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6 **Stratham Zoning Board of Adjustment**
7 **Meeting Minutes**
8 **January 13, 2015**
9 **Municipal Center, Selectmen's Meeting Room**
10 **10 Bunker Hill Avenue**
11 **Time: 7:00 PM**
12

13
14 **Members Present:** **Arol Charbonneau, Chairman**
15 **Jim Elliott, Secretary**
16 **Chris Brett, Full Time Member**
17 **Chris Cavarretta, Full Time Member**
18 **Phil Caparso, Alternate**
19 **Deidre Lawrence, Alternate**
20

21 **Members Absent:** **Garrett Dolan, Vice Chairman**
22 **Timothy Copeland, Alternate/Board of Selectman Representative**
23

24 **Staff Present:** **Audrey Cline, Building Inspector/Code Enforcement Officer**
25 **Lincoln Daley, Town Planner**
26
27

28 **1. Call to Order/Roll Call.**

29 The Chairman took roll call. He explained tonight's meeting was to decide if a motion
30 should be made for a rehearing of ZBA Case number 614 as requested by the Board of
31 Selectmen. The original 5 members who were at that meeting were present so he asked them
32 to be full voting members; this included one alternate Mr. Caparso. Ms. Lawrence would
33 remain an alternate for tonight's meeting.

34 **2. Approval of Minutes.**

35 **a. November, 25, 2014**

36 Mr. Brett made a motion to approve the minutes from the meeting November 25, 2014.
37 Motion seconded by Mr. Caparso. Motion carried unanimously.

38 **3. Public Meeting(s).**

39 **a. Case #614: Emerald Castle, LLC., 13 Evergreen Drive, Stratham, NH 03885 for the**
40 **property located at 255 Portsmouth Avenue, Stratham, NH Tax Map 22, Lot 7. A**

1 request for a Motion For Rehearing for the Variance granted on November 25, 2014 from
2 Section 3.6.F of the Stratham Zoning Ordinance to allow a personal service establishment
3 use in the Residential/Agricultural Zoning district.
4

5 The Chairman read from Page 3 of the ZBA Handbook which states that a motion for
6 rehearing gives a board the opportunity to correct their own mistakes before appeals are
7 filed with the court. There is no purpose granting a rehearing unless the petitioner finds a
8 technical error has been made to his detriment or he can produce new evidence that was
9 not available to him at the time of the first hearing. The coming to light of new evidence
10 is not a requirement, however the reason for a rehearing should be compelling and the
11 Board has no right to re-open up the case based on the same set of facts unless it is
12 convinced that an injustice would be created.
13

14 If the motion for the rehearing cites as a reason for the request the failure of the board to
15 adequately explain its decision, i.e., not address all five criteria for a variance, the board
16 could use the rehearing process to complete its records.
17

18 The Chairman referred to the document from the Board of Selectmen requesting a motion
19 for the rehearing and stated their arguments for a rehearing:
20

21 A. The ZBA did not have jurisdiction over the Variance Application due to the
22 Applicant's failure to receive an adverse decision or denial from the Code
23 Enforcement Officer.
24

25 The Chairman said this wasn't an issue as they weren't required to get a building
26 permit.
27

28 B. The Applicant failed to demonstrate, and the ZBA erred in concluding that there was
29 an "unnecessary hardship" associated with the Variance request. The ZBA further
30 erred by failing to make any findings of fact, pursuant to Section 7.19 of the
31 Ordinance, relative to the "unnecessary hardship" element of the Variance test.
32

33 C. The Applicant failed to demonstrate, and ZBA erred in concluding that granting the
34 Variance would be in the public interest and consistent with the spirit of the
35 ordinance.
36

37 The Chairman then talked about the partial objection to the rehearing from the client's
38 attorney in which she states the ZBA should grant a rehearing based solely on the issue of
39 "special conditions".
40

41 The members read the minutes from the November 25, 2014 meeting and all agreed that
42 they had voted there wasn't an unnecessary hardship. The Chairman said there seemed to
43 be some confusion about what an unnecessary hardship actually was, but that had to be
44 established as one of the criteria. Mr. Brett and Caparso said they should have denied the
45 application based on that.
46

1 Ms. Lawrence asked about the building permit issue. Mr. Charbonneau explained that it
2 is an unwritten policy, but typically the Building Inspector would write a denial letter in
3 which it would state that the applicant is welcome to go to the Zoning Board of Appeals
4 to seek a Variance or relief from the Zoning Ordinance. Mr. Charbonneau believes it
5 will now become written policy.
6

7 Mr. Cavarretta asked if to grant a rehearing, the Board just needs to vote on it. Mr.
8 Charbonneau said yes and said the fact they agreed there was no hardship, but then
9 proceeded to grant the variance is a technical error.
10

11 Mr. Charbonneau asked the board how they felt about point C made by the Selectmen.
12 Mr. Caparso felt that they substantiated their reasoning for the application being in the
13 public interest and consistent with the spirit of the ordinance. Mr. Brett agreed; he didn't
14 feel they addressed the unnecessary hardship with the rigor they applied to the other
15 criteria.
16

17 Mr. Caparso made a motion to rehear case number 614. Motion seconded by Mr.
18 Cavarretta. Motion carried unanimously.
19

20 Mr. Daley suggested the Board set the date for the rehearing. Mr. Charbonneau said it
21 would have to be February 10, 2015.
22

23 Mr. Caparso made a motion to close the case hearing. Motion seconded by Mr. Elliott.
24 Motion carried unanimously.

25 **4. Miscellaneous.**

26 Mr. Caparso said in the last meeting, the applicant's attorney said that Mr. Daley was not
27 allowed to speak during the session closed to the public. Mr. Caparso said in his opinion, as
28 Mr. Daley is staff, he should be allowed to speak.

29 Mr. Daley said to avoid any confusion if the Board would like staff to provide any procedural
30 guidance, the Board could call on them first. He asked if the Board prefer calling on staff or
31 prefer staff to interject. Mr. Charbonneau said if questions are asked periodically it is OK
32 and added that Ms. Cline usually raises her hand.

33 Mr. Caparso made a motion to allow Mr. Daley and Ms. Cline to speak in closed sessions as
34 staff. Motion seconded by Mr. Cavarretta. Motion carried unanimously.

35 Mr. Charbonneau said in the future, the Board should substantiate their decisions a little
36 more, rather than just saying "I agree". Mr. Daley seconded Mr. Charbonneau and gave an
37 example of an application that went to court; the main reason the Planning Board's decision
38 was found to be the right one, was down to the amount of detail provided by the members.
39 It reflected how much time the Board had put into their deliberation.

40 **5. Adjournment.**

1 Mr. Cavaretta made a motion to adjourn the meeting. Motion seconded by Mr. Caparso.
2 Motion carried unanimously.

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