c and d have all been met
22 and therefore should be approved. This was seconded by Mr. Barker. The motion was
23 carried unanimously. Mr. Bostock said that this now makes the variance application
24 mute so they would withdraw it.

25
26 There was a short interval whilst the Board waited for Mr. Dave Short, Board Member to
27 arrive.

28
29 (b) Case # 548: Ernestine Bayer, 24 Doe Run Lane, Tax Map 12, Lot 43 within
30 Residential/Agricultural Zoning District. This is a public hearing whereby the applicant is
31 requesting a Special Exception from Article II. Definitions, Section 2.1.36 Kennel, of the
32 Stratham Zoning Ordinance.

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34 The Chairman explained that Board Member, Mr. Jeff Karam, was an abutter to case #
35 548, and therefore, would not be able to take part as a Member of the Board.

36
37 Mrs Bayer's attorney, Ms. Somers started by saying that she felt there was really no need
38 to start from scratch as indicated by the Chairman. She recommended for the purpose of
39 the meeting to see how the various prevention measures have operated over the course
40 since December 2010. She stated for the record that Ms. Bayer has complied with all the
41 measures as stated in the written decision made by the Board in December 2010, and has
42 even utilized a calendar which tracks the times that she has let the dogs out and back in to
43 verify that she has complied with the measure of having her dogs inside by 9pm until
44 6.30am, Monday through Friday. Ms. Somers and Bayer had checked with Mr. Barnes to
45 see if there had been any complaints filed with him and also with Mr. Short, the Board
46 Member appointed to investigate any further complaints, as in the plans. She did indicate

1 that there had been one complaint that was made by the neighbors in the last weekend in
2 January when Ms. Bayer was out of town. She apologized following that incident and
3 there have been no further complaints logged with her since then. Ms. Somers also
4 mentioned that there had been one complaint logged with the Police department at around
5 10.30pm from a Mr. Frock that there was continuous barking for over thirty minutes.
6 However, looking at Ms. Bayer's records, the dogs were inside at the time of the
7 complaint. Ms. Bayer's personal observations are that the insulation of the silencer has
8 worked very well and Mr. Sharrid who did some carpentry at Ms. Bayer's house during
9 May and June can testify that he didn't observe the dogs acting inappropriately or acting
10 up in general whilst he was there. Unfortunately rocks have been thrown at the dogs and
11 two of the dogs were injured so a complaint has been filed with the police.
12

13 Ms. Somers said she was happy to take any questions. Somebody asked about the
14 incident of rocks being thrown at the dogs. He said that as the kennel is set far back from
15 the road, this probably meant that somebody actually went onto Ms. Bayer's property to
16 throw the rocks. Ms. Bayer commented she thinks that the rocks are being thrown with a
17 slingshot and that it has happened multiple times. Mr. Charbonneau confirmed that Ms.
18 Bayer has received one complaint. Ms. Bayer explained that it happened when she was
19 out of the country and she discovered that a friend had brought her dogs over so they
20 could run around and it was her friend's dogs that caused the complaint.
21

22 Several other abutters voiced their opinions. Mr. Sharrid stated that apart from when he
23 first arrives at the house, he hardly hears the dogs at all when he is working. Mr. Dold
24 said he remembered from the original meeting last year that phone numbers were given to
25 the abutters should they have any complaints. Ms. Bayer confirmed this saying she gave
26 both her cell and home number and Dave Short gave his phone number too and said he
27 could be over there within 5 minutes if there were any issues. Mr. Dold asked the
28 abutters present if they all received the phone number. One abutter responded that they
29 were told to call the police and notify them. Several Board members said they
30 remembered Mr. Short giving his number. Mr. Dold commented he thought that
31 everybody was supposed to be e-mailed and given Ms. Bayer's cell telephone number.
32 One abutter said he remembered receiving it, but also remembered being told that they
33 should contact the police department. Mr. Litvak stated that he walks his dog every
34 evening and has never heard her dogs bark not one single night. Ms. Bayer described the
35 kennels she has. John Mower, abutter to Mr. Litvak and the other side of Ms. Bayer who
36 has been living there since 1987, claimed to have rarely heard the dogs barking.
37

38 One abutter explained that another neighbor had complained about the dogs and the
39 police turned up. Ms. Somers reiterated that only one complaint had been formally
40 recorded with the police department. Scott Frock, the abutter who lodged the formal
41 police complaint explained that when he called, there was nobody available to come out
42 at that time and he was asked to submit an e-mail. He asked if it was right to put a kennel
43 in the middle of a residential area and although he knows her neighbors say they don't
44 hear it that is due to the location of the kennels. He said that the noise tends to travel in
45 his direction. He agreed that the problem has got better, but felt that the barking is still
46 frequent enough. When the dogs are outside, they bark. He asked if the rights of one

1 person outweigh the rights of a whole bunch of people who live in that area and if
2 making life miserable for them just to make one person's life happier, is the right thing.
3 The Chairman asked why he hadn't complained more often. Mr. Frock explained he is
4 not home often enough to complain.
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6 The abutter from 38 Butterfield confirmed what Mr. Frock had said saying he
7 remembered the policeman leaving Ms. Bayer a note because nobody was at home. It
8 was in the afternoon hours. Mr. Short commented that there were multiple arguments for
9 complaints to be made at the last meeting, but so far the Board has one maybe two
10 complaints that were documented and asked why more complaints weren't logged. The
11 abutter from 33 Butterfield claimed that he had never received any contact information
12 from anybody. Another abutter said it was discussed, but the information was never
13 given out. It appeared that only one person got the phone number and she decided she
14 didn't want to get in the middle of the situation. Another abutter wanted to know how
15 many complaints they had to make in order for the Board not to grant Ms. Bayer
16 permission to have her kennel. The Board responded that several complaints per week
17 would be needed and reminded everybody that they had plenty of opportunity to register
18 complaints which they had not done.
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20 The Board was asked if the condition still applied to seven dogs to which the Board
21 replied yes and further explained that the Applicant is allowed up to five dogs without a
22 permit. They also pointed out that if the property is sold, the permit would not apply to
23 the new owner of the property. The Board said if it made abutters feel more comfortable,
24 the Board could add a condition stating that the Applicant was not allowed to operate it as
25 a business. Ms. Bayer let the abutters know the times she had bred dogs, the last one
26 being 2004 and that she doesn't do frequent breeding. Mr. Frock said one of the main
27 concerns the abutters have is trusting Ms. Bayer will stick to the conditions if the permit
28 is granted. Ms. Bayer responded that she honored the condition that her dogs have to be
29 inside from 9pm to 6.30am Monday through Friday and in fact did the same for the
30 weekend. She works from home 3 days a week and hasn't heard them bark. She did
31 come home one day to hear them barking and saw they were barking at 32 turkeys on the
32 lawn. Ms. Somers supported Ms. Bayer saying that it is obvious she has adhered to the
33 conditions and even those abutters not in favor admit things have improved. There have
34 been no complaints as such and it seems to be working well and she feels it is incumbent
35 on the abutters if they are having problems during the day to complain. If there is a brief
36 flurry of barking because somebody has turned up in the driveway, that is acceptable.
37 She also mentioned that Ms. Bayer is going to sell her property and asked the Board to
38 continue the approval.
39

40 The abutter from 39 Butterfield asked what the state definition for "kennel" is and
41 whether Ms. Bayer could go through the state and override the decision made by the
42 Board. Ms. Somers answered that there is a state definition and a statute that addresses
43 licensing as such and the only thing that the Town has is an ordinance which deals with
44 zoning regulation which are two different types of regulations. The Town only has
45 jurisdiction to regulate zoning, not to regulate licensing and vice versa. Ms. Bayer
46 explained that she couldn't get a state license for her dogs until she was granted a special

1 exception. According to the Town's regulations, Ms. Bayer is not allowed to have more
2 than 7 dogs licensed in Stratham. She also mentioned that by State law a veterinarian has
3 to provide the Town with a rabies certification for each dog that has the rabies shot, so
4 the Town knows how many dogs a person has on a property in town.
5

6 The Chairman closed the public session and the Board went over the conditions for the
7 Special Exception. The Board agreed that all the conditions had been met. Mr.
8 Scamman made a motion to approve the special exception provided in section 2.1.20 to
9 approve the kennel with the conditions from the previous meeting of August 9, 2011,
10 those conditions being:
11

- 12 1. The dogs shall be inside the home from 9:00 pm until 6:30 am Monday through Friday
- 13 2. The owner shall not have more than 7 dogs at any time.
- 14 3. The owner shall maintain the current dog kennel fence with tarp covers.
- 15 4. The owner shall maintain a dog silencer system to help keep the dogs from barking
- 16 5. The abutters shall be able to call Ernestine Bayer if they have any complaints
17 regarding the dogs.
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19 This was seconded by Mr. Short. The Board carried the motion unanimously and the
20 Chairman closed Case # 548.
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22 **4. Adjournment**

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24 The meeting was adjourned at 9.10pm
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