



**Stratham Zoning Board of Adjustment
Meeting Minutes
August 13, 2013
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Garrett Dolan, Full Time Member
Chris Brett, Alternate

Members Absent: Kirk Scamman, Full Time Member
Mike Smith, Alternate

Staff Present: Terry Barnes, Building Inspector/Code Enforcement Officer
Lincoln Daley, Town Planner

1. Call to Order/Roll Call.

The Chairman took roll call and then explained the procedure for tonight's meeting.

2. Approval of Minutes.

a. June 25, 2013.

Mr. Brett made a motion to accept the minutes from June 25, 2013. Motion was seconded by Mr. Dolan. Mr. Charbonneau commented on 2 amendments. Motion passed unanimously with the exceptions noted.

3. Public Hearing(s).

a. **Case # 584 and 585: Alan and Shirley Patrick, 78 High Street, Stratham, NH, Tax Map 18, Lot 114.** A request for a Variance and Special Exception pursuant to Article II Definitions, Section 2.1.36 and Article III, Section 3.6 Table of Uses of the Stratham Zoning Ordinance to permit a kennel (five or more dogs) on the property.

Mr. Brett made a motion to accept the application as complete. Mr. Dolan seconded. Motion carried unanimously.

1 Mr. Charbonneau read out the application. The applicants inherited an extra dog from a
2 deceased family friend and were unaware of the applicable zoning ordinances. They
3 don't intend to breed dogs or operate a business. They are asking that they can care for
4 their pets until they come into compliance with the Town Ordinance through the passing
5 of one of their dogs. Mr. Charbonneau read the definition for having a kennel and said
6 they are allowed to have their dogs as long as they meet specific criteria which the Board
7 will go through.

8 The applicants Mr. and Mrs. Patrick introduced themselves and said there wasn't
9 anything else to add to what had just been said. He stressed however he didn't know that
10 there was a limit on the amount of dogs you can own in the Town and had they known
11 that, they probably wouldn't have accepted the 5th dog. He added that the brother-in-law
12 and sister-in-law also reside at the property in a separate apartment and they have a dog
13 registered in their names also so they have been in violation for some time without
14 knowing it. They only became aware of the regulations when they registered their 5th
15 dog.

16 Mr. Charbonneau asked how long they had had 5 dogs before registering the latest one.
17 Mr. and Mrs. Patrick replied it was probably a couple of years. As the dog isn't in good
18 health, they are not expecting the dog to live for much longer. A couple of the other dogs
19 are also turning 13 in the Fall so they don't expect this to be a permanent situation. Mr.
20 Patrick stressed they have no intention of operating a kennel as a business.

21 Mr. Charbonneau confirmed the lot size as 2.02 acres. Mr. Patrick wanted to mention
22 that the dogs aren't kept outside, they are house dogs and apart from one, all under 18lbs.
23 He doesn't believe they create a nuisance to the neighborhood.

24 The Board discussed the variance first. Mr. Charbonneau said to remember a variance
25 runs with the land and not the property owner so if granted it stays for good. Mr. Dolan
26 felt they needed to solve the issue of acreage before anything else.

27 Mr. Charbonneau asked those present if there was any opposition. There wasn't any. He
28 asked if anybody would like to speak in favor. Ms. Weymer, abutter said she had no
29 issues whatsoever with their dogs, however she is concerned about the future if
30 somebody else moved into the property and started a kennel business. She asked if there
31 is a limit to how many dogs are allowed for a kennel. Mr. Charbonneau said there isn't
32 an official limit, but the ZBA can put a restriction on the number.

33 Mr. Dolan made a motion to close the public session. Motion seconded by Mr. Brett.
34 Motion carried unanimously.

35 The Board went through the criteria for a variance in accordance with Section 17.8.3 of
36 the Town's Zoning Ordinance. They started by having a general discussion and then
37 addressed the criteria:

- 38 i. the variance will not be contrary to the public interest

1 As the applicant doesn't satisfy the dimensional requirement of having 5+ acres, the
2 Board felt it was contrary to the public interest.

3 ii. the spirit of the ordinance is observed

4 Mr. Daley explained the point of having 5 acres is to mitigate the visual and sound issues
5 that come with dogs. He stressed a variance runs with the land so if the current owners
6 move, a commercial kennel could potentially move into that property with the added
7 special exception requirement. He is not sure that is the intent of the Ordinance. The
8 members of the Board all agreed that the spirit of the ordinance is not observed.

9 iii. Substantial justice is done

10 The members agreed that substantial justice would not be done because of the potential
11 effect on abutters.

12 iv. The values of surrounding properties are not diminished, and

13 v. Literal enforcement of the provisions would result in an unnecessary hardship.

14 The Board agreed the possibility exists that surrounding property values could diminish.
15 They agreed also that a fair and substantial relationship exists between the general public
16 purposes of the ordinance and the specific application of that provision to the property
17 and the proposed use is not a reasonable one because of the size of the property.

18 The Board agreed that no unnecessary hardship existed due to dimensional and frontage
19 inadequacies.

20 The Board took a formal vote on each criterion. The Board agreed that the applicant did
21 not fulfill any of the criteria due to the lot size of the property. Mr. Charbonneau told the
22 applicant that the Board has to deny the variance, and although they are sympathetic,
23 because a variance is tied to the land, they have to look toward the future and the
24 possibility of a commercial kennel existing there. Mr. Charbonneau recommended
25 giving the applicant 6 months to solve the issue and asked the Code Enforcement Officer,
26 Terry Barnes to enforce it.

27 Mr. Dolan made a motion that the Board denies the variance request to section 3.6 Table
28 of Uses, Lot size and minimum setbacks based on the fact that the parcel does not meet
29 the minimum lot size required in the Zoning Ordinance or the minimum set back. Motion
30 seconded by Mr. Brett. Motion carried unanimously.

31 The applicant was advised to work with Terry Barnes to find an acceptable time frame to
32 come in line with the Ordinance.

33 As the variance was denied, the special exception was null and void. Mr. Patrick
34 withdrew the application verbally.

1 Mr. Charbonneau made a motion that the Board accept the applicant's withdrawal of
2 Case # 585, the special exception given the fact that the variance of Case # 584 was
3 denied. Motion seconded by Mr. Brett. Motion carried unanimously.

4 Cases # 584 and # 585 were closed.

- 5 b. **Case # 586: Donald and Deborah Chase, 26 Holmgren Road Stratham, NH, Tax**
6 **Map 6, Lot 64.** A request for a Special Exception pursuant to Article V. Supplementary
7 Regulations, Section 5.4. Accessory Apartments of the Stratham Zoning Ordinance to
8 construct an accessory apartment to the existing single-family dwelling.

9 Mr. Charbonneau made a motion to accept the application for Case # 586. Mr. Brett
10 seconded the motion. Motion carried unanimously.

11 Mr. Charbonneau invited the applicants to present their case. Mr. Donald Chase and Mrs.
12 Deborah Chase introduced themselves. Mr. Chase said the purpose of the request is to
13 build an apartment for his parents who are in excess of 90 years old. His mother in
14 particular needs extra care. He continued that the size of the apartment meets the
15 dimensional requirements of one third of the living space. They have taken care of the
16 septic requirements and believe they meet all the special exception criteria.

17 Mr. Charbonneau inquired what the size of the apartment will be. Mr. Chase said 800
18 square feet. Mr. Charbonneau double checked that it met the one third of living space
19 criterion. He said it did. Mr. Charbonneau asked where the apartment was going to be
20 situated in relation to the house. Mr. Chase said next to the garage. He showed the
21 Board the plan and talked the Board through it. Mr. Charbonneau asked about parking.
22 Mr. Chase said there was ample room for 3 cars. He said the apartment would be a single
23 floor apartment and the area above would be used for storage. Mr. Charbonneau
24 confirmed access would be through the front. Mr. Chase said it would be at the front,
25 through the garage and at the rear of the property.

26 Mr. Charbonneau asked if a water test had been done. Mr. Chase said he didn't realize he
27 needed that, but he can get that done within a short period of time.

28 Mr. Charbonneau asked if anybody wanted to speak in favor or opposition in regards to
29 this application. There was no response.

30 Mr. Brett made a motion to close the public session for Case # 586. Motion seconded by
31 Mr. Charbonneau. Motion carried unanimously.

32 The Board went through the criteria in accordance with Section 5.4 pertaining to
33 Accessory Apartments.

34 The Board agreed that the applicant met the criteria apart from 5.4.d as one of the
35 entrances is at the front. Mr. Chase mentioned a ramp. Mr. Brett said that was not
36 depicted on the plan. Mr. Daley explained that having a door at the front detracts from
37 the appearance of a single family dwelling. Mr. Daley asked about the ramp. Mr. Chase
38 explained it wouldn't be a fixed ramp, it would be mobile. Mr. Daley asked how the

1 mother would get up stairs. Mr. Chase replied that there is a chairlift for her and stressed
2 that they are not using a ramp currently, he is looking to the future and they will be stored
3 in the garage. Mr. Daley said the front door entrance would need to be eliminated to
4 bring it in line with the Ordinance. Mr. Charbonneau asked about the special situation
5 with the ramp. Mr. Daley asked if the ramp was meant for the front door access. Mr.
6 Chase said it was and the reason for the front entrance was to provide a very simple entry
7 for his mother out of the car and into the house. The ramp isn't required right now and it
8 is a moveable device. Mr. Daley asked if the ramp could be used at the other access
9 points. Mr. Chase said it could. Mr. Daley asked if it was possible to take out the front
10 door entrance and use the interior entrance way as the main entry way. Mr. Chase said it
11 was possible but he asked the Board to consider letting him keep the front entrance
12 because it makes life so much easier for his mother to access and leave the building. He
13 is also concerned that the entry into the garage may not meet all the fire codes. Mr.
14 Charbonneau asked Mr. Daley if the Board had any latitude concerning the front door
15 entrance. Mr. Daley said the only way around it would be if Mr. Chase went for a
16 variance.

17 Mr. Charbonneau confirmed that Mr. and Mrs. Chase could provide the Building
18 Inspector, Mr. Barnes with evidence that adequate potable water exists at the property.

19 The Board then went through the criteria for a special exception in accordance with
20 Section 17.8.2.a. The Board felt the applicants met all of the criteria although there was
21 some discussion about the change to the driveway due to the front entrance not being
22 permitted. Mr. Chase said some paving will be added. The Board agreed that as the
23 extra paving would be a small amount and as it is located away from the street, there
24 would be no significant increase of storm water runoff onto adjacent property or streets.

25 The Board felt there was no need to run through Section 17.8.2.b as only the removal of
26 the front entrance was appropriate and that would be addressed as a condition to the
27 approval.

28 Mr. Dolan moved to grant the special exception with the conditions that the front access
29 door be moved from the front to the side and evidence of potable water be provided.
30 Motion seconded by Mr. Brett. Motion passed unanimously.

31 Mr. Charbonneau confirmed that the Special Exception was approved but cautioned the
32 applicants that there is a 30 day appeal period so if they proceed with the project, it is at
33 their own risk during those 30 days.

34 c. **Case # 587 Lori and Charles Rocha, 19 Winding Brook Drive, Stratham, NH, Tax**
35 **Map 12, Lot 94.** A request for a Variance from Article XI Wetlands Conservation
36 District, Section 11.5.3 of the Stratham Zoning Ordinance to construct a structure
37 (accessory apartment) within 100 feet of very poorly drained soils.

38 d. **Case # 588: Lori and Charles Rocha, 19 Winding Brook Drive, Stratham, NH, Tax**
39 **Map 12, Lot 94.** A request for a Special Exception pursuant to Article V. Supplementary

1 Regulations, Section 5.4. Accessory Apartments of the Stratham Zoning Ordinance to
2 construct an accessory apartment to the existing single-family dwelling.

- 3 e. **Case # 589 Lori and Charles Rocha, 19 Winding Brook Drive, Stratham, NH, Tax**
4 **Map 12, Lot 94.** A request for a Special Exception pursuant to Article XII Shoreland
5 Protection District, Section 12.6.4 of the Stratham Zoning Ordinance to permit the
6 erection of a structure (accessory apartment) within the Shoreland Protection District.

7 Mr. Michael Donahue introduced himself as the attorney for the applicant. He said they
8 are requesting to delay their hearing until next month for 2 reasons; they would like to
9 meet with the Conservation Commission to review the details of the application and see if
10 they accomplish anything that addresses any concerns they may have and secondly they
11 would like to exercise their statutory right to a 5 member board because the burden is on
12 him to convince 3.

13 Mr. Dolan made a motion to accept the requested delay until September 10, 2013 from
14 Attorney Michael Donahue representing the Rochas for the Case Numbers 587, 588 and
15 589 in order to have a 5 member board present. Motion seconded by Mr. Charbonneau.
16 Motion carried unanimously.

17 **4. Miscellaneous.**

18 Mr. Charbonneau introduced Mr. Jim Elliott who was interested in becoming a member of
19 the ZBA.

20 Mr. Daley informed the Board that there would be a ZBA meeting on August 27, 2013 to
21 address both a variance and special exception application for 3 Portsmouth Avenue. There
22 will be a medical facility and day care going into the property and as the lot is in the Special
23 Commercial District a special exception is needed to allow those types of uses. The variance
24 relates to grading work needed for a rain garden that falls within the 25 no disturbance zone.

25 He added that that applicant will be before the Conservation Commission tomorrow night to
26 discuss the no disturbance zone.

27 Mr. Dolan asked how Case # 589 came about when the Shoreland Protection District clearly
28 stated there would be no construction in the Shoreland Protection District unless the property
29 was a lot of record prior to the Shoreland Protection District came into being. Mr. Daley said
30 it would need some investigation by the Town.

31 **5. Adjournment.**

32 Mr. Brett made a motion to adjourn the meeting at 8:57 pm. Motion seconded by Mr. Dolan.
33 Motion carried unanimously.