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6 **Stratham Zoning Board of Adjustment**  
7 **Meeting Minutes**  
8 **September 10, 2013**  
9 **Municipal Center, Selectmen's Meeting Room**  
10 **10 Bunker Hill Avenue**  
11 **Time: 7:00 PM**  
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14 **Members Present:** **Arol Charbonneau, Chairman**  
15 **Kirk Scamman, Full Time Member**  
16 **Garrett Dolan, Full Time Member**  
17 **Mike Smith, Alternate**  
18 **Jim Elliott, Alternate**  
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20 **Staff Absent:** **Chris Brett, Alternate**  
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22 **Staff Present:** **Lincoln Daley, Town Planner**  
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24 **1. Call to Order/Roll Call.**

25 The Chairman took roll call and ran through the procedure for the meeting

26 **2. Approval of Minutes.**

27 a. August 27, 2013.

28 The Board did not review the minutes.

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

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

34 b. **Case # 588: Lori and Charles Rocha, 19 Winding Brook Drive, Stratham, NH, Tax**  
35 **Map 12, Lot 94.** A request for a Special Exception pursuant to Article V. Supplementary  
36 Regulations, Section 5.4. Accessory Apartments of the Stratham Zoning Ordinance to  
37 construct an accessory apartment to the existing single-family dwelling.

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

5 As all 3 cases related to the same applicant it was decided to open them all at once. Mr.  
6 Scamman made a motion to accept Cases # 587, 588 and 589, Lori and Charles Rocha of  
7 19 Winding Brook. Motion seconded by Mr. Dolan. Motion carried unanimously.

8 The applicant's attorney, Mr. Mike Donahue introduced himself, Mr. Rocha, Janet  
9 Johnstone (mother-in-law), Steve Riker who delineated the wetlands along with Alex  
10 Ross of Ross Engineering, and Tim Mason the builder for the project.

11 Mr. Donahue explained that this series of applications is driven by the desire of Mrs.  
12 Johnstone to sell her home and move into an accessory apartment which would be  
13 constructed as an addition to the existing Rocha home. He was glad all 3 cases were  
14 opened as the facts being presented were common to each case.

15 Mr. Donahue reminded those present that they were before the Board at a previous time,  
16 but as there wasn't a full board that night, they elected to continue the application. It  
17 gave them the opportunity also to go before the Conservation Commission and work with  
18 them to develop what he considers a pre-packaged set of conditions of approval that  
19 address the items related to the wetland matters.

20 Mr. Donahue went on to say that they had been before the Planning Board also for  
21 approval to replace the existing septic system because of its proximity to the wetlands,  
22 and the new septic system is a much improved system. They filed their application with  
23 the NHDES who approved the upgraded septic system. The Conservation Commission  
24 was also pleased to see this newer system replace the old one. Mike Cuomo, the Town's  
25 consultant wrote to Mr. Barnes to say he couldn't approve the plan because it didn't  
26 comply with the Town's regulations Section 20.1.2 and Section 20.1.5.d.ii, however that  
27 can be waived by the Planning Board in accordance with Section 20.3 which is what the  
28 applicant did. Mr. Cuomo said also that the new system pre treats the affluence to a  
29 much greater degree than a standard septic and therefore requires a smaller disposal area.  
30 The applicant is using the best technology to overcome site limitations which in his  
31 opinion meets the intent of Section 20.3.c in that the applicant has greatly exceeded  
32 minimum design requirements.

33 Mr. Donahue asked Mr. Ross from Ross Engineering to explain the septic design and site  
34 plan.

35 Mr. Ross explained that the old system was installed in 1986 so it was 27 years old and  
36 the average lifespan of a leach field is 20 years. The new system will be 4' higher in  
37 elevation so above the ground water table. They have added a clean solution pre-  
38 treatment which actually decreases the leach field's size and significantly cleans up the  
39 affluent compared to a traditional system. Tests with this system have shown it to be  
40 96% - 99% cleaner than traditional systems. Mr. Ross reiterated that the system had been

1 approved by Mike Cuomo from Rockingham County Conservation District (RCCD) as  
2 well as the State.

3 Mr. Ross said the apartment will go at the southern end of the house to protect the  
4 wetland area from stormwater run off. 4 stone infiltration areas will be built that will  
5 correct roof run off from the existing house, and a rain garden that will collect run off  
6 from the accessory apartment. Mr. Ross explained that currently storm water just runs  
7 off directly into the wetlands which are why they are proposing infiltration trenches to  
8 detain the run off and slowly release it. The rain garden will detain storm water also,  
9 treat it, and release it slowly plus landscaping plants will be added too. Mr. Ross then  
10 gave a history to the project and how they have arrived at the current plan as a  
11 consequence of meeting with the Conservation Commission and Planning Board.

12 Mr. Smith confirmed that the system is 85' from the water body instead of the 100'  
13 stipulated by the Ordinance. Mr. Ross showed the location of the septic on the plan in  
14 relation to the water body setbacks. Mr. Donahue said there was a waiver from the State  
15 from the direct abutter who would be coming to the meeting. Mr. Scamman said that in  
16 between the leach field and the 100' set back is the driveway so the wetlands are already  
17 disturbed. Mr. Ross confirmed that was true. Mr. Ross said that with this type of septic  
18 system there has to be a maintenance agreement in place with the supplier of the unit.  
19 Mr. Scamman asked what the life span of this system was. Mr. Ross said if maintained  
20 the life span should be much longer than a traditional system.

21 Mr. Donahue talked through a set of pictures he had brought along showing the poorly  
22 drained soils to show why they were requesting the variance. In the rear of the property  
23 they will be removing pavement in order to mitigate putting a roof area on the home. The  
24 Conservation Commission found this reduction of pavement to be an appropriate amount.

25 Mr. Donahue explained that in this situation the septic cannot go anywhere else on the  
26 property which is why the Planning Board allowed them to locate it where it is. The  
27 home is where it is so they are doing various things to mitigate what already exists as part  
28 of the application to allow the small addition to be constructed. Mr. Donahue added that  
29 the addition has been designed to look like another wing of the home. He turned the  
30 conversation to the accessory apartment itself. He said it will be 712 square feet and the  
31 home has a minimum area of 4,904 square feet so the size is within the parameters of the  
32 Ordinance.

33 Mr. Donahue addressed the standards for a Special Exception in accordance with Section  
34 17.8.2.a. and Section 5.4 Accessory Apartments and explained why in his view, his client  
35 meets the criteria. Mr. Smith asked Mr. Tim Mason where the entrance was to the  
36 apartment. Mr. Mason said it was on the side and indicated it on the plan. Mr.  
37 Charbonneau asked if that was the only entrance, Mr. Mason replied yes. Mr. Doyle  
38 checked there were two means of egress, Mr. Mason confirmed there was. He said also  
39 no extra parking would be added due to the Conservation Commission's input. There is  
40 an existing well that is more than adequate for everybody in the house plus the apartment.

1 Mr. Donahue then discussed the Special Exception pursuant to Article XII Shoreland  
2 Protection District, Section 12.6.4 of the Stratham Zoning Ordinance to permit the  
3 erection of a structure, in this case the accessory apartment, within the Shoreland  
4 Protection District. The apartment does not meet the required 100' setback. It is  
5 currently approximately 55' away from the Shoreland setback. He continued it is a  
6 unique lot with a stream that bisects the entire property and it was appropriate to develop  
7 the site as it is currently because of those conditions, but regulations have changed since  
8 it was built, so to do this additional relief is required from the Zoning Board.  
9 Unfortunately there is no other location where the addition can be built. Mr. Donahue  
10 then addressed the 4 criteria listed under Section 12.6.4. of the Ordinance. He said the lot  
11 was an official lot of record; the addition cannot be built outside of the shoreland  
12 protection district because of the uniqueness of the lot; the lot was built prior to current  
13 regulations and he believes is a reasonable residential expansion use of the lot, he  
14 believes also that they have improved the lot by going through this entire process in terms  
15 of the impact on the wetlands, and finally Mr. Donahue believes the design and  
16 construction of the apartment is consistent with the purpose and intent of this Section.  
17 They met with the Conservation Commission who produced a list of conditions that they  
18 felt were needed and the applicant has agreed to those conditions.

19 Mr. Donahue then turned the topic to the requested Variance to construct the accessory  
20 apartment within 100 feet of very poorly drained soils. Mr. Eric Hawkins, abutter, 8  
21 Evergreen Way, asked if he could take the floor. He introduced himself and added he is  
22 also the Chairman of the Winding Brook Homeowners Association. He explained that as  
23 part of the by-laws, homeowners have to submit their plans, when there is any building so  
24 the committee members can review them. The Homeowners Association committee  
25 members found the plans for this addition to be acceptable. Mr. Scamman asked if the  
26 Association had to put a letter on file that approves this. Mr. Hawkins said they sent a  
27 letter to the homeowners saying they approved the plan and they met the by-laws of the  
28 Association. Mr. Terry Barnes, Code Enforcement Officer added that the Building  
29 Department also requests a copy of said letter from anybody building who belongs to a  
30 Homeowners Association.

31 Mr. Donahue addressed the criteria of a variance, in particular the reason for hardship. He  
32 reiterated that a brook runs through the property, that the current zoning restrictions  
33 interferes with the reasonable use of the property, and a variance will always be required  
34 because of the brook bisecting the property. He asked is it an unreasonable use in a town  
35 where special exceptions are granted for accessory apartments in residential/agricultural  
36 zones often and is it unreasonable to seek a variance to allow this apartment. Mr.  
37 Donahue said he feels it isn't unreasonable as long as it is done in the manner that has  
38 been presented with an upgrade that will benefit the environment, and a design which is  
39 acceptable to the neighborhood and closest abutter. He said the general purpose is to  
40 promote the health, safety, convenience and general welfare and to protect and conserve  
41 the value of property. Allowing this building activity within 100' of the very poorly  
42 drained soils as proposed will not affect the health, safety or welfare of the public at  
43 large. In fact the design the applicant is proposing will improve the conditions on the  
44 property by the use of the rain garden and the other afore mentioned systems. Mr.  
45 Donahue said if the Board doesn't allow this application then none of the upgrades will

1 happen. He feels allowing this application is a fair compromise to all parties concerned.  
2 The spirit and intent of the Ordinance is met also by improving the conditions on this lot  
3 and it's been reviewed and supported by the other Town boards involved.

4 Mr. Charbonneau asked if there were any comments either in favor or in opposition to the  
5 proposed accessory apartment from the public. There were no comments.

6 Mr. Scamman made a motion to close the public session on all 3 cases 587, 588 and 589.  
7 Motion carried by Mr. Dolan. Motion carried unanimously.

8 Mr. Dolan read the conditions from the Conservation Commission dated August 20, 2013  
9 into the record as follows:

10 The applicant will upgrade the existing leach field with improved pre treatment septic  
11 system previously approved by the Town of Stratham Planning Board.

12 They will construct a raingarden to treat run off from the proposed accessory apartment  
13 as shown on the plan and will add a note to the plan indicating a specific raingarden  
14 design and maintenance, and appropriate plantings for the raingarden.

15 They will construct 4 stone infiltration trenches to detain and thereby diminish the  
16 velocity of run off from the existing home. 3 of the trenches are shown on the plan as  
17 revised through July 17, 2013. The fourth will be added in the front right of the house as  
18 seen from Winding Brook Drive to pick up additional roof run off.

19 They will revise the plan to depict the removal of no less than 712 square feet of asphalt  
20 from the rear parking area as additional mitigation for the construction of the accessory  
21 apartment.

22 They will place a note on the plan that states explicitly that no additional asphalt  
23 pavement, building or other impermeable surfaces shall be added on the lot in the future.  
24 This condition shall be incorporated though a deed restriction for subject property citing a  
25 final approved plan. The deed restriction will recite the Town of Stratham as the  
26 enforcement agent. Said deed restriction and final approved plan shall be recorded at the  
27 Rockingham Registry of Deeds.

28 The applicant will also place a note on the plan indicating that there will be limited  
29 maintenance of grass along Winding Brook Drive and Evergreen Way in order to provide  
30 a further buffer to the brook over time.

31 Applicant will follow all best management practices as related to the control of any  
32 erosion or run off during the construction process including but not limited to the  
33 construction of a silt fence as detailed on the site plan and obtain DES permits if  
34 applicable.

35 The plan as revised will be filed with both the Zoning Board of Adjustment and the Town  
36 of Stratham Conservation Commission and the applicant agrees that the foregoing will be  
37 enforceable conditions of approval upon any favorable action of the Zoning Board of

1 Adjustment in case numbers 587, 588 and 589 involving the accessory apartment on this  
2 property. As various shoreland and wetland buffers exist to protect the valuable wetland  
3 resources, particularly ground water, the Commission is appreciative of the efforts put  
4 forth by this applicant to provide mitigation and to improve the water treatment on this  
5 site. The Commission has voted to approve this plan with the conditions outlined above.

6 The Board went through Case number 587 and addressed the criteria for the variance.  
7 They agreed it wasn't contrary to the public interest as the lot is being improved. They  
8 felt the spirit of the Ordinance was observed as they were improving the leach field,  
9 removing some pavement, and therefore the spirit of the Ordinance is being kept in tact.  
10 The Board agreed substantial justice is done as they are improving the water quality in  
11 the neighborhood, the apartment will fit in with the community and they are adhering to  
12 the conditions placed on the project by the Conservation Commission. The members  
13 agreed that surrounding property values won't be diminished due to all the improvements  
14 being made thanks to the project. The Board agreed that a hardship exists due to the  
15 brook bisecting the property. They agreed also that a fair and substantial relationship  
16 exists between the general public purposes of the ordinance provision and the specific  
17 application of that provision to the property due to promoting general safety and health  
18 and welfare of the community. The Board said the proposed use of the apartment is a  
19 reasonable use and it is allowed under a special exception also.

20 Mr. Dolan made a motion to allow Case number 587 on behalf of Lori and Charles  
21 Rocha, 19 Winding Brook Drive, Stratham, New Hampshire, Tax Map 12, Lot 94, their  
22 request for a variance from article XI, Wetlands Conservation district, Section 11.5.3 of  
23 the Stratham Zoning Ordinance to construct a structure, an accessory apartment, within  
24 100' of very poorly drained soils be granted under the conditions established by the  
25 Conservation Commission. Motion seconded by Mr. Scamman. Motion carried  
26 unanimously.

27 Mr. Scamman made a motion to close Case 587, Map 12 Lot 94. Motion seconded by  
28 Mr. Dolan. Motion carried unanimously.

29 The Board moved to Case 588, a special exception pursuant to Article V. Supplementary  
30 Regulations, Section 5.4. Accessory Apartments of the Stratham Zoning Ordinance to  
31 construct an accessory apartment to the existing single-family dwelling.

32 The Board ran through the Accessory Apartment criteria in accordance with Section  
33 5.4.3. of the Zoning Ordinance. They agreed that the applicants met all of the criteria.  
34 Mr. Scamman added that he had taken a look at the site and even though they are  
35 removing 700 square feet of the parking area, there will still be ample parking available.  
36 The Board reminded the applicants that they would need to provide the Building  
37 Inspector with evidence that there is potable water available.

38 Next the Board ran through the criteria for a Special Exception in accordance with  
39 Section 17.8.2. of the Zoning Ordinance. They agreed all the criteria were met and in  
40 fact rather than there being no significant increase of storm water runoff onto adjacent  
41 property or streets, there would now in fact be a decrease in the runoff.

1 Mr. Scamman made a motion to approve Case number 588, Lori and Charles Rocha, 19  
2 Winding Brook Drive, Stratham, New Hampshire, Tax Map 12 Lot 94, the request for a  
3 Special Exception pursuant to Article V. Supplementary Regulations, Section 5.4.  
4 Accessory Apartments of the Stratham Zoning Ordinance to construct an accessory  
5 apartment to the existing single-family dwelling and follow the Conservation  
6 Commission's conditions. Motion seconded by Mr. Dolan. Motion carried unanimously.

7 Mr. Dolan moved to close Case number 588, Lori and Charles Rocha. Motion seconded  
8 by Mr. Scamman. Motion carried unanimously.

9 The Board moved to Case Number 589 Special Exception pursuant to Article XII  
10 Shoreland Protection District, Section 12.6.4 of the Stratham Zoning Ordinance to permit  
11 the erection of a structure (accessory apartment) within the Shoreland Protection District.

12 The Chairman asked the Board members if they wanted to go through the standards again  
13 or if they felt comfortable that once sufficed. The members agreed it wasn't necessary.

14 The Board moved to the general criteria for a Special Exception. The Board agreed that  
15 once again the applicant met all of the criteria for Case 589.

16 Mr. Scamman made a motion for Case number 589, Lori and Charles Rocha, 19 Winding  
17 Brook Drive, Stratham, New Hampshire, Tax Map 12 Lot 94, a request for a request for a  
18 Special Exception pursuant to Article XII Shoreland Protection District, Section 12.6.4 of  
19 the Stratham Zoning Ordinance to permit the erection of a structure (accessory  
20 apartment) within the Shoreland Protection District and to include the conditions of the  
21 Conservation Commission letter which is on file. Motion seconded by Mr. Dolan.  
22 Motion carried unanimously.

23 Mr. Dolan made a motion to close Case Number 589, Lori and Charles Rocha, Tax Map  
24 12 Lot 94 and their request for a Special Exception pursuant to Article XII Shoreland  
25 Protection District. Motion seconded by Mr. Scamman. Motion carried unanimously.

26 **4. Miscellaneous.**

27 There were no miscellaneous items to report.

28 **5. Adjournment.**

29 Mr. Scamman made a motion to adjourn the meeting at 8:41 PM. Motion seconded by Mr.  
30 Smith. Motion carried unanimously.