



**Stratham Zoning Board of Adjustment
Meeting Minutes
December 8, 2015
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Garrett Dolan, Full Time Member
Jim Elliott, Secretary
Phil Caparso, Alternate
Deidre Lawrence, Alternate

Members Absent: Bruno Federico, Board of Selectman Representative
Chris Cavarretta, Full Time Member
Chris Brett, Full Time Member

Staff Present: Audrey Cline, Code Enforcement Officer

1) Call to Order/Roll Call

The Chairman took roll call and explained the procedure of the hearing to the applicant.

2) Approval of Minutes

a. November 24, 2015

Ms. Lawrence motioned to accept the minutes of November 24, 2015 as amended. Mr. Dolan seconded the motion. Motion carried unanimously.

3) Public Hearing(s)

a. Case #628: David Barnard/Kimberley Dennis, 40 Pineloch Drive, Portland, ME 04103, for property located at 6 Leigh Circle, Stratham, NH, Tax Map 15 Lot 84 Sublot 02. A Variance application request from Stratham's Zoning Ordinance, Section 8.9.b.iii.5 regarding Dimensional Requirements & Setbacks from internal lot.

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

1 David Barnard and Kimberley Dennis requested to infringe on the 15 ft. setback at 6
2 Leigh Circle, which is the middle property of 3 homes, due to the house being ½ the
3 width of the neighboring homes and they would like to center the house on the lot. Mr.
4 Barnard and Ms. Dennis have letters of support from the Golf Club of New England and
5 the abutter at 8 Leigh Circle, but after several attempts have not heard from the abutter at
6 4 Leigh Circle. Mr. Barnard requested to move within 3 ft. of the boundary line of 4
7 Leigh Circle and explained the pictures submitted:

8 Mr. Barnard stated the hardship criteria for the variance is shown on Picture 3. If the
9 house is built, as planned, the corner of the house will be extremely close to the shared
10 septic vent pipe of 8 Leigh Circle and 25 ft. from the patio of 4 Leigh Circle.; which is 40
11 ft. from the house, the closest allowed by the setback, but when a patio is added Mr.
12 Barnard & Ms. Dennis' bedroom would be 25 ft. from the neighboring patio. Mr.
13 Barnard asked to center the house so the corner of the bedroom will be equally distant
14 from 8 Leigh Circle's patio and the house on 4 Leigh Circle.

15 The uniqueness of the property, in terms of the spirit of the law, 6 Leigh Circle would be
16 more than 40 ft. from the abutter and the house. If the house is built within the setbacks
17 it would be placed 25 ft. from the neighbor and this could devalue both properties due to
18 the closeness and privacy. If the house is redesigned so the narrow part of the house is
19 facing the golf course, in Picture 4, it will devalue the property since the value of the
20 property is the view, as well as being too close to the neighbor at 8 Leigh Circle.

21 Mr. Charbonneau asked if it is the garage which will encroach on the setback. Mr.
22 Barnard confirmed, Picture 2, there is an incline so the distance will be 45 ft. from the
23 garage to the neighboring house, outside the setback in terms of the closest point to the
24 abutting residence. Mr. Barnard explained the house will be 68 ft. from the corner of the
25 abutting residence. Mr. Charbonneau questioned alternative locations for the garage.
26 Mr. Barnard explained moving the garage to the front of the residence would take away
27 from the residence aesthetically and devalue the property. Mr. Caparso asked whether
28 Mr. Barnard and Ms. Dennis were aware of the limitations of this property when they
29 purchased. Mr. Barnard stated they did, but were not aware of the neighbor's patio being
30 built so close to the property line. Ms. Lawrence asked for clarification of why the
31 property moved. Mr. Barnard explained the board was looking at the original plan which
32 fit within the setbacks and they would like to center the house. Discussion took place
33 regarding moving the garage to another location. Mr. Barnard explained there is no room
34 to move the garage side to side; it could be moved to the front but will devalue the
35 property. Mr. Charbonneau explained that the board will be voting on the 10 ft. zoning
36 setback, the developer went through the approval process as 15 ft. If the board votes to
37 allow the variance, the application will have to go before the planning board to rule on
38 the 15 ft. Ms. Cline questioned if Mr. Barnard included the overhang of the garage in the

1 setback he is requesting, Mr. Barnard did not realize the overhang was included, but they
2 would modify the design if needed. Ms. Cline stated the house, as it sits on the lot, has
3 10 ft. available on the floor plan to move the garage towards the front of the house. Ms.
4 Cline explained to Mr. Barnard that the board must approve the variance for the lifetime
5 of the property, which may impact future owners of the property. Mr. Dolan stated the
6 granting of a variance requires there be something unique with the property itself to
7 prevent the owner from making use of that property. Mr. Barnard explained this lot is
8 different due to the property being half the width of the two abutting properties, which
9 makes it unusual to the neighborhood. Mr. Dolan and Ms. Lawrence stated this does not
10 make the property unbuildable. Mr. Barnard asked the board why they would object to
11 centering the residence on the lot if the neighboring abutters are not objecting. Ms.
12 Lawrence explained the ZBA is required to uphold the zoning ordinance as it's written
13 and voted on by the Town of Stratham residents. Mr. Caparso asked for clarification if
14 the application gets rejected, Mr. Barnard and Ms. Dennis would still have the same
15 square feet of livable space but would require a redesign; Mr. Barnard confirmed. Mr.
16 Caparso questioned the cost for a redesign to which Mr. Barnard replied \$125/hour. Ms.
17 Cline questioned if the house could move forward 30 ft. Mr. Barnard and Ms. Dennis
18 stated the house cannot move forward per Mr. Jeff Baker, the individual making decision
19 for the HOA. Mr. Baker stated to Mr. Barnard and Ms. Dennis that moving the house
20 forward would infringe on the view of the other residences. Mr. Elliott stated the
21 residents of 8 Leigh Circle may prefer the residence further from their property line, but
22 the residents of 4 Leigh Circle may have issues with the residence moving closer to their
23 property line. Mr. Elliott is concerned the 4 Leigh Circle owners have not responded to
24 Mr. Barnard's attempts.

25 Mr. Charbonneau explained the procedure will be to close the public session and the
26 board will discuss the case and step through the criteria in order to meet the variance, and
27 lastly a vote will be made. Phil Caparso made a motion to close the public session.
28 Garrett Dolan seconded the motion. Motion carried unanimously.

29 Mr. Caparso stated his concern that the applicant bought the property due to it being a
30 unique piece of property, but they bought the property knowing the boundaries were
31 restricted. During the hearing it became evident that the issues are not with the property,
32 but with 8 Leigh Circle adding a patio. Mr. Charbonneau stated the leach field is too
33 close to the property.

34
35 17.8.3 VariANCES: (Rev. 3/11)
36

- 37 b. No variance shall be granted unless all of the following conditions are met:
38 i. The variance will not be contrary to the public interest:
39

1 Mr. Caparso stated the variance is not contrary to the public interest, the
2 uniqueness of the property isn't sending negative precedent; i.e. not in a
3 high traffic area, one neighbor is in agreement with the plan and argued it
4 is not contrary to public interest. Mr. Dolan argued 4 and 8 Leigh Circle
5 are the unique properties in the subdivision and they don't impact the
6 buildability of the lot at 6 Leigh Circle. Ms. Lawrence stated if the public
7 is interested in uniform enforcement it is not served by granting a variance.
8 Mr. Dolan agreed, due to this being an issue on other properties, which the
9 lot is buildable but an owner requests a variance to a certain aspect of the
10 zoning ordinance for economic benefit rather than actual physical
11 hardship. Mr. Dolan stated hardship is not supposed to be economic, but
12 within the property itself.

13
14 GD-Yes; AC-Yes; JE-Yes; PC-No; DL-Yes
15 Vote 4 Yes to 1 No
16

17 ii. The spirit of the ordinance is observed:

18 Mr. Charbonneau stated the spirit of the ordinance is observed. Ms.
19 Lawrence asked for clarification from Ms. Cline, Code Enforcement
20 Officer, regarding setbacks. Ms. Cline stated setbacks are tied to density
21 not access. Mr. Deschaine stated in prior years, in cluster subdivision,
22 setbacks for the lot lines were not the focus, but the setback from each
23 building was so a building could be within 5 ft. of a lot line as long as it
24 was back from the next structure according to the setbacks at that time.
25 Ms. Cline agreed and the smaller lot of the three structures at 4, 6, and 8
26 Leigh Circle is somewhat a restriction; and allowing the house to be in the
27 middle would not only benefit #6 but all the lots involved. Ms. Cline
28 stated the house being centered is not the issue, the garage is the issue that
29 needs to be resolved. Mr. Dolan stated the garage is the issue, not the
30 neighbor's patio. Mr. Dolan asked about the option of moving the garage
31 to the opposite side of the driveway. Ms. Cline stated the garage has room
32 to move forward with no impact on setbacks
33

34 DL-No; PC-Yes; JE-No; AC-No; GD-No
35 Vote 4 No to 1 Yes
36

37 iii. Substantial justice is done:

38 Mr. Charbonneau asked the board if there is a benefit for the town or
39 neighborhood versus the desire of the applicant. Mr. Caparso does not see
40 a conflict between the town and the applicants or neighbors. Mr. Dolan
41 agreed that granting a variance by speaking with neighbors substantial
42 justice is done, but substantial justice to the town by setting another
43 precedent has the potential to come back in the future. Only one neighbor
44 has responded to the applicant's request.
45

46 GD-No; AC-No; JE-No; PC-Yes; DL-No

1 Vote 4 No to 1 Yes
2

3 iv. The values of surrounding properties are not diminished:

4 Mr. Charbonneau agreed the value of surrounding properties is not
5 diminished. Ms. Lawrence and Mr. Caparso agreed.
6

7 AC-No; JE-No; PC-No; DL- No; GD-No

8 Vote 5 No to 0 Yes
9

10 v. Literal enforcement of the provisions of the ordinance would
11 result in an unnecessary hardship:
12

13 1. For purposes of this subparagraph, “unnecessary hardship” means
14 that, owing to special conditions of the property that distinguish it
15 from other properties in the area:
16

17 a. No fair and substantial relationship exists between the general
18 public purposes of the ordinance provision and the specific
19 application of that provision to the property; and
20

21 b. The proposed use is a reasonable one.
22

23 Mr. Charbonneau stated there is a relationship between the ordinance,
24 which is the setback and the impact on the neighbor and neighborhood.
25 Ms. Lawrence and Mr. Dolan agreed.
26

27 DL-No; AC-No; PC-No; JE-No; GD-No

28 Vote 5 No to 0 Yes
29

30 2. If the criteria in subparagraph 1. are not established, an unnecessary
31 hardship will be deemed to exist if, and only if, owing to special
32 conditions of the property that distinguish it from other properties in
33 the area, the property cannot be reasonably used in strict conformance
34 with the ordinance, and a variance is therefore necessary to enable a
35 reasonable use of it.
36

37 DL-No; AC-No; PC-No; JE-No; GD-No

38 Vote 5 No to 0 Yes
39

40 3. The definition of “unnecessary hardship” set forth in this section
41 shall apply whether the provision of the ordinance from which a
42 variance is sought is a restriction on use, a dimensional or other
43 limitation on a permitted use, or any other requirement of the
44 ordinance.
45

46 Ms. Lawrence stated putting the garage in the proposed location is
47 reasonable in light of the dimensional requirements; there are
48 dimensional requirements for a reason. Mr. Dolan explained the property
49

1 can be used in accordance with the ordinance and the ordinance is in
2 place by the Town due to their requirement. Ms. Lawrence stated the
3 concerns put for by the applicant was aesthetics and property value, not
4 hardship, and the applicant did not submit information from a relator, etc.
5 to support their concern.
6

7 The Board voted to DENY Variance application request from Stratham's Zoning
8 Ordinance, Section 8.9.b.iii.5 regarding Dimensional Requirements & Setbacks from
9 internal lot regarding **Case #628: David Barnard/Kimberley Dennis, 40 Pineloch**
10 **Drive, Portland, ME 04103, for property located at 6 Leigh Circle, Stratham,**
11 **NH, Tax Map 15 Lot 84 Sublot 02.**

12
13 Mr. Caparso made a motion to DENY a Variance request from Stratham's Zoning
14 Ordinance, Section 8.9.b.iii.5 regarding Dimensional Requirements & Setbacks from
15 internal lot regarding **Case #628: David Barnard/Kimberley Dennis, 40 Pineloch Drive,**
16 **Portland, ME 04103, for property located at 6 Leigh Circle, Stratham, NH, Tax Map**
17 **15 Lot 84 Sublot 02.** Mr. Brett seconded the motion. Motion carried unanimously.

18
19 Mr. Caparso made a motion to adjourn at 8:35 pm. Mr. Dolan seconded the motion. Motion
20 carried unanimously.